HOUSE OF REPRESENTATIVES—*Wednesday, June 30, 1982*

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. NATCHER).

Rev. Charles Mallon, permanent deacon, Holy Family Church, Mitchellville, Md., offered the following prayer:

Blessed is he who considers the poor, the Lord delivers him in the day of trouble; the Lord protects him and keeps him alive; he is called blessed in the land; Thou dost not give him up to the will of his enemies.—Psalm 41: 1-2.

Father, we thank You for the birth of this Nation and the spirit of independence that brought forth many peoples with sufficient faith to form this new concept in government.

And we recognize that we are a nation under Your direction and that we are united by our common hope of life, liberty, and the pursuit of justice.

Father, we ask You to continue to arm this Nation with Your spiritual strength and to give us both religious and civil leaders who are faithful to this, our common goal.

We ask this through Christ our Lord. 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 agrees to the amendments of the House to the bill of the Senate of the following title:

S. 881. An act to amend the Small Business Act to strengthen the role of the small, innovative firms in federally funded research and development, and to utilize Federal research and development as a base for technological innovation to meet agency needs and to contribute to the growth and strength of the Nation's economy.

The message also announced that the Senate agrees to the amendments of the House to the amendment of the Senate numbered 1 to the bill of the following title:

H.R. 3816. An act to improve the operation of the fishermen's contingency fund established to compensate commercial fishermen for damages resulting from oil and gas exploration, development, and production in areas of the Outer Continental Shelf.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON TODAY

The SPEAKER pro tempore. Without objection, the business in order under the Calendar Wednesday rule is dispensed with for today.

There was no objection.

REQUEST FOR ADJOURNMENT, MOTION WITHDRAWN

The SPEAKER pro tempore. The Chair recognizes the gentleman from Michigan (Mr. DINGELL).

Mr. DINGELL. Mr. Speaker, I have a motion.

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

The SPEAKER pro tempore. The gentleman will withhold for just 1 minute.

Does the gentleman from California (Mr. LEWIS) seek recognition.

Mr. LEWIS. Reserving the right to object, Mr. Speaker——

Mr. DINGELL. Mr. Speaker, I withdraw the motion.

The SPEAKER pro tempore. The Chair would like to advise the gentleman from California (Mr. LEWIS) that there is no unanimous-consent request pending before the House.

Does the gentleman from California (Mr. LEWIS) seek recognition to proceed for 1 minute?

Mr. DINGELL. Mr. Speaker, I will ask unanimous consent to proceed for 1 minute.

The SPEAKER pro tempore. Without objection, the gentleman from Michigan (Mr. DINGELL) is recognized.

There was no objection.

ORDER OF BUSINESS

(Mr. DINGELL asked and was given permission to address the House for 1 minute.)

Mr. LEWIS. Mr. Speaker, if the gentleman will yield, I wonder if the gentleman from Michigan (Mr. DINGELL) would clarify for the House his intention under this request?

Mr. DINGELL. Mr. Speaker, the gentleman from Michigan is not altogether clear as to exactly what the leadership intends. I believe the decision is being made as to whether or not we will adjourn or whether we will recess, and that is a matter on which I am not prepared to report either to my good friend, the gentleman from California, or the House.

Mr. LEWIS. Mr. Speaker, the gentleman from California is not exactly clear, either. I would be glad to go in the back room and have a cup of coffee with the gentleman, and we could discuss it.

I would suggest that this side would be very comfortable with adjourning until tomorrow.

Mr. DINGELL. Mr. Speaker, I have just been advised by a member of the majority staff that it is the intention of the leadership to adjourn until 10 tomorrow.

Mr. LEWIS. Mr. Speaker, we have no objection to that.

EXTENSION OF REMARKS

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

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

Mr. MCKINNEY.

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

Mr. WAXMAN.

Mr. BARNES.

Mr. STARK.

ENROLLED BILL SIGNED

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

H.R. 3816. An act to improve the operation of the fishermen's contingency fund established to compensate commercial fishermen for damages resulting from oil and gas exploration, development, and production in areas of the Outer Continental Shelf.

BILLS AND A JOINT RESOLUTION PRESENTED TO THE PRESIDENT

Mr. HAWKINS, from the Committee on House Administration, reported that that committee did, on June 29, 1982, present to the President, for his approval, bills and a joint resolution of the House of the following titles:

H.R. 4569. An act to designate the U.S. Post Office Building in Hartford, Conn., as the "William R. Cotter Federal Building";

H.R. 4903. An act granting the consent of the Congress to an interstate compact between the States of Mississippi and Louisiana establishing a commission to study the feasibility of rapid rail transit service between the two States; and

H.J. Res. 518. An act to designate the week commencing with the fourth Monday

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in June 1982 as "National NCO/Petty Officer Week."

ADJOURNMENT

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

The motion was agreed to; accordingly (at 10 o'clock and 5 minutes a.m.), the House adjourned until tomorrow, Thursday, July 1, 1982, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

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

4262. A letter from the Acting Deputy Assistant Secretary (Logistics), Department of the Air Force, transmitting notice of the proposed conversion to contractor performance of the transient aircraft maintenance function at Tinker Air Force Base, Okla., pursuant to section 502(b) of Public Law 93-342; to the Committee on Armed Services.

4263. A letter from the Acting Deputy Assistant Secretary (Logistics), Department of the Air Force transmitting notice of the proposed conversion to contractor performance of the food services mess attendant function at North Truro Air Force Station, Mass., pursuant to section 502(b) of Public Law 93-342; to the Committee on Armed Services.

4264. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report on loan, guarantee, and insurance transactions supported by Eximbank during May 1982 to Communist countries, pursuant to section 2(b)(2) of the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Finance and Urban Affairs.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

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

[Pursuant to the order of the House on June 24, 1982, the following report was filed on June 29, 1982]

Mr. JONES of North Carolina: Committee on Merchant Marine and Fisheries: H.R. 5543. A bill to establish an Ocean and Coastal Resources Management and Development Fund and to require the Secretary of Commerce to provide to coastal States national ocean and resources management and development block grants from sums in the fund; with amendments (Rept. No. 97-628). Referred to the Committee of the Whole House on the State of the Union.

MEMORIALS

Under clause 4 of rule XXII.

430. The SPEAKER presented a memorial by the Governor of the State of Washington, relative to legislation proposed by the five States that comprise the Northwest Low-Level Waste Compact Committee; jointly, to the Committees on Energy and Commerce and Interior and Insular Affairs.

ADDITIONAL SPONSORS

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

H.R. 1711: Mr. WEISS.
H.R. 6461: Mr. TRIBLE.
H. Con. Res. 327: Mr. EDGAR.

PETITIONS, ETC.

Under clause 1 of rule XXII.

504. The SPEAKER presented a petition of the County Board of Itasca County, Minn., relative to bilateral nuclear arms freeze; which was referred jointly to the Committees on Armed Services and Foreign Affairs.

SENATE—*Wednesday, June 30, 1982*

(Legislative day of Tuesday, June 8, 1982)

The Senate met at 9:45 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, the Reverend Richard C. Halverson, LL.D., D.D., offered the following prayer:

Our Father in Heaven, we live so much of our lives as though we were animals. We pay so much attention to the physical, so little to the spiritual. We provide the best food for our bodies and feed our souls on rubbish. We clothe our bodies with fine garments and subject our minds to garbage. We stuff the flesh and starve the spirit, then wonder why there is so little joy, so much depression. We take pills for highs and lows when we could be energized by Thy Holy Spirit and relaxed in Thy gracious love and care.

Help us to realize, dear Lord, that we are God hungry and nothing else will satisfy. "Thou hast made us for Thyself O Lord, and our hearts are restless until they repose in Thee." Forgive us, kind Father, for indulging the flesh and forsaking the spirit. Renew us to live like children of God, through Jesus Christ, the Lord. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

THE JOURNAL

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

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

EXTENSION OF TIME FOR SPEECHES DURING TRANSACTION OF MORNING BUSINESS

Mr. STEVENS. Mr. President, I understand that an order has been entered for the transaction of routine morning business, not to extend beyond 10:40 this morning, with speeches therein not to exceed 2 minutes each. Am I correct?

The PRESIDENT pro tempore. The Senator is correct.

Mr. STEVENS. Mr. President, I ask unanimous consent that speeches during the transaction of morning business not exceed 5 minutes each.

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

THE NATIONAL DEBT

Mr. STEVENS. Mr. President, a subject that continues to concern us all is the amount of the national debt, which is now around $1.08 trillion. A trillion dollars is an amount that is difficult to comprehend in conventional measurements, but in practical terms a trillion dollars would buy more than 75 percent of the Nation's single family homes. A trillion dollars, if given away at the rate of $4 million a day since the birth of Christ, would not yet be depleted.

The question has to be asked, Can a debt so huge eventually be paid off? I think it can, Mr. President, and we must start searching for ways to do so. It is not just the size of the debt, but the complications and impact that amount has on our economy. The June 14, 1982, edition of the U.S. News & World Report features an article on the national debt by Monroe Karmin and Robert Morse of the magazine's economic unit. This is one of the best articles I have read on the subject, and I highly recommend it to all Members of the Senate.

Mr. President, I ask unanimous consent to have the article printed in the RECORD.

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

WHEN NATIONAL DEBT GETS OUT OF CONTROL—

(Note.—Now more than 1 trillion dollars and climbing, Uncle Sam's mountain of IOU's is affecting the budget, interest rates and recovery prospects.)

As the President and Congress dig in for new budget battles, the mammoth national debt is casting a long shadow over the economy's future.

The Reagan administration quietly asked Congress in late May to raise the debt ceiling to a record 1.275 trillion dollars. Unless the ceiling is lifted, the Treasury warned, it will not be able to borrow enough money to pay all the government's bills that will be coming due on June 30.

This Gargantuan debt is important for reasons beyond serving as a measure of federal profligacy. It threatens to—

Crowd out other borrowers from the money market, meaning that some corporations, state and local governments and others in need of capital won't be able to get it.

Keep interest rates high or push them even higher, thereby jeopardizing the expected economic recovery and sabotaging company plans to invest in new plant and equipment.

Make it even more difficult, by increasing the budget's interest costs, for the government to close its deficits and control the debt.

The immensity of the problem is shown by the nearly continuous growth of the public debt in the past 50 years. After the IOU's built up during the Depression years of the 1930s and then World War II, debt mushroomed following the war. From 258.7 billion dollars in 1945, accumulated red ink rose 43 percent, to 370.1 billion at the end of 1970.

Then it exploded, crossing the 1-trillion-dollar mark in October, 1981. Now, Treasury officials are estimating that the debt will exceed the current 1.08-trillion-dollar limit before June 30. In all, the government has balanced its budget only once in the past 22 years.

When Washington finances this debt, it competes with corporate and other borrowers for credit in the private markets. Thus, the need to finance bigger and bigger deficits sops up available funds, squeezes other borrowers out of the market and tends to make money more expensive for everybody—including the government. Washington's share of the credit market is expanding rapidly. The U.S. News & World Report Economic Unit estimates that Uncle Sam's share of available domestic credit will reach a record 52 percent in the 1982 fiscal year, ending September 30. In comparison, the federal share averaged 25.4 percent during the 1970s, up from only 16.7 percent in the 1960s.

REAGAN'S DEFICITS

This huge federal credit need is dictated, in large part, by President Reagan's proposal to pile up huge new deficits, projected at well over 100 billion in each of the 1982 and 1983 fiscal years.

Beyond that, the federal establishment engages in a vast amount of borrowing that doesn't show up in the conventional budget. This includes debt incurred—directly or through loan guarantees by an array of federal agencies and government-sponsored enterprises—that isn't figured into the deficit.

Examples: The Postal Service, the Export-Import Bank, the Tennessee Valley Authority, the Rural Electrification Administration, the Veterans Administration, the Federal Housing Administration, the Federal Home Loan Bank Board, the Federal National Mortgage Association, the farm-credit system, the Student Loan Marketing Association and many others.

Over all, the amount of money to be raised under federal auspices is estimated by the Reagan administration at more than 200 billion dollars in each of the fiscal years in 1982 and 1983.

Experts outside the administration, however, say the total could climb to 250 billion or more in 1983 if the President and Congress fail to resolve their budget impasse. That would be more than double the 123.5 billion dollars of federal borrowing as recently as 1980, almost four times the 64.8

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

billion in 1975 and nearly 15 times the 16.7 billion borrowed in 1970.

This mounting competition from Uncle Sam for available credit means that only better-quality corporations, state and local governments and other borrowers will be able to raise funds. Smaller and, often, newer businesses will be crowded out.

What's more, those that can get funds will have to pay high interest rates, a specter that haunts Wall Street. Financial experts fret that an added heavy federal credit demand will, at best, keep today's high rates from falling much and, at worst, push them higher. That could stunt or abort the expected recovery.

High interest costs also are making it extremely expensive for corporations to go ahead with plans to step up their investments in job-creating new factories—a key goal of the Reagan economic program.

The Reagan administration argues that heavy federal borrowing need not keep interest rates high. The Treasury expects the supply of investment capital to expand as the President's tax-cut program stimulates savings.

Even though this year's personal-tax cut of 10 percent won't take effect until July 1, early evidence shows that savings may have increased a bit in the wake of last year's tax cuts for business and individuals.

The personal-savings rate, at 4.6 percent of disposable income in the first quarter of 1981 when Reagan assumed office, increased to 5.5 percent in the first quarter of this year. But the Economic Unit says that rise is not nearly enough to make the administration's wishes come true. It estimates that the personal-savings rate will have to reach the 8 to 10 percent range in order to provide the additional funds needed to finance the government's enlarged borrowing needs.

Unless a budget accord is arranged, therefore, the size of the federal debt will continue to weigh heavily on the economy. One result will be that the government will have to pay more for the money it borrows.

INTEREST INCREASE

The administration estimates that in fiscal 1983 federal interest payments will total close to 134 billion dollars, or 17.5 percent of budget expenditures. That's a sharp jump from the 13 percent in 1980 and the 9.9 percent in 1970.

The rising cost of the debt, in turn, makes it more difficult for the government to balance its books and means that the Treasury has to borrow more frequently at expensive interest rates to pay off maturing debt.

In recent years, the increase in the cost of the debt has far outdistanced the growth in total federal spending. By the end of 1982, interest payments will have risen 500 percent since 1970, compared with a 272 percent climb in spending in the same years.

Viewed in another way, interest on the debt will hit a record 3.8 percent of the nation's total output of goods and services this year, almost double the 2 percent ratio of 1970.

Ownership of the national debt is changing, too. Foreign investors have acquired a larger share, mainly because of the investment of surplus funds by oil-rich countries of the Mideast during the energy crisis of the 1970s. Since 1970, foreign ownership of the outstanding federal debt has soared from 3.8 percent to 13.4 percent at the end of February.

Individuals own about 13.8 percent of the national debt, about half of which is savings bonds. But because the popular series E and EE bonds have a yield of just 9 percent, people are cashing in more than they are buying. To stanch the losses, the Treasury asked Congress to O.K. a variable rate for the bonds that would allow savers to earn closer to market yields.

Holders of the debt also include state and local governments, which buy federal securities for investment of surplus funds, and the central government itself, using extra money in Social Security and other funds.

The outlook now is for Congress to lift the ceiling in order to keep the government running, though lawmakers know a debt extending to 13 digits poses a grave danger for the economy.

RESERVATION OF MAJORITY LEADER'S TIME

Mr. STEVENS. Mr. President, I reserve the remainder of the majority leader's time.

FUNDING FOR THE CORPORATION FOR PUBLIC BROADCASTING

Mr. BAKER. Mr. President, I call to the attention of my colleagues an article by Tom Shales which appeared in the June 25 edition of the Washington Post. Mr. Shales has written an insightful and propitious analysis of efforts to deal with funding for the Corporation for Public Broadcasting. Through the efforts of the distinguished assistant majority leader, Senator STEVENS, and under the leadership of Senate Appropriations Committee chairman, Senator HATFIELD, it appears at this time that an additional $24.4 million in funding will be restored to the CPB.

I ask unanimous consent that the text of Mr. Shales' article be printed in the RECORD.

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

AIR TIGHT BUDGET CRUNCH PROMPTS PBS TO CUT BACK

(By Tom Shales)

Public television has had dozens of eleventh hours. Now the bell tolls for it again. As representatives from 290 public TV stations convene here through Saturday for their annual membership meeting, they know they are facing Dust Bowl days, the worst financial crunch in public TV history.

As if to turn this story into even more of a cliffhanger, public TV has been bounced around again this week on Capitol Hill and by the White House. Sen. Ted Stevens (R-Alaska) introduced an amendment to restore $24.4 million in funding for fiscal 1984 that had been carved away by the House. But the appropriation for the Corporation for Public Broadcasting (CPB) was part of a catch-all "urgent supplemental" bill that the White House vetoed yesterday.

Public broadcasting was not mentioned in the veto message, however, and so a revised version of the urgent supplemental, with the public broadcasting appropriation intact, was expected to be approved quickly by both the Congress and the White House. That's the good news. The bad news is that even with Stevens' $24 million restored, federal funding for public broadcasting is still off 25 percent from fiscal '82 levels. Public broadcasting is going to have to tighten its belt to such an extent that its voice may change octaves.

And viewers of public television are going to see the results on their screens as early as this fall. Lawrence K. Grossman, president of the Public Broadcasting Service (PBS), is expected to announce at today's session at the Hyatt Crystal City Hotel in Arlington that starting in October PBS will cut back the number of hours it "feeds" programs to member stations. Saturday nights will go totally "dark," so that local stations will have to fill the time themselves. Feeds of repeat programs will be cut in half; if stations want to repeat shows, they will have to tape them themselves, at their expense.

While PBS stations will be repeating the popular six-part series "Tinker, Tailor, Soldier, Spy" next season, they won't be airing the sequel, "Smiley's People." It went to a higher bidder—commercial TV—and will be syndicated nationally to stations, including WDCA-TV in Washington, by Operation Prime Time. The new pay-cable service called The Entertainment Channel—available to only a tiny fraction of the viewing country, but generously financed with Rockefeller and RCA money—now gets first choice of programs from England's BBC that formerly turned up first on public TV.

Many local PBS stations are in financial straits so dire that they make previous crises look like bonanzas. KCET-TV in Los Angeles has laid off 77 employes since Jan. 1, reduced its own production to a virtual zero and is now renting out its, production facilities; yesterday, Regis Philbin's cable health show was taped there. KCET even loses hefty sums on "The Dial," a program guide scheme by a four-station cooperative that was supposed to make, or at least save, money. At WNET in New York president John Jay Iselin recently announced that times were so tough he was voluntarily taking a $5,000 cut in his annual salary, to which a spokesman for another public TV station responded, "Yeah—down to a measly $100,000."

Some stations may have "dark" nights of their own soon, Grossman says, and there is the possibility that smaller stations, dependent on state funds that have also been severely cut, may go dark altogether.

(Washington's WETA-TV, however, is not in any kind of peril. In fact, it will finish the current fiscal year with a $150,000 surplus, according to station president Ward Chamberlin.)

At their meeting, PBS stations will be exploring ways to weather the storm. But when it comes to alternate financing, Grossman thinks most alternatives have already been tried. The private sector has not come roaring through with money to make up for Uncle Sam's fit of parsimony. Grossman says task force after task force has come to the conclusion that the federal government will have to continue to be the principal source of funding.

"This is going to be a very hard, tough, lean period," Grossman says. "We are going to try to make it as unnoticeable to the public as possible."

Grossman may also reveal, at today's session, plans for a PBS link with a major private satellite firm that would distribute PBS programs over a new pay-cable TV channel. Existing "cultural" cable networks like CBS Cable, Bravo and ARTS are all sinking fast into deficits, but Grossman thinks that's because they are advertiser-supported, not paid for by cable subscribers.

"It's a very risky, uncertain business," Grossman concedes. "But there's a definite market for it. There is a loyal, passionate but very small audience for a pay-cable service like this. We think we have a good opportunity in the field."

Grossman says the point of the service would be not to make money for PBS but to help finance new productions. The programs would be seen first on the pay-cable service and, later, free to viewers of PBS stations. The proposal to go forward with this plan, if Grossman actually introduces it, would have to be approved on Sunday by the PBS board. One public broadcaster calls the plan "dead," but Grossman says he thinks it still has possibilities. He will survey the "landscape of the new technologies" at this afternoon's session.

What will not be unveiled, Grossman says, is a dramatic plan for raising more money. "People are awakening to the reality that there's no magic," Grossman says glumly. "No life-saving new vaccine will be announced by me." Still, he thinks there is room for optimism, that "the pendulum is starting to swing back the other way." Public TV stations are getting better ratings than ever, arguably presenting more notable programming than ever, and during the most recent fund-raising drive took in more than $28 million, nearly a 9 percent increase over the previous drive.

Grossman does not blame the Reagan administration for public television's woes. "Budget cutting on non-defense areas is its prime target and I can understand that," he says, "but whether Carter or Reagan or what's-his-name, Anderson, had won, I think the mood of the country was that everybody in the public sector was going to be cut."

How much worse things will get for public TV is open to speculation, but for now, and despite public TV's history of panic and fiscal catastrophe, the crisis is real. They're crying wolf, but the wolf is right there at the door.

TALKS ON REDUCING STRATEGIC NUCLEAR WEAPONS BEGIN

Mr. BAKER. Mr. President, yesterday, the United States and the Soviet Union began talks aimed at reducing strategic nuclear weapons. The meeting was the first on strategic weapons in more than 3 years between the two countries, and is an important step in reducing the risk of nuclear war.

At the beginning of the session yesterday, chief American negotiator, Edward L. Rowny read a letter from President Reagan which addresses the President's concerns on a topic of vital importance to every citizen on this planet. "As the two leading nuclear powers in the world," wrote President Reagan, "the United States and the Soviet Union are trustees for humanity in the great task of ending the menace of nuclear arsenals and transforming them into instruments underwriting peace."

I ask unanimous consent that the text of the President's letter be printed in the RECORD.

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

TEXT OF LETTER BY THE PRESIDENT TO THE HONORABLE EDWARD L. ROWNY, CHAIRMAN, U.S. START DELEGATION

THE WHITE HOUSE,
June 29, 1982.

DEAR AMBASSADOR ROWNY: You are about to undertake one of the most important tasks of our age—the negotiation of an effective and equitable strategic arms reduction agreement. Your efforts in this endeavor are vital to the citizens of the United States and the Soviet Union, and to all mankind.

Despite more than a decade of intensive negotiations, nuclear weapons continue to accumulate, and the strategic relationship between the Soviet Union and the United States has steadily become less stable. A major reason for this has been the massive buildup of the Soviet Union's ballistic missile force over the past 15 years.

An historic opportunity now exists for both the United States and the Soviet Union to reverse this process, and to reduce substantially both the numbers and the destructive potential of nuclear forces. Such reductions to equal levels must immediately focus on the most destabilizing elements of the strategic balance if we are to promptly enhance deterrence and stability and thereby reduce the risk of nuclear war. Further, the achievement of this goal should greatly reduce the nuclear anxiety that has become such a conspicuous feature of public concern throughout the world.

I do not underestimate the monumental nature of the task of effectively reducing forces. But while the task is formidable, the importance of undertaking these negotiations is fully appreciated by the American and, I believe, by the Soviet people. We must learn from the shortcomings of earlier efforts for, as you are well aware, the American people will not accept an agreement unless it is equal and verifiable, and contributes to stability.

The proposals you take to Geneva represent a practical, phased plan which will protect the legitimate security interests of both sides. It is designed to enhance deterrence and to achieve stability by reducing nuclear forces on both sides to equal levels in a verifiable manner. Its provisions significantly reduce the forces of both the Soviet Union and the United States and, therefore, contain benefits for both sides, as well as for the rest of the world.

I know that you and your delegation will present these proposals clearly and persuasively, along with the fundamental considerations that lie behind them. And, I want the Soviet delegation to know that concerns and proposals put forward by them will be given careful consideration by us. For our part, the United States is ready to move forward rapidly toward an agreement reducing strategic nuclear arms, and I am confident that if our efforts are met with the same seriousness of purpose by the Soviet Union, we can seize the historic opportunity that lies before us.

As the two leading nuclear powers in the world, the United States and the Soviet Union are trustees for humanity in the great task of ending the menace of nuclear arsenals and transforming them into instruments underwriting peace. I am convinced that this can be done if both nations fully accept the principle that the only legitimate function of nuclear arms is to deter aggression.

I wish you Godspeed in your efforts, and assure you that these negotiations will have personal attention.

Sincerely,

RONALD REAGAN.

NUCLEAR ARMS NEGOTIATIONS DWARF ALL OTHER ISSUES

Mr. PROXMIRE. Mr. President, the arms control talks that began yesterday at Geneva dwarf any other problem or issue that will come before the Congress this year. For us in the Senate to debate economic or social issues seems trivial and irrelevant when we consider the immense, the overwhelming importance of these negotiations between the United States and the Soviet Union, negotiations that literally involve the survival of mankind on this Earth. Everything we stand for, every last fragment of our civilization, could disappear forever in a nuclear war between this country and the Soviet Union.

We may stand on the brink of the most momentous success or failure in our history. Under our Constitution, this body, the U.S. Senate, can and will play a vital part in affirming or denying any agreement that our President through his negotiators, may reach with the Soviet Union. So we have an obligation to follow these negotiations as fully and conscientiously as we can.

Mr. President, our foreign policy has served this country best when it has been nonpartisan or bipartisan. In the nearly 25 years I have been in this body Republican Presidents have been supported by Democratic Senators and Representatives, and vice versa, on the really vital issues, with occasional serious exceptions.

At this time, all of us, Democrats and Republicans, must wish President Reagan and his chief negotiator, General Rowny, the very best wishes for success, and for an agreement that can begin the long road toward truly effective arms control and the end of the terrible threat of a nuclear holocaust.

Mr. President, Gerard Smith had an article on the op-ed page of yesterday's New York Times, and I should like to read the concluding few sentences of that article. He says:

> No man chosen to be head of his Government and state can remain indifferent to the possibility of a special place in history that would be reserved for the statesman and peacemaker who succeeded in curbing the nuclear arms race and opening the way to disarmament.
>
> President Reagan seems ideally placed to negotiate and assure full Congressional support for any agreement that results from this round of strategic arms talks. He is said to be deeply and personally committed to making a success of Start. The country should give him every chance to do so.

Mr. President, Gerard Smith was our chief negotiator in strategic arms limitation talks with the Soviet Union

from 1969 to 1972, so he is an expert. He knows whereof he speaks, and I think he speaks words of wisdom and words that all of us, in both parties, can endorse enthusiastically.

Mr. President, I ask unanimous consent to have the article printed in the RECORD.

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

[From the New York Times, June 29, 1982]

TOWARD ARMS CONTROL

(By Gerard Smith)

WASHINGTON.—One can only hope that the formal opening of arms limitation talks between the two superpowers in Geneva today will bring to an end the public posturing and the global propaganda that has marred the debate over nuclear weapons. I do not entirely endorse President Reagan's proposals, which may destabilize the arms race, but it may not be too late to turn what has been a largely polemical exercise into real negotiations.

However, it would be hard to underestimate the damage that the Administration already has done to itself. The key to arms control is patient and private diplomacy, and in choosing to reject this at the beginning, Mr. Reagan placed himself under a great handicap that could only sow confusion abroad and invite cynicism at home.

Not the least of his problems is that there is a growing number of Americans who believe that there is some quick fix to the nuclear dilemma. Anyone who has participated in arms negotiations knows that there is no such thing. But the Administration's reluctance to move on the issue created a profound sense of national impatience, which is not the best atmosphere in which to conduct complex diplomacy.

Words—even more than deeds—have contributed to the mess. Republican campaign rhetoric called for rearming the nation and regaining military superiority. Loose statements suggesting that a nuclear war could be "limited" to Europe offended our allies and helped accelerate the growth of a grassroots antinuclear movement in Europe. These pressures, which European governments could not ignore, eventually persuaded the Administration to begin talks in Geneva on theater nuclear weapons and to offer a plan, the so-called zero option, under which our proposed deployment of Pershing 2 and cruise missiles in Europe would be abandoned if the Soviet Union would scrap missiles now targeted on Western Europe. But it is difficult to see any positive outcome to these talks unless they are tied to some broader limitation on strategic arms.

The Administration soon began to notice that it had a problem at home as well. Adm. Hyman G. Rickover, the founding father of America's nuclear navy and a redoubtable old warrior, warned that we were spending too much on defense, that we probably would blow up the human race and that disarmament was an urgent necessity. A Congressional resolution calling for a freeze on nuclear weapons has gained considerable support, despite arguments that it would be difficult to verify and could only come after long, complicated negotiations.

For a time, the Administration continued to resist, arguing that serious, comprehensive talks should be linked to better Soviet conduct in Poland, Afghanistan and elsewhere, as well as an improvement in the United States' military posture. But the pressures proved too great. With the European summit meeting fast approaching, the Administration (not without fierce bureaucratic infighting) abandoned the idea of linkage, telescoped its negotiating schedule and got to work on some comprehensive proposals. Theses were announced to the graduating seniors of Eureka College, in Illinois—and to the world—on May 9.

Mr. Reagan's willingness to address the nuclear issue, however tardy it may have been, was welcome. But rhetorical excesses continue to raise questions about the Administration's common sense and, worse, its credibility. One puzzling, perhaps pernicious statement, was the President's surprising assertion that the United States is now in an inferior strategic position. I believe that almost all American (and, I suspect, Soviet) experts would disagree. Somehow, while being in a position of parity, we have managed to convince many that we are in second place. That specter will be felt at the negotiating table and it is not likely to increase our bargaining power. Until now, negotiations had been based on the assumption that a situation of parity existed between the two parties. It will take some doing to arrive at arrangements that correct a balance now alleged to be out of equilibrium.

Meanwhile, as reflected in the President's bellicose speeches to the British Parliament and the United Nations, the Administration has declared psychological and economic war on the Soviet Union even as it tries to regain the offensive on the issues of peace and arms control. Sending such confusing and even contradictory signals cannot help but complicate the very difficult task of trying to manage the strategic balance.

What are we to make of the proposals themselves?

Their stated purpose is to imbility" of the strategic balance. But it is not at all clear that the proposals would accomplish this purpose, especially since during the years that the President himself admits may be necessary to negotiate a new arms control agreement the United States presumably would be building missile systems that would threaten the Soviet Union's missiles even more than our existing weapons do.

Put briefly, the proposals envision a two-step process.

In Phase I, both countries would reduce the total number of warheads on their ballistic missiles to equal levels at least one-third below the present number—to about 5,000 warheads each. Not more than half of these warheads could be placed on land-based missiles, the rest on submarines. These reductions would take place as soon as possible.

In Phase II, sometime in the future, we would seek equal ceilings on other kinds of strategic weapon systems (these other systems are undefined) and on ballistic missile payloads—in both cases, ceilings lower than current American levels. Cruise missiles and bombers would also eventually be limited equitably.

To these proposals the President added sensible words about our willingness to listen to any Soviet counter-proposals and about not ruling out the control of any weapon systems. In his words, "Everything is on the table." We also promise not to undercut SALT II as long as the Russians don't.

The Soviet Union's reaction was predictably unenthusiastic. The American proposals, it said, were unfair: They would reduce systems central to Soviet security while having less impact on American weaponry. Three-fourths of the Soviet Union's nuclear power, Moscow said, rests in its intercontinental ballistic missile force, which Mr. Reagan would sharply reduce, but only one-fourth of the American strategic forces are land-based. Moreover, Moscow claimed, the proposals would put off to an uncertain future control over American weapon systems of most concern to Moscow: bombers and cruise missiles.

What the Russians fear is that the Eureka proposals would allow for the development of new weapons that could only result in a less stable strategic balance. President Reagan's proposals aim at ending the escalating spiral toward more and more dangerous weapons, as well as reducing the risk that in a deep crisis either side might feel so vulnerable to surprise attack that it would strike first. But, in fact, his plan would leave dangerous loopholes that would allow both countries to sprint ahead in the use of more sophisticated technology.

The proposals would not limit the number of warheads on each Soviet missile and as a result would allow the Russians to simply target the smaller number of American missiles that would be deployed once Phase I reductions had gone into effect. It is therefore hard to see how the Eureka plan would allay concerns that our ICBM's are unduly vulnerable to Soviet surprise attack. The Administration's response to this criticism is that the anticipated threat of increased Soviet warheads on each missile is based on merely "hypothetical ratios." Coming from a Government that has mounted a continuing campaign using hypothetical ratios to convince the public that our ICBM's are vulnerable, this defense sounds curious indeed.

The Eureka proposals would also allow American advances that can only seem unsettling to strategic planners in Moscow. The Russians would be asked to reduce the number of their ICBM's but we would be free to increase the number of warheads per missile, by deploying the MX, aimed at the Soviet Union's reduced ICBM force. It is hard to see how this would lead to a more stable situation, and it seems worth pointing out that SALT II would not have permitted this to happen.

Indeed, the most prudent course now would be to ratify SALT II and, with its ceilings nailed down, move on to reductions—reductions that in addition to setting lower overall levels for missiles and warheads would also limit the number of warheads each missile can contain. But that ratification seems politically impossible. The Administration continues to call SALT II fatally flawed and dead, yet says we will not undercut SALT II as long as the Russians don't. But the proposed MX missile deployment plan called Dense Pack would not be consistent with SALT II—and may not even be consistent with the 1972 treaty sharply limiting antiballistic missiles.

Already Administration officials are saying that not every proviso of SALT II need be lived up to! This is a dilemma that the Administration will soon have to resolve. What is needed, in the meantime, to prevent the development of new, destabilizing weapons is an interim freeze on all strategic nuclear systems. Failing that, further destabilization might be prevented by a Congressional resolution endorsing SALT II or firmly holding the Administration to its promise not to undercut that pact. Certainly the prospects for reaching a new agreement will be somewhat brighter if the Administration and Congress decide not to

deploy the MX in a way that would be inconsistent with SALT II. Better still would be a decision to modernize our missile force in some other way—perhaps to shift a larger part of it to sea.

The arms control process has a dynamic of its own, and these gloomy prospects of destabilization may be dispelled if Mr. Reagan can put aside public posturing and pursue Start negotiations in earnest. No man chosen to be head of his Government and state can remain indifferent to the possibility of a special place in history that would be reserved for the statesman and peacemaker who succeeded in curbing the nuclear arms race and opening the way to disarmament.

President Reagan seems ideally placed to negotiate and assure full Congressional support for any agreement that results from this round of strategic arms talks. He is said to be deeply and personally committed to making a success of Start. The country should give him every chance to do so.

(Gerard Smith was chief negotiator in strategic arms limitation talks with the Soviet Union from 1969 to 1972.)

MISINFORMATION ON GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, on Tuesday, June 22, I received a book written by Robert W. Lee entitled "The United Nation's Conspiracy." This book which was sent to me by the John Birch Society, devotes 4 pages to criticizing the Genocide Convention. Mr. Lee's attack on this very important human rights agreement is a classic example of a distorted and unfounded argument. I should like to take some time to clear up his misguided and outdated accusations.

Article II of the Genocide Treaty is the foundation on which the author attempts to construct his assertions. This article lists the specific acts which would be termed genocide and thus made an international crime. Mr. Lee asserts that the act of killing members of a group could be considered genocide and he uses as an example the death of a Black Panther at the hands of a policeman. This is wrong. By citing only the specific acts which qualify as genocide, Mr. Lee has conveniently overlooked the most vital language of article II. For these acts must be committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group. Mr. President, it seems as if I cannot stress this point enough. The intent to destroy such a group must be present. It is clear that the example Mr. Lee gives is not done with such intent. This is not genocide under the obvious terms of the treaty. Genocide is exactly what is stated in the convention and not what others may misconstrue it to be.

Mr. Lee goes further to say that the act of "causing serious bodily or mental harm to members of the group," could be meant to include criticism of Communists or Nazis. The Foreign Relations Committee has made it clear that "mental harm" means a permanent impairment of mental faculties. In fact, the committee has made it very clear that the convention does not apply to racial slurs, insults, or even discrimination. During the 1950 hearings, then Under Secretary of State Dean Rusk testified that the convention "does not aim at the violent expression of prejudice which is directed against individual members of a group." Taken in this context, Mr. Lee's criticism cannot be given serious consideration.

Mr. President, I will continue to rebut these inexcusable misconceptions directed at this great convention of profound moral principle.

RESERVATION OF MINORITY LEADER'S TIME

Mr. PROXMIRE. Mr. President, I reserve the remainder of the minority leader's time for his later use.

RECOGNITION OF SENATOR CHILES

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

CRIME CONTROL ACT OF 1982

Mr. CHILES. Mr. President, over 1 month ago, Senator NUNN and I introduced S. 2543, the Crime Control Act of 1982. S. 2543 is a package of anticrime proposals that would make changes in our criminal laws, changes that would improve the Federal Government's ability to fight organized crime, improve our bail and sentencing laws, especially as they apply to drug traffickers, and eliminate unnecessary appeals in our criminal justice system. Every day since the introduction of S. 2543, Senator NUNN and I have come to the floor of the Senate to speak out on crime and on the need for the Senate to act promptly on anticrime legislation. The Senate has an opportunity to act, Mr. President, because we were able to have S. 2543 placed directly on the Senate Calendar.

Just before Memorial Day, Senator THURMOND and Senator BIDEN, the chairman and ranking member of the Senate Judiciary Committee, also introduced a crime-fighting proposal, S. 2572. It, too, was placed directly onto the Senate Calendar, and could be called up for consideration at any time. Senator NUNN and I were original cosponsors of that bill.

So, today, we have two crime-fighting bills on the calendar. Both of these bills have broad-based support here in the Senate. S. 2543 has been cosponsored by a total of 17 other Senators, and over 50 Senators have signed on as cosponsors of S. 2572. While all this support is encouraging to those of us who want to pass tough crime-fighting legislation, there is still reason for concern. As few as 44 days remain in this session of the Senate, and many other issues remain before us. Unless the Senate acts promptly on crime-fighting legislation, we will lose this opportunity to show our concern and our determination to fight crime.

One of the most important areas of the law which needs to be reformed is the question of appeals in criminal cases. One of the fundamental principles of our system of justice is that, at some point, there must be finality of judgment. A case must come to a close. In criminal cases, this notion of finality does not carry the same weight as it does in other cases, because we want to make sure that any person convicted of a crime had a fair trial. However, our system was never intended to totally abolish this notion of finality of a judgment in our criminal system. Nevertheless, today, the Federal habeas corpus statutes are used by persons convicted in a State trial to challenge their convictions time and time again, often on purely technical grounds, for years and even decades after the original trial took place.

One case in my State of Florida, the case of Hanna against Wainwright, shows how convicts are able to use the habeas corpus laws to relitigate issues already fairly decided in the State courts. It underscores the need for greater finality in our criminal justice system.

In 1970, Hanna was convicted in State court on charges of simple and aggravated assault. His conviction was affirmed on appeal in the State court system, and his subsequent appeal to the Florida Supreme Court was denied. Then, in 1976, Hanna began to file Federal habeas corpus appeals. His first habeas petition claimed that the State prosecutor had made an improper comment during trial. The Federal court denied this appeal. He then filed another appeal, on the same grounds. This appeal was also denied. Then he filed a third habeas appeal in the Federal courts. This appeal was denied, too, but only after the Federal court made a full-scale determination of the merits of his case. Finally, he filed a fourth habeas petition, and claimed that the lawyer he had retained in his original trial had been ineffective. This fourth claim was also considered on its merits by the Federal courts, even though the issue already had been fully raised and decided on another one of the appeals that Hanna had filed earlier in the State court. Nevertheless, the current Federal habeas corpus laws allowed the issue to be decided one more time. Hanna ended up losing this final appeal, but not before the State attorney's office and the Federal court went through hours and hours of work. Finally, and

most important, it is worth noting that none of Hanna's claims went to the issue of whether he was guilty or innocent.

Mr. President, title 4 of S. 2543 reforms our Federal habeas corpus laws, to eliminate repetitive and frivolous appeals of issues already decided in full and fair State court proceedings. Had it been in effect, Hanna's claims could have been dismissed without having a full-scale determination of issues which had already been decided in the State court. The system would have produced finality, not expensive relitigation.

Recently, Florida Supreme Court Justice Ben Overton called on people to get Congress to end what he called "unreasonable, unconscionable, and unexplainable delays in the criminal justice system." He specifically called for revisions in the Federal habeas corpus laws. Justice Overton went on to say:

> You should know that there are at least 10 different possible court proceedings that can be held in a criminal case before it is final, whether or not it is a capital case where a death penalty is imposed, or a noncapital felony case. The cost of these multiple proceedings cannot be calculated. But the cost to the credibility of the courts may be fatal.

Mr. President, we have a chance to reform our criminal justice system to eliminate unnecessary appeals, and to give more finality to full and fair State court convictions. We can do that if we pass the reforms set forth in title 4 of S. 2543. However, time continues to run out, and unless we act now, we will lose an opportunity to restore the credibility of our criminal justice system in the eyes of the public.

Mr. President, I was delighted to hear the majority leader speak in the last several days in which he has said he feels it is necessary that the Senate take up, debate and, hopefully, pass a package of anticrime bills.

I understand there is now working in the Senate a unanimous-consent agreement that will give us the opportunity and, hopefully, those bills can even be taken up this week. I think it is essential that we do that as quickly as we can, and I hope we will be able to do it before the recess.

I know the distinguished chairman of the Senate Judiciary Committee (Mr. THURMOND) has certainly been moving on this, trying to get these bills taken up, as is also the ranking member on the minority side, Senator BIDEN from Delaware.

Senator NUNN and I certainly urge that we see these bills taken up and that they be taken up in the most speedy way that they can.

Mr. President, I now yield to the distinguished Senator from Georgia.

CRIME CONTROL ACT OF 1982, TITLE III—SENTENCING

Mr. NUNN. I thank my colleague from Florida.

Mr. President, I again stand before my colleagues today in an effort to reiterate the ever-increasing concern over crime in the United States. Day after day, the American people are confronted with the tragedy and dangers of organized drug trafficking. Narcotics offenders continue to be a serious and widespread problem which consumes months of investigative work and scarce resources by our law enforcement agencies. Once these officials have gathered and obtained sufficient evidence to indict and convict narcotics dealers, it appears that all too often, these valid efforts are of little value or wasted. Wasted in the sense that judges and parole boards are overly lenient in imposing the sentence the criminal is expected to serve. After so much Federal enforcement efforts have been utilized to track down and curtail such vital drug traffickers, past legislative measures have been unable to combat this growing problem. Again, in the context of this issue, I, along with Senator CHILES, call the Senate's attention to the support of the Crime Control Act of 1982.

Title III of this act is a step in the right direction with regard to the concept of sentencing these criminals to the proper amount of time to be served for their wrongdoing. Effective sentencing will aid in preventing repeated offenders from so easily and swiftly returning to their normal life of crime.

On February 4, 1981, Anthony Todisco was sentenced to 30 years in jail, with a 10-year special parole term. The district court judge recommended that Todisco serve at least 15 years of the jail term before release. Todisco was the leader of one of the largest heroin distribution rings operating in the United States, and was alleged to be the major supplier of heroin for the eastern seaboard.

Todisco's codefendant, Anthony Vallone, who was sentenced to 20 years in jail, also received a 10-year special parole term. The judge recommended that Vallone serve at least 10 years of his designated sentence. The third defendant, John Campopiano, received a 15-year prison term, with the recommendation that half of his term be served.

The most important, and most disturbing element in this case, is that Campopiano was previously sentenced to a 35-year term, which included 20 years for narcotics conviction, and 15 years for paying off a detective to murder a witness and U.S. marshals. As violent crime grows, criminals, like Campopiano, have become blatant in their contempt and disrespect for our criminal justice system. Despite the violent nature of his offense, Campopiano only served 6 years of the 35-year sentence prior to his release on special parole. Major heroin trafficking, bribing, and orders and contracts to murder resulted only in a 6-year sentence.

Mr. President, title III of the Crime Control Act of 1982 is directed at increasing the penalties for these large-scale narcotics distributors, importers and smugglers. The law must enforce strict penalties against professional criminals like Campopiano. Campopiano's parole after a 6-year term is a mockery of our criminal justice system. How many times must a felon commit a crime before our laws are geared to correct and eradicate these continuous and threatening acts of violent crime? These increased penalties will make it more difficult for violent offenders, like Campopiano, to persuade the parole board to grant lesser sentences. The sentencing provisions in title III of the Crime Control Act of 1982 register a clear directive for strict and effective penalties in cases of violent offenders as well as major narcotics traffickers.

Continuous offenders do not deserve the opportunity to serve a mere fraction of their sentences, then regain their freedom, only to return to a life of crime. Today, the United States is threatened and terrorized with so much violent crime that our criminal justice system fails seriously by not guaranteeing that criminals serve proper penalties. S. 2543 creates enhanced penalties for career criminals in order to insure a safe society to those who abide by its democratic philosophy. The time is past due for S. 2543. The American people want and deserve legislation of this caliber, so that we all can "stamp out" the violent and organized crime that daily terrorizes the American public. I ask the Senate to give this strong anticrime legislation the urgent attention which it deserves.

Mr. President, I yield the floor.

RECOGNITION OF SENATOR PRYOR

The PRESIDING OFFICER (Mr. RUDMAN). Under the previous order, the Senator from Arkansas (Mr. PRYOR) is now recognized for not to exceed 15 minutes.

THE OFFENSES OF DEFENSE LOBBYING

Mr. PRYOR. Mr. President, for some time now I have attempted to bring to the attention of the Senate my concern over contractors in the Department of Defense and other departments who charge against Government contracts their expenses for lobbying activities. I have also been concerned that, contrary to a clear prohibition against such activity, Defense Department officials lobby Congress in support not only of particular pro-

grams, but also in support of products manufactured by defense contractors.

To this end, I proposed an amendment to the fiscal year 1982 defense appropriations bill which the Senate approved. But it was dropped in conference. I then proposed S. 1969, a bill which would apply a prohibition on the use of appropriated funds for lobbying purposes, not only to Defense but to all departments.

It was therefore disturbing, though not surprising, to read press reports about the military-industrial complex and its efforts on behalf of the C-5 airplane. Through a sophisticated, computerized plan to influence the votes of Members of Congress on a multibillion-dollar program, a lobbying team composed of Defense Department personnel and the staff of a giant defense contractor and its subcontractors used resources provided by taxpayers to the Federal Treasury.

I can think of no better demonstration of the need for congressional hearings and legislation than these actions. No matter whether one favors the C-5 program or not, I think we can all be outraged that tax dollars are being used in this manner. What is, in fact, most disturbing of all is that this situation, bad as it is, reflects a way of life for the military-industrial complex. It is a way of life that needs to be ended. A strong defense requires tax dollars, but those dollars should be used for weapons and not political pressure.

Defense programs are perceived by the average taxpayer in this country as an alien landscape of strange and exotic dimensions. But this is not true for everyone. The fact is that contractors, who have so much impact on our defense posture, know exactly what is going on. They know because they are involved not only in producing weapons but also in policy, planning, and programing of those weapons and the procurement of those weapons.

Procurement by the Department of Defense has grown so much over the last 20 years that today even a single contract might be worth a billion dollars. During this time, the defense contractor has come to realize the importance of an office in Washington. While the major function of these offices in the 1950's was to provide information and monitor legislation, today's office emphasizes one concern—political pressure. It may be defined as "government relations," or "public affairs," but the application of pressure and influence has become the cornerstone to a contractor's success.

Pressure is aimed at both the Congress and the executive branch of Government. Designed to follow issues of importance to the contractor, it seeks to shape legislation, procurement, and appropriations decisions. Pressure also involves political strategy ranging from grassroots efforts and campaign contributions to direct contact with key figures in the Nation's Capital.

No one questions the right to lobby, Mr. President. There is a real advantage in having necessary information readily available, along with an interpretation of complex issues and professional advice on technical matters. This legitimate activity is guaranteed by the Constitution and appropriate costs are justifiably tax deductible.

The problem is that many of these expenses can by paid for by the public—not once, but twice—in the initial cost and later in the tax deduction. What is more, the taxpayer may pick up the tab for lobbying expenses of companies that fail to get the contract, thus inflating the price of these weapons systems.

It should be noted that the Department of Defense responded last year to the visibility of this issue, and I believe the Department should be commended for its efforts. Secretary Weinberger, on October 9, 1981, directed that the defense acquisition regulations be amended to prohibit the practice of contractors charging lobbying expenses against Government contracts.

I have also been led to believe that further revision to this regulation is being made to require that only a congressional request, in writing, will suffice as an exception to this general prohibition. As revised, this regulation could be an excellent first step and interim response to this problem. But even this response is less than adequate to resolve the issue. As written, this regulation is defective in two respects:

First, the regulation prohibits defense contractors from charging their lobbying expenses against Government contracts only where the lobbying activity is intended to influence legislation for the "procurement of specific supplies or services." All too often the issue before the Congress does not relate to "procurement of specific supplies or services," but rather focuses on a strategic decision or choice among alternatives directly related to fulfilling the military needs of a particular service or DOD as a whole. Issues such as whether we proceed with the B-1 bomber, the MX missile, or other weapon systems still on the drawing board, should not be subject to a different standard simply because they have not reached a production stage.

A second defect in this regulation is the substantive difference between a defense regulation and a prohibition expressed in statute. One must be subject to legislative consideration before the prohibition is removed, while the other can as easily be removed as it was established.

In addition to these defects, the C-5 experience raises real questions about whether this regulation is being enforced.

Mr. President, I believe it is imperative that the Congress express its voice on this matter. There is no reason for taxpayers to subsidize lobbying in any area of Government, especially when cuts are being made in many programs across the board. Debate over issues should be determined by which company sports the most impressive Washington office, uses the best computer, or generates the greatest amount of political pressure.

Mr. President, I ask unanimous consent that two recent news articles on the C-5 matter be printed in the RECORD at this point.

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

[From the Philadelphia Inquirer, June 22, 1982]

DESPITE LAW, AIR FORCE LOBBYING FOR LOCKHEED JET

(By Frank Greve)

WASHINGTON.—Air Force generals, barred by law from lobbying, are working hand-in-glove with the Lockheed Corp. on behalf of an aircraft the Air Force and Lockheed want Congress to buy.

A heretofore secret 96-page joint lobbying plan outlines a step-by-step strategy that gives a rare inside look at the way the Pentagon and a giant defense contractor combine to try to work their will on Congress.

That Air Force-Lockheed lobbying strategy includes lining up other defense contractors to support Lockheed and the Air Force. The leaked document also contains evidence suggesting strongly that the Air Force has coached and planted sympathetic uniformed witnesses in congressional hearings while muzzling or bypassing unsympathetic ones.

The issue is whether the government should buy 50 huge C-5 cargo aircraft from Lockheed for $98 million each or 48 smaller Boeing 747 freighters at $58 million each. Boeing, based in Seattle, contends its deal would be $6 billion cheaper over 20 years of operation. Lockheed, based in Burbank, Calif., and the Air Force challenge Boeing's claim about what would be saved. They also argue that only the C-5 is big enough for speedy airlift of tanks and artillery.

By law, no Air Force money can be used "to influence in any manner a member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress." That portion of the law, which carries a penalty of up to $500 in fines and a year's imprisonment, has not been enforced since it was enacted in 1948.

Indeed, several former Defense Department appointees characterized the Lockheed-Air Force campaign as lobbying as usual.

According to the lobbying plan, Lockheed and Air Force lobbyists for the C-5 have met almost daily since mid-May to coordinate their efforts and orchestrate the actions of subcontractors and congressmen committed to their plan.

On May 13 the Senate voted 60-39 in favor of the Boeing 747, so lobbying concentrates on the House, where a vote on the rival airplanes is expected during the second week of July.

Congressmen who back the C-5 do so, in part, with letters drafted by the Air Force

to their colleagues, signed by the congressmen. Rep. DAN DANIEL (D., Va.) chairman of the House Armed Services Committee's subcommittee on military preparedness, has used at least one such Air Force-drafted letter.

Another, described in the lobbying plan as a "soft-sell" letter, awaits distribution. "Attempts to have non-defense committee chairmen sign letter," is the assignment given to the Air Force Legislative Liaison Office by a lobbying team of top Air Force officers and Lockheed officials.

In a 27-page segment of the lobbying plan, called "C-5B Team Actions," the campaign is tersely outlined step by step. On May 26, for example, the Air Force agreed to "energize all military associations and obtain leadership and 'back home' support." Each service has such an interest lobby; the Air Force Association, for example, says it has 160,000 members.

On the same day, Air Force members of the C-5B Team agreed to "prepare paper and [congressional hearing] witnesses to highlight that Boeing's computer scenario is an isolated case study." The Boeing study had shown its 747 to have loading capabilities equal to the C-5B's for deployment to Southwest Asia.

To keep Air Force witnesses from making mistakes in congressional testimony, they were to be grilled in advance by a C-5B Team "Murder Board" composed of Air Force staffers armed with hostile questions, the plan shows.

Apparently there was some concern about testimony by the head of the Air Force's Military Airlift Command, who had strongly favored a third cargo plane, McDonnell Douglas Corp.'s C-17. "Need Gen. Jim Allen testimony to be strong on C-5 and no 747 prepared statement doesn't cover," reads the Air Force's June 14 instruction to itself in the plan.

Deciphered, that meant Allen was to make no comments on the 747 that had not been approved in advance by the Air Force.

Allen testified before the House Armed Services Committee on June 15 without reference to the 747. On that same day, Rep. Daniel called upon Lt. Col. Paul Godfrey from the hearing audience; Godfrey lauded the C-5B's ability to take off and land without a paved runway. A C-5 crew also was called from the audience by Rep. Jack Brinkley (D., Ga.), a pro-Lockheed congressman, to tell how easily the big plane could be loaded.

Godfrey had been flown in from California and planted in the audience by the Air Force, according to the C-5B Team document. The C-5 crew was part of an Air Force C-5 demonstration conducted for Congress last week at nearby Andrews Air Force Base, Md.

Air Force contractors also appear to have had arms twisted. On June 1, for example, the Air Force began wondering what to do about lobbying by contractors who supply both Boeing and Lockheed.

"Consider ways to obtain support of [Department of Defense] position from prime contractors and subcontractors," the document states. It named four who do business with both sides: E-Systems Inc. and Vought Corp., both of Dallas; Northrop Corp. of Los Angeles, and Pratt & Whitney Aircraft Group, a subsidiary of United Technologies of Hartford, Conn.

Col. Larry Shreve, associate director of the Air Force's Legislative Liaison Office, defended the energy of the lobbying effort. "If we didn't, the administration would have some claim to say we weren't doing our job," said Shreve. Similar campaigns are involved on all major procurements, he said.

The persuasion campaign on the C-5B, Shreve added, came only after a "very objective analysts" by the Air Force, which concluded that it was superior to the 747 for airlift purposes. "Once that decision was made, we are not objective. We make every effort to sell Congress that the administration's decision is the right one," said Shreve.

According to Shreve, the service's Legislative Liaison Office acts only in response to congressional inquiries. "We do not solicit them to my knowledge," he said. But the lobbying plan shows otherwise: the Air Force initiating dozens of meetings with congressmen and key aides to "obtain support."

Wally Raabe, a spokesman for Lockheed's Washington office, said the C-5B effort deals with a "Defense Department program involving a Lockheed product and we are vigorously supporting it." The campaign is intended "to make sure that congressmen and their staffs have accurate information on the issues involved—particularly in view of the vast amount of misinformation and distortion which this issue has generated."

Lockheed's general assignment has been to orchestrate lobbying from elsewhere in the aviation industry. It managed, for example, "to dissuade the ATA [Airline Transport Association] as a body from lobbying for 747," according to the plan.

Lockheed board chairman Roy A. Anderson also took on the task of neutralizing those airlines that own surplus 747 aircraft. Under one variant of the Boeing proposal, these planes could be refurbished and sold to the Defense Department at a considerable saving. Many already haul freight and passengers for the Pentagon.

In a letter to the board chairman of one such airline, World Airways Inc., Anderson warned that the 747 plan "could adversely impact airline revenues from government contracts." Whether Anderson was merely pointing out a fact—or hinting that the Air Force's displeasure might be costly to incur—could not be determined.

Lockheed lobbyists also appeared to be in charge of most direct congressional appeals. "Have Andy Young [the mayor of Atlanta and former U.S. ambassador to the United Nations] work caucus," was one Lockheed assignment. Young appeared in Washington June 17 to lobby the Black Caucus in Congress for the C-5B, which would be built at Lockheed's plant in Marietta, Ga.

Young paid his own airfare and expenses, according to his press spokesman.

Lobbyists for Boeing and its subcontractors have been about as numerous as Lockheed's, according to several Capitol Hill aides. Both manufacturers badly need the business. Boeing's surprise victory in the Senate followed a campaign by Sen. Henry M. Jackson (D., Wash.). Jackson, for example, reportedly threatened to withdraw future presidential campaign support from Sen. Edward M. Kennedy (D., Mass.) if Kennedy wouldn't vote for the Seattle-based company. Kennedy voted with Jackson.

Boeing, for its part, may have scored a public-relations coup. The Lockheed-Air Force documents were leaked by the Washington-based Project on Military Procurement, a public-interest group interested in military reform. The organization favors the 747. Its director, Dina Rasor, declined comment when asked if the documents had come via Boeing.

The larger segment of the lobbying plan, a 69-page "Congressional Contact Tally" shared by Lockheed and the Air Force, outlines in great detail the lobbying of each House member.

Former Transportation Secretary William T. Coleman Jr., for example, apparently has been assigned to contact several undecided representatives. Coleman's Washington law firm, O'Melveny & Meyers, represents Lockheed here.

Coleman is out of the country and could not be reached for comment.

Lockheed's many subcontractors also have assignments to sell congressmen on the C-5B. To lobbyists for General Dynamics Corp. of St. Louis, for example, fell the assignment to "work on (Sen. Carl Levin) (D., Mich.) and ask him to work on liberals."

Levin supports the C-5B, but an aide said he did so because of "its military capabilities." "We haven't been approached by General Dynamics, to my knowledge," the aide said.

Leaders of Defense-related congressional committees rate the most attention, according to the lobbying plan. The plan noted that Rep. Joseph P. Addabbo, chairman of the defense appropriations subcommittee, has received "one on one" sales pitches from Deputy Defense Secretary Frank Carlucci and Air Force Secretary Verne Orr.

Lockheed Corp. President Lawrence O. Kitchen and executives of Colt Industries and General Dynamics also visited Addabbo. They rate him undecided and note, "More work to swing."

[From the Boston Globe, June 22, 1982]

LOCKHEED'S BATTLE FOR A PLANE: AN INSIDE VIEW

(By Fred Kaplan)

WASHINGTON.—Three to four times each week, a dozen men meet in a Pentagon office to coordinate an intense lobbying and information campaign designed to protect an $8.2-billion weapons contract for the Lockheed Corp. that Congress is threatening to take away.

Calling themselves the C-5B Group—named after the Lockheed cargo-transport plane for whose cause they do battle—the men include Maj. Gen. Kelly Burke, Air Force deputy chief of staff for research, development and acquisition; Lloyd Moseman, Air Force deputy assistant secretary for logistics; a gaggle of generals, colonels and majors who work for Burke, the Air Force chief of staff or the Air Force legislative liaison office; and Richard Cook, Washington vice president of Lockheed. Before each meeting, copies of computer printouts listing all the actions taken by the C-5B Group, as well as up-to-date revisions and status reports, are handed out.

One such printout, covering actions taken up to June 14, was leaked by a Pentagon source to the Project on Military Procurement, a nonprofit research group in Washington that monitors weapons systems. The group provided a copy to the Globe.

The printout offers an unusually detailed glimpse of the way corporate executives work in tandem with military officers and political officials to shape policy and the spending of billions of taxpayers' dollars—in short, a documentary portrait of the day-to-day operations of what Dwight Eisenhower once called "the military-industrial complex."

President Ronald Reagan's fiscal 1983 budget contained $800 million to start production of the C-5B—a successor to Lockheed's C5A, an airplane of the '60s prone to dozens of troubles, including a $2-billion

cost overrun, wings that cracked after 2000 hours of flight and chronic breakdowns.

On May 13, Sen. Henry Jackson—with a lot of help from the Boeing Corp. in his home state, Washington—convinced a majority of senators that a modified version of Boeing's 747 wide-bodied commercial aircraft could do the job that needed to be done, and far more efficiently than the C-5. The Senate voted to take the C-5 out of the budget and to fund the 747 instead. Lockheed was in trouble.

The C-5B Group appears to have been formed shortly after the Senate vote, with a determination to keep the airplane alive in the House of Representatives.

The Group met three times the week of May 24, four times the week of May 31, three times the week after that, four times the following week, and at least once the week of June 14—the last date recorded on The Globe's copy of the computer printout.

In 12 days of meetings, the C-5B Group initiated 79 "Actions" to help save Lockheed in the House.

On May 24, the Group directed the Air Force: "Provide firm Sec Def [Secretary of Defense] position to two House Committees plus appropriate Key House leadership." That same day, Lockheed gave a draft of a letter supporting the C-5 to the Air Force. On June 2, according to the printout, the Air Force sent the draft to Secretary of Defense Caspar Weinberger. On June 4, Weinberger signed the Lockheed-drafted letter. On June 7 it was sent to Rep. Melvin Price (D-Ill.), William Dickinson (R-Ala.), Jamie Whitten (D-Miss.), Joseph Addabbo (D-N.Y.) and Don Edwards (D-Calif.)—all key members of the Armed Services or Appropriations Committee—and Robert Michel of Illinois, minority leader of the House.

On May 26, the group directed the Air Force and the office of the Secretary of Defense to get the support of House committee chairmen who normally have nothing to do with the defense budget—adding that such a tactic was used in selling the B-1 bomber.

In follow-up action, the Air Force drafted a "'soft-sell' Dear Colleague" letter and tried to get chairmen to sign it. "Dear Colleague" letters are frequently sent from one congressman to several others to request support of a bill.

Military officers are barred by law from lobbying, and by law, no appropriated government funds can be used "to influence in any matter a member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress." That portion of the law, which carries a penalty of a $500 fine or a year's imprisonment or both, has not been enforced since it was passed in 1948.

Other actions listed in the computer printout have the Air Force, the Pentagon and Lockheed composing questions and answers—"Q & A preparation"—to be used by friendly members in congressional hearings.

Asked about such incidents, an Air Force spokesman responded, "The Air Force has a responsibility to provide facts to support the Administration's decision. We selected the C-5 after a lot of study. A congressman asks for data and we provide it to him. That's part of our responsibility."

However, sometimes it seems that the Air Force prompts a congressman to ask for the data in the first place. When Rep. Norm Dicks (D-Wash.) sent a letter to colleagues arguing that the 747 was superior to the C-5B, the C-5B Group directed Lockheed to find some congressman "to request comments from AF [Air Force] on Dicks' letter."

In the status report on this action, it was noted that on June 3, Lockheed got Rep. G. V. (Sonny) Montgomery (D-Miss.) to put in the request. The next day, "AF response" was reported "in work." On June 11: "Draft prepared." On June 14, Lockheed was ordered: "Get AF ltr [letter] to Sonny Montgomery—responding to Dicks' point—distributed to members."

Told of the Montgomery case, the Air Force spokesman said, "Well, that is not the norm, but it probably isn't the exception, either."

The C-5B group attempted to get other defense contractors in on the lobbying act. On June 1, the Air Force and the Defense Department were directed to "consider ways to obtain support of DOD [Department of Defense] position [on support of C-5] from prime contractors and subcontractors like E-Systems, Vought, Northrop and P&W [Pratt and Whitney]."

A few days earlier, on May 25, the Air Force and Defense Department were told to "energize all military association and obtain leadership and 'back home' support." This endeavor partly fell through, however, when Air Force legislative liaison officers reported, "issue too split by contractors"—some were willing to go with Lockheed, but others had too much to gain from a Boeing win.

Nonetheless, D. C. Jones, president of Lockheed Missiles & Space Co., sent a telegram, copies of which The Globe has obtained, to major airline companies June 6 at the direction of the C-5B Group.

The C-5B Group has tried to attract not only hawkish supporters in Congress, but liberal doves as well. On May 25, the group decided that Lockheed should get Andrew Young, the mayor of Atlanta, who commands enormous respect among liberals, to "work [the Congressional Black] Caucus."

The C-5B would be built in Lockheed's plant in Georgia and provide an estimated 8500 jobs in the state.

Mayor Young's office confirmed that he was in Washington last Thursday, trying to persuade members of the House Black Caucus to vote for the C-5B. A press aide says that he was there for other reasons, as well, and that Lockheed did not pay Young's travel expenses.

On June 11, the group decided to ask General Dynamics, which manufactures the C-5's tail, to "work on [Sen. Carl] Levin (D-Mich.) and ask him to work on liberals. Also work Rep. [Morris] Udall (D-Ariz.)." Aides to Levin and Udall said no such contact had been made. In the C-5B Group computer printout, the space next to "Status" on this action was left blank as of June 14, suggesting that a contact had yet to be made.

A larger printout reveals that corporate political action committees, or PACs, are also being used in the campaign. Several California congressmen, including Republicans Robert Dornan and Barry Goldwater Jr., are said to be "PAC-wired." Beside many legislators names various corporate PACs are cited under the column, "Contractor Contacts."

The White House has also come under the C-5B Group's purview. "Further Action" for Rep. Tom Loeffler (R-Texas) includes "Coord. with White House Leg. Staff." Rep. Michel is slated to get "President Call and Sen. [Howard] Baker Call." Rep. Guy Vander Jagt (R-Mich.) will also receive "White House & House GOP leader contacts."

The printout notes that Michel's and Vander Jagt's positions on the C-5 are undecided or unknown.

The C-5B Group—a joint military-industrial operation—directed a governmentwide lobbying effort to keep the C-5 in action. On May 26, it directed Lockheed: "Work specific assignments to get member to member commitments in HAC, HASC [House Appropriations and House Armed Services committees] and other members."

Lockheed was also to "Get major subcontractors on board and working." The status update listed beneath this action reads: "Closed. Working hard."

Also on May 26, the group decided to "Maintain database and coordination on contacts and commitment for a tally count and further actions." On June 1 it was reported that Lockheed had put a "computer database in place."

Although there is a federal prohibition against using government funds for lobbying. Don Simon, a lawyer with Common Cause, in Washington, pointed out that the statute in question "has never ever been enforced." It's all "a very murky area," he said, with vague definitions of "lobbying" and a legislative history that provides little guidance for clarification or enforcement.

In many ways, the C-5B Group is little different from the normal range of activities pursued by defense contractors and their government allies in pursuit of large contracts. However suspicious and possibly illegal many of these actions may be, they represent the way Washington often works.

One Pentagon analyst who was shown the printouts believes the C-5B Group has gone beyond normal bounds, especially when they got the Air Force to compose the "Dear Colleague" letter for congressmen. "This is one seedy step farther than they've gone before," he said.

Another Pentagon official familiar with the printouts (but not their source) pointed to the C-5B Group's efforts to pressure other contractors and the entire airline industry. "It's unusually intense," he says. "I've never seen one handled quite this way."

Most unusual about the C-5B Group, he noted, is the thoroughness of the records of their actions and the fact that these records have now been exposed. "This is the military-industrial complex at work," he said, "stark naked, self-revealed and self-identified."

S. 2695—FEDERAL PROCUREMENT IMPROVEMENT ACT OF 1982

Mr. PRYOR. Mr. President, I am today introducing legislation aimed at correcting an expensive and chronic abuse of Government procurement; namely, the lack of effective and meaningful competition in the procurement of goods and services. This occurs despite the fact that several studies have shown that competition can reduce the price of goods and services by as much as 25 to 30 percent.

Last fall, the Committee on Governmental Affairs, under the leadership of Senator BILL ROTH, completed a series of hearings on the defense acquisition process. Throughout those hearings witness after witness, as well as members of the committee, lamented the absence of competition in DOD procurement.

This legislation translates those concerns into concrete action not only for DOD, but all agencies and departments. Simply put, it would require each executive agency head to establish full-time advocates for competition to assure that no opportunities for obtaining competition are neglected, and require that a policy regarding dual sourcing be developed.

Using the Department of Defense as an example is enlightening. DOD uses formal advertising and negotiation as the two basic procedures for purchasing goods and services. The Armed Services Procurement Act of 1947 requires DOD to procure by formal advertising whenever it is feasible and practical. According to the act, when a procurement is formally advertised, contracting officers should award the resultant contract without negotiation to the responsive and responsible bidder whose bid will be most advantageous to the Government, price and other factors considered.

The 1947 act also establishes 17 exceptions to the use of formal advertising, which provide DOD contracting officers with the authority to negotiate.

In fact, these 17 exceptions to the bid process, Mr. President, really offer enough exceptions through which it is possible to drive not one but three Mack trucks.

Generally, contracting officers must develop written justifications supporting a decision to negotiate rather than to formally advertise.

While formal advertising always involves price competition, negotiated awards may be either competitive or noncompetitive. In cases where formal advertising is neither feasible nor practical, contracting officers may negotiate with two or more qualified suppliers for first, the best price or second, the best design and/or technology within acceptable price range. In the first instance, the negotiated award is referred to as "competitively negotiated" since more than one potential supplier is involved. If negotiations are conducted with only a single supplier, however, the award is noncompetitive and is commonly referred to as "sole source."

Of particular concern to me is the fact that recent changes in Defense Department reports on procurement make it more difficult to determine how much competition is taking place.

According to a General Accounting Office study released March 8, 1982, DOD testified before the Senate Armed Services Committee that competition in procurement has reached 69 percent of DOD purchases. Unfortunately, when GAO analyzed the statistics, real competition was found to be less than 41 percent. DOD has simply changed the categories, included nonmilitary awards never previously included in the charts, moved some noncompetitive procurement subcategories over to the competitive side of the chart, and omitted some noncompetitive procurements.

While everyone should applaud higher percentages of competitive procurement, DOD must be encouraged to do so by awarding more contracts through competition not by changing the classification system. Indeed such manipulation of the figures can only discourage those of us in the Congress and among the taxpaying public who look forward to savings through real competition.

We can be certain, based on long experience, that the lack of meaningful price competition contributes mightily to a procurement environment conducive to rapid cost escalation. As of April 1982, for instance, the Federal cost growth from initial Congressional Budget estimates had escalated 132 percent in the Department of Defense. Procurement authorities agree that much of this escalation is attributable to the monopoly position of sole-source suppliers, where there is little incentive to hold down costs. Given the administration's call for a military budget that, net of inflation, will total nearly $300 billion by 1985, we can only expect cost escalation and overruns to continue unless action is taken to inject meaningful competition into defense procurement.

I recognize that there are circumstances under which true competition is impractical and an agency or department may have no alternative to sole-source procurement. For example, as a result of the 1973 oil embargo and the Federal Government's fuel allocation system, DOD had to negotiate most of its fuel purchases noncompetitively. Thus, its competitive fuel procurements dropped from 90 percent of fuel obligations in 1972 to only 45 percent in 1978.

Nevertheless, there is ample evidence that all agencies are missing legitimate opportunities for maximizing price competition and not fully exploring competitive alternatives.

In its July 29, 1981, report, the General Accounting Office pointed out that when a proposed procurement appears to be noncompetitive the contracting officer is responsible not only for assuring that competition is not feasible, but also for taking actions to avoid subsequent noncompetitive procurements. In short, noncompetitive buying should occur only when all attempts to obtain competition have failed. Both the GAO and the Office of Federal Procurement Policy have reported, however, that competitive opportunities are being missed because:

First, procurement officials lack or do not take the time to develop purchase descriptions needed to invite competitive bids.

Second, product specifications are written too restrictively and exceed minimum needs.

Third, contracting officers acquiesce to the specific procurement requests of headquarters, technical personnel, or end-users without performing market analyses to determine whether alternative suppliers exist.

Fourth, sole-source contracts are awarded in response to unsolicited proposals without justification as to why the goods or services could not be obtained competitively.

In addition to these reasons for missing competitive opportunities, I believe that DOD and civilian agencies are not taking fullest advantage of opportunities to dual source procurements. Under dual sourcing, annual buys of a given weapon system or piece of equipment are split between two suppliers, based on the quality and cost of their performances in prior years. By cultivating two sources, dual sourcing increases competition, thereby providing suppliers with an incentive to control costs. A recent study of procurements for which DOD used dual sourcing showed that unit costs were reduced by an average of 30 percent as a result of the incentives that competition provides.

Dual sourcing also helps to broaden the production base. This is an important benefit considering the erosion of the defense industrial base in recent years and the magnitude of the administration's proposed increases in defense spending. According to the Congressional Budget Office and other authorities, the defense buildup is likely to percipitate substantial inflation in defense costs, given the comparatively limited production base over which procurement dollars can be spread.

As I noted earlier, much of the defense procurement dollar, and I suspect a large percentage of the civilian procurement dollar, is represented by sole-source follow-on awards. It is this type of procurement which I think is particularly ripe for dual sourcing. Evidence of the potential advantages of dual sourcing was noted in the April 17, 1982, National Journal where it was reported that DOD had reached agreement with General Dynamics and McDonnell Douglas for dual sourcing arrangement to provide the Tomahawk—a tactical cruise missile. Under the agreement each firm is guaranteed at least 30 percent of the DOD Tomahawk purchases each year, but will compete with each other for the remaining 40 percent of component sales.

Mr. President, I recognize that dual sourcing may not be effective under all conditions. One must carefully analyze and weigh the additional investment needed to secure a second source of supply against the potential price reductions that competition can bring.

But dual or multiple sourcing is standard commercial practice in the private sector. The Federal Government has not fully explored dual sourcing opportunities in its procurement programs, and this fact is borne out by the complete lack of official policy or guidance to assist contract officials in exploring this possibility. In fact, to a large extent, dual sourcing is discouraged by the very fact that procurement statutes and regulations are silent on when and if dual sourcing should be considered, and what the relevant criteria and guidelines are.

Mr. President, this legislation would assure that the Executive branch is committed to increased competition and no longer ignores or overlooks competitive opportunities.

First, it requires all agencies to establish and report to the Congress a policy on the use of dual sourcing, including the conditions under which an analysis of the cost and benefit of dual sourcing should be performed by contracting officials and the methodology of the analysis. It also requires the various agencies to identify those procurement programs for which dual sourcing is currently employed.

Second, the bill requires the head of each agency and department to appoint at each of its major procurement offices an individual to serve as a full-time advocate for competition. While present regulations in theory make each contracting officer responsible for maximizing competition, the sad reality is that there is no clear responsibility and accountability for competition and contracting officers are acquiescing to the sole-source procurement requests of headquarters, technical personnel, or end-users. The advocates correct this condition by assuring that opportunities for competition are not lost or foreclosed by restrictive need statements, unnecessarily detailed specifications, poor procurement planning, or by arbitrary agency action.

In conclusion, Mr. President, let me emphasize that an effective procurement system—one which assures that we have the equipment and services we need, when we need them, where we need them, and at a cost we can afford—is critical to our Government's functions. This bill makes procurement more efficient and effective because it commits the various agencies to concrete action for increasing competition in procurement spending.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD at this point.

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

S. 2695

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Federal Procurement Improvement Act of 1982".

SEC. 2. For the purposes of this Act—

(1) the term "dual source procurement" means the competitive procurement by a purchasing and contracting office of identical property or services from each of two or more sources, in which the largest share of the procurement is given to the source that provides the property or performs the service in most cost-efficient manner and that has an acceptable performance record;

(2) the term "executive agency" has the same meaning as provided in section 4(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 403 (a));

(3) the term "advertising" includes advertising, as provided in section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253), and formal advertising, within the meaning provided in section 2302(3) of title 10, United States Code; and

(4) the term "negotiating" includes negotiating without advertising under section 302(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)), and negotiating within the meaning provided in section 2302 (2) of title 12, United States Code.

SEC. 3. (a)(1) Except as provided in subsection (c), there is established in each purchasing and contracting office of each executive agency an advocate for competition.

(2) Each head of an executive agency shall—

(A) designate one officer or employee of each purchasing and contracting office to serve as the advocate for competition;

(B) relieve such officer or employee of all duties and responsibilities other than the duties and responsibilities of the advocate for competition; and

(C) provide such officer or employee with such staff or assistance as may be necessary to carry out the duties and responsibilities of the advocate for competition.

(b)(1) The advocate for competition shall promote competition in the procurement of property and services.

(2) The advocate for competition shall—

(A) review the purchasing and contracting activities of his office;

(B) identify and report to the head of the office—

(i) opportunities to achieve competition on the basis of price in the purchases and contracts of the office;

(ii) solicitations and proposed solicitations which include unnecessarily detailed specifications or unnecessarily restrictive statements of need which may reduce competition in the procurement activities of the office; and

(iii) any other condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the office; and

(C) prepare and transmit to the head of the executive agency an annual report describing his activities under this section.

(c) This section shall not apply in any fiscal year to any purchasing and contracting office which, during the preceding fiscal year, made purchases of and entered into contracts for property and services of a total amount which does not exceed $25,000,000.

SEC. 4. (a) Not later than 120 days after the date of enactment of this Act, the head of each executive agency shall transmit to the Committees on Governmental Affairs of the Senate and Government Operations of the House of Representatives a report including the information specified in subsection (b). Not later than March 31 of the year after the year in which the report required by the preceding sentence is transmitted, and annually thereafter, the head of each executive agency shall transmit to such committees a report including the information specified in subsection (b) with respect to the fiscal year preceding the year in which the report is transmitted.

(b) Each report transmitted under subsection (a) shall include—

(1) with respect to each executive agency, the number and total dollar value of purchases of and contracts for property or services awarded during the preceding fiscal year after—

(A) formal advertising;

(B) negotiating with more than one prospective source of property or services and evaluating the proposals for purchase or contract on the basis of price and factors relating to price;

(C) negotiating with more than one prospective source of property or services and evaluating the proposals for purchase or contract on the basis of design or technical factors and not on the basis of price;

(D) negotiating with only one prospective source of property or services which has not previously provided to such executive agency the type of property or services being procured, and evaluating any proposal for purchase or contract submitted by such source on the basis of price, design, or technical factors; and

(E) negotiating with only one prospective source for property or services of the same kind as such source has provided under a prior contract awarded by such department under circumstances described in subclause (A), (B), (C), or (D);

(2) a detailed statement of the policy of each executive agency with respect to the use of dual source procurement to purchase or contract for property or services, including a description of—

(A) the circumstances under which the contracting officers of the executive agency are required to analyze the benefits and costs of using dual source procurement to purchase or contract for property or services; and

(B) the methodology such contracting officers are required to use in analyzing such benefits and costs; (3) a list of all dual source procurements the executive agency makes or intends to make during that fiscal year;

(4) a specific description of all actions that the head of the executive agency intends to take during that fiscal year to—

(A) increase competition for contracts with the executive agency on the basis of price; and

(B) reduce the number and dollar value of contracts negotiated by the executive agency with only one source; and

(5) a summary of the activities and accomplishments of the advocate for competition of the executive agency.

SEC. 5. The Administrator for Federal Procurement Policy shall promulgate regulations governing the use of dual source procurement by all executive agencies.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business, not to extend beyond the hour of 10:40 a.m., with Senators being allowed to speak therein for not more than 5 minutes each.

The Chair, in his capacity as a Senator from New Hampshire, suggests the absence of a quorum. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

ORDER FOR RECOGNITION OF CERTAIN SENATORS TOMORROW

Mr. STEVENS. Mr. President, I ask unanimous consent that there be entered special orders for the recognition of Senators BAKER, STEVENS, PACKWOOD, and TSONGAS for not to exceed 15 minutes each on Thursday, July 1.

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

REPORT CARD ON WILLIAM FRENCH SMITH

Mr. THURMOND. Mr. President, as chairman of the Committee on the Judiciary, it is my responsibility to be aware of the activities of the Department of Justice. Close contact with the Department is dictated both by the oversight responsibility of the committee and by the very nature of those matters falling within the jurisdictional authority of the committee.

Over the past 18 months, I have come to know and genuinely admire Attorney General William French Smith. He is a man of great depth who, although preferring to work quietly behind the scenes, has the courage and integrity to make his voice heard when circumstances dictate. I have found him to be a pillar of reliability and strength in the Reagan Cabinet.

The position of Attorney General requires the services of an individual who is not only an excellent, highly regarded lawyer but also one who possesses the ability to successfully manage one of the largest agencies of the Federal Government.

Believing Attorney General Smith to be one of the best Attorneys General in memory, I was pleased to note an article entitled "A Report Card on William French Smith," written by Steven Brill, which appears in the July 1982 issue of the American Lawyer.

Mr. President, while I would not agree with every conclusion reached by the author of the article, I do heartily concur in his assessment that William French Smith is the most effective Attorneys General in recent history. I ask unanimous consent that the article be printed in its entirety in the CONGRESSIONAL RECORD.

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

REPORT CARD ON WILLIAM FRENCH SMITH

(By Steven Brill)

Publicly, William French Smith's demeanor ranges from reserved to stern. Publicly, Smith is a poor, even listless speaker with little exciting to say. Publicly, Smith is cautious, a non-leader who refused for 16 months to take a stand on the obvious unconstitutionality of legislation to limit Supreme Court jurisdiction. Publicly, he is invisible to most of the people who work for him. Publicly, he seems to be exactly as New York Times columnist Anthony Lewis described him on January 28 in a piece entitled "Mr. Zero Goes to Washington"—a "Rodeo Drive [Beverly Hills] Warren Harding."

After all, when Lewis wrote that column, Smith's Justice Department had just turned the previously settled question of tax exemptions for racist private schools into a debacle of policy reversal and re-reversal. The talk of the D.C. cocktail circuit was that Smith was not in control of his department and that his deputy, Edward Schmults, was the real power at Justice. The attorney general appeared to be fulfilling the lack of promise he had shown a year before at his confirmation hearings, where he had testified that he did not feel qualified to answer the elementary questions put to him about antitrust law, about searches of newsrooms ("The name [*Zurcher* v. *Stanford Daily*] is very familiar, [but] I can't tell you in what context"), about legislative vetoes, and about civil rights policy (including the constitutionality of federal aid to segregated *state*-run institutions). All he seemed to offer was his record as a labor lawyer of less-than-world renown at Los Angeles's Gibson, Dunn & Crutcher and his status as a Reagan friend and fundraiser. In short, Lewis's epithet seems altogether reasonable.

But it is way off the mark. A closer look at what's going on at the Justice Department suggests that Smith is anything but Mr. Zero.

The 64-year-old attorney general has more than overcome what some say was a slow start and what he says was a necessary period of gearing up. For better or for worse, Smith has in his own quiet way become the most effective attorney general to serve since an equally unprepared Robert Kennedy was named to the post in 1960.

I use five criteria in judging the effectiveness of an attorney general: (1) ability and willingness to manage the Justice Department mega-bureaucracy, in order to get hold of key decisions and steer them in accordance with the president's policies; (2) ability, nonetheless, to be independent of the White House or any other political interference having to do with the attorney general's job as impartial law enforcer; (3) the quality of the legal product the attorney general and his staff produce; (4) the quality of the judges and U.S. attorneys he advises the president to appoint; and (5) his ability and willingness to be a leader in fulfilling his vision of the American ideal of justice for all.

In the first three categories, Smith is clearly a winner, and a surprise winner at that, given the way many seem ready to share Lewis's assessment. In the fourth category, judicial selection, his otherwise good record has been marred by a wholesale neglect of black America. In the fifth category, standing for justice, Smith is a failure; perhaps as part of a strategy to maximize his effectiveness in some of the other categories, he has shied away whenever he could from taking positions and articulating a broad vision—in short, from leading the country as the nation's top justice enforcer.

Beyond the question of Smith's effectiveness, there is the question of the effect of that effectiveness. To those who view antitrust enforcement as having become counterproductive in an age in which the country needs big, tough companies to compete in the world market with the German and Japanese giants, Smith is a savior. To those concerned about the conglomeratization of America, he is a threat. To those who think the rights of the law-abiding have been lost to needless concern for the rights of criminals, he is a welcome relief; to those with a slippery-slope view of the need to be ever vigilant about police or prosecutorial abuse, he is a clear and present danger. To those who view themselves as innocent defendants in an overreaching fight for civil rights, he is a long overdue hero; to those who see themselves as plaintiffs or amici in that fight, he is a disaster, unsurpassed even in the Nixon era.

Smith will read that last paragraph and blanch. He shies away from that kind of confrontational, your-side-or-my-side view of politics. A corporate lawyer, not litigator, of 36 years, his instinct is to get things done by characterizing that which separates him from the guy on the other side of the table as narrowly as possible, always emphasizing the common ground. It is a professional instinct that matches his personality. Smith is a "nice guy," a man who doesn't take himself so seriously that he can't be civil, even affable, to those who oppose him.

Even a facetious statement by a friend of Smith's triggers that accommodating urge. Referring to the Reagan administration's hard line against the striking air traffic controllers, a policy Smith masterminded, Jerome Byrne, a Gibson, Dunn partner who worked with Smith on labor matters for clients that included the breweries and utilities of southern California, says, "I suspect the PATCO strike was like a Walter Mitty situation for him. All your career you have to tell management clients that 'no. You can't fire the —— on strike.' And then you wake up one day and find that your client is the president and the workers are barred from striking, and you fire 'em. It must've been a great thrill."

NO PROSELYTIZER

Sitting in a hardwood chair in front of his desk, his dark suit matching the image he projects in the press while his unforced smile and frequent quips contradict it, Smith laughs off Byrne's suggestion, saying that PATCO was "an interesting situation" but that it was an exception, that normally the "right to strike is as important in the economic arena as the right of free speech" is in the political arena. He will not be trapped by a reporter, or anyone else, into extending PATCO into a broader management-versus-labor debate.

And so it is with all the issues Smith confronts; his rhetoric is the non-rhetoric of a corporate lawyer for whom debates over abstract principle are counterproductive indulgences. Thus, the differences between the Smith position on the Freedom of Information Act and the position of most of the press, which through various editors' and publishers' groups has attacked Smith's proposed reforms as a cynical assault on open government, are characterized by Smith and his aides as mere differences over how to make the information act work better; and the fierce criticism by civil rights groups of Smith's retreats on busing and affirmative

action are termed by Smith as "differences in remedies, not rights." Smith is happy to leave speechifying on broad principles to Cabinet members such as Secretary of the Interior James Watt (a right-wing litigator-activist), who consequently attracts rabid opposition that transcends any single decision he makes.

The Smith approach works: his department's dramatic policy reversals—such as putting illegally immigrating Haitians in detention camps or severely restricting the government's cooperativeness under the Freedom of Information Act via a simple change in litigation procedure—have been achieved without the angry widespread opposition one might have expected.

However practical, Smith's non-confrontational nature seems real, born of real tolerance. "At the firm Bill was no proselytizer," says Byrne. Despite long association with President Reagan as a patron and supporter through the sixties and seventies, Smith's service as chairman of the firm committee responsible for deciding on political contributions is recalled by Gibson, Dunn lawyers as having been determinedly bipartisan. "We gave to Democrats as well as Republicans," says one partner. "And he only solicited his good friends privately for Reagan while encouraging everyone, Democrats and Republicans, to get actively involved with campaigns they believed in."

In offering an example of what most friends cite as Smith's best quality—"his sound judgment" in advising clients—Byrne recalls another instance of Smith's lack of ideological hang-ups. "Eighteen years ago in a result of the free speech movement at Berkeley, the board of regents asked me to head a commission to investigate unrest in the California university system. Before I took the job, I consulted Bill, who sat down with me and told me how he thought I should position myself in order to gain maximum independence—what title I should ask for, how I should draft my charter, et cetera. . . . I consider his advice to have been crucial to the way I was able to do the investigation and the report."

Byrne was, and is, a liberal-leaning Democrat, and Smith's advice helped assure the independent authority Byrne needed to issue a report rebutting right-wing allegations that the Berkeley demonstrations had been part of a communist conspiracy and calling for liberal reforms at the university.

It is no surprise, then, that over the years Smith has become a friend of Paul Ziffren, the veteran entertainment lawyer who has been one of the key activists in the state Democratic party for more than two decades. "We met when he was speaking somewhere for Eisenhower in 1952 and I was appearing for Stevenson," recalls Ziffren, who in 1979 was lured by Smith into merging his firm into Gibson, Dunn. "I liked him because in all the debating we did, he never lost sight of the fact that maybe, just maybe, his opponent might be right—that his opponent isn't necessarily stupid or subversive or ignorant." "Bill has his own strong beliefs," notes Byrne, "which I characterize as the New England conservative. [The Harvard Law-educated, New Hampshire-born Smith is descended from a wealthy Boston family.] He's a man who wants government to leave people alone."

Yet Byrne adds, "I'd be surprised if Bill believed in or wanted to waste time with some of the New Right's agenda—you know, like a constitutional amendment against abortion. He's too practical to get involved in that, and it goes against his beliefs that government should leave you alone."

Smith is also too practical, or too timid, to respond directly to his former partner's suggestion that he might disagree with his president on abortion or anything else; he's happy to talk about his belief that the "smallest unit possible should make decisions, not big government," but when asked if the smallest unit appropriate for abortion decisions isn't the family or the woman involved rather than Congress passing amendments, he says, "I don't want to get into the question of abortion."

Such taciturn loyalty doesn't surprise Byrne, who concludes that "Bill is preeminently the quintessential private lawyer, always working quietly behind the scenes for someone else. His whole demeanor is that of a private lawyer, totally self-effacing. . . . I kidded him after the election," Byrne continues, "that he should hold out for secretary of state becasue most presidents are really their own secretaries of state and, so, the secretary should be self-effacing, whereas as attorney general you're in the department that's supposed to be the most independent of the White House. There [at Justice] you're largely your own client, and you have to be a spokesman for yourself and develop your own program."

GETTING COMFORTABLE

Initially, Smith did not enjoy that out-front role. "The beginning was a very difficult time," Smith recalls. "It was like taking over a new corporation and having to hire all new executives. . . . There was also the problem of moving, of filling out tax forms, and of filling out all those financial disclosure forms of the Ethics in Government Act, which, if you didn't have that recorder on, I'd refer to with a few expletives."

He might also have thrown in a few expletives for how the press treated him during those first months. It was a time when his efforts to master his job and put his team in place—"a goal-oriented time when you don't stand on the rooftops and shout about how great you are," he says—led to stories that Ronald Reagan's kitchen cabinet friend and personal attorney was a figurehead whose major activity was appearing with his wife at various social events, including a party attended by the ever-investigated Frank Sinatra, for which Smith was pilloried in two New York Times columns by William Safire.

"Bill called me the day after the first Safire column," recalls one of Smith's friends at Gibson, Dunn. "He told me he had run into Safire at a party the night the column appeared and really told him off. I told him he'd made a mistake, that Safire would just write another column, which he did. It really stung Bill.

"But by December," the same friend adds, "Bill came back and had dinner with a bunch of us at the firm and told us that he now was enjoying meeting with reporters—that he liked being out there on his own with them." The same friend notes that "whereas in the beginning Bill would tell us how the job had all these things he's never really thought about, like immigration, drug enforcement, prisons—'I have all these goddamn prisons to worry about,' he complained once—he now seemed to like those areas. . . . He'll stay all four years," the close friend concludes, "unless Reagan appoints him to a Supreme Court vacancy, which I think Bill wants and will get."

FUNNEL VISION

Smith's way of running his 54,000-employee, 4,300-lawyer department is radically different from that of his most recent predecessors, Edward Levi and Griffin Bell. (Benjamin Civiletti's caretaker year following Bell's departure in 1979 is distinctive only for the way he insulated himself with 12 special assistants and was thoroughly discredited in the Billy Carter investigation.) Think of Levi as a professor, Bell as a judge, and Smith as a large law firm's senior corporate partner, and the differences become clear and explainable.

Levi, the former University of Chicago law school dean and university president, was professorially detached from much of what went on in his department. He devoted himself to pondering a small number of key projects, most notably guidelines for the reform of intelligence agencies. His deputy, Harold Tyler, Jr., ran most of everything else, using morning meetings of the top staff to coordinate things. Smith himself chairs such meetings, which 13 top aides attend.

Bell was known for his quick, judge-like rulings. Says Kevin Rooney, who has served as assistant attorney general for administration and head of the Justice Department Management Division under both Bell and Smith, "Bell was inclined to give his views and let everyone scurry around trying to dissuade him if they wanted to. But Smith is more likely to wait—to have issues raised to him by the staff after they've worked on it."

The best way to understand how these issues get staffed is to think of a funnel standing on its base, with Smith, in the style of a senior corporate partner, at the top dealing with the outside client, distributing assignments to the staff, and approving and putting final touches on the product that the staff produces.

Other than Smith, the only people at the top of the funnel are Edward Schmults, 51, the deputy attorney general, and Kenneth Starr, 36, Smith's counselor.

Schmults was a deputy White House counsel and Treasury Department general counsel in the Ford administration. Before and after his Washington stint, he was a partner at Wall Street's White & Case. A large man, Schmults is tough, direct. His politics are conservative.

Starr ("Heavy Hitters," *AL*, May) was a young partner in the Gibson, Dunn Washington office who impressed Smith so much with his volunteer work on the transition team that he quickly became the new attorney general's closest aide. A former Warren Burger clerk, Starr is friendly, intensely loyal, and nice (in an un-phony way) to everyone he deals with. He is the kind of avid conservative who infuriates liberals by refusing to show the mean, selfish side that liberals suspect motivates all those on the right.

Starr sifts all of Smith's mail and sits in on most of his meetings. He still finds time to handle his own projects, such as the investigation of Sandra O'Connor's record and the preparation for her confirmation testimony (which featured about as many noncommittal answers as Smith offered in his own bout with the senators).

Just below Smith, Schmults, and Starr in the funnel are the 11 top aides who attend the daily 8:45 a.m. meetings (see photo, page 32). The meetings last about half an hour. They are informal; people don't hesitate to call Smith "Bill" or to joke about negative stories in the press. But they're also quick and crisp, a tone pushed by Schmults, who always seems to think they last too long.

One rung below this group are the assistant attorney generals in charge of the department's various litigating divisions: Tax,

Civil Rights, Civil, Criminal, Antitrust, and Land and Natural Resources, plus the heads of the Justice subagencies such as the U.S. Marshals Service, Immigration and Naturalization, the Bureau of Prisons, and the FBI.

Among those division chiefs there are no clinkers, no obviously unqualified patronage choices. Rather, most are qualified, if unspectacular, Republican lawyers. For example, J. Paul McGrath, the head of the Civil Division, is an accomplished "big case" trial lawyer who left a partnership at New York's Dewey, Ballantine, Bushby, Palmer & Wood; he wanted a change of pace, and a partner at the firm was able to get him an interview with Schmults.

Smith has a regular monthly meeting with the top staff of each of these divisions and agencies. Half the time he goes to the division's office and asks the assistant or director in charge to invite a larger group of a dozen or so division staff members. Otherwise the meetings are in his office or in the A.G.'s conference room and involve a smaller group from the division.

Schmults, Starr, and an assistant or two of Smith's or Schmults's sit in on all of the meetings. The division chiefs prepare an agenda and usually a background paper for each meeting; Smith invariably studies them beforehand. He is a careful, voracious reader—a fact appreciated by his own staff and his White House colleagues. "He is exceptionally well prepared at Cabinet and other meetings," says White House counsel Fred Fielding. "He is not someone who can't talk without a staff member next to him ready to chime in."

Between those regular division meetings Schmults will meet more frequently for an hour or two with the division chiefs to go over specific problems; and Associate Attorney General Rudolph Giuliani, and often Schmults, will meet regularly with the field agencies. In addition, Schmults approves all federal government settlements of civil cases amounting to payouts of $750,000 or more; he is also in charge of all sensitive congressional correspondence, and he must approve all letters that are drafted for the attorney general's signature.

From that description it sounds as if Schmults is doing more of the real work, an impression bolstered by the pounds of briefing memos and action reports that are forever piled up on his desk and by the fact that Schmults's daily schedule is almost always more crowded than Smith's. But that's not the whole story.

First there are the Cabinet meetings and Cabinet council meetings that Smith must attend at the White House, which add up to three or four sessions a week. Smith sits (alone, without staff) on four Cabinet councils, involving natural resources and the environment, economic policy and trade, human resources, and legal policy, which he chairs.

Also, Smith has made it a point to convene weekly meetings of a judicial selection committee. In making their choices, Smith and his people have almost completely overlooked black America; only one of 59 judicial choices and none of 80 U.S. attorney picks has been black. This gaping oversight aside, Smith—as he did when he advised Governor Ronald Reagan informally on judges in California—has selected generally qualified people, often despite senatorial pressure to the contrary. (The only bad choices I could find out of 45 district judge appointments were John Shabaz in Wisconsin and the wholly inexperienced Clyde Hamilton in South Carolina, who is a former aide and hometown neighbor of Judiciary Committee chairman Strom Thurmond.)

Despite these kinds of scheduled sessions, Smith's calendar is, indeed, lighter than it could be, for he has fashioned an efficient system for finding out about, and getting deeply involved in, the department's most important work; and he deliberately leaves flexibility in his schedule to allow him to plunge into such areas as they arise.

"Bill has a good feel for when to step in and when not to," says Giuliani. Thus, Carol Dinkins, the assistant attorney general in charge of the Land and Natural Resources Division, who is generally considered Smith's best division chief, finds Smith's management style "just the way I like it. It's not intrusive, but it's involved.

"If I have a particular matter that I know needs his attention, I can just call and get on his calendar for fifteen minutes or a half hour, because he keeps his schedule flexible," says Dinkins, a former Vinson & Elkins partner who, like most assistant A.G.'s, was recruited in a procedure that included a long interview with Schmults, then a meeting with Smith attended by Starr, who had briefed Smith to be sure to ask Dinkins what she felt about what big business interests see as the problem of environmental groups not being challenged for standing by the government when the filed *amicus* briefs.

Smith has pushed Dinkins to follow up on that standing question, which she has, much to the consternation of environmental groups. And on this and other issues Smith and Dinkins have led a turnaround in government environmental litigation policy, tilting it sharply toward business interests. Nonetheless, Dinkins is no fanatic, and she has frequently clashed with extremist Interior Secretary Watt and his Interior Department lawyers over how far the government can go in various cases. Smith has backed her effectively. "If I know I'm going over to talk to Secretary Watt, I want to be able to say, 'I've spoken to the attorney general about this, and he concurs,'" she says. "If you need the A.G., he's available. If you need him to call someone or go see someone for you, he does it. And when you meet with him, if you ask him to prepare by reading something in advance, he always does it, so you're not wasting your time with him going over what he's supposed to have read."

F. Daniel Frost, The Gibson, Dunn management committee chairman who became a senior partner with Smith in 1962, notes that when lawyers get out of law school "they're generalists. Then they become specialists. As you get to be a senior partner, you become a generalist again. You let others do the specialized work while you deal with clients."

In Smith's case the specialty was labor, and union lawyers who remember his bargaining-talk days describe him as cool, determined, efficient, but neither the most bullheaded nor the most skillful adversary they faced. Later, as a senior partner working "for a client such as Reagan or the Irvine Ranch [the giant southern California real estate complex], Bill was the contact man," recalls Byrne. "He was not the kind of partner who billed a lot of hours doing legal work. He was more involved in client development through his business and community activities outside the office."

Smith was, in fact, so frequently away from the office and so disinclined to spend time getting to know people when he was there that most associates and many partners hardly knew him. "We used to kid Bill about how aloof he was," says Frost.

For all his accessibility to his department heads and his contact with handfuls of their subordinates at regularly scheduled meetings, Smith's aloofness at Justice is as noticeable as it was at Gibson, Dunn. Larry Simms, who has worked as an assistant in the Office of Legal Counsel since Griffin Bell's days, says that "Smith works with a much more tightly knit group of people and draws less on the career folks than either of his two predecessors. Bell and Civiletti tended to go down further into the bureaucracy in terms of meeting with people and relying on advice."

Thus, Simms notes, "I've had much less contact with Smith as a special assistant in this office than I had as a staff attorney here under Bell. I'd go to every meeting with John Harmon [the predecessor to Theodore Olson, Smith's Office of Legal Counsel chief] and Bell. Ted [Olson] seldom if ever takes anyone. And that's not his predilection; it's the A.G.'s. . . . Within two weeks after Ben Civiletti took over, he just popped into my office. Things like that have a tremendously positive effect. But Smith is just not that kind of person, and there's no use in him faking it."

Management Division chief Rooney concedes that while he admires the "unprecedented way" Smith involved himself in Rooney's budget process last year "in order to really learn this department," Smith's aloofness costs him some morale-boosting opportunities.

But Rooney also notes that the attorney general's more efficient staffing system provides some compensating gains. "Civiletti had thirteen assistants, and his associate A. G. [John] Shenefield had about twelve," he recalls. "So whenever any division chief tried to call Civiletti or Shenefield, you'd get a call back from one of these little aides. You'd get disgusted. You'd stop bothering Smith's staff and Schmults's staff are small. And they help you get to the guy rather than block you."

THE SMITH AGENDA

All this smart, methodical staffing and unrelenting homework add up to an attorney general who has been personally involved—in formal policy meetings, in ad hoc strategy sessions, in document drafting, in congressional lobbying—in as impressive an array of Justice Department policy and legislative initiatives as has ever been attempted in such a short time: proposed changes in the Foreign Corrupt Practices Act (which will help businesses compete legitimately or spread ugly-American corruption, depending on one's view); changes in the Freedom of Information Act; stepped-up efforts to go after delinquent recipients of student loans; immigration reform; reform of criminal law and procedure; reorganization of the drug enforcement apparatus; a reversal of environmental litigation policy; sharp modification of antitrust policy (allowing almost any vertical merger); a proposed end to the post-Watergate Special Prosecutors Act, an action that would give back to the Justice Department jurisdiction over investigations of the president and his top aides; and a turnaround in how the civil rights laws are enforced.

Three areas—immigration, crime (including drug enforcement), and civil rights—have most occupied Smith personally, and they seem to be his highest-priority issues. What he has done in each area illustrates the extent of his effectiveness as a manager

and policy maker, as well as his limits as a problem solver, as a law enforcer, and as the leader of the federal agency charged with providing justice.

BORDERLINE JUSTICE

However else people disagree on what to do about those who sneak their way into the American dream, there is little disagreement that our country has lost control of its borders. More immigrants entered the United States in 1980 than in any other year, including the years between 1880 and 1921 that covered the nation's great immigration tides; and most entered illegally. To his credit, Smith quickly perceived immigration as the most pressing problem facing his department. "Bill got so involved in it so early on that I was able to stay out of it almost completely," says Schmults.

Working with Starr and then-special assistant David Hiller, Smith (who read nearly as much on the subject as the staffers) developed a long-overdue comprehensive immigration legislative and enforcement plan, parts of which have already been implemented.

There is much to criticize about it. The enforcement package includes the unprecedented incarceration of newly arrived illegal immigrants—a policy that keeps illegal boat people from melting into the community prior to their exclusion or deportation hearings and presumably deters their countrymen back home.

The Justice Department-sponsored but legally questionably high seas interdiction by the Coast Guard of Haitian refugee boats is also a deterrent, and one that probably saves a lot of drownings. Yet because the overwhelming majority of the new arrivals are black Haitians, rather than previously welcomed, or tolerated, Soviet Jews, Cubans, or Nicaraguans, the incarcerations without hearings have the appearance, if not the reality, of racism and are certainly hardhearted if not inhumane.

As on-top-of-things as Smith tries to be, he has yet to visit one his Immigration and Naturalizations Service's "detention centers" that house the Haitians. True, by bringing in Bureau of Prisons personnel to help at the centers, conditions there have improved, but a surprise visit by Smith to any of the centers—I went to the one in Miami and have talked to lawyers who have been to the others—might make him more hesitant about breezily emphasizing to me and other reporters how much better things are at these barbed-wire mockeries to the Statue of Liberty.

Underpinning the detention policy is the effort by Smith and his people to deny the Haitians status as political refugees, though many can show histories of political persecution and can make a good case they will be tortured or executed by the brutal right-wing Haitian regime if they are sent back. Nicaraguans fleeing the left-wing Sandinist government have faced no such opposition, a distinction that Giuliani attributes to the timing of the policy, which came after the Nicaraguans had fled.

That anti-Haitian policy was initially enforced last summer by several weeks of exclusion hearings in the Immigration and Naturalization Service's kangaroo courts. The hearings were so devoid of due process—the Haitians' handful of lawyers were often expected to cover several hearings at once, and the judges were plainly one-sided—that a federal judge enjoined their continuation pending improvements.

The Smith legislative package is more defensible. Its amnesty for illegal immigrants who have been here for more than ten years, combined with long-overdue though still relatively mild sanctions against employers who hire undocumented aliens, makes good sense.

The American Civil Liberties Union has criticized the employer sanctions (while not praising Smith's refusal to propose ACLU-dreaded, but often-suggested, worker identity cards) because, the ACLU says, punishing employers for hiring illegal aliens will make them more reluctant to hire all foreigners for fear that some might be illegal. This is an absurd position, roughly equivalent to opposing child labor laws because employers will be afraid to hire young-looking workers. But the ACLU is on firmer ground in opposing the Smith administration's recent raids on workplaces suspected of harboring large numbers of illegal aliens. There were clumsy, abusive police actions that violated rights and accomplished nothing other than to provide a reminder of how far the Immigration and Naturalization Service needs to go to become a competent, lawful organization.

Nonetheless, Smith deserves credit for putting together a specific, comprehensive proposal—one that has gained bipartisan support and now seems likely to fare well in Congress in the form of a modified bill sponsored by Democratic Representative Romano Mazzoli and Republican Senator Alan Simpson—and for getting more involved in this neglected crisis than any attorney general in history.

CRIME AND DRUGS

In the area of crime, including drug law enforcement, Smith has relied more on his aides—principally Giuliani and his assistant Jeffrey Harris, both former prosecutors. Two months after taking office, Smith appointed a special task force (chaired by former Attorney General Bell and Illinois Governor James Thompson) to study how the federal government could help fight violent crime. He made sure he could control it by mandating that it complete its work within six months *and* that it be staffed by Harris rather than outsiders hired by the task force members. This makes the Smith violence task force either an example of effective governing or fraudulent governing, depending on how cynically one views the substantive role of such blue-ribbon panels.

"We had a blueprint of what we wanted them to come up with going into it, and that's how they came out," says Harris, who adds that he wrote the agenda for each task force meeting, scheduled its witnesses, and drafted the final report. The result was a series of recommendations that had the drama and credibility of the deliberations of a bipartisan, big-name panel but which was the Smith Justice Department's crime plan.

Thus far, the Reagan administration has accepted all but two of the panel's recommendations, either proposing them to Congress (such as bail reform and limits in the exclusionary rule in federal cases) or implementing them by executive action (such as the transfer of excess federal property to states for use as prisons, the empaneling of crime-fighting coordinating councils in all 94 judicial districts, chaired by the local U.S. attorneys, and a system of trading federal and state prosecutors so that one can practice in the other's courts if his expertise is needed).

One of the crime proposals the White House has not supported is a $2-billion federal prison-building program. The program has been rejected as too expensive. Similarly, despite all of Smith's and President Reagan's supposed concern for crime fighting, Smith has presided over the elimination of grants to state and local governments for anticrime, drug abuse, and juvenile justice programs.

Even ignoring the scripted nature of the panel's deliberations, it's arguable that its work was mostly insignificant. Other than gun control (the other proposal of the task force that the Reagan administration has not supported), there is little that the federal government can do about street crime anyway. Bail reform, a federal death penalty, or modification of the exclusionary rule in federal cases is largely irrelevant. On the other hand, the coordinating councils do seem like a good idea; federal and local law enforcement officials I talked with in several cities say they are helping, albeit mostly intangibly, to redirect and coordinate priorities. And the yet-to-be-acted-on gun control proposal, which Smith says he is still studying but which Giuliani and Harris say they favor, has at least resulted in the White House staff, which, like the President, opposes gun control, not pushing Justice to support an NRA effort to weaken the federal gun law. (However, the White House, in the person of presidential counselor Edwin Meese, III, has backed the NRA proposal.)

As for drug enforcement, Smith, again relying on Giuliani and Harris, has truly accomplished something.

For years the federal Drug Enforcement Administration (DEA) has been a model of incompetence and corruption. In fact DEA is such a disaster that the one possible solution for salvaging it—merging it with the FBI—has been resisted by the FBI for fear that a merger would destroy the FBI pedigree of relative honesty and effectiveness.

Harris, who has known Giuliani since they both worked in the U.S. attorney's office in New York in the early 1970s, explains that he and his friend had a better idea. "Rudy and I decided ten years ago that we had the plan for the perfect federal drug agency," he says. The plan included a strategy of skillful bureaucratic sidestepping in which DEA, as Harris explains, "would be under the FBI's supervision and combined with the FBI in certain respects but not merged. That way you don't have to worry about [the two agencies' different] civil service standards. And you use the FBI's technical expertise and organized-crime intelligence, plus the DEA's street smarts when it comes to drugs."

In June that combination was announced after, in Harris's words, "the A.G. had spent hours going over it with us, modifying it, learning it so he could present it to [FBI Director William] Webster." As important as the new structure was the fact that Giuliani and Harris suggested that Smith appoint Francis "Bud" Mullen, a widely respected assistant FBI director, to run DEA under Webster. "Mullen is the best thing ever to happen to DEA," says one big-city U.S. attorney. "He's smart, shrewd, tough, and the best possible way to link DEA with the FBI."

A problem one might have expected in Smith's making crime and crime-related topics a high personal priority and in his appointing the young, high-profile Giuliani and Harris to help him is that he might run into some interference from the president's most influential aide, counselor Meese. Meese is a former prosecutor. And he is more a cops-and-robbers enthusiast than Smith, Giuliani and Harris combined. So when Meese convinced Smith to appoint his close friend and old boss from the Alameda

County prosecutor's office, D. Lowell Jensen, as head of the Criminal Division, there were fears at Justice that Jensen would serve as Meese's eyes and ears and influence wedge.

That hasn't happened. True, Meese and some of his White House loyalists are not fond of Giuliani and have tried to undercut him by badmouthing him to the press and opposing the violence task force's moderate gun control proposal. And Meese, as blunt-talking a crime buff as they come, has caused Smith some trouble with his occasional outbursts on law and order. (Aficionados of how to sidestep a question should write the Justice Department for a transcript of the press conference at which Smith was grilled about whether he agreed with Meese's statement that the ACLU is a lobbying organization for criminals.) But Jensen has genially accepted a nonpolicy-making role as coordinator of specific criminal investigations, a role that is clearly subordinate to Giuliani's, and Meese has respected Smith's turf.

"Sure there's some tension between Ed and Bill," says a presidential assistant. "But Ed respects the fact that Bill's relationship with the president is that of a peer, not an aide-de-camp, the way Ed's is. That's probably why," the assistant continues, "Ed and the rest of us go through Schmults if we really want to push anything on Justice."

Although no one can cite an instance of Schmults undercutting Smith to serve Meese, there is general agreement around the Justice Department and the White House that Schmults is an ambitious man, eager to preserve and enhance his relationship with Meese.

According to White House counsel Fred Fielding, "I have an agreement in writing with the A.G. that any White House contact about investigations of any kind will go through him or Schmults. But other than that, I'd say we're a bit more relaxed [about contact with the White House] than the prior administration was," adds Fielding, referring to Griffin Bell's post-Watergate insistence on treating the Justice Department as if the entire building was as off limits to the White House as his old judicial chambers might have been. In addition to Schmults, a number of Justice aides such as Starr, special assistant F. Henry Habicht II, Olson, or Legal Policy head Jonathan Rose are in frequent contact with Fielding, with Michael Uhlmann, the domestic policy staffer in charge of legal policy, and with their respective staffs.

Early on in the administration there were charges by Justice lawyers in the Criminal Division that a foreign bribery case against Lockheed had been improperly sidetracked by White House pressure. Yet the dropping of the Lockheed case, on closer look, seems to have been a legitimate exercise of prosecutorial discretion; and so far, there is no evidence that the kind of contact between an executive agency and the seat of executive power that Smith and his aides freely engage in has corrupted anyone or any decision—unless one views political input into policy decisions by agents of the elected chief executive as corruption.

CIVIL RIGHTS: NO ADVOCATE

That is exactly how civil rights leaders characterize the way Smith and his staff have decided civil rights issues. In February a group of civil rights organizations, called the Leadership Conference on Civil Rights and chaired by NAACP executive director Benjamin Hooks, issued a blistering report on the Smith Justice Department, charging "unlawful and improper activity," "undue political influence," and "corruption of the legal process."

A key example the civil rights leaders used was the position taken by the Justice Department in an unusual busing case then pending in the Supreme Court. The case involved a busing plan enacted voluntarily by the Seattle, Washington, school district with the support of local government, civic, and business leaders. After the plan had gone into effect, the state of Washington's voters approved a referendum forbidding busing. The school district and the city of Seattle then sued in federal court claiming that the referendum and its enforcement violated the Fourteenth Amendment because, they asserted, it was state action directed solely at depriving people of their civil right to integrated education. Both the federal district court and the court of appeals agreed and declared the prohibition unconstitutional. In both instances the United States, through the Carter/Bell Justice Department's Civil Rights Division, filed *amicus* briefs supporting the school district and opposing the referendum. But when the case went to the Supreme Court, the Reagan administration reversed the government's position and filed a brief supporting the state.

The civil rights groups discovered that prior to the government's change of position state attorney general Ken Eikenberry, who had been a Reagan campaign organizer in the state, had written a letter to Republican party chairman Richard Richards and to Lyn Nofziger, then the White House key political coordinator, saying: "I would prevail on you to use your good offices and do whatever possible to make sure that the analysis of this case and the decision about the position of the United States be made by personnel in the . . . Justice Department . . . who are sympathetic to the policies and goals of the administration of President Reagan rather than the administration of President Carter." Nofziger in turn sent a memo with a copy of Eikenberry's letter to Meese, Smith, Schmults, and William Bradford Reynolds, the new chief of Smith's Civil Rights Division, saying: "Surely, if we are going to change the direction of this country, mandatory school busing is a good place to make changes—as I thought we would do because I thought that was what the President wanted. . . . I do hope we can give Mr. Eikenberry's problems a careful look."

Replying to the civil rights leaders' charges that Nofziger's memo constituted gross political corruption, Smith says that the Eikenberry letter and the Nofziger memo "had no effect, no influence whatsoever."

In fact, sources familiar with how the Seattle case was handled at Justice say that the Nofziger memo triggered both Schmults and Reynolds to inquire about the case and then to order a reversal of the government's position. Yet it's an irrelevant debate. What's wrong with "political interference" in the decision about how and whether to file this kind of amicus brief? Surely the civil rights groups would not be charging corruption if the year were 1985 and they were lobbying President Edward Kennedy's Justice Department for a reversal of a Reagan position in an amicus brief.

What is relevent is that the Smith Justice Department's position on the Seattle case seems to betray hypocrisy that can only be explained by antipathy to the cause of school integration.

Ask Smith-who can cite facts and the lower court decisions in the Seattle case more knowledgeably than civil rights chief Reynolds—to explain his political philosophy, and he says that "at the core" is his belief that "the smallest unit of government that can make a decision should be making that decision." Why, then, would he support the state of Washington's effort to block busing in Seattle when the city of Seattle and its school district have voluntarily decided on a busing plan?

Because, Smith replies, there are exceptions: "We happen to think that busing doesn't work and hasn't worked."

The record in the Seattle case is that busing has worked; the schools are integrated, and there has not been the "white flight" from public schools that busing opponents often try to cite as the reason for their opposition.

Smith and his staff bridle at any reference to their "antipathy" to the cause of integration. Smith has skillfully refused to cede any such ground, preferring that the issues be narrowed to questions of practicality. "Busing is a discredited remedy," Smith says. "It has nothing to do do with rights."

In a speech this spring defending his civil rights record, Smith amplified that point: "They [civil rights leaders] have chosen to brand a debate over remedies as a difference over rights. Clearly, we have been in the process of evaluating the means by which government has sought to promote equality of opportunity. . . . Just as clearly, we have found some of these means ineffective. And we are, therefore, seeking new ways to promote and ensure the right of equal justice under law."

Smith has yet to articulate any such new remedies; besides, in Seattle, as elsewhere, the effectiveness of the remedy has not been questioned. The courts and the local government have found that busing works. The opposition has consisted mostly of white parents who do not want their children bused just for integration or who simply do not want their children going to school with blacks.

Thus, what Smith and company are debating, but not admitting to be debating, is, at a minimum, the principle of whether children should be bused even if it is effective but inconvenient, or, at a maximum, the principle of whether a * * * Rights. Civil Rights Division chief Reynolds declared that the Smith Justice Department's civil rights record is one "in which the administration understandably takes considerable pride." He cited a collection of statistics regarding pending cases to rebut the civil rights groups' charges—numbers, he asserted, that easily match the Carter administration's effort in its first year.

The numbers of civil rights cases pursued by the Smith Justice Department are, indeed, about even in many respects with those of the prior administration. It is the remedies that Reynolds seeks that are different.

In school desegregation cases, Smith and Reynolds have decided to ignore Supreme Court, court of appeals, and district court decisions that busing is often a necessary evil. The Justice Department now seeks only voluntary school transfers, never forced busing, as a remedy for segregated school systems.

Even the formerly discarded "separate but equal" defense to segregation seems to have been revived: in a March speech billed by his staff as a major civil rights statement, Smith, referring to possible new suits

against segregated school systems, declared in March, "We have also begun investigation in three cases to determine if the quality of education offered to predominantly black schools was intentionally and illegally inferior to that offered to predominantly white schools." In the same speech, Smith advanced the long-discredited (if ever creditable) legal theory that *Brown* v. *Board of Education* has to do only with the personal interest of the plaintiff in admission to an integrated school, not with what he called "racial balance within the schools." Taking an equivalent position, Reynolds has defended the government's retreat to a voluntary integration plan for the segregated Chicago school system by making the plainly anti-lawful statement that "any students who want to have an integrated education ought to have it, but if there are students out there who do not want an integrated education, we should not be compelling them to get on a bus to have one."

Similarly, in job discrimination cases, Reynolds has stated that he thinks the Supreme Court's *Weber* opinion allowing a voluntary affirmative action program that set aside half the spaces for blacks in a job training program was "wrongly decided" and, therefore, that his agency will no longer seek programs with specific minority hiring goals, let alone quotas, when it gets involved in a job discrimination case. That is, he has decided to ignore settled law.

"We seek to get help for the individual who has been discriminated against," Smith explained to me, "not the group the individual happens to be in." To those who believe that racial discrimination must be fought—and proved, and compensated for—case by case, plaintiff by plaintiff, that makes sense. To those (including most sitting federal judges, Republican and Democrat) who look to the job discrimination laws to help correct years of discrimination against blacks or women with more sweeping remedies once discrimination has been found, it is wholly unsatisfactory.

Civil Rights Division chief Reynolds was recently denounced by Representative Don Edwards, chairman of the Civil and Constitutional Rights Subcommittee of the House Judiciary Committee, for "international, deliberate backsliding" and for directing a "wholesale uprooting of civil rights enforcement by the administration." Asked to explain that strong language, Catherine Leroy, Edwards's chief counsel, says, "It's Reynolds's job to seek the strongest remedies possible. If you went to your lawyer and he said, 'We can probably get this remedy because the courts have done it before, but I think it's too strong, so I won't seek it,' you'd fire him. Reynolds and the Justice Department are supposed to be the lawyer for those protected by the civil rights laws. He's not."

That should come as no surprise to anyone who knows the 1980 election results. "I think it's true that we don't see our role as enforcing civil rights for any particular group or groups," says White House legal policy presidential aide Michael Uhlmann. "That may explain the differences we have with the civil rights groups."

So, at best, what the civil rights adherents have in Reynolds—a 40-year-old former litigation partner at Shaw, Pittman, Potts & Trowbridge in D.C., a conservative Republican with no experience in civil rights law and a man who, in direct contradiction to Leroy's definition, says he "wasn't put here to please any particular group"—is a disinterested, neutral party anxious to please his bosses. At worst they have an opponent. Under no circumstances do they have an *advocate*.

Nor should civil rights leaders and the dozens of the now-disgruntled career lawyers who staff the Civil Rights Division have expected that the attorney general would be their advocate. Smith's only involvement in civil rights prior to taking office was co-signing a 1968 Supreme Court brief on behalf of a group of realtors who wanted the federal Open Housing Act struck down as unconstitutional. (Typically, the Smith brief deplored racial discrimination but simply objected to the means used by the law to combat it.)

It should be no surprise, then, that Smith took a cautious, lawyer-like ten months to decide his position on the extension of the Voting Rights Act. Then, this February, trying as he always does to downplay differences, he proclaimed his support for extending the act exactly as is. That sounds progressive enough until one recalls that at the same time he strongly opposed changes in the act voted 23-1 by the House Judiciary Committee—changes which would simply have brought the act back to where it was in 1980 before a statutory interpretation by the Supreme Court severely weakened its enforceability.

When the White House staff later convinced Reagan to back the House-proposed changes in the act, Smith listened to Reynolds, the supposed civil rights enforcer, who persuaded Smith to go directly to the president. (Reagan, who continues to count Smith among his closest friends, took Smith's advice and reversed the White House position. But ultimately the administration, bowing to pressure from congressional Republicans, agreed to a compromise tilted strongly toward the Judiciary Committee version.)

Smith was similarly influenced by Reynolds in the administration's most notorious civil rights backstep: the reversal by the Justice Department of federal policy on tax exemptions for racist private schools. The Supreme Court had already decided in favor of the IRS not being allowed to give such exemptions, but the Court had taken *certiorari* in the 1981-1982 term to decide whether schools (Bob Jones University and Goldsboro Christian Schools) that discriminated by race because of alleged religious beliefs should be included in the prohibition on exemptions.

Schmults recalls that he and Reynolds "red-flagged" the Supreme Court brief that had been drafted supporting the government's 12-year-old position that the IRS could not give tax exemptions to racist schools. "We urged that the department take another look at it," Schmults says. And Reynolds, along with special assistant Charles Cooper, then wrote the pro-tax-exemption brief. Reynolds had to write it—because Lawrence Wallace, who as deputy solicitor general was handling the case after Solicitor General Rex Lee was disqualified, held firm to his position against tax exemptions and declined to write the Justice Department brief taking the new position.

As a piece of legal writing and scholarship, Reynolds's brief pales in comparison with the usually excellent work turned out in the Smith Justice Department by the solicitor general's office and by the Office of Legal Counsel. Examples of the department's more typical, better product include the letters to Congress, drafted by Office of Legal Counsel head Olson and his staff and finally released in May, which questioned the constitutionality of proposals to strip the Supreme Court of jurisdiction over school prayer and opined that eliminating the high court's or the Justice Department's authority to push busing plans would raise constitutional questions.

Like Wallace, Olson opposed the Reynolds-Schmults position on tax exemptions. At a meeting Smith convened two days before he made the decision, Olson and Wallace argued forcefully against the policy reversal. On the morning the decision was announced Olson gave Smith a memo trying to turn the attorney general around, in which he politely said the Reynolds's written work, especially his analysis of relevant legislative history, was hogwash. Smith stuck with the Reynolds view.

MOTIVES DON'T MATTER

It is important to note that deputy solicitor Wallace was allowed to make his dissent from the Reynolds tax exemption brief public and that he has not been the victim of reprisals from Smith or anyone else. Nor has Olson shown any reluctance to discuss his difference with Smith.

Thus, there is an advantage in Smith's insistence that he is not a bad guy, or racist, simply because he believes in what he calls different *means* than others believe in to achieve racial equality: for the same reason, he isn't inclined to see the other side as bad guys either.

In fact, Smith's expectations that the civil rights debate not turn into a good-guys-versus-bad-guys fight may be legitimate. Smith, Reynolds, Schmults, Starr, and the others do not seem to be the mean-spirited types whom one could comfortably call ideologues or racists. A more likely explanation for their civil rights policies, which will doubtless be pernicious in effect regardless of motivation, is that these policy-makers came from a world in which achievement has been so available to them that they find it hard to believe that blacks, women, and other minorities won't start achieving, too, now that society and the law doesn't countenance discrimination against them. In that world, affirmative action, or busing, or an onerous voting rights bill, or even getting the IRS involved in judging the values of private schools would, indeed, be counterproductive overkill.

Yet their motives aren't really important. Smith is right in his instinct for defusing debates by veering away from questions of principle, which imply unanswerable and divisive questions of motive, such as racism. For what *is* important is not Smith's and staff's motives but the simple fact that they are not civil rights advocates eager to push for strong remedies. What *is* important is that theirs is a world in which other concerns—such as the disruption caused by busing, or the red tape and lawyering necessitated by strong voting rights or job discrimination remedies—weigh more heavily than they do in the world of those who lost the 1980 election.

Similarly, what is important is that William French Smith and his Justice Department worry more about government and corporate privacy and the cost to the government of a freedom of information act than they do about open government, more about judicial restraint and curbing crime than they do about the rights of defendants, more about preserving our borders than they do about the plight of Haitians.

And what is undeniably true is that they're good at what they do. To paraphrase one of Smith's predecessors, John

Mitchell: watch what they do, not what they say.

ITEM VETO ON APPROPRIATIONS MEASURES

Mr. DIXON. Mr. President, yesterday, for the fourth time, we dealt with an urgent supplemental appropriations bill. The President has vetoed the first and second versions of the bill. So another version, one I hope can be adopted, has now been sent the House.

I am a relative newcomer to the Senate, but I am informed that the procedural maze that this bill has gone through is not at all unique in the Senate's history. All too often in the past, as I understand it, we have found ourselves in the situation that we are in today—a situation that makes a mockery of the Senate's reputation as the world's greatest deliberative body.

Once again, major parts of the Government and major Government activities are on the brink. Unless we are today more successful than we were on our previous attempts, thousands of employees of the Department of Labor and other Government departments will have to be furloughed, operation of the guaranteed student loan program will be disrupted, and and it is even possible that there will be disruption of the social security system, causing checks to be issued late. Unfortunately, this is in no way a complete summary of the damage that our failure to complete action on the urgent supplemental has caused; there are numerous other problems in addition to those I have mentioned.

Forcing major parts of Government to the edge of disaster does not reflect well on either the Congress or the President. I am aware of how we got to where we are today, as I am sure all here are, but I defy anyone to explain it to the country in a manner that does not make us all look rather foolish.

I do not believe the country understands how we get ourselves in such a mess, and I cannot say that I blame them. We simply have to find a way to conduct business that does not again force us through the Byzantine procedures that this urgent supplemental measure has been through.

Mr. President, I believe we must find a better way to resolve these conflicts, and I think the Illinois constitution may provide a possible solution. Illinois, which adopted a new constitution in 1970, provides the Governor with an item veto on appropriations measures.

This provision enables him to reduce or strike individual items within appropriations bills. He is not forced to either sign a bill with many elements he finds disagreeable, or to veto a measure with many essential and worthy provisions in it. In short, he has another choice. He is able to exercise his authority in a targeted way. He is not limited to a blunderbuss veto.

However, the provision also attempts to protect the power of the legislative branch, in order to insure that the balance of powers between the branches that is at the heart of our system of government is not upset.

The Illinois constitution provides that the legislature can override an item veto by a majority vote, although like the U.S. Constitution, it requires an extraordinary majority to override the veto of a bill. Lowering the margin necessary to override the veto effectively acts as a counterbalance to the executive's item veto power.

I think this approach has much to recommend it, and that it should be seriously reviewed at the national level. For that reason, I am developing, and will soon introduce, a joint resolution embodying the Illinois approach. If that approach were the law of the land now, conflicts like the one over the housing stimulus package would not have to jeopardize other, unrelated, operations of Government.

I do not claim that this is a new idea. The first Federal item veto proposal was introduced over 100 years ago, and over 140 proposals have been introduced since. Forty-three States have item veto provisions in their constitutions and many of them date back to the Civil War era and before.

I do believe, however, that in view of the serious budget problems facing us, this is an idea that needs to be examined seriously at the Federal level.

It is commonly acknowledged that the Federal budget is out of control. The budget process is becoming more and more difficult and is threatening to break down altogether.

In desperation, 60 Senators have cosponsored a constitutional amendment to mandate a balanced budget. A balanced budget is clearly an objective which we all support. However, it is not enough to mandate an objective. We must be sure that the tools are available to carry out that objective in a reasonable and equitable manner.

Mr. President, I think an item veto provision would be a powerful tool, and one that would help make it possible for Congress and the President, acting together, to budget in a fiscally sound manner.

It would help prevent the practice of "logrolling" which has become so prevalent. It would help to focus national debate on those areas which are truly at issue, without hurting all the innocent bystanders as we do today. It would make consideration of issues where there was a conflict more orderly and expeditious, without creating the kinds of parliamentary tangles we have witnessed in the course of the consideration of the pending urgent supplemental bill.

I make no claim that the Illinois example provides the definitive solution to the budget problems facing us. Other States use other variations on the item veto theme; and there are, I am sure, numerous other approaches that could be used. I do think, however, that this idea deserves serious consideration, and that it is time to begin looking at these proposals in a serious way. My proposal is an attempt to begin that review. I hope my colleagues will agree that this is an area that needs close attention. I solicit their help and support.

CONCLUSION OF MORNING BUSINESS

Mr. STEVENS. Mr. President, is there further morning business?

The PRESIDING OFFICER. There appears to be no further morning business.

Without objection, morning business is now concluded.

RECESS UNTIL 11:30 A.M.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate stand in recess until 11:30 a.m., at which time we will lay down the flexitime bill.

The PRESIDING OFFICER. Is the Senator asking unanimous consent that it automatically be laid down?

Mr. STEVENS. No. I am just announcing that that is what we will do.

There being no objection, the Senate, at 10:44, recessed until 11:30 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. NICKLES).

EXTENSION OF TIME FOR ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business not to exceed 10 minutes, in which Senators may speak.

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

The Senator from Delaware.

THE DELAWARE LEGISLATURE URGES NUCLEAR ARMS CONTROL

Mr. BIDEN. Mr. President, the American people, as we have all come to know in recent months, want to halt and reverse the nuclear arms race. They want our Nation to remain strong, but they recognize that we can be strong and can also reduce the danger of nuclear war by a mutual and verifiable cessation in the buildup of those terrifying weapons.

I believe that this emerging American constituency for arms control,

which draws support from all portions of our political spectrum, is having positive and favorable effects on U.S. military policy and diplomacy as well as on our relations with our allies. The current administration has shifted from its early disparaging attitude toward any arms control to the initiation of major negotiations of far-reaching proposals.

I believe and I hope that they are sincere. I believe that once they have sat down at the table, which they have begun to do today, the need for arms control for the purpose of preserving humanity and also for our immediate and continued strategic interests will become more and more apparent. That is why I am so hopeful that we will, in fact, end up with an accord.

One recent expression of the widespread support for effective nuclear arms control came—to my surprise, I might add—when both houses of the Delaware General Assembly—the Democratic-controlled Senate and the Republican-controlled House of Representatives—approved a concurrent resolution urging the President to propose to the Soviet Union mutual agreement "to immediately halt the testing, production and further deployment of all nuclear weapons, missiles and delivery systems in a way that can be checked and verified by both sides."

Mr. President, I said that came as a surprise to me. That is not quite true. It came as a shock to me. My conservative legislature, a border State, all Republicans and all Democrats—if I am not mistaken, it was totally unanimous in both Houses. I see a Delawarean on the floor. I think he would be surprised to know that those downstate Democrats and downstate Republicans voted unanimously for a freeze and asked their congressional delegation to support a freeze.

I happen to think a freeze is not the best way to go. I happen to think that what this really is is an expression of a sentiment that we must do something about arms control. I do not think a freeze is a negotiable document or, as a document, a negotiating instrument.

The point I want to make here, Mr. President, is that the Delaware State Legislature, not a group of 1968 hippies from Haight-Ashbury, came along and said they want their Republican Senator ROTH, their Democratic Senator BIDEN, and their Republican Congressman EVANS to vote for a freeze. Unanimously, they came forward with that.

I was not as surprised when the Wilmington City Council said that several months earlier. But for the Delaware State Legislature to say it—those of you who are familiar with the politics of my State and the politics of border States generally, I think, really should sit up and take notice of what is really happening here.

Mr. President, it would be an understatement to say that I welcome the action by our Delaware Legislature, for I believe that our national security can be enhanced by the negotiation and ratification of tight limits and stabilizing reductions in nuclear weaponry. I ask unanimous consent that the full text of the general assembly's resolution—the 131st Delaware General Assembly—be printed in the RECORD.

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

HOUSE CONCURRENT RESOLUTION No. 170

Whereas, there is a substantial and growing danger of nuclear war between the United States and the Soviet Union which would result in millions of deaths of the people in Delaware and throughout the nation; and

Whereas, the United States and the Soviet Union already possess nuclear weapons in an amount equal to 2½ tons of TNT for each person on earth, enough warheads to destroy civilization as we know it; and

Whereas, in the 1980's the United States and the Soviet Union are planning a massive nuclear weapons buildup which will increase the danger of nuclear war; and

Whereas, there is no effective civil defense in the event of a nuclear war; and

Whereas, security necessarily includes the economic and social well-being of citizens; and

Whereas, stopping the buildup of these weapons on both sides is a critical first step towards lessening the risk of nuclear war: Now, therefore be it

Resolved by the members of the House of Representatives and the Senate of the 131st General Assembly of Delaware, That the President of the United States is hereby urged to propose to the Government of the Soviet Union that both countries agree to immediately halt the testing, production and further deployment of all nuclear weapons, missiles and delivery systems in a way that can be checked and verified by both sides: be it further

Resolved that appropriately backed copies of this resolution be sent to members of Delaware's congressional delegation.

Mr. BIDEN. Let me further say on this point, Mr. President, if I have any time left, that I really believe that we who hold public office at high levels—in Congress, governorships, and in the executve branch of this Government—operate at our own peril if we do not understand one thing that is happening. This is another example of the American people leading their leaders. The American people understand better than we understand that there is a need for a commonsense approach to dealing with what they understand may be the thing that can end the existence of the human race as we know it today.

A poll that my colleague (Mr. ROTH) conducts on a yearly basis recently was published by my colleague. It showed, to my amazement—maybe this is reflecting that I do not know my State as well as I thought I did. This poll showed that, out of a registered number of voters of about 300,000 in the State; 13,000 responded in writing to my senior colleague.

He asked them "What do you think the probability of a nuclear war in your lifetime is?" He had four categories, if my memory serves me. One said very likely, one said likely, and it went on down the line.

The very likely and likely added up to 54 percent of the people of my State—54 percent of the people of my State who answered that poll.

I agree this is not a scientific poll in the sense that Mr. Caddell or Wirthlin or any of them in the polling business would consider it, but 13,000 people responded out of a registered total of eligible voters of 300,000 in my State; 13,000 wrote back and more than half of them said that in their lifetime, they believe, there will be a nuclear war.

I think they understand something pretty clearly: If we keep building weapons and not agreeing, not talking, we in fact are likely to have it become a self-fulfilling prophecy.

Mr. President, I sincerely appreciate the majority whip's giving me this time. To conclude, I think the American people want very badly for us to be strong. I think there is a consensus that we need to build up our military, particularly conventional, capability. I think there is an overwhelming consensus that you cannot trust the Russians, nor should you trust the Russians. I believe there is an overwhelming view that says that there is not a compatibility between the Soviet system and our system. I believe the vast majority of the American people rightly perceive the Soviet Union as a threat.

Having said all that, it is not the least bit inconsistent for them also to say, "But, in our mutual interest, we should deal with the people we do not trust, we do not like, we think are bad for our interests when, in fact, we can do it in a way that is verifiable and in a way that meets both of our concerns; that is, the annihilation of humanity."

But we in the Senate, in the 10 years I have been here, talk about those things as if they are mutually exclusive. My friends on the left stand up and say, not only must we have arms control, but we do not need any bigger military. My friends on the right stand up and say, we need a bigger military and we need more missiles and we cannot have any agreement with the Russians, because no matter how tight the agreement is, you cannot trust them anyway.

But the American people have said where we should be. The American people say, build up our military, be credible and tough and strong, second to no one in the world. But negotiate on the issue of nuclear weapons.

I make a prediction, Mr. President, that my colleagues will arrive at that

conclusion very shortly. When I say shortly, I mean within the year. Because this is where the American people are—and the American people are right.

I end by saying if we trusted the basic good judgment of the American people a little bit more, we would all be a little bit better off.

Mr. President, I should like to switch to a second subject, if my colleague will yield me another 2 minutes.

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

PROPOSED CUTS IN SOCIAL SECURITY

Mr. BIDEN. Mr. President, the media is full of stories about proposed cuts and proposals relating to the social security system. On almost a weekly basis—I guess I have had 14 thus far this year—on Monday night I have a town meeting. The most people that have ever shown up at the town meetings are 600 and as few as 100, somewhere on the average of 200. As I said, I think I have had 14 or 15 since the middle of January. Social security is a big issue. We in the Senate spend many hours debating the issue, and we are scaring the living devil out of the American people about the solvency of the system, what is going to happen to the system.

While it is proper, Mr. President, for proposed social security cuts to receive a great deal of attention and publicity; I am afraid all that attention has obscured yet another cut which could have an equally devastating effect on seniors. I am referring, Mr. President, to the Budget Committee's proposal to slash $23.5 billion from the medicare program over the next 3 years.

Among other changes in law, this proposed savings would be achieved through the institution of a 6-percent copayment in fiscal year 1983, an 8-percent copayment in fiscal year 1984, and a 9-percent copayment in fiscal year 1985. These copayments would be charged against medicare part A, that is, the cost of hospitalization. Currently, the patient pays a $256 deductible against the first day's cost, with medicare picking up the tab for days 2 to 60.

If this proposal is enacted into law, Mr. President, it will mean that a medicare patient would be forced to pay $116.34 per week—after the deductible—for the average hospital room in Delaware, as opposed to no fee today. In fiscal year 1984, assuming a 5-percent increase in the cost of a hospital room, the charge would be $165.36/week, again as opposed to no fee today. In fiscal year 1985, assuming another 5-percent jump in hospital costs, the additional charge would rise to $192.15 per week.

To bring this proposal into even clearer perspective, Mr. President, a 60-day hospital stay for a medicare patient under current law costs that patient $256 in out-of-pocket expenses. If this proposal is approved, that stay will cost $1,287.87 in fiscal year 1983, $1,743.48 in fiscal year 1984 and $1,972.80 in fiscal year 1985.

When he first heard of the magnitude of the proposed medicare cuts, John Muldoon—who is president of the Association of Delaware Hospitals—called my office to express his view that the proposal is "unrealistic." I go a step beyond that characterization, Mr. President. I believe this proposal represents a callous attempt to cut costs in order to hide the failure of the administration's economic program.

How are we to expect seniors to cope with this attempt to balance the budget on their backs? Let us remember that, although the CPI actually went down last month, the health care portion of the index jumped by 12 percent.

Let us also remember, Mr. President, that this generation of seniors has made its sacrifice. They have been through the Great Depression. They have been through three and, in some cases, four wars. They have worked to bring the country out of numerous recessions.

Yes, they are willing to do more. Each senior I speak to expresses his or her willingness to do their part to help get America's economy back on track. But they are not willing to have the budget balanced on their backs. Mr. President, we must reject the Budget Committee's medicare cut.

Mr. President, I once again thank the Senator from Alaska for giving me this time, and I yield the floor.

PRIVILEGE OF THE FLOOR—S. 2240

Mr. STEVENS. Mr. President, I ask unanimous consent that when S. 2240 is being considered by the Senate, Ira Shapiro, Marcia McCord, Michael Forscey, Gerald Lindrew, and Ed Jayne be permitted access to the floor during all proceedings.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business has concluded.

Mr. STEVENS. Mr. President, I am awaiting the arrival of the distinguished minority leader so that we can proceed to the consideration of S. 2240. I suggest the absence of a quorum until he arrives.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

FEDERAL EMPLOYEES FLEXIBLE AND COMPRESSED WORK SCHEDULES ACT OF 1982

Mr. STEVENS. Mr. President, I ask unanimous consent that the Chair lay before the Senate S. 2240, Calendar No. 518, the flexitime bill.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

A bill (S. 2240) to amend Title V, United States Code, to provide permanent authorization for Federal agencies to use flexible and compressed employee work schedules.

Without objection, the Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs with amendments, as follows:

On page 4, after line 2, insert the following:

"(8) 'collective bargaining', 'collective bargaining agreement', and 'exclusive representative' have the same meanings given such terms—

"(A) by section 7103(a)(12), (8), and (16) of this title, respectively, in the case of any unit covered by chapter 71 of this title; and

"(B) in the case of any other unit, by the corresponding provisions applicable under the personnel system covering this unit.".

On page 9, strike line 11, through and including line 20, and insert the following:

"(b) Any employee who is on a flexible schedule program under section 6122 of this title and who is no longer subject to such a program shall be paid at such employee's then current rate of basic pay for—

"(1) in the case of a full-time employee, not more than 24 credit hours accumulated by such employee, or

"(2) in the case of a part-time employee, the number of credit hours (not excess of one-fourth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.".

On page 13, strike line 3, through and including page 14, line 2, and insert the following:

"§ 6130. Application of programs in the case of collective bargaining agreements

"(a)(1) In the case of employees in a unit represented by an exclusive representative, any flexible or compressed work schedule, and the establishment and termination of any such schedule, shall be subject to the provisions of this subchapter and the terms of a collective bargaining agreement between the agency and the exclusive representative.

"(2) Employees within a unit represented by an exclusive representative shall not be included within any program under this subchapter except to the extent expressly

provided under a collective bargaining agreement between the agency and the exclusive representative.

"(b) An agency may not participate in a flexible or compressed schedule program under a collective bargaining agreement which contains premium pay provisions which are inconsistent with the provisions of section 6123 or 6128 of this title, as applicable.".

On page 14, strike line 22, through and including page 16, line 21, and insert the following:

"(a) Notwithstanding the preceding provisions of this subchapter or any collective bargaining agreement and subject to subsection (c) of this section, if the head of an agency finds that a particular flexible or compressed schedule under this subchapter has had or would have an adverse agency impact, the agency shall promptly determine not to—

"(1) establish such schedule; or

"(2) continue such schedule, if the schedule has already been established.

"(b) For purposes of this section, 'adverse agency impact' means—

"(1) a reduction of the productivity of the agency;

"(2) a diminished level of services furnished to the public by the agency; or

"(3) an increase in the cost of agency operations.

"(c)(1) This subsection shall apply in the case of any schedule covering employees in a unit represented by an exclusive representative.

"(2)(A) If an agency and an exclusive representative reach an impasse in collective bargaining with respect to an agency determination under subsection (a)(1) not to establish a flexible or compressed schedule, the impasse shall be presented to the Federal Service Impasses Panel (hereinafter in this section referred to as the 'Panel').

"(B) The Panel shall promptly consider any case presented under subparagraph (A), and shall take final action in favor of the agency's determination if the finding on which it is based is supported by evidence that the schedule is likely to cause an adverse agency impact.

"(3)(A) If an agency and an exclusive representative have entered into a collective bargaining agreement providing for use of a flexible or compressed schedule under this subchapter and the head of the agency determines under subsection (a)(2) to terminate a flexible or compressed schedule, the agency may reopen the agreement to seek termination of the schedule involved.

"(B) If the agency and exclusive representative reach an impasse in collective bargaining with respect to terminating such schedule, the impasse shall be presented to the Panel.

"(C) The Panel shall promptly consider any case presented under subparagraph (B), and shall rule on such impasse not later than 60 days after the date the Panel is presented the impasse. The Panel shall take final action in favor of the agency's determination to terminate a schedule if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact.

"(D) Any such schedule may not be terminated until—

"(i) the agreement covering such schedule is renegotiated or expires or terminates pursuant to the terms of that agreement; or

"(ii) the date of the Panel's final decision, if an impasse arose in the reopening of the agreement under subparagraph (A) of this paragraph.

"(d) This section shall not apply with respect to flexible schedules that may be established without regard to the authority provided under this subchapter.".

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That this Act may be cited as the "Federal Employees Flexible and Compressed Work Schedules Act of 1982".

SEC. 2. (a) Chapter 61 of title 5, United States Code, is amended—

(1) by inserting before section 6101 the following:

"SUBCHAPTER I—GENERAL PROVISIONS";

and

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

"SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES

"§ 6120. Purpose

"The Congress finds that the use of flexible and compressed work schedules has the potential to improve productivity in the Federal Government and provide greater service to the public.

"§ 6121. Definitions

"For purposes of this subchapter—

"(1) 'agency' means any Executive agency, any military department, and Library of Congress;

"(2) 'employee' has the meaning given it by section 2105 of this title;

"(3) 'basic work requirement' means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise;

"(4) 'credit hours' means any hours, within a flexible schedule established under section 6122 of this title, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday;

"(5) 'compressed schedule' means—

"(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

"(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays;

"(6) 'overtime hours', when used with respect to flexible schedule programs under sections 6122 through 6126 of this title, means all hours in excess 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours; and

"(7) 'overtime hour', when used with respect to compressed schedule programs under sections 6127 and 6128 of this title, means any hours in excess of those specified hours which constitute the compressed schedule.

"(8) 'collective bargaining', 'collective bargaining agreement', and 'exclusive representative' have the same meanings given such terms—

"(A) by section 7103(a) (12), (8) and (16) of this title, respectively, in the case of any unit covered by chapter 71 of this title; and

"(B) in the case of any other unit, by the corresponding provisions applicable under the personnel system covering this unit.

"§ Flexible schedules; agencies authorized to use

"(a) Notwithstanding section 6101 of this title, each agency may establish, in accordance with this subchapter, programs which allow the use of flexible schedules which include—

"(1) designated hours and days during which an employee on such a schedule must be present for work; and

"(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

"(b) Notwithstanding any other provision of this subchapter, but subject to the terms of any written agreement referred to in section 6130(a) of this title, if the head of an agency determines that any organization within the agency which is participating in a program under subsection (a) is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

"(1) restrict the employees' choice of arrival and departure time,

"(2) restrict the use of credit hours, or

"(3) exclude from such program any employee or group of employees.

"§ 6123. Flexible schedules; computation of premium pay

"(a) For purposes of determining compensation for overtime hours in the case of an employee participating in a program under section 6122 of this title—

"(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1), 5544(a), and 5550 of this title, section 4107(e)(5) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other provision of law; or

"(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

"(b) Nothwithstanding the provisions of law referred to in subsection (a)(1) of this section, an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 6126 of this title or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

"(c)(1) Notwithstanding section 5545(a) of this title, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which such premium pay is otherwise authorized, except that—

"(A) if an employee is on a flexible schedule under which—

"(i) the number of hours during which such employee must be present for work, plus

"(ii) the number of hours during which such employee may elect to work credit

hours or elect the time of arrival at and departure from work,

which occur outside of the nightwork hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

"(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

"(2) Notwithstanding section 5343(f) of this title, and section 4107(e)(2) of title 38, night differential will not be paid to any employee otherwise subject to either of such sections, solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized, except that such differential shall be paid to an employee on a flexible schedule under this subchapter—

"(A) in the case of an employee subject to subsection (f) of such section 5343, for which all or a majority of the hours of such schedule for any day fall between the hours specified in such subsection, or

"(B) in the case of an employee subject to subsection (e)(2) of such section 4107, for which 4 hours of such schedule fall between the hours specified in such subsection.

"§ 6124. Flexible schedules; holidays

"Notwithstanding sections 6103 and 6104 of this title, if any employee on a flexible schedule under section 6122 of this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Office of Personnel Management).

"§ 6125. Flexible schedules; time-recording devices

"Notwithstanding section 6106 of this title, the Office of Personnel Management or any agency may use recording clocks as part of programs under section 6122 of this title, and the Bureau of Engraving and Printing may use recording clocks to record time and attendance of employees of such Bureau without regard to whether the use of recording clocks is part of a program under section 6122 of this title.

"§ 6126. Flexible schedules; credit hours; accumulation and compensation

"(a) Subject to any limitation prescribed by the Office of Personnel Management or the agency, a full-time employee on a flexible schedule can accumulate not more than 24 credit hours, and a part-time employee can accumulate not more than one-fourth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

"(b) Any employee who is on a flexible schedule program under section 6122 of this title and who is no longer subject to such a program shall be paid at such employee's then current rate of basic pay for—

"(1) in the case of a full-time employee, not more than 24 credit hours accumulated by such employee, or

"(2) in the case of a part-time employee, the number of credit hours (not excess of one-fourth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.".

"§ 6127. Compressed schedules; agencies authorized to use

"(a) Notwithstanding section 6101 of this title, each agency may establish programs which use a 4-day workweek or other compressed schedule.

"(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any program under subsection (a) unless a majority of the employees in such unit who, but for this paragraph, would be included in such program have voted to be so included.

"(2) Upon written request to any agency by an employee, the agency, if it determines that participation in a program under subsection (a) would impose a personal hardship on such employee, shall—

"(A) except such employee from such program; or

"(B) reassign such employee to the first position within the agency—

"(i) which becomes vacant after such determination,

"(ii) which is not included within such program,

"(iii) for which such employee is qualified, and

"(iv) which is acceptable to the employee. A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

"§ 6128. Compressed schedules; computation of premium pay

"(a) the provisions of sections 5542(a), 5544(a), and 5550(2) of this title, section 4107(e)(5) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

"(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by the applicable provisions referred to in subsection (a) of this section. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

"(c) Notwithstanding section 5544(a), 5546(a), or 5550(1) of this title, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

"(d) Notwithstanding section 5546(b) of this title, an employee on a compressed scheduled who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirements for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of this title, as applicable, or the provisions of section 7 of the Fair Labor Standards Act (29 U.S.C. 207) whichever provisions are more beneficial to the employee.

"§ 6129. Administration of leave and retirement provisions

"For purposes of administering sections 6303(a), 6304, 6307 (a) and (c), 6323, 6326, and 8339(m) of this title, in the case of an employee who is in any program under this subchapter, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

"§ 6130. Application of programs in the case of collective bargaining agreements

"(a)(1) In case of employees in a unit represented by an exclusive representative, any flexible or compressed work schedule, and the establishment and termination of any such schedule, shall be subject to the provisions of this subchapter and the terms of a collective bargaining agreement between the agency and the exclusive representative.

"(2) Employees within a unit represented by an exclusive representative shall not be included within any program under this subchapter except to the extent expressly provided under a collective bargaining agreement between the agency and the exclusive representative.

"(b) An agency may not participate in a flexible or compressed schedule program under a collective bargaining agreement which contains premium pay provisions which are inconsistent with the provisions of sections 6123 or 6128 of this title, as applicable.".

§ 6131. Criteria and review

"(a) Notwithstanding the preceding provisions of this subchapter or any collective bargaining agreement and subject to subsection (c) of this section, if the head of an agency finds that a particular flexible or compressed schedule under this subchapter has had or would have an adverse agency impact, the agency shall promptly determine not to—

"(1) establish such schedule; or

"(2) continue such schedule, if the schedule has already been established.

"(b) For purposes of this section, 'adverse agency impact' means—

"(1) a reduction of the productivity of the agency;

"(2) a diminished level of services furnished to the public by the agency; or

"(3) an increase in the cost of agency operations.

"(c)(1) This subsection shall apply in the case of any schedule covering employees in a unit represented by an exclusive representative.

"(2)(A) If an agency and an exclusive representative reach an impasse in collective bargaining with respect to an agency determination under subsection (a)(1) not to establish a flexible or compressed schedule, the impasse shall be presented to the Federal Service Impasses Panel (hereinafter in this section referred to as the 'Panel').

"(B) The Panel shall promptly consider any case presented under subparagraph (A), and shall take final action in favor of the agency's determination if the finding on which it is based is supported by evidence that the schedule is likely to cause an adverse agency impact.

"(3)(A) If an agency and an exclusive representative have entered into a collective

bargaining agreement providing for use of a flexible or compressed schedule under this subchapter and the head of the agency determines under subsection (a)(2) to terminate a flexible or compressed schedule, the agency may reopen the agreement to seek termination of the schedule involved.

"(B) If the agency and exclusive representative reach an impasse in collective bargaining with respect to terminating such schedule, the impasse shall be presented to the Panel.

"(C) The Panel shall promptly consider any case presented under subparagraph (B), and shall rule on such impasse not later than 60 days after the date the Panel is presented the impasse. The Panel shall take final action in favor of the agency's determination to terminate a schedule if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact.

"(D) Any such schedule may not be terminated until—

"(i) the agreement covering such schedule is renegotiated or expires or terminates pursuant to the terms of that agreement; or

"(ii) the date of the Panel's final decision, if an impasse arose in the reopening of the agreement under subparagraph (A) of this paragraph.

"(d) This section shall not apply with respect to flexible schedules that may be established without regard to the authority provided under this subchapter.".

"§ 6132. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

"(1) such employee's rights under sections 6122 through 6126 of this title to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

"(2) such employee's right under section 6127(b)(1) of this title to vote whether or not to be included within a compressed schedule program or such employee's right to request an agency determination under section 6127(b)(2) of this title.

"(b) For the purpose of subsection (a), the term 'intimidate, threaten, or coerce' includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, compensation).

"§ 6133. Regulations; technical assistance; program review

"(a) The Office of Personnel Management shall prescribe regulations necessary for the administration of the programs established under this subchapter.

"(b)(1) The Office shall provide educational material, and technical aids and assistance, for use by an agency in connection with establishing and maintaining programs under this subchapter.

"(2) In order to provide the most effective materials, aids, and assistance under paragraph (1), the Office shall conduct periodic reviews of programs established by agencies under this subchapter particularly insofar as such programs may affect-

"(A) the efficiency of Government operations;

"(B) mass transit facilities and traffic;

"(C) levels of energy consumption;

"(D) service to the public;

"(E) increased opportunities for full-time and part-time employment; and

"(F) employees' job satisfaction and nonworklife.

"(c) With respect to employees in the Library of Congress, the authority granted to the Office of Personnel Management under this subchapter shall be exercised by the Librarian of Congress.".

(b) The table of sections at the beginning of such chapter is amended—

(1) by inserting before the item relating to section 6101 the following:

"SUBCHAPTER I—GENERAL PROVISIONS";

and

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

"SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES

"Sec.
"6120. Purpose.
"6121. Definitions.
"6122. Flexible schedules; agencies authorized to use.
"6123. Flexible schedules; computation of premium pay.
"6124. Flexible schedules; holidays.
"6125. Flexible schedules; time-recording devices.
"6126. Flexible schedules; credit hours; accumulation and compensation.
"6127. Compressed schedules; agencies authorized to use.
"6128. Compressed schedules; computation of premium pay.
"6129. Administration of leave and retirement provisions.
"6130. Application of programs in the case of negotiated contracts.
"6131. Criteria and review.
"6132. Prohibition of coercion.
"6133. Regulations; technical assistance; program review."

SEC. 3. Section 3401(2) of title 5, United States Code, is amended by inserting "(or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title)" after "week".

SEC. 4. Each flexible or compressed work schedule established by any agency under the Federal Employees Flexible and Compressed Work Schedules Act of 1978 (5 U.S.C. 6101 note) in existence on the date of enactment of this Act shall be continued by the agency concerned subject to the review of such schedule by the agency within 90 days after the date of enactment of this Act and such further action as the agency shall take under the second sentence of this section. If, in reviewing the schedule, the agency determines that the schedule has reduced the productivity of the agency or the level of services to the public or has increased the cost of the agency operations, the agency shall, notwithstanding any provision of a negotiated agreement, immediately terminate such schedule and such termination shall not be subject to negotiation or to administrative review (except as the President may provide) or to judicial review.

SEC. 5. The amendments made by this Act shall not be in effect after three years after the date of the enactment of this Act.

Mr. STEVENS. Mr. President, there is a time agreement on this bill, is there not? Will the Chair state that agreement?

The PRESIDING OFFICER. The Senator is correct.

The Chair is advised that when the Senate proceeds to the consideration of S. 2240, a bill to authorize the Federal Government's use of flexible and compressed work schedules for its employees, but not before Tuesday, June 29, 1982, debate on an amendment to be offered by the Senator from Colorado (Mr. ARMSTRONG) relative to the Walsh-Healy Act and the Contract Work Hours and Safety Standards Act shall be limited to 1 hour, to be equally divided and controlled, debate on a perfecting amendment to be offered by the Senator from Massachusetts (Mr. KENNEDY) to the Armstrong amendment shall be limited to 30 minutes, to be equally divided and controlled, debated on two committee amendments which shall be offered shall be debated out of the time allotted on the bill, with no other amendments in the first and second degree to be in order, and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 5 minutes to be equally divided and controlled. Provided, that in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee.

Mr. STEVENS. I thank the Chair.

Mr. President, I yield myself such time as I need to pursue an opening statement and some committee amendments.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. STEVENS. I yield.

Mr. ROBERT C. BYRD. I designate Mr. EAGLETON to control the time under my control.

Mr. STEVENS. I thank the minority leader. I am delighted to be able to work once again with my good friend from Missouri.

Mr. President, when we passed S. 2254, which continued the Government's alternative work schedules experiments for 4 months, I said we would continue to work on a compromise bill to authorize an alternative work schedules program. With the help of some Members in the House, S. 2240 with an amendment is that compromise.

S. 2240 authorizes alternative work schedules for 3 years. Programs established under Public Law 95-390, the experimental program, can be reauthorized under this act. Management of each such program must review the program within 90 days of enactment. If they determine the program reduced productivity, reduced the level of service to the public, or increased agency costs, the agency must immediately terminate that schedule regardless of any contract provision. That decision is not negotiable or reviewable.

Programs started subsequent to enactment, including those replacing terminated schedules, are fully negotia-

ble where a unit is represented by an exclusive bargaining agent. Agency management is free not to institute a schedule if they can provide evidence that one of the aforementioned negative factors is likely to occur. If the exclusive bargaining agent disagrees, the impasse will be presented to the Federal Service Impasses Panel with the burden of proof on agency management.

Once a negotiated new program is in effect, an agreement may be reopened by management to seek termination if it determines that one of the previously mentioned negative factors has resulted from the program. If no agreement is reached on termination, the impasse will be presented to the Federal Service Impasses Panel. The panel must rule in 60 days. It must rule in favor of the agency if it determines that productivity declined, service to the public diminished or cost increased as a result of the program.

Mr. President, in order to conform this bill to a recently introduced House bill, I intend to offer an amendment to more fully clarify the intent of an agency's unilateral right to terminate an experimental schedule and its subsequent responsibilities. This amendment requires that prior to the termination of an experimental schedule an agency must certify that the termination of such a schedule and reintroduction of a more traditional schedule will not increase costs. Administrative cost resulting from the transition from one schedule to another are not to be considered in making the cost determination.

Second, this amendment clarifies that an agency which terminates an experimental schedule must negotiate in good faith on any new schedule proposed by an exclusive representative of that agency's unit. This applies to those agencies where there are either agreements containing a provision for alternative work schedules or agreements for such schedules that are in existence on the date of enactment of this legislation.

I intend to move the adoption of those amendments after the statement of the distinguished Senator from Missouri.

Finally, Mr. President, I will also ask adoption of a technical amendment that clarifies a minor budgetary problem. A provision in the bill authorizing the Bureau of Engraving and Printing to use time clocks will under this amendment not be effective until October 1, 1982, and that authority would also be made permanent.

Mr. President, at this time I am happy to yield to my good friend from Missouri if he has a statement to make.

Mr. EAGLETON. Mr. President, in 1978, Congress enacted the Federal Employees Flexible and Compressed Work Schedules Act, Public Law 95-350, better known as the flexitime legislation. The legislation required the Office of Personnel Management (OPM) to establish a program to conduct a carefully controlled 3-year experiment throughout the Federal Government with various work schedules which were alternatives to the traditional 8-hour day, 40-hour week.

Stated simply, the basic goal of that legislation was to assess whether the promising trend in the private sector toward alternatives to the traditional 8-hour day could work effectively in the Federal Government. in 1978, when I chaired hearings on the original flexitime legislation, there was already an impressive volume of evidence that private companies which had experimented with flexible scheduling and alternatives to the traditional work day and week were extremely enthusiastic about it. Employees were generally very excited about their newly-found flexibility; it was proving to be particularly beneficial to families with children where both parents worked, enabling the parents to spend substantially more time with their children. Employers generally reported that after an initial adjustment, the change to more flexible scheduling did not make management more difficult; in fact, the improved employee morale led to increased productivity and more than offset any difficulties which resulted from administrative inconvenience.

In my view, the potential benefits from flexible work hours for family life—the chance to ease the dilemma for parents who wanted to spend more time with their children but also either wanted to work or found it necessary financially to work—alone justified the Federal Government's experiment with flexible and compressed work schedules. From the private sector studies, it was evident that a range of other potential benefits could result as well: Everything from lengthened hours of service to the taxpayers; less congested traffic patterns; possible reductions in energy consumption in cases where the 4-day week proved viable. At the same time, the evidence suggested that not all experiments with flexible new schedules produced the desired results. I remember several cases in which workers switched to a 4-day, 10-hour schedule, found it to be exhausting, and opted to return to the 5-day week. But the overall evidence certainly justified a careful experiment to measure the benefits and costs of more flexible scheduling and to assess systematically the circumstances where it would work and those where it would not.

As the committee report on this legislation described, the experiment with alternative work schedules has been generally successful. OPM's final report to the President found that the program was, in most cases, beneficial to the public and the employees themselves. The committee report summarizes the OPM findings in this way:

> The benefits of these schedules to employees were overwhelming. Working parents could structure their work schedules to best attend to their children's needs. Appointments outside of the office could be more easily scheduled without the necessity of taking sick or annual leave. Travel times to and from the office were reduced. Employees generally had a greater degree of control over their work lives which provided them with more time to devote to non-work activities.
>
> The benefits of these schedules to government, when utilized in a proper fashion, were also significant. Hours of service to the public increased. Tardiness and absenteeism of employees were reduced. Energy consumption in buildings decreased. General productivity was enhanced.
>
> On the other hand, improper use of alternative work schedules did have some serious repercussions. In some cases, productivity and work performance declined. Service to the public was delayed and hindered. Workers were unavailable when needed. Costs increased.

I agree with the botton line assessment in the committee report: "the result of the experimental program showed that the use of alternative work schedules can be beneficial to all concerned when the schedules were used properly." However, the interests of the Federal employees are obviously not the sole concern; the most important consideration is the quality of the service provided to the public and insuring that a change to flexible work schedules does not harm that service in any way.

S. 2240 established the Federal Government's use of flexible and compressed work schedules on a permanent basis. In fashioning the legislation, Senator STEVENS has gone to great lengths to accommodate two potentially conflicting concerns: The rights of employees represented by labor unions to bargain collectively over vital workplace issues—and the nature of work schedules is obviously such an issue—and the responsibility of management to exercise some judgment that flexible or varied work schedules are not appropriate in certain situations or that there may be situations where a flexible work schedule is having an unanticipated adverse effect on Government service. In my view, S. 2240 establishes a framework which protects the needs and prerogatives of both the Federal managers and the employees and their representatives. Management has the authority to make an initial determination that a particular schedule, if initiated, will have an adverse effect in an agency. In cases where a particular schedule is already in effect, management is granted a limited right to reopen an agreement to seek termination of a schedule which management believes is having an adverse effect. In either case, however, once the initial

management decision is made, management can go no further unilaterally. Where initiating a flexible schedule is at issue, full negotiation on all aspects of an alternative work schedule must occur. Where terminating an existing schedule is the question, once the agreement is reopened, the termination of a schedule is fully negotiable. If the parties reach an impasse in either case, the issue must be resolved by the Federal Service Impasses Panel.

It is no secret that the flexitime program has been the subject of rather stormy controversy which prevented timely passage of permanent legislation which the 3-year experiment concluded in March. I commend Senator STEVENS for the time he has devoted to this legislation and the compromise he has crafted between viewpoints that at onetime seemed almost irreconcilable. Only a person with a deep commitment to the interests of Federal workers and an understanding of management's concerns could have produced this result. While the ultimate outcome for this legislation is by no means assured, without Senator STEVEN's extraordinary work, we would not be on the floor today. I know of no person who has done more over the years to protect the interests of the Federal employees and the quality of the Civil Service than Senator STEVENS.

S. 2240 provides a framework for successful continuation of flexible work schedules on a permanent basis; it does not provide a guarantee. In the testimony taken in 1978 in connection with the original flexitime legislation, one point came through with particular clarity: Flexible work schedules are obviously a boon to employees. To succeed, however, they require management which is capable and adaptable, and willing to tolerate some initial adjustment period because it cares about the morale of its employees and recognizes the long-term benefits which can result in terms of productivity.

That approach to management has often been sadly lacking in the last 18 months. The Federal civil service has taken a terrific beating at the hands of an administration which often seems intent on demoralizing Federal workers, degrading the importance of their work, and driving them into a private sector which, in the current recession, is not exactly ripe with opportunities. This administration's war on Federal employees goes far beyond what is necessary to cut the Federal budget. It is an ideological vendetta stemming from the philosophy that the Federal Government should be permanently weakened because Government is not an essential instrument for discharging responsibilities to the public or fulfilling our collective aspirations as a society.

Without much confidence, I hope that the administration will use the passage of this legislation as a moment to reconsider their dangerous and short-sighted view of the Federal civil service. If President Reagan, Dr. Devine, and others are too committed to their philosophy to reconsider its consequences, I hope that they will make a sincere attempt to implement this legislation effectively. In a period of RIF's and furloughs, pay caps and benefit cuts, flexible and compressed work schedules have been one of the very few bright spots for Government workers. With effective management, this program can continue to benefit the taxpayers well.

Mr. STEVENS. Mr. President, I am most grateful to the Senator from Missouri for his kind remarks.

I point out to him that I think the work, the dogged persistence on this issue has been done by Jamie Cowen of my staff, Ed Jayne of Senator PRYOR's staff, and Ira Shapiro of his staff. I think they deserve the credit he has so generously bestowed on me.

UP AMENDMENT NO. 1047

Mr. STEVENS. Mr. President, as I indicated, I send to the desk two amendments that I have described previously, the first to conform this to the House bill, and the second, a technical amendment. I ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER (Mr. HUMPHREY). There are committee amendments to the bill that should be disposed of.

Mr. STEVENS. Very well, Mr. President. It was my intention to have these amendments added to the committee amendments, and then have them all treated as original text for the purpose of further amendment.

To be certain that there is no controversy with respect to further amendments, I ask unanimous consent that we proceed in that manner so that there will be no question with respect to further amendments.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an unprinted amendment numbered 1047.

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

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

The amendment is as follows:

UP AMENDMENT NO. 1047

On page 17, line 11, delete the period and insert the following: "(other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).".

Page 21, amend section 4 (beginning on line 14 and ending on line 12 of page 22) to read as follows:

"SEC. 4 (a) Except as provided in subsection (b), each flexible or compressed work schedule established by any agency under the Federal Employees Flexible and Compressed Work Schedules Act of 1978 (5 U.S.C. 6101 note) in existence on the date of enactment of this Act shall be continued by the agency concerned.

"(b)(1) During the 90-day period after the date of the enactment of this Act, any flexible or compressed work schedule referred to in subsection (a) may be reviewed by the agency concerned. If, in reviewing the schedule, the agency determines in writing that—

"(A) the schedule has reduced the productivity of the agency or the level of services to the public, or has increased the cost of the agency operations, and

"(B) termination of the schedule will not result in an increase in the cost of the agency operations (other than a reasonable administrative cost relating to the process of terminating a schedule),

"the agency shall, notwithstanding any provision of a negotiated agreement, immediately terminate such schedule and such termination shall not be subject to negotiation or to administrative review (except as the President may provide) or to judicial review.

"(2) If a schedule established pursuant to a negotiated agreement is terminated under paragraph (1), either the agency or the exclusive representative concerned may, by written notice to the other party within 90 days after the date of such termination, initiate collective bargaining pertaining to the establishment of another flexible or compressed work schedule under subchapter II of chapter 61 of title 5, United States Code, which would be effective for the unexpired portion of the term of the negotiated agreement."

At the end of the bill add the following new section:

SEC. . (a) Section 6106 of title 5, United States Code, is amended by striking out the period and inserting in lieu thereof a comma and "except that the Bureau of Engraving and Printing may use such recording clocks.".

(b) The amendment made by this section shall take effect October 1, 1982. Section 5 of this Act shall not apply to the amendment made by this section.

On page 8, beginning with the comma on line 18, strike out all through line 22 and insert in lieu thereof a period.

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

The amendment (UP No. 1047) was agreed to.

Mr. STEVENS. Mr. President, I ask that the committee amendments, as amended, be agreed to.

The committee amendments, as amended, were agreed to.

The PRESIDING OFFICER. Without objection, the bill, as amended, will be considered as original text for the purpose of subsequent amendment.

Mr. SASSER. Mr. President, I rise to confirm my understanding that since this bill provides authorization for the continuation of programs conducted under Public Law 95-390 its provisions

do not therefore affect or impair the alternative work schedules conducted by the Tennessee Valley Authority in accordance with the TVA Act of 1933. The terms and conditions of employment for TVA personnel, as established by the TVA Act, are not affected by S. 2240, as I understand it. Further, S. 2240, the Federal Employees Compressed Work Schedules Act of 1982 does not expand the application of the Federal labor-management relations law of chapter 71 to cover agencies, like TVA, which are not now covered.

Mr. STEVENS. The Senator's understanding is correct.

RECESS UNTIL 1 P.M.

Mr. STEVENS. Mr. President, we are now in the position of awaiting the first substantive amendment to be offered by the Senator from Colorado (Mr. ARMSTRONG). He is in the Committee on Finance on a very important matter and we do not wish to disturb the meeting of the Committee on Finance.

Therefore, with the understanding that it has been approved by the distinguished minority leader, I ask unanimous consent that the Senate stand in recess until 1 p.m.

There being no objection, the Senate, at 12:05 p.m. recessed until 1 p.m.; whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. SCHMITT).

The PRESIDING OFFICER. Who yields time? The majority leader is recognized.

Mr. BAKER. Mr. President, I ask unanimous consent that I may proceed for 1 minute without the time being charged against anybody.

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

Mr. BAKER. Mr. President, I understand we are prepared to resume consideration of the flexitime bill on which there is a time limitation; is that correct?

The PRESIDING OFFICER. The Senator from Tennessee is correct.

Mr. BAKER. Would the Chair please state the condition of the time agreement?

The PRESIDING OFFICER. The agreement under which S. 2240 is being considered is as follows: Debate on an amendment to be offered by the Senator from Colorado (Mr. ARMSTRONG) relative to the Walsh-Healy Act and the Contract Work Hours and Safety Standards Act shall be limited to 1 hour, to be equally divided and controlled; debate on a perfecting amendment to be offered by the Senator from Massachusetts (Mr. KENNEDY) to the Armstrong amendment shall be limited to 30 minutes to be equally divided and controlled. Is that sufficient for the Senator? There are other provisions.

Mr. BAKER. No, Mr. President, that is sufficient.

There is one provision in the order that I will discuss with the minority leader and other Senators, and I may ask for a modification at a later point. That has to do with the control of time in opposition to the Kennedy amendment, assuming the Kennedy amendment is offered. I will not now do that, but I will confer with the minority leader and make sure he has no objection to it.

I think the intention of the order was that if the Kennedy amendment is offered, the time in opposition would be under the control of Senator from Colorado (Mr. ARMSTRONG). The way it is written at this time, it would be under the control of the minority leader or his designee. I do not think that is a problem but it is a matter which has been brought to my attention, and I will consult with the minority leader later on that point.

The PRESIDING OFFICER. The Senator is correct in his interpretation.

Mr. BAKER. I thank the Chair and I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Alaska.

Mr. STEVENS. Mr. President, may I inquire is the Senator from Colorado prepared to proceed with his amendment at this time?

Mr. ARMSTRONG. Mr. President, I am prepared.

Could I just inquire as to what the status of time is at the moment, how much time remains on the bill?

The PRESIDING OFFICER. The Senator from Alaska has 11 minutes, the Senator from Missouri has 7 minutes.

Mr. ARMSTRONG. Mr. President, is it the desire of the Senator from Alaska that I proceed at this time?

Mr. STEVENS. If the Senator from Colorado is prepared, that would be our request.

The PRESIDING OFFICER. The Senator from Colorado.

UP AMENDMENT NO. 1048

(Purpose: To amend the Contract Work Hours Standards Act and the Walsh-Healey Act to permit employees, to whom such Acts apply, to work any combination of hours in a forty-hour workweek)

Mr. ARMSTRONG. Mr. President, I will be delighted to proceed. Before I do so may I thank the Senator from Alaska for helping me work out the time so we could offer this amendment in a way that permitted me to be present when it was offered. I have been tied up in the Committee on Finance with some important business, and yet I did wish to be here to present this amendment and to discuss it with my colleagues, and I am grateful to the Senator from Alaska for his courtesy.

With that word of explanation, I do send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Colorado (Mr. ARMSTRONG) proposes an unprinted amendment numbered 1048.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with, and I will endeavor to explain it.

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

The amendment is as follows:

At the appropriate place in the bill, insert the following:

Sec. . (a) Section 102(a) of the Contract Work Hours Standards Act (40 U.S.C. 328(a)) is amended to read as follows:

"(a) Notwithstanding any other provision of law, the wages of every laborer and mechanic employed by any contractor or subcontractor in his performance of work on any contract of the character specified in section 103 shall be computed on the basis of a standard workweek of forty hours, and work in excess of such standard workweek shall be permitted subject to the provisions of this section. For each workweek in which any such laborer or mechanic is so employed, such wages shall include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of forty hours in the workweek.".

(b) Section 102(b) of such Act is amended—

(1) by striking out "eight hours in any calendar day or in excess of" in paragraph (1); and

(2) by striking out "eight hours or in excess of" in paragraph (2).

Sec. . Subsection (c) of the first section of the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes" (41 U.S.C. 35 (c)), commonly known as the Walsh-Healey Act, is amended by striking out "eight hours in any one day or in excess of".

Sec. . The amendments made by this Act shall not affect collective bargaining agreements in effect on the date of enactment of this Act.

Mr. ARMSTRONG. Mr. President, we are proceeding under controlled time, and I yield myself 10 minutes.

Mr. President, the proposal to create a permanent statutory authority for alternative work schedules for Federal employees is now before the Senate for consideration. The Office of Personnel and Management created and evaluated work schedules that vary from the conventional workweek and found them beneficial to agencies, employees, and the public. They concluded that alternative work schedules can improve the productivity of an organization and increase its service to the public without additional costs.

I support this concept and, indeed, I congratulate the Senator from Alaska and others who have brought this legislation to the floor because, in my opinion, there are many instances in which this flexitime concept for Federal employees is not only in the best

interests of the employees but also enhances the productivity of the Government itself.

I feel we must also, however, offer that same kind of option to the Federal contractors in the private sector. The concept of increased productivity, energy savings, and improved employee morale through use of a compressed workweek is embraced both in my amendment to the Walsh-Healey Act—which governs Federal contractors—and in this legislation to reauthorize the Government's flexitime program. With these legislative proposals more or less identical in concept, Congress has a golden opportunity to update a relic of the past.

The amendment I offer today simply permits Federal contractors the option of instituting flexible work schedules without facing penalty. The administration and many Senators have expressed their support for the legislation. It is needed primarily to bring the laws governing Federal contractors into conformity with current overtime provisions and flexibility provided to private sector employees, and, if the legislation before us passes, to Federal employees themselves. Specifically, the proposal amends parts of two statutes which regulate pay standards for Government contractors: The Walsh-Healey Act and the Contract Work Hours and Safety Standards Act. Those laws presently mandate that "no persons employed by Federal contractors shall be permitted to work in excess of eight hours in any one day without payment of time and one half for overtime."

Since the 1930's, when the Walsh-Healey and Contract Work Hours and Safety Standards Acts were enacted, employer and employee needs and desires have changed. Today more than one-fifth of the labor force is functioning under flexible, compressed, or voluntarily reduced work schedules. This trend will continue throughout the 1980's as life styles and family structures are changing. Employers who respond creatively to these new conditions will have the competitive edge.

Unfortunately, the Federal regulations have not kept pace with the changing society. Moreover, the unnecessary and outdated restriction has brought extra costs to the Government. In a report to the Congress by the Comptroller General (Contractors Use of Altered Work Schedules for Their Employees—How is it Working? April 1976), the Department of Labor cited one instance of an organization utilizing a 4-day work schedule, that negotiated a contract with the Government and included about $240,000 in overtime and associated costs in the contract price because of the overtime payment required by the Walsh-Healey Act. The legislation also reduces the number of bids on Government contracts. The Department of Defense and the General Services Administration, who both do a large amount of contracting for the Government, supported legislative changes in the Walsh-Healey Act and Contract Work Hours and Safety Standards Act for this reason.

Mr. President, this amendment has one objective and one aim. To allow Federal contractors the option of alternative work schedules. I stress we are talking only about an option. This requires no company and no employee to change their existing work schedule. It merely says in those instances where employees and their companies wish to do so they may adopt a 10-hour 4-day workweek or some other version of a workweek without incurring overtime until the total hours worked within the workweek exceed 40 hours.

This, I stress, is exactly the same provision that now governs every other private sector firm and employee.

The benefits of flexitime, however, go far beyond less Government interference in the private sector. There are, at least for some companies, distinct advantages in choosing to implement the alternative work schedule. Numerous studies have been conducted on the optional compressed workweek, including those done by the Comptroller General, the Bureau of Labor Statistics, and the National Center for Energy Management and Power.

Among the conclusions are the following: That in some cases, at least, greater productivity is realized—higher weekly output, improved use of plant and equipment and improved employee morale; improved working conditions—reduced employment working costs, increased job satisfaction, and ease of recruitment; and energy conservation.

One advantage of particular interest to me deals with the problem of air pollution. We now have evidence, as a result of a study released by the Denver Regional Council of Governments in cooperation with the Denver Federal Executive Board, examining the travel habits of some 7,000 Federal employees on the compressed work schedule in Denver. To date, this study is the only in-depth investigation which applies the full travel impact resulting from an experiment of this size. The study concludes that the compressed workweek is one of the most effective transportation management actions that Denver's Federal agencies can take in addressing the concern of air pollution and traffic congestion. It has been estimated that neither providing free transit service at peak periods for everyone in the area, nor an extensive and complicated program of carpool matching would even equal the impact on air pollution that resulted from only 7,000 employees on a compressed workweek.

It is easy to imagine what might result if all employees of Federal contractors in the area, which easily number twice that of the Federal employees in the study, were allowed the option of shifting to a 4-day workweek schedule.

A change in the Walsh-Healey Act would not in any way affect the Fair Labor Standards Act, which governs all workers and provides that overtime premiums be paid whenever employees work more than 40 hours a week. My amendment would not impact the collective bargaining process, nor would it conflict with any of the Federal labor laws. Nothing in this amendment is to be construed to cover employees other than those employees specified in the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act. Finally, this amendment does not mandate a compressed workweek, but only restores to American firms and their employees serving the Federal Government a basic option, a basic freedom of choice.

Mr. President, the Government employees are eager to see the Federal Employees Flexible Work Schedules Act become permanent. We have heard many of the unions and workers testify to that effect. The same is true for the employees in the private sectors who are working on Federal contracts. Many private sector collective bargaining agreements across the Nation encompass the 4-day, 10-hour workweek. In my own State of Colorado, many labor contracts include provisions for a compressed workweek and are merely awaiting action by Congress to update the law in the way that my amendment suggests.

In my opinion, it is only fair for Federal contractors to have the same advantages that private sector and Government employees do. If that is ever to be accomplished, this is the time to do it, because it relates, in concept, so directly to the legislation which is now pending before us.

Mr. President, in conclusion, I would like to point out that this amendment is supported by the administration, by the National Association of Manufacturers, the U.S. Chamber of Commerce, the Business Roundtable, NFIB, and dozens of other associations and individual companies, a list of which I ask unanimous consent be printed in the RECORD.

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

ASSOCIATIONS

National Association of Manufacturers.
U.S. Chamber of Commerce.
Business Roundtable.
N.F.I.B.
American Apparel Manufacturing Association.
American Horse Council.

American Motorcyclists Association.
American Recreation Coalition.
American Textile Manufacturers Institute, Inc.
Associated Builders and Contractors, Inc.
Associated General Contractors of America.
Electronic Industries Association.
International Snowmobile Industry Association.
National Meat Association.
National Marine Manufacturing Association.
National Motor Sports Committee.
National Spa and Pool Institute.
Printing Industries of America.
Recreation Vehicle Dealers Association.
Recreation Vehicle Industry Association.
United States Ski Association.

OTHERS

A. H. Robins.
ALCOA.
Ball Corporation.
Bristol Myers Corporation.
Burlington Industries.
C. A. Norgren and Company.
Dow Chemical U.S.A.
E. I. duPont de Nemours and Co.
General Telephone and Electronics Co.
JLG Industries.
Mobil Oil Corporation.
Motorola, Inc.
Spring Mills, Inc.
TRW, Incorporated.
Uniroyal, Inc.
United Technologies Corporation.
Upjohn Company.
Xerox Corporation.

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

Mr. STEVENS. Mr. President, the amendment of the distinguished Senator from Colorado is an interesting amendment and one that deserves review by the Senate and by the Congress. But I say to the Senate that it should not be on this bill.

This is a bill from the Governmental Affairs Committee. When we go to conference we will be going to conference with the Post Office and Civil Service Committee in the House. Our old Post Office and Civil Service Committee was folded into the Governmental Affairs Committee reorganizations several years ago. Our subcommittee now has the same jurisdiction as the House full committee.

The Armstrong amendment will jeopardize the passage of this flexitime legislation. The current experimental legislation expires for most agencies on July 21. The House of Representatives will not return until July 12. They will have only a week to dispose of this legislation. We have received assurances that if we amended the bill in the manner that we have already amended it, that the House would attempt to pass our bill without amendments. This amendment will mean that it will involve the jurisdiction of two committees in the House and will undoubtedly see that this bill would be referred to those two committees and that would be the end of flexitime for Federal employees.

In addition to that, let me point out to the Senate that the Armstrong amendment does not contain the protections afforded the Federal employees to insure that an alternative work schedule is not imposed upon them. Our bill, S. 2240, provides full negotiation over the establishment and termination of flexitime where a union is involved.

If there is no union, a majority of the employees in the unit must vote to agree with an agency decision to establish a particular schedule. Despite union representation, or a majority consent, as the case may be, an employee who would experience personal hardship from the schedule can be exempted. This employee has recourse to the Special Counsel of the Merit System Protection Board if the agency does not exempt him. Unfortunately, the Armstrong amendment does not, and I do not think it could, provide these kinds of protections because of the mechanisms that are already in the Federal law to deal with such exemptions for particular employees.

Now, my plea to the Senate is not to attach this amendment to this particular bill. It is within the jurisdiction of the Labor Committee. I understand that there is similar legislation in the Labor Committee. The only result that can happen is either the House will strip such an amendment off and send it back here or the House will be forced to refer this bill to the two committees as I indicated.

The Senator is attempting to conform the requirements of the Walsh-Healey Act to the Fair Labor Standards Act and, as I understand it, he wants to substitute for the 8-hour workday restriction the 40-hour workweek for Federal contractors.

It is, as I indicated, in my opinion a subject that needs to be pursued. The Walsh-Healey Act applies only to Federal contractors. It requires overtime to be paid for hours in excess of 8 hours a day. That, however, is completely foreign to the concepts of flexitime as they apply to Federal employees, and the impact of this would be, as I indicated, in my opinion, to jeopardize the passage of the flexitime bill. We will not have the time to save those compressed work schedules that had been instituted during the period of the experiment. It would require us to address the matter entirely in a different way. We just cannot handle this in negotiation with the people that we would be compelled to meet with if this matter were sent to conference.

But I state to the Senate that in my opinion the House would not go to conference on this bill. There is no reason for the House Post Office and Civil Service Committee to tackle the problems of the Walsh-Healey Act. Does the Senator from Missouri desire to comment?

Mr. EAGLETON. Yes.

Mr. STEVENS. I yield to the Senator from Missouri such time as he may wish.

Mr. EAGLETON. Mr. President, I join with the distinguished floor manager, Senator STEVENS, in urging that Senator ARMSTRONG's amendment to this bill, which amends the Walsh-Healey and Contract Work Hours Standards Acts, be tabled. I do so for both procedural and substantive reasons.

First, Senator ARMSTRONG's amendment is not germane to the Federal flexitime bill. An amendment to the Walsh-Healey Act has absolutely nothing to do with extension of Federal flexitime programs. In fact, adoption of the Armstrong amendment will seriously jeopardize the prospects for enacting this continuation of the Federal flexitime program, a topic just discussed by Senator STEVENS.

Second, Senator ARMSTRONG introduced a bill which is virtually identical to the pending amendment on February 5, 1981; it is still pending before the full Labor and Human Resources Committee.

No full committee executive session has ever been scheduled on this legislation. In seeking to add his amendment to the flexitime bill, Senator ARMSTRONG is attempting to bypass full committee consideration by the committee of jurisdiction.

Finally, Mr. President, I would point out that while Senator ARMSTRONG likes to suggest that this amendment is needed "to bring the laws governing Federal contractors into conformity with current overtime provisions and flexibility in work schedules provided to private sector employees, and ironically, to Federal employees themselves," the amendment differs from the Federal flexitime bill in a very significant way. The Federal flextime bill contains a number of provisions designed to insure employee free choice in selecting alternative work schedules or a compressed work week.

I emphasize the words "employee free choice."

Senator ARMSTRONG's amendment does not include a comparable protection for private sector employees. Although his amendment states that it will not affect collective-bargaining agreements in effect on the date of enactment, it does not provide any mechanism for unorganized employees to have a voice in determining their work schedules. The unorganized worker would have no choice but to simply quit his job if he could not, for family reasons, or child care arrangements, or whatever, adjust to increased hours in the work day.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks time?

Mr. ARMSTRONG. Mr. President, I yield to the Senator from Wyoming.

Mr. WALLOP. I thank the Senator from Colorado.

Mr. President, I rise in support of his amendment. I would point out to the distinguished Senator from Alaska that because the House threatens us with inability or a lack of desire to act, there is no reason for us not to do something which, in our judgment, is right. I believe that we should do what our intellect in the Senate tells us we should do, and that we should not worry about threats from the House, whether they will or will not take up a certain thing. They have as much responsibility and accountability to the Federal employees who they seek to respond to as we do.

If they leave us with nothing but threats, so be it. It would be their threats and their inability to act, or their lack of desire to act, or their obstinance in the face of these threats, that would be the troublesome factor to the Federal employee, not that of the Senate, if it is, in fact, the Senate's ideas.

Mr. President, as I said, I rise in support of the amendment offered by my distinguished colleague from Colorado. The amendment would permit Federal private contractors to utilize a 4-day, 40-hour workweek. The Walsh-Healey Act currently limits the ability of private industry to employ innovative work schedules. While the limits of the act may have been appropriate back in the 1930's, there is a need to modernize this provision to reflect the changing work force of the 1980's.

In recent years, a number of companies have successfully implemented a 4 day, 40-hour work schedule. The flexibility it provides to both employer and employee is an important incentive for a more productive workplace. These experiments have not succeeded in all cases. Trial and error demonstrate where such a program is appropriate. This amendment will greatly expand the number of firms that can utilize the 4-day workweek.

The issue has been before the Congress for 10 years. Our former colleague from Kentucky, Senator Marlow Cook, was the original proponent of this legislation. I congratulate my colleague from Colorado for his efforts in seeking passage of this legislation.

Our economy is at a crossroads. Last year, we adopted tax incentives to reindustrialize private industry. We need to adopt techniques which will improve productivity and innovation. Our economy is faced with an aging work force. There are also more women in the workplace. Flexibility in work schedules is necessary as we return to a full growth economy. The 4-day, 40-hour workweek bill is one small step. Another improvement is the compensatory time legislation which I introduced earlier this year. This legislation, S. 2395, would permit companies to maintain their work force throughout the year even when there are peaks and troughs in work orders. I will not offer my proposal as an amendment today, but do hope that we can address the issue in the near future.

For the moment, I would urge my colleagues to vote in favor of the pending amendment.

I thank the Senator from Colorado for yielding.

Mr. ARMSTRONG. Mr. President, I am grateful to the Senator from Wyoming for his observations, with which I fully agree.

Mr. President, I now yield 10 minutes to the Senator from Oklahoma. I would note in doing so, that the Senator is extraordinarily well informed on this issue, having presided at the hearings held by the Subcommittee on Labor on this subject.

Mr. NICKLES. I thank the Senator from Colorado.

Mr. President, I ask unanimous consent that Senator HELMS and I may be added as cosponsors to the Armstrong amendment.

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

Mr. NICKLES. Mr. President, I rise in support of the Armstrong amendment. As the Senator from Colorado stated, the subcommittee of which I am chairman, the Subcommittee on Labor, held extensive hearings on this matter in March 1981. We have convincing evidence from a number of sectors—private, public, union, and nonunion—that we need changes in the Walsh-Healey Act amendments which now mandate the payment of overtime for anything over 8 hours.

In investigating this, we find out that under the present statutes, all private employers who are not doing Government work do not have to pay overtime until they exceed 40 hours of work. We find out the Government employees are allowed to have flexitime. But we also find out that those persons who are doing work for the Federal Government, Federal contractors, are obligated under this so-called mandatory overtime over 8 hours.

What does that mean? I think it is important for people to realize that they have to pay overtime for over 8 hours a day, and you are doing contract work for the Federal Government, if you wanted to work four 10-hour days. I think that is evident by the statement of the Senator from Alaska saying, "Yes, flexitime works, it does work," but there are a lot of cases where it does work and a lot of cases where it will not work, where employees have opted to do so.

In those cases where the employees find it is to their economic advantage, to their time advantage, to their family advantage, to work four 10, or some other flexible schedule besides the 5 days, right now they find out if they are doing Federal contract work they cannot do so because their employer cannot compete.

Why can they not compete? Figure it up. If you work four 10-hour days and you are obligated to pay time-and-a-half over 8, the cost of working 40 hours is not 40 hours but it is 44 hours, because you pay time-and-a-half for 2 hours over 8 for 4 days.

It is time-and-a-half for those 8 hours, and that half-time premium is 4 hours. Instead of paying for 40 hours, you pay for 44 hours. In other words, it is a 10-percent premium.

You realize this if you are doing Federal construction or contract work, if it is labor intensive. Usually in construction you are looking at two primary costs, the materials, which are somewhat fixed for all contractors, and labor. You find out if you are doing Federal contract work you have a 10-percent premium added on, mandated by the Federal Government. It makes no sense.

Why should a Federal contractor be under a different law than all other private contractors? If they do private work, they are not mandated by it, but if they do Federal work they are mandated by it. It makes no sense.

I think Senator STEVENS and the Senator from Missouri realize the fallacy of this. They may say, "Yes, for Federal employees, we will allow flexitime." I congratulate them on it. I think there has been some productivity increase and morale increase that have been advantageous. But why are we going to prohibit that from private contractors doing work for the Federal Government?

Mr. President, much of the opposition to the Armstrong amendment is based on agruments that just will not stand up when they are closely examined. Today, I would like to discuss the Armstrong amendment, why I support it, and why I cosponsor it.

The purpose of the Armstrong amendment is to alter the Walsh-Healey Act to permit the employees of Federal contractors the same flexitime scheduling rights as those enjoyed by their counterparts in private industry and the Federal workforce. This is a concept which my predecessor, Senator Bellmon, successfully helped put through the Senate during the 96th Congress. Additionally, I might add, that the current administration supports such an amendment to the Walsh-Healey Act. I will submit for the record at the conclusion of my statement a copy of a letter on the subject from Secretary Donovan, but first let me relate to my colleagues its conclusion:

The administration supports legislative reform to provide Federal contractors with increased flexibility in alternative workweek scheduling. The administration would support the amendment proposed by Senator ARMSTRONG to make the language of the

89-059 O-86-46 (Pt. 11)

Walsh-Healey Act and the Contract Work Hours and Safety Standards Act comparable to that of the Fair Labor Standards Act, namely to permit work in any combination of hours per day without paying overtime until hours exceed 40 per week. This legislative language would be consistent with the administration's view that the act should be amended to permit labor and management to implement flexible worktime arrangements that could enhance the quality of worklife, promote energy efficiency, and increase productivity.

Flexible work schedules have been proven to have several distinct advantages. First, they have resulted in increased productivity. Second, there have been reductions in absences and tardiness on the part of workers. Third, there have been improvements in employee morale. Fourth, there has been a better utilization of resources. Fifth, there has been a reduction in energy requirements. Finally, employers and employees have both benefited in several ways. Employers have been free to experiment with new time schedules that allow for both imagination and innovation. Employees have been able to arrange their schedules so that they can have 3-day weekends, take advantage of educational opportunities, and spend more time with their families. To date, flexible work schedules have provided distinct advantages to both employers and employees.

The Armstrong amendment which we are considering today would simply eliminate the 8-hour-per-day restriction of the Walsh-Healey Act that applies only to the employees of Federal contractors. It eliminates the restriction but does not compel the adoption of flexible work schedules. All we are doing here is providing the employees of Federal contractors the same opportunity to have flexible work schedules that their counterparts in the Federal Government and private industry already possess. Thus, Senator ARMSTRONG's amendment merely eliminates a discriminatory situation that has prevailed in recent years in this area. Moreover, it frees Federal contractors to devise ways and means to cut costs and increase worker productivity. As a result, it represents one way in which we in this body can seek to reduce the budget and help restore the economy to a sound footing.

If Senator ARMSTRONG's amendment is enacted, workers and employers in several energy intensive industries—meatpacking, printing, and construction, for example—all heavily organized, I might point out—will be able to take advantage of flexitime and compressed work-week scheduling. All industries and all workers would not be inclined to take advantage of a Walsh-Healey change. Those most likely to do so can generally be categorized as small and energy intensive. This was made clear at hearings held early last year before the Labor Subcommittee. Consequently, this amendment would only affect a small but nevertheless important part of the American economy.

Opponents of the Armstrong amendment have offered many reasons for not supporting this measure. Some have charged that collective bargaining will be undermined. This criticism is both unfair and inaccurate. Collective bargaining will not be affected by the Armstrong amendment. Others have charged that the Armstrong amendment, by undermining the 8-hour day, will lead to an attack on the measures that protect workers from being exploited by unscrupulous employers. This criticism is again both unfair and inaccurate. This amendment is merely a small step to extend to the employees of Federal contractors the benefits of flexible work schedules that their counterparts in other parts of the work force already enjoy. This small, but significant, step is designed not to undermine the protections enjoyed by the American worker but rather to remove from Federal law a restriction that makes no sense whatsoever. It is time for Congress to take a close look at the over regulation that has so hampered the American economy in recent years. The Armstrong amendment will remove one restriction that will encourage the innovation and imagination of which Americans are capable once restrictive and senseless regulations are eliminated.

A final argument made by opponents of the Armstrong amendment is that it could result, if adopted, in the killing of the Federal flexitime extension legislation proposal of Senator STEVENS. I am a cosponsor of the earlier bill sponsored by Senator STEVENS and fully support his amendment here today. Senator ARMSTRONG has a right to offer an amendment—an amendment which is no more than a conforming amendment that will allow all employees and employers to enjoy the benefits of flexible work scheduling should they so choose. If the House of Representatives chooses to defeat this legislation because the Senate enacts a conforming amendment, then the House—I repeat, the House—and not the Senate has killed this legislation.

As Senators, we have an obligation to legislate in the best interests of all of our constituents. This was the vision that James Madison had when he argued for the national interest in Federalist Paper No. 51. This is the same vision that Senator ARMSTRONG had when he submitted his amendment. I urge my colleagues to accept the Armstrong amendment. Its benefits will be enjoyed by many people as time passes and at this time, it best serves the national interest of the United States.

I ask unanimous consent that a letter to me concerning this matter from Secretary of Labor Raymond J. Donovan, be printed at this point in the RECORD.

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

U.S. DEPARTMENT OF LABOR,
Washington, D.C., June 16, 1982.

Hon. DON NICKLES,
Chairman, Subcommittee on Labor,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request for the Administration's views on (a) Senator Armstrong's bill, S. 398, to amend the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act to provide federal contractors with increased flexibility in alternative workweek scheduling and (b) a subsequent modification of S. 398, which Senator Armstrong is considering attaching to S. 2240, the flexitime legislation.

As I indicated in my July, 1981 letter to you on the first question, the Administration supports legislative reform to provide federal contractors with increased flexibility in alternative workweek scheduling. With regard to the second question, let me say that the Administration would support the amendment proposed by Senator Armstrong to make the language of the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act comparable to that of the Fair Labor Standards Act, namely to permit work in any combination of hours per day without paying overtime until hours worked exceed forty per week.

This legislative language would be consistent with the Administration's view that the Act should be amended to permit labor and management to implement flexible work time arrangements that could enhance the quality of worklife, promote energy efficiency, and increase productivity.

The Office of Management and Budget advises that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

RAYMOND J. DONOVAN,
Secretary of Labor.

Mr. THURMOND. Mr. President, will the distinguished Senator from Colorado yield to me?

Mr. ARMSTRONG. Mr. President, I shall be pleased to yield to the distinguished Senator from South Carolina 3 minutes or more, as he wishes.

Mr. THURMOND. I thank the Senator.

Mr. President, I support the amendment offered by my distinguished colleague and good friend from Colorado (Mr. ARMSTRONG). This amendment would conform the overtime provisions of the Walsh-Healey and Contract Work Hours and Safety Acts to those of the Fair Labor Standards Act.

Mr. President, under the Fair Labor Standards Act, most employers may adopt flexible work schedules conducive to their business needs without incurring liability for overtime compensation, unless employees are required to work in excess of 40 hours in a calendar week. Unfortunately, this is not the case where Federal contractors are concerned. Under the Walsh-Healey and Contract Work Hours and Safety

Acts, Federal contractors are subject to overtime liability whenever an employee works in excess of 8 hours a day.

Last year, Senator ARMSTRONG introduced a bill, S. 398, which would have permitted Federal contractors to adopt a 10-hour, 4-day workweek schedule without incurring overtime liability. I felt that was a significant improvement over the present situation, and I joined as a cosponsor.

The amendment Senator ARMSTRONG offers today is one step better than the bill introduced by him last year. It would strike all reference to 8-hour days in the overtime provisions of the Walsh-Healey and Contract Work Hours and Safety Acts, and provide that wages for workers on Federal contracts will be computed on the basis of a standard workweek of 40 hours. With this change, only work in excess of such standard workweek will be considered as overtime.

Mr. President, not only will this amendment help to increase worker productivity and thereby reduce labor costs on Federal contracts, it also should contribute to worker satisfaction and morale by enhancing leisure time for employees. Accordingly, I commend this amendment to my colleagues as an appropriate adjunct to the Federal Employees Flexible and Compressed Work Schedules Act.

Mr. President, if there is no objection, I ask that I be added as a cosponsor.

Mr. ARMSTRONG. Mr. President, not only is there no objection to adding the Senator as a cosponsor; I am delighted that he chooses to associate himself with this effort in that way.

I ask unanimous consent that the Senator be added, Mr. President.

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

Mr. ARMSTRONG. Mr. President, unless others wish to speak, I have yet a little business to complete before I yield the floor.

First, I ask for the yeas and nays on the amendment.

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

The yeas and nays were ordered.

Mr. ARMSTRONG. Mr. President, I have a couple of other matters to take care of. Then I do want to recognize the junior Senator from Oklahoma again.

I send to the desk an article from the Engineering News Record about firms who favor the compressed workweek. I ask unanimous consent that the article be printed in the RECORD at this point.

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

[From Engineering News Record, June 24, 1982]

MANY FIRMS FAVORING COMPRESSED WORKWEEK

Alternative work schedules that squeeze more working hours into fewer days, such as "four-10's," are becoming increasingly popular with large design and construction firms, a new survey reveals.

Of the 18 union and nonunion firms examined, nine worked some form of compressed workweek in their home office and engineering operations, and seven of the 13 firms with construction capability used for 10-hour days on their jobsites. Five of the six construction firms on a standard schedule are union companies. The survey was conducted by T. Michael Goodrich, vice president of BE&K, Inc., Birmingham, Ala.

Companies using a compressed work schedule reported that its advantages far outweigh disadvantages, and none said that they intended to abandon the system. It is the "greatest thing since sliced bread," quipped one contractor executive whose firm uses four-10's on jobsites and "four-nines and a four" for office workers.

He and others responding to the survey noted that worker acceptance of the schedules is almost universal, with productivity increasing and absenteeism declining dramatically. Workers, they said, "love it" because of the longer periods of leisure time, reduced travel expenditures and enhanced "job satisfaction." It has also become an effective recruitment tool, observed some executives.

Construction firms were especially enthusiastic about the use of four-10s on their projects, explaining that cost savings were achieved by the elimination of one start-up and shutdown a week. The firms also claimed they could control contruction schedules more effectively by using Fridays as a makeup day for weather delays and using a second three-day shift for more extensive delays.

However, there are some hang-ups in using compressed workweeks. Problems mentioned most frequently in the survey responses centered on those caused by a firm's interaction with clients, suppliers and other divisions using a different schedule. Others included practical problems on jobsites such as additional lighting costs, lessened effectiveness during winter months and on jobsites in remote regions where housing is provided for workers, and child-care problems for working parents.

Mr. ARMSTRONG. I also ask unanimous consent to have printed in the RECORD a letter to me from the National Federation of Independent Businesses, which represents some 600,000 individuals and businesses in this country, in which they endorse this amendment; also, a letter from the administration in which the administration endorses and expresses its support for the amendment; a resolution signed by some 35 businesses and associations in which they endorse the amendment; a discussion of this matter in a memorandum to Members of the Senate from the Chamber of Commerce of the United States, in which they respectfully urge Senators to support the amendment and give their reasons why; finally, a letter from the National Association of Manufacturers, in which they endorse the amendment and express support for it.

I ask unanimous consent that all these items be printed in the RECORD at this point.

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

NATIONAL FEDERATION OF INDEPENDENT BUSINESSES,
June 29, 1982.

Hon. WILLIAM ARMSTRONG,
U.S. Senate,
Washington, D.C.

DEAR BILL: I want to express NFIB's support for your proposal to amend the Walsh-Healy Act. As you know, many small employers who have agreed with their employees to institute "flextime" schedules have been unable to contract with the federal government because of provisions of the Walsh-Healy Act. Your proposal will increase opportunities for small business and, therefore, make a positive contribution to the economy.

Sincerely,

JAMES D. "MIKE" MCKEVITT,
Director Federal Legislation.

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, D.C., June 16, 1982.

Hon. DON NICKLES,
Chairman, Subcommittee on Labor, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request for the Administration's views on (a) Senator Armstrong's bill, S. 398, to amend the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act to provide federal contractors with increased flexibility in alternative workweek scheduling and (b) a subsequent modification of S. 398, which Senator Armstrong is considering attaching to S. 2240, the flexitime legislation.

As I indicated in my July, 1981 letter to you on the first question, the Administration supports legislative reform to provide federal contractors with increased flexibility in alternative workweek scheduling. With regard to the second question, let me say that the Administration would support the amendment proposed by Senator Armstrong to make the language of the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act comparable to that of the Fair Labor Standards Act, namely to permit work in any combination of hours per day without paying overtime until hours worked exceed forty per week.

This legislative language would be consistent with the Administration's view that the Act should be amended to permit labor and management to implement flexible worktime arrangements that could enhance the quality of worklife, promote energy efficiency, and increase productivity.

The Office of Management and Budget advises that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

RAYMOND J. DONOVAN.

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, D.C., June 25, 1981.

Hon. DON NICKLES,
Chairman, Subcommittee on Labor, Committee on Labor and Human Resources, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN NICKLES: This is to express the views of the Department of Labor on S. 398, a bill "(t)o amend the Walsh-

Healey and the Contract Work Hours Standards Act to permit certain employees to work a ten-hour day in the case of a four-day workweek."

The Department of Labor supports sufficient flexibility in the contract labor standards statutes to permit management and labor to implement new worktime arrangements that could enhance the quality of worklife, promote energy efficiency, and increase productivity.

We understand that some workers are interested in new worktime arrangements which can result in greater time available for family and other personal activities. We also recognize that our Nation's employers are interested in worktime arrangements which can maintain or increase employees' job satisfaction while creating energy savings and more productive results than conventional arrangements. A number of our Nation's employers and their employees have been trying some of these unconventional work arrangements. At your Subcommittee on Labor's March hearings, it was noted that contracts providing for a four-day, 10-hour day workweek have been signed with labor organizations in the construction industry in Alabama, Florida, Kentucky, Louisiana, Ohio, Oklahoma, Texas, and Utah.

The Federal law's contract overtime pay requirement for work over eight hours in a day in effect precludes the use of unconventional worktime arrangements by employers and employees subject to these laws. Moreover, the existence of this requirement may tend to discourage experimentation with these arrangements by others who are not currently subject to Federal legal constraints.

We support legislative action to remove the present disincentives so that Federal contractors, and their employees, can move forward together, as can other employers and their workers, in trying new worktime arrangements.

The Office of Management and Budget advises that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

RAYMOND J. DONOVAN.

To meet the needs of today's workforce and current economic realities, the following associations and companies strongly support legislative reform of the Walsh-Healey Act and the Contract Work Hours Act to provide flexibility in the day to day scheduling of employees working on federal contracts:

A. H. Robins;
ALOCA;
American Apparel Manufacturing Association;
American Horse Council;
American Motorcyclists Association;
American Recreation Coalition;
American Textile Manufacturers Institute, Inc.;
Associated Builders and Contractors, Inc.;
Associated General Contractors of America;
Ball Corporation;
Bristol Myers Company;
Burlington Industries;
Business Roundtable;
C.A. Norgren & Company;
Dow Chemical U.S.A.;
E. I. duPont de Nemours & Company;
Electronic Industries Association;
General Telephone and Electronics Corporation;
International Snowmobile Industry Association;
JLG Industries;
Mobil Oil Corporation;
Motorola Inc.;
National Association of Manufacturers;
National Meat Association;
National Marine Manufacturing Association;
National Motor Sports Committee;
National Spa and Pool Institute;
Printing Industries of America;
Recreation Vehicle Dealers Association;
Recreation Vehicle Industry Association;
Springs Mills Inc.;
TRW, Incorporated;
Uniroyal, Inc.;
U.S. Chamber of Commerce;
United States Ski Association;
United Technologies Corporation;
Upjohn Company;
Xerox Corporation.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, June 29, 1982.

To: Members of the Senate.
From: Hilton Davis, Vice President, Legislative and Political Affairs.
Subject: Senator Armstrong's Flexitime Amendment to S. 2240.

The Senate will soon consider S. 2240, the Federal Employees Flexible and Compressed Work Schedules Act of 1982, reauthorizing the 1978 Act which provides the option of flexible work schedules to federal employees—the same flexibility that private sector employers and employees are assured by the Fair Labor Standards Act.

However, one segment of the American workforce is denied the right to opt for alternative workweek schedules without overtime penalties—federal contractors.

Federal contractors need that flexibility. Senator Armstrong intends to introduce an amendment to S. 2240 on the Senate floor to accomplish that end.

The Armstrong amendment would permit innovative work schedules without daily overtime premiums for federal contractors. It would benefit employees, employers, and the federal government, and would eliminate the wage-hour discrimination against federal contractors.

On behalf of the Chamber's more than 250,000 members, I respectfully urge you to support the Armstrong amendment and eliminate the costly and inequitable daily overtime requirements which now apply only to federal contractors.

The Walsh-Healey Act singles out federal contractors to impose a daily overtime premium for hours worked in excess of an eight-hour day. For all other employers, private and public, overtime is required only for hours worked in excess of a 40-hour workweek. Walsh-Healey prevents federal contractors from adopting, for example, a work schedule of four ten-hour days or three thirteen-hour days, instead of the more common five eight-hour day workweek schedule.

Numerous studies, including a 1976 General Accounting Office report, have demonstrated that flexible or alternative workweek schedules benefit both management and workers.

The Armstrong amendment would not only rectify the inconsistencies and inequities of the current law; it would encourage federal contractors to use compressed workweeks. Compressed workweeks:

Benefit employees by (1) improving employee morale, (2) providing more opportunity for extended leisure time, (3) improving performance by increasing productivity and enhancing quality of worklife, (4) decreasing job dissatisfaction, (5) permitting increased employer responsiveness to employee desires, (6) reducing employee working costs (such a commuting fares, restaurant lunches, and child care), and (7) providing more accessibility to the workplace for women with children;

Benefit employers by (1) decreasing overtime costs, (2) increasing employee productivity (due largely to reduced start-up and closedown time), (3) reducing energy consumption, (4) permitting more efficient use of physical resources, (5) enhancing personnel and production flexibility, (6) reducing absenteeism, tardiness, and employee turnover, and (7) aiding employee recruitment (because of the attractiveness of alternatives to the five-day eight-hour standard); and

Benefit the federal government by (1) creating cost savings for federal contractors which would be reflected in lower and more competitive bids (and thus reduced federal costs), and (2) increasing competition for federal contracts (by making wage-hour requirements consistent across-the-board, eliminating a disincentive to potential bidders.)

Elimination of these restrictive Walsh-Healey requirements is particularly appropriate and sensitive to our economy's needs at this time of government budget-cutting and energy conservation.

It is also noteworthy that in the private sector, alternative workweek schedules are gaining popularity with both employers and employees. Furthermore, there is a current trend toward these provisions in collective bargaining agreements.

Finally, S. 2240 is an appropriate and necessary vehicle for these much-needed reforms because its subject and provisions are similar. In fact, the Armstrong amendment serves the exact goals and objectives that S. 2240 serves.

I strongly urge you to support Senator Armstrong's amendment, to oppose any effort to weaken or alter it, and to support S. 2240 as amended.

NATIONAL ASSOCIATION OF MANUFACTURERS,
June 17, 1982.

Hon. WILLIAM L. ARMSTRONG,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ARMSTRONG: Earlier this week, the National Association of Manufacturers urged you to support an amendment to be offered by Senator Armstrong during the Senate's consideration of S. 2240, the "Federal Employee Flexible and Compressed Work Schedules Act of 1982."

Yesterday, the Administration voiced its support for Senator Armstrong's amendment. Enclosed is a copy of the letter to Senator Nickles from Secretary of Labor Donovan expressing the Administration's position, underscoring the importance it attaches to this matter.

The NAM wishes to reaffirm its strong support for Senator Armstrong's efforts. We ask you to vote in favor of his amendment and to support S. 2240, as amended.

Sincerely yours,

JERRY J. JASINOWSKI.

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, D.C., June 16, 1982.

Hon. DON NICKLES,
Chairman, Subcommittee on Labor, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request for the Administration's views on (a) Senator Armstrong's bill, S. 398, to amend the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act to provide federal contractors with increased flexibility in alternative workweek scheduling and (b) a subsequent modification of S. 398, which Senator Armstrong is considering attaching to S. 2240, the flexitime legislation.

As I indicaterd in my July, 1981 letter to you on the first question, the Administration supports legislative reform to provide federal contractors with increased flexibility in alternative workweek scheduling. With regard to the second question, let me say that the Administration would support the amendment proposed by Senator Armstrong to make the language of the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act comparable to that of the Fair Labor Standards Act, namely to permit work in any combination of hours per day without paying overtime until hours worked exceed forty per week.

This legislative language would be consistent with the Administration's view that the Act should be amended to permit labor and management to implement flexible worktime arrangements that could enhance the quality of worklife, promote energy efficiency, and increase productivity.

The Office of Management and Budget advises that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

RAYMOND J. DONOVAN.

Mr. ARMSTRONG. Mr. President, I yield to the Senator from Oklahoma.

Mr. NICKLES. Mr. President, I ask unanimous consent to have printed in the RECORD a list of some contracts from many, many States throughout the country. This list has grown considerably since the time of our hearing. It shows the number of unionized plants that are now on flexitime. They have something less than the 5 days. I think most of these are listed on the computer as having four 10-hour-day workweeks. I ask unanimous consent that this be printed.

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

CONSTRUCTION LABOR RESEARCH
COUNCIL,
Washington, D.C., June 29, 1982.

Senator DONALD L. NICKLES,
6327 Dirksen Senate Office Building, Washington, D.C.

DEAR MR. SMISTS: The Construction Labor Research Council has prepared the enclosed listing from its data files of those collective bargaining agreements within the construction industry which permit the option of utilizing a weekly work schedule of four days with 10 hours of straight time work each day.

Data are for the 1,200 contracts in CLRC's file. They do not include contracts signed in 1982 which include the 4-10's option for the first time. It is our understanding that a number of agreements signed this spring have added this provision.

Please call if we can be of any further assistance.

Sincerely,

ROBERT M. GASPEROW,
Executive Director.

Enclosure.

CRAFT CODES

04.—Asbestos workers
08.—Boilermakers
12.—Bricklayers
13.—Bricklayers—H/H
15.—Carpenters—H/H
16.—Carpenters
20.—Cement masons
21.—Cement masons—H/H
23.—Crane operators—H/H
24.—Crane operators
26.—Crane operators—utility
28.—Electricians
32.—Elevator constructors
33.—Floor covers
34.—Glaziers
35.—Iron workers—H/H
36.—Iron workers—structural
37.—Iron workers—ornamental
38.—Iron workers—reinforcing
39.—Laborers—H/H
40.—Laborers—building
41.—Laborers—tunnel
42.—Laborers—hod carriers
44.—Lathers
48.—Millwrights
52.—Painters
56.—Plasterers
60.—Pipefitters
64.—Plumbers
65.—Pipefitters—refrigeration
66.—Roofers
68.—Sheet metal workers
72.—Teamsters
74.—Teamsters—H/H
76.—Tile layers

CONTRACTS WITH 4-10'S, JUNE 29, 1982

City and craft

Birmingham, Ala., 36
Birmingham, Ala., 48
Mobile, Ala., 12
Mobile, Ala., 16
Mobile, Ala., 20
Mobile, Ala., 24
Mobile, Ala., 36
Mobile, Ala., 40
Mobile, Ala., 48
Mobile, Ala., 60
Mobile, Ala., 68
Mobile, Ala., 72
Washington, D.C., 60
Jacksonville, Fla., 60
Miami, Fla., 60
Pensacola, Fla., 16
Pensacola, Fla., 20
Tampa, Fla., 60
Boise, Idaho, 34
Ft. Wayne, Ind., 52
Louisville, Ky., 08
Alexandria, La., 40
Baton Rouge, La., 40
Baton Rouge, La., 44
Baton Rouge, La., 52
Baton Rouge, La., 60
Baton Rouge, La., 64
Baton Rouge, La., 72
Lake Charles, La., 40
New Orleans, La., 04
New Orleans, La., 24
New Orleans, La., 34
Shreveport, La., 24
Akron, Ohio, 60
Muskogee, Okla., 20
Tulsa, Okla., 20
Abilene, Tex., 12
Galveston, Tex., 12
Galveston, Tex., 20
Houston, Tex., 04
Houston, Tex., 08
Houston, Tex., 12
Houston, Tex., 16
Houston, Tex., 20
Houston, Tex., 33
Houston, Tex., 60
Houston, Tex., 64
Houston, Tex., 68
San Antonio, Tex., 60
Wichita Falls, Tex., 36
Salt Lake City, Utah, 15
Salt Lake City, Utah, 21
Salt Lake City, Utah, 23
Salt Lake City, Utah, 34
Salt Lake City, Utah, 39
Salt Lake City, Utah, 40
Salt Lake City, Utah, 74
Newport News, Va., 20
Newport News, Va., 52
Newport News, Va., 56
Newport News, Va., 60
Norfolk, Va., 04
Norfolk, Va., 12
Norfolk, Va., 16
Norfolk, Va., 40
Norfolk, Va., 52
Norfolk, Va., 60
Richmond, Va., 04
Richmond, Va., 52
Richmond, Va., 56
Richmond, Va., 60
Roanoke, Va., 04
Roanoke, Va., 52
Roanoke, Va., 60
74 records processed.

Mr. NICKLES. Also, I wish to comment on a telegram, Mr. President. At the proper time, I shall enter this into the RECORD. I received this today from Mr. Kenneth Blaylock, who is national president of the American Federation of Government Employees. Most other Senators, I am sure, received this today. Mr. Blaylock urges the Senate to vote against the Armstrong amendment. He says:

> Adoption of this amendment would destroy the protection provided for private sector workers under the Walsh-Healey Act and also jeopardize passage of this legislation which continues and expands the authority for the use of alternative work schedules. Alternative work schedules have proven—in their limited experimental use over the past 3 years to be successful in improving agency productivity and Federal employee morale. It should be continued.

I say to my colleagues, I am somewhat perplexed about this telegram. The logic used by Mr. Blaylock confuses me. Why should we vote to continue flexitime for Federal employees yet at the same time vote to deny even the possibility of flexitime for the employees of private Federal contractors?

That makes no sense.

According to Mr. Blaylock, flexitime is described by him as a "success" for Federal employees. However, flexitime for private employees of Federal contractors would "destroy the protection provided for private sector employees under the Walsh-Healey Act."

Mr. Blaylock, I submit, wants to have two kinds of flexitime, one for Federal employees and yet a second

which he would deny to the employees of private Federal contractors.

I submit that this kind of blatant discrimination is not only unjust but it is un-American. This, my friends, is the type of tactic that the opponents of the Armstrong amendment are forced to resort to when the shallow arguments that support their reasoning collapse of their own accord.

I think we have had enough of this foolishness, and I hope we vote today to pass the Armstrong amendment and restore a little commonsense, a little equity to persons that are working for Federal contractors, as well as those who work for the Federal Government, as well as those who work for private employers.

I ask unanimous consent that the telegram be printed in the RECORD.

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

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
Washington, D.C., June 29, 1982.

Hon. DON NICKLES,
U.S. Senate,
Washington, D.C.

On behalf of the 700,000 Federal workers who are represented by the American Federation of Government Employees (AFL-CIO), I urge you to vote no on the Armstrong amendment to S. 2240, the Flexible Hours and Compressed Work Schedules Act of 1982.

Adoption of this amendment would destroy the protection provided for private sector workers under the Walsh-Healey Act and also jeopardize passage of this legislation which continues and expands the authority for the use of alternative work schedules have proven—in their limited experimental use over the past 3 years—to be successful in improving agency productivity and Federal employee morale. It should be continued.

I urge you, therefore, to support the motion to table the crippling Armstrong Walsh-Healey amendment, and to vote against the Armstrong amendment if the motion to table fails.

KENNETH T. BLAYLOCK,
National President.

Mr. NICKLES. Mr. President, one additional comment. I have heard some people say this is antiunion, this is antiworker. That is far from the truth of the matter. I am in manufacturing. I work with employees who work on five 8-hour days. I work with employees who work on four 10's. I work with employees who like to work four 10's. Many people would rather have the flexitime, some people would rather not. A lot of employees have said that they have a great deal of flexibility to change schedules around to make them conform to particular employees' desires, but yet we come in and tell that employer "Because you do work for the Federal Government, you cannot do it. You can do it if you are doing work in the private sector, you can have some flexibility."

I listed the names of a number of unions who have signed on collective bargaining for flexitime. I think it is kind of ridiculous to say, "No, we are going to exclude it. We are going to discriminate against you and not allow you to have that opportunity."

A lot of employees, Mr. President, want to see this Armstrong amendment passed. It may well be that they are in construction work and they have to drive to the construction site. It may well be that that construction site is 50 miles away and they do not want to commute four of five times; maybe they can only commute three or four times, and have the opportunity to finish their job, come back and have a 3-day weekend with their family. Maybe they like to hunt. Maybe they like to fish. Maybe they want to travel. Whatever they want to do, let us give them that flexibility. Let us not have a Federal Government regulation which would prohibit it. Let us restore a little commonsense. Let us put Federal empolyees and Federal contractors under the same laws and requirements as all other private employees and all other governmental employees.

I urge the adoption of the Armstrong amendment.

Mr. STEVENS. Mr. President, I yield 1 minute to the Senator from Virginia.

Mr. WARNER. I thank my distinguished colleague.

I am most sympathetic to the amendment offered by my colleague from Colorado, but I cannot find anywhere the answer to the question: How can we get it through the House? Is it not better that at this time we try and take the part of it that we can achieve, namely, for the Federal Government, and at a later time try to support the private sector? I am anxious to support your legislation.

Mr. NICKLES. If the Senator will yield, I would be happy to make a comment.

I think the Senate, operating under its own guidance and wisdom, really does not need to operate under the wisdom of the leadership of the House. We have two different bodies. I personally did not come to the Senate to be governed by the House.

Mr. WARNER. I agree with the Senator, but as a practical legislative problem we cannot get it through the House.

The PRESIDING OFFICER. The 1 minute of the Senator has expired.

Mr. STEVENS. Mr. President, I might say to my good friend from Colorado and my friend from Oklahoma that I, too, have not really made up my mind what to do about the problem of the amendment that they offer except that I know there is no question that the House will not agree to it. They have the committee that the distinguished Senator from Oklahoma is the chairman of, the Subcommittee of the Labor Committee that has jurisdiction over this. That committee can report the bill out to the floor and enter a conference with the Members from the House who deal with the Walsh-Healey Act regularly. Our committee does not know anything about it. This is not something that we ought to be forced to take to the House in conference or to try to get the House to adopt. Again I say that the amendment of the Senator from Colorado does not give the private sector employees the same protection as this bill gives Government employees. It is not possible to do so because of the mechanisms that are built into the Federal Government in terms of the ability to get unit votes, the ability to have an impasse. We have an impasse panel. It is not proper to state that this gives the private employees the same protection as our bill gives Government employees because it is just not possible under existing law.

Does the Senator wish to make some further comment? If he does not, I intend to make a motion to table. One Senator has an appointment downtown, and we want to have a long vote.

Mr. EAGLETON. May I have 30 seconds?

Mr. ARMSTRONG. Mr. President, I have concluded my remarks. I have a little time remaining which I hope I can yield to the Senator from Indiana (Mr. QUAYLE), who I am told is on his way to the floor to make a statement on this matter. I should like to reserve time for that purpose.

Mr. WARNER. Will the Senator yield? Does he care to address the question of how we would get this through the House? I am sympathetic with the position of the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. ARMSTRONG. Mr. President, I am wondering if the Senator from Alaska has time to yield to me for the purpose of responding to that question?

Mr. STEVENS. If the Senator will limit it to 1 minute, I am happy to do that. The Senator wants to leave.

Mr. ARMSTRONG. I should be happy to limit it to half a minute.

The answer to the question raised by the Senator from Virginia is that the statute books are full of provisions which at some time or another were purported to be unpassable in one House or the other. It is our task to send to the other body the best legislation we can, and then it is up to the conferees to work it out. As the Senator knows, that is a usual thing—for the Senate to say, "No, we will never agree to that," and for the House to say, "No, we will never agree to that."

Let us send them a good bill, a bill that conforms the private sector to the practice that we are recommending and work it out in conference. I am confident we can sell it to them.

Mr. STEVENS. I yield 30 seconds to the Senator from Missouri.

Mr. EAGLETON. Mr. President, taking up the theme just discussed between Senators STEVENS and ARMSTRONG, I think it should be noted that a subcommittee of the Labor and Human Resources Committee reported out the amendment that was in bill form on July 9, 1981. That is almost a calendar year ago. That subcommittee of Labor and Human Resources reported it up to the full committee. Senator NICKLES is on that committee. I am on that committee. Senator HATCH of Utah is the chairman of that committee. It has been there sound asleep before the full committee since July 9, 1981. Not a peep has been heard about it, not the slightest effort has been made to move it. Senator HATCH could convene a committee markup on the bill at any time he desires, but it has sat dormant for a calendar year. Now it emerges as this amendment.

Mr. KENNEDY. Mr. President, as ranking minority member of the Labor and Human Resources Committee I want to join the Senator from Alaska and the Senator from Missouri in opposing the Armstrong amendment.

Those who support the Federal flexitime bill, as I do, should understand that adoption of the Armstrong amendment will seriously jeopardize the prospects for enacting the flexitime bill before the current authorization expires next month.

The Armstrong amendment is not germane to the bill before us. If adopted it will have to be referred to two House committees and it is extremely unlikely that House action can be completed before the deadline.

Moreover the chairman of the House Post Office and Civil Service Committee has made it clear that he will not act on a Senate-passed bill which includes a Walsh-Healy amendment.

Beyond that there is absolutely no excuse for addressing the Walsh-Healy issue today. The Labor Subcommittee completed hearings on Walsh-Healy on March 10, 1981. The bill was reported to the full committee on July 9, 1981.

It has languished there for 12 months.

The Armstrong amendment is nothing more than an attempt to disrupt the orderly procedures of the Senate by circumventing the committee structure. There is simply no justification for proceeding in this manner when no one on the Labor Committee is preventing consideration of the bill under normal procedures.

Adoption of the Armstrong amendment will not result in flexitime work schedules in the private sector because it will not become law if attached to this bill. Instead, the likely consequence will be to deny the benefits of the Federal program to thousands upon thousands of Federal workers because no bill will be enacted.

Every Member of this body should understand that a vote for the Armstrong amendment is a vote against the Federal flexitime bill.

I urge the defeat of the amendment.

● Mr. GLENN. Mr. President, I rise in support of S. 2240, the Federal Employees Flexible and Compressed Work Schedule Act of 1982. The author of the legislation, the Senator from Alaska (Mr. STEVENS) has consistently demonstrated a profound interest in the needs of Federal employees, along with the need for a more efficient Federal bureaucracy. I believe that this bill is just one more example of that interest.

The flexitime experiment has been an asset to worker satisfaction and a boon to dual career families. Studies performed by the Office of Personnel Management indicate that the experiment has enjoyed an impressive 90 percent satisfaction rating. This coupled with the reports of productivity improvements outpacing declines by a 3-to-1 margin gives us sufficient reason to continue the flexitime program.

Management views flexitime very positively. More than 80 percent of the supervisors involved in the program favor continuing the present schedules. S. 2240 goes beyond the present program to extend to agency heads more authority to eliminate inefficient schedules. It also established a standardized procedure for judging the efficacy of a schedule.

Extension of this program could be frustrated by the amendment offered by the Senator from Colorado (Mr. ARMSTRONG). So, even though this amendment deserves attention, I do not believe this is the appropriate time or place. The Labor and Human Resources Committee is capable of considering this issue in detail. (As a result, I support Mr. STEVEN's motion to table this amendment and allow the Federal Government to maintain this beneficial program.)●

● Mr. DODD. Mr. President, I strongly oppose the Armstrong amendment allowing management to impose extended workdays on employees under Federal contract.

This amendment would undermine labor standards earned only after hard and long struggles and would have a punitive effect on workers under collective bargaining agreements today. The Walsh-Healey Public Contracts Act of 1936 requires that workers under Federal contract not work more than 8 hours per day without overtime pay. Ninety-three percent of workers under Federal contract today have a collective bargaining agreement requiring premium pay after 8 hours of work. It would be wrong to punish legislatively freely reached worker-management agreements on hours. But that is exactly what we would do by allowing the management of nonunion employees to impose longer days on their workers. We would penalize unionized companies in the competition for Government contracts.

Under this amendment, longer workdays could be readily imposed—regardless of the risks to worker health and safety and regardless of the disruption to home and family. The known potential for such risks and the potential for disruption of family life is even greater now than when Walsh-Healey was enacted in 1936.

Now we know that asbestos, petrochemicals, and other substances to which workers are exposed can cause severe hazards to worker health. We know that prolonged exposure to high levels of noise can cause hearing loss. We know of the contribution of fatigue to the probability of crippling accidents. And now, many of the standards we have developed to protect workers from these hazards are based on 8-hour—not 10-hour—workdays. Excessive noise is probably the most frequent worker health hazard. The standard regulating noise exposure is based on an "8 hour time-weighted average." Are we to redo such standards for a 10 hour or even longer day? Or are we to guess at whether worker health is endangered by regular, prolonged exposure at management convenience?

And what of the working women whose family life is structured around an 8 hour absence? In 1936 when Walsh-Healey was enacted, we did not even count the number of the women in the labor force; 11 years later, at first count, there were less than 17 million women workers. In 1979, over 43 million American women worked outside the home. Over 30 percent of these women workers have children at home. More than 5 million children under age 6 have mothers who work for a living. Can we seriously argue that it provides more flexibility to these women to allow their employers to impose a longer working day? Is it reasonable to expect their families to readjust their schedules?

Compressed schedules can be conducive to better home and community life. But that decision should remain with those who are engaged in the work and not with those who manage it. The flexitime program extended in S. 2240 is a voluntary, worker initiated program. I applaud the flexitime program and I intend to vote in favor of the Stevens bill.

But the suggestion made with this amendment is categorically different. It punishes unionized workers. It allows management to place at risk the health and safety of workers. It makes a mockery of standards outside the purview of the Walsh-Healey Act. It ignores the needs of those workers

for whom compressed schedules may cause disruption of family life. I will vote against this amendment and I urge my colleagues to do likewise.●

Mr. HATCH. Mr. President, I join in strong support of the amendment offered by my distinguished colleague, Senator ARMSTRONG. He has succinctly and persuasively made the case for adoption of his amendment. I would emphasize only a couple things.

First, the Senate as a body is not blazing a new trail with this amendment. Just 2 years ago, in the 96th Congress, this body added a similar amendment to pending legislation that was in a technical sense not germane to the Walsh-Healey Act and the Contract Work Hours Standards Act. On December 9, 1980, Senator BELLMON added a compressed workweek amendment to the Revenue Sharing bill H.R. 7112. This amendment was adopted by a record vote, 43 to 38. Unfortunately, the amendment was dropped by the other body.

Second, it should be noted that this amendment would not in any respect change the Federal minimum wage law or the overtime provisions of the Fair Labor Standards Act. Those statutes remain completely intact. Further, the Armstong amendment would not in any way affect the collective bargaining process, except to make it possible to bargain over flexible work schedules such as the 4-day workweek where such bargaining is not discouraged by current law.

Third, while making it financially feasible to adopt a compressed workweek, the amendment in changing the Walsh-Healey Act and the Contract Work Hours Standards Act does not mandate—I repeat, does not mandate—the adoption of such a schedule. Thus, even in the nonunion context, employees do not have to fear that this amendment will automatically result in a different work schedule.

Finally, I think it should be reiterated how this amendment is designed to do simple equity. The case has been persuasively made for giving Federal employees the opportunity of alternative work schedules. That is all we are trying to do for employees of Federal contractors. Indeed, there is a certain irony in all this. The case for Federal employees to enjoy flexible work schedules was not made just on the experience under the experimental program which Congress established in 1978. The impetus for the Federal experiment was in part due to the experience of flexible and compressed work schedules in the private sector to begin with. The committee reports on the 1978 legislation expressly alluded to the positive experience in the private sector as grounds for expanding its experimental use by Federal employees. Moreover, the Washington Post, in commenting recently on the Federal flexitime legislation, noted: "In many private companies, the old 9-to-5 routine has become outmoded. One out of the five workers now chooses to work either part time or on a flexible schedule. Some specialists predict that half of the labor force will be flexing its work time by the next decade." In short, the practice and trend which began in the private sector should be encouraged to grow there at the same time they are being encouraged in the Federal sector.

I urge the adoption of the amendment.

WALSH-HEALEY MUST BE REFORMED

● Mr. KASTEN. Mr. President, earlier this year, the owner of a small business in McFarland, Wis., came to me with a problem his firm was having with the Walsh-Healey Act.

After reviewing the facts of this case with the owner, I came away convinced that Walsh-Healey had to be reformed and made more flexible for Government contractors.

The company, ENA Business Forms Inc., is a 24 employee printing company that contracts its services with the Federal Government.

Several years ago during the energy crunch, ENA's employees requested that they be permitted to set their own hours of work rather than work straight 8-hour days or less.

As Walsh-Healey is currently written Government contractors are required to pay overtime for any work over 8 hours a day regardless of the total hours worked per week. This is the case even if employees request to be placed on an alternative work schedule and still work a 40-hour week. The effect of Walsh-Healey is that while Federal employees may benefit from flexitime, many private sector workers involved with Federal contracts are not allowed this option.

In ENA's case, employees were paid overtime for work over 40 hours a week, but not paid overtime for work over 8 hours a day. Thus, ENA was out of compliance with the very provisions of Walsh-Healey the Senate is attempting to amend today.

Subsequently, ENA was audited by the Department of Labor and found to be out of compliance with Walsh-Healey. As a result of this audit, ENA, the business, owes $27,661.76 to ENA, the workers.

Currently, ENA is on the brink of bankruptcy because of the inflexibility of Walsh-Healey. The worst possible finish to this story would be that ENA would go bankrupt because of Walsh-Healey.

But ENA is still fighting for its economic survival. And although we in the Senate cannot alleviate the burden Walsh-Healey has placed on ENA, we can fight too by amending the act to allow Government contractors the same flexitime options offered to Government employees.

It appears that at a time when the Federal Government is working so hard to restore vitality to the American economy, a law which is as counterproductive as Walsh-Healey must be reformed.

Congress must bring the laws governing Federal contractors into conformity with the overtime provisions and flexibility in work schedules provided to the private sector employees, and ironically, to Federal employees themselves.

The restrictions of Walsh-Healey were passed by Congress in 1935, nearly a half century ago. In those 50 years, the American work force and American lifestyle have changed dramatically. Unfortunately, restrictive laws governing Government contractors have not kept up with the times.

Today the Senate has the opportunity to reform a law that has outlived its usefulness and now is a burden on workers and businesses. I urge my colleagues to support the Armstrong amendment on behalf of all the small businesses across the country that deserve the right to establish flextime schedules without overtime penalties.●

Mr. QUAYLE. Mr. President, I would like to speak in support of the Armstrong amendment to the Federal Employees Flexitime Act, and to oppose any efforts to weaken that amendment. I believe we are making a small but important improvement in the flexitime extension by allowing Federal contractors as well as Federal employees to participate in this program. I believe it is critical that we eliminate inequitable restrictions on Federal contractors so that they can have the same rights and flexibility in workweek scheduling that are presently enjoyed by other employers. If we decline to include Federal contractors in this measure we are discriminating against a single class of workers and employers and refusing them the benefits and flexibility of alternative workweek scheduling which we reserve only to those outside the confines of government contract work.

This amendment is very simple. It simply gives Federal contractors the same rights already enjoyed by private sector contractors. Current law makes it prohibitively expensive for Government contractors to use alternative work schedules because of premium rates which must be paid on any work performed in excess of 8 hours per day.

I know that many Federal employees in Indiana have contacted me asking my help in preserving their flexitime privileges. They support the idea, they have worked under it and they like it.

Now it is time to end discrimination against those workers and employers

who have never had the chance to operate under a compressed workweek.

The benefits of working on an alternative work schedule are many. In hearings on this issue before the Subcommittee on Labor, which is chaired by the distinguished Senator from Oklahoma, Senator DON NICKLES, we heard many witnesses attest to the advantages of the compressed workweek. Specifically:

It increased worker productivity. The result is a higher weekly output, improved use of plant equipment and improved employee morale as demonstrated through reduced absenteeism, tardiness, and turnover.

It improves working conditions. A necessary side-effect of the change is reduced working costs associated with reduced commuting time, lunches, and child care. Also there is more usable leisure time for employees and more time for personal business, medical appointments, and rest.

It promotes energy conservation. A reduction in fuel costs is associated with fewer commuting days. (The Comptroller General reported that employee commuting time and gasoline consumption could be reduced by as much as 20 percent by converting to a compressed workweek.) In addition, there would be a reduced need for heating and cooling plants and offices.

I understand that some labor groups have been concerned that this measure would affect them unfavorably. Opponents of the amendment are saying that it will adversely affect the minimum wage, that it will alter the 40-hour overtime provisions of the Fair Labor Standards Act or even that it will mandate a certain number of hours in a workday. Let me dispell that concern. This measure maintains the 40-hour workweek. It allows for flexible scheduling of hours within that time limit. It makes no change in minimum wages and it does not mandate the number of hours in a workday. Any time worked over 40 hours weekly will still be compensable by overtime pay.

I would like to make one other point before I close. Studies of alternative and compressed workweeks have shown that experience with the schedule has been an important factor in influencing attitudes about such schedules. In general, employees have tended to be very positive about the schedules, but those who have actually experienced them were much more favorable than those who hypothesized the effects.[1] I feel this is significant because I believe many poeple "hypothesize" the effects of flextime on the work of government contractors. It has been used with great success for private sector employees, for government employees and it has been shown to increase productivity, I see no reason why we need to discriminate against a single group of employees and employers when we do not place those restrictions on the private sector. I support the Armstrong amendment and I encourage my colleagues to support it.

● Mr. GRASSLEY. Mr. President, I support Senator ARMSTRONG's amendment to remove daily overtime restrictions placed on Federal contractors by the Walsh-Healey and Contract Work Hours and Safety Standards Act. Currently, Federal contractors are prohibited from utilizing any form of flexitime provisions that are enjoyed by other Federal workers, as well as private sector employees. The Walsh-Healey Act singles out Federal contractors to impose a daily overtime premium for hours worked in excess of an 8-hour day. For all other employees, private and public, overtime is required only for hours worked in excess of a 40-hour workweek. I feel that Senator ARMSTRONG's amendment, which is similar to S. 398 which I have cosponsored, would provide an excellent opportunity for restoring uniform and equitable treatment of all employees, including Government contractors. This amendment would bring those laws governing Government contractors into conformance with the Fair Labor Standards Act and maintain the 40-hour workweek overtime standard.

The Bureau of Census has shown recently that in 1980, approximately 12 percent of all full-time, nonfarm wage earners were on flexitime or other schedules that permit them to vary the time their workdays begin and end. By the end of the decade, it is estimated that over one-third of the work force will be involved in compressed, flexible, or other alternative work schedules. Alternative schedules have been gaining popularity with employers, employees, and in recent collective-bargaining agreements for many good reasons.

Such schedules have proven to be more responsive to the desires of employees, provided more leisure time and reduced commuting time and expense. Equally important are the substantial benefits to employers in increased productivity, reduced energy requirements and more efficient use of capital equipment. Resulting cost saving for Federal contractors would be reflected in lower and more competitive bids for Federal procurements.

I am pleased to note the administration has endorsed this amendment, as well as many employer and employee groups across the Nation. Furthermore, I feel that S. 2240 is an appropriate vehicle for Senator Armstrong's reforms because they serve the exact goals and objectives of this bill. Federal contractors and their employees should be permitted latitude in tailoring their work schedules when it is in their mutual self-interest. Government should not stand in the way of these changes, but rather promote worktime arrangement that could enhance the quality of worklife, encourage energy efficiency and increase productivity. I urge my colleagues to join in support of this amendment to allow Federal contractor's employees to benefit from innovative work schedules, while maintaining the 40-hour-workweek overtime standard that protects all workers.●

● Mrs. HAWKINS. Mr. President, I support S. 2240, the Federal Employees Flexible and Compressed Work Schedule Act of 1982. I believe that the 3-year flexitime experiment involving Federal employees has been successful and deserves to be continued. The experiment in flexible and compressed workweeks demonstrates that this intelligent personnel policy will generate important benefits, including higher output, reduced energy usage, and greater employee satisfaction.

At a time when productivity growth has been slow, it is noteworthy that other observers have also concluded that flexitime programs will lead to savings and improved morale. For example, an interim report of the flexitime program prepared by the Office of Personnel Management concluded that alternative work schedules "can produce improvements in productivity, greater service to the public, and savings in cost." The report also noted that more than 90 percent of employees and 85 percent of supervisors participating in these programs were satisfied with the results and recommended their continuation.

Another demonstration of the success of flexitime is its increased use in the public and private sector. The Bureau of Census reports that in 1980, 12 percent of all full nonfarm wage and salary workers were on a flexitime or compressed work schedule. By 1990, it is estimated that over 30 percent of the workforce will be using some type of flexible work schedule.

It is easy to see why flexitime improves productivity by improving morale. Increasingly, single working fathers and mothers need to arrange their work schedules to spend more time with their families. The latest census reports noted a dramatic rise in one-parent families in the workforce. Of the 31.5 million families with children under age 18 in the country in 1981, 21 percent were single-parent families, up sharply from 11 percent in 1970. Clearly, a personnel policy which materially helps the head of one out of every five working parents will show up in national productivity statistics. Therefore, Federal policy

[1] Simcha Ronen, Ph. D., Management Department, Graduate School of Business Administration, New York University, Testimony before the Subcommittee on Labor on S. 398, p. 4.

should promote the usage of flexitime in both the public and private sectors. That is why I support the continuation of the flexitime program.

While this legislation allows the Federal Government and most private firms to take advantage of flexible work schedules, curiously private businesses doing business with the Federal Government are prevented from adopting flexible work schedules or compressed workweeks for their employees. That is because the Walsh-Healey Act of 1936 imposes two separate standards on private businesses, one for Government contractors and another for private firms. Senator ARMSTRONG's amendment eliminates the dual standard by making overtime pay requirements uniform in Government and privately contracted work. It does so by allowing all contractors to use flexitime if they choose to do so.

Passage of the Armstrong amendment will lead to Federal procurement savings. Presently, the requirement that private businesses contracting with the Government must pay premium rates for all hours worked in excess of 8 hours per day, making it prohibitively expensive for Government contractors to use compressed workweek schedules. This costs the Government money because such contractors cannot pass on to the Government saving achieved by compressed workweeks. Furthermore, the Walsh-Healey Act discourages private sector users of compressed workweeks from bidding on Federal contracts, thus denying the Federal Government of the services of some of the more innovative and productive contractors in the labor market.

Mr. President, it is not often that the Senate has a chance to raise productivity, improve worker morale, and save the taxpayers money simultaneously. I believe we should take the opportunity to do so by passing this important amendment, and S. 2240.●

Mr. NICKLES. Will the Senator yield?

Mr. EAGLETON. Yes; I yield.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Just a half a minute. The Senator has to be downtown in 10 minutes.

Mr. NICKLES. I will make a real quick comment, and that comment is, yes, we reported it out of subcommittee. We did not have the votes in the full committee. But the Senator is also aware that that bill has passed the Senate before in the previous Congress.

Mr. STEVENS. I yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Colorado yield back the remainder of his time?

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

Mr. STEVENS. I thank the Senator.

Mr. President, I move to table the amendment, and I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Colorado. On this question the yeas and the nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Alabama (Mr. DENTON), the Senator from California (Mr. HAYAKAWA), and the Senator from Kansas (Mrs. KASSEBAUM) are necessarily absent.

I also announce that the Senator from Georgia (Mr. MATTINGLY) is absent due to illness.

I further announce that, if present and voting, the Senator from California (Mr. HAYAKAWA), and the Senator from Georgia (Mr. MATTINGLY) would each vote "nay."

Mr. CRANSTON. I announce that the Senator from Massachusetts (Mr. TSONGAS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 49, nays 46, as follows:

[Rollcall Vote No. 202 Leg.]

YEAS—49

Andrews	Glenn	Moynihan
Baucus	Hart	Murkowski
Biden	Heflin	Nunn
Boren	Heinz	Packwood
Bradley	Hollings	Pell
Bumpers	Huddleston	Proxmire
Burdick	Inouye	Randolph
Byrd, Robert C.	Jackson	Riegle
Cannon	Johnston	Sarbanes
Chafee	Kennedy	Sasser
Cranston	Leahy	Specter
DeConcini	Levin	Stafford
Dixon	Long	Stevens
Dodd	Mathias	Warner
Durenberger	Melcher	Weicker
Eagleton	Metzenbaum	
Ford	Mitchell	

NAYS—46

Abdnor	Exon	Nickles
Armstrong	Garn	Percy
Baker	Goldwater	Pressler
Bentsen	Gorton	Pryor
Boschwitz	Grassley	Quayle
Brady	Hatch	Roth
Byrd, Harry F., Jr.	Hatfield	Rudman
	Hawkins	Schmitt
Chiles	Helms	Simpson
Cochran	Humphrey	Stennis
Cohen	Jepsen	Symms
D'Amato	Kasten	Thurmond
Danforth	Laxalt	Tower
Dole	Lugar	Wallop
Domenici	Matsunaga	Zorinsky
East	McClure	

NOT VOTING—5

Denton	Kassebaum	Tsongas
Hayakawa	Mattingly	

So the motion to table Mr. ARMSTRONG's amendment (UP No. 1048) was agreed to.

(Later the following occurred:)

Mr. MATSUNAGA. Mr. President, on rollcall vote No. 202, I am recorded as having voted "Aye." I intended to vote "Nay." Inasmuch as the change in vote will not change the result, I ask unanimous consent that I be recorded as having voted "Nay."

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

(The foregoing tally has been corrected to reflect the above order.)

Mr. MURKOWSKI assumed the chair.

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

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, how much time do we have remaining on the bill?

The PRESIDING OFFICER. A total of 18 minutes remains on the bill. The Senator from Alaska controls 11 minutes.

Mr. STEVENS. Mr. President, we had time for the Senator from Indiana. The Senator from Virginia wishes 3 minutes.

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

Mr. STEVENS. Mr. President, I might state to the Senate that it is our intention to have a rollcall vote on the final passage.

The PRESIDING OFFICER. The Senate will please come to order.

Mr. STEVENS. I yield to the Senator from Virginia.

The PRESIDING OFFICER. Will the Senators conversing please excuse themselves to the cloakroom? The Senate will come to order.

Mr. STEVENS. Mr. President, I yield to the Senator from Virginia.

Mr. WARNER. Mr. President, I first would like to acknowledge the distinguished Senator from Colorado and others who were in support of his amendment.

I should say that it was practical politics when we had to vote against that amendment. Should it appear again on a proper vehicle, I would provide my support. I thank those who recognize the need for us to get on with S. 2240, which I consponsor with the distinguished Senator from Alaska, because it is desperately needed by those serving in the Federal Government.

Last March when this legislation was introduced, it was referred to the Governmental Affairs Committee, and we approved S. 2254 in a temporary 4-month extension of the existing experimental program. That extension expires July 20.

S. 2240 will continue the programs established under Public Law 95-390, the experimental program for 3 years. Management of the existing programs must review them for reduced productivity, reduced level of public service,

or increased agency costs. If the findings show that the program is defective, the agency must terminate the program immediately. The decision is not negotiable or reviewable.

During the past 3 years, over 325,000 Federal employees in 1,500 organizations have participated in this program. There have been some programs that have not met the criteria of better service, increased productivity and lower cost. These programs will be terminated.

This legislation will provide the opportunity for the effective programs to continue and new programs to start. This legislation will provide the Federal manager additional tools to provide better, less costly service. This legislation will also provide the Federal employee with optional work schedules and the chance to increase production.

Flexitime, or alternative work schedules (AWS), has been used in private industry for a number of years with great success. Managers in companies, such as Metropolitan Life Insurance, say that flexitime has increased the productivity of 10,000 employees in New York City.

The 3-year experiment has been successful. A report by the Office of Personnel Management indicated that more than 90 percent of employees and 85 percent of supervisors participating in these experiments were satisfied with the results and wished to continue the program.

This legislation S. 2240, is supported by OPM, the administration, the employee groups and the employers themselves.

Senator STEVENS is to be congratulated for initiating this worthwhile legislation, and I am pleased to join with him. I urge my colleagues to accept the amendments offered today by Senator STEVENS and to enact S. 2240 for the good of the Government, its employees and the American taxpayer.

Mr. STEVENS. Mr. President, I do commend the Senator from Colorado and the Senator from Oklahoma on the amendment they offered. I, too, have a deep feeling about that amendment, and Senator BELLMON's amendment when he was here.

I appreciate the support of the Members of the Senate to clear this bill to go to the House unencumbered by that amendment. I do appreciate the manner in which the Senator from Colorado and the Senator from Oklahoma handled the presentation of their points of view.

Mr. President, I do not have any more requests for time. If there are no more requests for time, the Senator from Missouri and I will join in yielding back time on the bill.

Mr. HATCH. Mr. President, I rise in strong support of S. 2240. I believe that there is considerable merit in extending, on a permanent basis, a program that has demonstrated its worthiness. It was for this reason that I introduced in March of this year an earlier version of the proposal (S. 2156), since then, the interested parties, including the administration, Federal employee representatives, and congressional leaders, have closely reviewed the proposal and exchanged recommended changes. The outcome of this process is the pending bill as reported by my distinguished colleague from Alaska (Mr. STEVENS).

Mr. President, the Office of Personnel Management has found that alternative work schedules can produce improvements in productivity, greater service to the public, and added cost savings. Equally important is the fact that workers themselves have had a very positive experience with the concept of flexitime and of the compressed workweek. Many people are coming into the work force, especially women with family responsibilities, for whom flexible schedules are very beneficial. They are productive people, yet they are not able to work exactly the hours that have been regarded as traditional. Moreover, virtually every experimental program involving flexible work schedules has demonstrated significant improvements in the morale of employees. And there is greater job satisfaction. As aptly noted by the federally employed women organization:

> The time-management and psychological benefits derived from these programs by the employee are substantial. Alternative work schedules help people balance their home and work life responsibilities. They provide a sense of freedom and autonomy for the worker, resulting in increased job satisfaction and higher employee morale.

Flexitime has proven its worth in the Federal Establishment across the Nation in 1,500 different agencies, involving 325,000 people. And, the people of my State of Utah have enjoyed the success of the program like those in other States. For instance, almost 600 of my constituents at Dugway Proving Grounds personally contacted me, urging support for the legislation. They stated:

> We have been on the 4-day workweek for the past 18 months and can assure you that it has many advantages over the regular 8-hour day.

These people are obviously pleased with the program. And I say that when Federal employees are happier and more productive, other American taxpayers are getting their money's worth as well.

I urge the passage of the legislation.

Mr. EAGLETON. Mr. President, I yield back my remaining time.

Mr. STEVENS. Mr. President, I yield back my time and I ask for the yeas and nays on final passage.

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

The yeas and nays were ordered.

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

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Alabama (Mr. DENTON), the Senator from California (Mr. HAYAKAWA), the Senator from Vermont (Mr. STAFFORD), and the Senator from Georgia (Mr. MATTINGLY) are absent due to illness.

I further announce that, if present and voting, the Senator from Alabama (Mr. DENTON), the Senator from California (Mr. HAYAKAWA), the Senator from Georgia (Mr. MATTINGLY) would each vote "yea".

Mr. CRANSTON. I announce that the Senator from Massachusetts (Mr. TSONGAS), is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 93, nays 2, as follows:

[Rollcall Vote No. 203 Leg.]

YEAS—93

Abdnor	Exon	Melcher
Andrews	Ford	Metzenbaum
Armstrong	Garn	Mitchell
Baker	Glenn	Moynihan
Baucus	Goldwater	Murkowski
Bentsen	Gorton	Nickles
Biden	Grassley	Nunn
Boren	Hart	Packwood
Boschwitz	Hatch	Pell
Bradley	Hatfield	Percy
Brady	Hawkins	Pressler
Bumpers	Heflin	Proxmire
Burdick	Heinz	Pryor
Byrd, Harry F., Jr.	Helms	Quayle
Byrd, Robert C.	Hollings	Randolph
Cannon	Huddleston	Riegle
Chafee	Humphrey	Roth
Chiles	Inouye	Sarbanes
Cochran	Jackson	Sasser
Cohen	Jepsen	Schmitt
Cranston	Johnston	Simpson
D'Amato	Kassebaum	Specter
Danforth	Kasten	Stennis
DeConcini	Kennedy	Stevens
Dixon	Laxalt	Symms
Dodd	Leahy	Thurmond
Dole	Levin	Wallop
Domenici	Long	Warner
Durenberger	Lugar	Weicker
Eagleton	Mathias	Zorinsky
East	Matsunaga	
	McClure	

NAYS—2

Rudman	Tower

NOT VOTING—5

Denton	Mattingly	Tsongas
Hayakawa	Stafford	

So the bill (S. 2240), as amended, was passed, as follows:

S. 2240

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Employees Flexible and Compressed Work Schedules Act of 1982".

SEC. 2. (a) Chapter 61 of title 5, United States Code, is amended—

(1) by inserting before section 6101 the following:

"SUBCHAPTER I—GENERAL PROVISIONS";

and

(2) by adding at the end therof the following new subchapter:

"SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES

"§ 6120. Purpose

"The Congress finds that the use of flexible and compressed work schedules has the potential to improve productivity in the Federal Government and provide greater service to the public.

"§ 6121. Definitions

"For purposes of this subchapter—

"(1) 'agency' means any Executive agency, any military department, and the Library of Congress;

"(2) 'employee' has the meaning given it by section 2105 of this title;

"(3) 'basic work requirement' means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise;

"(4) 'credit hours' means any hours, within a flexible schedule established under section 6122 of this title, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday;

"(5) 'compressed schedule' means—

"(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

"(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays;

"(6) 'overtime hours', when used with respect to flexible schedule programs under sections 6122 through 6126 of this title, means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours; and

"(7) 'overtime hours', when used with respect to compressed schedule programs under sections 6127 and 6128 of this title, means any hours in excess of those specified hours which constitute the compressed schedule.

"(8) 'collective bargaining', 'collective bargaining agreement', and 'exclusive representative' have the same meanings given such terms—

"(A) by section 7103(a)(12), (8), and (16) of this title, respectively, in the case of any unit covered by chapter 71 of this title; and

"(B) in the case of any other unit, by the corresponding provisions applicable under the personnel system covering this unit.".

"§ 6122. Flexible schedules; agencies authorized to use

"(a) Not withstanding section 6101 of this title, each agency may establish, in accordance with this subchapter, programs which allow the use of flexible schedules which include—

"(1) designated hours and days during which an employee on such a schedule must be present for work; and

"(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

"(b) Notwithstanding any other provision of this subchapter, but subject to the terms of any written agreement referred to in section 6130(a) of this title, if the head of an agency determines that any organization within the agency which is participating in a program under subsection (a) is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

"(1) restrict the employees' choice of arrival and departure time,

"(2) restrict the use of credit hours, or

"(3) exclude from such program any employee or group of employees.

"§ 6123. Flexible schedules; computation of premium pay

"(a) For purposes of determining compensation for overtime hours in the case of an employee participating in a program under section 6122 of this title—

"(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1), 5544(a), and 5550 of this title, section 4107(e)(5) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other provision of law; or

"(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

"(b) Notwithstanding the provisions of law referred to in subsection (a)(1) of this section, an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 6126 of this title or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

"(c)(1) Notwithstanding section 5545(a) of this title, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which such premium pay is otherwise authorized, except that—

"(A) if an employee is on a flexible schedule under which—

"(i) the number of hours during which such employee must be present for work, plus

"(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,

which occur outside of the nightwork hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

"(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

"(2) Notwithstanding section 5343(f) of this title, and section 4107(e)(2) of title 38, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized, except that such differential shall be paid to an employee on a flexible schedule under this subchapter—

"(A) in the case of an employee subject to subsection (f) of such section 5343, for which all or a majority of the hours of such schedule for any day fall between the hours specified in such subsection, or

"(B) in the case of an employee subject to subsection (e)(2) of such section 4107, for which 4 hours of such schedule fall between the hours specified in such subsection.

"§ 6124. Flexible schedules; holidays

"Notwithstanding sections 6103 and 6104 of this title, if any employee on a flexible schedule under section 6122 of this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Office of Personnel Management).

"§ 6125. Flexible schedules; time-recording devices

"Notwithstanding section 6106 of this title, the Office of Personnel Management or any agency may use recording clocks as part of programs under section 6122 of this title.

"§ 6126. Flexible schedules; credit hours; accumulation and compensation

"(a) Subject to any limitation prescribed by the Office of Personnel Management or the agency, a full-time employee on a flexible schedule can accumulate not more than 24 credit hours, and a part-time employee can accumulate not more than one-fourth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

"(b) Any employee who is on a flexible schedule program under section 6122 of this title and who is no longer subject to such a program shall be paid at such employee's then current rate of basic pay for—

"(1) in the case of a full-time employee, not more than 24 credit hours accumulated by such employee, or

"(2) in the case of a part-time employee, the number of credit hours (not excess of one-fourth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.".

"§ 6127. Compressed schedules; agencies authorized to use

"(a) Notwithstanding section 6101 of this title, each agency may establish programs which use a 4-day workweek or other compressed schedule.

"(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any program under subsection (a) unless a majority of the employees in such

unit who, but for this paragraph, would be included in such program have voted to be so included.

"(2) Upon written request to any agency by an employee, the agency, if it determines that participation in a program under subsection (a) would impose a personal hardship on such employee, shall—

"(A) except such employee from such program; or

"(B) reassign such employee to the first position within the agency—

"(i) which becomes vacant after such determination,

"(ii) which is not included within such program,

"(iii) for which such employee is qualified, and

"(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not late than 10 days after the day on which a written request for such determination is received by the agency.

"§ 6128. Compressed schedules; computation of premium pay

"(a) The provisions of sections 5542(a), 5544(a), and 5550(2) of this title, section 4107(e)(5) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

"(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provide by the applicable provisions referred to in subsection (a) of this section. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

"(c) Notwithstanding section 5544(a), 5546(a), or 5550(1) of this title, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

"(d) Notwithstanding section 5546(b) of this title, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which in not in excess of the basis work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of this title, as applicable, or the provisions of section 7 of the Fair Labor Standards Act (29 U.S.C. 207) whichever provisions are more beneficial to the employee.

"§ 6129. Administration of leave and retirement provisions

"For purposes of administering sections 6303(a), 6304, 6307(a) and (c) 6323, 6326, and 8339(m) of this title, in the case of an employee who is in any program under this subchapter, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

"§ 6130. Application of programs in the case of collective bargaining agreements

"(a)(1) In the case of employees in a unit represented by an exclusive representative, any flexible or compressed work schedule, and the establishment and termination of any such schedule, shall be subject to the provisions of this subchapter and the terms of a collective bargaining agreement between the agency and the exclusive representative.

"(2) Employees within a unit represented by an exclusive representative shall not be included within any program under this subchapter except to the extent expressly provided under a collective bargaining agreement between the agency and the exclusive representative.

"(b) An agency may not participate in a flexible or compressed schedule program under a collective bargaining agreement which contains premium pay provisions which are inconsistent with the provisions of section 6123 or 6128 of this title, as applicable.".

"§ 6131. Criteria and review

"(a) Notwithstanding the preceding provisions of this subchapter or any collective bargaining agreement and subject to subsection (c) of this section, if the head of an agency finds that a particular flexible or compressed schedule under this subchapter has had or would have an adverse agency impact, the agency shall promptly determine not to—

"(1) establish such schedule; or

"(2) continue such schedule, if the schedule has already been established.

"(b) For purposes of this section, 'adverse agency impact' means—

"(1) a reduction of the productivity of the agency;

"(2) a diminished level of services furnished to the public by the agency; or

"(3) an increase in the cost of agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).

"(c)(1) This subsection shall apply in the case of any schedule covering employees in a unit represented by an exclusive representative.

"(2)(A) If an agency and an exclusive representative reach an impasse in collective bargaining with respect to an agency determination under subsection (a)(1) not to establish a flexible or compressed schedule, the impasse shall be presented to the Federal Service Impasses Panel (hereinafter in this section referred to as the 'Panel').

"(B) The Panel shall promptly consider any case presented under subparagraph (A), and shall take final action in favor of the agency's determination if the finding on which it is based is supported by evidence that the schedule is likely to cause an adverse agency impact.

"(3)(A) If an agency and an exclusive representative have entered into a collective bargaining agreement providing for use of a flexible or compressed schedule under this subchapter and the head of the agency determines under subsection (a)(2) to terminate a flexible or compressed schedule, the agency may reopen the agreement to seek termination of the schedule involved.

"(B) If the agency and exclusive representative reach an impasse in collective bargaining with respect to terminating such schedule, the impasse shall be presented to the Panel.

"(C) The Panel shall promptly consider any case presented under subparagraph (B), and shall rule on such impasse not later than 60 days after the date the Panel is presented the impasse. The Panel shall take final action in favor of the agency's determination to terminate a schedule if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact.

"(D) Any such schedule may not be terminated until—

"(i) the agreement covering such schedule is renegotiated or expires or terminates pursuant to the terms of that agreement; or

"(ii) the date of the Panel's final decision, if an impasse arose in the reopening of the agreement under subparagraph (A) of this paragraph.

"(d) This section shall not apply with respect to flexible schedules that may be established without regard to the authority provided under this subchapter.".

"§ 6132. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

"(1) such employee's rights under sections 6122 through 6126 of this title to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

"(2) such employee's right under section 6127(b)(1) of this title to vote whether or not to be included within a compressed schedule program or such employee's right to request an agency determination under section 6127(b)(2) of this title.

"(b) For the purpose of subsection (a), the term 'intimidate, threaten, or coerce' includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6133. Regulations; technical assistance; program review

"(a) The Office of Personnel Management shall prescribe regulations necessary for the administration of the programs established under this subchapter.

"(b)(1) The Office shall provide educational material, and technical aids and assistance, for use by an agency in connection with establishing and maintaining programs under this subchapter.

"(2) In order to provide the most effective materials, aids, and assistance under paragraph (1), the Office shall conduct periodic reviews of programs established by agencies under this subchapter particularly insofar as such programs may affect—

"(A) the efficiency of Government operations;

"(B) mass transit facilities and traffic;

"(C) levels of energy consumption;

"(D) service to the public;

"(E) increased opportunities for full-time and part-time employment; and

"(F) employees' job satisfaction and nonworklife.

"(c) With respect to employees in the Library of Congress, the authority granted to the Office of Personnel Management under this subchapter shall be exercised by the Librarian of Congress.".

(b) The table of sections at the beginning of such chapter is amended—

(1) by inserting before the item relating to section 6101 the following:

"SUBCHAPTER I—GENERAL PROVISIONS";

and

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

"SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES

"Sec.
"6120. Purpose.
"6121. Definitions.
"6122. Flexible schedules: agencies authorized to use.
"6123. Flexible schedules; computation of premium pay.
"6124. Flexible schedules; holidays.
"6125. Flexible schedules; time-recording devices.
"6126. Flexible schedules; credit hours; accumulation and compensation.
"6127. Compressed schedules; agencies authorized to use.
"6128. Compressed schedules; computation of premium pay.
"6129. Administration of leave and retirement provisions.
"6130. Application of programs in the case of collective bargaining agreements.
"6131. Criteria and review.
"6132. Prohibition of coercion.
"6133. Regulations; technical assistance; program review.".

SEC. 3. Section 3401(2) of title 5, United States Code, is amended by inserting "(or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title)" after "week".

SEC. 4. (a) Except as provided in subsection (b), each flexible or compressed work schedule established by any agency under the Federal Employees Flexible and Compresed Work Schedules Act of 1978 (5 U.S.C. 6101 note) in existence on the date of enactment of this Act shall be continued by the agency concerned.

(b)(1) During the 90-day period after the date of the enactment of this Act, any flexible or compressed work schedule referred to in subsection (a) may be reviewed by the agency concerned. If, in reviewing the schedule, the agency determines in writing that—

(A) the schedule has reduced the productivity of the agency or the level of services to the public, or has increased the cost of the agency operations, and

(B) termination of the schedule will not result in an increase in the cost of the agency operations (other than a reasonable administrative cost relating to the process of terminating a schedule),

the agency shall, notwithstanding any provision of a negotiated agreement, immediately terminate such schedule and such termination shall not be subject to negotiation or to administrative review (except as the President may provide) or to judicial review.

(2) If a schedule established pursuant to a negotiated agreement is terminated under paragraph (1), either the agency or the exclusive representative concerned may, by written notice to the other party within 90 days after the date of such termination, initiate collective bargaining pertaining to the establishment of another flexible or compressed work schedule under subchapter II of chapter 61 of title 5, United States Code, which would be effective for the unexpired portion of the term of the negotiated agreement.

SEC. 5. The amendments made by this Act shall not be in effect after three years after the date of the enactment of this Act.

SEC. 6. (a) Section 6106 of title 5, United States Code, is amended by striking out the period and inserting in lieu thereof a comma and "except that the Bureau of Engraving and Printing may use such recording clocks.".

(b) The amendment made by this section shall take effect October 1, 1982. Section 5 of this Act shall not apply to the amendment made by this section.

Mr. STEVENS. I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

IRANIAN PERSECUTION OF THE BAHÀ'I COMMUNITY

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 636, Senate Concurrent Resolution 73.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follow:

A concurrent resolution (S. Con. Res. 73) to condemn the Iranian persecution of the Bahà'i community.

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

Mr. ROBERT C. BYRD. There is no objection, Mr. President.

The Senate proceeded to consider the concurrent resolution, which had been reported from the Committee on Foreign Relations, with amendments, as follow:

On page 2, line 3, strike "Bahàis", and insert "Bahà'is";

On page 2, line 5, strike "Bahàis", and insert "Bahà'is"; and

On page 2, line 7, strike "Bahàis", and insert "Bahà'is".

Mr. HEINZ. Mr. President, we are considering today a resolution which condemns the Iranian Government's persecution of the Bahà'i community. The extensive murder and persecution currently inflicted by the Khomeini regime is an immoral and unjustifiable continuing denial of the most basic human rights—a denial which began with the opposition of the Islamic clergy over 135 years ago. The extent of the mistreatment presently being applied is so great that it demonstrates the urgency of the matter and the need for us to speak out forcefully. Passage of this resolution, Mr. President, will show the Congress concern and anger regarding this tragic situation.

The reported 113 executions of Bahà'i citizens during the past year only too vividly illustrates the extent to which the Khomeini government is attempting to exterminate the Bahà'i religion. On August 21, 1980, all nine members of the Bahà'i National Assembly were abducted along with two other officers of the faith by the Iranian Revolutionary Guard. Since that time they have not been found, and must be presumed dead. Eight members of the subsequent national assembly were also abducted by revolutionary guards and then secretly executed in Tehran. And in January 1982, six of the nine members of the Tehran Assembly were executed. That the leaders of the Bahà'i struggle for life and freedom are the primary victims of this persecution is by no means coincidental, for I believe that there is a conscious effort on the part of the Iranian Government to destroy the Bahà'i leadership, and thus cripple the entire community. It has become very hard, if not impossible, for the 300,000 Bahà'is currently in Iran to live under the rule of the Khomeini regime.

On May 25, 1982, the chairman of the National Spiritual Assembly of the Bahà'is of the United States, Judge James Nelson, testified before the House Subcommittee on Human Rights and International Organizations. The following are some of the more disturbing examples of Iranian persecution during the past 3½ years as told by Mr. Nelson:

In Miandoab, a mob, after destroying the local Bahà'i center, fell upon a man and his son, dragged their bodies through the streets, and chopped them up into small pieces that were finally consigned to flames.

In Yazd, following the execution of seven Bahà'is, including an 85 year-old man, the authorities presented their widows with bills to cover the cost of the bullets used to execute them.

In Tehran, the High Court of Justice upheld a verdict of the Shiraz Revolutionary Court that cited membership in Bahà'i Assemblies as a crime punishable by death. Since this verdict more than 60 Bahà'i leaders have been executed.

In addition to these violent tragedies, the holiest shrine in Iran for the Bahà'is and a place for pilgrimage for the Bahà'is of the world, the house of Bab, was destroyed. Many other holy places, historic sites, and sacred writings have been confiscated and/or destroyed by government authorities. Even though the Bahà'is community has lost many of its leaders, its shrines, and its sacred texts, it has not lost its spirit to survive. The Bahà'is are not restless political revolutionaries but are people striving to hold on to their most fundamental human rights including the freedom of religion.

For many decades they have struggled against this unfair oppression alone, but now as their plight worsens, it is time for our support. As a nation committed to the human rights of all we cannot understand how a nation can inflict such torture and execution on members of their own community. Apparently, since the Bahà'i religion is not recognized under the Iranian

constitution they are, as in the words of Mr. Nelson, "not entitled to protection under the law, and have no opportunity to defend themselves against false accusations." No person or group deserves to be treated so inhumanly; however, the present evidence suggests that the Iranian Government will stop at no end in its efforts to wipe out the Bahà'i faith, and will continue to pursue a policy of violent oppression. As a nation committed to the human rights of all, we cannot tolerate a continuation of this injustice.

We have a responsibility to speak out on this matter, even though our relationship with the Government of Iran is, at best, strained. People of good conscience cannot ignore terror and murder, and perhaps by bringing it forcefully to the world's attention we can in some way influence the course of events in Iran.

This resolution, I believe, will do just that. By expressing America's concern and outrage over the Iranian Government's inhuman treatment, we have the opportunity to bring to light the Bahà'is' struggle. Considering recent developments, outside pressure is a very important, if not vital, method of helping the Bahà'is secure the basic human rights all people deserve. Iran should be held responsible for upholding the rights of all its citizens, including the Bahà'is, and I hope this resolution will demonstrate to Iran, as well as the rest of the world, our commitment to human rights and our determination that other nations protect their most fundamental freedoms.

Mr. President, I ask unanimous consent that the testimony of James F. Nelson, chairman of the National Spiritual Assembly of the Bahà'is of the United States, before the Subcommittee on Human Rights and International Organizations of the House Foreign Affairs Committee on May 25 be printed at this point in the RECORD.

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

PREPARED STATEMENT OF JAMES F. NELSON

My name is James F. Nelson. I am a judge of the Municipal Court of Los Angeles and the chairman of the National Spiritual Assembly of the Baha'is of the United States—the governing board of trustees elected by the 100,000 members of the American Baha'i community. With me is Firuz Kazemzadeh, professor of history and chairman of the Committee on Middle-Eastern Studies at Yale University, and vice-chairman of our National Assembly. Also with me is Glenford E. Mitchell, secretary and chief executive officer of our National Assembly. My colleagues and I appreciate the opportunity to testify today before the Subcommittee on Human Rights and International Organizations concerning the horrible acts of discrimination against the members of the Baha'i Faith in Iran.

For the last three-and-one-half years the Baha'i community of Iran has suffered relentless persecution. The horrors that are being inflicted upon it stagger the imagination. They constitute without any doubt a gross violation of all fundamental human rights.

In Miandoab, a mob, after destroying the local Baha'i center, fell upon a man and his son, dragged their bodies through the street, and chopped them up into small pieces that were finally consigned to flames.

In Nuk, a farming village near Birjand, fifteen masked men attacked a couple in their home at night, poured kerosene on the husband and set him on fire before forcing him to run for a few yards; finally they heaped wood upon him, burning him to death. His wife, subjected to similar treatment, died a few days later.

In Shiraz, 300 Baha'i homes were burned.

In Tehran, the dead bodies of executed Baha'is were written upon in large script. These ghoulish markings included the epithet "enemy of Islam."

In Yazd, following the execution of seven Baha'is, including an 85-year-old man, the authorities presented their widows with bills to cover the cost of the bullets used to execute them.

In Musa-Abad Village, two teenage girl students were abducted from school by their religion teachers. The parents have been unable to determine their fate. The teachers claimed that the girls had converted to Islam and refused to meet their Baha'i parents, a most unlikely story.

In Kashan, a teenage girl was abducted and forced to marry a Muslim despite her being under age.

In Shiraz, a high-ranking authority decreed that a Baha'i widow had no right to the pension due from her husband's insurance and could not retain custody of her children.

In Tehran, the High Court of Justice upheld a verdict of the Shiraz Revolutionary Court that cited membership in Baha'i Assemblies as a crime punishable by death. Since this verdict more than sixty Baha'i leaders have been executed.

The Iranian Baha'is have no recourse for redress of grievances. The constitution of the Islamic Republic does not recognize the Baha'i Faith, although similar religious minorities are recognized. Thus the patient and repeated appeals of the Baha'is to the authorities fall on deaf ears.

The Baha'i Faith originated in 1844. Ever since then its history has been marked with bloody periods of persecution. However, the new attacks began with the Islamic revolution in the autumn of 1978. Between September 25 and December 14 of that year the community recorded 112 instances of assault upon its members. There were lootings, burnings, beatings, murders, the desecration of cemeteries, the disruption of meetings—all intended to force Baha'is to deny their faith. The attacks spread rapidly to every province in Iran.

In the spring of 1979, when the Islamic Revolutionary Government of Ayatollah Khomeini was already firmly established, the campaign against the Baha'is assumed an official form and increased in magnitude: 2,000 men, women and children were driven from their homes and sought refuge in the deserts and mountains.

The House of the Bab, the holiest shrine in Iran for Baha'is and a place of pilgrimage for the Baha'is of the world, was seized on the pretext that it was being held by the authorities as a protection against mob attack. It was ultimately razed, the site obliterated by a hastily constructed road.

Nawnahalan company, which served as a savings and loan association primarily for the benefit of Baha'i children, was confiscated.

Omana company, which held in trust Baha'i community properties, including holy place, and historic sites that had been in the possession of Baha'is for more than a century, was similarly confiscated. As national and local properties were seized, so too were the sacred literature and records of the community.

The Ministry of Education issued a circular that those Baha'is who did not deny their faith should immediately be discharged from their jobs as teachers.

Baha'is were arrested without charge in various localities.

Soon it became apparent that the campaign directed against the Baha'i community was systematic and centrally directed. The Human Rights Commission of the Federation of Protestant Churches in Switzerland issued a report in Zurich on September 12, 1979 in which it described the methods and ends of the persecution as "administrative strangulation," "financial strangulation," "social and personal strangulation." Other reports, including the published dispatches of the correspondents for Reuters, The Associated Press, Le Monde, The New York Times, The Washington Post, The Los Angeles Times, signified the deepening crisis for the Baha'is of Iran. These reports combined to portend the imminence of genocide.

The final blow was to be the elimination of the leadership of the community. The primitive logic was clear: a body without a head could not survive. Beginning in 1980, shortly after the taking of American hostages, a rash of disappearances, arrests and executions of members of Baha'i local and national governing bodies shocked the community. The abduction of all nine members of the National Assembly on August 21 confirmed the rumor of a plot to wipe out the Baha'i leadership. The National Assembly members were meeting in a private home, when revolutionary guards forcibly took them away, along with two other officers of the Faith with whom they were conferring. No trace of them has been found and they must be presumed dead. Eight members of the subsequent National Assembly were similarly abducted and then secretly executed in Tehran last December. Six of the nine members of the Tehran Assembly met the same fate in January 1982. Scores of other local Assembly members have been executed in different parts of the country, some after torture. Scores more languish in jail, their fate unknown.

How do Iranian authorities justify the persecution of the Baha'is? The Baha'i Faith is not recognized in the constitution of the Islamic Republic. Therefore, Baha'is are not entitled to protection under the law and have no opportunity to defend themselves against false accusations. Baha'i marriages are not sanctioned by law. Therefore, their issue are not recognized as legitimate. Since Baha'i marriages are not recognized, Baha'i women are proclaimed prostitutes.

The Shiite clergy and the Government persistently accuse the Baha'i Faith of being a political conspiracy that serves the interests of foreign powers, including the United States. This, in spite of the fact that Baha'is strictly avoid disloyal and subversive activities.

The clergy and the Government claim that the Baha'is were favored by the regime of the Shah and ran his secret police, the SAVAK, when in fact the Baha'is were per-

secuted under Pahlavi rule and were frequently the SAVAK's victims.

The clergy and the Government accuse the Baha'is of serving the interests of Zionism and Israel. As proof they point to the fact that the Baha'i world center is located in Haifa, Israel and that Baha'is send money to that country. Indeed, the Baha'i world center is in Israel. This occurred because 114 years ago the government of the Ottoman Empire forcibly brought the founder of the Baha'i Faith and His disciples to Akka which was then in the province of Syria. Baha'u'llah, the founder of the Baha'i Faith, died in Akka and ever since then the twin cities of Akka and Haifa have been the spiritual center of the Baha'i Faith long pre-dating the State of Israel.

The allegations that the Baha'is transfer funds to Israel are made out of sheer mischief. Baha'i pilgrims from all parts of the world regularly travel to Israel to visit the Shrine of Baha'ullah, and other sites closely associated with their religion. Thousands of Iranian Baha'is made this pilgrimage during the time when they were permitted by law to visit Israel. In accordance with the clear requirements of the Baha'i Faith, its world spiritual and administrative centers must always be united in one locality. Accordingly, the world administrative center of the Baha'i Faith has always been and must continue to be in the Holy Land. It cannot be relocated for the sake of temporary political expediency. Contributions sent by Baha'is to their world center in Israel are solely and exclusively for the upkeep of their holy shrines and historic sites, and for the administration of their Faith. Almost all Baha'is in Iran have made such contributions, and this innocent action is used to support charges of their collusion with Israel.

These allegations are a sham. They are a smokescreen for religious fanaticism. Time and again the persecutors have confirmed by their own acts that their charges are groundless. The fake trials of the Baha'is never deal with the substance of any of these accusations, rather, the prosecutors attempt to learn about the operations of the Baha'i community and to force the defendants to recant their faith. In November 1981, a couple in whose home the members of the Tehran Baha'i Assembly met when they were arrested, were put on trial. The wife refused to recant, was sentenced to death for espionage and executed. Her husband recanted and was set free, fully absolved of the charge of spying.

In former and simpler times, the Shiite clergy did not need to invent justifications for their hatred of the Baha'i Faith. Back then they persecuted "heretics" and did not have to bother with notions of religious tolerance. Today, the clergy are as determined as ever to eradicate the Baha'i Faith, but feel they need elaborate justifications for their murderous acts.

The Shiite clergy's hatred of the Baha'is is at its root purely religious. The Muslim clergy hold that Muhammad was the last of a series of prophets going all the way back to Adam. The Baha'is, however, believe that the dialogue between God and man can never stop, that Baha'u'llah was a prophet of God equal to Muhammad and that in the future there will be others who will continue to bring divine revelation to humanity. Moreover, Baha'u'llah abrogated particular Islamic laws such as holy war, polygamy, certain dietary laws, and regulations concerning ritual purity.

Equally offensive to the Shiites is the Baha'i principle of the equality of men and women. Perhaps even more upsetting is the fact that the Baha'i Faith does not have a clergy but is, instead, governed by democratically elected bodies. Moreover, by promoting the unity of mankind as its pivotal principle and by envisioning a federation of nations under a world government, the Baha'i Faith shatters Shiite notions of exclusiveness and monopolistic possession of power.

Thus the Baha'is are frequently accused of being "enemies of Islam," which in an Islamic Republic also means enemies of the state. Yet it must be recognized that wherever the Baha'is have spread their religion, they have succeeded in spreading reverence for Islam and its prophet. Moreover, they have taught their fellow-believers in more than 100,000 localities around the globe to love Iran as the birthplace of their religion.

The situation in Iran also affects Baha'i communities in other countries. The anti-Baha'i propaganda spouted by the Iranian Islamic Republic spreads misunderstanding and suspicion of the Baha'i community far and wide. Even in the United States, American Baha'is had to battle against the power of mass communications as Iran's spokesmen have taken to the airways with half-truths and outright lies. There have been instances in which fanatical Islamic Iranians have made attempts to disrupt Baha'i activities in our own country. For example, on March 27 this year, the Baha'is of Morgantown, West Virginia were prevented from holding a prayer meeting when a group believed to be Iranian students threatened the management of the hotel in which the event was to have taken place. Similar incidents have occurred in Reno, Nevada and Minneapolis, Minnesota. It seems that some Iranian Muslims residing in the United States are attempting to intimidate the American Baha'i community and to create for it the same oppressive conditions existing in their own country.

We have cited in this brief statement the most telling evidences of the persecution of the Iranian Baha'i community, namely: the wholesale seizure of Baha'i sacred literature, the confiscation of national and local records, the expropriation of the community's properties and other assets, and the execution of its leaders. No extensive analysis is needed to determine the precise intention behind these acts. A community deprived of its inspiration, of its memory, of its material means and of its leadership becomes extinct. That these deadly afflictions have not succeeded in breaking the spirit of the Baha'i community is a clear indication of its deep-rootedness, its resilience and its determination to survive. But there are limits to human endurance, and it is our hope that before it is too late the governments and peoples of the nations will join in the effort to ensure the security of this innocent minority.

It is the task of the Baha'is of other lands to help their Iranian co-religionists by calling the attention of the world to the horrors that are being perpetrated in the name of religion. On many occasions in this century, the world averted its eyes when fanatics, demagogues, and dictators of various stripes massacred national, racial and religious minorities, or filled concentration camps with "class enemies," deprived of their most fundamental rights all those who dared to differ from their brutal orthodoxies even in thought. Decency, respect for human rights, and love of one's neighbor, be he ever so distant geographically, are as indivisible as peace. Humanity cannot afford to remain silent and by its silence to condone evil.

We, the Baha'is of the United States, feel no animosity toward the government of Iran. We feel genuine sympathy for the long-suffering Iranian people and wish for them a peaceful and happy future. However, we cannot remain indifferent to the sufferings of our Iranian brothers and sisters at the hands of bigots, who have no compunctions about shedding innocent blood. We call upon our fellow citizens and our elected representatives to proclaim that America will not acquiesce in oppression and that its perpetrators will have to answer for their deeds in the court of world opinion.

Mr. Chairman, again I thank you for giving time to the Baha'i community to present to your Subcommittee information about one of the most compelling cases of religious persecution in modern history.

● Mr. SARBANES. Mr. President, among the first to feel the sting of harassment and persecution in postrevolutionary Iran were the Bahá'is. More than 3 years ago Members of this body wrote to the Iranian Prime Minister expressing concern over the possibility of mistreatment of ethnic and religious minorities, the Bahá'is among them, because "Our own forebears settled in this country seeking refuge from political persecution on account of religious beliefs. This deep historical experience has generated concern among Americans when it appears that the freedom to worship is threatened in this country or elsewhere." Subsequent letters have expressed the same concern, and have sought reassurances following reports of destruction and confiscation of holy places, including the House of Bab in Shiraz, Bahá'i centers, sites and cemeteries. Recently there have been increasing reports of attacks on individuals, their families and homes.

These assurances sought have never been provided by the Government of Iran, and indeed the precarious situation of the Bahá'is has worsened with the passage of time. the Immigration and Naturalization Service, acknowledging the situation in Iran, has adopted a policy which recognizes adherence to the Bahá'i faith by an Iranian national as likely cause for persecution in Iran and therefore as prime facie grounds for asylum in the United States.

Mr. President, Senate Concurrent Resolution 73 condemns Iranian oppression of the Bahá'is and calls for an end to their harassment and persecution. Its message is urgent and I urge its adoption.●

● Mr. DENTON. Mr. President, I support Senate Concurrent Resolution 73, which condemns the persecution of the Bahá'i community in Iran.

The Bahá'is are not a foreign element within Iran; they are an indigenous religious faith. Since the inception of their faith in the middle 1800's, the Bahá'is have lived in a climate of constant repression characterized by frequent outbreaks of violence and

bloodshed. From its earliest days, the aims and purposes of the faith have been misrepresented in Iran, where it has been portrayed as a heretical sect, actively engaged in designs to overthrow Islam in its existing form.

Religious persecution against the Bahà'is has become institutionalized in Iran. The omission of the Bahà'i minority from the new constitution intensifies the adverse effects of denying recognition of the Bahà'i faith as an independent religion. The result has been to enable fanatical and criminal elements within the country to mount violent attacks against the Bahà'is and their property with almost complete assurance of impunity.

The Immigration and Naturalization Service has implemented a liberal policy toward granting U.S. asylum to Iranian Bahà'is who fear persecution if they return to Iran. The State Department regards the persecution of the Bahà'is as the most serious case of religious persecution in the world, and the "Country Report on Human Rights Practices for 1981," submitted to the Congress, states:

> The Bahà'is whose religion is not recognized by the constitution, continue to be singled out for especially harsh treatment, with the number of executions reaching well over a hundred. These executions included the secret execution in December of eight of nine members of the national leadership of the Bahà'i community as well as some local Baha'i leaders. In the case of some officially acknowledged executions of Bahà'is, the main charges were, basically, their adherence to the Bahà'i faith.

Mr. President, there are approximately 650 members of the Bahà'i faith in Alabama. I want this statement to be my message of support, support for their right to practice the religion of their choice and support for the resolution of condemnation for the persecution of their fellows in Iran.●

Mr. KENNEDY. Mr. President, I wish to speak in support of Senate Concurrent Resolution 73 which deplores the persecution of the followers of the Bahà'i faith by the authorities in Iran. The resolution condemns the persecution of the 300,000 Iranian Bahà'is and urges the cessation of the discrimination and executions from which the Bahà'is have suffered.

The persecution of the Bahà'is in Iran has a long history; however, it has greatly intensified since the Ayatollah Khomeini came to power. The Subcommittee on Human Rights and International Organizations of the Senate Foreign Relations Committee has heard moving testimony from several Bahà'i community leaders. This testimony outlined the gross violations of human rights to which the Bahà'is have been subjected. The Bahà'i faith is neither recognized nor respected by the government; the Bahà'i people are virtually denied all legal rights. Their homes and shrines are pillaged, their property confiscated, and their people brutally murdered and the bodies mutilated. In fact, the High Court of Justice in Tehran declared that being a member of the Bahà'i faith was a crime punishable by death. The Department of State's 1981 Report on Human Rights states:

> The Bahà'is, whose religion is not recognized by the constitution, continue to be singled out for especially harsh treatment, with the number of executions reaching well over one hundred. These executions included the secret executions of December 1980 of eight of the nine members of the national leadership of the Bahà'i community, as well as some local Bahà'i leaders. In the case of some officially acknowledged executions of Bahà'is, the main charges were, basically, their adherence to the Bahà'i faith.

As one who has long been committed to the cause of human rights in the world, I welcome the Senate's action in taking up that cause again in the name of the Bahà'is. The Iranian authorities have blatantly violated article 18 of the International Covenant on Civil and Political Rights to which they are a State party. Article 18 states:

> Everyone shall have the right to freedom of thought, conscience, and religion. The right shall include freedom to have or adopt a religion or a belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.

Amnesty International, the Human Rights Commission of the Federation of Protestant Churches in Switzerland, and other organizations and journals have documented and protested the inhumane treatment of the Bahà'i community in Iran. It is time the United States lend its strong support to the international appeals to the Iranian authorities to cease this brutal persecution of a peaceful people. In all cases where human rights are denied, we must not hesitate to denounce the violations and appeal for human justice. We cannot bear silent witness. We must speak out.

Mr. President, I am proud to cosponsor Resolution 73 in defense of the Bahà'is, and I urge my colleagues to support this call to human decency.

Mr. SASSER. Mr. President, as a cosponsor of Senate Concurrent Resolution 73, which condemns the Iranian persecution of the Bahà'i community, I want to commend my colleague Senator HEINZ for his leadership in bringing this matter to the attention of the full Senate. This is an issue that transcends national boundaries and sectarian interests. The cause of the continuing bloody assault by the Islamic regime in Iran against adherents of the Bahà'i faith is religious bigotry and hatred; those who have sought to destroy the Bahà'i faith make a practice of conjuring up accusations of political and criminal intentions on the part of the Bahà'i's in order to justify the campaign of murder and desecration that has continued for the 138-year history of the Bahà'i religion.

Senator HEINZ has submitted for the RECORD the testimony of Chairman James F. Nelson of the National Spiritual Assembly of the Bahà'is of the United States before the Subcommittee on Human Rights and International Organizations. I would urge my colleagues to read Mr. Nelson's remarks, for they tell the story not only of the origins of their faith in Iran through the prophet Baga'u'llah, but also of the lies and distortions that have been used over the years by Shiite clergy to discredit members of the Bahà'i community. The use of fabricated information to discredit members of a religion is not limited to this case or to Iran. The horrors the Bahà'is have suffered in Iran are one particularly brutal and egregious example of what can happen when religious hatred is allowed to grow and flourish. In Iran, it is a matter of national policy to exterminate the followers of Baga'u'llah, people whose affront to Islam is to renounce holy war polygamy, certain dietary laws and regulations concerning ritual purity, according to Mr. Nelson's testimony. The pivotal principle of the Bahà'i faith is the unity of mankind, and a belief that the dialog between God and man never stops.

Although there have been bursts of repression and murder in Iran against the Bahà'is since the faith was founded there, the days since the coming to power of the Ayatollah Khomeini have seen the most organized and relentless effort yet to destroy the Bahà'i community. Their most holy shrines have been eradicated, their literature and artifacts confiscated and burned, and their people kidnaped, tortured and murdered by the hundreds.

The United States must not sit by while the systematic annihilation of the followers of the Bahà'i faith continues. To endure this in silence is an abrogation of our fundamental responsibilities as human beings and as a nation committed to individual liberty and religious freedom. If the reality of the potential loss of these freedom seems too far away, I would refer my colleagues again to the testimony of James Nelson. He reports that on March 27 of this year:

> The Bahà'is of Morgantown, W.Va., were prevented from holding a prayer meeting when a group believed to be Iranian students threatened the management of the hotel in which the event was to have taken place. Similar incidents have occurred in Reno, Nev., and Minneapolis, Minn.

I urge immediate passage of Senate Concurrent Resolution 73 by the Senate, and continued expressions of outrage and concern by the U.S. Government and its citizens. This genocide must not go unchallenged.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution, as amended.

The concurrent resolution, as amended, was agreed to.

The preamble was agreed to

The concurrent resolution (S. Con. Res. 73), as amended, with its preamble, reads as follows:

S. CON. RES. 73

Whereas the Bahá'i community in Iran is experiencing persecution, harassment and disappearances of family members, job discrimination, seizure of bank funds, destruction of personal property, and torture;

Whereas current reports shows at least one hundred and thirteen executions of Bahá'is and Bahá'i religious leaders by the Government of Iran; and

Whereas the continued harassment and murder of Bahá'is demonstrates that the Government of Iran has launched a conscious effort to destroy the Bahá'i community: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress of the United States condemns persecution of the Bahá'is, holds the Government of Iran responsible for upholding the rights of all its citizens, including the Bahá'is, and expresses the hope that the discrimination and brutal executions within the Bahá'i community cease immediately. The Congress urges the Iranian Government to take whatever means are necessary to end this extermination of law abiding citizens who only wish to worship in freedom.

Amend the title so as to read: "To condemn the Iranian persecution of the Bahá'i community.".

The title was amended so as to read: "A concurrent resolution to condemn the Iranian persecution of the Bahá'i community."

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

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

The motion to lay on the table was agreed to.

BUDGET ACT WAIVER

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 583, Senate Resolution 384, concerning a budget waiver.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 384) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to consideration of title IV of S. 2487, which authorizes supplemental appropriations for fiscal year 1982 for intelligence activities of the United States.

The PRESIDING OFFICER. Is there objection to the present considering of the resolution?

Mr. ROBERT C. BYRD. There is no objection, Mr. President.

The resolution (S. Res. 384) was considered and agreed to, as follows:

S. RES. 384

Resolved, That pursuant to Section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to consideration of title IV of S. 2487, which authorizes supplemental appropriations for fiscal year 1982 for intelligence activities of the United States.

Such a waiver is necessary because title IV of S. 2487 authorizes supplemental appropriations for fiscal year 1982. Compliance with section 402(a) of the Congressional Budget Act of 1974 was not possible by May 15, 1981, because the amount of supplemental appropriations for fiscal year 1982 for intelligence activities of the United States was not known at that time.

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

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1983

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 683, S. 2487, the bill to authorize intelligence activities appropriations for fiscal year 1983.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2487) to authorize appropriations for the fiscal year 1983 for intelligence activities of the U.S. Government, for the Intelligence Community Staff and for the Central Intelligence Agency retirement and disability system, and for other purposes.

The PRESIDING OFFICER. Is there objection to this present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Armed Services with an amendment, as follows:

On page 3, line 3, after "Senate,", insert "as amended by the classified appendix of the Committee on Armed Services of the Senate".

So as to make the bill read:

S. 2487

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 "Intelligence Authorization Act for Fiscal Year 1983".

TITLE I—INTELLIGENCE ACTIVITIES

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. (a) Funds are authorized to be appropriated for the fiscal year 1983 for the conduct of intelligence activities of the following departments, agencies, and other elements of the United States Government:

(1) The Central Intelligence Agency and the Director of Central Intelligence.

(2) The Department of Defense.

(3) The Defense Intelligence Agency.

(4) The National Security Agency.

(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.

(6) The Department of State.

(7) The Department of the Treasury.

(8) The Department of Energy.

(9) The Federal Bureau of Investigation.

(b) The amounts authorized to be appropriated under subsection (a) for the conduct of the intelligence activities of the agencies listed in such subsection are those listed in the classified schedule of Authorizations for the fiscal year 1983 prepared by the Select Committee on Intelligence of the Senate, as amended by the classified appendix of the Committee on Armed Services of the Senate. Such Schedule of Authorizations shall be made available to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of Representatives, and to the President. The President shall provide for suitable distribution of the schedule, or of appropriate portions of the schedule, within the executive branch.

(c) During the fiscal year 1983, funds may not be made available for any activity for which funds are authorized to be appropriated by this Act unless such funds have been specifically authorized for such activity or, in the case of funds appropriated for a different activity, unless the Director of Central Intelligence or the Secretary of Defense has notified the appropriate committees of the Congress of the intent to make such funds available for such activity.

(d) Authorizations of appropriations provided in this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

TITLE II—INTELLIGENCE COMMUNITY STAFF

AUTHORIZATION OF APPROPRIATIONS; PERSONNEL

SEC. 201. (a) there are authorized to be appropriated for the Intelligence Community Staff for the fiscal year 1983, $15,200,000.

(b) The Intelligence Community Staff is authorized two hundred and ten full-time personnel as of September 30, 1983. Such personnel may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(c) Any employee of the United States who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such employee may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary duties as required by the Director of Central Intelligence.

(d) Except as provided in subsections (b) and (c), the activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

AUTHORIZATION OF APPROPRIATIONS

SEC. 301. There are authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for the fiscal year 1983, $91,300,000.

TITLE VI—SUPPLEMENTAL AUTHORIZATION FOR THE FISCAL YEAR 1982

SUPPLEMENTAL AUTHORIZATION OF APPROPRIATIONS

SEC. 401. In addition to funds authorized to be appropriated for the fiscal year 1982 for the conduct of intelligence activities of the United States Government, there are authorized to be appropriated supplemental funds for such fiscal year for such purpose. The amounts authorized to be appropriated under this title are those listed in the classified Schedule of Supplemental Authorizations for the fiscal year 1982 prepared by the Select Committee on Intelligence of the Senate.

TITLE V—GENERAL PROVISIONS

INCREASES IN EMPLOYEE BENEFITS

SEC. 501. There are authorized to be appropriated such amounts as may be necessary for increase in salaries, pay, and retirement or other benefits provided by law for employees for whose salary, pay, and benefits appropriations are authorized by this Act.

AUTOMATIC DATA PROCESSING EQUIPMENT OR SERVICES

SEC. 502. (a) Section 3 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c) is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding subsection (e) of section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(e)), the provisions of section 111 of such Act relating to the procurement of automatic data processing equipment or services shall not apply with respect to such procurement by the Central Intelligence Agency.".

(b) Subsection (e) of section 3 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403(e)), as added by subsection (a) of this section, does not apply to a contract made before the date of enactment of this Act.

UNAUTHORIZED USE OF DEFENSE INTELLIGENCE AGENCY NAME, INITIALS, OR SEAL

SEC. 503. (a) Chapter 4 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 140c. Secretary of Defense Use of Defense Intelligence Agency name, initials, or seal

"(a) No person may, except with the written permission of the Secretary of Defense, knowingly use the words 'Defense Intelligence Agency', the initials 'DIA', the seal of the Defense Intelligence Agency, or any colorable initation of such words, initials, or seal in connection with any merchandise, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Defense Intelligence Agency.

"(b) Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.".

(b) The table of sections at the beginning of chapter 4 of title 10 is amended by adding at the end thereof the following new item:

"140c. Secretary of Defense: Use of Defense Intelligence Agency name, initials, or seal.".

Mr. GOLDWATER. Mr. President, today marks only the sixth time that a separate budget authorization bill has been introduced for U.S. intelligence activities. The budget authorization process is now standard procedure and represents clear evidence that our constitutional responsibilities can be fulfilled while, at the same time, maintaining the confidentiality necessary for an effective intelligence system.

Mr. President, no other nation in the world does what we have been doing now for the past 6 years. No other nation in the world allows its legislative branch to oversee in detail and authorize the budget for its intelligence community. In my judgment, this is the best method that can be used to insure that there is accountability for intelligence activities in our Government. Annual authorization for intelligence is now an established practice in our Government, and I think that it works very well in insuring that we have strong and effective intelligence which is responsive to the needs of our Government and our Nation.

Earlier this year, the Budget Subcommittee of the Senate Select Committee on Intelligence held numerous closed hearings and we have engaged in hundreds of hours of staff interviews and briefings in putting together the bill which is on the floor today. We have examined in detail the budgets of the Central Intelligence Agency, the National Security Agency, and the intelligence activities of the Departments of Defense, State, and Treasury, and of the Federal Bureau of Investigation. Given the extremely short time period we have had to finish this process this year, I want to say that the cooperation and patience that was shown to us by all concerned was a tribute to the professional attitude and dedication of these people.

Mr. President, I thank my colleagues—in particular, Senator WALLOP and Senator INOUYE, the distinguished chairman and vice chairman of our Budget Subcommittee—for their hard work and effort in preparing this legislation. These two gentlemen and their colleagues on the Budget Subcommittee are responsible for the lion's share of the work and they are to be commended for it.

Also, I thank the staff of the Senate Intelligence Committee and acknowledge the fine work they have done in preparing and presenting this bill. In particular, Mr. President, I draw attention to the contribution of Danny Childs, our senior budget officer. Danny has served our committee in this capacity ably over the years—in fact, since the very first days of our existence. He has played a very important role in the budget authorization process and we are most grateful to him for his contribution. This year will be the last time that Danny will engage in this process, as he has been selected to serve in the very important post of Comptroller of the Central Intelligence Agency. This is a great honor and a great accomplishment for him, and we applaud him for being selected to this important position. On behalf of all the members of the committee, I wish him the very best in the future.

Mr. President, the Intelligence Authorization Act for fiscal year 1983 is an important piece of legislation which I urge my colleagues to support. I now yield the floor to Senator WALLOP and ask him to manage this bill on my behalf.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. WALLOP. Mr. President, on behalf of the Select Committee on Intelligence I send to the desk two unprinted amendments and ask for their immediate consideration.

The PRESIDING OFFICER. The Chair would like to inform the Senator that the committee amendment must be disposed of first, the committee amendment as reported from the Committee on Armed Services.

Mr. WALLOP. All right. I ask for the adoption of the committee amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Committee on Armed Services.

The amendment was agreed to.

UP AMENDMENT NO. 1049

(Purpose: To provide for equitable sharing by qualifying spouses of Central Intelligence Agency officers in retirement benefits earned as a result of service with the Agency)

Mr. WALLOP. Mr. President, I now ask that the two unprinted amendments be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Wyoming (Mr. WALLOP) proposes unprinted amendments en bloc numbered 1049.

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

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

The amendment is as follows:

On page 2, line 3, insert "titles I through V of" after "That".

At the bottom of page 7, add the following new title:

TITLE VI—RETIREMENT BENEFITS FOR CERTAIN FORMER SPOUSES OF CENTRAL INTELLIGENCE AGENCY EMPLOYEES

SHORT TITLE

SEC. 601. This title may be cited as the "Central Intelligence Agency Spouses' Retirement Equity Act of 1982".

ANNUITANTS

SEC. 602. Section 204 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) is amended—

(1) by inserting "former spouses," after "including surviving wives and husbands,"; and

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

"(4) '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 sections 251, 252, and 253 of this Act, at least five years of which were spent outside the United States by both the participant and the former spouse.".

COMPUTATION OF ANNUITIES FOR OTHER THAN FORMER SPOUSES

SEC. 603. Section 221 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees is amended—

(1) by inserting immediately above the section the following section heading: "COMPUTATION OF ANNUITIES FOR OTHER THAN FORMER SPOUSES"; and

(2) by amending subsection (b) to read as follows:

"(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 participant shall receive a reduced annuity and provide a survivor annuity for his or her spouse under this subsection or former spouse under section 222(b), or a combination of such annuities, as the case may be.

"(B) 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 222(b) if the spouse later qualifies as a former spouse under section 204(b)(4)), or to reduce such survivor annuity under this section (or section 222(b)) by designating a portion of the annuity of the participant as the base for the survivor benefit. If the marriage is dissolved following an election for such a reduced annuity and the spouse qualifies as a former spouse, the base used in calculating any annuity of the former spouse under section 222(b) may not exceed the portion of the participant's annuity designated under this subparagraph.

"(C) If a participant or former participant has a former spouse, the participant (or former participant) and such former spouse may jointly elect by spousal agreement under section 263(b) to waive a survivor annuity under section 222(b) for that former spouse.

"(D) The Director may prescribe regulations under which a participant or former participant may make an election under Subparagraph (B) or (C) without the participant's spouse or former spouse if the participant establishes to the satisfaction of the Director that the participant does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse or fromer spouse.

"(2) The annuity of a participant or former participant providing a survivor benefit under this section (or section 222(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 222(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 222(b) may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 222b(4)(B)

"(C) An annuity payable from the fund to a surviving spouse under this paragraph shall commence on the day after 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 dissolved by death, annulment, or divorce if any lump sum paid upon termination of the annuity is returned to the fund.".

RIGHT OF ELECTION

SEC. 604. Section 221 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended by section 603 of this title, is further amended in subsection (g)—

(1) by inserting "(1)" after "(g)";

(2) by redesignating paragraphs (1) and (2) as clauses (A) and (B), respectively; and

(3) by adding at the end thereof the following:

"(2) A 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 someone other than that participant.".

SUPPLEMENTAL ANNUITIES; RECOMPUTATION OF ANNUITIES

SEC. 605. Section 221 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended by sections 603 and 604 of this title, is further amended by adding at the end thereof the following:

"(m)(1) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under subsection 271(b) 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 whom the annuitant subsequently married.

"(2) The Director shall issue regulations to provide for the application of paragraph (1) of this subsection and of subsection 271(b) in any case in which an annuitant has a former spouse who was married to the participant at any time during a period of recall service and who qualifies for an annuity under section 222(b).

"(n) 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, subject to any reduction required to provide a survivor benefit under section 222 (b) or (c). Upon remarriage the retired participant may irrevocably elect, by means of a signed writing received by the Director 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 222(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).

"(o) The director shall, on an annual basis—

"(1) inform each participant of his or her right of election under subsections (f)(2) and (n); 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 222.".

COMPUTATION OF ANNUITIES FOR FORMER SPOUSES

SEC. 606. Part C of title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees is amended by adding at the end thereof the following:

"COMPUTATION OF ANNUITIES FOR FORMER SPOUSES

"SEC. 222. (a)(1) Unless otherwise expressly provided by any spousal agreement or court order under section 263(b), 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 throughout such creditable service, equal to

a proportion of 50 percent of such annuity which is the proportion that the number of days of the marriage of the former spouse to the participant during periods of creditable service of such participant under this Act bears to the total number of days of such creditable service.

"(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 (4)(B)).

"(4)(A) The annuity payable to any participant shall be reduced by the amount of an annuity under this subsection paid to 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 title, and in calculating any reduction in the annuity of the participant to provide survivor benefits under subsection (b) or section 221(b).

"(B) If any annuitant whose annuity is reduced under subparagraph (A) is recalled to service under section 271, or reinstated or reappointed, in the case of a recovered disability annuitant, or if any annuitant is reemployed as provided for under sections 272 and 273, 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.

"(5) 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 date the participant would qualify on the basis of his or her creditable service for an annuity under this title (other than a disability annuity) or the date the disability annuity begins, whichever is later, 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.

"(6) An annuity under this subsection shall be treated the same as a survivor annuity under subsection (b) for purposes of section 221(g)(2) or any comparable provision of law.

"(b)(1) Subject to any election under section 221(b)(1)(C) and unless otherwise expressly provided by any spousal agreement or court order under section 263(b), 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 221(a), or

"(B) if not married to the participant throughout such creditable service, equal to a proportion of 55 percent of the full amount of such annuity which is the proportion that the number of days of the marriage of the former spouse to the former participant during periods of creditable service of such former participant under this Act bears to the total number of days of such creditable service.

"(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 after 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 dissolved by death, annulment, or divorce 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 221(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 221(a).

"(B) Once a survivor annuity has been provided for under this subsection for any former spouse, a survivor annutiy for another individual may thereafter be provided for under this subsection (or section 221(b)(3)) with respect to a participant or former participant only for that portion (if any) of the maximum available base for survivor benefits which is not committed for survivor benefits for any former spouse whose prospective right to such has not terminated by reason of death or remarriage.

"(C) After the death of a participant or former participant, a court order under section 263(b) may not adjust the amount of the annuity of any former spouse under this section.

"(5)(A) For each full month after a former spouse of a participant or former 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 receipt of notice of the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 221(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 spousal agreement or court order under section 263(b) 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 Director.

"(2) Neither the total amount of survivor annuity or annuities 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 or section 221, shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 221(a).

"(3)(A) In accordance with regulations which the Director shall prescribe, the participant involved may provide for any annuity under this subsection—

"(i) by a reduction in the annuity or an allotment from the salary of the participant,

"(ii) by a lump sum payment or installment payments to the fund, or

"(iii) by any combination thereof.

"(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 Director.

"(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 reduction or salary allotment under subparagraph (A) is in effect for that spouse or former spouse, the annuity shall be recomputed and paid as if it had not been reduced or the salary allotment terminated, as the case may be, 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 Director.

"(D) Under regulations prescribed by the Director, an annuity shall be recomputed (or salary allotment terminated or adjusted), and a refund provided (if appropriate), in a manner comparable to that provided under subparagraph (C), in order to reflect a termination or reduction of future benefits under this subsection for a spouse in the event a former spouse of the participant dies or remarries before attaining age 60 and an increased annuity is provided for that spouse in accordance with this section.

"(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 291 shall not apply to any annuity under this subsection, unless authorized under regulations by the Director.

"(d) Section 221(l) 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 spousal agreement or court order under section 263(b), or an election under section 221(b)(1)(B), from the amount which would be calculated under subsection (a)(1) or (b)(1), as the case may be, in the absence of such spousal agreement, court order, or election; or

"(2) to any annuity payable under subsection (c).".

SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES

SEC. 607. Part C of title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended by section 606 of this title, is further amended by adding at the end thereof the following:

"ELECTION OF SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES

"SEC. 223. (a) Any participant or former participant in the Central Intelligence Agency Retirement and Disability System who has a former spouse not eligible for survivorship benefits under subsection (b) of section 222 may, by a spousal agreement, elect to receive a reduced annuity and provide a survivor annuity for such former spouse under that subsection.

"(b)(1) If the participant or former participant has not retired under such system, an election under this section may be made at any time before retirement.

"(2) If the participant or former participant has retired under such system, an election under this section may be made within such period after retirement as the Director may prescribe.".

DISCONTINUED SERVICE BENEFITS

SEC. 608. Section 234 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees is amended—

(1) by striking out in subsection (a) "Any" and inserting in lieu thereof the following: "Subject to any limitations contained in subsections (c) or (d), any"; and

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

"(c) Unless otherwise expressly provided by any spousal agreement or court order under section 263(b), the amount of a participant's or former participant's lump-sum credit under this section or under section 241 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 such 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 a proportion of 50 percent of such lump-sum credit which is the proportion that the number of days of the marriage of the former spouse to the participant during periods of creditable service of such participant under this Act bears to the total number of days of such creditable service.

Such lump-sum credit of the participant shall be reduced by the amount of the lump-sum credit payable to the former spouse.

"(d) A lump-sum payment under this section or section 241 of this Act may be paid by the Director to or for the benefit of a participant only upon written notification by the Director to a current spouse of the participant, if any, or any former spouse with whom the participant has not concluded a final, legally recognizable and enforceable property settlement or judgment incident to divorce proceedings, and the express written waiver of that spouse or former spouse has been received by the Director.".

SPOUSAL AGREEMENTS; COURT DECREES

SEC. 609. The Central Intelligence Agency Retirement Act of 1964 for Certain Employees is further amended—

(1) by striking out "None" in section 263 and inserting in lieu thereof "(a) Except as provided in subsection (b) of this section, none"; and

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

"(b) Payments under this Act which would otherwise be made to a participant or the child, survivor, or former spouse of a participant based upon the service of the participant shall be paid (in whole or in part) by the Director directly to the participant, or child, survivor, or former spouse of the participant according to the terms of any legally enforceable spousal agreement or recognized court decree of divorce, annulment, or legal separation between the participant and that former spouse, or the terms of any recognized court order or court-approved property settlement agreement incident to any such spousal agreement or court decree of divorce, annulment, or legal separation. Any payment under this subsection to a party to a spousal agreement, or court decree of divorce, annulment, or legal separation or property settlement agreement incident thereto shall bar recovery by any other person.".

TECHNICAL AMENDMENTS

SEC. 610. The Central Intelligence Agency Retirement Act of 1964 for Certain Employees is further amended—

(1) by striking out in the first sentence of section 221(f) "Any" and inserting in lieu thereof the following: "Subject to the rights of former spouses under sections 221(b) and 222, any"; and

(2) by adding to subsection 221(1) the following paragraph:

"(4) This subsection shall not apply to the extent provided in section 222(d).".

COMPULSORY CONTRIBUTIONS

SEC. 611. Section 211 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees is amended by adding at the end thereof the following new subsection:

"(c) Amounts deducted and withheld from the basic salary of a participant under this section from the beginning of the first pay period after the participant has completed 35 years of creditable service computed under sections 251 and 252 (excluding service credit for unused sick leave under section 221(h)), together with interest on these 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 252(b), 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 order of precedence specified in subsection 241(b)(1)), subject to any restrictions on lump sums under section 234 of this Act regarding notification or consent of a spouse or prior spouse to such payments, or the participant may use these sums to purchase an additional annuity in accordance with section 281, or any other elective benefits authorized by this Act, including additional retirement or survivorship benefits for a current or former spouse or spouses.".

CIVIL SERVICE EMPLOYEES

SEC. 612. The Central Intelligence Agency Act of 1949 (50 U.S.C. 403a-m) is amended by adding at the end thereof the following new section:

ANNUITIES FOR FORMER SPOUSES OF CERTAIN EMPLOYEES

"SEC. 14. (a) Any qualified former spouse of an employee of the Agency, which employee is a participant in the Civil Service Retirement and Disability System, is entitled to an annuity under such retirement system—

"(1) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

"(2) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 50 per centum of such annuity.

"(b) Any qualified former spouse of such employee of the Agency, which employee is a former participant in the Civil Service Retirement and Disability System and is survived by such former spouse, is entitled to an annuity under such retirement system—

"(1) if married to the participant throughout the creditable service of the participant, equal to 55 per centum of the full amount of the participant's annuity; or

(2) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 55 per centum of the full amount of such annuity.

"(c) Notwithstanding subsections (a) and (b), benefits for qualified former spouses shall—

"(1) commence and terminate, and

"(2) be subject to limitation or modification.

because of lump sum payments, spousal agreements, court orders, multiple spouses or former spouses, recall or reinstatement to service, or other circumstances in a manner comparable to the manner in which benefits for former spouses of participants are administered under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.

"(d) The Director of the Office of Personnel Management in consultation with the Director of Central Intelligence shall issue such regulations as are necessary to implement the provisions of this section.

"(e)(1) The provisions of this section regarding the rights of former spouses to any annuity under subsection (a) shall apply in the case of any individual who after the effective date of this section becomes a former spouse of an individual who separates from the Agency after such date.

"(2) Except to the extent that it is inconsistent with an election made which is comparable to an election under section 223 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, the provisions of this section regarding the rights of former spouses to receive survivor annuities under subsection (b) shall apply in the case of any individual who after the effective date of this section becomes a former spouse of a participant or former participant in the Civil Service Retirement and Disability System.".

EFFECTIVE DATE

SEC. 613. (a) Except as provided in subsections (b) and (c) of this section, this title shall take effect 90 days after the date of its enactment.

(b) The provisions of section 222(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as added by this title, regarding the rights of former spouses to an annuity shall apply in the case of any individual who after the effective date of this title becomes a former spouse of an individual who separates from service with the agency after such date.

(c) Except to the extent provided in section 223 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, the provisions of sections 221(b) (as amended by this title) and the provisions of subsections (b) and (c) of section 222 of such Act, as added by this title, regarding the rights of former spouses to receive survivor annuities shall apply in the case of any individual who after the effective date of this

title becomes a former spouse of a participant or former participant in the Central Intelligence Agency Retirement and Disability System.

On page 5, between lines 18 and 19, insert the following:

CEILING ON THE EMPLOYMENT OF CIVILIAN PERSONNEL BY THE CENTRAL INTELLIGENCE AGENCY

SEC. 402. Section 102 of the Intelligence Authorization Act for Fiscal Year 1982 (95 Stat. 1150) is amended—

(1) by striking out in the first sentence "The" and inserting in lieu thereof "(a) Except as provided in subsection (b), the"; and

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

"(b) The Director of Central Intelligence may authorize the employment of civilian personnel by the Central Intelligence Agency in excess of the number authorized by subsection (a) when he determines that such action is necessary to the performance of important intelligence functions, except that such additional number may not exceed two percent of the total number authorized for the Central Intelligence Agency by such subsection.

"(c) The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate of any authorization to increase civilian personnel of the Central Intelligence Agency under subsection (b).".

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

The amendment (UP No. 1049) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. WALLOP. Mr. President, it is my privilege again this year to introduce the intelligence authorization bill, which authorizes appropriations for U.S. intelligence activities for fiscal year 1983.

This legislation authorizes appropriations for those programs and activities of the U.S. Government which serve the intelligence needs of our national policymakers. This includes the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and the national intelligence activities of the Departments of Defense, State, Treasury, and Energy, and the Federal Bureau of Investigation. It also authorizes appropriations for the intelligence community staff, and the Central Intelligence Agency Retirement and Disability System, and includes certain legislative provisions to enhance the effectiveness of our intelligence agencies.

The committee views the annual budget authorization process as one of the principal means of fulfilling its oversight responsibilities, because of the insight and leverage it provides in influencing the long-term scope and direction of the U.S. intelligence efforts. This year, as in the past, the committee conducted a comprehensive examination of the intelligence budget request, which included testimony from the Deputy Director of Central Intelligence, key Defense Department officials, and each of the principal program managers.

The committee continues to believe that strengthening and improving the U.S. intelligence system should remain among our highest national priorities. As we have emphasized for the past 2 years, investment in intelligence must grow to insure the system is able to meet the challenges U.S. policymakers will face in the 1990's. Our assessment has not changed; we see no lessening of the worldwide competition with our principal adversaries, while at the same time, developments in the Third World and global issues will grow in importance to our national security.

Until recently, resource constraints, and to some extent the lack of a longer term strategic perspective, have seriously limited the intelligence community's ability to implement the steps necessary to insure they would be able to meet these challenges adequately. Initiatives undertaken during the past couple years are beginning to improve this situation, but further enhancements will be necessary. Fiscal year 1983 represents another important step in the revitalization of the U.S. intelligence system, which in many respects, has been living off capital investments undertaken a decade or more ago. Major investments have been provided for investments in analysis and analytic support systems; a new generation of technical collection systems; expanded human source collection abroad; improvements in our capabilities to counter foreign espionage and international terrorism; and modernization of the worldwide intelligence support infrastructure.

Major investments will continue to be required through the mid- to late 1980's to fully recapitalize the intelligence system and acquire the capabilities necessary to satisfy the broad range of policy needs likely to emerge in the decade ahead. The committee is persuaded that these investments are absolutely essential and that the appropriations recommended for fiscal year 1983 represent a prudent, measured strategy for achieving these goals.

Because of the sensitive nature of our intelligence operations, I cannot discuss the details of the committee's recommendations in open session. They have, however, been set forth in a classified committee report which has been made available to the members under the provisions of Senate Resolution 400.

Mr. President, intelligence is the Nation's first line of defense; it is also one of our major assets for maintaining world peace. In these perilous times, when miscalculation could have such devasting consequence, it is more important than ever that this Nation maintain a strong intelligence system. I strongly urge my colleagues support for this important legislation.

Mr. President, I would like to add to that statement my most sincere and heartfelt praise of a staff member of the committee, Dan Childs.

This completes his fifth budget on which he has worked well and carefully both for the majority and the minority, and in both hats and in both capacities.

He is competent; he moves on to a job that will benefit us and the country as well, and I just want it to be known by my colleagues that this epitomizes the kind of staff service that all of the Senate should be privileged to have at all committee levels.

He has been loyal, competent, and he has been hard-working. He has been uncomplaining. He has been able to work with all members, with appointed staff persons within the committee and with the community.

I think he is held in the widest respect by those in the community with whom he has had to deal and make judgments on behalf of the Senate. I think he is as widely respected by those on the committee who have witnessed this effort, and surely the committee will miss him.

With that I yield to the Senator from Hawaii.

Mr. INOUYE. Mr. President, this amendment would add a title VI to the Intelligence Authorization Act and would provide for equitable sharing by qualifying spouses of CIA officers in retirement benefits earned as a result of service with the Agency. The text of the amendment is exactly the same as the provisions of S. 2422 as amended, which has been ordered favorably reported from the Select Committee on Intelligence.

PURPOSE

The purpose of this bill is to secure an equitable share of retirement benefits for qualified spouses of Central Intelligence Agency (CIA) employees who have served a substantial period overseas. These benefits include retirement annuities, survivor payments, and lump-sum disbursements from the retirement fund. This bill would help assure that the spouses of CIA officers, many of whom have made deep personal and professional sacrifices by following their intelligence officer-partners abroad in difficult service, will not be left without means of support in their retirement if their marriages were later to end in divorce.

Under the bill, an individual who has been married for more than 10 years to a CIA officer would presumptively be entitled to a pro rata share of the officer's retirement benefits, up to 50

percent, based on the length of the marriage during the period of Agency service prior to divorce. The spouse would also be entitled to a similar share of the officer's survivorship benefits. These provisions are substantially equivalent to those the Congress adopted for Foreign Service spouses under section 814 and related provisions of the Foreign Service Act of 1980, Public Law 96-465. Only employees and spouses who have served for more than 5 years abroad together during the marriage would be covered by these amendments.

This bill will not only go a long way toward financially protecting CIA spouses who have followed their husbands or wives abroad, but will also help the Agency attract the best possible calibre of employee, such as those who otherwise would have two-career marriages. It will also help to highlight publicly the difficult personal and professional situation of our intelligence officers and their families who serve the Nation abroad.

While providing these assurances, the bill would not necessarily substantively alter the outcome of divorces involving CIA officers. The entitlement of the former spouse to a share of retirement or survivorship payments would be fully reviewable by courts in the context of dividing marital assets at the time of divorce. Today, retirement benefits of CIA officers are already includable in marital assets subject to apportionment by State divorce courts. The fact that the payments to former spouses would be made automatically from the retirement system, unless the divorce court orders otherwise, however, would make these benefits more dependable, particularly during the time before final judicial determination of the terms of the property division.

INTELLIGENCE COMMITTEE ACTION

During the winter of 1981-82, a number of CIA spouses and former spouses and other individuals associated with the Agency, including Mr. William Colby, former Director of Central Intelligence, approached Senator GOLDWATER, chairman of the Select Committee on Intelligence, and myself to request that legislation be enacted to make CIA retirement benefits, which are currently paid exclusively to the employee except when specified otherwise by court divorce order, automatically available in part to former spouses of these employees. Similar legislation had been enacted in 1980 for spouses of Foreign Service officers, who also serve for significant periods overseas, under section 814 and related provisions of the Foreign Service Act of 1980, Public Law 96-465. In response to these contacts, committee staff met with several of these individuals and also with CIA officials, notably Mr. Stanley Sporkin, Agency General Counsel, to discuss the concerns of CIA spouses and former spouses, especially in connection with divorce. As a result of this meeting and other actions, the CIA established a task force on spousal concerns, and this task force subsequently prepared a report on divorce-related problems and other issues.

Difficulties appear to be present in the equitable distribution of retirement benefits to former spouses and the handling of divorce-related requests by spouses or former spouses for Agency assistance in securing through judicial action a share of the retirement benefits of Agency employees. These difficulties were not completely resolved by Executive Order No. 12197 in 1980, which inter alia provided that retirement benefits under the CIA retirement and disability system (CIARDS), like civil service retirement benefits, would be subject to judicial apportionment in the context of the division of marital assets at the time of divorce. Specific problems in administering the Executive order and equivalent civil service provisions made it difficult for former spouses of CIA employees to obtain relief both during and after divorce proceedings. These difficulties were compounded by the overseas location of these spouses during much of their potential professional life, and also by the need of the Agency to retain secrecy concerning the details of the identities and assignments of its personnel who have operated in a clandestine capacity.

In response to these concerns, committee staff drafted S. 2422, which was introduced by myself on April 22, 1982, with Chairman GOLDWATER, Senator MOYNIHAN, vice chairman of the Select Committee, Senator DURENBERGER, and Senator HUDDLESTON as cosponsors. S. 2422 as introduced would have adopted the provisions of the Foreign Service Act of 1980 relevant to retirement benefits for former spouses for insertion in the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note). As such, it would have been applicable only to employees participating in the CIARDS retirement system; it would have covered all such employees, regardless of their actual service abroad. (Nearly all CIA employees with significant overseas service participate in CIARDS and not the Civil Service Retirement and Disability System (CSRDS), and virtually all CIARDS participants have served a substantial period abroad.)

The committee hearing on S. 2422, held on May 5, 1982, was closed due to the sensitive nature of some of the personal identities and case histories discussed. The testimony of several CIA spouses and former spouses was heard, as well as the testimony of high-ranking ex-officials of the CIA including Mr. Colby. The Agency was represented by General Counsel Sporkin as well as supporting staff from the Agency's personnel division. Testimony of several former CIA intelligence officers was also heard.

Out of concern that the views of current intelligence officers be heard despite the problems in reaching them and eliciting their testimony, and in order to obtain a clearer and more detailed statement of the Agency's position on the bill, I instructed at the May 5 hearing that the record be left open for 10 additional days to receive written comments. All comments so received have been considered by the committee's staff and included in the record regardless of when they were received. Scores of comments were received from CIA employees, both in the United States and abroad, in response to the Agency's solicitation of comments in an employee bulletin. The Agency itself also provided detailed written comments on the bill during the response period.

Approximately 75 Agency employees as well as current and former spouses of Agency employees commented on the bill. A majority of wives and former spouses supported S. 2422, as did some Agency officers who would be affected by the legislation. A substantial majority of employees, however, opposed the measure. I wish to record these views, which were received by the committee, but feel that S. 2422 properly addresses a situation in need of legislative attention. It should be recognized, furthermore, that many of the critical comments received by the committee concerned difficulties in communication of the terms of the bill to Agency employees.

In response to the comments received, and also in light of the passage of similar provisions by the House of Representatives in title VI of H.R. 6068, committee staff developed several amendments to S. 2422 as introduced. On June 17, 1982, the full committee met to markup S. 2422. Senator BENTSEN asked to have his name added as a cosponsor of the bill. The technical amendments to the bill were adopted by the committee in the markup and the chairman, without objection, instructed me to submit the measure and an accompanying report to the floor, subject to perfecting amendments by staff.

BASIC PROVISIONS

S. 2422 would essentially create an interest by spouses of CIA employees who have served 5 years abroad in the retirement benefits of the employees.

Under the bill:

(1) A former spouse of a current or former CIA employee would be entitled to a share of the employee's retirement benefits in proportion to the length of the marriage during the participant's period of creditable service, up to one-half of such benefits, provid-

ed both marriage partners spent 5 years abroad and the marriage was for a minimum of 10 years during creditable Government service.

(2) Qualified former spouses would also be eligible for prorated survivorship payments from the retirement fund, and the annuity of the participant would be automatically reduced in order to provide such payments (in accordance with the current formula), subject to an election otherwise by written consent of current marital partners or modification of such entitlements for former spouses through spousal agreements or divorce proceedings.

(3) Qualified former spouses would be provided a pro rata share of lump-sum retirement payments to CIA employees or former employees. Withdrawals of lump-sum amounts from the retirement fund by a participant would be subject to the express written consent of a current spouse or qualified former spouse with whom the participant is not a party to a final spousal agreement or judicial order concerning the division of marital assets.

(4) The provision of Executive Order No. 12197 (1980), in section 1-101(e), that payments from CIARDS are subject to divorce-related legal decrees, would be incorporated into statute and expanded to include spousal agreements as well. This would enable current marital partners to adjust the equities of their individual situation voluntarily through agreement as well as allow the court to adjust them in the context of legal proceedings surrounding divorce or separation. This provision would provide an "escape hatch" in those cases in which the distribution of benefits between the parties under the new provisions did not adequately reflect the true situation of the marriage.

(5) The act would become effective 90 days after enactment. The change in the disposition or retirement annuities described in paragraph (1) above would be applicable to spouses who are divorced after enactment and whose partners retire after enactment. The provision of survivorship benefits described in paragraph (2) above would apply to spouses who are divorced after enactment. Phasing in the new distribution of benefits in this way insures that no current financial situations are substantially affected and that the preconditions of existing divorce decrees are not materially changed.

RATIONALE OF THE AMENDMENT

The basic rationale of S. 2422 is to recognize the personal and professional sacrifices made by the spouses of CIA officers engaged in overseas service, especially in a clandestine capacity. The combination of overseas assignment and the clandestine nature of the work of the officer place special demands on the CIA spouse. In many ways, these demands and sacrifices are similar to these of Foreign Service spouses; but in some ways, they are even more severe. The CIA spouse may be subjected to greater psychological and social pressure as a result of the clandestine nature of certain activities. The following excerpt from the Foreign Relations Committee Report on the Foreign Service Act of 1980 highlights the need for this legislation:

The nature of a Foreign Service career makes it particularly difficult for spouses of members of the Foreign Service to attain any independent economic security. Not only do the frequent transfers among Foreign Service posts around the world militate against the establishment of an independent career for a spouse, but the opportunity for paid employment of any kind in most foreign countries for a spouse is minimal due to legal, language, and cultural barriers. Foreign Service spouses, therefore, have little opportunity either to establish pensions in their own right or to develop marketable skills which can be put to use when the need arises. At the same time, they often contribute countless unpaid hours to the Service. Under current law, in the event of divorce, a former spouse of a Foreign Service member is denied retirement or survivorship rights under the Foreign Service Retirement System. In contrast, under social security today, a nonworking spouse can acquire a pension based on the work of his or her spouse.

Equally unsatisfactory is the decision [which is the case today for CIA spouses] to leave this problem to a solution by court order. Access to the courts is expensive, particularly for individuals such as Foreign Service spouses who typically have no jobs, no insurance, and no other income to speak of. There is no real precedent for awarding to former spouses a percentage of pensions or survivor annuities. In addition, widely varying divorce laws from state to state would result in different awards of a Federal benefit for the same deprivations. Furthermore, there is little or no awareness among the legal community of the special problems faced by Foreign Service spouses. Finally, overseas service frequently results in cutting off these individuals from their community roots, thereby exacerbating the problems normally faced by women seeking divorce. In particular, this results in reliance on a husband's lawyer or on his recommendation. [This] section [,] . . . therefore, seeks to provide some protection for these individuals through the mechanism of the retirement system.

THE SPOUSES' CONTRIBUTION

Even more than in the ordinary case, however, the spouse of a CIA officer serving in a clandestine capacity may provide valuable support to his or her partner's professional service as well as make great personal sacrifices. Several factors illustrate this situation:

Spouses of CIA officers in clandestine service are routinely located abroad for long periods of time and are subject to continual transfers. They are required to live without the personal and social support groups that would often be available within the United States. Because of the nature of their service, some such spouses may not even be able to avail themselves of the social connections provided by American consular and diplomatic staff.

As a result of their foreign location and frequent transfers, such spouses often forego the opportunities for personal and professional development that are available to others. Living in foreign countries and moving from place to palce make finding a job difficult. Employment abroad for such spouses may be legally barred or unavailable. Even when employment is obtained, its short-term nature may make normal career advancement, as well as participation in retirement plans, impossible. Employment of a spouse in connection with activities at a CIA station abroad may be subject to nondisclosure agreements that prevent it from being included in personal résumés and similar forms of professional documentation. Also, certain occupations—such as writing—may be effectively foreclosed because they would tend to endanger the clandestine nature of the CIA officer's activities by increasing the visibility of the couple or even compromising certain information about the CIA officer's activities.

The spouse of a CIA officer in clandestine service also may provide more support to the officer, the family, and the country than do other spouses in similar situations. It has been estimated by the Association of American Foreign Service Women that the total hours spent by Foreign Service spouses in service-related activities amount to fully 127 hours or more. The spouse of a CIA officer may provide similar or even more substantial services.

A CIA spouse may have special social and personal obligations resulting from CIA activities undercover. Such activities may place special personal demands on the spouse. The occurence of clandestine activities may cause the spouse special problems in the management of the household.

While spouses may not become directly involved in clandestine activities, situations may arise when the nature of the activities undertaken inevitably affects the officer's spouse and family. Spouses and sometimes entire families are subject to social pressures resulting from the secrecy that the officer's work entails. There is also the inevitable fear by the spouses for the physical safety of their partners.

Occasionally officers in clandestine service become exposed, with unavoidable effects on the entire family. Some exposures have occured in recent years due to the "naming of names" of purported intelligence officers by persons deliberately involved in compromising

U.S. intelligence activities abroad; the Congress has recently moved to protect intelligence officers from exposure in this fashion through passage of the Intelligence Identities Protection Act of 1982.

The committee cannot reveal all the details of individual case histories that came before it during consideration of S. 2422, in the closed hearing and the classified record. Therefore, I cannot communicate publicly the full dimensions of the difficulties faced by CIA officers and their spouses in clandestine service abroad. To facilitate greater understanding of these matters, and the motivation of the present bill, however, the committee intends to release as much of this material as possible in a forthcoming public hearing record, after consultation with the CIA concerning appropriate classification.

PROCEDURAL DIFFICULTIES DURING DIVORCE

Secrecy concerns also interfere with the attempts of CIA spouses to claim equitable benefits from the Agency's retirement system. Former spouses of CIA officers who have been in clandestine service are specially disadvantaged in attempting to obtain an interest in their partner's retirement benefits. Like the spouses of foreign service officers, they have in many cases provided substantial support to the professional career of their partner. They have often relocated into circumstances in which their personal career development has been impeded. It would be difficult for them, like former Foreign Service spouses, to obtain full recognition of their contribution to the marital unit in judicial divorce proceedings. For them, as for other classes of Federal employees, court decrees requiring alimony payments by their former partners as part of an overall divorce decree may be defeated through procedural devices and jurisdictional means. For example, former partners may avoid making court-directed alimony payments by leaving the jurisdiction in which their former spouses are located, making collection time consuming and difficult. Such a situation can be especially harsh for former spouses who have vountarily neglected their own professional development and employment career to provide essential personal support for their partners.

In addition to these ordinary obstacles, former spouses of CIA officers in clandestine service may be prevented from revealing in open court the details of their personal circumstances during certain periods of the marriage. While special procedures—such as the use of cleared attorneys and in camera judicial proceedings—may be available to surmount such difficulties, these additional complications may make enforcing their rights in court difficult. Even though the CIA is willing in principle to provide essential security services in connection with such proceedings, such as clearing attorneys and providing sanitized employment records when necessary, the Agency could be overwhelmed if the volume of such requests were large. And for some former spouses any delay in legal proceedings may cause extreme difficulty.

Mr. President, I ask unanimous consent to include in the RECORD, at this point, the cost estimate for this bill prepared by the Congressional Budget Office in connection with the Select Committee's consideration of S. 2422, together with a section-by-section analysis.

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

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., June 29, 1982.

Hon. BARRY M. GOLDWATER,
Chairman, Select Committee on Intelligence, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2422, the Central Intelligence Agency Spouse's Retirement Equity Act of 1982, as ordered reported by the Senate Select Committee on Intelligence on June 17, 1982.

This bill would permit former spouses of Central Intelligence Agency retirees to receive a share of retiree annuity and survivor benefits. Since the bill would redistribute but not increase retiree benefits, it is expected that no significant cost to the government will be incurred as a result of enactment of this legislation.

Sincerely,

RAYMOND C. SCHEPPACH,
(For Alice M. Rivlin, Director).

SECTION-BY-SECTION ANALYSIS

SECTION 601—SHORT TITLE

This Act may be cited as the "Central Intelligence Agency Spouses' Retirement Equity Act of 1982."

SECTION 602—QUALIFIED FORMER SPOUSES

Sec. 2 amends section 204 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) ("CIARDS Act"), (1) to include certain former spouses as persons eligible to receive annuity payments; and (2) to provide that, in order to qualify for benefits under the provisions of this Act, a former spouse must be married to a participant for at least ten years during the period of creditable service by the participant, as defined in the relevant sections of the CIARDS Act, and that at least five of these years must have been spent in service outside the United States.

SECTION 603—COMPUTATION OF ANNUITIES FOR OTHER THAN FORMER SPOUSES

Sec. 3 amends the CIARDS Act to (1) insert a new heading prior to section 221; and (2) replace section 221(b) with corresponding provisions from the Foreign Service Act of 1980, P.L. 96-465, which conform with the effective provision of retirement benefits to former spouses under subsequent sections of this bill. The detailed amendments contained in this section correspond in purpose with those adopted in section 806(b) of the Foreign Service Act, and have been analyzed in a detailed manner in the report of the Foreign Relations Committee on that Act, Sen. Rep. No. 96-913, at page 62. The amendments to subsections 221(b)(1)(B)-(C) of the CIARDS Act have been changed in a minor respect, to delete the time limits contained in the Foreign Service Act for the election of the participant and his current or former spouse to waive survivor payments. This is in response to the experience of the State Department under the Foreign Service Act, as transmitted to the Select Committee by the CIA, which has revealed that such time limitations are unnecessary to effective administration of these two subsections.

SECTION 604—FORMER SPOUSE'S RIGHT OF ELECTION OF SURVIVORSHIP BENEFITS

This section provides that a former spouse eligible to receive a survivor annuity from the CIARDS fund shall only receive it if the former spouse elects to receive it instead of any other survivor annuity to which he or she may be entitled under CIARDS or another federal retirement system on the basis of a marriage to someone other than the participant whose survivorship rights are being claimed.

SECTION 605—SUPPLEMENTAL ANNUITIES; RECOMPUTATION OF ANNUITIES

The new subsection (m) to section 221 of the CIARDS Act adopted in this section corresponds to section 806(i) of the Foreign Service Act of 1980. It is intended to provide a survivorship annuity for the spouses of CIARDS participants who return to active service with the Agency under section 271 of the CIARDS Act. In such cases, the supplemental retirement annuity of the participant based upon his additional service would automatically generate a supplemental survivorship payment in favor of the last surviving spouse, to whom the participant was married at or after the time of reversion to retired status. Contributions for, and eligibility for, this supplemental benefit could be waived by a joint written election otherwise by the participant and the current spouse during the time of the participant's return to service with the Agency. A detailed explanation of this subsection is given in the report of the Foreign Relations Committee on the corresponding subsection of the Foreign Service Act of 1980, in Sen. Rep. No. 96-913 at page 63.

New subsection (n) to section 221 of the CIARDS Act is equivalent to section 806(j) of the Foreign Service Act of 1980, and is discussed in Sen. Rep. No. 96-913 at page 63. It provides for recomputation upwards of the basic annuity of an annuitant who is married upon retirement or thereafter, and who has chosen to provide a survivorship to his current spouse, if the annuitant subsequently becomes single through death or divorce. The subsection also allows an annuitant receiving his full share of annuity payments to elect to provide a survivor benefit in the case of remarriage.

SECTION 606—COMPUTATION OF ANNUITIES FOR FORMER SPOUSES

Section 606 adds a new section, section 222 to the CIARDS Act, entitled "Computation of Annuities for Former Spouses". This section establishes the right of qualified former spouses to a pro rata share of retirement and survivor payments under the Act (subsections (a)-(b)) and for the obtaining by the participant of additional survivorships (subsection (c)). Subsection (d) specifies that payments under the preceding subsections in favor of current or former spouses would not be subject to the provision of section 221(l) of the CIARDS Act that monthly payments from the CIARDS

fund must be greater than the smallest monthly primary insurance payment under Social Security.

Section 606 is completely derived from section 814 of the Foreign Service Act of 1980, P.L. No. 96-465. The specific provisions of this section are given a detailed analysis in the report of the Foreign Relations Committee on that Act in Sen. Rep. No. 96-913, at pages 66-70. Subsection (a)(4) has, however, been deleted; this is upon the suggestion of the CIA which transmitted comments by the State Department to the Select Committee, to the effect that the time limit contained in this subsection on the effectiveness of spousal agreements and court orders was unnecessary. The succeeding paragraphs of subsection (a)—(5), (6), and (7)—, have accordingly been renumbered (4), (5), and (6), respectively.

SECTION 607—ELECTION OF SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES

Section 7 adds a new section to the CIARDS Act, section 223. Subsection (a) of the new section provides that any current or former participant in CIARDS may elect to receive a reduced annuity in order to provide a survivor annuity to a former spouse not otherwise eligible for survivorship benefits under section 222(b), the new former spouse amendment relating to such benefits. Subsection (b) gives the procedural conditions for this election: Paragraph (1) provides that participants or former participants who have not yet retired under CIARDS may so elect any time before their retirement; paragraph (2) provides that the Director may prescribe a period for such election by retired participants and former participants.

The amendments contained in section 7 derive from section 2109 of the Foreign Service Act of 1980. They were adopted by the House and Senate conferees on that Act and are discussed on page 116 of the Conference Committee Report, H.R. Rep. No. 96-1432. The intent of this provision is to provide a vehicle by which participants and former participants in CIARDS may provide a survivorship from the System in favor of their former spouses who are not covered by the amendments due to the non-retroactive effect of these amendments.

SECTION 608—LUMP-SUM PAYMENTS; RIGHTS OF CURRENT AND FORMER SPOUSES

Section 8 inter alia amends section 234 of the CIARDS Act, on lump-sum payments from the CIARDS fund, by bringing it into conformity with section 815(i) of the Foreign Service Act of 1980, P.L. 96-465, concerning the right of former spouses to a pro rata share in lump-sum payments from the fund. Subsection (1) amends subsection 234(a) of the CIARDS Act by adding a phrase at the beginning of that subsection to the effect that payments under section 234 are subject to the limitations contained in the new subsections (c) and (d) added by this section concerning the rights of former and current spouses.

Subsection (2) adds a new subsection to section 234 of the CIARDS Act, subsection 234(c), which provides that a qualified former spouse is entitled to a pro rata share in lump-sum disbursements from the CIARDS fund in the same proportion as for retirement annuities and survivor payments under section 222(a)-(b). New subsection 234(c) is drawn directly from subsection 815(i) of the Foreign Service Act; a discussion of its effect is given on page 70 of the report of the Foreign Relations Committee on that Act, Sen. Rep. No. 96-913.

Subsection (3) adds a new subsection (d) to section 234 of the CIARDS Act, to the effect that the Director may make lump-sum disbursements to CIARDS participants or former participants only upon notification of any current spouse or former spouse with whom the participant or former participant has not concluded a final, legally recongizable and enforceable property settlement or judgment incident to divorce proceedings, and that the express written waiver of such spouse or former spouse be obtained before any lump-sum payment is made from the fund.

New subsection 234(d) is original and is intended to ensure that the rights of qualified former spouses to a share of retirement benefits from the fund are not defeated through lump-sum withdrawals by CIARDS participants of former participants. Such withdrawals could occur either before or at the time of retirement and could be made with the knowledge that divorce is impending. In requiring express written waiver of both spouses for lump-sum withdrawals from the CIARDS fund, the new provision is similar to the express written waiver of both spouses required for waiver of survivorship rights, contained in new section 221(b)(1)(B)-(C) of the CIARDS act, which is adopted in section 3 of the present bill.

SECTION 609—SPOUSAL AGREEMENTS; COURT DECREES

Section 9 amends section 263 of the CIARDS Act, (1) by providing that the prohibition on attachment, garnishment and other forms of legal process of benefits from the CIARDS fund is subject to the new subsection, (b), added to section 263, and (2) by adopting the new subsection. Subsection 263(b) provides that payments under the CIARDS Act which would be made under any other section of the Act shall be made to a participant or the child, survivor, or former spouse of the participant based on the service of the participant as specified in any legally enforceable spousal agreement or recognized court decree of divorce, annulment, or legal separation between the participant and that former spouse or the terms of any recognized court order or court-approved property settlement agreement incident to any such spousal agreement or court decree of divorce, annulment, or legal separation. It provides further that any such payment shall bar its legal recovery by any other person.

The amendments to section 263 of the CIARDS Act adopted in this section serve the same purpose as section 820(b) of the Foreign Service Act of 1980, with respect to modification by the participant and a current or former spouse through spousal agreement or judicial order incident to divorce or similar proceedings of a former spouse's share of CIARDS benefits. This section makes clear that the qualified former spouse's share of retirement annuities, survivor payments, or lump-sum disbursements from the CIARDS fund established under the other sections of this bill are fully subject to the action of the participant and current spouse through spousal agreement, or the court in divorce or similar proceedings involving a current or former CIARDS participant as one of the parties. This provision as adopted was drawn from the existing provision of law allowing the payment of CIARDS benefits to be affected by divorce, annulment, or legal separation-related judicial decrees, orders, or approved settlements—section 1-101(e) of Executive Order No. 12197.

This provision preserves the right of the state divorce courts thoroughly to review the relative positions of the parties at the time of divorce, annulment, or legal separation, and to make a determination of the distribution of marital assets de novo, without any binding substantive presumption concerning the proper shares of the parties thereto in benefits to be paid from the System. Thus the apportionment of CIARDS benefits specified in other sections of these amendments is not conclusive, but serves primarily as a procedural device to ensure that former spouses of participants or former participants do not experience undue difficulties in receiving their equitable share in marital assets either during the time prior to a final, judicially-approved property settlement or thereafter. Of course, the former spouse would be entitled to receive the prescribed share unless the divorce court finds that this division would be inappropriate, in accordance with the court's authority under applicable state law governing property division in connection with divorce to make a determination based on the circumstances of the marriage.

Operation of the provisions of this bill can also assist the Agency in its administration of such domestic matters. The bill provides for automatic payments that need not be challenged by the parties—which may create security problems for the Agency because of the potential need to divulge and discuss the conditions of Agency service in court and to draft a property order including the Agency-related retirement benefits—if it provides an accurate reflection of the circumstances of the parties to the divorce or if other marital assets could conveniently be divided so as to render the statutory division of retirement benefits fully equitable.

I wish to emphasize that the operation of these amendments is not intended to create a "federal law of divorce" through a substantive specification of the presumptive shares of husband and wife in retirement benefits earned through the service of one of the marital partners. The state divorce courts remain completely free under this section to reexamine the distribution of benefits established in the other sections and to divide them on equitable grounds, under applicable state law. These benefits have already been made a marital asset subject to determination by the state courts in the context of divorce, annulment, or legal separation through the operation of section 1-101(e) of Executive Order No. 12197, which was adopted to bring CIARDS into conformity with similar provisions applicable to the Civil Service System under a 1978 amendment to the System contained in P.L. 95-366 and codified as 5 U.S.C. 8345(j).

SECTION 610—TECHNICAL AMENDMENTS

This section makes two minor technical amendments, to conform other provisions of the CIARDS Act to the changes made in this bill. Subsection (1) adds a new phrase to subsection 221(f) of the CIARDS Act to make it clear that the election of a participant under subsection (f)(1) to receive a reduced annuity in order to create a survivorship is subject to the rights of former spouses under new sections 221(b) and 222. Subsection (2) repeats the provisions of subsection 222(d) that the restrictions of minimum payments from the fund contained in subsection 221(1) do not apply to the extent provided in section 222(d), which lifts these restrictions for former spouses, and in the case of additional survivor annuities elected under section 222(c).

SECTION 611—EXCESS CONTRIBUTIONS TO CIARDS

Currently under CIARDS an employee must continue to make the mandatory retirement contribution from his salary even after he has reached the maximum obtainable benefit level. This is not the case with the Civil Service Retirement and Disability System or with Foreign Service Retirement and Disability System, both of which permit the withdrawal of excess mandatory retirement deductions. The amendment in this section would add a new subsection 211(c) to the CIARDS Act to CIARDS participants in this situation the option of purchasing additional annuities or applying for a refund of excess contributions. Before either option could be exercized, however, the excess contributions would first be applied toward uncovered service.

The Committee was requested by the CIA to make this amendment to CIARDS in the context of the Committee's reexamination of the provisions of CIARDS in connection with the problem of providing benefits for former spouses. The Committee believed that this proposal is sound and fair and would bring the principles of the CIARDS system into line with the other federal retirement systems in this regard. Additional clauses have been added to the original CIA proposal to specify that refunds of lump sums would be subject to the express written waiver of a current or certain former spouses under section 234 and that excess contributions could be applied to purchase additional retirement or survivorship benefits for a current or former spouse or spouses as well as any other additional annuities in accordance with section 281.

SECTION 612—CIVIL SERVICE EMPLOYEES OF THE AGENCY

Section 12 was not present in S. 2422 as introduced April 22, 1982. As introduced the bill would have made detailed statutory amendments to the CIARDS Act to bring this System into conformity with the Foreign Service Retirement and Disability System with regard to the rights of former spouses to payments from the System. During the Committee's consideration of S. 2422 during its closed hearing on May 5, 1982, and in subsequent unclassified written comments, the CIA strenuously urged the Committee to include its Civil Service employees as well as its CIARDS participants if former spouse provisions were to be added to the latter retirement scheme. The Agency argued that if CIARDS were amended to incorporate these provisions, and not the Civil Service Retirement and Disability System, the retirement options available to Agency employees could be distorted. CIARDS was established as a preferential retirement system for Agency personnel in certain categories of employment, usually involving difficult overseas service, with improved retirement benefits and an earlier mandatory retirement age.

Section 12 was added to the bill by the Committee in response to these and other concerns. This section is modelled after similar provisions adopted by the House of Representatives as Title VI of its Intelligence Authorization Bill for Fiscal 1983, H.R. 6068. The House bill would establish the right of qualified former spouses to share in retirement and survivor payments from both CIARDS and the Civil Service System, for CIA employees who retire from the Agency. The House bill would instruct the Director of the Office of Personnel Management, in consultation with the Director of Central Intelligence, to issue regulations implementing these entitlements and bringing the administration of retirement systems for eligible CIA employees into conformity with the Foreign Service Retirement and Disability System in this regard.

In addition to its request that its Civil Service participants be included in the amendments contained in this bill, the CIA has also requested that it be given considerable regulatory flexibility in designing provisions for former spouses. Members of the Select Committee believe that the detailed provisions of S. 2422 concerning CIARDS are well-known in the context of the passage of the similar provisions of the Foreign Service Act in 1980 and in view of the one year experience of the Department of State in administering these provisions. The Committee was unwilling, however, to draft similarly detailed statutory provisions for CIA employees who participate in the Civil Service Retirement and Disability System. Therefore, the Committee decided to retain the detailed statutory amendments contained in S. 2422 as introduced with respect to CIARDS, with several amendments described hereinbefore, and to incorporate the present section to cover Civil Service participants, in accordance with the request of the Agency and the recent action of the House of Representatives.

SECTION 613—EFFECTIVE DATE

The amendments to CIARDS would take effect ninety days after the enactment of this bill. (For the similar effective date provisions for the amendments applicable to qualifying CIA employees who participate in the Civil Service System, see the new section 14(e) of the Central Intelligence Agency Act of 1949, 50 U.S.C. 403 a-m, adopted in section 14 of the present bill.) The automatic retirement benefits for qualified former spouses established in these amendments would become available to spouses who become divorced after the effective date, providing their partner separates from service with the CIA after this date. Thus the amendments to the retirement annuity provisions would not affect retirement benefits already being paid to retired CIARDS participants. The survivorship benefits would apply only to spouses who are divorced after the effective date.

Establishing the effective date in this way leaves certain former spouses, who are divorced before enactment of the amendments, without additional protection. While the Committee realizes that this group has certainly made an important contribution as a result of their marriages, it has decided not to pursue a statutory remedy in their favor at this time. This is because to do so would be retroactively to change the amount of payments already being received under CIARDS and possibly even to affect the validity of existing divorce decrees. At some future date the Congress may wish, nevertheless, to consider providing additional benefits to this group in recognition of their important service.

Survivorship benefits could, however, be secured for certain ineligible former spouses through a voluntary election by their former partners who are participants in CIARDS, through an election under section 7 of the present bill. CIARDS participants so electing could choose to receive a reduced annuity in order to provide survivor benefits for their ineligible former spouses.

Mr. INOUYE. Mr. President, I just wish to associate myself with the remarks of the Senator from Wyoming. Mr. Childs has been almost indispensable to the work of the committee. It has been my privilege to work with him from the very birth of the committee. We will miss him.

Mr. WALLOP. I yield to the Senator from New York.

Mr. MOYNIHAN. I thank my distinguished friend, the Senator from Wyoming. Mr. President, I wish to associate myself with the remarks made about Dan Childs. Mr. Childs is about to leave us. I would like to have the record show that he is leaving to become the comptroller of the Central Intelligence Agency which, I think, can be measured as not only an indication of his own abilities, but of the abilities of the staff of this committee over these recent years. Mr. Child's service as the committee's senior budget officer accounts in no small part for the extraordinarily distinguished, meticulous, and capable job which the Senator from Wyoming and the Senator from Hawaii have performed as a chairman and vice chairman, respectively, of our Budget Subcommittee.

The statement I have made on the departure of Mr. Childs is one more expression of gratitude for his service to his country, it being a characteristic of the work he has done that very few persons can know its quality, and only rarely can we publicly attest to it, and I am happy to have this occasion to join the chairman, vice chairman of the Budget Subcommittee in doing so. We wish him well in his new position at the CIA.

I would simply wish to state, Mr. President, that the country perhaps ought better to take note, as then Deputy Director of Central Intelligence, Adm. Bobby Inman, observed in an address to the American Newspaper Publishers Association in San Francisco on April 27, that from 1964 to the mid-1970's the number of personnel in the intelligence establishment declined by 40 percent at a time when the country may have had the impression of some billowing enterprise when it was, in fact, being reduced more sharply than any Government agency of which I am aware.

As the new DDCI, Mr. John McMahon, testified in his confirmation hearings, this downward trend was reversed in 1979, and we are moving back in the direction to a point—we have not reached that point, but we are moving back to where we were, if I may put it in those terms. This is certainly the judgment of the committee. And the fact that it has been carried forward with such skill, with such ease in terms of agreement and consensus, is a tribute in important part to the skill of the Senator from Wyoming and the Senator from Hawaii.

Mr. President, the annual budget authorization process is one of the prin-

cipal means by which the committee fulfills its duties. Senate Resolution 400, which established the select committee in May 1976, charges the committee with the responsibility "to make every effort to assure that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the Executive and Legislative branches to make sound decisions affecting the security and vital interests of the Nation." The budget process also is an important occasion for the committee to carry out a second significant duty specified in Senate Resolution 400—that is, "to provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States."

With the authorization bill for fiscal year 1983, the select committee takes another step in the rebuilding of our intelligence capabilities which, due to resource constraints in the past decade, have been at times less than adequate. I have already referred to Admiral Inman's speech, reported in the April 28, 1982, New York Times, in which he noted that the CIA lost 40 percent of its personnel from 1964 to the mid-1970's. It was this trend of decreasing resources which the committee has attempted to reverse. In this connection, it was gratifying to hear Mr. McMahon attest to the committee's contribution to the rebuilding process. At his May 27, 1982, nomination hearing, he noted that the "downward trend (in intelligence resources and capabilities)" has been reversed, and that this occurred "principally on the initiative of Congress" beginning in 1979 with the approval of the Intelligence Authorization Act for fiscal year 1980.

The committee continues to work in this spirit. This year, for example, the committee supplemented the administration's request for the FBI's foreign counterintelligence program by $17.6 million and 267 positions. The committee found that these additional resources are essential to enable the FBI to meet growing threats from hostile foreign intelligence services and international terrorists operating in the United States. I should also note that, where expenditures were determined to be unwarranted, the committee did not hesitate to make appropriate reductions or deletions.

I cannot, of course, refer in detail in open session to the matters which comprise the heart of the bill. It must suffice to say that, after reviewing thousands of pages of budget justification material, and hearing many hours of testimony, our committee agreed that the amounts provided in the bill are necessary to recapitalize the intelligence system and to acquire the capabilities needed to satisfy the broad range of challenges that lie ahead. As the committee report states, we are "persuaded that these investments are essential and that the appropriations recommended for fiscal year 1983 represent a prudent strategy for achieving these goals."

I should like to mention certain legislation which originated in the select committee, although it was not included in this year's authorization bill. On May 6, 1982, the Senate unanimously passed S. 2488, the Defense Intelligence Agency Personnel Management Improvement Act of 1982. This bill is intended to improve the management of civilian personnel within DIA by exempting DIA from civil service classification provisions, authorizing compensation to DIA civilian personnel, and authorizing the termination of such personnel when necessary or advisable in the interests of the United States. These provisions were included in the intelligence authorization bill passed by the Senate last year; however, only provisions establishing a senior executive service in DIA were adopted in conference and became law.

The additional authorities in S. 2488 would enable DIA to establish a flexible personnel system similar to that of CIA. As the select committee notes:

> DIA has been significantly handicapped in its ability to recruit and reward outstanding analysts and other intelligence specialists and otherwise to operate an effective civilian personnel system. If the benefits of "competitive analysis," a concept which both Administration and the Committee strongly support, are to be realized, it is imperative that DIA have analytical capabilities comparable to its sister agencies.

I urge the House of Representatives to take early and favorable action on this bill.

I should also like to draw the attention of my colleagues to S. 2422, the Central Intelligence Agency Spouses' Retirement Equity Act—a bill of which I am pleased to be a cosponsor and which the select committee recently ordered to be reported favorably to the Senate, as amended.

This legislation has afforded the select committee an unusual opportunity to ameliorate the financial burdens occasioned by the termination of marriages of CIA officers—burdens that have frequently fallen disproportionately on the spouses of those officers. This is a basic human problem, one which is easily overlooked in an age preoccupied with national technical means and other more glamorous aspects of intelligence work. It is, indeed, heartening that the committee has taken the time to address this issue.

We have received testimony from several individuals, ably represented by former Director of Central Intelligence William Colby and his wife Barbara, about the special pressures and hardships faced by spouses of CIA employees who served overseas in clandestine capacities. Unfortunately, many of these marriages have ended with the spouses finding themselves with little financial resources and no adequate legal remedy to acquire a share of the CIA officers' pension and survivor benefits. Under current law, there is no clear precedent for awarding a former spouse a percentage of these benefits.

Considerations similar to these led the Congress in 1980 to give former spouses of Foreign Service officers an equitable interest in the officer's retirement benefits. The case of CIA spouses is, if anything, stronger. As a consequence of the secret nature of the CIA officer's work, the spouse is generally subjected to greater psychological and social pressures than the typical Foreign Service counterpart. Moreover, in divorce related proceedings, CIA spouses are inhibited by security considerations from presenting evidence to courts which might support a claim against the officer's pension or other assets.

I wish to commend the distinguished former chairman of the select committee, Senator INOUYE, for taking the lead in sponsoring this legislation. As indicated by its title, S. 2422 is intended to provide some equity to CIA spouses. It would do so by entitling individuals who have been married for 10 or more years to CIA officers and who have spent more than 5 years abroad to share up to one-half of the officers' retirement annuities and a similar portion of their survivorship benefits. A former spouse would therefore become eligible to receive those payments following a divorce. This entitlement would be subject to such adjustment as a State domestic relations court may deem appropriate. Nevertheless, this bill should place the spouse in considerably stronger position in any court contest relating to the division of property.

This is a modest measure, but it serves the important purpose of recognizing the personal and professional sacrifices made by spouses of CIA officers engaged in overseas service. It is fully in keeping with the Foreign Service Act which established spousal interests in the pension system under that act. In this connection, I should like to point out that S. 888, the Economic Equity Act, which I joined Senator DURENBERGER in sponsoring, would provide spousal interests in the civil service a military pension systems similar to those provided in S. 2422. I am pleased that S. 2422 has been incorporated as an amendment to the Intelligence Authorization Act for fiscal year 1983. I am hopeful that this amendment soon become law and that we will thereby move closer to the day that all Government retirement systems contain this basic equity.

Mr. President, in conclusion, I wish to urge the Senate to support passage of the Intelligence Authorization Act for fiscal year 1983.

Mr. WALLOP. Mr. President, I obviously thank the Senator from New York for his kind remarks.

I would just say it is a measure of Mr. Childs' service and how he has gotten on with the community that he goes to the community. I mean what I said when I said he would serve the country in a fine capacity. I think it will benefit them more than it will us.

Mr. MOYNIHAN. Our loss is their gain.

Mr. HUDDLESTON. Mr. President, I urge my colleagues to support the Intelligence Authorization Act for fiscal year 1983 which provides a substantial enhancement for our Nation's intelligence capabilities. There is no question that the United States needs to strengthen its system for collecting and analyzing intelligence to cope effectively with the increasing complexity of world problems.

In the past it was considered sufficient if the intelligence community could do a reasonably good job of keeping track of our principal adversaries. In more recent years, however, we have all come to realize that the interests of the United States can be affected significantly by events in the far corners of the globe. The crisis over the Falkland Island is the most dramatic example. Who would have thought that an obscure place populated by so few people would engage the military forces of our closest ally in battle in the Western Hemisphere.

Good intelligence will not insure the wise use of American power or the conduct of an effective foreign policy, but it is an essential requirement. Without good intelligence on the military capabilities of contending nations, we cannot hope to assess the readiness of our own forces and those of our allies. Without confidential sources of information to penetrate the secrecy of closed societies, our policymakers cannot fully anticipate possible developments that could threaten our security and world stability. Without the best analytical talents, the vast store of information compiled by the agencies is useless.

The effort by the select committee to work with the intelligence community on ways to overcome their serious resource problems has been completely bipartisan. At the Budget Subcommittee level, the current subcommittee chairman, Senator WALLOP, and his predecessor and now vice chairman, Senator INOUYE, have given us outstanding leadership.

We would be remiss, however, if we did not mention the critical role in this process played by the former Deputy Director of Central Intelligence, Adm. Bobby Inman, who worked closely with the committee to take a truly comprehensive and long-range approach to planning for the future resource needs of the intelligence community.

I also want to take this occasion to express my deep personal appreciation to one of the most valuable staff members that any congressional committee could ever have, Mr. Daniel A. Childs, who has served as the senior budget officer for the select committee since 1976. Dan is leaving to become Comptroller at CIA, where he began his career. We will miss his talents, both as a specialist in the resource needs and management of the intelligence community and as a wise counselor on the conduct and direction of effective congressional oversight.

The last item I want to mention involves one aspect of the intelligence budget that has been of some concern to me. That is the FBI's foreign counterintelligence program, which involves investigations of hostile intelligence activities and international terrorism. The committee has voted to authorized an additional $17.6 million above the amount requested by the administration for this program.

Last February, shortly after the administration submitted its budget request, I wrote a letter to the President urging him to reconsider and submit an amendment providing for a substantial enhancement of FBI capabilities in this field. In my judgment the original request was seriously deficient and did not keep pace with increasing requirements for FBI investigations in this area.

The FBI estimates that about one-third of the Soviet bloc personnel in the United States assigned to embassies, consulates and the United Nations or other international organizations are full-time intelligence officers. Over the past 12 years the number of official representatives of governments which engage in hostile intelligence activities in the United States has increased by 400 percent. Immigrants and refugees from the Soviet Union and Cuba also pose a security threat. According to Attorney General William French Smith, Soviet and Cuban intelligence agents have been "a small but significant fraction of these recent refugees." Identifying these covert agents from among the tens of thousands of refugees imposes added burdens on the FBI program.

In December 1981, Attorney General Smith stated publicly that "the number of hostile agents has grown so much that our FBI counterintelligence agents are greatly outnumbered." But the administration's budget request for the FBI failed to enhance this vital element of the Nation's defense against hostile foreign powers.

Fortunately, the select committee's action on the FBI portion of the national foreign intelligence budget would provide the needed resources. It is my hope that this action will be reflected in the authorization and appropriations for the Justice Department when the Senate completes its action on the FBI budget for fiscal year 1983.

I am sure my colleagues on the select committee join in expressing the belief that the administration should adopt policies that insure the FBI is treated fairly in the allocation of intelligence community resources and that its foreign counterintelligence program does not suffer from arbitrary constraints that are not imposed by the Office of Management and Budget on the other principal elements of the national intelligence budget.

Mr. WALLOP. Mr. President, I thank the Senator from Kentucky.

● Mr. DURENBERGER. Mr. President, ask the average person to describe the typical CIA officer and chances are you will get a portrait of James Bond: the young, dashing, daring, and above all else, unmarried secret agency.

The fact is, of course, the typical intelligence officer is a far cry from the movie image. We have dedicated, hard-working men and women who, in many cases, are joined and reinforced in their commitment to our country by their spouses and families.

Today the Senate, by passing this amendment, is recognizing that national security intelligence is more than tradecraft and technology. Intelligence is also people, intelligence officers and their families, giving of themselves for the sake of their fellow citizens.

The human dimension of intelligence is terribly important. I have seen the conditions in which intelligence personnel must work. It is no bed of roses when you have to vary your routes to and from the office, in case terrorists are waiting for you. It is not easy, economically or emotionally, when spouses are sent to posts in which professional employment is forbidden by the laws or customs of the host country or difficult to arrange.

These tensions and frustrations often lead to substantial problems for American intelligence. Families are less willing to be moved around the world at the Government's whim. The strains on families are seen by more people as reasons not to pursue a career that is vital to our national security.

Many of these problems cannot be avoided, but we can ease some of the emotional and economic tensions. This amendment will assure the spouses of CIA officers overseas that their many years of service to their partners and their country will not end in a nightmare of poverty because of divorce.

The Economic Equity Act (S. 888), which I introduced last year, is a par-

allel measure covering the civil service and military retirement systems. I am pleased to have several Intelligence Committee colleagues as cosponsors of that bill. Just as I am sure that the amendment before us will pass, so I am sure that in time all Government retirement systems will contain this basic equity. It is the path of both fairness and practicality.

I am confident that this amendment will aid in the recruitment of bright, motivated people to serve the CIA. It will also lead to a better family life for CIA officers overseas, by giving spouses the assurance of some economic security for themselves and their families.

This amendment is more, of course, than just a response to personnel problems. It is tangible affirmation of the principle of fairness. A person who, for over 10 years, shares the life of an intelligence officer deserves to share in the economic security that the officer achieves during that time. A later divorce does not erase the spouse's contribution; we never regain those years.

Mr. President, today is the deadline for ratification of the equal rights amendment. This is a poignant time for millions of American women, who are regrouping to continue the fight for their full rights. What better time could there be for the Senate to demonstrate its commitment to economic equity? Let this CIA spouses' amendment be a sign that we keep the faith, that we still care.

We have asked a lot of our intelligence officers and their families. Over the years, they always have responded. Now we have the opportunity to recognize the contributions of CIA spouses and repay them by assuring equity. In good conscience, we can do no less.

Mr. President, I want to pay tribute to a fine person who will soon leave the staff of the Senate Select Committee on Intelligence. Mr. Daniel A. Childs, our chief budget officer, has made a tremendous contribution to the work of the committee. He has built up our budget analysis capability to the point that the committee is now a respected, responsible contributor to these critical decisions.

Danny Childs brought to the committee two decades of CIA experience and an ability to penetrate numbers that would cause other eyes to glass over. He has trained fellow staff members to recognize what is important. He also has reminded them to consider what is practical. His steadying influence will be sorely missed.

Danny Childs raises horses in his spare time, and he knows better than to turn down greener pastures. Soon he will become comptroller of the Central Intelligence Agency. There could be no finer person for that important and difficult position.

As Danny rides into the sunset toward Langley, he knows that soon we will be taking pot shots at him. But we will be smiling, happy to have such a fine and thoughtful person for a target.●

● Mr. BIDEN. Mr. President, I would like to state publicly my support for the Intelligence Authorization Act for fiscal year 1983 and congratulate Senators GOLDWATER, MOYNIHAN, WALLOP, and INOUYE for their hard and effective work on this bill. As with many other issues addressed by the Intelligence Committee the dedication and effort of the Members who provide leadership in the analysis and preparation of the budget goes widely unnoticed; so I would like to provide some measure of recognition to these colleagues most continuously involved in the authorization bill.

This authorization bill allows for a significant bolstering of curent intelligence programs. It also provides for the initiation of intelligence programs that promise to enhance the U.S. awareness and understanding of significant events around the world that have a vital bearing on our national interests.

The military activities of the Soviet Union and other potential—and we hope only potential—adversaries; the compliance of participating States to important arms control treaties; the capability to supply immediate and durable support to U.S. military commanders; indication and warning of potential military threats; and social and political change in the Third World and other areas of emerging interest; trends in the international economy and commerce; proliferation of sensitive and dangerous nuclear technologies; counterintelligence; international illicit drug traffic; international terrorism; support to the planning of U.S. diplomatic efforts and the design of the U.S. military's weapons: This is a long and still incomplete list of the indespensible labors of the U.S. intelligence community. They are accomplished with the skill of devoted intelligence personnel and the exploitation of diverse technological assets.

The prudent and regorously planned increase in the intelligence community's budget that this bill permits has bipartisan backing. It continues a trend that started in 1979 under President Carter's administration. The community's budget in 1979 had been preceded by almost a decade of dwindling support—both economic, popular, and political—for U.S. intelligence activities. A variety of events at the end of the 1970's brought home anew to the American people the significant role that accurate, objective, and reliable intelligence can play. This budget again expresses the appreciation which the Intelligence Committee has for the value of intelligence and the confidencee which it has in the men and women in the intelligence community.

I hope that this is one in a series of increased intelligence budgets also has a certain symbolic value. It should symbolize the importance which the Government of the United States attaches to an objective, dispassionate understanding of a broad range of events around the world that efect diverse peoples. It should symbolize the importance which this Government attaches to maintaining an intelligence community which is capable not only of reporting what happens around the world but also of analyzing for U.S. policymakers the relative importance that these events have for enduring national interests.

The intelligence community has been in the public eye of late. We have had two new Executive orders since December that govern the basic practices of our Soviet agencies. We have had a slew of State Department white papers—on Communist interferenc in Central America, chemical warfare in Southeast Asia, the Soviet military threat, and Soviet active measures—that rely in large measure on intelligence information and that, therefore, have provoked public debate on the uses and objectivity of intelligence. We have had a committee investigation of the financial affairs of the DCI. We have had the resignation of the almost universally acclaimed Admiral Inman and his replacement by the extremely well qualified John McMahon.

As a member of the select committee, it is often difficult to discuss these matters publicly—for the important facts are usually classified and, therefore, respect for the prerequisites of congressional oversight requires silence. There have been occasions, however, when without breaching confidences, it ha been possible to express quesioningabout or disagreement with certain trends, or judgments, or uses of intelligence. For example, the difficult issues posed to the United States by instability in Central America—which have lost some of the prominence of 5 months ago but none of their importance—raised nagging doubts in my mind about the adequacy, objectivity, and insightfulness of intelligence. As another example, the judgment and instincts of a few officials, and many of them not even in the intelligence community, was brouhgt in to no little doubt when early proposals for the Executive order on intelligence activities would have allowed excessive intrusiveness by the CIA within the United States.

But, in general and with great consistency, the intelligence community has provided absolutely indispensable support for our national interest. I would like to vouch for this as a member of the Intelligence Committee

and urge my colleagues to support this reasonable increase in funding for the national foreign intelligence program.●

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

The bill was ordered to be engrossed for a third reading and was read the third time.

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

The bill (S. 2487) was passed.

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

Mr. MOYNIHAN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WALLOP. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 6068, Calendar Order No. 585, the companion bill to the one just passed, S. 2487.

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

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 6068) to authorize appropriations for fiscal year 1983 for intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, to authorize supplemental appropriations for fiscal year 1982 for the intelligence and intelligence-related activities of the United States Government, and for other purposes.

Mr. WALLOP. Mr. President, I ask unanimous consent that all after the enacting clause of H.R. 6068 be stricken and that the language of S. 2487, as amended by the Senate, be substituted in lieu thereof.

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

Mr. WALLOP. Mr. President, I know of no further amendments and request third reading and final passage of H.R. 6068, as amended.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

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

The bill (H.R. 6068) was passed.

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

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate rescind its action on passing S. 2487 and that Calendar Order No. 683, S. 2487, be indefinitely postponed.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. STEVENS. Mr. President, it is my clear understanding that we have passed the House bill, not the Senate bill, and it has the text of the Senate language in the House bill.

The PRESIDING OFFICER. The Senator is correct.

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

The motion was agreed to, and the Presiding Officer (Mr. KASTEN) appointed Mr. GOLDWATER, Mr. WALLOP, Mr. GARN, Mr. DURENBERGER, Mr. ROTH, Mr. SCHMITT, Mr. MOYNIHAN, Mr. INOUYE, Mr. JACKSON, Mr. LEAHY, and Mr. BENTSEN; and Mr. WARNER for matters of interest to the Armed Services Committee.

Mr. WALLOP. I thank the Chair and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

FEES OF THE COPYRIGHT OFFICE

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate Calendar Order No. 688, H.R. 4441 and ask for its immediate consideration.

Mr. ROBERT C. BYRD. Mr. President, there is no objection.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 4441) to amend title 17 of the United States Code with respect to the fees of the Copyright Office, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, I yield to the Senator from Nebraska.

UP AMENDMENT NO. 1050

(Purpose: To amend title 17, United States Code, to exempt nonprofit veterans' organizations and nonprofit fraternal organizations from the requirement that certain performance royalties be paid to copyright holders)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Nebraska (Mr. ZORINSKY) proposes an unprinted amendment numbered 1050.

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

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

The amendment is as follows:

Sec. 3. Section 110 of title 17, United States Code, is amended—

(1) in paragraph (4), by striking out "performers, promoters, or organizers" and inserting in lieu thereof "performers or organizers";

(2) by striking out the period at the end of paragraph (8) and inserting in lieu thereof a semicolon;

(3) by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and "; and

(4) by adding at the end thereof the following new paragraph:

"(10) performance of a nondramatic literary or musical work in the course of a social function which is organized and promoted by a nonprofit veterans' organization or a nonprofit fraternal organization to which the general public is not invited, if the proceeds from such performance, after deducting the reasonable costs of producing the performance, are used exclusively for charitable purposes and not for financial gain.".

Mr. ZORINSKY. Mr. President, the amendment I offer to H.R. 4441 is the body of S. 603. This amendment would exempt nonprofit fraternal and nonprofit veterans organizations from the payment of copyright and royalty fees. The need for this legislation was brought to my attention by members of my own People's Club in Omaha, Nebr. It is legislation that the American Legion selected as its No. 1 priority last year.

Mr. President, I ask unanimous consent that a letter from the American Legion be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. ZORINSKY. This legislation will allow the outstanding contribution these groups are making to their communities to continue and, in addition, allow them to do even more of this fine work by providing additional dollars for charitable services.

Mr. President, I would like to thank the chairman of the Judiciary Committee, Senator THURMOND, for his

help and cosponsorship of this amendment.

EXHIBIT 1

THE AMERICAN LEGION,
Washington, D.C., June 21, 1982.

Hon. EDWARD ZORINSKY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ZORINSKY: The American Legion takes this opportunity to express its profound gratitude to you for your efforts to exempt non-profit veterans organizations from provisions contained in P.L. 94-553 requiring certain performance royalties be paid to copyright holders. We have fully supported your introduction of legislation, S. 603, to accomplish this purpose and we now fully support your amendment to legislation extending the manufacturing clause of the Copyright Act, again for this same purpose.

It should be stated at the outset that The American Legion does not dispute the right of any creator of music to protect his creation through the receipt of royalties. We recognize the need for a copyright mechanism and we do not quarrel with the principle of requiring compensation from those who seek financial gain through the use of material created by someone else. We, however, believe that the use of material for the expressed purpose of promoting charitable activities differs significantly from that principle.

It is our sincere belief that neither Congress nor the creators of copyrighted musical works have ever intended copyright legislation as an impediment to legitimate nonprofit community service activity. Yet, P.L. 94-553 is having precisely that impact. Many posts, facing financial survival on a day-to-day basis, are simply not willing to risk the consequences of outright violation of the law and, therefore, have terminated all live musical performances. Without this source of fund raising they have been forced to curtail their community service activities.

A recent nation-wide review of such activities reveals some rather astounding figures. With 44% of our 17,000 posts reporting—we found that last year 355,101 veterans, widows, and orphans were assisted with their Veterans Administration claims by Post Service Officers. Our members also contributed more than one million hours as volunteers in VA hospitals, assisted 28,422 veterans in finding employment, donated more than 113,000 pints of blood, and donated more than 2.2 million hours to a variety of community projects. These were strictly gratuitous services and involved no direct fund raising.

In the matter of fund raising activities—again with 44% of all posts reporting—$1.5 million was spent sending boys to The American Legion Boys State program; $1.4 million was spent in sponsoring drum and bugle corps groups; $4.7 million was spent to sponsor Legion baseball teams; $454,000 was spent on Scout troops; $669,000 in academic scholarships were awarded; and $2 million in cash assistance was given to needy children. Our posts also purchased and donated more than $3 million worth of clothing and essentials for needy children and distressed families. Donations to mental health programs amounted to $96,000 with $171,000 going to the United Fund; $233,000 for the mentally retarded; $67,000 to the Red Cross; $160,000 for cancer research; $233,000 to crippled children; and $1.5 million to many other miscellaneous community projects.

Our members who willingly give their time and energy to participate in activities which benefit the community are inclined to view the royalty payment obligation as they would a seemingly needless governmental regulation—both are sources of frustration. They serve to discourage volunteerism when individuals decide that personal satisfaction is not sufficient to compensate for the inconvenience of contending with such restrictions.

In conclusion, Senator, we support this amendment fully. You may be sure that adoption of this exemption will insure that non-profit veterans groups will go on doing what they do best—volunteering their time selflessly and promoting the general welfare of local communities across the nation.

Sincerely,

E. PHILIP RIGGIN,
Director,
National Legislative Commission.

Mr. STEVENS. Mr. President, does the distinguished Senator from South Carolina wish to make a statement?

Mr. THURMOND. Mr. President, I am in accord with the procedure being followed. I think the amendment being offered here is a good amendment to this bill, and I think it is the only chance of getting through soon. The Judiciary Committee has before it another bill, but there has not been a hearing on it. I think this would save time.

I favor adoption of the amendment.

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

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

The amendment (UP No. 1050) was agreed to.

Mr. STEVENS. Mr. President, third reading.

Mr. THURMOND. Mr. President, this bill, H.R. 4441, is noncontroversial in nature and is a housekeeping measure sought by the Copyright Office of the Library of Congress. It permits the Office to retain and utilize certain copyright fees collected under the statute which cannot now be used for such purpose.

This bill has passed the House and was reported unanimously by the Committee on the Judiciary yesterday.

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

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

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

So the bill (H.R. 4441), as amended, was passed.

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

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT OF MANUFACTURING CLAUSE OF COPYRIGHT LAW

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate Calendar No. 691, H.R. 6198, and ask for its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 6198) to amend the manufacturing clause of the copyright law.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. THURMOND. Mr. President, this legislation would extend the manufacturing clause of the copyright law of 1976 for a period of 4 years, until July 1986.

A companion bill, S. 1880, was introduced by me in the Senate and had a number of cosponsors from both sides of the aisle. That bill, S. 1880, would have extended the manufacturing clause for an indefinite period of time. Since the July 1, 1982 deadline for the manufacturing clause is near, it was the judgment of the committee to take the House position on this matter and report a bill with a 4-year extension.

Recently, the committee met and considered S. 1880. Senator LEAHY offered an amendment to change the period of extension to 1 of 4 years and the committee concurred in that amendment.

The legislation must be sent to the President for his signature before July 1, 1982. Passage of H.R. 6198 will expedite that result. Therefore, Mr. President, I move the Senate approve H.R. 6198 and indefinitely postpone the consideration of S. 1880.

● Mr. LEAHY. Mr. President, the manufacturing clause of the Copyright Act was due to expire at midnight tonight. The manufacturing clause was adopted by Congress almost a century ago. It provides that in exchange for full American copyright protection, the work of a U.S. author must be printed in the United States or Canada.

If we permit the manufacturing clause to expire on July 1, hundreds of thousands of Americans will lose their jobs. Moreover, the expiration of the clause will put the American printing industry in a particularly vulnerable position in the international marketplace.

The U.S. Department of Labor has estimated that elimination of the manufacturing clause would result in a loss of 78,000 to 172,000 job opportunities in the printing and publishing industry alone, and a total loss of 170,000 to 367,000 job opportunities throughout the United States. Our economy is already in trouble. We simply cannot

afford to add still more unemployment to our economic problems.

As introduced, S. 1880, which I cosponsored with Senator THURMOND and several members of the Judiciary Committee, would put this issue to rest by extending the clause indefinitely. I certainly would prefer an indefinite extension of the manufacturing clause to the 4-year extension passed by the House.

However, time is running short. Therefore, to avoid a potentially lengthy conference on this issue which could run past July 1, the committee thought the wisest course was to conform S. 1880 to the House-passed text. I urge my colleagues to avoid delay and pass this bill in its present form to save the jobs of many hard-working people in Vermont and throughout the country.●

Mr. SPECTER. Mr. President, I am pleased to have been an original cosponsor of the Senate bill to prevent the expiration of the so-called manufacturing clause of the copyright law. This provision, reserves full copyright protection in this country over nondramatic literary material written by American authors unless specific processes such as typesetting, printing, and binding are performed in the United States or Canada.

Last summer, a most disturbing report was issued by the Department of Labor. It projects that expiration of the manufacturing clause would result in a loss of 78,000 to 172,000 job opportunities in the printing and publishing industries and that total estimated lost job opportunities in the U.S. economy would total between 170,000 and 367,000.

I wrote the chairman of the Committee on the Judiciary in September of last year concerning this matter. I was pleased to have joined him as an original cosponsor of the bill he introduced to extend the manufacturing clause.

When the Judiciary Committee recently voted to report favorably the bill to extend the manufacturing clause, we were conscious of its impending expiration and, accordingly, agreed to modify the Senate bill to grant the more limited extension provided by our House colleagues. In this way, we hoped to avoid any further delay or the necessity of a conference.

With our action here today the Congress will have completed its work on this important economic matter in a timely fashion and be able to present to the President a bill that will serve to protect American industry and preserve employment opportunities in the printing and publishing industries.

I am this evening dispatching to the President a letter expressing my personal request that he approve the extension of the manufacturing clause of the copyright law without delay. With his expedited consideration, the impending expiration of the protections of the law can be averted. Our economy can afford no other course.

The bill was ordered to a third reading, read the third time, and passed.

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

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that Calendar No. 689, S. 1880, be indefinitely postponed.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

MILITARY CONSTRUCTION CODIFICATION ACT

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate Calendar No. 684, H.R. 6451.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 6451) to amend title 10, United States Code, to revise and codify the permanent provisions of law relating to military construction and military family housing.

Mr. ROBERT C. BYRD. We have no objection.

There being no objection, the Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, there are no amendments. We ask for immediate passage of the bill.

Mr. THURMOND. Mr. President, H.R. 6451 and the companion Senate bill, S. 2645, are products of several year's effort to bring together in one place in title 10 of the Code all military construction law that has evolved over the years. The purpose of the bill is to simplify and streamline military construction procedures for the future.

For the most part, current military construction policies and procedures have simply been incorporated in a new chapter 169 in title 10. In some few instances, changes in policy and procedure have been adopted and these are covered in detail in the committee report and I do not intend to go into them here unless there are questions.

Mr. President, the military construction programs of the Department of Defense are very well managed. Virtually every dollar that is appropriated is expended under publicly advertised, competitively bid procedures. These procedures are the best guarantee to the taxpayer that their interests are being protected. The Department's performance with respect to cost overruns in its military construction program is likewise excellent. The incidents of major cost overruns are few and in every case the departments have been required to absorb cost overruns through savings in other projects. This codification bill will not adversely perturb the current management of the military construction effort. To the contrary, streamlined programing and reporting procedures in this bill should result in additional savings.

I strongly urge my colleagues to support passage of this bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 6451) was ordered to a third reading, was read the third time, and passed.

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

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask unanimous consent that Calendar No. 676, S. 2645, be indefinitely postponed.

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

UNANIMOUS-CONSENT AGREEMENT—S. 2586

Mr. BAKER. Mr. President, in respect to the military construction bill, I have a unanimous-consent request that I believe has been cleared all around, and I would like to state it now for the consideration of the minority leaders, the distinguished Senator from South Carolina, and other Senators.

Mr. President, I ask unanimous consent that when the Senate proceeds to the consideration of Calendar Order No. 262, S. 2586, the military construction bill, it be under the following time agreement:

Two hours on the bill to be equally divided between Senators THURMOND and HART or their designees; 30 minutes on amendments, with the exception of 1 hour on an amendment to be offered by the Senator from Rhode Island (Mr. PELL) dealing with airfield construction in Honduras; 10 minutes to be equally divided on an amendment to be offered by the Senator from West Virginia (Mr. ROBERT C. BYRD), the minority leader, to permit alternative sites in connection with the Charleston Armed Forces Reserve Center, which I understand is known to the distinguished Senator from South Carolina and to which he has no objection; 10 minutes on any debatable motions, appeals, or points of order if submitted to the Senate, and the agreement to be in the usual form, with the proviso that no amendment be in order dealing with Davis-Bacon.

Mr. President, I am advised that we have one request that we defer this request momentarily. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BAKER. Mr. President, I modify the unanimous-consent request which I put to delete that reference to an amendment to be offered by the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD), on which there would have been 10 minutes equally divided. I am advised by the Senator from South Carolina that he is aware of the amendment, that it is technical in nature, and that it had been his intention as manager of the bill to accept the amendment.

Mr. THURMOND. Mr. President, that is correct.

Mr. BAKER. Mr. President, I reiterate the request.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Without objection, it is so ordered.

MILITARY CONSTRUCTION AUTHORIZATION ACT, 1983

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate proceed to the consideration Calendar Order No. 626, S. 2586, the Military Construction Authorization Act.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2586) to authorize certain construction at military installations for fiscal year 1983 and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. Who yields time?

The minority leader is recognized.

UP AMENDMENT NO. 1051

(Purpose: To make a technical change to a land conveyance provision of the Military Construction Authorization Act, 1982)

Mr. ROBERT C. BYRD. Mr. President, on behalf of myself and my colleague from West Virginia (Mr. RANDOLPH) I send an amendment to the desk and ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD), for himself and Mr. RANDOLPH, proposes an unprinted amendment numbered 1051.

Mr. ROBERT C. BYRD. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the bill add the following new section:

TECHNICAL AMENDMENT OF PRIOR AUTHORITY FOR LAND CONVEYANCE, SOUTH CHARLESTON, WEST VIRGINIA

SEC. . Section 915 of the Military Construction Authorization Act, 1982, is amended—

(1) in subsection (a) by inserting "or the State of West Virginia" after "South Charleston, West Virginia" the first place it appears; and

(2) in subsection (b)(1)(A) by inserting a comma and "or such other alternate sites which may be acceptable to the Secretary" after "South Charleston, West Virginia".

Mr. ROBERT C. BYRD. I ask unanimous consent that the amendment be in order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

SOUTH CHARLESTON COMBINED ARMED FORCES RESERVE CENTER

Mr. ROBERT C. BYRD. Mr. President, the amendment which I offer today is a technical change to the fiscal year 1982 military construction authorization bill. That bill, which was signed by the President on December 22, 1981, authorized the Secretary of Defense to engage in a land exchange with the city of South Charleston, W. Va. That exchange will permit the Department of Defense to consolidate three separate and obsolete reserve centers in one efficient combined armed forces reserve center to be constructed near South Charleston.

The bill which we passed last December specified a specific site for the new combined reserve center. Subsequently, the various planning aspects for the new center have gone smoothly. The Department of Defense has indicated, during this planning period, an interest in another parcel of land which is owned by the State of West Virginia. The State, I am told, is willing to exchange land with the Department. I believe that it is in the interest of all parties that the Secretary of Defense be given flexibility to choose an alternative site, should he choose to do so.

The amendment which I offer today will grant to the Secretary of Defense the flexibility to select an alternate site and to enter into a land exchange agreement with the State, if appropriate. The amendment in no way restricts the prerogative of the Secretary, and it is my understanding that the Department of Defense supports this amendment.

Mr. President, it is my understanding that this amendment has been cleared on both sides of the aisle. Would the distinguished manager of the bill confirm my understanding?

Mr. THURMOND. That is correct, Mr. President. The amendment of the Senator from West Virginia has been reviewed by this side of the aisle, and I am aware of no objection to it. I might add as chairman of the Military Construction Subcommittee, that I support the amendment.

Mr. ROBERT C. BYRD. I thank the Senator from South Carolina for his support.

Mr. THURMOND. Mr. President, we think the amendment is reasonable and we accept it.

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

The amendment (UP No. 1051) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from South Carolina for his courtesy. I also thank the distinguished majority leader for his courtesy.

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina.

Mr. THURMOND. Mr. President, the bill before the Senate, S. 2586, is an annual bill authorizing military construction projects for fiscal year 1983. In addition, it contains the authority for appropriations to support the existing inventory of nearly 400,000 units of military family housing.

The original budget request for new military construction authority was $7,811,164,000. However, in order to accomodate the reductions made to the Defense function in the first concurrent resolution on the budget, it was necessary to reduce this bill by $1.4 billion, and the bill before the Senate recommends new authorization totalling $6,435,506,000.

My colleagues should know that I am not happy to be forced to make these reductions—I do not feel that we are spending enough on our national defense; however, I am committed to abide by the decisions of the Armed Services Committee and I strongly support the efforts by the distinguished chairman of the Committee, Senator TOWER, to arrive at an overall defense budget figure that has broad support in the Senate and in the administration.

Let me state the basic premises that were used by the committee in developing the bill which is before the Senate:

Unbudgeted projects have not been considered. Normally the committee is able to consider certain high priority, unbudgeted projects and add some to

the bill to replace projects denied or deferred. This year we adopted a policy of no "add-ons."

All "nice-to-have" projects have been deferred without prejudice. This category of projects includes administrative, community, morale and welfare, supply and laboratory facilities. It was felt that this category of projects could be deferred without unduly impacting military preparedness. These deferrals will be painful; I think nearly every Senator is affected. It necessitates the deferral of four projects at three military bases in South Carolina. Of course, I do not like that. Deferral of this category of projects saves $470 million in budget authority.

All new military family housing construction is deferred without prejudice. For the first time in many years the services are asking to build substantial amounts of family housing overseas—quite expensive housing I might add—over $120,000 per unit. I am not at all sure that we want to embark on a major effort to build new family housing overseas and I want to take a good look at this proposal, if it is renewed next year. Deferral of new military family housing saves $250 million in budget authority.

All improvements to military family housing, except for those improvements related to energy conservation, are deferred without prejudice. A major portion of this effort involves adding central air-conditioning to existing units. Savings in this area total $165 million in budget authority.

Finally, there are the usual denials or deferrals where projects are not justified or where projects could not be executed during the fiscal year. These are reductions that would have been recommended regardless of the budget situation. These savings total $490 million in budget authority.

Despite the reductions that have been made, this bill contains many very important projects to support our military forces around the world. For example, another increment of funds is authorized for the construction of contingency facilities at locations near, or en route to, the Middle East which would provide our Rapid Deployment Force the capability to react more efficiently to contingencies in Southwest Asia. I invite the attention of my colleagues to the committee report for additional details on this bill.

Before I yield the floor, I would like to thank the distinguished ranking minority member of the Senate Armed Services Subcommittee on Military Construction, Senator GARY HART, for his cooperative efforts on this bill. Having chaired this subcommittee during the 96th Congress, he is well aware of the complexities of this bill, which this year contains over 1,000 different projects at more than 500 military installations around the world. His work and his support are very much appreciated.

Mr. President, I urge my colleagues to support this bill.

The PRESIDING OFFICER. Who yields time?

Mr. HART. Mr. President, I support the bill before the Senate, and although I have reservations about the specifics relating to Honduras, I urge its favorable consideration by my colleagues.

Let me first commend the distinguished majority manager of the bill, the Senator from South Carolina (Mr. THURMOND) for his management of this legislation. As a former chairman of the Military Construction Subcommittee, I am familiar with the extreme complexities of this bill not well understood, I am afraid, by our colleagues. The capital construction projects covered in this legislation touch every facet of our defense effort—from evolving strategic programs to replacement of mobilization assets.

The job of tailoring the bill this year was more demanding than usual. Difficult budgetary decisions had to be made to reduce the bill by nearly $1.4 billion in budget authority. This reduction was necessary to accommodate the action taken by the Senate in establishing a budget ceiling for the national defense function for fiscal year 1983. At the same time the committee has to insure that the readiness and military preparedness of our forces was not jeopardized by deletion or deferral of proposed construction efforts.

Projects in just about every State—including those of the chairman of the subcommittee and myself—were affected by the proposed reductions but I am satisfied that the guidelines for affecting these reductions were prudent and applied in an even-handed, equitable fashion. I note to my colleagues that the new family housing and nonreadiness related projects which were deleted from this year's authorization were deferred "without prejudice." Even with these reductions and deferrals the bill totals slightly over $6.4 billion in authorization—roughly the same level as was included in last year's bill when it came to the Senate floor.

Let me briefly comment on two areas of this bill on which I have focused in the past; namely, energy projects and NATO construction. This bill goes forward with those initiatives.

ENERGY PROJECTS

When I assumed the chairmanship of the Military Construction Subcommittee, I made it a priority to use the annual authorization bill as a vehicle to get the Defense Department involved in projects that would benefit not only the Defense Department but the entire Nation in addressing the energy crisis. That effort has been quite productive and the Defense Department is an acknowledged leader among Federal agencies in efforts to conserve energy and to sponsor new energy initiatives. This year's bill continues to allocate significant resources to these energy conservation efforts. It includes energy conservation investment programs at a number of installations. Energy monitoring and temperature control projects are authorized at several other facilities. Despite deferring most requested improvements to existing family housing, the committee has retained in the bill those improvements relating to energy conservation. I applaud Senator THURMOND's continued recognition that investments in projects which make our military facilities more energy efficient are most worth while and indeed help strengthen our national security.

NATO CONSTRUCTION

Again this year, construction in Europe constitutes a major portion of the military construction program. Well over $1 billion will be spent for construction in support of our forces deployed in NATO. I agree wholeheartedly with the committee's report when it says that:

> The growing construction requirements in Europe cannot continue to be addressed solely through increases in unilateral U.S. funding; the Defense Department must aggressively seek alternative funding sources which rely more heavily on allied burden sharing.

There is no question that we must get our allies to do more and we must use the NATO forum to optimize facility construction in support of U.S. forces. We have taken on increased military burdens—particularly the Middle East contingency role—and our allies must understand that they face the same threat. Therefore, they must share in the efforts to address that threat.

Mr. President, that concludes my remarks. I again thank the distinguished chairman of the subcommittee for his leadership in this area.

Mr. TOWER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield to the distinguished and able chairman of the Armed Services Committee such time as he may require.

The PRESIDING OFFICER. The Senator from Texas.

Mr. TOWER. Mr. President, I want to thank my good friend, Senator STROM THURMOND, the ranking majority member on the Armed Services Committee and the chairman of the Military Construction Subcommittee, for his most diligent efforts in bringing this military construction bill to the Senate. This is a very complex and a very important bill. It touches the entire spectrum of defense programs—

from facilities to support our strategic weapons systems, to contingency facilities for our Rapid Deployment Force, to living accommodations for our service personnel. Senator THURMOND has done an excellent job in melding the construction program in this bill with our priority defense requirements.

I also commend the distinguished ranking minority member (Mr. HART) for his cooperation in the formulation of this bill.

I share the concern of Senator THURMOND at having to make cuts in the President's request in this bill, but like any good business enterprise, when profits are down, capital investment is deferred. When the Congress mandates cuts in defense programs, the deferral of military construction is a logical consequence. I think that the rationale used by the committee in effecting these reductions—which Senator THURMOND has explained in his remarks—is appropriate under the circumstances.

My colleagues should know of the consequences of these cuts. Many of you already know because you have written or spoken to me about military construction projects that were cut in your particular State. I now of no way to cut defense without cutting somebody's State or somebody's constituency. Defense cuts hurt, so Members should not vote for blanket defense cuts and expect not to be affected.

I think that some of my colleagues do expect that. Some of those who have been foremost in their advocacy of defense reduction have talked to me about trying to restore cuts in programs and in military construction in their particular States. They have to understand that when defense is cut, it means that some jobs are going to be cut because defense does provide jobs.

We hear a lot of rhetoric these days about spending so much on defense when our people need jobs; we ought to be spending Federal money on programs that are addressed to providing jobs for people.

Defense spending is one of the biggest providers of jobs of anything the Federal Government does, if not the biggest. So let us understand what the economic impact is of both increases and decreases in defense spending.

In this bill we have cut nearly $1.4 billion in construction projects. I remind my colleagues that unemployment in the construction industry is 20 percent. I sincerely hope this $1.4 billion is not just shuffled to another Government pocket to pay unemployment compensation to these same construction workers. It makes much more sense to spend this money on capital projects, which promote employment and productivity, rather than on unemployment compensation.

Mr. President, at this point, I note that the Armed Service Committee has authorized funds for construction projects associated with the modernization of intermediate nuclear forces in Europe. This is a program of the utmost importance to Western security. The buildup of Soviet theater nuclear force capability, beyond any reasonable defensive capability, poses an intolerable threat to Western security. NATO's double-tracked decision of December 1979 to deploy 108 Pershing II's and 464 ground-launched cruise missiles and pursue arms control negotiations was a prudent one. The committee fully supports this modernization program and believes strongly that if negotiations fail, NATO must be in a position to assure the earliest possible initial operating capability for these systems.

Mr. President, I urge my colleagues to support this bill.

I intend to strongly oppose any amendments that are designed to add any significant additional funding authorization to this bill regardless of how meritorious they may appear to be.

I thank my colleague for yielding.

UP AMENDMENT NO. 1052

(Purpose: To provide a substitute for the provision authorizing the conveyance of certain real property in Bell, Calif.)

Mr. THURMOND. Mr. President, I send an amendment to the desk and ask that it be immediately reported.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. THURMOND), on behalf of Mr. HAYAKAWA and Mr. CRANSTON, proposes an unprinted amendment numbered 1052.

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

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

The amendment is as follows:

On page 42, beginning on line 5, strike out all through line 23 on page 41 and insert in lieu thereof the following:

SEC. 803. Subject to subsections (b) through (h), and notwithstanding any other provision of law, the Secretary of the Army (hereafter in this section referred to as the "Secretary") is authorized to convey to the city of Bell, California (hereafter in this section referred to as the "city"), all right, title, and interest of the United States in and to a parcel of land, aggregating seven and two-tenths acres, more or less, together with improvements thereon, situated in the city, as more particularly described on a map on file in the Office of the District Engineer, United States Army Engineer District, Los Angeles, California.

(b)(1) In consideration for the conveyance authorized by subsection (a), the city, pursuant to an agreement to be entered into between the city and the Secretary, shall provide to the United States, to the extent of the fair market value of the land conveyed by the Secretary under subsection (a) (as determined by the Secretary), the buildings and other improvements described in paragraph (2), which buildings and improvements shall be the property of the United States.

(2) The buildings and improvements to be provided to the United States are:

(A) a National Guard armory;

(B) modernization of a Government-owned building located in the city and known and designated in Department of the Army records as Building 332; and

(C) an organizational maintenance shop.

(3) The design and construction of the National Guard armory and the organizational maintenance shop and the modernization of the building described in paragraph (2)(P) shall be in conformance with plans and specifications approved by the Secretary.

(c) The city shall pay to the United States, as further consideration, an amount equal to the amount by which the fair market value of the property conveyed by the Secretary under subsection (a) (as determined by the Secretary) excess the sum of the actual costs (as determined by the Secretary) of the buildings and improvements provided to the United States under subsection (b).

(d) The exact acreage and legal description of the property to be conveyed under this section shall be determined by a survey which is satisfactory to the Secretary.

(e) The Secretary is authorized to accept and administer any real property conveyed to the Secretary under this section.

(f) In carrying out this section, the Secretary may require such additional terms and conditions as he considers appropriate to protect the interests of the United States.

(g) The authority of the Secretary under this section shall expire three years after the date of enactment of this Act.

Mr. THURMOND. Mr. President, this amendment is by Senator HAYAKAWA on behalf of himself and Senator CRANSTON. Section 803 of the bill as reported provides for a non-cost, fair-market-value land exchange between the Army and the city of Bell, Calif. Under the terms of this agreement, the Army would convey approximately 7.2 acres of land to the city and in return the city would build a replacement armory for the Army guard unit displaced. The transaction is in the usual form and protects the interests of the taxpayer.

Mr. President, the purpose of the amendment is to accommodate certain changes in the transaction that have developed since the original proposal was presented. The changes are technical only and do not involve costs or benefits. The changes would increase the amount of land conveyed by the Army from 5.5 to 7.2 acres and would provide for the construction of a new replacement armory rather than the renovation of an existing building for use as an armory.

There is no cost associated with the amemdment. The requirement in the original provision that this be a fair-market-value exchange with the Government receiving full value for the land and facilities to be conveyed is not affected by the amendment. We are willing to accept the amendment.

I yield to the Senator from Colorado.

Mr. HART addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, the amendment that the Senator from South Carolina offers is agreeable to the minority and we urge its adoption.

Mr. CRANSTON. Mr. President, I am joining with Senator HAYAKAWA to sponsor this amendment to the military construction authorization bill for fiscal year 1983.

The city of Bell and the Army have worked out a land exchange agreement whereby the city will build a new armory for the National Guard, according to the Guard's specifications, in exchange for approximately 7 acres of land now owned by the Army. The exchange has the support of the Army National Guard Bureau, the California National Guard, the Sixth Army, and the Army Corps of Engineers. The Senate Armed Services Committee and the House Armed Services Committee have both approved the concept. However, more land is needed than was originally estimated. The purpose of this amendment, which is essentially technical in nature, will provide the necessary amount of land which the city requires—approximately 7.2 acres as opposed to the 5.5 acres presently provided. It is my understanding that both the chairman and the ranking member agree to this amendment and that it is also supported by the Department of the Army.

(By request of Mr. THURMOND, the following statement was ordered to be printed in the RECORD:)

● Mr. HAYAKAWA. Mr. President, today I am offering, along with Senator CRANSTON, an amendment to the military construction authorization bill which clarifies language regarding the acreage in the land transfer to the city of Bell, Calif. These proposed changes more nearly meet the needs of the city of Bell and the California National Guard.

The California National Guard currently uses World War II warehouses as an armory in Bell. The Army needs a replacement facility but does not require the full 9.5 acres at this location. The city of Bell owns 2.18 acres adjacent to this site on which it wishes to build a hotel, however an additional 7.2 acres is needed for a parking lot and amenities. The city would like to purchase this land from the Army's 9.5 acres at the estimated market value of $1.9 million. As consideration for the land, the city will build, to National Guard specifications, a new armory for the Guard on a 17-acre parcel of land near the U.S. Army Reserve.

The Army National Guard, California National Guard, and the Sixth Army Corps of Engineers support the transfer of 7.2 acres of land. The National Guard would get a new permanent armory built to their specifications and the city of Bell would get the land essential to the new hotel development. Most importantly, no U.S. public funds would be expended.●

The PRESIDING OFFICER. Is all time under the amendment yielded back?

Mr. THURMOND. All time is yielded back here.

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

The PRESIDING OFFICER. All time being yielded back, is there objection to the amendment?

The amendment (UP No. 1052) was agreed to.

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

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1053

(Purpose: To revise the authorization to sell or exchange defense real property)

Mr. THURMOND. Mr. President, I send to the desk another amendment and ask that it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. THURMOND), on behalf of himself and Mr. TOWER and Mr. PERCY, proposes an unprinted amendment numbered 1053.

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

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

The amendment is as follows:

Strike out pages 42 and 43 and insert in lieu thereof the following:

AUTHORIZATION TO SELL OR EXCHANGE DEFENSE REAL PROPERTY

SEC. 804. (a) Notwithstanding any other provision of law, the President of the United States or his designee, if he determines that it is in the public interest or is necessary for national defense purposes, may sell or exchange any real property and associated facilities which are under the jurisdiction of the military departments (including any such property or facilities the disposal of which requires authorization or specific authorization by law) except public domain lands.

(b) Any such sale or exchange shall be accomplished using publicly advertised, competitively bid contracting procedures to the extent feasible, but in no case may such sale or exchange be entered into if the United States will not receive at least the fair market value of the property to be conveyed.

(c)(1) Notwithstanding any other provision of law, a portion of the gross proceeds from any such sale or exchange may be used—

(A) to cover all costs associated with such sale or exchange; and

(B) subject to approval by the Secretary of Defense, to cover the costs of land acquisition and the construction of replacement facilities that may be reasonable and necessary incident to such sale or exchange.

(2) Ninety-five percent of the remaining (net) proceeds shall be covered into the general fund of the Treasury to be used solely for the reduction of the national debt of the United States. Five percent of the remaining (net) proceeds shall be credited to a Defense Facilities Replacement Fund (hereinafter referred to as the "Fund") and may be used for the purpose of capitalizing future sales or exchanges pursuant to this section.

(3) Moneys remaining in the Fund at the end of each fiscal year in excess of $50,000,000 or any lesser amount determined by the Secretary of Defense to be sufficient shall be covered into the general fund of the Treasury to be used solely for the reduction of the national debt of the United States.

(d) No transaction may be entered into where the estimated costs of such transaction as included in subsection (c) (1) exceed the amount to be realized from such sale or exchange. Any transaction where the costs as included in subsection (c) (1) would exceed 50 per centum of the amount to be realized shall be subject to the prior approval of the Director of the Office of Management and Budget.

(e) Before any transaction under the provisions of this section may be entered into in which the fair market value of the real property to be sold or exchanged exceeds $100,000, a report in writing shall be submitted to the Committees on Armed Services of the Congress. Such report shall include the justification for the transaction and the current estimate of the cost of the transaction. Such transaction may then be carried out only (1) after the end of the fifteen-day period beginning on the date of notification is received by such committees, or (2) after each such committee has approved of the transaction, if the committees approve of the transaction before the end of that period.

(f) All sales, exchanges, and other transactions under this section shall be carried out in accordance with regulations which shall be prescribed by the Director of the Office of Management and Budget.

Mr. THURMOND. Mr. President, I am pleased to sponsor this amendment, which has been worked out with all interested parties. I feel that it improves on section 804, as reported by the committee, while retaining the thrust of this important provision to improve the management of defense resources. The principle change in this amendment is to specify that the profits realized from the sale or exchange of defense real property will go directly to reduce the national debt, rather than returning the profits to Defense, as provided in the committee reported version, which would have reduced the national debt indirectly. I feel quite confident that this provision will generate several billions of dollars in "profits" from real estate transactions over the next several years and will significantly benefit the President's effort to reduce the national debt.

Let me explain for my colleagues how I would expect this provision to work. Attached to my statement is a hypothetical summary of transactions as they will be executed under this

provision. I ask unanimous consent that that summary be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. THURMOND. Mr. President, under the terms of this provision the Defense Department is permitted to enter into transactions to either, first, sell excess defense property and associated facilities or, more importantly, second, to sell property and associated facilities, that are underutilized or inefficiently utilized, and to use the sale proceeds to buy replacement land and facilities. It is this second category of transactions which has the potential to generate significant savings, not only as a result of the transaction, but also over the long term as operating costs of replacement facilities will be reduced. Each transaction, where the cost of the Defense real property to be conveyed exceeds $100,000, must be presented to the Armed Services Committees of the Congress, providing the necessary oversight of this provision. Each transaction must show a "profit"—that is, the total proceeds from the sale must be greater than the total costs to effect the sale and the cost to acquire replacement land and facilities.

As each transaction is executed, 5 percent of the "profits" or "net proceeds," as indicated on the attached hypothetical fund transaction summary, would be credited to a defense facilities replacement fund. During the course of the year, the fund balance would be available to pay the "up front" costs of new transactions, if such costs were to be incurred in advance of the receipt of the proceeds from the transaction. Ninety-five percent of the net proceeds would go directly to the Treasury to reduce the national debt.

At the end of the fiscal year, the Secretary of Defense would take a look at the fund balance and decide how much money he wanted to carry over into the fund for the next fiscal year to provide the "up front" costs to promote future transactions. This amount could not be more than 5 percent of the total of the net proceeds that have accrued in the fund to date. The remaining money—an amount equal to at least 95 percent of the net proceeds—would go into the Treasury to reduce the national debt.

Mr. President, for the Federal Government, this provision is revolutionary. It is an entirely new way of doing business. On the other hand, private enterprise will be amused, because the provision permits the Defense Department to manage its real property resources much like the private sector does to optimize cost effectiveness.

I urge my colleagues to support this amendment.

EXHIBIT 1.—DEFENSE FACILITIES REPLACEMENT FUND

[Hypothetical transaction summary]

Transaction No.	Gross proceeds	Cost of—		Net proceeds	Fund balance
		Sale or exchange	Replacement land and facilities		
1	[1] $10,000,000	$1,000,000	0	$9,000,000	$450,000
2	3,000,000	300,000	$1,000,000	1,700,000	985,000
Total end fiscal year	500,000,000	50,000,000	100,000,000	350,000,000	17,500,000
Start fiscal year	500,000,000	50,000,000	100,000,000	350,000,000	[2] 17,500,000
201	5,000,000	500,000	0	4,500,000	22,000,000
Total end fiscal year	1,000,000,000	100,000,000	250,000,000	650,000,000	317,500,000
Start fiscal year	1,000,000,000	100,000,000	250,000,000	650,000,000	32,500,000

[1] All figures notional.
[2] Figure is 5 percent of the net proceeds up to a maximum of $50,000,000 or any lesser amount determined by the Secretary of Defense to be sufficient.

Mr. HART. Mr. President, will the Senator from South Carolina yield for a question?

Mr. THURMOND. I am pleased to yield.

Mr. HART. I wonder whether the distinguished floor manager of the bill can inform the Senator from Colorado, in round numbers, approximately how much money a year has come into the Treasury from the sale of excess Defense Department property.

Mr. THURMOND. We are not informed as to the exact amount. It is not very much. The GSA now handles the disposal of excess property.

Mr. HART. But neither the Senate nor the committee staff has any estimate of what we are talking about per fiscal year, in round numbers—whether it is $100,000 or $100 million? We do not know how much property is being excessed?

Mr. THURMOND. We can obtain that information for the Senator.

Mr. HART. I wonder whether the Senator from South Carolina can inform the Senator from Colorado where the money now goes, under the law, from excess property sold by the Defense Department.

Mr. THURMOND. The GSA now handles it. If they get any profit, it goes into the water conservation fund.

Mr. HART. But, again, the Senator and the staff are not aware about how much that has been running—the excess, that is?

Mr. THURMOND. The GSA handles it for all the Federal agencies. We do not know the particular amount.

Mr. HART. So it is mingled.

Mr. President, on behalf of the minority, I will not object to the amendment.

The Senator from Colorado has certain lingering reservations in terms of what precedent is being established here, and I am not quite clear what the implications of this step are for other Government excess property sales. This might or might not be a good idea for other agencies in addition to the Defense Department.

The support that the Senator from Colorado gives to the amendment at this time is conditioned on reserving certain rights to object to this being taken as a precedent for other similar actions by other agencies.

With that reservation, Mr. President, I will not oppose the amendment.

Mr. THURMOND. Mr. President, I thank the able Senator from Colorado. I might say that this will be an item in conference, too, and it can be discussed fully at that time.

The PRESIDING OFFICER. Is all time on the amendment yielded back?

Mr. THURMOND. I yield back the remainder of my time.

Mr. HART. I yield back the remainder of my time.

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

The amendment (UP No. 1053) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I understand that Senator EXON has an amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. PERCY. Mr. President, the amendment Senator THURMOND is proposing will make several important changes to help bring more business-like discipline and fiscal responsibility to the way the Federal Government—in this case one of its biggest landlords, the Department of Defense—manages its real property assets.

I wish to pay tribute to Senator TOWER for providing an amendment which will offer an incentive for the Department of Defense to take action, sell off properties that are unneeded and unnecessary to have some payback to the Department for relocation purposes, which they never had before, but then will provide for the bulk of the funds to go to reduce the national debt.

I have just talked to the chairman of the board of International Harvester, a company which has been in deep financial trouble. They have a major liquidation program to sell off assets to get cash for those assets to help them with their condition.

We are in that kind of condition. We are short of cash, we are hard pressed, we are in the money market, we are driving up interest costs out there. Why do we not go out and sell some of this property we have no need for, that we have had no incentive with the Department of Defense or any other Department to sell these properties?

The Tower amendment will provide that incentive and will also provide, I think, a sense of momentum toward what we very much need indeed, and that is to reassess, and I commend the President for the reassessment now being made throughout the Federal Government. What does the Government own in the way of properties it does not need? We are not talking about national parks, national forests, national treasuries, anything of that type. These are just properties unneeded and unnecessary. We ought to take a look at our attic and have a garage sale. That is what an ordinary business has to do, and we have to run the Government that way. There are literally hundreds of millions of dollars, billions of dollars that would help finance our programs.

It will overcome all existing statutory obstacles to selling unneeded Defense Department properties. It will permit the President, or his designee, to sell or exchange any real property under the jurisdiction of the military, except public domain lands, and to direct most of the sale proceeds to the reduction of our trillion-dollar-plus national debt.

The amendment will allow the Defense Department to recoup the costs of relocating facilities it plans to sell, as long as the Government receives a net profit on the transaction. After relocation costs are met, 95 percent of the proceeds from the sale will go to a special fund in the Treasury to be used solely for the reduction of the national debt. The remaining 5 percent will be set aside to capitalize future relocation costs in the Defense Department. These provisions will encourage the Defense Department to part with properties they do not need to own, or could locate more economically elsewhere, while providing funds for the reduction of the national debt. In short, this amendment will encourage the most efficient use of real property assets by the Defense Department, while reducing the national debt.

In addition, it will raise the threshold for congressional approval of real property sales from $1,000 to $100,000.

This amendment will expedite the appropriation of land sales proceeds to the Treasury for national debt reduction. These cash proceeds will go directly to the Treasury fund unless the Defense Department, under the direction of the Secretary and in concurrence with strict OMB guidelines, can justify using them for relocation under subsection "(3)(A)" of the amendment.

I am, and always have been, a strong supporter of the land and water conservation fund, and I want to emphasize that this amendment will not have any adverse affect on this fund. It will not reduce the level of funding for the fund by 1 cent. By law, the land and water conservation fund must receive $900 million each fiscal year from any combination of sources: Off-shore drilling leases, motorboat fuel taxes, and surplus property sales. In the past, surplus property sales have provided only about 5 percent of the fund's appropriations. With these proceeds redirected to a national debt reduction fund, other sources will make up for the loss.

I fully expect that the net effect of the entire Federal program on asset management and liquidation will be to create more parkland than would ever result if agencies continued hanging onto properties they do not need. It is certainly my intent to work to achieve this result. If this program is as successful as I think it can be, we will see a number of surplus properties offered at affordable prices to State and local governments. While my amendment calls for fair-market-value-only prices when Defense Department properties are sold, any reasonable definition of fair market value must take into account the eventual use of the property, zoning restrictions, and other factors which might affect the true value of the property. After all, fair market value for parkland and fair market value for commercial development are two very different things. I would also like to see this program complemented by a reasonable level of spending from the land and water conservation fund, to enable the purchase of privately held properties that are particularly well-suited to park and recreation purposes.

I would like to congratulate Senators TOWER and THURMOND for their tremendous support and assistance in sponsoring this amendment. I hope to work with them in the future toward our mutual goals of better management of Federal property assets and a reduced national debt.

Mr. THURMOND. Mr. President, I wish to commend the able Senator from Illinois for his statement and for the fine leadership and cooperation he has given from his position on the Committee on Governmental Affairs on this matter.

Mr. PERCY. I thank the Senator.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Who yields time?

Mr. THURMOND. Mr. President, we are ready now for another amendment. I believe the distinguished Senator from Rhode Island (Mr. PELL) has another amendment he wishes to bring up.

UP AMENDMENT NO. 1054

(Purpose: To prohibit the use of authorized funds for the construction of any facility in Honduras.)

Mr. PELL. I thank the Senator very much indeed.

I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island (Mr. PELL) for himself and Mr. RANDOLPH proposes an unprinted amendment numbered 1054.

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

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

The amendment is as follows:

At the appropriate place in the bill insert the following:

CONSTRUCTION IN HONDURAS AND ANY OTHER COUNTRY IN THE CENTRAL AMERICAN AND CARIBBEAN REGION

SEC. . None of the funds appropriated pursuant to an authorization contained in this Act may be obligated or expended to improve, expand, extend, acquire, construct, convert, rehabilitate, or install any permanent or temporary airfield or airbase, including any facility in connection with an airfield or airbase, in Honduras or any other country in the Central American and Caribbean region. For purposes of this section the term "Central American and Caribbean region" shall include the following countries:

Anguilla	Nicaragua
Antigua and Barbuda	Panama
Bahamas, The	Saint Lucia
Barbados	Saint Vincent and the Grenadines
Belize	Surinam
Colombia	Trinidad and Tobago
Costa Rica	Cayman Islands
Cuba	Montserrat
Dominica	Netherlands Antilles
Dominican Republic	Saint Christopher-Nevis
El Salvador	Turks and Caicos Islands
Grenada	Venezuela
Guatemala	Virgin Islands, British
Guyana	
Haiti	
Honduras	
Jamaica	

Mr. PELL. Mr. President, this amendment to the military construction bill would prohibit the use of any funds for airfield improvement in Honduras or in any other Central American and Caribbean country. This measure is directed at that portion of the bill which provides a $21 million item for such construction in Honduras. The administration concluded secret negotiations with the Government of Honduras and on May 6 initialed an agreement as an annex to the bilateral military assistance program of May 20, 1954. The agreement which would permit the United States to use the improved and extended runways was designed I believe so that the United States could gain access for U.S. tactical aircraft, and I would assume personnel, to the Central American and Caribbean region.

This project has grave foreign policy implications, not the least of which is the potential for involving the United States even more deeply into the turmoil in Central America. In the present context of the administration's hardline rhetoric and discussion of U.S. options, such a move sends a signal to the world, and especially to those in Central America and the Caribbean that the United States is indeed preparing for deeper involvement, including direct military intervention.

It will also serve to exacerbate the already fragile relationship that exists between the United States and Nicaragua. Nicaragua already perceives a very real military threat from the United States. I can vouch for this as I was there a few months ago and they expressed this fear to me. The almost daily incursions of anti-Sandinista former Somoza national guardsmen into Nicaragua from their sanctuaries in Honduras is seen by the Nicaraguans as part of U.S. covert operations against their Government. According to press reports, the Honduran military is openly cooperating with these anti-Sandinista forces providing them with training and ammunition and even protecting them when they return to Honduran sanctuary fleeing Nicaraguan troops. It is interesting to note that the Honduran military reportedly welcomes the airfield improvement project and has made it known that it would welcome American combat forces into Honduras in an emergency.

These events bring into question U.S. desire and sincerity about conducting negotiations with the Nicaraguans. In fact, it leads to the opposite conclusion that the United States, by working closely with the Honduran military, by providing, according to news accounts, covert support to anti-Sandinista counterrevolutionaries, and now by preparing Honduran airbases to land military aircraft, could provoke the Nicaraguans into moves against Honduras.

This could conveniently provide the rationale for the use of U.S. forces in Honduras and expand the U.S. military role in the volatile Central American region.

Rather than concentrate our efforts on improving airfields in Honduras or in other countries of the region, the administration should be totally and sincerely dedicated to working out peaceful solutions to the issues which face us in this region.

Another area of concern that I am sure my colleagues will share with me is the $21 million cost of this questionable project. At a time of such severe economic problems in this country when we are continually rebuffed in our efforts to obtain financing for important public works projects in our respective States, our Government is asking us to finance a public works project in Honduras.

Mr. President, the foreign policy implications of this project in Honduras is abundantly clear. Yet, these issues were not raised in the Congress consideration of the military construction bill. The committees in both the House and Senate with responsibility for military construction very correctly concentrated on the feasibility and costs of the various projects in the bill. Moreover, little was known of the Honduran project because the agreement was being negotiated in secret during the various committees consideration of the overall bill.

This project should be reviewed in the context of our overall policy toward Central America and the Caribbean by the Senate Foreign Relations Committee because of all its implications.

For this reason I ask that my colleagues support this amendment.

Mr. PERCY addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. PERCY. Mr. President, I have great respect for my distinguished colleague, the ranking member of the Foreign Relations Committee. He served as a distinguished official in the State Department—the only member of the Foreign Service to be a Senator—and we agree on many, many things. But I would like to point out to my colleagues the rather sweeping nature of this amendment. The amendment—and I would like to read just a section from it—prohibits the Department of Defense from obligating or expending "to improve, expand, extend, acquire, construct, convert, rehabilitate, or install any permanent or temporary airfield or airbase, including any facility in connection with an airfield or airbase, in Honduras or any other country in the Central American and Caribbean region."

Then the amendment lists roughly 31 countries in which we would be prohibited from carrying on those actions.

Mr. President, the history of this is that the country of Honduras, with whom we have a very friendly relationship, has become deeply concerned about the unprecedented military buildup, including the airfield preparation to receive Mig aircraft in Nicaragua. But they are also worried about the increased number of incidents along their border with Nicaragua. We have worked with the government of Honduras at their request, our Ambassador has met with them, given careful consideration to the threat that they perceive to their understandable rights and sovereign rights. And we have been in negotiation with them to see what can be done in cooperation with them to help strengthen their own ability to protect themselves.

This does not involve any U.S. troops, any American forces whatsoever. It is the same thing that we have done with a number of other countries in areas of deep concern to us thousands of miles from here. Here we are dealing in our own hemisphere now with a country that feels it has a threat. We concur that they have a threat.

There is not any question but this was done with the Department of Defense, Department of State, and the Office of the President's full support and backing. They have proposed to spend funds on airfield improvement in Honduras. The administration has negotiated and signed an agreement with the Government of Honduras which, together with the airfield improvements, permit the United States the use of these airfields for the broad purpose of mutual defense and cooperation as set forth in our early agree-

ments with Honduras. That is the military assistance agreement of May 20, 1954, and the agreement on flights of military aircraft of April 2, 1952.

Use of the airfields under normal circumstances such as routine transit and search and rescue operations require simple notification of the Honduras Government. Any other use would require the approval of the Honduras Government and we have no plans to station U.S. forces under this agreement, according to a letter which Senator TOWER has received from Powell Moore.

So on behalf of myself, I oppose this amendment and would urge our colleagues to oppose it.

Mr. President, I ask unanimous consent that a letter from Powell Moore, Assistant Secretary for Congressional Relations for the Department of State to the Honorable JOHN TOWER, chairman of the Armed Services Committee, dated June 2, and another letter dated June 30, from Fred C. Ikle, Under Secretary of Defense, to Senator STROM THURMOND, the President pro tem of the Senate, also reiterating the same objections and concerns, be printed in the RECORD.

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

DEPARTMENT OF STATE,
Washington, D.C., June 2, 1982.

Hon. JOHN TOWER,
Chairman, Armed Service Committee, U.S. Senate.

DEAR MR. CHAIRMAN: As you are aware, the Department of Defense has included in its fiscal year 1983 budget a request for $21 million in military construction funds for the Western Caribbean. We propose to spend these funds on airfield improvements in Honduras. In this regard, we have negotiated and signed an agreement with the Government of Honduras which would, together with the airfield improvements, permit us the use of these airfields for the broad purposes of mutual defense cooperation set forth in our earlier agreements with Honduras, the Military Assistance Agreement of May 20, 1954, and the Agreement on Flights of Military Aircraft of April 2, 1952. Use of the airfields "under normal circumstances," such as routine transit and search and rescue operations, requires simple notification of the Honduran Government. Any other use would require the approval of the Honduran Government. We have no plans to station U.S. forces under this agreement.

While the amount involved is relatively modest, I cannot overemphasize the importance of funding the proposed airfield improvements for our security interests in Central America. The newly elected democratic government of Honduras is deeply worried about incidents on the Nicaraguan border and by Nicaragua's arms buildup, which exceeds any defensive requirements. Our essential aim is to demonstrate to the Hondurans that we remain interested in the security of our friends in the area. By reassuring our friends, this initiative will therefore contribute to the security and stability of Central America. I trust that you will be able to give it your full support.

Sincerely,

POWELL A. MOORE,
Assistant Secretary for Congressional Relations.

THE UNDER SECRETARY OF DEFENSE,
Washington, D.C., June 30, 1982.

Hon. STROM THURMOND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: The fiscal year 1983 military construction authorization bill for which you are floor manager contains $21 million for airfield improvements in the Western Caribbean. We intend to use the funds to improve two airfields in Honduras and have negotiated an access agreement (attached) with the Honduran government.

The access agreement permits use of the fields for transit and search and rescue operations with at least 24 hours advance notification. Longer term deployment to meet a security threat to Honduras or U.S. interests requires joint approval by both governments.

The agreement along with the proposed airfield improvements, gives us the capability to act positively in response to a wide range of contingencies, from disaster relief to a military emergency.

The Honduran government is deeply concerned about the unprecedented military buildup, including the airfield preparations to receive MIG aircraft, in Nicaragua. They are also worried about the increasing number of incidents along their border with Nicaragua.

This airfield improvement project can send a clear signal to our friends in the area. If they commit themselves to freedom, as Honduras has, we will support their efforts to defend themselves in a tangible way while they build the institutions necessary to insure social, economic and political progress.

This program, at $21 million, is relatively small, but it will have a major impact in a region that is becoming more important to us as events unfold. Your support of this program is deeply appreciated.

Sincerely,

FRED C. IKLE.

EMBASSY OF THE UNITED STATES OF AMERICA,
Tegucigalpa, D.C., May 6, 1982.

His Excellency, EDGARDO PAZ BARNICA,
Minister of Foreign Relations of the Republic of Honduras, Tegucigalpa, D.C.

EXCELLENCY: I have the honor to refer to the recent conversations between representatives of our Governments concerning the use and improvement of certain facilities in Honduras. As a result of those discussions, I have the honor to propose to Your Excellency that the attached text constitute an Annex to the Bilateral Military Assistance Agreement between the Government of Honduras and the Government of the United States of America, which was signed on May 20, 1954, to enter into force on the date of your reply concurring therein.

Accept, Excellency, the renewed assurances of my highest consideration,

JOHN D. NEGROPONTE.

ANNEX TO THE BILATERAL MILITARY ASSISTANCE AGREEMENT BETWEEN THE GOVERNMENT OF HONDURAS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA DATED MAY 20, 1954

1. To further the purposes and objectives of the Bilateral Military Assistance Agreement between the Government of the United States of America and the Government of Honduras, concluded on May 20, 1954, and under the terms and conditions specified herein:

A. To the extent agreed between the Governments of the United States of America and Honduras, the United States will undertake a program for the improvement of existing facilities at the Honduran aerial ports of Palmerola, Goloson, and La Mesa, and at such other aerial ports as the two Governments may subsequently agree; as well as the construction of new facilities and installation of equipment as may be necessary for their use;

B. Aircraft operated by or for the Government of the United States of America may make use of the aforesaid aerial ports and facilities and of other aerial ports that the two Governments may subsequently agree upon.

2. Under normal circumstances, the use by the Government of the United States of America of the aerial ports referred to in paragraph 1 above shall be in accordance with paragraphs 1, 2 and 7 of the agreement of April 2, 1952 between the Government of Honduras and the Government of the United States of America on flights of military aircraft. In other circumstances, the use of those aerial ports shall be a matter for the joint decision of the two Governments.

3. United States authorities will notify Honduran authorities at least twenty-four (24) hours in advance of anticipated arrivals of aircraft covered by this Annex, except in cases of urgent need as agreed by both Governments. Such aircraft, as is customary under international law and practice, will be exempt from landing fees, navigation charges and similar charges.

4. The Government of Honduras authorizes the Government of the United States of America to make use of the facilities at the aerial ports referred to in paragraph 1 above for the fueling or refueling of aircraft, maintenance of aircraft and equipment, accommodation of personnel, communications, supply, storage and other such activities. The Government of the United States of America shall bear the cost of supplies and services which it requests and receives from Honduran sources.

5. For the improvement or construction of facilities pursuant to this Annex, and for the installation and maintenance of equipment, the Government of the United States of America may, under applicable United States laws, regulations, and procedures, utilize its own personnel or contractors of its choice, with maximum possible use being made of qualified Honduran contractors and personnel.

6. Under the Agreement of May 20, 1954, the Government of Honduras will facilitate the entry into, movement within and exit from Honduras of United States personnel in connection with the provisions of this Annex. Such personnel will be obligated to respect the laws of Honduras and to abstain from undertaking activities inconsistent with the aforesaid Agreement. Their treatment, privileges and immunities will be in accordance with that Agreement and applicable Honduran immigration law.

7. The authorities of the Government of the United States of America will pay just and reasonable compensation in settlement of meritorious claims arising out of acts or omissions of members and civilian employees of United States Armed Forces done in the performance of official duty or out of

any act, omission or occurrence for which the United States is legally responsible. The Government of the United States of America may also at its discretion settle meritorious claims not arising from the performance of official duty and for which it is not otherwise legally responsible, but in the absence of such settlement the injured party may seek recovery of his damages from the responsible member or employees in Honduran courts. All claims processed by the authorities of the Government of the United States of America will be settled expeditiously and in accordance with United States law.

8. The Government of Honduras shall have the first option to acquire any equipment, materials, supplies, relocatable structures, or other movable property imported into or procured within Honduras under this Annex which the Government of the United States of America may decide to dispose of within Honduras.

9. The competent authorities of the two Governments shall conclude such arrangements as may be required to implement this Annex. The two Governments shall issue instructions to their appropriate authorities to ensure that the obligations stated in this Annex and arrangements agreed thereunder are fully implemented.

Mr. PERCY. They would certainly oppose any such amendment because this has been carefully negotiated, it is done in our mutual defense, and it would be a gesture to a friendly nation that wishes to adequately defend itself and hold up its end of the common defense in the region.

Mr. PELL. Will the Senator yield?

Mr. PERCY. I am happy to yield.

Mr. PELL. As I understand the Senator—and I have great respect for my chairman, friend, and colleague—he feels that this amendment is much too sweeping. Am I correct in that assumption?

Mr. PERCY. Well, I not only feel it is too sweeping, but I also feel even if it were limited just to Honduras it would undo an agreement we have already made with the Government of Honduras and I think evidence poor faith in dealing with them and undercut the executive branch of Government in doing something for which I think they have had a perfectly good reason for doing and which I strongly support.

But as I understand the amendment, if I read it correctly, it does not just apply to Honduras, though that is the country that is singled out, it does apply to 31 countries in the Central and Caribbean region.

Mr. PELL. I think that the Senator's first point about its wide sweeping nature is very well taken. Since I have not as yet asked for the yeas and nays on this amendment, I ask unanimous consent, Mr. President, that I be permitted to modify my amendment and put a period following the word "Honduras" on the sixth line of the first section of this amendment, which would then mean that it would be limited exclusively to Honduras. Is the amendment so modified?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. THURMOND. We have no objection to modifying the amendment.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, UP No. 1054, as modified, is as follows:

At the appropriate place in the bill insert the following:

CONSTRUCTION IN HONDURAS AND ANY OTHER COUNTRY IN THE CENTRAL AMERICAN AND CARIBBEAN REGION

SEC. . None of the funds appropriated pursuant to an authorization contained in this Act may be obligated or expended to improve, expand, extend, acquire, construct, convert, rehabilitate, or install any permanent or temporary airfield or airbase, including any facility in connection with an airfield or airbase, in Honduras.

Mr. THURMOND. I rise in strong opposition to this amendment which proposes to strike $21 million from this bill which is to be used to upgrade airfield facilities at two locations in Honduras.

Until President Reagan was elected, this Nation had virtually ignored the other nations in this hemisphere for more than a decade. We had no foreign policy when it came to Central America. With a treaty that was badly flawed, we abandoned our security interests in Panama and "gave away" the Panama Canal which threatens to become an economic millstone around Panama's neck. We watched as the Soviets and their Cuban surrogates sponsored a Communist takeover in Nicaragua.

Now we have an administration that is trying to restore America's image in this hemisphere and at the same time to protect our national security interests in the region. Honduras is the one bright spot in Central America. They have a strong democratic government that is the product of free elections. They are allies of the United States. In an effort to further promote the friendly relations between our two countries, negotiations were begun on March 26, 1982, leading toward an agreement wherein the United States would upgrade the runway facilities at two airfields in Honduras and in return, the Government of Honduras would grant the United States reasonable access to these facilities in accordance with established procedures. These negotiations were concluded in April and the agreement was signed by both nations on May 7, 1982.

I ask unanimous consent that a copy of that agreement be placed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. THURMOND. Mr. President, let me explain what the United States proposes to do in Honduras and why. Two existing airfields—one, on the northern coast near La Ceiba and one near the capital at Comayagua—would be upgraded. The work would consist of runway extensions, taxiway construction, parking area expansion, and fuel tank installation. The objective is to be able to use these airfields for limited airlift or for up to a squadron of tactical fighter aircraft.

There will be no U.S. forces stationed in Honduras at these airfields and there are no plans to go beyond these austere operational facilities that I have outlined. The facilities would be available to the United States—with appropriate prior consultation with the Government of Honduras—for missions such as search and rescue or natural disaster relief, as well as a range of possible military scenarios.

The threat in the region is clear. With the growing Soviet presence in Nicaragua, which now has the largest standing army in Central America and which is upgrading its airfields and training its personnel to receive Soviet Mig fighters, the United States must respond to maintain the regional balance of power. The only airfields in the region which will accommodate U.S. tactical aircraft are at Howard Air Force Base in Panama, over 500 miles away; Guantanamo Naval Base in Cuba, over 800 miles away; and Puerto Rico, which is 1,200 miles away. Twenty-one million dollars, the cost to upgrade these facilities in Honduras, seems to me to be quite a bargain to enable the United States to be able to support its allies in the region with adequate airlift and fighter aircraft.

I must point out the serious consequences that may occur if this funding is denied. Our Government has negotiated this agreement with the Government of Honduras in good faith. Honduras gets upgraded airfields which they can use for civil purposes, we get reasonable access to the airfields and help maintain the balance of power in the region. The Government of Honduras has supported and encouraged U.S. involvement in the region at a time when many Central American countries are questioning the reliability of the United States as an ally. If we deny this $21 million, and thereby fail to carry through on our part of this country-to-country agreement, we may do irreparable damage to our relations with the entire region. On the other hand, if we go forward with this project, it will be "concrete" evidence that the United States is serious in its commitment to defend the cause of freedom in the region.

The President of Honduras, the Honorable Roberto Suazo, will visit the United States during the period of July 14-16. President Suazo's elected government was inaugurated earlier this year. The new government is com-

mitted to democratic reform and the advancement of individual rights. I hope that the Senate will soundly defeat this amendment as a clear message to President Suazo and all nations of this hemisphere that the United States is a reliable ally and can be counted on to support the cause of free men anywhere in the world.

Mr. President, I hope the Senate will see fit to defeat this amendment. It is a very dangerous amendment. It is contrary to the agreement we have with that country. It is my sincere hope that we can act forthwith on it.

EXHIBIT 1

EMBASSY OF THE
UNITED STATES OF AMERICA,
Tegucigalpa, D.C., May 6, 1982.

His Excellency EDGARDO PAZ BARNICA,
Minister of Foreign Relations of the Republic of Honduras, Tegucigalpa, D.C.

EXCELLENCY: I have the honor to refer to the recent conversations between representatives of our Governments concerning the use and improvement of certain facilities in Honduras. As a result of those discussions, I have the honor to propose to Your Excellency that the attached text constitute an Annex to the Bilateral Military Assistance Agreement of the United States of America, which was signed on May 20, 1954, to enter into force on the date of your reply concurring therein.

Accept, Excellency, the renewed assurances of my highest consideration.

JOHN D. NEGROPORTO.

Enclosure: Annex to the Bilateral Military Assistance Agreement.

ANNEX TO THE BILATERAL MILITARY ASSISTANCE AGREEMENT BETWEEN THE GOVERNMENT OF HONDURAS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA DATED MAY 20, 1954

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9. The competent authorities of the two Governments shall conclude such arrangements as may be required to implement this Annex. The Two Governments shall issue instructions to their appropriate authorities to ensure that the obligations stated in this Annex and arrangements agreed thereunder are fully implemented.

Mr. THURMOND. Mr. President, I yield such time as the Senator from Texas, the chairman of the Armed Services Committee, may require.

Mr. TOWER. I thank my colleague. I will be brief.

Mr. President, the forces in Nicaragua currently number 20,000 to 25,000. With reservists and militia in excess of 50,000, there are some 75,000 Nicaraguans under arms.

In contrast, Honduras with a larger population than Nicaragua, has armed forces totaling 11,500, while Guatemala, the largest country in Central America, and with nearly three times the population of Nicaragua, has a smaller military establishment.

Against this backdrop, Honduras, which shares a long and vulnerable border with Nicaragua, just completed a transition from military rule to a democratically elected civilian government.

It occurs to me that people would feel a sense of outrage if we fail to provide a little money for airfields for Honduras on the grounds that it might be provocative to Nicaragua, which has a military force many times their size.

This does not enhance the size of the military force in Honduras. It does give them an airfield capability, at a time when Nicaragua is arming far beyond its defensive requirements.

Let us remember that Honduras has transitioned to a democratic government. It occurs to me in 1939 many people thought that our failure to deliver up Czechoslovakia to Adolf Hitler would provoke him. Is it provocation to deny a friendly country some reasonable ability to defend itself, even to deny them an airfield that might by used both for economic and defensive purposes, on the grounds that it might provoke Nicaragua, which has already demonstrated aggressive tendencies?

If this is the kind of ally the United States is going to be we are going to be a totally unreliable ally and we might as well cede the control of this hemisphere outside the North American Continent to the Soviet Union and its surrogate, Cuba. We might as well send Castro a cable saying, "Come in. Take over. We are going to do nothing. If anyone objects that we provide some assistance with a struggling country in Latin America that is trying to achieve democracy, that is trying to achieve economic growth, trying to achieve peace and stability, we will proffer no assistance to them or offer none to them because we do not want to be involved."

I cannot think of anything that would have a more devastating impact on our influence in this hemisphere than to pass an amendment of this kind. I certainly hope the Senate will reject it, and will reject it by a sizable majority so that the sentiment of this body is unmistakable.

Mr. THURMOND. Mr. President, would the able Senator from Rhode Island consider withdrawing his amendment in view of the agreement we have with Honduras and in view of

the strong attitude of many as to the importance of this matter, not only the Defense Department but also the State Department. I would hope he might consider withdrawing his amendment.

Mr. PELL. I would like to respond with a comment and a query.

First, the comment. This amendment should not be interpreted as an anti-Honduran amendment. It is a measure that reflects the people's concerns about the administration's policy in Central America. I too feel that we should show strong signs of support for the democratic process in Honduras after a long period of military rule, but would have hoped to show it in other ways. I look forward to explaining this to President Suazo Cordova when he comes to Washington next month.

In response to the Senator's thought about withdrawing it, I should be glad to withdraw it if I could receive assurance that before these airfields that are being improved are to be used by American military aircraft for military purposes, the Committee on Foreign Relations would be notified. If I could receive that assurance, I would be glad to withdraw it.

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

Mr. THURMOND. I yield to the distinguished Senator from Texas.

Mr. TOWER. Mr. President, I would think that any American use of these airfields would be subject to the War Powers Act in which, I think, the right of the Senate to be informed and the authority of the Congress in the matter are adequately protected.

I should like to think that if, for example, there were flood or famine or something of that sort in Honduras and we wanted to send some relief supplies down there in C-130 aircraft, we could do it without the President having to convene the Congress if it is out of session to get our permission or notify us in pursuit of a humane cause of that sort.

We do not impose that kind of restriction on airfields we build in many parts of the world, Mr. President.

Mr. PELL. Mr. President, I am obviously not talking about relief supplies or anything of that sort. I am talking about military purposes.

I yield at this time to my colleague from Nebraska (Mr. ZORINSKY).

Mr. THURMOND. Mr. President, I might call my colleagues' attention to a letter from the Under Secretary of Defense, Mr. Fred C. Ikle, in which he states—this is quoted from his letter:

> The access agreement permits use of the fields for transit and search and rescue operations with at least 24 hours' advance notification. Longer term deployment to meet a security threat to Honduras or United States interests requires joint approval of both governments.

I thought that might be satisfactory to the Senator.

Mr. President, I am quite sure the Armed Services Committee would be notified if the decision is made to take military action that he is concerned about.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nebraska.

Mr. ZORINSKY. Mr. President, I support the amendment on Honduras offered by the distinguished senior Senator from Rhode Island (Mr. PELL) as ranking member of the Committee on Foreign Relations. I find his concerns about the $21 million project in Honduras extremely well founded and hope that all of our colleagues in this body become convinced of the serious implications of this project as expressed by Senator PELL.

The project for airfield improvement in Honduras is an unnecessary and expensive public works project overseas that has not had the proper public airing because of the secrecy that had to be maintained during the negotiations with Honduras. The foreign policy implication of the project are clearly not in the best interests of the United States.

There is much more than meets the eye on the project. It is not simply a project whereby the U.S. Government, in a spirit of humanitarianism, finances the improvement of three airfields for the sake of the Honduran economy. This is a project initiated by the Government of the United States to make these airfields capable of landing U.S. tactical aircraft.

As a substitute to that, I point out that in these hallowed Halls, many times, I have supported the construction of additional aircraft carriers. Aircraft carriers certainly are a factor in putting an air umbrella over Honduras if it need be without putting one dime into a Honduran runway.

It does not take too much imagination to envision, in the not too distant future, a scenario in which U.S. fighter aircraft and U.S. troops land to fight in the mountains and jungles of Central America.

For an issue that has such far-ranging implications, there has been virtually little public discussion. The House and Senate committees involved in military construction dealt with the project within their purview. Understandably, the foreign policy implication of such a project was not foremost in their minds. Because the negotiations between the Governments of the United States and Honduras were going on during the committees' consideration of the military construction bill, there was no opportunity for a public airing of the issue that our citizens deserve. The potential for deepening U.S. military involvement in Central America is too stark a reality not to have a wider discussion of the issue within the Congress.

I had been assured prior to the discussion of these airfields by members of the Air Force of our country that we are quite capable of reaching Nicaragura and all of Central America, through B-59's, through strategic aircraft tactical squadrons, and through many other means, including the super aircraft carriers which could lie offshore, which I previously mentioned.

The financial aspect of the project is no less important for the American public. As Senator PELL brought out, we are continually telling our people back home that there is no money for this or that necessary project in our respective States. Now I am faced with the prospect of telling the people of Nebraska that there is no Federal money for the many bridges that are in need of refurbishing and that there is no money for the North Omaha Freeway project, but there is enough for a $21 million public works project in Honduras.

Mr. President, I hope my colleagues will heed the concerns expressed by Senator PELL and myself and vote in favor of the amendment which would withhold funds for improvement of airfields in Honduras.

I also point out, Mr. President, due to the current events in the Middle East, that this type of money put into any airfield could be quickly wasted. I think it has been proven and demonstrably illustrated that it took 20 minutes to destroy an airfield capable of handling the type of planes we want to land in Honduras in Beirut, Lebanon. It takes only nine pockmarks in the middle of a runway. I say if we cannot provide the wherewithal to protect an airfield from destruction, I think it is a hollow claim to say we are going to provide protection by giving them a concrete runway which an enemy force could destroy very rapidly.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. THURMOND. Mr. President, I yield such time as the Senator from Texas may require.

Mr. TOWER. Mr. President, the Senator from Nebraska has said that this area is within the range of the B-59, and I am at a loss to know what type of aircraft that is. I know of no such aircraft in our inventory in the first place.

In the second place, he suggests we should not build airfields because they can be destroyed by military action.

If that is true, we should not build airfields anywhere except perhaps in the continental United States where the only risk of destruction is from intercontinental weapons systems, which we might or might not be able to defend against.

I think it is a poor argument against building an airfield simply to point out that they can be militarily destroyed. I can think of nothing that would be more calculated to inhibit the use of airfields for public and military purposes than to suggest that we should not build them because they are militarily vulnerable. Everything is vulnerable in a military confrontation when an enemy is willing to use anything and pay the price to do it.

Mr. ZORINSKY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. ZORINSKY. I should like to say to my distinguished colleague from Texas that I appreciate the correction. Obviously, there is no B-59 that I am aware of either. I certainly meant B-52, which has demonstrated its ability to fly from the Pacific Ocean all the way into the Persian Gulf and return with inflight refueling.

When the Senator says we should not build for the sake of worrying about destruction, I did qualify the construction with an ability to defend the construction. I do not think many of us have to remember very far back—as a matter of fact, about 1½ years ago—to when 16 jet fighters of the National Guard were blown up on a runway in Puerto Rico. There was no war going on in Puerto Rico. That was about a $40 million cost to the American taxpayer.

So I say that if we cannot defend 16 of our jets on a runway in Puerto Rico and keep them from getting blown up, then I think we have a very poor opportunity to defend any runway in an area where hostilities take place.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, if no one else has anything else to say, I think we might have a rollcall.

Is the Senator ready? Does he yield back his time?

Mr. PELL. I am ready to yield back my time.

Mr. THURMOND. Mr. President, I just want to say a few words. Honduras is our friend. Honduras is here on this continent. Honduras will stand by us. I think that if we will provide protection for them, it will be to our advantage. It is in our national security interests to support this agreement.

I again remind my fellow Senators that not only does the Defense Department support this proposed construction strongly, the State Department approves of it as well. I just talked to the Ambassador from the OAS and he thinks it is vital. All of the Government departments concerned are in accord that this airfield construction should be done. I hope the Senate will disapprove the amendment of the able Senator from Rhode Island.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. I have the greatest affection and regard for the senior Senator from Texas and the senior Senator from South Carolina, and also for the people that they mentioned as being in support of their position opposing this amendment.

On the other hand, I do not agree with them, and for that reason I ask that the yeas and nays be ordered on this amendment.

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

The yeas and nays were ordered.

Mr. TOWER addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. TOWER. Mr. President, if all time is yielded back, I move that the amendment of the Senator from Rhode Island be tabled.

The PRESIDING OFFICER. The time has not yet been yielded back.

Mr. PELL. I yield back my time.

Mr. THURMOND. Mr. President, I yield back my time.

Mr. TOWER addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. TOWER. Mr. President, I move that the amendment of the Senator from Rhode Island be tabled.

The PRESIDING OFFICER. The question is on the motion to table the amendment of the Senator from Rhode Island.

The motion to lay on the table was agreed to.

Mr. PELL. Mr. President, I move to reconsider the vote by which the amendment was tabled because I had asked for a rollcall on the amendment.

The PRESIDING OFFICER. The question is on the motion to reconsider.

Mr. PELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. TOWER. Mr. President, I ask unanimous consent that the voice vote on the motion to table be vitiated and that a rollcall vote occur on the motion to table.

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

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Alabama (Mr. DENTON), the Senator from Arizona (Mr. GOLDWATER), and the Senator from California (Mr. HAYAKAWA) are necessarily absent.

I also announce that the Senator from Georgia (Mr. MATTINGLY) is absent due to illness.

I further announce that, if present and voting, the Senator from California (Mr. HAYAKAWA) and the Senator from Georgia (Mr. MATTINGLY) would each vote "yea".

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON) and the Senator from Montana (Mr. MELCHER) are necessarily absent.

The PRESIDING OFFICER (Mr. CHAFEE). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 65, nays 29 as follows:

[Rollcall Vote No. 204 Leg.]

YEAS—65

Abdnor	Exon	McClure
Andrews	Garn	Moynihan
Armstrong	Glenn	Murkowski
Baker	Gorton	Nickles
Bentsen	Grassley	Nunn
Boren	Hatch	Packwood
Boschwitz	Hawkins	Percy
Brady	Heflin	Pressler
Bumpers	Heinz	Quayle
Byrd, Harry F., Jr.	Helms	Rudman
	Hollings	Schmitt
Chiles	Humphrey	Simpson
Cochran	Jackson	Specter
Cohen	Jepsen	Stafford
D'Amato	Johnston	Stennis
Danforth	Kassebaum	Stevens
DeConcini	Kasten	Symms
Dixon	Laxalt	Thurmond
Dole	Long	Tower
Domenici	Lugar	Wallop
Durenberger	Mathias	Warner
East	Matsunaga	Weicker

NAYS—29

Baucus	Hart	Proxmire
Biden	Hatfield	Pryor
Bradley	Huddleston	Randolph
Burdick	Inouye	Riegle
Byrd, Robert C.	Kennedy	Roth
Cannon	Leahy	Sarbanes
Chafee	Levin	Sasser
Dodd	Metzenbaum	Tsongas
Eagleton	Mitchell	Zorinsky
Ford	Pell	

NOT VOTING—6

Cranston	Goldwater	Mattingly
Denton	Hayakawa	Melcher

So the motion to lay on the table Mr. PELL's amendment (UP No. 1054, as modified) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

Mr. TOWER. Mr. President, will the Senator from South Carolina yield to me?

The PRESIDING OFFICER. Will the Senator please withhold? We must have order in the Chamber. We cannot hear. Will Senators please desist in their conversations.

Mr. THURMOND. Mr. President, I yield to the distinguished Senator from Texas.

The PRESIDING OFFICER. Let us give the Senator our attention, please. The Senator from Texas.

Mr. TOWER. Mr. President, I would just like to ask the distinguished Senator from South Carolina if it is not his intention to have a record vote on final passage of the military construction bill, and if that vote is not expected to occur very shortly? I think it would be helpful for Senators to understand that we probably will have a record vote in a very few minutes.

Mr. THURMOND. Mr. President, there is only one other amendment that I know about by the distinguished Senator from Nebraska (Mr. EXON) and we expect to accept that amendment. Then we are going to ask for a rollcall on final passage of the bill. So if Senators can remain here for 5 minutes I think we are ready to have the rollcall.

UP AMENDMENT NO. 1055

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nebraska (Mr. EXON) proposes an unprinted amendment numbered 1055: p. 14, line 2: Strike "$47,380,000" and insert in lieu thereof "$53,395,000".

Mr. EXON Mr. President, the amendment I am offering to this bill will restore funding for two of the athletic facilities which were requested by the Navy for the Island of Diego Garcia in the Indian ocean.

The military construction subcommittee chairman, Senator THURMOND, has already explained to the Senate that it was necessary to defer without prejudice those projects which were felt could be safely deferred without severely impacting readiness. This category of deferments included morale and welfare projects. This became necessary for budgetary purposes so that spending targets for the national security function of Government could be brought more in line with the ceilings set by the Senate's version of the first concurrent budget resolution. I support that action.

Nevertheless, I believe there is one location where an exemption to this policy should be made. That is Diego Garcia. This Island base is gaining increasing importance and use in support of our relatively new defense commitments to the Indian Ocean and Southwest Asian areas. It is the only base in that area which we can call our own. At last count, there were just over 2,000 military and civilian personnel stationed there full time. The number of transient personnel who spend limited amounts of time on the island fluctuates; however, at times that number can total an additional 2,000.

I have looked at the situation on Diego Garcia carefully and have discussed this matter with the new Chief of Naval Operations, Admiral Watkins, as well as other knowledgeable people. My conclusion is that the amount and type of recreational facilities there is clearly inadequate.

Mr. President, there are several reasons why I believe that Diego Garcia represents a special case worthy of special consideration. This island is a relatively small hunk of coral right smack in the middle of the Indian Ocean. It is barren with the absolute minimum of conveniences for a base of its increasing size and importance. There is no town there in which to go out on liberty or leave. In short, the only recreation available is that which the natural surroundings or our Government can provide for the people which the United States sends there to perform an essential mission.

Unfortunately, Mr. President, the current inadequate recreation and athletic options appear to be a contributing factor to a drug abuse problem on the island which all of us, I am sure, would like to alleviate. While the current Defense Department drug crackdown will help, we must also provide better alternatives to such behavior as a longer term and more beneficial cure. The Navy people we send to Diego Garcia stay there for 1 year without their families. I believe that we need to create a better environment for people who serve in such isolated outposts.

Mr. President, I am not proposing to restore all of the recreational facilities which the Navy requested for fiscal year 1983. After careful evaluation, and in an effort to hold down the cost of this amendment, I am proposing only two additions. These are funding for 13 outdoor volleyball, basketball, and tennis playing courts and certain additions to the existing gymnasium, including four indoor handball courts. The cost of these projects will be just over $6 million.

Mr. President, were it not for what I consider to be a truly pressing need which should not wait for the next fiscal year, I would not propose this amendment. However, I believe we owe our people who are stationed on Diego Garcia the type of recreational facilities embodied in this amendment because of the isolation of their duty post.

I am hopeful that the floor managers of the bill will agree to accept this amendment.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, we have considered this amendment. We have studied it carefully. We think it is worthwhile, and we are willing to accept it.

The PRESIDING OFFICER. Do both Senators yield back their time?

Mr. EXON. I yield back my time.

Mr. THURMOND. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Nebraska (Mr. EXON).

The amendment (UP No. 1055) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I would like to announce that the distinguished Senator from Alabama (Mr. DENTON) is unavoidably detained at the Bethesda Naval Hospital. He wanted the record to show that he would have voted against the Pell amendment and would have voted for final passage of this bill if he had been here.

Mr. MITCHELL. Mr. President, I rise in support of S. 2586, the fiscal year 1983 military construction authorization bill which provides authority for several important projects in the State of Maine.

The bill provides spending authority for projects at the Portsmouth Naval Shipyard in Kittery, Loring Air Force Base in Limestone, and the new Over-the-Horizon Backscatter support complex in Bangor.

One project, authorized at $2.2 million, is included for the Naval Shipyard in Kittery. The funds will permit the modernization of the yard's electrical electronic shop. Once completed, the modernized shop will have the capacity to conduct antenna assembly tests. In addition, the area in which gyros and motor testing takes place will be enlarged, and the shop will be given a greater load capacity so that it can be better utilized to test submarine generator sets.

At Loring Air Force Base, Maine's Strategic Air Command installation in Limestone, three major military construction program projects are authorized by S. 2586. All three of these projects will help Loring regain some of the ground it lost while the Air Force was planning to mothball the facility several years ago.

Since the mothball plan for Loring was discarded in October of 1979, the Maine delegation has worked very hard to insure that Loring's physical

plant is brought back up to the high standard which it knew previously. The fiscal year 1983 authorization bill must be considered as part of this continuing effort to upgrade Loring. Contained in the bill is authority for $33 million which will be used to convert oil-fired burners to coal; $1.2 million to continue Loring's energy conservation investment program; and $3.5 million for the construction of an advanced waste treatment facility.

The last major Maine feature contained in this bill concerns the Bangor support complex planned for the Over-the-Horizon Backscatter Radar System. Although the administration had earlier hoped that Congress would see fit to authorize some $7.2 million for OTH-B, the Armed Services Committee and Air Force officials subsequently agreed that the design had not progressed to the point where construction could occur in fiscal year 1983. Accordingly, the committee has seen fit to authorize the funds required to procure only the necessary land ($1,200,000) and to defer without prejudice the construction portion of the request until next year.

Mr. President, Maine has always been proud of its ability to participate in the continuing national defense effort. To do this effectively, our Government must continue to upgrade and replace the buildings in which our civilian and military defense personnel labor and live.

This measure, S. 2586, enables this necessary process of rehabilitation and replacement to continue. Though it does not provide all of the construction work which we might have desired, it does authorize several extremely important projects which must be undertaken this coming year if Maine's installations are to effectively perform their assigned tasks. I urge my colleagues to support the bill.

Mr. DECONCINI. Mr. President, there is no easy aspect to budget cutting, yet it is always tempting to choose the easiest possible way to save money, even when that way may not be the best way. It is my deep concern that my distinguished colleagues on the Armed Services Committee may in fact have chosen the easiest way to accomplish their goal of reducing the fiscal year 1983 budget request of $7.8 billion for military construction by $1.4 billion at the expense of the most important factor in our ability to be militarily strong and prepared—the men and women who make up our Armed Forces.

By deferring without prejudice $897 million in so-called "nice-to-have" projects, new family housing construction, and construction to make nonenergy related improvements in family housing, we are, in essence, slicing the pay of the military personnel and their families who live on base. The administration continues to support the concept of a volunteer army, as do I, but this deferral does not support this concept. It harms the Armed Forces' ability to attract new personnel and it makes military personnel and their families less and less willing to continue their life in the Armed Forces.

Mr. President, last year, with limited success, I proposed an amendmnt to the fiscal year 1982 military construction bill which would have earmarked funds for improvements in family housing at Yuma Proving Ground in Arizona. I am happy to say that, according to information I have received, the loyal and dedicated Army personnel at Yuma will, indeed, be receiving desperately needed refurbishment of their air-conditioning systems due to committee and Defense Department action. For this, I am very grateful.

But air-conditioning is not enough. What about the kitchens at Yuma which have not received remodeling or improved equipment since the construction of the housing unit? What about the units which need additional bedrooms and the units which need their bathrooms refurbished and the need for safety fencing?

I know these needs are not limited to Yuma—indeed, the Army's priority list indicates there are several facilities which have greater need than Yuma. Yet this bill makes no provisions for these types of improvements at any Army facility. The deferral gives the impression of equitability because no exceptions, no add-ons were granted, yet the fact of the matter is that the sacrifices of funds for improvements, new family housing, and so-called nice-to-haves strikes at the heart of military families all over this Nation. Do these families, who are the strength of our Armed Forces, not deserve something? Quite frankly, are we not shoving an unfair share of our need to reduce the budget on to their already burdened shoulders?

Mr. President, I had contemplated introducing an amendment here today to try to rectify this inequity. However, I was faced with the choice of either proposing funding just for Arizona projects that I know are needy or proposing that the full amount that was cut from the bill for Army family housing be restored. One amendment does too little, the other too much. Neither takes into account similarly harmful cuts made by the committee in the other branches of our Armed Forces and neither takes into account the harm of such cuts as the deletion of funding for construction of a new logistics complex at Williams Air Force Base in Arizona. This is the second consecutive year that funding for this complex, which would replace 11 widely separated, World War II wooden buildings, has been deferred without prejudice. That means that we are continuing to require Air Force personnel to put up with a building with structural integrity that does not permit the vertical stacking of supplies, thus requiring the use of hand trucks and excessive manual labor.

For these reasons, I decided against proposing an amendment to this bill, but I hope that my statement serves as a reminder to my colleagues of the problem that this legislation poses or, in many cases, exacerbates. I shall continue to take whatever opportunities I may have to help seek workable and equitable remedies to this problem of such concern to the men and women of our Armed Forces.

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

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. TOWER. Mr. President, I ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. Do the managers of the bill yield back the remainder of their time?

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

The PRESIDING OFFICER. All time having been yielded back, the bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Alabama (Mr. DENTON) and the Senator from California (Mr. HAYAKAWA) are necessarily absent.

I further announce that the Senator from Georgia (Mr. MATTINGLY) is absent due to illness.

I further announce that, if present and voting, the Senator from California (Mr. HAYAKAWA) and the Senator from Georgia (Mr. MATTINGLY) would each vote "yea."

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON), the Senator from Louisiana (Mr. JOHNSTON) and the Senator from Montana (Mr. MELCHER) are necessarily absent.

The PRESIDING OFFICER (Mr. ABDNOR). Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 93, nays 1, as follows:

[Rollcall Vote No. 205 Leg.]

YEAS—93

Abdnor	Boren	Harry F., Jr.
Andrews	Boschwitz	Byrd, Robert C.
Armstrong	Bradley	Cannon
Baker	Brady	Chafee
Baucus	Bumpers	Chiles
Bentsen	Burdick	Cochran
Biden	Byrd,	Cohen

D'Amato	Humphrey	Proxmire
Danforth	Inouye	Pryor
DeConcini	Jackson	Quayle
Dixon	Jepsen	Randolph
Dodd	Kassebaum	Riegle
Dole	Kasten	Roth
Domenici	Kennedy	Rudman
Durenberger	Laxalt	Sarbanes
Eagleton	Leahy	Sasser
East	Levin	Schmitt
Exon	Long	Simpson
Ford	Lugar	Specter
Garn	Mathias	Stafford
Glenn	Matsunaga	Stennis
Goldwater	McClure	Stevens
Gorton	Metzenbaum	Symms
Grassley	Mitchell	Thurmond
Hart	Moynihan	Tower
Hatch	Murkowski	Tsongas
Hawkins	Nickles	Wallop
Heflin	Nunn	Warner
Heinz	Packwood	Weicker
Helms	Pell	Zorinsky
Hollings	Percy	
Huddleston	Pressler	

NAYS—1

Hatfield

NOT VOTING—6

Cranston	Hayakawa	Mattingly
Denton	Johnston	Melcher

So the bill, S. 2586, as amended, was passed as follows:

S. 2586

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 "Military Construction Authorization Act, 1983".

TITLE I—ARMY

AUTHORIZED ARMY CONSTRUCTION PROJECTS

SEC. 101. The Secretary of the Army may establish or develop military installations and facilities by acquiring, constucting, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment for the following acquisition and construction:

INSIDE THE UNITED STATES

UNITED STATES ARMY FORCES COMMAND

Fort Bragg, North Carolina, $23,070,000.
Fort Campbell, Kentucky, $10,650,000.
Fort Carson, Colorado, $8,700,000.
Fort Devens, Massachusetts, $3,200,000.
Fort Hood, Texas, $4,100,000.
Fort Irwin, California, $19,190,000.
Fort Lewis, Washington, $21,700,000.
Fort Meade, Maryland, $2,500,000.
Fort Ord, California, $6,700,000.
Fort Polk, Louisiana, $10,100,000.
Camp Roberts, California, $2,050,000.
Fort Stewart, Georgia, $17,200,000.
Fort Wainwright, Alaska, $3,020,000.
Yakima Firing Center, Washington, $1,250,000.

UNITED STATES ARMY WESTERN COMMAND

Schofield Barracks, Hawaii, $2,930,000.

UNITED STATES ARMY TRAINING AND DOCTRINE COMMMAND

Fort Benning, Georgia, $15,500,000.
Fort Bliss, Texas, $21,300,000.
Fort Eustis, Virginia, $6,400,000.
Fort Knox, Kentucky, $8,400,000.
Fort Leavenworth, Kansas, $13,600,000.
Fort Leonard Wood, Missouri $11,000,000.
Fort McClellan, Alabama, $7,500,000.
Fort Rucker, Alabama, $3,950,000.
Fort Story, Virginia, $13,800,000.

UNITED STATES ARMY MATERIEL DEVELOPMENT AND READINESS COMMAND

Aberdeen Proving Ground, Maryland, $9,400,000.
Pine Bluff Arsenal, Arkansas, $19,650,000.
Red River Army Depot, Texas, $39,000,000.
Tooele Army Depot, Utah, $4,150,000.
White Sands Missile Range, New Mexico, $5,500,000.

AMMUNITION FACILITIES

Indiana Army Ammunition Plant, Indiana, $2,910,000.
Iowa Army Ammunition Plant, Iowa, $430,000.
Kansas Army Ammunition Plant, Kansas, $7,200,000.
Longhorn Army Ammunition Plant, Texas, $230,000.
Louisiana Army Ammunition Plant, Louisiana, $3,410,000.
Milan Army Ammunition Plant, Tennessee, $5,500,000.
Radford Army Ammunition Plant, Virginia, $2,400,000.
Sunflower Army Ammunition Plant, Kansas, $3,000,000.

UNITED STATES ARMY HEALTH SERVICES COMMAND

Fort Detrick, Maryland, $1,700,000.
Walter Reed Army Medical Center, Washington, District of Columbia, $9,800,000.

BALLISTIC MISSILE DEFENSE SYSTEMS COMMAND

Classified locations, $20,000,000.

OUTSIDE THE UNITED STATES

EIGHTH UNITED STATES ARMY

Korea, $57,850,000.

UNITED STATES ARMY FORCES COMMAND

Panama, $6,800,000.
Egypt, $53,000,000.

UNITED STATES ARMY, EUROPE

Germany, $240,840,000.
Turkey, $3,750,000.

UNITED STATES ARMY WESTERN COMMAND

Johnston Island, $1,050,000.

UNITED STATES ARMY COMMUNICATIONS COMMAND

Germany, $3,950,000.

EMERGENCY CONSTRUCTION

SEC. 102. The Secretary of the Army may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Army, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1983, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1984, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 103. The Secretary of the Army is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $49,950,000.

FAMILY HOUSING

SEC. 104. (a) The Secretary of the Army, or the Secretary's designee, is authorized to accomplish alterations, additions, expansions, or extensions, not otherwise authorized by law, to existing public quarters at a cost not to exceed $43,880,000, which shall be available only for energy conservation projects.

(b) Section 505 of the Military Construction Authorization Act, 1976 (Public Law 94-107; 89 Stat. 561) is amended by striking out "$195,000" in the item relating to Fort McNair, Washington, District of Columbia, and inserting in lieu thereof "$223,000".

(c) Section 601(c) of the Military Construction Authorization Act, 1982 (Public Law 97-99; 95 Stat. 1373) is amended by striking out "four hundred and fifty-four units" in the item relating to Fort Irwin, California, and inserting in lieu thereof "four hundred and eighty-four units."

FORT LEWIS, WASHINGTON—WEYERHAEUSER LAND EXCHANGE

SEC. 105. (a) The Secretary of the Army (hereinafter in this section referred to as the "Secretary") is authorized to convey to the Weyerhaeuser Corporation, Tacoma, Washington, all right, title, and interest of the United States in and to five parcels of land aggregating approximately three hundred acres located along the westerly boundary of the Fort Lewis military Reservation, Pierce County, Washington, together with the improvements on such land. Such conveyance shall be made subject to such terms and conditions as the Secretary considers to be in the public interest and shall include the following reservations:

(1) a training easement over tract 1-US, and

(2) an access easement over tract 4-US.

(b) In consideration for the conveyance authorized by subsection (a), the Weyerhaeuser Corporation shall—

(1) convey or cause to be conveyed to the United States all right, title, and interest in two parcels of land aggregating approximately two hundred and ninety acres, together with improvements, to be equivalent in value as determined by the Secretary to the land conveyed under subsection (a) and that are other wise acceptable to the Secretary;

(2) pay all costs associated with surveying, installing boundary monuments, and fencing costs; and

(3) shall not reserve any easements in the lands to be conveyed to the United States with the exception of two easements over roads in tract 1-W.

(c) The exact acreages and legal descriptions of the lands to be conveyed under subsections (a) and (b) shall be determined by surveys which are satisfactory to the Secretary.

(d) The Secretary is authorized to enter an agreement with the responsible officials of Pierce County, Washington, whereby the reversionary interest of Pierce County in the United States lands to be conveyed

under subsection (a) is extinguished and replaced with a reversionary interest in the lands conveyed to the United States under subsection (b).

LIMITS ON PROJECTS IN SUPPORT OF THE MASTER RESTATIONING PLAN

SEC. 106. None of the funds authorized to be appropriated for projects in the Federal Republic of Germany in support of the master restationing plan may be obligated or expended until there is formal agreement between the governments of the United States and the Federal Republic of Germany as to the cost sharing arrangements that will apply to all projects in support of such master restationing plan.

TITLE II—NAVY

AUTHORIZED NAVY CONSTRUCTION PROJECTS

SEC. 201. The Secretary of the Navy may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment for the following acquisition and construction:

INSIDE THE UNITED STATES

UNITED STATES MARINE CORPS

Marine Corps Air Station, Beaufort, South Carolina, $4,650,000.

Marine Corps Base, Camp Lejeune, North Carolina, $27,050,000.

Marine Corps Base, Camp Pendleton, California, $39,965,000.

Marine Corps Air Station, Cherry Point, North Carolina, $29,300,000.

Marine Corps Air Station, El Toro, California, $7,200,000.

Marine Corps Air Station, Kaneohe Bay, Hawaii, $1,450,000.

Marine Corps Recruit Depot, Parris Island, South Carolina, $4,550,000.

Marine Corps Development and Education Command, Quantico, Virginia, $23,250,000.

Marine Corps Recruit Depot, San Diego, California, $27,100,000.

Marine Corps Air Station, Tustin, California, $2,400,000.

OFFICE OF NAVAL RESEARCH

Naval Research Laboratory, Washington, District of Columbia, $1,800,000.

CHIEF OF NAVAL OPERATIONS

Naval Academy, Annapolis, Maryland, $5,700,000.

Naval Submarine Support Base, Kings Bay, Kingsland, Georgia, $147,750,000.

COMMANDER IN CHIEF, UNITED STATES ATLANTIC FLEET

Naval Air Station, Cecil Field, Florida, $9,300,000.

Naval Station, Charleston, South Carolina, $10,700,000.

Naval Amphibious Base, Little Creek, Virginia, $1,850,000.

Naval Station, Mayport, Florida, $15,800,000.

Naval Submarine Base, New London, Groton, Connecticut, $5,900,000.

Commander Oceanographic System Atlantic, Norfolk, Virginia, $3,100,000.

Atlantic Fleet Headquarters Support Activity, Norfolk, Virginia, $2,085,000.

COMMANDER IN CHIEF, UNITED STATES PACIFIC FLEET

Naval Facility, Adak, Alaska, $1,900,000.

Naval Air Station, Alameda, California, $1,900,000.

Naval Air Station, Lemoore, California, $9,000,000.

Naval Air Station, Moffett Field, California, $6,850,000.

Naval Air Station, North Island, California, $31,070,000.

Naval Station, Pearl Harbor, Hawaii, $14,400,000.

Naval Station, San Diego, California, $27,300,000.

Shore Intermediate Maintenance Activity, San Diego, California, $14,100,000.

Shore Intermediate Maintenance Activity, Pearl Harbor, Hawaii, $7,000,000.

NAVAL EDUCATION AND TRAINING COMMAND

Fleet Combat Training Center, Atlantic, Dam Neck, Virginia, $1,700,000.

Naval Air Station, Corpus Christi, Texas, $2,800,000.

Naval Training Center, Great Lakes, Illinois, $1,850,000.

Naval Education and Training Center, Newport, Rhode Island, $1,100,000.

Naval Training Center, Orlando, Florida, $5,500,000.

Naval Air Station, Pensacola, Florida, $1,400,000.

BUREAU OF MEDICINE AND SURGERY

Naval Regional Medical Center, Oakland, California, $9,700,000.

Naval Regional Medical Center, Camp Lejeune, North Carolina, $2,800,000.

NAVAL MATERIAL COMMAND

Naval Air Rework Facility, Alameda, California, $1,400,000.

Naval Weapons Station, Charleston, South Carolina, $1,140,000.

Naval Air Rework Facility, Cherry Point, North Carolina, $5,550,000.

Navy Public Works Center, Great Lakes, Illinois, $3,400,000.

Mare Island Naval Shipyard, Vallejo, California, $2,250,000.

Norfolk Naval Shipyard, Portsmouth, Virginia, $160,000,000.

Navy Public Works Center, Norfolk, Virginia, $16,030,000.

Naval Air Rework Facility, North Island, California, $18,500,000.

Aviation Supply Office, Philadelphia, Pennsylvania, $1,400,000.

Navy Public Works Center, San Francisco, California, $9,800,000.

Portsmouth Naval Shipyard, Kittery, Maine, $2,200,000.

Naval Air Development Center, Warminster, Pennsylvania, $1,400,000.

Naval Surface Weapons Center, White Oak, Maryland, $1,700,000.

NAVAL TELECOMMUNICATIONS COMMAND

Naval Communications Area Master Station Eastern Pacific, Honolulu, Hawaii, $6,300,000.

Naval Communications Area Master Station Atlantic, Norfolk, Virginia, $1,850,000.

OUTSIDE THE UNITED STATES

UNITED STATES MARINE CORPS

Marine Corps Base, Camp Butler, Okinawa, Japan, $2,000,000.

Marine Corps Air Station, Iwakuni, Japan, $1,350,000.

COMMANDER IN CHIEF, UNITED STATES ATLANTIC FLEET

Naval Facility, Keflavik, Iceland, $1,400,000.

Naval Station, Keflavik, Iceland, $2,600,000.

COMMANDER IN CHIEF, UNITED STATES PACIFIC FLEET

Naval Air Facility, Atsugi, Japan, $1,700,000.

Naval Air Station, Cubi Point, Republic of the Philippines, $10,400,000.

Naval Support Facility, Diego Garcia, Indian Ocean, $53,395,000.

Naval Activities, Kenya, $8,300,000.

Naval Activities, Somalia, $30,000,000.

COMMANDER IN CHIEF, NAVAL FORCES, EUROPE

Naval Air Station, Sigonella, Italy, $30,600,000.

NAVAL MATERIAL COMMAND

Navy Public Works Center, Subic Bay, Republic of the Philippines, $2,050,000.

NAVAL TELECOMMUNICATIONS COMMAND

Naval Communication Area Master Station Western Pacific, Guam, $1,750,000.

Naval Communication Area Master Station, Mediterranean, Naples, Italy, $2,500,000.

Naval Communication Station, Thurso, Scotland, $1,400,000.

NAVAL SECURITY GROUP COMMAND

Naval Security Group Activity, Edzell, Scotland, $9,390,000.

HOST NATION INFRASTRUCTURE SUPPORT

Various Locations, $3,000,000.

EMERGENCY CONSTRUCTION

SEC. 202. The Secretary of the Navy may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the secretary of defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Navy, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1983, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1984, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 203. The Secretary of the Navy is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $55,938,000.

FAMILY HOUSING

SEC. 204. (a) Notwithstanding any other provision of law, the Secretary of the Navy is authorized to purchase ninety-one acres of real estate at a cost not to exceed $1,000,000 in support of a future project to construct family housing units at the Naval Station, Mayport, Florida.

(b) The Secretary of the Navy, or the Secretary's designee, is authorized to accomplish alterations, additions, expansions, or extensions, not otherwise authorized by law,

to existing public quarters at a cost not to exceed $7,574,000 which shall be available only for energy conservation projects.

HOUSING UNITS ACQUIRED FROM PUBLIC HEALTH SERVICE

SEC. 205. The Secretary of the Navy may use for military family housing purposes the seven housing units comprising a portion of the United States Public Health Service Facility, Norfolk, Virginia, to be acquired by the Secretary of the Navy by transfer from the Secretary of Health and Human Services pursuant to section 987 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35).

TITLE III—AIR FORCE

AUTHORIZED AIR FORCE CONSTRUCTION PROJECTS

SEC. 301. The Secretary of the Air Force may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment for the following acquisition and construction:

INSIDE THE UNITED STATES

AIR FORCE LOGISTICS COMMAND

Hill Air Force Base, Utah, $5,854,000.
Kelly Air Force Base, Texas, $10,000,000.
McClellan Air Force Base, California, $9,000,000.
Robins Air Force Base, Georgia, $4,700,000.
Tinker Air Force Base, Oklahoma, $10,650,000.
Wright-Patterson Air Force Base, Ohio, $11,586,000.

AIR FORCE SYSTEMS COMMAND

Arnold Engineering Development Center, Tennessee, $6,600,000.
Edwards Air Force Base, California, $7,100,000.
Eglin Air Force Base, Florida, $10,400,000.
Fort MacArthur, California, $1,900,000.
Cape Canaveral, Florida, $9,100,000.
Moffett Naval Air Station, California, $1,900,000.
Sunnyvale Air Force Station, California, $11,700,000.

AIR TRAINING COMMAND

Chanute Air Force Base, Illinois, $8,160,000.
Columbus Air Force Base, Mississippi, $1,150,000.
Goodfellow Air Force Base, Texas, $15,300,000.
Keesler Air Force Base, Mississippi, $9,000,000.
Lackland Air Force Base, Texas, $6,100,000.
Laughlin Air Force Base, Texas, $5,770,000.
Lowry Air Force Base, Colorado, $13,050,000.
Maxwell Air Force Base, Alabama, $15,150,000.
Randolph Air Force Base, Texas, $1,050,000.
Reese Air Force Base, Texas, $3,750,000.
Sheppard Air Force Base, Texas, $5,500,000.
Williams Air Force Base, Arizona, $2,600,000.

ALASKAN AIR COMMAND

Eielson Air Force Base, Alaska, $6,580,000.
Elmendorf Air Force Base, Alaska, $4,800,000.
Galena Airport, Alaska, $2,050,000.
Shemya Air Force Base, Alaska, $1,200,000.
Various Locations, Alaska, $43,600,000.

MILITARY AIRLIFT COMMAND

Altus Air Force Base, Oklahoma, $1,060,000.
Andrews Air Force Base, Maryland, $12,150,000.
Charleston Air Force Base, South Carolina, $1,550,000.
Dover Air Force Base, Delaware, $2,500,000.
Kirtland Air Force Base, New Mexico, $3,570,000.
Little Rock Air Force Base, Arkansas, $5,500,000.
McGuire Air Force Base, New Jersey, $16,000,000.
Norton Air Force Base, California, $1,300,000.
Pope Air Force Base, North Carolina, $4,400,000.
Scott Air Force Base, Illinois, $4,850,000.

NATIONAL MILITARY COMMAND CENTER

Pentagon Building, Virginia, $3,300,000.

NORTH AMERICAN AEROSPACE DEFENSE COMMAND

NORAD Cheyenne Mountain Complex Colorado, $1,900,000.

STRATEGIC AIR COMMAND

Beale Air Force Base, California, $2,595,000.
Blytheville Air Force Base, Arkansas, $1,350,000.
Carswell Air Force Base, Texas, $54,500,000.
Dyess Air Force Base, Texas, $1,650,000.
Ellsworth Air Force Base, South Dakota, $1,350,000.
Francis E. Warren Air Force Base, Wyoming, $4,150,000.
Fairchild Air Force Base, Washington, $3,740,000.
Griffiss Air Force Base, New York, $49,050,000.
K. I. Sawyer Air Force Base, Michigan, $4,450,000.
Loring Air Force Base, Maine, $38,420,000.
Malmstrom Air Force Base, Montana, $49,900,000.
March Air Force Base, California, $1,550,000.
McConnell Air Force Base, Kansas, $3,000,000.
Offutt Air Force Base, Nebraska, $13,255,000.
Peterson Air Force Base, Colorado, $67,700,000.
Powell, Wyoming, $1,250,000.
Vandenberg Air Force Base, California, $79,759,000.
Various Locations, Continental United States, $1,900,000.
Wurtsmith, Air Force Base, Michigan, $1,800,000.

TACTICAL AIR COMMAND

Bergstrom Air Force Base, Texas, $5,450,000.
Cannon Air Force Base, New Mexico, $1,800,000.
Davis-Monthan Air Force Base, Arizona, $11,950,000.
George Air Force Base, California, $1,400,000.
Holloman Air Force Base, New Mexico, $2,800,000.
Homestead Air Force Base, Florida, $1,500,000.
Langley Air Force Base, Virginia, $15,550,000.
MacDill Air Force Base, Florida, $1,400,000.
Moody Air Force Base, Georgia, $2,550,000.
Mountain Home Air Force Base, Idaho, $1,700,000.
Nellis Air Force Base, Idaho, $19,900,000.
Seymour-Johnson Air Force Base, North Carolina, $3,620,000.
Shaw Air Force Base, South Carolina, $1,150,000.
Tyndall Air Force Base, Florida, $6,300,000.
Various Locations, Maine, $1,200,000.

M-X

Various Locatons, Continental United States, $40,000,000.

AIR NATIONAL GUARD

Buckley Air National Guard Base, Colorado, $1,100,000.
Otis Air National Guard Base, Massachusetts, $3,440,000.

AIR FORCE RESERVE

Westover Air Force Reserve Base, Massachusetts, $2,700,000.

OUTSIDE THE UNITED STATES

MILITARY AIRLIFT COMMAND

Rhein-Main Air Base, Germany, $7,270,000.

PACIFIC AIR FORCES

Camp Long, Korea, $1,750,000.
Clark Air Base, Republic of the Philippines, $14,380,000.
Diego Garcia Air Base, Indian Ocean, $4,550,000.
Kadena Air Base, Japan, $15,950,000.
Kunsan Air Base, Korea, $36,490,000.
Kwang-Ju Air Base, Korea, $2,450,000.
Misawa Air Base, Japan, $6,600,000.
Osan Air Base, Korea, $44,000,000.
San Miguel, Republic of the Philippines, $1,750,000.
Yaedake Radio Relay Station, Japan, $1,300,000.

STRATEGIC AIR COMMAND

Andersen Air Force Base, Guam, $2,440,000.

TACTICAL AIR COMMAND

Keflavik Naval Station, Iceland, $3,600,000.
Various Locations, Worldwide, $21,000,000.

UNITED STATES AIR FORCES IN EUROPE

Egypt, Various Locations, $125,600,000.
Germany, Various Locations, $12,038,000.
Aviano Air Base, Italy, $7,200,000.
Oman, Various Locations, $60,350,000.
Torrejon Air Base, Spain, $4,000,000.
Incirlik Air Base, Turkey, $7,290,000.
Various Locations, United Kingdom, $52,960,000.
Various Locations, $88,030,000.

EMERGENCY CONSTRUCTION

SEC. 302. The Secretary of the Air Force may establish or develop installations and facilities by proceeding with construction made necessary by changes in missions and responsibilities which have been occasioned by (1) unforeseen security considerations, (2) new weapons developments, (3) new and unforeseen research and development requirements, (4) improved production schedules, or (5) revisions in the tasks or functions assigned to a military installation or facility or for environmental considerations, if the Secretary of Defense determines that deferral of such construction for inclusion in the next Military Construction Authorization Act would be inconsistent with interests of national security and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $20,000,000. The Secretary of the Air Force,

or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediatley upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including those real estate actions pertaining thereto. This authorization shall expire on October 1, 1983, or on the date of the enactment of the Military Construction Authorization Act for fiscal year 1984, whichever is later, except for those public works projects concerning which the Committees on Armed Services of the Senate and House of Representatives have been notified pursuant to this section prior to such date.

MINOR CONSTRUCTION

SEC. 303. The Secretary of the Air Force is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $90,974,000.

FAMILY HOUSING

SEC. 304. The Secretary of the Air Force, or the Secretary's designee, is authorized to accomplish alterations, additions, expansions, or extensions, not otherwise authorized by law, to existing public quarters at a cost not to exceed $17,000,000 which shall be available only for energy conservation projects.

DEFICIENCY AUTHORIZATION FOR PRIOR YEAR PROJECT

SEC. 305. The Military Construction Act, 1977 (Public Law No. 94-431; 90 Stat. 1349), as amended, is further amended as follows:

(1) In section 301 concerning the Arnold Engineering Development Center, Tennessee, delete "$519,010,000" and insert in lieu thereof "$561,010,000" and

(2) In clause (3) of section 602 delete the phrases "$759,759,000" and "$816,409,000" and insert in lieu thereof "801,759,000" and "$858,409,000", respectively.

LAND CONVEYANCE, FLORIDA

SEC. 306. (a) Notwithstanding the restoration provisions of the Second Deficiency Appropriation Act, 1940 (Public Law 668, ch. 437, 54 Stat. 628, 655 (1940)), the Secretary of the Air Force (hereinafter in this section referred to as the "Secretary") is authorized to adjust the base boundaries at Eglin Air Force Base, Florida, to resolve encroachments by both the Air Force and private property owners resulting from reliance on inaccurate surveys. In doing so the Secretary is authorized (1) to disclaim intent to acquire property by prescription, which disclaimer shall be binding on all parties, (2) to dispose of tracts by gift, sale or exchange for privately owned land adjoining Eglin Air Force Base to parties in possession of such tracts who mistakenly believed that they had acquired title to such tracts, and (3) to acquire tracts by purchase, donation or exchange for Government-owned land at Eglin Air Force Base.

(b) Conveyances pursuant to this action may be made without consideration at the Secretary's discretion.

(c) The exact acreages and legal description of all properties are to be determined by surveys which are acceptable to the Secretary.

FOREIGN MILITARY SALES CENTER, WRIGHT-PATTERSON AIR FORCE BASE, OHIO

SEC. 307. Notwithstanding any other provision of law, the Secretary of the Air Force is authorized to convert, rehabilitate, or alter an existing facility at Wright-Patterson Air Force Base, Ohio, for use as a foreign military sales center to accommodate personnel engaged in logistics system support and management of the foreign military sales program of the United States Air Force using foreign military sales administrative funds in the amount of $395,000.

TITLE IV—DEFENSE AGENCIES

AUTHORIZED CONSTRUCTION PROJECTS FOR THE DEFENSE AGENCIES

SEC. 401. The Secretary of Defense may establish or develop military installations and facilities by acquiring, constructing, converting, rehabilitating, or installing permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, for defense agencies for the following acquisition and construction:

INSIDE THE UNITED STATES

DEFENSE MAPPING AGENCY

Aerospace Center, Saint Louis, Missouri, $24,141,000.

NATIONAL SECURITY AGENCY

Fort George G. Meade, Maryland, $75,500,000.

OFFICE OF THE SECRETARY OF DEFENSE

Classified Activity, Fort Belvoir, Virginia, $2,100,000.

Defense Foreign Language Institute, Monterey, California, $23,500,000.

OUTSIDE THE UNITED STATES

DEFENSE LOGISTICS AGENCY

Defense Fuel Support Point, Guam, $43,900,000.

Various Locations, Korea, $29,000,000.

SECRETARY OF DEFENSE ACTIVITIES

Classified Location, $13,000,000.

NATIONAL SECURITY AGENCY

Classified Locations, $8,557,000.

EMERGENCY CONSTRUCTION

SEC. 402. The Secretary of Defense may establish or develop installations and facilities which he determines to be vital to the security of the United States and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment in the total amount of $5,200,000. The Secretary of Defense, or the Secretary's designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public work undertaken under this section, including real estate actions pertaining thereto.

MINOR CONSTRUCTION

SEC. 403. The Secretary of Defense is authorized to accomplish minor construction projects under section 2674 of title 10, United States Code, in the amount of $9,620,000.

FAMILY HOUSING

SEC. 404. The Secretary of Defense, or the Secretary's designee, is authorized to accomplish alterations, additions, expansions, or extensions, not otherwise authorized by law, to existing public quarters at a cost not to exceed $33,000 for the Defense Agencies.

TITLE V—NORTH ATLANTIC TREATY ORGANIZATION INFRASTRUCTURE

SEC. 501. (a) The Secretary of Defense is authorized to incur obligations in amounts not to exceed $375,000,000 for the United States' share of the cost of multilateral programs for the acquisition or construction of military facilities and installations (including international military headquarters) for the collective defense of the North Atlantic Treaty Area.

(b) Within thirty days after the end of each calendar-year quarter, the Secretary of Defense shall furnish to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives a description of obligations incurred by the United States during the preceding quarter for the United States' share of the cost of such multilateral programs.

TITLE VI—AUTHORIZATION OF APPROPRIATIONS AND ADMINISTRATIVE PROVISIONS

WAIVER OF RESTRICTIONS

SEC. 601. The Secretary of each military department may proceed to establish or develop installations and facilities under this Act without regard to section 3648 of the Revised Statutes, as amended (31 U.S.C. 529), and sections 4774 and 9774 of title 10, United States Code. The authority to place permanent or temporary improvements on land includes authority for surveys, administration, overhead, planning, and supervision incident to construction. That authority may be exercised before title to the land is approved under section 355 of the Revised Statutes, as amended (40 U.S.C. 255), and even though the land is held temporarily. The authority to acquire real estate or lands includes authority to make surveys and to acquire land and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise.

AUTHORIZATION OF APPROPRIATIONS

SEC. 602. (a) There are authorized to be appropriated for fiscal years beginning after September 30, 1982, such sums as may be necessary for the purposes of this Act, but appropriations for public works projects authorized by titles I, II, III, IV, and V, shall not exceed—

(1) for title I: military construction inside the United States $372,090,000; military construction outside the United States $367,240,000; minor construction $43,950,000; family housing construction $43,800,000; family housing support $905,678,000; homeowners assistance under section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374), including acquisition of properties, $4,000,000; for a total of $1,742,758,000;

(2) for title II: military construction inside the United States $735,190,000; military construction outside the United States $155,820,000; minor construction $55,938,000; family housing construction $8,574,000; family housing support $659,439,000; for a total of $1,614,961,000;

(3) for title III: military construction inside the United States $810,250,000; military construction outside the United States $520,998,000; minor construction $17,000,000; family housing support $809,535,000; for a total of $2,248,757,000;

(4) for title IV: military construction inside the United States $125,241,000; military construction outside the United States $94,457,000; minor construction $9,620,000; emergency construction $5,200,000; family housing construction $33,000; family housing support $17,279,000; for a total of $251,830,000; and

(5) for title V: for a total of $375,000,000.

(b) The amounts authorized to be appropriated for family housing support may be increased to the extent additional funds are

necessary for increased pay costs associated with actions taken pursuant to law.

COST VARIATIONS

SEC. 603. (a) OVERALL TITLE TOTAL LIMITATION.—Notwithstanding the provisions of subsections (b) and (d), the total cost of all construction and acquisition in each of titles I, II, III, IV, and V, except as provided in subsection (c), may not exceed the total amount authorized to be appropriated for that title.

(b) VARIATIONS IN INSTALLATION TOTALS—UNUSUAL VARIATIONS IN COST.—Any of the amounts specified in titles I, II, III, and IV of this Act (other than in sections 103, 203, 303, and 403) may, at the discretion of the Secretary of the military department or Director of the defense agency concerned, be increased if the Secretary of the military department or Director of the defense agency concerned determines that such increase (1) is required for the sole purpose of meeting unusual variations in cost, and (2) could not have been reasonably anticipated at the time such estimate was submitted to the Congress.

(c) VARIATIONS IN NORTH ATLANTIC TREATY ORGANIZATION TOTAL.—When the Secretary of Defense determines that the amount set forth in the title V for the United States' share of the cost of the North Atlantic Treaty Organization program must be increased, the Secretary may incur obligations in excess of such amount if the amount of the increase does not exceed by more than 25 percentum the amount set forth in such title. When the Secretary of Defense determines that the amount set forth in title V of this Act must be exceeded by more than 25 per centum for the United States' share of the cost of the North Atlantic Treaty Organization infrastructure program, the Secretary may proceed with such construction or acquisition after a written report of the facts relating to the increase of such amount, including a statement of the reasons for such increase, has been submitted to the Committees on Armed Services of the Senate and House of Representatives and either (1) fifteen days have elapsed from the date of submission of such report, or (2) both committees have indicated approval of such construction or acquisition. Notwithstanding the provisions in prior Military Construction Authorization Acts, the provisions of this subsection shall apply to such prior Acts.

(d) COST AND SCOPE VARIATIONS OF INDIVIDUAL PROJECTS: REPORTS TO CONGRESS.—No individual project authorized in sections 101, 104, 201, 204, 301, 304, 401, and 404 of this Act for any specifically listed military installations for which the current working estimate is greater than the statutory upper limit for minor construction projects may be placed under contract if—

(1) the approved scope of the project is reduced in excess of 25 per centum; or

(2) the current working estimate, based upon bids received, for the construction of such project exceeds by more than 25 percentum the amount authorized for such project by the Congress;

until a written report of the facts relating to the reduced scope or increased cost of such project, including a statement of the reasons for reduction in scope or increase in cost, has been submitted to the Committees on Armed Services of the Senate and House of Representatives and either fifteen days have elapsed from the date of submission of such report or both committees have indicated approval of such reduction in scope or increase in cost, as the case may be.

(e) ANNUAL REPORT TO CONGRESS.—The Secretary of Defense, or the Secretary's designee, shall submit an annual report to the Congress identifying each individual project (other than a project authorized under section 103, 203, 303, or 403) which has been placed under contract in the preceding twelve-month period and with respect to which the then current working estimate of the Department of Defense, based upon bids received, for such project exceeded the amount authorized by the Congress for that project by more than 25 per centum. The Secretary shall also include in such report each individual project with respect to which the scope was reduced by more than 25 per centum in order to permit contract award within the available authorization for such project. Such report shall include all pertinent cost information for each individual project, including the amount in dollars and percentage by which the current working estimate based on the contract price for the project exceeded the amount authorized for such project by the Congress.

CONSTRUCTION SUPERVISION

SEC. 604. Contracts for construction made by the United States for performance within the United States and its possessions under this Act shall be executed under the jurisdiction and supervision of the Corps of Engineers, Department of the Army; the Naval Facilities Engineering Command, Department of the Navy; or such other department or Government agency as the Secretaries of the military departments recommend and the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective accomplishment of the construction herein authorized. The Secretaries of the military departments shall report annually to the President of the Senate and Speaker of the House of Representatives a breakdown of the dollar value of construction contracts completed by each of the several construction agencies selected together with the design, construction supervision, and overhead fees charged by each of the several agents in the execution of the assigned construction. Further, such contracts (except architect and engineering contracts which, unless specifically authorized by the Congress shall continue to be awarded in accordance with presently established procedures, customs, and practice) shall be awarded insofar as practicable, on a competitive basis to the lowest responsible bidder, if the national security will not be impaired and the award is consistent with chapter 137 of title 10, United States Code. The Secretaries of the military departments shall report annually to the President of the Senate and Speaker of the House of Representatives with respect to all contracts awarded on other than a competitive basis to the lowest responsible bidder. Such reports shall also show, in the case of the ten architect-engineering firms which, in terms of total dollars, were awarded the most business; the names of such firms; the total number of separate contracts awarded each firm; and the total amount paid or to be paid in the case of each such action under all such contracts awarded such firm.

EFFECTIVE DATE FOR PROJECT AUTHORIZATIONS

SEC. 605. Titles I, II, III, IV, and V shall take effect on October 1, 1982.

TITLE VII—GUARD AND RESERVE FORCES FACILITIES

AUTHORIZATION FOR FACILITIES

SEC. 701. Subject to chapter 133 of title 10, United States Code, the Secretary of Defense may establish or develop additional facilities for the Guard and Reserve Forces, including the acquisition of land therefore, but the cost of such facilities shall not exceed the following amounts:

(1) For the Department of the Army:

(a) for the Army National Guard of the United States, $33,000,000; and

(b) for the Army Reserve, $28,500,000.

(2) For the Department of the Navy; for the Naval and Marine Corps Reserves, $21,900,000.

(3) For the Department of the Air Force:

(a) for the Air National Guard of the United States, $89,800,000; and

(b) for the Air Force Reserve, $29,000,000.

WAIVER OF CERTAIN RESTRICTIONS

SEC. 702. The Secretary of Defense may establish or develop installations and facilities under this title without regard to section 3648 of the Revised Statutes, as amended (31 U.S.C. 529) and sections 2662, 4774, and 9774 of title 10, United States Code. The authority to place permanent or temporary improvements on lands includes authority for surveys, administration, overhead, planning, and supervision incident to construction. That authority may be exercised before title to the land is approved under section 355 of the Revised Statutes, as amended (40 U.S.C. 255) and even though the land is held temporarily. The authority to acquire real estate or land includes authority to make surveys and to acquire land and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise.

NOTIFICATION ON USE OF LUMP-SUM AUTHORITY

SEC. 703. Section 2233a(1), of title 10, United States Code is amended—

(1) by striking the word "thirty" after the words "until after the expiration of" and inserting in lieu thereof the word "fifteen",

(2) by striking the words "Senate and the House of Representatives" after the words "Secretary of Defense or his designee notifies the" and inserting in lieu thereof the words "Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives",

(3) by striking the words "Senate and the House of Representatives" after the words "damaged or destroyed, where the" in exception (b) and inserting in lieu thereof the words "Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives", and,

(4) by adding an additional exception, subsection (c), as follows:

"(c) Facilities contained on the list of projects supporting the annual lump sum authorization, providing that the location or nature of the facility have not changed, and that the estimated cost is within 125 per centum of the amount indicated on the supporting list.".

TITLE VIII—GENERAL PROVISIONS

LAND CONVEYANCE, HOUSTON COUNTY, GEORGIA

SEC. 801. (a) The Secretary of the Air Force (hereinafter in this section referred to as the "Secretary") is authorized to convey to the city of Warner Robins, Georgia, and the Board of Commissioners of Houston County, Georgia, all right, title, and interest of the United States in and to tracts of land consisting of a total of approximately seventy acres, together with any improvements located on the tracts of land.

(b) In consideration for the conveyance under subsection (a), the city of Warner Robins, Georgia, and the Board of Commis-

sioners of Houston County, Georgia, shall convey to the United States all right, title, and interest of the city and the board in and to four tracts of land consisting of a total of approximately four hundred acres and located contiguous to Robins Air Force Base, Georgia, together with any improvements located on the tracts of land.

(c) The city of Warner Robins, Georgia, and the Board of Commissioners of Houston County, Georgia, shall pay to the United States an amount equal to the amount by which the fair market value (as determined by the Secretary) of the property to be conveyed by the United States to the city and the board under subsection (a) exceeds the fair market value (as determined by the Secretary) of the property to be conveyed by the city and the board to the United States under subsection (b).

(d)(1) The exact acreages and legal descriptions of any property acquired or conveyed under subsection (a) or (b) shall be determined by surveys that are satisfactory to the Secretary. The cost of any such survey shall be borne by the city of Warner Robins, Georgia, and the Board of Commissioners of Houston County, Georgia.

(2) The Secretary may require such additional terms and conditions with respect to the acquisition and conveyance authorized by the section as the Secretary considers appropriate to protect the interests of the United States.

OBLIGATIONS FOR COMMISSARY STORE FACILITY CONSTRUCTION

SEC. 802. Section 2685 of title 10, United States Code, is amended by adding after subsection (b) the following new subsection:

"(c) The Secretary of a military department, with the approval of the Secretary of Defense and the Director of the Office of Management and Budget, may obligate anticipated proceeds from the adjustments or surcharges authorized by subsection (a) for any use specified in subsection (b), without regard to fiscal year limitations, if the Secretary of the military department determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in subsection (b).".

LAND CONVEYANCE, BELL, CALIFORNIA

SEC. 803. (a) Subject to subsections (b) through (h), and notwithstanding any other provision of law, the Secretary of the Army (hereafter in this section referred to as the "Secretary") is authorized to convey to the city of Bell, California (hereafter in this section referred to as the "city"), all right, title, and interest of the United States in and to a parcel of land, aggregating seven and two-tenths acres, more or less, together with improvements thereon, situated in the city, as more particularly described on a map on file in the Office of the District Engineer, United States Army Engineer District, Los Angeles, California.

(b)(1) In consideration for the conveyance authorized by subsection (a), the city, pursuant to an agreement to be entered into between the city and the Secretary, shall provide to the United States, to the extent of the fair market value of the land conveyed by the Secretary under subsection (a) (as determined by the Secretary), the buildings and other improvements described in paragraph (2), which buildings and improvements shall be the property of the United States.

(2) The buildings and improvements to be provided to the United States are:

(A) a National Guard armory;

(B) modernization of a Government-owned building located in the city and known and designated in Department of the Army records as Building 332; and

(C) an organizational maintenance shop.

(3) The design and construction of the National Guard armory and the organizational maintenance shop and the modernization of the building described in paragraph (2)(B) shall be in conformance with plans and specifications approved by the Secretary.

(c) The city shall pay to the United States, as further consideration, an amount equal to the amount by which the fair market value of the property conveyed by the Secretary under subsection (a) (as determined by the Secretary) exceeds the sum of the actual costs (as determined by the Secretary) of the buildings and improvements provided to the United States under subsection (b).

(d) The exact acreage and legal description of the property to be conveyed under this section shall be determined by a survey which is satisfactory to the Secretary.

(e) The Secretary is authorized to accept and administer any real property conveyed to the Secretary under this section.

(f) In carrying out this section, the Secretary may require such additional terms and conditions as he considers appropriate to protect the interests of the United States.

(g) The authority of the Secretary under this section shall expire three years after the date of enactment of this Act.

AUTHORIZATION TO SELL OR EXCHANGE DEFENSE REAL PROPERTY

SEC. 804. (a) Notwithstanding any other provision of law, the President of the United States or his designee, if he determines that it is in the public interest or is necessary for national defense purposes, may sell or exchange any real property and associated facilities which are under the jurisdiction of the military departments (including any such property or facilities the disposal of which requires authorization or specific authorization by law) except public domain lands.

(b) Any such sale or exchange shall be accomplished using publicly advertised, competitively bid contracting procedures to the extent feasible, but in no case may such sale or exchange be entered into if the United States will not receive at least the fair market value of the property to be conveyed.

(c)(1) Notwithstanding any other provision of law, a portion of the gross proceeds from any such sale or exchange may be used—

(A) to cover all costs associated with such sale or exchange; and

(B) subject to approval by the Secretary of Defense, to cover the costs of land acquisition and the construction of replacement facilities that may be reasonable and necessary incident to such sale or exchange.

(2) Ninety-five percent of the remaining (net) proceeds shall be covered into the general fund of the Treasury to be used solely for the reduction of the national debt of the United States. Five percent of the remaining (net) proceeds shall be credited to a Defense Facilities Replacement Fund (hereinafter referred to as the "Fund") and may be used for the purpose of capitalizing future sales or exchanges pursuant to this section.

(3) Moneys remaining in the Fund at the end of each fiscal year in excess of $50,000,000 or any lesser amount determined by the Secretary of Defense to be sufficient shall be covered into the general fund of the Treasury to be used solely for the reduction of the national debt of the United States.

(d) No transaction may be entered into where the estimated costs of such transaction as included in subsection (c)(1) exceed the amount to be realized from such sale or exchange. Any transaction where the costs as included in subsection (c)(1) would exceed 50 per centum of the amount to be realized shall be subject to the prior approval of the Director of the Office of Management and Budget.

(e) Before any transaction under the provisions of this section may be entered into in which the fair market value of the real property to be sold or exchanged exceeds $100,000, a report in writing shall be submitted to the Committees on Armed Services of the Congress. Such report shall include the justification for the transaction and the current estimate of the cost of the transaction. Such transaction may then be carried out only (1) after the end of the fifteen-day period beginning on the date the notification is received by such committees, or (2) after each such committee has approved of the transaction, if the committees approve of the transaction before the end of that period.

(f) All sales, exchanges, and other transactions under this section shall be carried out in accordance with regulations which shall be prescribed by the Director of the Office of Management and Budget.

AUTHORIZATION TO USE MONEYS RECEIVED FROM GRAZING AND AGRICULTURAL LEASES

SEC. 805. Section 2667(d) of title 10, United States Code, is amended by inserting the following before the period at the end thereof: ", except that money rentals from leases for agriculture or grazing on lands other than those acquired by the United States for flood control, navigation and allied purposes, including the development of hydroelectric power, may be retained and expended by the Secretary concerned in the amounts he considers necessary to cover administrative expenses associated with such leasing and the financing of multiple land use management programs on any installation under his jurisdiction".

REVISION OF FOREIGN LEASING DOLLAR LIMITATION

SEC. 806. (a) Section 605 of the Military Construction Authorization Act, 1982 (Public Law 97-99; 95 Stat. 1374 1981) is amended by striking out "$113,717,000" in subsection (a)(2) and inserting in lieu thereof " $118,017,000.".

(b) The amendment specified in subsection (a) is effective upon the date of its enactment.

LAND EXCHANGE, WASHINGTON, DISTRICT OF COLUMBIA

SEC. 807. (a)(1) There is authorized to be expended from appropriations of the Department of the Navy for military construction an amount not to exceed $5,000,000 for the alteration, conversion, and modernization of building numbered 210 at the Washington Navy Yard as administrative office space; for alterations of buildings numbered 142 and 198 as public works facilities in support of building numbered 210; and for other supporting systems, utilities, and site improvements, all at the Washington Navy Yard, Washington, District of Columbia.

(2) The Secretary of the Navy (hereinafter in this section referred to as the "Secretary") is authorized to dispose of the property at 8621 Georgia Avenue, Silver Spring, Maryland, sometimes known as the Wolfe Building, and to reimburse the appropriations from which funds are expended

under subsection (a)(1) from the proceeds of that disposal.

(b) Any proceeds from the disposal of the Silver Spring property over and above the amount necessary for reimbursement under subsection (a), as determined by the Secretary, shall be available to the Department of the Navy for military construction projects authorized in fiscal year 1984 and later years.

(c) The disposal authorized in subsection (a)(2) shall be at fair market value, as determined by the Secretary, and his authority therein includes the authority to dispose of the Silver Spring property by sale to private parties or transfer to other Government agencies, for cash, or on credit, and upon such other terms and conditions as the Secretary determines to be in the public interest.

LAND EXCHANGE, KANSAS CITY, MISSOURI

SEC. 808. (a) Subject to subsections (b) through (f), the Secretary of the Army (hereinafter referred to as the "Secretary") is authorized to convey to the Kansas City Corporation for Industrial Development of Kansas City, Missouri (hereinafter referred to as the "Corporation") all right, title, and interest of the United States in and to a parcel of land, aggregating one and two-tenth acres, more or less, together with improvements thereon, situated in Jackson County, Kansas City, State of Missouri, presently used by the United States for Army Reserve purposes and known as the Sergeant Charles R. Long Army Reserve Training Center.

(b) In consideration for the conveyance by the Secretary, the Corporation shall—

(1) convey to the United States, all right, title, and interest in and to a parcel of land, aggregating four and one-half acres, more or less, together with improvements thereon, known, and hereinafter referred to, as the Carlisle School;

(2) repair and rehabilitate the Carlisle School; and

(3) provide to the United States the cost, as determined by the Secretary, of relocating the Federal Government activities from the United States Reserve Training Center to the Carlisle School.

(c) If the sum of the fair market value of the property conveyed to the United States and the repair and rehabilitation costs is less than the fair market value of the property of the United States, the Corporation shall pay to the United States the amount of the difference, which shall be deposited into the Treasury as miscellaneous receipts.

(d) The exact acreages and legal descriptions of the properties shall be determined by surveys which are satisfactory to the Secretary.

(e) The Secretary is authorized to accept and administer any real property conveyed to the United States under this section.

(f) The Secretary may require such additional terms and conditions as the Secretary considers appropriate to protect the interests of the United States.

(g) In the event the Corporation offers to provide to the United States another facility, in lieu of the Carlisle School, which the Secretary determines is equal to or better than the Carlisle school from a functional, rehabilitative, economic or other aspect, or aspects, the Secretary is authorized to accept and administer such alternative, consistent with (e) above, *Provided*, That prior to accepting such a conveyance, the Secretary shall submit a report of the facts concerning the proposed transaction to the Committees on Armed Services of the Senate and House of Representatives pursuant to title 10, United States code, section 2662.

RESTRICTIONS ON CONSTRUCTION OF SPECIAL CONTINGENCY FACILITIES IN CERTAIN COUNTRIES

SEC. 809. (a) Subject to subsections (b) and (c), none of the funds appropriated pursuant to this Act for the construction of contingency facilities to support the national security interests of the United States in Egypt, Kenya, Oman, Somalia, the island of Diego Garcia, or at Lajes Field (Portugal) may be obligated or expended for the construction of a facility in any such country, island, or air field unless each contract entered into for the construction of such facility requires that all construction materials (other than cement, cement products, aggregates, and concrete components other than steel) to be used in carrying out the contract will be materials produced, manufactured, or refined in the United States or the host nation.

(b) The provisions of subsection (a) shall not apply (1) if the application of such provisions would violate a formal agreement between the United States and the country that exercises sovereignty over the land on which a facility referred to in such subsection is to be constructed, or (2) in the case of a contract for $5,000,000 or less.

(c) The project manager of a facility referred to in subsection (a) may authorize, in the construction of such facility, a limited use of materials not produced, manufactured, or refined in the United States if the manager determines that the use of such materials is necessary for the orderly and timely construction of such facility. However, the total amount expended for materials not produced, manufactured, or refined in the United States under a contract for the construction of a facility referred to in subsection (a) may not exceed the applicable limit specified in the following table:

If the contract amount is—		The percent of the contract amount that may be used to procure materials not produced, manufactured, or refined in the United States may not exceed—
More than—	But not more than—	
$5,000,000.....	$25,000,000...	5
$25,000,000...	$50,000,000...	3
$50,000,000...	$100,000,000..	2
$100,000,000.....		1

TECHNICAL AMENDMENT OF PRIOR AUTHORITY FOR LAND CONVEYANCE, SOUTH CHARLESTON, WEST VIRGINIA

SEC. 810. Section 915 of the Military Construction Authorization Act, 1982, is amended—

(1) in subsection (a) by inserting "or the State of West Virginia" after "South Charleston, West Virginia" the first place it appears; and

(2) in subsection (b)(1)(A) by inserting a comma and "or such other alternate sites which may be acceptable to the Secretary" after "South Charleston, West Virginia".

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

Mr. HART. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I take this opportunity to express my appreciation to Senator HART, the ranking member of the Subcommittee on Military Construction of the Committee on Armed Services, for the fine cooperation and able assistance he gave during the consideration and passage of this bill.

I also want to express my appreciation to Paul C. Besozzi, the minority counsel, who worked closely with our majority counsel on this bill, for the fine assistance he rendered.

Mr. President, I thank the able chairman of the Committee on Armed Services for the great assistance he gave in this matter.

I also express my appreciation to Mr. James C. Smith, one of the most competent staff members I have had the pleasure of working with here in 28 years, and his able staff assistant, Miss Marie Dickinson, who is a very competent lady, for the fine assistance they gave.

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

Mr. THURMOND. I am pleased to yield.

Mr. HART. Mr. President, I wish to reciprocate the kind words of the distinguished Senator from South Carolina. He has perpetuated the tradition of cooperation on this military construction bill. I appreciate his leadership in the management of this legislation.

As did the Senator from South Carolina, I compliment the excellent staff on both sides of the aisle. It is indeed, I think, one of the finest staffs on the Hill, particularly Mr. Smith and Mr. Besozzi. I thank all those who helped put this legislation together.

Mr. ROBERT C. BYRD. Mr. President, I compliment both Senator THURMOND and Senator HART on the skill and craftsmanship they have demonstrated in handling the military construction bill on the floor.

Mr. GARN. Mr. President, the majority leader will return to the floor in just a moment. During his absence, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT—H.R. 3663

Mr. PACKWOOD. Mr. President, I believe we are going to undertake the bus regulation bill. I believe the distinguished Senator from West Virginia has a unanimous-consent request, which I shall make.

I ask unanimous consent that when the Senate turns to the consideration of Calendar No. 582, H.R. 3663, a bill to amend subtitle IV of title 49, United States Code, to provide for more effective regulation of motor carriers of passengers, it be considered under the following time agreement:

That 10 minutes on the bill to be equally divided between the Senator from Missouri (Mr. DANFORTH) and the Senator from Nevada (Mr. CANNON) or their designees;

That the committee substitute and technical amendments thereto to be offered on behalf of the committee by Senators PACKWOOD and CANNON, be adopted en bloc without debate and considered as original text for the purpose of further amendment;

That the only amendment in order shall be the amendments printed as amendment No. 1901, to be proposed by the Senator from South Dakota (Mr. PRESSLER), which shall be considered en bloc and which shall not be subject to amendment; on which there shall be 1 hour equally divided between the Senator from South Dakota and the Senator from Missouri (Mr. DANFORTH); and which shall not be subject to a motion to table; and that, following disposition of the Pressler amendment No. 1901, the Senate shall proceed to vote on passage of H.R. 3663.

Mr. DANFORTH. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Missouri has reserved the right to object.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DANFORTH. Mr. President, I have no objection to the unanimous-consent request stated by the Senator from Oregon.

Mr. GARN. Mr. President, I object temporarily to the quorum call being called off.

APPOINTMENT ON BEHALF OF THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, appoints the Senator from Alaska (Mr. STEVENS) to attend the 34th annual session of the International Whaling Commission, to be held in Brighton, England, July 19-24, 1982.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR—H.R. 3663

Mr. GOLDWATER. Mr. President, I ask unanimous consent that my assistant, Mr. Brown, be allowed the privileges of the floor.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BAKER. Mr. President, as I have advised the minority leader and the distinguished chairman of the Commerce Committee, I talked to Senator MATTINGLY who is in the hospital in Georgia. We had received mixed signals on whether he did or did not have a hold on this measure. I am pleased to report that he does not now have a hold on the bill, and we are prepared to proceed with it. I understand the unanimous consent has been propounded. I reiterate it at this time.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, may I ask the distinguished majority leader a question?

Mr. BAKER. Yes. I would be pleased to answer a question.

Mr. ROBERT C. BYRD. What is the outlook for the remainder of the day and tomorrow, if I may ask?

Mr. BAKER. Mr. President, the minority leader may indeed, and I thank him for making the inquiry.

I say to him and for the benefit of all Senators that it is my hope that we can finish the bus deregulation bill in short order. I hope that we can finish the business of the Senate today at about 6:30, that we would go over then until tomorrow.

ORDER FOR RECESS UNTIL 9 A.M. TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 9 a.m. tomorrow.

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

Mr. BAKER. When we come back tomorrow, Mr. President, I hope we can go to the jobs bill offered by the Senator from Indiana and the Senator from Massachusetts (Mr. KENNEDY). We are negotiating a time agreement on a crime package and a bill to follow the crime package, so it is my hope that tomorrow we can do the jobs bill and that we can obtain an agreement on the crime package and consider that bill.

I hope we can do the jobs bill, the crime package, the second shorter crime package, which would deal with habeas corpus. Then, if there is a possibility of doing so, we would like to take up the shipping bill to which I alluded on Tuesday when we first convened.

I hope that we can complete our action early enough in the day to leave by midafternoon or late afternoon.

I intend, Mr. President, I say to my friend, the minority leader, to call up the adjournment resolution which I believe is now at the desk, having passed the House, and pass it. I wonder if the Senator will permit me to do that at this time.

Mr. ROBERT C. BYRD. I have no objection.

ADJOURNMENT OF HOUSE AND SENATE UNTIL JULY 12, 1982

Mr. BAKER. Mr. President, there is the adjournment resolution at the desk, and I ask that it be laid before the Senate.

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

The legislative clerk read as follows:

A resolution (H. Con. Res. 367) providing for adjournment of the House from any day between June 28 and July 2, 1982 and adjournment of the Senate from July 1 or July 2 until July 12, 1982.

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

The concurrent resolution (H. Con. Res. 367) was agreed to.

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

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

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, I hope that it is sufficient information to the minority leader. It may be that some of these matters cannot be completed tomorrow, but those three items will be the ones I hope that we can dispose of tomorrow.

Mr. ROBERT C. BYRD. Mr. President, will the majority leader indicate whether or not there will be further rollcall votes today?

Mr. BAKER. Yes, I expect that there will be one more rollcall vote today, perhaps on passage of this bill.

Mr. ROBERT C. BYRD. I thank the distinguished majority leader.

Mr. QUAYLE. Will the majority leader yield?

Mr. BAKER. Yes, I yield to the Senator from Indiana.

Mr. QUAYLE. Mr. President, will the majority leader yield?

Mr. BAKER. Yes, I yield to the Senator from Indiana.

Mr. QUAYLE. My understanding is that tomorrow the majority leader intends to take up which piece of legislation first?

Mr. BAKER. The piece of legislation of the Senator from Indiana.

Mr. QUAYLE. The jobs training legislation.

I thank the majority leader very much.

BUS REGULATORY REFORM ACT OF 1982

Mr. PACKWOOD. Mr. President, I ask that the Senate now turn to consideration of Calendar No. 582.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 3663) to amend subtitle IV of title 49, United States Code, to provide for more effective regulation of motor carriers of passengers.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

There being no objection, the Senate proceeded to consider the bill (H.R. 3663) which had been reported from the Committee on Commerce, Science, and Transportation with an amendment to strike out all after the enacting clause, and insert the following:

That this Act may be cited as the "Bus Regulatory Reform Act of 1982".

PURPOSE OF THE ACT

Sec. 2. This Act is part of the continuing effort by Congress to reduce unnecessary and burdensome Government regulation.

CONGRESSIONAL FINDINGS

Sec. 3. The Congress hereby finds that a safe, sound, competitive, and fuel-efficient motor bus system contributes to the maintenance of a strong national economy and a strong national defense and is vital to the transportation needs of the elderly, handicapped, and the poor; that the statutes governing Federal regulation of the motor bus industry are outdated and must be revised to reflect the future transportation needs and realities; that historically the existing Federal and State regulatory structure has tended in certain circumstances to inhibit market entry, carrier growth, maximum utilization of equipment and energy resources, and opportunities for minorities and others to enter the motor bus industry; that State regulation of the motor bus industry has, in certain circumstances, unreasonably burdened interstate commerce; that overly protective regulation has resulted in operating inefficiencies and diminished price and service competition in the motor bus industry; that the objectives contained in the national transportation policy can best be achieved through greater competition and reduced regulation; that in order to reduce the uncertainty felt by the Nation's motor bus industry and those persons and communities that rely on its services, the Interstate Commerce Commission should be given explicit direction for reduced regulation of the motor bus industry and should do everything within its power to promote competition in the motor bus industry; and that legislative and resulting changes should be implemented without unnecessary disruption to the transportation system consistent with the scope of the reforms enacted.

CONGRESSIONAL OVERSIGHT

Sec. 4. The appropriate authorizing committees of Congress shall conduct periodic oversight hearings on the effects of this legislation, not less than annually until July 1, 1985, to ensure that this Act is being implemented according to congressional intent and purpose.

NATIONAL TRANSPORTATION POLICY

Sec. 5. Subsection (a) of section 10101 of title 49, United States Code, is amended by striking out "and in regulating those modes" and all that follows through the period at the end of such subsection and inserting in lieu thereof the following: "and—

"(1) in regulating those modes—

"(A) to recognize and preserve the inherent advantage of each mode of transportation;

"(B) to promote safe, adequate, economical, and efficient transportation;

"(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

"(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

"(E) to cooperate with each State and the officials of each State on transportation matters; and

"(F) to encourage fair wages and working conditions in the transportation industry;

"(2) in regulating transportation by motor carrier, to promote competitive and efficient transportation services in order to (A) meet the needs of shippers, receivers, passengers, and consumers; (B) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public; (C) allow the most productive use of equipment and energy resources; (D) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; (E) provide and maintain service to small communities and small shippers; (F) provide and maintain commuter bus operations; (G) improve and maintain a sound, safe, and competitive privately owned motor carrier system; (H) promote greater participation by minorities in the motor carrier system; and (I) promote intermodal transportation; and

"(3) in regulating transportation by motor carrier of passengers (A) to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objectives of this subtitle; (B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this subtitle; and (C) to ensure that Federal reform initiatives enacted by the Bus Regulatory Reform Act of 1982 are not nullified by State regulatory actions.".

MOTOR CARRIER OF PASSENGERS ENTRY POLICY

Sec. 6. (a) Subsection (a) of section 10922 of title 49, United States Code, is amended (1) by striking out "II or", and (2) by striking out "motor common carrier of passengers or water common carrier, respectively," and inserting in lieu thereof "water common carrier".

(b) Section 10922 of title 49, United States Code, is amended by redesignating subsections (c), (d), (e), (f), (g), (h), (i), and (j) (and any references thereto) as subsections (d), (e), (f), (g), (h), (i), (j), and (k), respectively, and by inserting after subsection (b) the following new subsection:

"(c)(1) Except as provided in this section—

"(A) A certificate shall be issued by the Commission to a person authorizing that person to provide regular-route transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of passengers and a certificate shall be issued to a recipient of governmental financial assistance for the purchase or operation of buses, or to an operator for such a recipient, authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of passengers, if the Commission finds that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission unless the Commission finds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized is not consistent with the public interest.

"(B) For all applications for authority except those under clause (A) of this paragraph, the Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of passengers if the Commission finds that the person, is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission.

"(2)(A) The Commission shall issue a certificate to a person authorizing that person to provide regular-route transportation entirely in one State as a motor common carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier has authority on the effective date of the Bus Regulatory Reform Act of 1982 to provide interstate transportation of passengers if the Commission finds that the person is fit, willing, and able to provide the intrastate transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission, unless the Commission finds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized would directly compete with a commuter bus operation and it would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

"(B) The Commission shall issue a certificate to a person authorizing that person to provide regular-route transportation entirely in one State as a motor common carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier has been granted authority or will be granted authority after the effective date of the Bus Regulatory Reform Act of 1982 to provide interstate transportation of passengers if the Commission finds that the person is fit, willing, and able to provide the

intrastate transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission, unless the Commission finds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized is not consistent with the public interest.

"(C) No State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to the provision of pickup and delivery of express packages, newspapers, or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement by bus in intrastate commerce and if a city within the commercial zone, as defined in section 10526(b)(1) of this title, is served by that person in regular-route service as a motor common carrier of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title.

"(D) Subject to subparagraph (F) of this paragraph, any intrastate transportation authorized by issuance of a certificate under this paragraph shall be deemed to be transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this subtitle. Upon issuance of such certificate, the carrier shall establish initial rates, rules, and practices applicable to such transportation to the same extent and in the same manner as a motor common carrier of passengers providing transportation subject to the jurisdiction of the Commission under such subchapter establishes rates, rules, and practices applicable to such interstate transportation. Any such initial rate, rule, or practice shall be subject to the provisions of chapter 107 of this subtitle as if such rate, rule, or practice were related to interstate transportation.

"(E) Not later than 30 days after the date on which a motor common carrier of passengers first begins providing transportation entirely in one State pursuant to a certificate issued under this paragraph, the carrier shall take all action necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation.

"(F) Transportation entirely in one State authorized by issuance of a certificate under this paragraph shall remain subject to the jurisdiction of the Commission, and initial rates, rules, and practices applicable to such transportation established under subparagraph (D) of this paragraph shall remain in effect, until permanent rates, rules, and practices applicable to such transportation are established under the laws of such State.

"(G) The Commission shall take final action upon an application filed under subsection (C)(2)(A) of this section for authority to provide transportation entirely in one State not later than 90 days after the date the application is filed with the Commission.

"(H) This paragraph shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

"(I) Notwithstanding subparagraph (F) of this paragraph, intrastate transportation authorized under this paragraph may be suspended or revoked by the Commission under section 10925 of this title.

"(3) In making any findings relating to public interest under paragraphs (1)(i) and (2)(B) of this subsection, the Commission shall consider, to the extent applicable—

"(A) the transportation policy of section 10101(a) of this title;

"(B) the value of competition to the traveling and shipping public;

"(C) the effect of issuance of certificate on motor carrier of passenger service to small communities; and

"(D) whether issuance of the certificate would impair the ability of any other motor common carrier of passengers to provide a substantial portion of the regular-route passenger service which such carrier provides over its entire regular-route system. Diversion of revenue or traffic from a motor common carrier of passengers in and of itself shall not be sufficient to support a finding that issuance of the certificate would impair the ability of the carrier to provide a substantial portion of the regular-route passenger service which the carrier provides over its entire regular-route schedule system.

"(4) The provisions of paragraph (1) of this subsection relating to the Commission finding that transportation to be authorized by issuance of a certificate is not consistent with the public interest shall not apply to any application under this subsection for authority to provide—

"(A) interstate transportation service to any community not regularly served by a motor common carrier of passengers using this section;

"(B) interstate transportation service which will be a substitute for discontinued rail or commercial-air passenger service to a community if such discontinuance results in such community not having any rail and commercial-air passenger service and if such application is filed within 180 days after such discontinuance becomes effective; and

"(C) interstate transportation service to any community with respect to which the only motor common carrier of passengers providing interstate transportation service to such community applies for authority to discontinue providing such interstate service under section 10925(b) of this subchapter or applies for permission to reduce its level of intrastate service to such community under section 10935 of this subchapter.

"(5) The Commission may not make any finding under paragraphs (1) and (2) of this subsection which is based upon general findings developed in rulemaking proceedings.

"(6) The requirement that persons issued certificates under this subsection be fit, willing, and able means safety and proof of insurance pursuant to the minimum financial fitness responsibility requirements of section 18 of the Bus Regulatory Reform Act of 1982.

"(7) No motor common carrier of passengers may protest an application to provide transportation filed under this subsection or a request to remove an operating restriction under section 10922(i)(4) of this title unless—

"(A)(i) it possesses authority to handle, in whole or in part, the traffic for which authority is applied;

"(ii) it is willing and able to provide service that meets the reasonable needs of the traveling public; and

"(iii) it has performed service within the scope of the application during the previous 12-month period or has, actively in good faith, solicited service within the scope of the application during such period;

"(B) it has pending before the Commission an application filed prior in time to the application being considered for substantially the same traffic; or

"(C) the Commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in section 10101(a) of this title.

"(8) No motor contract carrier of passengers may protest an application to provide transportation filed under this subsection.

"(9) For purposes of this section, authority under this subsection to provide special or charter transportation of passengers by motor vehicle includes authority to provide such transportation as round-trip service and as one-way service if such one-way service may be provided as part of a round-trip movement involving the same passengers and air, rail, or water transportation or any combination of air, rail, or water transportation.".

(c) Paragraph (4) of subsection (e) of section 10922 of title 49, United States Code, as redesignated by subsection (b) of this section, is amended as follows:

"(4) A certificate of a motor common carrier to transport passengers shall be deemed to include permissive authority to transport newspapers, baggage of passengers, express packages, or mail in the same motor vehicle with the passengers, or baggage of passengers in a separate motor vehicle.".

(d)(1) Section 10102 of title 49, United States Code, is amended by redesignating paragraphs (5) through (29), and any references thereto, as paragraphs (6) through (30), respectively, and by inserting after paragraph (4) the following new paragraph:

"(5) 'commuter bus operations' means short-haul regularly scheduled passenger service provided by motor vehicle in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, and utilized primarily by passengers using reduced fare, multiple-ride, or commutation tickets during morning and evening peak period operations.".

(2) Section 11711(f) of such title is amended by striking out "10102(10)(A)" and inserting in lieu thereof "10102(11)(A)".

(3) Section 250(a)(1) of the Internal Revenue Code of 1954 is amended by striking out "10102(18)" and inserting in lieu thereof "10102(19)".

(4)(A) Section 5201(5) of title 39, United States Code, is amended by striking out "10102(12)" and inserting in lieu thereof "10102(13)".

(B) Section 5201(6) of title 39, United States Code, is amended by striking out "10102(7)" and inserting in lieu thereof "10102(8) of title 49".

(e) Section 10322(a) of title 49, United States Code, is amended by srtiking out "10922(h)(2)" and inserting in lieu thereof "10922(i)(3)" and by adding at the end thereof the following new sentence: "In addition, the deadlines set forth in this section do not apply to any application filed under section 10922(c) of this subtitle for authority to provide regular-route transportation entirely in one State as a motor common carrier of passengers.".

(f) Section 10521(b) of title 49, United States Code, is amended—

(1) in clause (1) by inserting "except as provided in sections 10922(c)(2), 10935, and 11501(e) of this title," immediately before "affect";

(2) in clause (2) by inserting "except as provided in sections 10922(c)(2) and 11501(e)," immediately before "authorize"; and

(3) in clause (3) by inserting "except as provided in section 10922(c)(2) of this title," immediately before "allow".

(g) Section 10922(b) of title 49, United States Code, is amended—

(1) by redesignating paragraphs (4) through (9) as paragraphs (5) through (10), respectively; and

(2) by adding after paragraph (3) the following new paragraph:

"(4)(A) The Commission shall not issue a certificate to provide transportation as a motor common carrier under this section to any person domiciled in a foreign country, or to a motor common carrier owned or controlled by a person or persons domiciled in a foreign country consistent with the findings of paragraph (1) of this subsection, until the President has certified to the Commission that an agreement has been reached and the date on which such agreement is to become effective, pursuant to subparagraph (B) of this paragraph.

"(B) The President shall, as appropriate, enter into discussions with appropriate foreign authorities regarding the establishment of agreements with respect to motor carrier transportation between the United States and foreign countries. Such discussions shall be conducted in consultation with the United States Trade Representative, the Department of State, and the Department of Transportation. Such agreements shall provide for fair and equitable treatment for United States motor common carriers.

"(C) Whenever an agreement is reached between the United States and a foreign country regarding motor carrier transportation between the United States and a foreign country, the President shall certify to the Commission that an agreement has been reached and the date on which such agreement is to enter into effect.

"(D) When the Commission has received a certification from the President under subparagraph (C) of this paragraph and after the agreement has become effective, the Commission shall issue a certificate to provide transportation as a motor common carrier under this section to any person domiciled in a foreign country which is a party to such agreement, or to a motor common carrier owned or controlled by a person domiciled in a foreign country which is a party to such agreement, consistent with the findings of paragraph (1) of this subsection, except where the Commission determines under section 10925(b) of this title that the government, motor carrier authorities, or foreign motor carriers of any foreign country or political subdivision of such foreign country have imposed restrictions on access of United States motor carriers to foreign markets which are inconsistent with agreements entered into under subparagraph (B) of this paragraph.

"(E) This paragraph shall apply only to foreign persons who are from countries contiguous to the United States.".

(h) Section 10925 of title 49, United States Code, is amended—

(1) by redesignating subsections (b), (c), (d), and (e), and any references thereto, as subsections (c), (d), (e), and (f), respectively; and

(2) by adding after subsection (a) the following new subsection:

"(b)(1) Whenever the Commission, upon complaint or on its own initiative, determines that a foreign government, motor carrier authority or foreign motor carrier imposes restrictions on access of a United States motor carrier to foreign markets which are inconsistent with any agreement entered into under section 10922(b)(4) of this title, the Commission may take such action as may be necessary to encourage compliance with any such agreement. Such actions may include the denial, transfer, alteration, modification, amendment, cancellation, suspension, limitation, or revocation of any foreign motor carrier permit, certificate, license, or tariff pursuant to the powers of the Commission under this title.

"(2) In considering any complaints or in any proceedings on its own initiative under this subsection, the Commission shall solicit the views of the United States Trade Representative, the Department of State, and the Department of Transportation. In addition, the Commission shall provide any affected motor carrier or foreign motor carrier with reasonable notice and opportunity to file written evidence and argument on the complaint.

"(3) Any action by the Commission under this subsection shall be presented to the President for review. The President shall have the right to disapprove any such action on the basis of foreign policy or national defense considerations within 60 days after presentation of the action. Any such action which is disapproved by the President shall be null and void. Any such action which is not disapproved within 60 days after presentation to the President shall take effect as action of the Commission.

"(4) The Commission shall exercise its duties under this section consistent with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries.".

(i) Section 10922 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(l)(1) No certificate to provide transportation as a motor common carrier shall be issued under this section to any person from a political subdivision of a foreign country unless such political subdivision or such country grants authority to persons from the United States to provide transportation by motor vehicle for compensation in such political subdivision or country.

"(2) This subsection shall only apply to foreign persons who are from countries contiguous to the United States.".

RESTRICTION REMOVAL

Sec. 7. Section 10922(i) of title 49, United States Code, as redesignated by section 6(b) of this Act, is amended by adding at the end thereof the following new paragraphs:

"(3) On the effective date of the Bus Regulatory Reform Act of 1982, a certificate to provide interstate transportation of passengers issued under this section shall be deemed to authorize (but not require)—

"(A) round-trip operations where only one-way authority exists; and

"(B) special and charter transportation from all points in a political subdivision of a State in any case in which special and charter transportation authority is limited to one or more points of origin in such political subdivision.

"(4) Upon request of the holder of a certificate, the Commission shall within 90 days remove any operating restriction imposed on the certificate in order to authorize interstate transportation or service to intermediate points on any route covered by the certificate unless the Commission finds, on the basis of evidence presented by a person objecting to the removal of such an operating restriction, that the resulting interstate transportation directly competes with a commuter bus operation and it will have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.".

MIXING OF REGULAR AND CHARTER PASSENGERS

Sec. 8. Subsection (j) of section 10922 of title 49, United States Code, as redesignated by section 6(b) of this Act, is amended by redesignating clauses (1) and (2) as clauses (A) and (B), respectively, by inserting "(1)" before "A person holding", and by adding at the end of such subsection the following new paragraphs:

"(2)(A) Subject to the provisions of this paragraph, a motor common carrier of passengers who has authority under this section to provide special or charter transportation of passengers and to provide regular-route transportation of passengers may transport the special or charter passengers in the same motor vehicle with regular-route passengers.

"(B) Subparagraph (A) of this paragraph shall only apply to transportation of passengers entirely in a State if the motor common carrier of passengers has authority under the laws of such State to provide within such State special or charter transportation of passengers and regular-route transportation of passengers and if the laws of such State and the certificate, permit, or other authority under which such carrier provides intrastate transportation in such State authorizes such carrier to transport special or charter passengers in the same motor vehicle with regular-route passengers.

"(C) Special or charter transportation of passengers may only be provided under subparagraph (A) of this paragraph in the same motor vehicle as regular-route transportation of passengers if the mixing of such passengers does not interfere with the obligation of the carrier to comply with section 11101 of this subtitle.

"(3) Subject to such regulations as the Commission may issue, a person who has authority under this section to provide charter transportation of passengers may transport groups of charter passengers in the same motor vehicle at the same time.".

RULE OF RATEMAKING

Sec. 9. (a) Section 10701(e) of title 49, United States Code, is amended by striking out "of property" each place it appears.

(b) Section 10704(b)(2)(B) of title 49, United States Code, is amended by striking out "of property".

RATE BUREAUS

Sec. 10. (a) Paragraphs (1) and (2) of section 10706(b) of title 49, United States Code, are amended by striking out "of property" each place it appears.

(b)(1) Section 10706(b)(3)(B)(i) of title 49, United States Code, is amended by striking out "and (D)" and inserting in lieu thereof ", (D), (E), and (F)".

(2) Section 10706(b)(3)(B)(iii) of title 49, United States Code, is amended by striking out "of property".

(3) Section 10706(b)(3)(D) of title 49, United States Code, is amended by inserting after the first sentence the following new sentence: "This subparagraph shall not apply to any single-line rate proposed by a motor common carrier of passengers.".

(4) Section 10706(b)(3) of title 49, United States Code, is amended by redesignating subparagraphs (E) and (F), and any references thereto, as subparagraphs (G) and (H), respectively, and by inserting after subparagraph (D) the following new subparagraphs:

"(E) On and after January 1, 1983, no agreement approved under this subsection may provide for discussion of or voting upon any single-line rate proposed by a

motor common carrier of passengers. On and after January 1, 1984, no agreement approved under this subsection may provide for discussion of or voting upon any joint rate. This subparagraph shall not apply to any rate applicable to special or charter transportation. This subparagraph and subparagraph (B)(i)(II) of this paragraph shall not apply to the following:

"(i) any general rate increase or decrease, broad change in tariff structure, or promotional or innovative fare change, as defined by the Commission and subject to such notice requirements as the Commission may specify by regulation if discussion of such general increase or decrease is limited to industry average carrier costs and intermodal competitive factors and does not include discussion of individual markets or particular single-line rates or joint rates; and

"(ii) publishing of tariffs, filing of independent actions for individual member carriers, providing of support services for members, and changes in rules or regulations which are of at least substantially general application throughout the area in which such changes will apply.

"(F) After the effective date of the Bus Regulatory Reform Act of 1982, no agreement approved under this subsection may provide for discussion of or voting upon any rate applicable to special or charter transportation proposed by a motor common carrier of passengers. This subparagraph shall not apply to publication of such rate.".

(c) Subsection (b) of section 10706 of title 49, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) Notwithstanding any other provision of this subtitle (other than paragraph (3)(F) of this subsection, relating to special and charter transportation of passengers), before January 1, 1983, the Commission may not take any action which would, on the basis of the type of carrier service involved (including service by carriers singly or in combination with other carriers), result in the exclusion of one or more motor common carriers of passengers from discussion or voting under agreements authorized by this subsection on matters concerning rates, allowances, or divisions, except that before January 1, 1983, the Commission may issue regulations which take effect on or after January 1, 1983, to carry out the provisions of paragraph (3)(E) of this subsection.".

(d) The first sentence of section 10706(c) of title 49, United States Code, is amended by striking out "of property".

(e)(1) Paragraph (2) of section 14(b) of the Motor Carrier Act of 1980 (Public Law 96-296; 94 Stat. 806) is amended to read as follows:

"(2) The Study Commission shall make (A) a full and complete investigation and study of the collective ratemaking process for all rates of motor common carriers of property and upon the need or lack of need for continued antitrust immunity therefor, and (B) a full and complete investigation and study of the collective ratemaking process for general rate changes, innovative fare changes, and broad changes in tariff structure of motor common carriers of passengers and upon the need or lack of need for antitrust immunity therefor. The Study Commission may study the collective ratemaking process for single-line or joint-line rates of motor common carriers of passengers. Each such study shall estimate the impact of the elimination of such immunity upon rate levels and rate structures and describe the impact of the elimination of such immunity upon the Interstate Commerce Commission and its staff. Each such study shall give special consideration to the effect of the elimination of such immunity upon rural areas and small communities.".

(2) Paragraph (3) of section 14(b) of the Motor Carrier Act of 1980 (Public Law 96-296; 94 Stat. 806) is amended—

(A) by striking out "10 members" and inserting in lieu thereof "14 members";

(B) by striking out "and" at the end of clause (B); and

(C) by striking out the period at the end of such paragraph and inserting in lieu thereof "; and"; and

(D) by adding at the end of such paragraph the following:

"(D) 4 members of the public appointed by the President, 1 who is a motor common carrier of passengers receiving $3,000,000 or more per year in revenues from motor common carrier of passengers operations, 1 who is a motor common carrier of passengers receiving less than $3,000,000 per year from motor common carrier of passengers operations, and 2 who are not affiliated with the motor common carrier industry.

No member of the Study Commission who is appointed under clause (C) of this paragraph shall vote on any matter before the Commission related to motor common carriers of passengers, and no member of the Study Commission who is appointed under clause (D) of this paragraph shall vote on any matter before the Study Commission related to motor common carriers of property.".

(3) Paragraph (4) of section 14(b) of the Motor Carrier Act of 1980 (Public Law 96-296; 94 Stat. 806) is amended by striking out the first 2 sentences and inserting in lieu thereof the following:

"(4) The Study Commission shall submit to the President and the Congress its final report on the collective ratemaking process applicable to motor common carriers of property not later than January 1, 1983, and its final report on the collective ratemaking process applicable to motor common carriers of passengers not later than January 1, 1984. Such reports shall include, but not be limited to, the findings and recommendations of the Study Commission. The Study Commission shall cease to exist 6 months after submission of the last of such reports.".

(4) Paragraph (12) of section 14(b) of the Motor Carrier Act of 1980 (Public Law 96-296; 94 Stat. 808) is amended by striking "$3,000,000" and inserting in lieu thereof "$4,000,000".

(f) Any organization established pursuant to an agreement entered into by motor common carriers of passengers and approved by the Commission prior to the effective date of this Act under section 10706(c) of title 49, United States Code, may continue to function pursuant to such agreement until a new or amended agreement is finally disposed of by the Commission under section 10706 of title 49, United States Code, as amended by this section, so long as (1) such new or amended agreement is submitted to the Commission for approval within 120 days of such effective date, and (2) such organization complies with this section (including amendments made by this section and regulations issued under such amendments) during the period such new or amended agreement is being prepared, submitted to, and considered by the Commission.

ZONE OF RATE FREEDOM

Sec. 11. (a) Subsection (d) of section 10708 of title 49, United States Code, is amended by redesignating paragraph (4) of such subsection, and any references thereto, as paragraph (6) and inserting after paragraph (3) the following new paragraphs:

"(4) Notwithstanding any other provision of this title, the Commission may not investigate, suspend, revise, or revoke any single-line rate proposed by a motor common carrier of passengers, or joint rate proposed by one or more such carriers, applicable to any transportation (other than special or charter transportation) on the grounds that such rate is unreasonable on the basis that it is too high or too low if—

"(A) the carrier or carriers notify the Commission that they wish to have the rate considered pursuant to this subsection; and

"(B) the aggregate of increases and decreases in any such rate is not more than 10 percent above the rate in effect 1 year prior to the effective date of the proposed rate, nor more than 20 percent below the lesser of the rate in effect on the effective date of the Bus Regulatory Reform Act of 1982 (or, in case of any rate which the carrier or carriers first establish after such date for a service not provided by the carrier or carriers on such date, such rate on the date such rate first becomes effective), or the rate in effect 1 year prior to the effective date of the proposed rate.

"(5) One year after the effective date of the Bus Regulatory Reform Act of 1982, the first and second percentages specified in paragraph (4)(B) of this subsection shall change to 15 percent and 25 percent, respectively. Two years after the effective date, the first and second percentages specified in paragraph (4)(B) of this subsection shall change to 20 percent and 30 percent, respectively.".

(b) Paragraph (6) of section 10708(d) of title 49, United States Code, as redesignated by subsection (a) of this section, is amended by inserting after the first sentence the following new sentence: "Evidence that any motor common carrier of passengers established pursuant to this subsection a joint or single-line rate applicable to transportation over any route which is the same as or similar to a joint rate applicable to transportation over such route which such carrier together with one or more other motor common carriers of passengers established pursuant to this subsection shall not be in and of itself sufficient to establish a violation of any such antitrust law.".

(c) Section 10708 of title 49, United States Code, is amended by adding at the end thereof the following new subsections:

"(e) Notwithstanding any other provision of this title, 3 years after the effective date of the Bus Regulatory Reform Act of 1982, the Commission may not investigate, suspend, revise, or revoke any rate proposed by a motor common carrier of passengers on the grounds that such rate is unreasonable on the basis that it is too high or too low, unless the proposed rate is established collectively in accordance with the procedures of an agreement approved by the Commission under section 10706(b) of this title. In publishing and filing a tariff under section 10762 of this title, the carrier shall disclose whether such rate is the result of collective ratemaking procedures pursuant to an agreement approved by the Commission under section 10706(b) of this title.

"(f) Notwithstanding any other provision of this title, an interested party may file a complaint under section 11701 of this title challenging the reasonableness of a rate filed under this section by a motor carrier of passengers. Any such complaint proceeding shall be finally determined by the Commis-

sion no later than 60 days after the filing of the complaint.".

RATES FOR SPECIAL AND CHARTER TRANSPORTATION

Sec. 12. (a) Section 10708 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) Notwithstanding any other provision of this title, the Commission may not investigate, suspend, revise, or revoke any rate proposed by a motor common carrier of passengers applicable to special or charter transportation. Nothing in this subsection shall limit the Commission's authority to suspend and investigate proposed rates on the basis that such rates constitute predatory practices in contravention of the transportation policy set forth in section 10101(a) of this title.".

(b) Section 10762(c)(3) of title 49, United States Code, is amended—

(1) in the second sentence by inserting "and motor common carrier of passengers with respect to special or charter transportation" immediately after "a rail carrier"; and

(2) by adding at the end thereof the following new sentence: "In the case of a motor common carrier of passengers, a proposed rate change resulting in an increased rate or a new rate applicable to special or charter transportation shall not become effective for 30 days after the notice is published, and a proposed rate change resulting in a reduced rate applicable to special or charter transportation shall not become effective for 10 days after the notice is published.".

MOTOR CONTRACT CARRIERS

Sec. 13. (a) Section 10923(b)(2) of title 49, United States Code, is amended to read as follows:

"(2) The provisions of paragraph (2) of subsection (a) of this section shall not apply to applications under this section for authority to provide transportation as a motor contract carrier of passengers. The requirement that persons issued permits under this section as motor contract carriers of passengers be fit, willing, and able means safety fitness and proof of insurance pursuant to the minimum financial responsibility requirements of section 18 of the Bus Regulatory Reform Act of 1982."; and

(b) Subsection (f) of section 10925 of title 49, United States Code, as redesignated by section 6(h) of this Act, is amended—

(1) by striking out "of property" each place it appears;

(2) by striking out "section 10922(b)" each place it appears and inserting in lieu thereof "section 10922"; and

(3) in paragraph (2)—

(A) by striking out "transportation"; and

(B) by striking out "of the same property" and inserting in lieu thereof "the same type of transportation".

BROKERS

Sec. 14. (a) Subsection (a) of section 10924 of title 49, United States Code, is amended by striking out "passengers or".

(b) Subsection (e) of section 10924 of title 49, United States Code, is amended by striking out "of travelers and".

(c) Section 10924 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) The Commission may impose on brokers of passengers such requirements for bonds or insurance or both as the Commission determines are needed to protect passengers and carriers dealing with such brokers.".

(d) Section 10526(a) of title 49, United States Code, is amended—

(1) by striking out "or" at the end of paragraph (12);

(2) by striking out the period at the end of paragraph (13) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(14) brokers for motor carriers of passengers, except as provided in section 10924(f) of this title.".

TEMPORARY AND EMERGENCY TEMPORARY AUTHORITY

Sec. 15. Section 10928 of title 49, United States Code, is amended—

(1) in subsection (a) by striking out "motor carrier of passengers or" each place it appears;

(2) in subsection (b)(1) by striking out "of property" each place it appears; and

(3) in subsection (c)(1) by striking out "of property" each place it appears and by inserting immediately after "not more than 90 days" the following: "and, in addition, in the case of a motor carrier of passengers, the Commission may extend such authority for a period of more than 90 days but not more than 180 days if no other motor carrier of passengers is providing transportation to the place or in the area".

EXIT POLICY

Sec. 16. (a) Subchapter II of chapter 109 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 10935. Discontinuing bus transportation in one State

"(a) When a motor common carrier of passengers having intrastate authority under the laws of a State, and interstate authority under a certificate issued under section 10922 of this subchapter, to provide transportation over any route to any point in such State has proposed to discontinue providing transportation over such route to such point or to reduce its level of service over such route to such point to a level which is less than one trip per day (excluding Saturdays and Sundays) and the carrier has requested the department, agency, or instrumentality of such State having jurisdiction over granting such discontinuance or reduction for permission to discontinue such intrastate transportation or to reduce its level of service to a level which is less than one trip per day (excluding Saturdays and Sundays) and the request has been denied (in whole or in part) or such department, agency, or instrumentality has not acted finally (in whole or in part) on the request by the 120th day after the carrier made the request, the carrier may petition the Commission for such permission.

"(b) When a petition is filed under subsection (a) of this section, the carrier shall certify that he has notified (1) the Governor of the State in which such transportation is provided, (2) the State authority having jurisdiction over granting discontinuances of transportation by motor common carriers of passengers and reductions in levels of service by such carriers, (3) local governments having jurisdiction over areas which would be affected if such petition is granted, and (4) such other interested persons as the Commission may specify by regulation.

"(c) Any person (including a department, agency, or instrumentality of a State or local government) may object to the Commission to the granting of permission to any motor common carrier of passengers to discontinue or reduce transportation under this section.

"(d) If no person objects under subsection (c) of this section to the granting of permission to discontinue or reduce transportation under this section within 20 days after the carrier files with the Commission the petition for such discontinuance or reduction, the Commission shall grant such permission at the end of such 20-day period.

"(e)(1) Subject to paragraph (2) of this subsection, if, within 20 days after a carrier files a petition for permission to discontinue providing intrastate transportation over any route to any point or to reduce its level of service over such route to such point to a level which is less than one trip per day (excluding Saturdays and Sundays), any person objects under subsection (c) of this section to the Commission to the granting of such permission, the Commission shall grant such permission unless the Commission finds, on the basis of evidence presented by the person objecting to the granting of such permission, that such discontinuance or reduction is not an unreasonable burden on interstate commerce. For the purposes of this subsection, continuance of the transportation would not constitute an unreasonable burden on interstate commerce only if discontinuance or reduction of such service is not consistent with the public interest and the interstate and intrastate revenues from such service are adequate to cover the variable costs of operating the service proposed to be discontinued or reduced.

"(2) The Commission shall only grant permission to a carrier to discontinue intrastate transportation over any route to any point under this subsection if such carrier has applied for authority to discontinue its interstate transportation over such route to such point under section 10925(b) of this subchapter and the Commission has granted or will grant such authority.

"(3) If any person objects under subsection (c) of this section to the granting of permission to discontinue or reduce transportation under this section within 20 days after the carrier files with the Commission the petition for such discontinuance or reduction, the carrier, within 15 days after the filing of such objection with the Commission, shall furnish to the Commission and to objecting persons—

"(A) an estimate of the annual subsidy required, if any, to continue the service;

"(B) traffic, revenue, and other data necessary to determine the amount of annual financial assistance, if any, which would be required to continue the service; and

"(C) such other information as the Commission may require by regulation.

The Commission shall take final action upon such petition not later than 75 days after the date the carrier files such petition.

"(f) Before a discontinuance or reduction in level of service proposed in a petition filed by a carrier under subsection (a) of this section has become effective, the Commission may order the carrier to continue any part of the intrastate transportation for not to exceed the 150-day period beginning on the date the carrier files such petition with the Commission.

"(g) In making a finding under subsection (e)(1) of this section, the Commission shall consider, to the extent applicable:

"(1) the national transportation policy of section 10101 of this title;

"(2) whether the motor common carrier of passengers has received an offer of, or is receiving, financial assistance to provide the transportation to be discontinued or reduced from a financially responsible person (including a governmental authority); and

"(3) in the case of a petition to discontinue transportation to any point, whether the transportation is the last motor carrier of passenger service to such point and whether a reasonable alternative to such service is available.

"(h) No State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to discontinuance or reduction in the level of intrastate service by a motor common carrier of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title corresponding to an interstate service initiated pursuant to the provisions of section 10922(c)(4) of this title except to the extent that notice of discontinuance or reduction in service, not in excess of 30 days, may be required.

"(i) This section shall not apply to any carrier owned or controlled by a State or local government.".

(b) The analysis for subchapter II of chapter 109 of title 49, United States Code, is amended by inserting

"10935. Discontinuing bus transportation in one State."

after

"10934. Household goods agents.".

(c) Section 10322(a) of title 49, United States Code, is amended by inserting "10935," immediately after "10934(c),".

DISCRIMINATORY STATE REGULATION OF RATES AND PRACTICES

Sec. 17. (a)(1) Section 11501 of title 49, United States Code, is amended by redesignating subsection (e), and any references thereto, as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e)(1) The Commission shall prescribe any rate, rule, or practice applicable to transportation provided entirely in one State by a motor common carrier of passengers providing transportation subject to jurisdiction of the Commission under subchapter II of chapter 105 of this title—

"(A) if the carrier has requested the department, agency, or instrumentality of such State having jurisdiction over such rate, rule, or practice for permission to establish such rate, rule, or practice and the request has been denied (in whole or in part) or the State authority has not acted finally (in whole or in part) on the request by the 120th day after the carrier made the request; and

"(B) if the Commission finds that the rate, rule, or practice in effect and applicable to such intrastate transportation causes unreasonable discrimination against or imposes an unreasonable burden on interstate or foreign commerce.

"(2) For purposes of paragraph (1)(B) of this subsection, there shall be a rebuttable presumption that—

"(A) any rate, rule, or practice applicable to transportation provided by a motor common carrier of passengers entirely in one State imposes an unreasonable burden on interstate commerce if the Commission finds that—

"(i) such rate, rule, or practice results in the carrier charging a rate for such transportation which is lower than the rate such carrier charges for comparable interstate transportation of passengers;

"(ii) on the basis of evidence presented by the carrier, that as a result of such rate, rule, or practice such carrier does not receive revenues from such transportation which exceed the variable costs of providing such transportation; or

"(iii) the department, agency, or instrumentality of such State having jurisdiction over such rate, rule, or practice failed to act finally (in whole or in part) on the request of the carrier to establish such rate, rule, or practice by the 120th day after the date the carrier made the request; and

"(B) any rate applicable to transportation entirely in one State imposes an unreasonable burden on interstate commerce if the Commission finds that the most recent general rate increase applicable to transportation provided by motor common carriers of passengers in such State is less than the most recent general rate increase applicable to interstate transportation provided by motor common carriers of passengers under this subtitle.

"(3)(A) A motor common carrier of passengers must file an application with the Commission for prescription under this subsection of a rate, rule, or practice applicable to transportation provided entirely in one State by such carrier. When such application is filed with the Commission, the carrier shall certify that he has notified (i) the Governor of such State, (ii) the department, agency, or instrumentality of such State which denied, or failed to take action on, the request of such carrier related to such rate, rule, or practice, and (iii) such other interested persons as the Commission may specify by regulation. The Commission shall take final action on any such application not later than 60 days after such application is filed with the Commission.

"(B) The Commission shall establish, by regulation, procedures for processing applications under this subsection.

"(4) This subsection shall not apply to any carrier owned or controlled by a State or local government.

"(5) No State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to scheduling of interstate or intrastate transportation provided by motor common carrier of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title on an authorized interstate route or relating to any reduction in the rates for such transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required. This provision shall not apply to intrastate commuter service.".

(2) Subsection (f) of section 11501 of title 49, United States Code, as redesignated by paragraph (1) of this subsection, is amended by inserting "(1)" immediately after "take action" and by inserting ", or (2) with respect to a rate, rule, or practice of a motor common carrier transportation of passengers, in accordance with the procedures established by the Commission under subsection (e)(3)(B) of this section" immediately after "a full hearing".

(b) Section 10322(a) of title 49, United States Code, is amended by inserting "or 11501(e)" immediately after "section 10934".

(c) The Interstate Commerce Commission, in consultation with each national association representing State departments, agencies, and instrumentalities having jurisdiction over motor common carrier transportation of passengers, shall cooperate with each such department, agency, or instrumentality of a State for the purpose of establishing standards and procedures (including timing requirements) for rates, rules, and practices applicable to intrastate transportation provided by motor common carriers of passengers who provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of subtitle IV of title 49, United States Code, which are—

(1) to the extent feasible, uniform among the States; and

(2) consistent with the standards and procedures established by the Interstate Commerce Commission under such subtitle for regulation of interstate transportation provided by motor common carriers of passengers.

(d) It is the sense of Congress that each State should revise its standards and procedures (including timing requirements) for rates, rules, and practices applicable to intrastate transportation provided by motor common carriers of passengers to conform such standards and procedures to the standards and procedures for rates, rules, and practices applicable to interstate transportation provided by motor carriers of passengers not later than 2 years after the effective date of this Act.

(e) Not later than 30 months after the effective date of this Act, the Interstate Commerce Commission shall report to the Congress on the results of its efforts to establish uniform standards and procedures applicable to motor common carrier of passengers rates, rules, and practices.

FINANCIAL RESPONSIBILITY

Sec. 18. (a) The Secretary of Transportation shall establish regulations to require minimal levels of financial responsibility sufficient to satisfy liability amounts to be determined by the Secretary covering public liability and property damage for the transportation of passengers for hire by motor vehicle in the United States from a place in a State to a place in another State, from a place in a State to another place in such State through a place outside of such State, and between a place in a State and a place outside of the United States.

(b) The minimal level of financial responsibility established by the Secretary under subsection (a) of this section—

(1) for any vehicle with a seating capacity of 16 passengers or more shall not be less than $5,000,000, except that the Secretary, by regulation, may reduce such amount (but not to an amount less than $2,500,000) for any class of such vehicles or operations for the 2-year period beginning on the effective date of the regulations issued under such subsection or any part of such period if the Secretary finds that such reduction will not adversely affect public safety and will prevent a serious disruption in transportation service; and

(2) for any vehicle with a seating capacity of 15 passengers or less shall not be less than $1,500,000, except that the Secretary, by regulation, may reduce such amount (but not to an amount less than $750,000) for any class of such vehicles or operations for the 2-year period beginning on the effective date of the regulations issued under such subsection or any part of such period if the Secretary finds that such reduction will not adversely affect public safety and will prevent a serious disruption in transportation service.

(c)(1) If, at the end of the 1-year period beginning on the effective date of this Act, the Secretary has not established regulations to require minimal levels of financial responsi-

bility as required by subsection (a) of this section for any class of transportation of passengers, the levels of financial responsibility for such class of transportation shall be the $5,000,000 amount set forth in subsection (b)(1) of this section in the case of motor vehicles with a seating capacity of 16 passengers or more and the $1,500,000 amount set forth in subsection (b)(2) of this section in the case of motor vehicles having a seating capacity of 15 passengers or less, until such time as the Secretary, by regulation, changes such amount under this section.

(2) Notwithstanding the provisions of subsection (b) of this section, the Secretary may only make reductions in the $5,000,000 and $1,500,000 amounts set forth in such subsection for the 2-year period beginning on the 366th day following the effective date of this Act or any part of such period.

(d) Financial responsibility may be established under this section by any one or combination of the following methods acceptable to the Secretary: evidence of insurance, including high self-retention, guarantee, or surety bond. Any bond filed shall be issued by a bonding company authorized to do business in the United States. The Secretary shall establish, by regulation, methods and procedures to assure compliance with this section.

(e)(1) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and opportunity for a hearing, to have knowingly violated this section or a regulation issued under this section shall be liable to the United States for a civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. The amount of any such penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(f) This section shall not apply—

(1) to a motor vehicle transporting only school children and teachers to or from school;

(2) to a motor vehicle providing taxicab service and having a seating capacity of less than 7 passengers and not operated on a regular route or between specified points; and

(3) to a motor vehicle carrying less than 16 individuals in a single, daily roundtrip to commute to and from work.

(g) For purposes of this section, the term—

(1) "Secretary" means the Secretary of Transportation; and

(2) "State" means a State of the United States and the District of Columbia.

(h) Section 10927(a)(1) of title 49, United States Code, is amended by inserting immediately after "Motor Carrier Act of 1980" the following: ", in the case of a motor carrier of property, or section 18 of the Bus Regulatory Reform Act of 1982, in the case of a motor carrier of passengers".

SECURITIES

SEC. 19. (a) Section 11302 of title 49, United States Code, and the item relating to such section in the section analysis for chapter 113 of such title, are repealed.

(b) Section 11911(a) of title 49, United States Code, is amended by striking out "or of a person to which that section is made applicable by section 11302(a) of this title".

(c) Section 3(a)(6) of the Securities Act of 1933 (15 U.S.C. 77c(a)(6)) is amended by striking out "Any security issued by a motor carrier the issuance of which is subject to the provisions of section 214 of the Interstate Commerce Act, or any" and by inserting in lieu thereof "Any".

TAX DISCRIMINATION

SEC. 20. Section 11503a(a)(3) of title 49, United States Code, is amended by striking out "of property".

MERGER PROCEDURE

SEC. 21. (a)(1) Section 11341(a) of title 49, United States Code, is amended by inserting "or exempted by" immediately after "approved by."

(2) The third sentence of section 1134(a) of title 49, United States Code, is amended by inserting "approved or exempted" immediately after "participating in that".

(b) Section 11343 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(e)(1) Notwithstanding any provisions of this title, the Interstate Commerce Commission, in a matter related to a motor carrier of property providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, may exempt a person, class of persons, transaction, or class of transactions from the merger, consolidation, and acquisition of control provisions of this subchapter if the Commission finds that the application of those provisions of this subchapter—

"(A) is not necessary to carry out the transportation policy of section 10101 of this title; and

"(B) either (i) the transaction is of limited scope, or (ii) the application of the provisions of this subchapter is not needed to protect shippers from the abuse of market power.

"(2) The Commission may revoke an exemption, to the extent it specifies, when it finds that application of the provisions of this section to the person, class of persons, or transportation is necessary to carry out the transportation policy of section 10101 of this title.".

(c) The heading of section 11345a of title 49, United States Code, is amended to read as follows:

5"§ 11345a. Consolidation, merger, and acquisition of control: motor carrier procedure".

(d) Subsection (a) of such section is amended by striking out "or property".

(e) The item relating to section 11345a in the analysis for subchapter III of chapter 113 of title 49, United States Code, is amended to read as follows:

"11345a. Consolidation, merger, and acquisition of control: motor carrier procedure.".

(f) Section 11344(b) of title 49, United States Code, is amended by redesignating paragraphs (1), (2), (3), (4), and (5) (and any references thereto) as subparagraphs (A), (B), (C), (D), and (E), respectively, by inserting "(1)" immediately before "In a proceeding", and by adding at the end thereof the following new paragraph:

"(2) In a proceeding under this section which involves only carriers of passengers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title, the Commission shall consider at least the following:

"(A) the effect of the proposed transaction on the adequacy of transportation to the public.

"(B) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.

"(C) the total fixed charges that result from the proposed transaction.

"(D) the interest of carrier employees affected by the proposed transaction.".

"(e) Section 11344(d) of title 49, United States Code, is amended by adding at the end thereof the following new sentence: "The provisions of this subsection do not apply to any proceeding under this section which involves only carriers of passengers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title.".

SAFETY ENFORCEMENT

SEC. 22. (a) Section 10925(e) of title 49, United States Code, as redesignated by section 6(h) of this Act, is amended by redesignating paragraph (2) (and any references thereto) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, upon petition by the Secretary of Transportation, the Commission may suspend a certificate or permit of a motor carrier of passengers if the Commission finds that such carrier has been conducting unsafe operations which are an imminent hazard to public health or property.".

(b) Paragraph (3) of section 10925(e) of title 49, United States Code, as redesignated by section 6(h) of this Act and subsection (a) of this section, is amended by inserting immediately before the period at the end thereof the following: "or, in the case of a suspension under paragraph (2) of this subsection, until the Commission revokes such suspension."

ILLEGAL OPERATIONS

SEC. 23. Section 11901(g) of title 49, United States Code, is amended by inserting immediately before the period at the end of the first sentence the following: "; except that, in the case of a person who does not have authority under this subtitle to provide transportation of passengers, or an officer, agent, or employee of such person, that does not comply with section 10921 of this title with respect to providing transportation of passengers, the amount of the civil penalty shall not be more than $1,000 for each violation and $500 for each additional day the violation continues".

ADMINISTRATIVE ASSISTANCE

SEC. 24. Section 10321(b) of title 49, United States Code, is amended—

(1) by striking out "and" at the end of clause (2);

(2) by striking out the period at the end of such section and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new clause:

"(4) consistent with the transportation policy of section 10101 of this title, provide administrative assistance to small motor common carriers of passengers and local governments preparing for proceedings under sections 10922(c)(2), 10935, and 11501(e) of this title.".

STUDY OF CITIZEN BAND RADIOS ON BUSES

SEC. 25. (a) The Secretary of Transportation shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the use of citizen band radios on motor vehicles providing transportation of passengers subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of title 49, United States Code, by the operators of such vehicles. Such study shall determine, at a minimum, the following:

(1) the effect on safety if such operators are authorized to use such radios; and

(2) the effect on safety, health, and convenience of the passengers of such vehicles if such operators are authorized to use such radios.

(b) The Secretary of Transportation shall request the National Academy of Sciences to submit to the Secretary and the Congress, within 1 year after entering into arrangements with the National Academy of Sciences for conducting the study under subsection (a) of this section, a report on the results of such study along with its recommendations concerning whether operators of motor vehicles providing transportation of passengers should be allowed to use citizen band radios. The Secretary shall furnish to such Academy, at its request, any information which such Academy deems necessary for the purpose of conducting such study.

(c) Not later than 60 days after the National Academy of Sciences submits its report to the Secretary of Transportation under subsection (b) of this section, the Secretary of Transportation shall initiate a rulemaking proceeding to determine whether operators of motor vehicles providing transportation of passengers subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of title 49, United States Code, should be allowed to use citizen band radios in such vehicles. In making such determination, the Secretary of Transportation shall give substantial weight to the recommendations and conclusions of the National Academy of Sciences. Such rulemaking proceeding shall be completed not later than 120 days after such proceeding is commenced. If the Secretary issues a rule or regulation which recommends that operators of such vehicles be allowed to install temporarily and operate citizen band radios in such vehicles, the Secretary of Transportation shall issue regulations establishing guidelines for the use of such radios in such vehicles in order to ensure that the public safety is adequately protected.

(d)(1) Subchapter I of chapter 111 of title 49, United States Code, is amended by adding at the end thereof the following new section:

"§ 11111. Use of citizen band radios on buses

"(a)(1) A motor carrier of passengers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall allow the operator of any motor vehicle providing such transportation to temporarily install and operate a citizen band radio in such vehicle if the Secretary of Transportation issues a rule or regulation which recommends that operators of such vehicles be allowed to temporarily install and operate such radios in such vehicles.

"(2) Citizen band radios installed and operated in motor vehicles providing transportation of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall be installed and operated in accordance with the guidelines established by the Secretary of Transportation under section 25(c) of the Bus Regulatory Reform Act of 1982.

"(b) The Commission shall issue such regulations as it considers necessary to carry out this section.".

(2) The analysis for subchapter I of chapter 111 of title 49, United States Code, is amended by inserting

"11111. Use of citizen band radios on buses."

after

"11110. Household goods carrier operations.".

(e) Section 11702(a)(2) of title 49, United States Code, is amended by inserting "or 11111" after "11109".

(f) This section shall not be construed to provide new spending authority within the meaning of section 401(c)(2)(A) of the Congressional Budget Act of 1974.

BUS TERMINAL STUDY

SEC. 26. (a) The Secretary of Transportation and the Interstate Commerce Commission shall conduct a full investigation and study of the ownership, location, and adequacy of bus terminals and their capacity to provide passenger service in accordance with the transportation policy set forth in section 10101 of title 49, United States Code. A report on the results of such investigation and study, including legislative recommendations, shall be submitted to the President and Congress not later than December 31, 1983.

(b) The report under this section shall include an analysis of at least the following:

(1) the pattern of ownership of bus terminals, including public and private ownership;

(2) the desirability of terminals for more than one mode of transportation and their impact on urban development;

(3) the desirability of governmental assistance in the construction of nonurban bus terminals.

EMPLOYEE PROTECTION

SEC. 27. (a)(1) Each individual who is eligible for protection under this section and whose employment is terminated by a motor common carrier of passengers (other than for cause) prior to the last day of the 10-year period beginning on the date of enactment of this Act shall have a right of priority reemployment, in his or her occupational specialty, by such carrier at such time as such carrier is hiring additional employees.

(2) Any motor common carrier of passengers hiring additional employees shall have a duty to hire an individual eligible for protection under this section, in his or her occupational specialty, before hiring any other individual if such individual—

(A) was terminated previously by such carrier;

(B) has applied for a vacant position for which such carrier is accepting applications; and

(C) at the time the application is filed, has notified such carrier that he or she is eligible for protection under this section.

(b)(1) Each individual who is eligible for protection under this section and whose employment is terminated by a motor common carrier of passengers (other than for cause) prior to the last day of the 10-year period beginning on the date of enactment of this Act shall have a right of consideration for employment, in his or her occupational specialty, by any other motor common carrier of passengers who is hiring additional employees.

(2) Each motor common carrier of passengers who is hiring additional employees shall have a duty to consider for employment, in his or her occupational specialty, an individual who is eligible for protection under this section if such individual—

(A) has applied for a vacant position for which such carrier is accepting applications; and

(B) at the time the application is filed, has notified such carrier that he or she is eligible for protection under this section.

(c) An individual (other than a member of a board of directors or an officer of a corporation) who was employed by a motor common carrier of passengers for the 2-year period ending on the date of enactment of this Act shall be eligible for protection under this section if, upon application of such individual, the Commission determines that the employment of such individual has been terminated by a motor common carrier of passengers having intrastate authority under the laws of a State, and interstate authority under a certificate issued under section 10922 of title 49, United States Code, to provide transportation over any route to any point in such State as a result of such carrier—

(1) discontinuing (A) interstate service over such route under section 10925(b) of such title, and (B) intrastate service over such route (i) under section 10935 of such title, or (ii) under the laws of such State;

(2) reducing (A) interstate service over such route under subtitle IV of such title, and (B) intrastate service over such route (i) under section 10935 of such title, or (ii) under the laws of such State; or

(3) substantially reducing (A) interstate service over such route under subtitle IV of such title, and (B) intrastate service over such route (i) under section 11501(e) of such title, or (ii) under the laws of such State.

In a proceeding to determine whether an individual is eligible for protection under this section, it shall be the obligation of the individual whose employment has been terminated by a motor common carrier of passengers to identify to the Commission the discontinuance or reduction which such individual alleges resulted in such termination and to specify the pertinent facts; and it shall be the obligation of any carrier contesting the eligibility of the individual for protection under this section to prove that the discontinuance or reduction was not a contributing factor causing such termination.

(d) The Commission shall establish, maintain, and periodically publish a comprehensive list of jobs available with class I motor carriers of passengers. Such list shall include that information and detail, such as job descriptions and required skills, the Commission deems relevant and necessary. In addition to publishing the list, the Commission shall make every effort to assist individuals eligible for protection under this section in finding other available employment. The Commission may require each class I motor carrier of passengers to file with the Commission the reports, data, and other information necessary to fulfill the

duties of the Commission under this subsection.

(e) For the purposes of this section:

(1) A motor common carrier of passengers shall not be considered to be hiring additional employees when it recalls any of its own furloughed employees.

(2) An individual who is furloughed by a motor common carrier of passengers and who still has a right of recall by such carrier shall not be considered to be terminated.

(3) The term "Commission" means the Interstate Commerce Commission.

(4) The term "motor common carrier of passengers" means a person who has authority under section 10922 of title 49, United States Code, to provide transportation of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of such title.

(5) The term "class I motor carrier of passengers" means a motor common carrier of passengers having annual gross revenues from motor common carrier of passengers operations in excess of $3,000,000.

(f) Nothing in this section shall be construed to affect (1) an affirmative action plan or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan.

(g) This section shall not apply (1) to any carrier owned or controlled by a State or local government, and (2) to any periodic discontinuance of or reduction in motor carrier of passenger service which is seasonal in nature.

(h) The Commission shall issue such rules and regulations as are necessary to carry out this section. Initial rules and regulations shall be promulgated within 6 months after the effective date of this Act.

(i) The provisions of this section shall terminate on the last day of the 12-year period beginning on the effective date of this Act.

PUBLICATION OF COMMISSION ACTIONS

SEC. 28. (a) Section 10322(b)(3) of title 49, United States Code, is amended by striking "in the Federal Register".

(b) Section 10328(b) of title 49, United States Code, is amended—

(1) by inserting "(1)" immediately after "(b)";

(2) by amending paragraph (1), as so redesignated, by striking "that is, or is proposed to be, provided in a State" and by striking all after "interested persons" and inserting in lieu thereof a period; and

(3) by adding at the end thereof the following:

"(2) The Commission may adopt, after a rulemaking proceeding in accordance with the provisions of section 553 of title 5, a special procedure for providing interested parties reasonable notice of applications to provide transportation as a motor or water common or contract carrier or freight forwarder, or to be a broker for transportation, under sections 10922, 10923, 10924, and 10928 of this title, or applications for removal of operating restrictions under section 10922 of this title. The special procedure may consist of printing and distributing to subscribers an independent publication to provide notice of such applications, if the Commission finds, as a result of its rulemaking proceedings, that such method of providing notice would not be unduly burdensome to the public.".

GENDER-NEUTRAL TERMINOLOGY

SEC. 29. (a) Section 10722(c)(4) of title 49, United States Code, is amended by striking out "newsboy" and inserting in lieu thereof "newspaper carrier".

(b) Section 10722(d)(1)(B) of title 49, United States Code, is amended by striking out "widow" and inserting in lieu thereof "surviving spouse".

(c) Section 10723(b)(1)(C) of title 49, United States Code, is amended to read as follows:

"(C) an individual traveling on behalf of a nonprofit organization which provides recreational, housing or other services and benefits for the general welfare of employees of common carriers.".

(d) Section 11504(c)(3) of title 49, United States Code, is amended by striking out "seaman" and inserting in lieu thereof "sailor".

(e) Section 11905 of title 49, United States Code, is amended by striking out "linemen" and inserting in lieu thereof "line maintainers".

EFFECTIVE DATE

SEC. 30. This Act shall take effect on the 60th day after the date of enactment of this Act.

UP AMENDMENT NO. 1056

(Purpose: To make various amendments to the act)

Mr. DANFORTH. Mr. President, I send a committee amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH) proposes an unprinted amendment numbered 1056.

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

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

The amendment is as follows:

On page 64, line 24, strike "shippers;" and insert in lieu thereof the following: "shippers and intrastate bus services;".

On page 68, line 21, strike "that" and insert in lieu thereof "a".

On page 69, line 10, strike "initial"; on line 10, insert "(including changes thereto)" immediately after "practice"; and on line 22, strike "initial".

On page 70, line 4, strike "subsection (C)(2)(A) of this section" and insert in lieu thereof "subparagraph (A) of this paragraph".

On page 70, line 16, strike "(1)(i)" and insert in lieu thereof "(1)(A)".

On page 70, line 22, insert "the" immediately after "of" the second time it appears therein.

On page 71, line 16, strike "using" and insert in lieu thereof "under".

On page 72, line 5, insert "discontinue or" immediately after "to" the first time it appears therein.

On page 73, line 23, insert "to read" immediately after "amended".

On Page 75, strike lines 4 through 11 and insert in lieu thereof the following:

"(e) Section 10322(a) of title 49, United States Code;

"(1) by inserting "10708(f)," immediately after "10708(b),";

"(2) by inserting "10922(i)(4)," immediately after "10922(i)(2)" (as redesignated by subsection (b) of this section; and

"(3) by adding at the end thereof the following new sentence: "In addition, the deadlines set forth in this section do not apply to any application filed under section 10922(c)(2)(A) of this subtitle for authority to provide regular-route transportation entirely in one State as a motor common carrier of passengers.".

On page 75, strike all from line 23 through line 3 on page 80, and insert in lieu thereof the following:

"(g) Section 10922 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

" '(1) Notwithstanding any other provision of law, the Commission shall not issue any certificate to any motor common carrier, or any permit to any motor contract carrier, owned or controlled by persons of any contiguous country for a period of 2 years after the date of enactment of the Bus Regulatory Reform Act of 1982. The United States Trade Representative, with the advice of the Committee established pursuant to section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)), and in consultation with the Secretaries of Transportation and State, may remove or modify in whole or in part the restriction imposed under this subsection on the issuance of certificates or permits if it is determined that such action would be in the national interest.' ".

On page 84, line 7, insert a comma immediately after "regulation".

On page 85, line 4, strike " ' *5)" and insert in lieu thereof " '(5)".

On page 85, line 23, insert "(A)" immediately after " '(2)"; and strike "(A)" and insert in lieu thereof "(i)".

On page 86, line 2, strike "(B)" and insert in lieu thereof "(ii)".

On page 86, line 15, strike "communities.'. " and insert in lieu thereof "communities.".

On page 86, insert the following immediately after line 15:

"(B) The Study Commission shall make a full and complete investigation and study of the impact of implementation of the Bus Regulatory Reform Act of 1982 on persons over the age of 60, including those who reside in rural areas and small communities. In particular, the Study Commission shall investigate and study the effect on such persons of the potential termination of routes as a result of implementation of the Bus Regulatory Reform Act of 1982. In making the study required by this subparagraph, the Commission shall provide for notice and the opportunity for interested parties to comment, but need not provide for oral evidentiary hearings. In addition, the Study Commission shall consider the impact of both statutory and administrative regulatory reforms on the continuation and development of high quality intrastate motor bus services. Such study shall focus on the impact on existing firms currently providing service, some or all of which is conducted between points wholly within a single State. The Study Commission shall present its conclusions in its final report. Prior to such final report, if the Study Commission finds the existence of conditions that jeopardize the viability of continued intrastate services, it shall immediately notify the Congress and the Commission of its findings. If such notice is presented to the Commission, it shall give expedited treatment to whatever recommendations are made. The mandate to study the impact on intrastate bus transportation shall be an on-going one throughout the duration of the Study Commission's existence.".

On page 88, line 2, insert the following immediately after "1984.": "The Study Com-

mission shall, not later than January 1, 1984, submit to the President and the Congress the report required by paragraph (2)(B) of this subsection.".

On page 91, line 19, strike "60" and insert in lieu thereof "90".

On page 93, line 20, strike "and"; on line 25, strike "transportation'." and insert in lieu thereof "transportation';"; and insert the following immediately after line 25:

"(4) by adding at the end thereof the following new subsection:

"'(f) Notwithstanding any other provision of law, the Commission shall not issue any permit to any motor contract carrier owned or controlled by a citizen of any contiguous country for a period of 90 days following the date of enactment of the Bus Regulatory Reform Act of 1982. After such period, the Commission may, at its discretion, postpone the issuance of any such permit for an additional period not to exceed 60 days.'".

On page 97, line 22, strike "such discontinuance or reduction is not" and insert in lieu thereof "continuing the transportation, without the proposed discontinuance or reduction, will not constitute".

On page 98, line 3, insert "under reasonable pricing practices" immediately after "service".

On page 104, line 2, strike "of" and insert in lieu thereof "or".

On page 104, line 11, insert "the implementation of" immediately after "to".

On page 104, line 14 and insert in lieu thereof the following: "not apply to intrastate commuter service.

"(6) When the Commission decides, upon complaint by any person, that a reduction in a rate charged or collected for intrastate service provided on an authorized interstate route constitutes a predatory practice in contravention of the transportation policy set forth in section 10101(a) of this title, the Commission shall prescribe the rate to be followed.".

On page 111, line 10, strike "1134(a)" and insert in lieu thereof "11341(a)".

On page 126, insert the following immediately after line 10:

"EXEMPT MOTOR CARRIER TRANSPORTATION

"SEC. 30. Section 10525 of title 49, United States Code, is amended—

"(1) by redesignating subsection (e) as subsection (f); and

"(2) by inserting after subsection (d) the following new subsection:

"'(e) Notwithstanding the provisions of this section, the Commission has no jurisdiction under this subchapter over transportation, except transportation of household goods, by a motor carrier operating solely within the State of Hawaii. The State of Hawaii may regulate transportation exempt from the jurisdiction of the Commission under this subsection and, to the extent provided by a motor carrier operating solely within the State of Hawaii, transportation exempt from the jurisdiction of the Commission under section 10523 of this title.'".

On page 126, line 12, strike "Sec. 30. This" and insert in lieu thereof "Sec. 31. (a) Except as provided in subsections (b) and (c) of this section, this".

On page 126, insert the following immediately after line 13:

"(b) The amendment made by section 10(e)(4) of this Act shall take effect on October 1, 1982.

"(c) The provisions of section 6(g) and section 30 of this Act shall take effect on the date of enactment of this Act.".

The PRESIDING OFFICER. Under the previous order, the amendments are to be considered en bloc and the committee substitute is agreed to. The amendment is considered original text for the purpose of further amendment.

Mr. DANFORTH. Mr. President, may I inquire, have we just agreed to the amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. DANFORTH. Mr. President, last November, the House passed a bus deregulation bill, H.R. 3663. The Senate Commerce Committee overwhelmingly approved the bill with an amendment in the nature of a substitute on May 11, 1982, by a vote of 16 to 1.

The intercity bus industry functions under an economic regulatory scheme which is almost 50 years old. The purpose of this legislation is to modernize the regulation of this important transportation industry by eliminating many unnecessary and unduly cumbersome restrictions on free competition. Everyone who travels by bus and everyone who ships by bus can look forward to improved service once H.R. 3663 is signed into law.

This legislation is a well-balanced and delicate compromise. The compromise has the support of the American Bus Association (the association which represents Trailways and Greyhound, as well as hundreds of small carriers), the United Bus Owners Association (the association which represents primarily small carriers), the Department of Transportation, the Interstate Commerce Commission, and Labor. I want to emphasize that this is a compromise bill. It would set sound and fair policy, but the provisions are complicated and no one provision can be altered without affecting the whole bill's carefully constructed balance.

The major provisions provide for:

First. Greater freedom to enter into markets;

Second. Increased flexibility in setting and adjusting fares;

Third. Increased ability to leave markets if the service provided unduly burdens on interstate commerce;

Fourth. Preemption of certain regulatory controls which burden interstate commerce;

Fifth. Elimination of antitrust immunity to discuss single and joint line fares; and

Sixth. Labor protection.

The legislation encourages carriers to begin serving new markets and to develop new types of service, except where such initiatives would be contrary to the public interest. For example, the Interstate Commerce Commission may consider the effect on small communities if there is a protest to a carrier's entry into a new market. Where large bus companies currently operate unprofitably, economical service can be started. Where there is no bus service, or where a community has lost air or rail service or where a carrier has asked permission to drop service to a particular community, carriers may begin new service without undue delay.

As a result of this legislation, carriers will no longer be able to sit down together and talk about setting certain rates. Rates will, therefore, be more competitive and the passengers will reap the benefits. The Interstate Commerce Commission, of course, would continue to be able to investigate unreasonable or predatory rates.

This bill does not permit carriers to pull out of any market anytime they want. A carrier would be able to leave a market if certain cost standards are not met or if public interest does not require continued service.

The bill also insures that State regulators would be involved in deciding the question of exit, but State regulatory authority will be preempted in some respects to avoid imposing duplicative, unnecessary, and inconsistent regulations on the industry. In the past, regulations in one State have conflicted with those in another. State regulations have prevented carriers from adding or improving service. For example, under existing regulations, an interstate carrier may be prohibited from opening its doors as it passes through a particular State, and allowed to open its doors only at cetain points in another State. This is the sort of nonsense which gives regulation a bad name. To maximize service to the public, the law should, to the extent possible, subject carriers to only one set of regulations, one set of deadlines and one set of filing procedures.

Mr. President, I urge passage of this carefully balanced bill, a measure which the industry, the administration, and labor recognize as serving the best interests of the public.

I would like to clarify the additional points:

First. Section 30 provides that the act shall take effect on the 60th day after enactment. The purpose of the delayed effective date is to provide a period during which the Commission can promulgate rules as required by the new legislation, so that final rules can be in place on the effective date.

Second. The committee does not intend that this act authorize any additional budget authority for fiscal 1982. The committee intends that any fiscal year 1982 costs incurred from the bill will be absorbed from existing funds.

Mr. President, the Bus Regulatory Reform Act also contains a provision of special interest to the American trucking industry. This provision is part of a broader approach to eliminate the basic inequities faced by American motor carriers with respect to their treatment in foreign countries. Of particular concern to me is

the issue of United States-Canada transborder trucking and Canadian licensing standards which restrict the operation of U.S. trucking firms in Canada. At stake is about $1 billion in traffic and tens of thousands of U.S. jobs because U.S. motor carriers have been placed at a competitive disadvantage vis-a-vis their Canadian counterparts. This is because they must continue operating on a joint or interline basis while their counterparts are able to establish single-line operations across the border, as a result of eased ICC licensing standards under trucking deregulations.

Also at stake is a key test case in the area of service sector trade policy—where unless immediate efforts are made to achieve fair and equitable access for American motor carriers in the Canadian market, they are destined to lose the bulk of transborder shipping activities. Since motor carrier licensing standards under Canadian law are far, far more restrictive than those in the United States since enactment of the Motor Carrier Act of 1980, all transborder trucking commerce is likely to become dominated in both directions by foreign motor carriers. This will be the case regardless of rates charged, because as a practical matter only foreign-based carriers will be able to provide the single-line service most shippers desire.

As I understand it, the problem in Canada rests with both the provincial transportation boards and, on a Federal level, with FIRA.

For the purpose of arriving at a solution, I would maintain that the original language in the House bill, and indeed, certain aspects of the language marked up by the Senate Commerce Committee, are unnecessary if the administration employs vigorously the authority under existing law and takes advantage of the additional flexibility for action provided in this bill.

Specifically, the legislation Senator GOLDWATER and I have proposed to the Senate would impose a 2-year moratorium on the issuance of certificates or permits to motor carriers controlled or operated by a citizen of a contiguous country. This moratorium could then be removed or modified, in whole or in part, by the administration upon their determination that such action would be in the national interest.

Based on my conversations and correspondence with U.S. Trade Representative Bill Brock and others in the administration, it is my expectation that the moratorium will remain in place as long as necessary for them to resolve the problem of access to foreign markets by U.S. motor carriers.

As chairman of the Subcommittee on International Trade of the Finance Committee, I believe that an effective trade policy must be the product of the President's trade negotiating entity, working in cooperation with other agencies. Our trade laws grant the President extensive authority to investigate foreign unfair trade practices and to negotiate for their removal or take retaliatory measures against them. While section 301 of the Trade Act already provides for action in the services area, should more leverage be needed by the U.S. Trade Representative or American motor carriers in the future—after initial resolution of this problem—additional help is on the way. To this end, I should like to share with my colleagues several provisions of the Reciprocal Trade and Investment Act of 1982—cleared for floor action on June 16 by the Finance Committee by a vote of 17 to 2. Under this legislation, which I hope will be passed by the Senate in the coming weeks, existing retaliatory authority pertaining to trade in services would be clarified, and a fast-track legislative procedure would be set in place for retaliation in trade or investment areas not already covered by provisions of section 301. In addition, a specific negotiating mandate in the services trade area would be put into place.

On May 26 I wrote to U.S. Trade Representative Bill Brock, to initiate a process under section 305 of the Trade Act involving information pertaining to the nature and extent of the Canadian practice and U.S. rights and remedies under any trade agreement that may have bearing on the problem. It is my understanding that since receipt of the letter, the Office of the U.S. Trade Representative has been in close consultation with the U.S. trucking industry in their effort to prepare the case to be made to Canadian authorities.

Based on his investigation, the U.S. Trade Representative has now concluded that a negotiated settlement is likely to be in the best interest of both United States and Canadian truckers. That the problem of United States-Canadian transborder trucking has been a festering source of strain between ourselves and our Canadian ally for over a year makes it all the more important that it be resolved once and for all. No businessman, Canadian or American, can be expected to operate in a constant state of uncertainty, and once an agreement or set of agreements is worked out, the interests of both sides should have been satisfied.

In the final analysis, however, a number of things are clear: First, the problems being encountered by U.S. motor carriers are certainly within the scope and intention of the Trade Act. Second, urgent action is required to make sure U.S. motor carrier competitiveness is not lost before adequate remedies are employed. Finally, if we are in fact to build a credible and effective trade policy that includes trade in services, we must be willing to use all tools within our grasp—including those not traditionally held to be within the realm of trade actions.

Mr. GOLDWATER. Mr. President, the Bus Regulatory Reform Act contains a provision that is of special interest to me. This provision is part of a broader approach to eliminate the basic inequities faced by American motor carriers with respect to their treatment in foreign countries. Of particular interest to me is the issue of United States-Mexico transborder bus service and Mexican licensing standards which restrict the operation of U.S. bus firms in Mexico. At stake is the severe competitive disadvantage of U.S. motor carriers who are unable to operate in Mexico, while their counterparts are able to obtain permission to operate in the United States.

For the purpose of arriving at a solution, I would maintain that the original language in the House bill, and indeed, the language marked up by the Senate Commerce Committee, are unnecessary if the administration and the Interstate Commerce Commission employ vigorously authority under existing law and take advantage of the additional flexibility for action provided in this bill.

Specifically, the legislation imposes a 2-year moratorium on the issuance of certificates or permits to motor carriers controlled or operated by a citizen of a contiguous country. This moratorium could then be lifted, in whole or part, by the U.S. Trade Representative upon his determination that such action would be in the national interest.

During this timeframe, it is my hope and expectation that the problem of access to the Mexican market by U.S. carriers can be resolved—combining action by the U.S. Trade Representative under section 301 of the Trade Act of 1974, consultations by the U.S. Trade Representative with Mexican authorities, and existing authority of the Interstate Commerce Commission to consider the question of access in its deliberations regarding the issuance of licenses to foreign carriers.

On June 17 I wrote to the U.S. Trade Representative, Bill Brock, and told him of my concern over the issue of the Mexican Government not granting operating licenses to American trucks or buses, even though it is relatively simple for Mexican trucks or buses to get operating licenses in the United States from the Interstate Commerce Commission. It is my understanding that Mr. Brock plans to begin consultations in the next few weeks with the Mexican authorities to resolve this problem. Mr. Brock's office was also contacted to learn if an objection would be raised if an Arizona carrier should choose to file a petition relative to the Mexican situation. It is my hope that should the U.S. Trade Representative choose, he could undertake consultations with the Mexican authorities pursuant to the Trade

Agreements Act, and if necessary recommend to the President expeditious action to offset the problem of access to the Mexican market.

● Mr. RIEGLE. Mr. President, I hope that this legislation will result in a healthier bus industry and improved service to both rural and urban areas. I appreciate the efforts of the committee in addressing concerns that have been expressed about possible adverse impacts in rural areas. The committee is to be commended for including a statement in the national transportation policy which specifically includes the goal of providing and maintaining service to small communities. Since that policy statement is the guide for the Interstate Commerce Commission to follow in carrying out the provisions of the act, this legislation gives the Commission explicit direction to consider the needs of small communities. The entry and exit provisions also specifically direct the Commission to consider the impact on small communities wherever appropriate. The legislation also makes it very easy for carriers to provide new services to communities not regularly served by other carriers. I believe that all of these provisions go a long way toward addressing the concerns that have been expressed and provide an appropriate balance between the need for increased competition in the industry and the need to insure service in all areas of the country.

Nevertheless, not everyone is confident that the actual result will be improved services to small communities. Some individuals have suggested that an interim funding program might be needed to insure a smooth transition by providing financial and technical assistance to smaller carriers who serve rural and small urban areas. I realize that this year's severe budgetary constraints would preclude the inclusion of any kind of funding package in this bill. Nevertheless, I am hopeful that, should the need arrive, my colleagues on the Surface Transportation Subcommittee will review such a program during the oversight hearings that will be held next year.

Mr. DANFORTH. Mr. President, I thank Senator RIEGLE for his remarks. I agree that this bill represents an excellent balance between the need to remove excessive regulation and provide more competition in the bus industry and, at the same time, insure that no part of the country is inadvertently harmed. And I appreciate the distinguished Senator from Michigan reciting all of the things we have included in the bill to insure that rural service is protected.

Section 4 of this act directs and requires the appropriate congressional authorizing committees to hold periodic oversight hearings, at least annually until July 1, 1985. The committee report accompanying the bill clearly states the intention of the committee to hold its first oversight hearing within 1 year after the effective date. As chairman of the Surface Transportation Subcommittee I can assure my colleagues that the committee will include in those hearings consideration of a transitional funding program of the kind Senator RIEGLE has described, should the effects of less regulation on the level of service to small communities prove to be detrimental.●

● Mr. CHAFEE. Mr. President, I commend the managers of the bill and the members of the Committee for their efforts. I support the bill but I have serious reservations about the impact of the bill on older Americans. My concern is that older men and women who live in rural and in smaller nonurban communities and who rely on bus transportation as their sole means of conveyance should not advertently or inadvertently be harmed by the provisions of this bill.

In my own State hundreds of older citizens have contacted me through an organization called Great Age, which has a strong following in the community and very effectively represents and voices the concerns of many older people. Many of these individuals are concerned that this legislation, in the name of deregulation, could result in route terminations and other changes that could cut them off from friends, relatives, shopping, and recreational pursuits.

It is for this reason that I am pleased that the committee has accepted, as a committee amendment, language I proposed which would require the Motor Carrier Ratemaking Study Commission to study the effects of H.R. 3663 on older Americans. It would insure that such persons and groups like Rhode Island's Great Age will have an opportunity to express their opinions. Specifically, the amendment provides that—

[T]he Study Commission shall make a full and complete investigation and study of the impact of implementation of the Bus Regulatory Reform Act of 1982 on persons over the age of 60, including those who reside in rural areas and small communities. In particular, the Study Commission shall investigate and study the effect on such persons of the potential termination of routes as a result of implementation of the Bus Regulatory Reform Act of 1982.

The amendment also provides that individuals and private organizations representing the elderly have the opportunity to express their views to the Commission.

I am very pleased that the managers of the bill have seen fit to accept this amendment and that it has been adopted as a committee amendment to the bill.

I am aware that the manager of the bill, the distinguished Senator from Missouri (Mr. DANFORTH), has had a great deal of concern about the impact of potential route termination on smaller and rural communities and on the elderly.

I would like to ask the distinguished Senator in what ways he believes the bill protects bus service and bus routes in small communities and rural areas?

Mr. DANFORTH. I would like to point out to my distinguished colleague that the general and specific reforms of the bill will enhance small community service. Let me outline some of these reforms:

First, the new national transportation policy places great weight on improved small community service. The Interstate Commerce Commission will be required to consider the need to provide and maintain service to small towns and small shippers in many entry and exit proceedings.

Second, the bill allows freer entry into the regular route, charter, and contract carrier sectors. Furthermore, applicants who wish to provide common carrier service to certain markets, such as communities not regularly served by a common carrier; towns to which rail or air service has been abandoned; or towns where the last carrier serving applies to discontinued service, will be required to show only safety and financial fitness. This eased entry will encourage carriers to begin small town service.

Third, the bill removes operating restrictions, such as prohibitions against stops at intermediate points along a regular route. These intermediate points are generally small towns.

Fourth, carriers will be allowed considerable freedom to price their services without Interstate Commerce Commission suspension of a proposed rate. Pricing freedom will encourage competition, and the setting of innovative fares and will allow carriers to quickly tailor their services to the costs of particular operations.

Fifth, the bill gives interstate carriers increased flexibility to change intrastate fares and schedules in order to meet the conditions of individual markets. The bill also eases exit at the intrastate level, which historically has been a major problem for carriers, but carefully balances this freedom to exit against the interest of retaining small community service.

In short, the reforms contained in this bill will remove barriers to service and make it easier for carriers to serve small communities and rural areas.

Mr. CHAFEE. Mr. President, I would further ask my friend and distinguished colleague whether the bill protects against the situation in which large bus companies that are granted easier market access to existing markets can take over routes now served by smaller carriers, forcing such carriers to abandon less profitable routes in outlying areas?

Mr. DANFORTH. I want to assure my distinguished colleagues that the

bill does protect against such situations. The public interest test of the entry standard requires the Interstate Commerce Commission to consider, to the extent applicable, whether issuance of an operating certificate would impair the ability of any other motor common carrier of passengers to provide a substantial portion of the service it provides over its entire regular route system. This factor would protect a small carrier who could show that the new entry would materially jeopardize its ability to continue its system-wide, regular-route operations.

Mr. CHAFEE. Mr. President, I would like to ask the manager of the bill whether it addresses the fears of those senior citizens who fear the loss of their bus service, or fear being forced to endure substantial fare increases?

Mr. DANFORTH. Again, I would like to assure my distinguished colleague that the bill addresses the concerns of senior citizens about a possible loss of bus service or substantial fare increases. First, the bill eases entry into the industry, especially to small communities and rural areas, while also protecting carriers from new entry which would substantially impair their regular-route networks. This eased entry will encourage competition among carriers and increase price-service options available to the traveling public.

Second, while the bill contains significant pricing flexibility, bus service users retain their ability to complain to the Interstate Commerce Commission about unreasonable fares. In fact, section II of this bill requires the Interstate Commerce Commission to take expedited action on complaints concerning unreasonable bus fares.

I want to emphasize, however, that the key to insuring good service at reasonable rates to all riders, including the elderly, is competition. This bill contains a careful balancing of procompetitive reforms which will improve service to the traveling public and strengthen the financial condition of the intercity bus industry.

Finally, I want to emphasize that the Chafee amendment to the bill requires the Motor Carrier Ratemaking Study Commission to study the effects of this bill on senior citizens. The amendment, which was adopted at the distinguished Senator's request, specifically directs the Commission to investigate the effect of the potential termination of routes. This study will insure that the concerns of our senior citizens who use intercity bus service are recognized and addressed.●

Mr. CANNON. Mr. President, several aspects of the committee amendment go beyond the realm of the purely technical. First, Senators CHAFEE and KENNEDY have expressed concerns about the possible adverse impact on senior citizens and intrastate bus carriers. Although we believe that the legislation already provides adequate protections against any adverse impacts on such groups, we have nevertheless included a requirement that the Motor Carrier Study Commission specifically address these concerns and have made specific reference to the existence of intrastate bus carriers in the statement of national transportation policy.

We believe these changes more than adequately address the concerns raised while not diminishing the procompetitive thrust of this legislation and without providing protection from competition for any group or carrier. I wish to thank the Senator from Rhode Island and the Senator from Massachusetts for their help and assistance.

The second way that the committee amendment departs from the purely technical is in the area of reciprocity. As the bill was reported from the Commerce Committee, it contained provisions which would have restricted the Interstate Commerce Commission from issuing operating certificates to foreign carriers when the home governments of those carriers discriminated against American carriers. The administration argued that these provisions were too broadly drafted and that they would interefere with the work of the U.S. Trade Representative. In fact, the administration felt so strongly about these provisions that they threatened to veto the legislation.

We have now managed to work out appropriate language which accomplishes the original intent of the committee and at the same time is acceptable to the Special Trade Representative and the administration. Thus, the committee amendment substitutes the new language for the language previously reported by committee. The new language provides that the Interstate Commerce Commission may not issue operating certificates to carriers from any contiguous country for a period of 2 years unless the U.S. Trade Representative, in consultation with the Secretaries of Transportation and State, determines that such action would be in the national interest and lifts the restriction.

Mr. President, I ask unanimous consent that the committee amendment be adopted.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DANFORTH. Mr. President, I yield 2 minutes to the Senator from Wisconsin.

Mr. KASTEN. Mr. President, I am joining with Senators DANFORTH and GOLDWATER in this new trucking reciprocity language, but I am doing so because I understand we have an assurance from the administration that negotiations will be undertaken to provide American truckers with fair and equitable access to the Canadian markets.

Is this the understanding of the Senator from Missouri?

Mr. DANFORTH. It is. The question of so-called reciprocity with Canada has been one of great concern to the Senator from Missouri. It has been one that was discussed and worked out at the committee level, and subsequently there have been negotiations with both the Department of Transportation and the U.S. Trade Representative.

I think we have the matter cleared up now in a way which is satisfactory to all parties.

Mr. KASTEN. I appreciate the comments of the Senator from Missouri, and I thank him.

I think it is very important that we understand this 2-year moratorium on the issuance of licenses to foreign motor carrier operators will be used by the U.S. Trade Representative, the Department of Transportation, and others to exert the maximum amount of leverage in these negotiations and that we do not want them to back down in these negotiations.

It is my understanding that the congressional intent here is clear. We intend that they exert the maximum amount of leverage in their negotiations, and that they refuse to lift this moratorium unless it was completely in the national interest and a negotiated solution had been reached. This moratorium would not be lifted until current inequities in the United States and Canadian license practices are eliminated.

Is that the understanding of the Senator from Missouri?

Mr. DANFORTH. It is. It is also my belief that the bill as amended does provide the U.S. Trade Representative with the maximum amount of negotiating leverage that we could provide.

Mr. KASTEN. Mr. President, I wish to discuss one aspect of this bill which I believe is extremely important and needs clarification. I refer to the provisions affecting foreign-owned motor carriers operating or seeking to operate in the United States.

Just so there is no misunderstanding, I am referring specifically to the trucking industry and to our neighbors to the south and north—Mexico and Canada.

The provision in this bill provides that no certificate shall be issued to any motor common carrier owned or controlled by a citizen of any contiguous country for a period of 2 years following the enactment of this bill. However, the Special Trade Representative is empowered to modify this moratorium at his discretion after consulting with the Secretaries of State and Transportation.

Mr. President, I am going to support this provision reluctantly because I be-

lieve it is the best we can get. However, I believe the direction may be too ambiguous to accomplish the intent. Were I to have my way I would prohibit issuance of certificates to any foreign carrier until Canada and Mexico allowed entrance by United States-owned carriers into those countries on essentially equal terms. Let me explain why.

I first became aware of how serious the foreign motor carrier entry problem was becoming about the end of last year. My investigation revealed that over 400 Canadian carriers alone had applied for entrance into the United States. And the ICC was prepared to issue the certifications. Now why is this so important? It is important because when the Motor Carrier Act of 1980 was enacted, it failed to address the issue of foreign carriers. What that act said was "Here is our country, our markets, come and do business." And the Canadians, in particular, have come. More than 400 applications to run trucks across the land are pending. If these applications are granted an already troubled trucking industry is going to be a lot more troubled.

Mr. President, we are talking about jobs. We are talking about businesses, and we are talking about a little basic fairness and equity. I just noted in the June 14 edition of a trade publication that motor carrier failures in this country are at an all-time high. According to American Trucking Association's president 144 carriers employing 18,291 persons and representing an estimated $755 million in annual revenues have closed their doors. Another 47 companies and 22,265 employees are in chapter 11 bankruptcy reorganization or have sharply curtailed service.

Mr. President, we are talking about jobs and tax revenues. And we are talking about whether we ought to sanction foreign truckers to run all over this country when they will not allow us to do the same on equal terms. Let us made no mistake about the situation. Mexico prohibits entry of United States trucks in its Constitution. And Canada has devised a nice tool called the Federal Investment Review Act which makes it extremely difficult to penetrate the Canadian markets. Moreover, Canadian Provinces still control the issuances of licenses under regulations not dissimilar to what ours were like prior to deregulation.

The simple truth is that the Canadian Provinces and the Canadian Federal Government still have barriers in place. Their entry standards are restrictive; ours are easy. The net result is that large numbers of Canadian carriers want the ICC to approve certificates so they can single-line service from points all over the United States to Canadian ports and cities. U.S. carriers, because they have extreme difficulty obtaining similar authority, will be forced to interline freight at the border—with Canadian carriers. Now is anything fair or free about this kind of commerce?

Shippers overwhelmingly prefer single line service to interline service. It means less handling of goods. Shippers will usually pay slightly higher rates to get such through service. So even if U.S. carriers slash rates, as many are now doing, they still cannot obtain the traffic.

Mr. President, by enacting the Motor Carrier Act of 1980 we unwittingly created a strong competitive advantage for Canadian carriers to dominate transborder traffic.

One should not overlook the advantages this will create for ports such as Montreal over Baltimore. Indeed, it will compound the Canadian diversion issue which is currently the subject of hearings in the Senate Commerce Committee.

Because of my concern, I introduced S. 2057 in February to deal with this problem. I still believe it is the best solution because it imposed upon foreign carriers the same type of restrictions on entry as are imposed on our carriers by foreign governments. It is the carrot and stick approach, which could impress upon Canadian officials the need to open its market as we have opened ours.

Unfortunately, S. 2057 has not been considered in this debate. Therefore, Mr. President, I intend to support the compromise that Senator DANFORTH has worked out in this bill.

However, I find it necessary to state my understanding of how this is to work. I understand the Special Trade Representative is to consider if any unfair and unintended competitive advantages have accrued or are accruing to Canadian companies since enactment of the Motor Carrier Act of 1980 before modifying the moratorium.

Mr. President, I wish to make it very clear that the Interstate Commerce Commission may already have power to withhold issuance of certificates under existing law. I think it is very important to make this point.

Within the past few months the ICC has undertaken its own investigation, ex parte No. MC-157. While this moratorium is welcome because it will provide additional time to assess that record, I want to take a few minutes to recite the laws which may already provide the necessary authority to solve this problem.

First, the Motor Carrier Act of 1980 contains the requirement that the Commission is to consider the public convenience and necessity in licensing cases. Section 10922(b) directs the Commission to make findings "on the basis of evidence presented by persons objecting to the issuance of a certificate, that the transportation to be authorized by the certificate is inconsistent with the public convenience and necessity." The words "public convenience and necessity" are extremely broad and appear to allow the Commission to consider any applicable problem, including the lack of reciprocity in licensing decisions. American carriers complain that because of Canada's strict entry policies and the United States' liberal entry policies American firms will be placed at a competitive disadvantage vis-a-vis their Canadian counterparts. American truckers allege, and I believe they are correct, that the Canadians will ultimately capture the entire market for transborder freight. As noted earlier, Mexico grants no authority for entrance to U.S. carriers. Certainly the Commission has the power to consider the competitive impacts of opening up the licensing process indiscriminately to every foreign carrier that submits an application.

Several other statutory provisions support this view. First, section 10521(a)(1)(E) expressly authorizes the ICC to regulate motor carrier transportation between the United States and a foreign country to the extent the transportation takes place within the United States. Thus, the Commission is not impermissibly treading in the realm of foreign policy as some have claimed when it considers the issue. Furthermore, the National Transportation Policy, which the Commission is to consider in rendering licensing decisions, expressly directs the Commission "to promote competitive and efficient transportation." Surely, if Canada can gain an unfair advantage in the transborder trade competition will be curtailed.

Mr. President, I believe these provisions of existing law authorize the Commission to consider reciprocity, especially when complaints have been filed by American truckers about discrimination and anticompetitive effects. It should be noted that express authority is not always required for the Commission to act. Section 10321(a) provides that "Enumeration of a power of the Commission under this subtitle does not exclude another power the Commission may have in carrying out this subtitle."

I mention these laws, Mr. President, because it should not be implied that by including the moratorium provisions in this bill the existing authority should be ignored or in any way clouded.

Because of our concern that the ICC might not act under existing law, we are including this provision so there can be no misunderstanding about what Congress intends.

I would make it abundantly clear, and note that Senator DANFORTH agrees, that the intent here is to instruct the ICC to refrain from issuing

even a single certificate or permit to any foreign carrier until this problem is fully examined and resolved by the U.S. Trade Representative. We also intend that Congress will decide this issue, not the ICC by fiat.

Finally, Mr. President, it is my understanding that should the Special Trade Representative determine that unfair competitive advantages do in fact exist, then the Trade Representative could recommend to the President, and the President could implement any reasonable remedy.

Mr. President, I would prefer the more restrictive provisions of my own bill. While I am supporting the compromise worked out by the distinguished Senator from Missouri, I do that with the clear understanding that the ICC and the Trade Representative understand very clearly that Congress intends this issue be resolved with fairness and equity to U.S. truckers.

I have confidence that in the long run this is the best policy for our country.

The PRESIDING OFFICER. Who yields time?

Mr. PRESSLER. Mr. President, I ask for the yeas and nays on final passage of this measure.

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

The yeas and nays were ordered.

UP AMENDMENT NO. 1057

(Purpose: To amend procedures for the Interstate Commerce Commission to issue certificates of route authorizations for the regulation of motor carriers of passengers and for other purposes)

Mr. PRESSLER. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. PRESSLER) proposes an unprinted amendment numbered 1057.

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

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

The amendment is as follows:

On page 71, between lines 8 and 9, include the following new subparagraphs:

"'(E) evidence of public support for an application or other demonstration of public need;

"'(F) the quality and quantity of available service;

"'(G) whether granting the application or a series of similar applications—

"'(i) might result in discontinuance of intercity bus service to communities having no other intercity bus transportation; or

"'(ii) might impair or curtail the operations of existing carriers.'".

On page 72, delete lines 10 through 14, and insert in lieu thereof the following:

"'(6) The requirement that persons issued certificates under this subsection be fit, willing, and able includes, among other things, financial fitness, operational fitness, safety fitness and insurance pursuant to the minimum financial fitness responsibility requirements of section 18 of the Bus Deregulatory Reform Act of 1982.'"

On page 93, line 9, after the word "means", insert "financial fitness, operational fitness,".

On page 119, line 1, after the word "capacity", insert ", including those located in nonurban areas,".

Mr. PRESSLER. Mr. President, this amendment to H.R. 3663, the Bus Regulatory Reform Act of 1982, would expand the scope of two tests, the public interest standard and the fitness definition, used by the Interstate Commerce Commission in deciding upon new entrants to regular-route service. I am offering this amendment because I strongly believe that the current version of H.R. 3663 is too deregulatory in nature and would result in severe loss and dislocation of intercity bus service in rural States. At this time, I ask unanimous consent that the name of Senator ABDNOR be added as a cosponsor of my amendment.

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

Mr. PRESSLER. Mr. President, I should like to take a moment to point out some relevant facts about the nature of the intercity bus industry. First of all, the industry is dominated by two large carriers who control 60 percent of the industry revenues and 75 percent of the regular-route passenger service. Only Greyhound and Trailways provide nationwide service. The remaining market is divided among 1,200 small carriers, most of whom provide feeder service in small communities for the two large companies. In addition, these two dominant firms own and operate the majority of bus terminals in which the small carriers must operate. Any discussion of deregulating the bus industry must carefully consider this near-monopoly situation.

Another important fact to remember is that, out of 15,000 communities served by intercity bus, 14,000 have no alternative passenger transportation. This means no airline or passenger rail service. If intercity bus service is abandoned, these small towns will be further isolated.

Nearly 50 percent of all bus passengers are under 18 or over 65 years of age. These people generally have no other transportation alternative. Rural senior citizens depend on bus service for shopping, trips to visit family, and to obtain medical care. If this service is abandoned, these people will suffer.

Mr. President, I should also like to mention a few points about the legislative history of H.R. 3663. The House passed this measure with a number of provisions concerning rural service and without completely open entry for new applicants. The House bill had the uniform support of the entire industry. However, in the Senate Commerce Committee, several significant changes were made to provide for almost totally open entry and exit on regular-route and charter service.

Both Senate and House Committees heard testimony to the effect that open entry would destroy rural service. I quote from Art Lewis' statement during the House hearings. Mr. Lewis is the former president of the American Bus Association. Regarding regulation of entry, Mr. Lewis said:

> Control of entry has always been an integral part of the regulatory structure. Its purpose is not to prevent competition, but by striking a balance between demand and available service, to promote an effective level of competition which will produce a balanced and comprehensive level of service that is not destructive in nature. Regulation of competition is required to insure that carriers discharge their common carrier and other service obligations without discrimination. Passengers are the primary beneficiaries of these objectives, especially those who live in relatively small or isolated communities.

During the Senate hearings, Mr. Norman Sherlock, current president of the American Bus Association, said much the same thing in support of the House version of H.R. 3663:

> The intercity bus industry is vested with a public interest. The basic issue is whether this public interest can best be proposed by some regulated competition designed to preserve a balance of values or best be promoted by unrestrained competition. We believe that some continued discipline in entry provision will best strike that balance and H.R. 3663 so promises. Even though entry under the terms of the bill is greatly liberalized, there are sound reasons why it should not be made automatic.

Mr. President, I want to remind my colleagues that the testimony I have just quoted pertains to H.R. 3663 as it was sent to this body by the House. However, in spite of overwhelming testimony to the contrary, the Senate Commerce Committee chose to ignore the need for some entry regulation and substituted language which changes the character of entry policy. This is the reason I am offering amendments to return to the House version and restore House language.

Mr. President, I believe my colleagues will agree that rural transportation service of any kind survives on its ability to subsidize a majority of unprofitable routes with a few profitable lines. If H.R. 3663 passes, this delicate balance will be destroyed and carriers will be forced to drop dozens of intercity bus routes which are the only form of passenger service available to rural citizens. If H.R. 3663 passes in its present form, one of several things will happen. The dominant carriers will quickly move to pick up those profitable routes, engaging in predatory price activity to drive out rural competition. Or new carriers, under the guise of increased competition, will likewise move in to serve the few rural destinations with larger markets,

bypassing the many small towns which are economically unattractive. In either case, the existing carrier will be forced to abandon service or go bankrupt. But most important of all, the new carrier will be under no obligation to include these abandoned routes in this service area. The rural passenger ends up without any bus service.

H.R. 3663 requires two entry tests for regular-route applicants: The "public interest" standard and the "fitness" definition. H.R. 3663 requires only a demonstration of safety and insurance fitness in its "fitness" definition. The "public interest" standard is much weaker than the "public convenience and need" standard currently used by the Commission. My amendments will change the scope of these tests in the following ways:

First, the public interest standard would also require the ICC to consider the effect of new entry on existing service.

Second, the "fitness" definition would include the standards of "operational and financial fitness." This is identical to the House language.

Third, the bus terminal study required by H.R. 3663 would include consideration of nonurban bus terminals.

My amendment restores the very balance which the industry itself supported during congressional hearings. This balance between free market competition and common carrier obligation is crucial if bus deregulation is to avoid the serious problems experienced in other forms of transportation deregulation.

Mr. President, at the risk of enlarging the scope of this debate, I would like to point out that other deregulatory efforts have not been without problems. The promised advantages of airline deregulation include lower fares and a variety of service alternatives which would theoretically benefit consumers. In fact, my colleagues from rural States know that just the opposite has resulted. Americans from small towns and rural areas must pay more money and have fewer choices.

For rural States like my home State of South Dakota, problems like these have been enormous. Since airline deregulation, South Dakota has experienced a 7-percent drop in the number of departures per week and a larger 21-percent loss in the number of available passenger seats per week. Air fares have risen astronomically because South Dakota passengers are a captive market because new service is not attracted to rural States. For instance, in the last 5 years, a South Dakotan flying from Watertown to Aberdeen is faced with a 77-percent price increase. A passenger between Pierre, the State's capital, and Minneapolis, the major midwest hub for airline connections, must now pay 59 percent more for a ticket. Since these figures have already been adjusted for inflation, the increase is staggering.

Supporters of the deregulation theory contend that replacement service, which is better suited to marketplace requirements, will materialize. Again, the experience of the past 5 years does not necessarily support that argument. South Dakota has struggled to find replacement commuter air service. One replacement airline approved by the Civil Aeronautics Board went bankrupt in a matter of months, not because of a lack of traffic, but because the current economic environment is not at all conducive to new businesses. In 1981, 55 percent of American bankruptcies were new businesses. In the last 7 years, bankruptcies increased by 77 percent. Commonsense tells us that this is hardly the time to depend on new replacement service, even in the bus industry, which is less capital intensive than the airline industry.

Mr. President, our national transportation system was built on the common carrier obligation. Carriers were assigned some profitable routes with the understanding that they would also have an obligation to provide service to less financially attractive destinations. In our rush to deregulate, we seem to forget this fundamental principle. I urge Congress to seriously consider the diversity of needs and problems in the United States and carefully draft legislation which takes this diversity into account.

Mr. President, my amendment does not destroy the deregulatory provisions of H.R. 3663. It does not "gut the bill." If my amendment is adopted, H.R. 3663 will still contain ample deregulation, including eased entry for charter and special operations, Federal preemption of State regulation, a flexible zone of rate freedom, and gradual elimination of antitrust immunity for collective ratemaking. My amendment restores a much-needed balance between the encouragement of free market endeavors and the need to establish carrier obligations in areas of this country which are not attractive to competition. My amendment is a reasonable compromise between total deregulation and reregulation. I urge my colleagues to support this amendment.

Mr. President, at this point I would like to yield to my colleague, Senator ABDNOR.

(Mr. SPECTER assumed the chair.)

Mr. ABDNOR. I thank my colleague and friend from South Dakota for yielding. I appreciate the opportunity he gave me to cosponsor his amendment which, I think, is very necessary for our particular area.

Mr. President, I wish to express my concern about the consequences of deregulating the bus industry in the United States. I do not claim to be an expert in the field of economics and its study of resource allocation and efficiency. I do, however, lay claim to a perception of how deregulation of this important transportation system will affect rural areas of America.

The major issue at stake in this debate is whether the inevitable impact caused by the forces of competition is to be accepted and tolerated. For most of the 20th century, the concept of "universal service" was favored, and applied to many of the services provided. This concept unified America as it emerged as an industrial giant. When mail service was undertaken, our congressional predecessors had the foresight to charge a uniform rate on first-class mail regardless of distance. In a time when mail was the principal form of communication, the rural and outlying areas were connected with the urban sectors of the country. When telephone service was recognized for its great potential, legislators adopted a philosophy of universal service at low cost to put the telephone within the reach of all Americans. Indeed, the U.S. Government backed up those words by providing low-cost funding of rural telephone cooperatives. The same was done for the provision of electricity in rural areas.

These actions substantially raised the standard of living of rural citizens. But in return, those rural citizens became more productive and more involved in the economy at large. Our farms are not just the breadbasket of the Nation but of the world as well. Farm exports resulted in a $29 billion trade surplus last year which provided a tremendous stimulus to the rest of the economy. In addition, by being so productive, our farmers have freed up valuable resources for alternative uses in our economy. I cannot emphasize that fact too strongly. Rural areas have always given something in return for what they receive, and I believe the Nation as a whole has benefited.

We are now deliberating a bill that will take services and resources away from rural areas. That is a simple economic fact of life. Bus routes which cannot sustain a break-even point or a decent rate of return will be discontinued. It is a well known fact that bus companies have been, in effect, subsidizing the unprofitable routes by diverting the profits of the viable routes. This behavior is not exclusive to this industry. It is a characteristic of many regulated industries, such as the Bell System, which currently offers below-cost pricing of basic service because long distance pricing makes up for it. Clearly, efficient market forces dictate that losing operations must be discontinued.

In order to serve the public interest of rural Americans, I have to register my doubts about the complete shift to a market approach to providing trans-

portation services. I feel that some control must be exercised to insure common carrier obligations which are a part of the tradition of our society.

I point to the condition of our airline industry as an indicator of what I suspect will happen in bus service. Fierce competition along popular routes has given consumers tremendous bargains. But service into less traveled areas has been reduced and fares have been raised. I am very concerned about a pricing scheme which requires me to pay 50 percent more for air service to South Dakota than for air service to California, which is almost twice as far away.

The contribution that rural areas make to the rest of the Nation far outweigh what rural areas receive from urban areas. I feel that the importance of the economic role of rural areas is neglected. Without adequate transportation services available, rural areas will suffer.

I thank the Senator for yielding.

Mr. PRESSLER. Mr. President, the National Farmers Union has entered a statement in opposition to the bill, and I ask unanimous consent to have that statement printed.

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

NATIONAL FARMERS UNION,
June 11, 1982.

MEMORANDUM

To: Members of the U.S. Senate.
From: Paul R. Sacia, Legislative Assistant.
Re H.R. 3663, Bus Deregulation.

The National Farmers Union respectfully urges you to oppose H.R. 3663. Major changes made during Senate Commerce Committee deliberations this spring concerning entry and exit of common carrier and charter service especially makes this bill unpalatable to our members.

Many of our rural communities are served by small bus companies. Oftentimes, the financial viability of these companies depends on the profitability of a few routes, with the air of charter servicing, to balance losses incurred from feeder runs to small communities. H.R. 3663 so eases entry by the two dominant carriers into such profitable routes and charters that smaller carriers could be devastated by subsequent price wars.

We believe this legislation will lead to a weakening of the financial health of smaller carriers dedicated to servicing their rural customers. Our members cannot afford further transportation setbacks. Please oppose H.R. 3663.

Thank you for your consideration.

Mr. PRESSLER. Mr. President, a number of questions have been raised concerning my amendment and I would like to take a moment to answer them. How does your amendment help rural service?

The changes in the "public interest" standard and the "fitness" definition will help rural service in several ways:

First, the Interstate Commerce Commission will have to consider existing service, the need and desirability of competition and the effect such competition would have on rural carriers.

Second, the inclusion of "financial and operational fitness" in the "fitness" definition will protect consumers from irresponsible carriers who attempt to enter profitable routes without meeting certain standards.

In all cases, predatory competition and the siphoning off of a few profitable rural routes can be avoided.

Another question is: Your amendment restricts entry applicants but does not deal with the liberalized exit provision. Is not rural service more concerned with abandonment of routes? Why do you not offer an exit amendment?

First of all, the fact that this question has been asked is an indication that, in fact, rural residents should be concerned about the liberalized exit and the bill in general.

Restricting exit does no good if entry is not likewise regulated. Industry representatives all testified that a bus deregulation bill must be balanced between entry and exit. If exit is tightened, existing carriers will still face the problem of predatory competition in their profitable routes. If those routes are lost to a dominant carrier, the rural operator is still held in on the losing routes with no way to financially support them.

Another question is:

First of all, my amendment does not restrict entry. The fitness definition is the same one used in the House language, which was originally supported by the industry.

Second, if my amendment is adopted, substantial entry deregulation remains in the bill:

One, open entry for charter and special operations.

Two, elimination of the public convenience and need standard.

Three, relaxation of the public interest standard.

Four, relaxation of entry requirements for carriers who wish to provide service where none is currently available.

Five, relaxation of entry requirements for carriers who wish to replace lost rail or commercial air service.

Six, relaxation of entry requirements for a bus company to provide service where previous bus service has been lost.

If my amendment is adopted, all of these provisions still remain in the bill. My amendment can hardly be considered restriction. Rather, it is an effort to balance the bill between the need for increased competition and the need to consider existing rural service.

Another question is: Rural Senators support H.R. 3663. Why do you disagree with this judgment?

We are not discussing regulations versus deregulation. We are debating the degree to which Congress will deregulate the bus industry. The House version of H.R. 3663 includes a strong definition of "fitness" while, at the same time, eliminating the "public convenience and need" standard. The Senate bill substantially weakens the fitness definition. My amendment will restore the house fitness definition and will include several issues for the Interstate Commerce Commission to consider in the public interest standard.

Efforts were made to rush Senate passage of H.R. 3663. Perhaps these efforts resulted from a fear that more Senators would have an opportunity to look closely at this legislation and reconsider the liberalized entry and exit policies. Congress has a responsibility to look at this complicated measure very carefully to determine the extent to which deregulation should be allowed.

Another question is: Your amendment would restrict the possibility of replacement bus service in rural communities which lose existing service.

First of all, my amendment does not change section 6(c)(4) which allows the Interstate Commerce Commission to waive the public interest standard for entry applicants who wish to provide replacement bus service.

Second, I am not as confident as the supporters of this bill that replacement service would even appear, should existing rural service be lost. If a line is economically unattractive, why would a new carrier want to start service on it? Even if the new carrier adjusts his operations to meet the specific needs of the communities—for example, van service, fewer stops, fewer scheduled runs—the current economy is not encouraging for new businesses. The plight of the airline industry, which has struggled to adjust to deregulation in a bad economy, should be a lesson for Congress. We must proceed carefully. New services does not magically appear to replace lost or bankrupt carriers.

Another question is: The Federal Trade Commission submitted testimony to the Senate Commerce Committee, denying that there would be any predatory practices as a result of open entry.

First of all, I am not as willing as some of my colleagues to accept without question the statements of the Federal Trade Commission.

Second, testimony from the industry overwhelmingly supports the argument that total deregulation of entry would seriously damage existing rural service. I would like to quote from some of that testimony. Mr. Norman Sherlock, president of the American Bus Association, said to the House committee:

Control of entry has always been an integral part of the regulatory structure. Its purpose is not to prevent competition, but

by striking a balance between demand and available service, to promote an effective level of competition, which will produce a balanced and comprehensive level of service and not be destructive in nature.

If the chief industry representative is warning Congress about the destructive consequences which would result from total deregulation of entry, I believe that Congress should pay close attention.

Another question is:

In my long experience with this legislation, I have watched with great interest as various Washington representatives of this industry have changed their public statements on this issue numerous times. On numerous occasions, different segments of them have taken different stands. For instance, in House testimony, Mr. Wayne Smith, president of the United Bus Owners Association, the Washington representative for the small bus owners said:

We feel there is not a need at the present time for legislation. We feel it is time for review of the existing deregulation that already has gone on in the aviation field, the trucking field, the railroad field.

During the Senate hearings, Norm Sherlock, president of ABA, strongly opposed DOT amendments to further liberalize entry. Mr. Sherlock said in response to a question about complete deregulation of entry:

I do not think you are going to know what is going to happen in total deregulation in every State until you have it. But I would suggest that by the time you have it and if you do it in quick, wholesale fashion, you may be sorry you have it.

I am not in a position to explain the reversal of positions now taken by Washington lobbying groups. However, I do agree with Mr. Sherlock that those of us who represent rural States will indeed by sorry we have it.

Another question is: The language included in the bus terminal study provision is redundant since the provision already makes reference to nonurban bus terminals.

This language is not redundant. In section 26(b), the bill says that the study should look at the question of possible Federal assistance in the construction of nonurban bus terminals. This language specifically talks about future bus terminals which have not yet been built.

The language I am proposing concerns a study of existing nonurban bus terminals. Small and rural carriers have complained that access to these terminals are owned by the dominant carriers. My amendment expands the scope of the study to include this particular problem. I might also mention that the owner monopoly of bus terminals may very well be a forerunner of similar monopolistic practices should total bus deregulation be enacted.

Another question is:

If the object of my amendment were to protect existing South Dakota carriers, I would be fighting for entry restrictions on charter service, which provides the margin of profits for those companies. My amendment does not do that.

My strong concern is the rural consumer who will not benefit from increased competition but instead will see existing service destroyed with no promise of any replacement service. Competition may work in some parts of the country. It does not work in captive markets such as rural communities.

Second, as H.R. 3663 is now written, it is a bill which primarily benefits the two major carriers. H.R. 3663 is a big industry bill. Reese Taylor, Chairman of the Interstate Commerce Commission, admitted to this motive during his testimony before the Senate Commerce Committee. When asked why bus deregulation was needed at this time, Chairman Taylor responded:

Well, I suppose the biggest reason is that everybody else has had a chance to sup at the deregulatory banquet. The bus industry feels they have some very serious problems in areas such as rate flexibility and in exit.

I agree with Senator DANFORTH's response to this statement and I would like to take a moment to continue quoting from that exchange:

DANFORTH. Let us suppose, just hypothetically, that a Senator is less interested in who sups at what table than what is in the best interests of his constituents, his people. What is wrong with the present system?

TAYLOR. I think you will have a better bus industry if you adopt this bill.

DANFORTH. How about the people?

I echo Senator DANFORTH's question, "What about the people?" My amendment is an effort to establish a balanced bill which takes into account the dominant carriers' need for deregulation, the small carriers' need to retain their few profitable routes and the rural passengers' need for dependable and reasonably priced bus service.

The last question is: "Deregulation in Florida and California has resulted in increased competition and decreased fares. Why should not the rest of the country benefit in a similar fashion?"

First of all, both States have large population centers with ample markets to carry competition. Second, both States have a diverse tourism economy which can support competitive rates on charter services. This is not the case in sparsely populated States like the upper Midwest. Norm Sherlock, president of ABA, made this same point during the Senate hearings. At that time, the industry did not support total deregulation of entry. I do not see where the situation has changed in any respect.

During House hearings on bus deregulation, Wayne Smith of the United Bus Owners Association, which represents the small bus companies, brought up an example of the effects of Florida bus deregulation. Quoting from Mr. Smith:

I received a call yesterday from a member down in Florida. He personally wanted me to convey to this committee that in 1980, from January until May 31—and this is when deregulation was not in effect—that his charter business gross was $1,013,000. Last week he received his financial statement for the same period of January to May 1981 and his charter business was $659,000. Last Saturday he sold 10 buses. . . . He wanted me to pass on that maybe the glowing statements that everything is rosy in Florida is not true.

Statements like this demonstrate that open entry in the chapter market is not always beneficial. We should not allow total deregulation of entry because this too often results in the destruction of healthy existing carriers. My amendment only pertains to regular-route service. This is a compromise between total entry deregulation and total reregulation.

Mr. DANFORTH. Mr. President.

The PRESIDING OFFICER. Who yield time?

The Senator from Missouri.

Mr. DANFORTH. Mr. President, because I share the concerns of the Senator from South Dakota about small communities, I have to oppose this amendment, stating, first of all, that the amendment offered by the Senator from South Dakota would gut the bill. And it is strongly opposed by the administration which is strongly in support of the bill. H.R. 3663 would make market entry and exit easier than is the case today. However, the committee-passed bill contains specific protections against loss of service to small communities.

Senator PRESSLER claims his amendment would help small rural communities. To the contrary, this amendment would substantially raise market entry barriers. In fact, the amendment would make it very difficult for new carriers, especially small carriers, to begin service to small communities. Under the Pressler amendment, a carrier which is ready to serve a small community in dire need of bus service could be forced to leave the town stranded while the new carrier tries to generate letters and affidavits from potential customers saying they need service. This is exactly the type of time-consuming, expensive, and unjustifiable regulatory burden which has undermined good service to the traveling public.

Mr. ABDNOR. Will the Senator yield?

Mr. DANFORTH. Yes.

Mr. ABDNOR. I was interested in what the Senator was saying. Senator PRESSLER's concerns, as are mine that there will be some protection and assurances—can be given to the rural world. To many people in this Chamber, the term "rural" consists of just

several thousand people. We are not talking about that.

The Senator mentioned, I believe, that there are assurances in here that bus service would not be disrupted in the rural areas. This brings me back to the debate in the committee that took place over in the House of Representatives when I was a member of the Public Works Committee. I remember Congressman COLEMAN being there. He said, "Congressman, don't worry. We had South Dakota in mind." And they came up with something called the 406 fund to make sure we had airplanes. It was supposed to go several more years in the program. The administration has already asked that be cut out and it will probably be cut out. We now must wonder what is going to happen to rural air service.

I guess I just do not have enough faith and trust in deregulatory efforts. While talk and maybe the intent is ever so good at this particular moment, somehow a year or 2 years later we sometimes forget the concerns that we had.

How can I be assured that we are going to be protected to some degree? We have lost practically all of our air service and, as Senator PRESSLER has pointed out, we only have the one busline in South Dakota. We talk about trucking deregulation and we wonder how long that is going to be around when you no longer have to stop at towns of a population of 200 or 300. That does not sound like many people in a village, but they are citizens that deserve attention and protection.

But when those kinds of towns are 15, 20 miles apart and they rely solely on buses for some kind of transportation service, I think we are justified in expressing our concern here today. I just wonder if the Senator could tell me if we really can depend on continued bus service.

Mr. DANFORTH. First, there are a couple of protections that are specifically written into the bill. As part of the public interest test, the Interstate Commerce Commission can consider the effect of a new carrier on small communities and on the carrier presently serving the community If a community is without bus service, a carrier has filed to discontinue service, or a replacement for air and train service, the carrier need only be safe and meet the insurance requirements in order to begin service.

I think that one of the misconceptions in the whole debate on bus deregulation is that there is some relationship between deregulation of interstate bus service on one hand and deregulation of the airline on the other. Airline transportation requires huge capital investments, many, many individuals involved, personnel involved in servicing any stop that any airplane would make. Bus transportation, by contrast, can be carried on by a single individual, for that matter, who happens to buy a bus. And a bus can stop anyplace that it can open its doors.

So I really think that it is not appropriate to draw a parallel between bus deregulation and the deregulation of plane service.

Mr. ABDNOR. If the Senator would yield again, maybe in total dollars and costs that might be true. But when you have a very local busline within a State, it may cost several hundreds of thousands of dollars and still be very small in relation to an airline. But it is solely operated and owned. You open it up. You have several major cities in South Dakota. Probably another line could come in and make some difficult competition, strong competition.

I am very well aware that some of the stops the present buslines have to make as they go down the road are not very profitable. What is to prevent those people from saying: "I am sorry, fellows. Business is such now that I cannot afford to stop in this town or that town or the next town?" What assurance do we have that they will continue to operate and that these little towns are going to have service?

I am not worried about the buslines. I am worried about the people. When you go, say, 100 miles and find 7 little towns of less than 500 population, what is going to stop by for them, if anything?

Mr. DANFORTH. Mr. President, under the bill, the Interstate Commerce Commission, as I stated before, would consider the effect on small communities and on the carrier, the whole business of the carrier which previously had been serving the community.

I would suggest to the Senator from South Dakota that ease of entry, in something as flexible as bus transportation, would be particularly appropriate to precinct service in small communities.

Mr. ABDNOR. Well, I guess I could say this: It is kind of like taking the cream off the milk. When we have competition, no one can see a profit in competing with a larger population. We have to split that with another busline. The company that has been taking care of the smaller communities can just no longer afford it.

Some day I may have to come back and remind the Members of this Senate about that. But I can see we are probably quite undermanned in finding the bodies here to agree with us. I predict we will have to recall this, as we go down the road. Maybe I will be the first one to come before the committee and ask for some help.

Mr. SCHMITT. Will the Senator yield?

Mr. DANFORTH. Yes.

Mr. SCHMITT. Mr. President, I reluctantly oppose the amendment of my good friend from South Dakota. His intent is clearly the correct intent. It is the mechanism that he has chosen that I oppose.

One of the major interests of this Senator and this administration is deregulation. Deregulation—the removal of unnecessary regulations and procedures, the removal of artificial barriers which protect industry, not consumers.

This amendment is a so-called small community amendment. We are told that it will protect the interests of small communities. I appreciate the concern of the Senator from South Dakota. His fine State has many small communities. New Mexico, my home State, has many small communities as well. Some of those communities rely solely on passenger buses for passenger and cargo traffic. This bill, without amendment, will serve New Mexico's small communities' interest better than the status quo. Senator PRESSLER's amendment could do great damage to passenger bus service to rural communities in New Mexico and elsewhere.

Mr. President, this amendment very simply places new barriers to entry on small carriers. Are we to understand that the small entrepreneurial carrier who wants to offer service between Loco Hill and Dexter, N. Mex., cannot, because they cannot afford to go to the ICC with hat in hand. How will small communities benefit from stringent entry barriers?

There are small commuter airlines operating in New Mexico serving small communities, I am sure the same is true in South Dakota. These airlines would not be operating today and the small communities that they serve would have no air service whatsoever if we had created stringent barriers to entry when we deregulated airlines.

The Senator is concerned with loss of service to small communities. I understand that South Dakota lost some air service under airline deregulation. The Senator made a statement to that effect in this Chamber on June 22. Loss of service is an effect of eased exit, not eased entry.

Creating new barriers to market entry will not maintain bus service in small communities; instead, it will rob small communities from small jitney service they may have received otherwise.

If the Senator really wanted to insure that small communities are to receive service with full and free competition, he would offer an amendment opening up market entry further. Then, more carriers could serve more small communities without having to go through the costly regulatory song and dance with the ICC proving financial and operational fitness.

I urge my colleagues to reject this amendment.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PESSLER. Mr. President, let me say, in response to some of the comments of my colleague from Missouri, for whom I have the highest regard, it is my fear, first of all, that the entry standards that have been built into this bill do not have sufficient teeth in them.

Also, let me say that from testimony we had from one of our bus executives, it is pretty expensive to get into the bus business. First of all, a bus, which costs, I am told, anywhere between $30,000 and $100,000 for a small bus, plus insurance, plus employees, plus the bookkeeping that is required. Also, in towns such as my hometown of Humboldt, S. Dak., which has 450 people, of the bus company serving Humboldt did not have some profitable route between two big cities, it would not be able to survive on the small town route.

Our national transportation system was built on the common carrier responsibility. If a common carrier, a bus or a train or an airline got some very rich routes, it would also take the responsibility for some other routes that were not so rich or not so profitable. That is how our whole westward transportation expansion developed.

We are abandoning that principle with deregulation. Before long we will see coupons being sold to travel from New York and Chicago for $9, but for a senior citizen or a person living in a small town, if they have bus service, it will be astronomically expensive. For example, we were promised many things with airline deregulation, and now it costs me $500 for a roundtrip ticket to Sioux Falls. But people who are going from Chicago to Los Angeles can do it for $99.

So the captive market is subsidizing these so-called fancy rate coupons.

Mr. President, I ask unanimous consent to withdraw my amendment. My colleagues can express their opposition to this bill in a rollcall vote on final passage. But in requesting that, let me say that I think this bill is another example of what is hurting the quality of life in rural America. We have done it with railroads, we have done it with airlines, and now we are doing it with buses. So our struggle will continue, and I hope, when we come back to Congress for assistance because we have lost service, that this debate will be noted and remembered.

Mr. President, I ask unanimous consent to withdraw the amendment, and I urge that Members vote against the bill to express their support for the concepts that we have discussed.

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

Mr. PRESSLER. Mr. President, I would like to thank my fellow Senator from South Dakota for his support of my amendment. I would also like to take a moment to thank my distinguished colleagues, Senators PACKWOOD and DANFORTH, for giving me the opportunity to debate this bill. I appreciate their cooperation. I should also mention the good staff work that was demonstrated during the course of this bill's history, particularly the work of Kathy Meier.

Mr. DANFORTH. Mr. President, I ask unanimous consent that statements from some 10 groups supporting the bill, together with an editorial from the Washington Post, and a news release from the Interstate Commerce Commission be printed in the RECORD.

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

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., June 14, 1982.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR BOB: I would like to take this opportunity to express the Reagan Administration's support for the "Bus Regulatory Reform Act of 1982," which was reported out of the Committee on Commerce, Science, and Transportation on May 11. This bill would substantially reduce Federal regulation of the intercity bus industry, consistent with our goal of reducing the regulatory burden on American business.

The "Bus Regulatory Reform Act of 1982" is important legislation. The reforms contained in this bill will improve service to the public, benefit, consumers, and strengthen the financial condition of the intercity bus industry, an industry that is a vital component of the nation's passenger and freight transportation system.

This legislation offers a balanced approach to regulatory reform. It would provide greater freedom of entry, especially for those operators who seek to serve small communities and rural areas, and would eliminate burdensome operating restrictions which reduce the quality of service available to the public. The bill would also provide greater pricing flexibility, allowing carriers to adjust their fares quickly to meet the changing needs of the marketplace, while maintaining necessary Federal regualtory control to prevent anticompetitive pricing practices. Further, the bill takes steps to ensure that State regulation would not unduly burden the interstate operations of carriers and would require carriers to maintain greater insurance coverage, while also increasing the effectiveness of the Interstate Commerce Commission in precluding unsafe carriers from operating.

I wish to emphasize that the Administration's endorsement of this bill does not extend to the language dealing with the reciprocal treatment of foreign owned motor carriers operating or seeking to operate in this country. I have written to Sentor Danforth separately on that subject. I understand that alternative language on reciprocity is being developed and that an amendment may be offered on the Senate floor. The Administration continues to strongly oppose the reciprocity provision that is in the bill as reported. I have attached a copy of my earlier letter to Senator Danforth on this subject.

I understand that Senator Pressler is planning to introduce on the floor a series of amendments to the bill which he claims will protect small communities. While these amendments have not been discussed within the Administration, I can say personally that I am disturbed by them. Their enactment would not ensure service to small communities. In fact, the amendments would remove all meaningful entry reform from the bill, thereby restricting competition to the detriment of consumers and discouraging the introduction of new and innovative services to small communities. They would destroy the balance among the provisions of this legislation sufficiently as to call into question my continued support.

You and your colleagues on the Commerce Committee are to be commended for your efforts in the area of bus regulatory reform. I encourage you and your colleagues to continue your bipartisan efforts to reduce unnecessary and wasteful economic regulation of our transportation industries.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report for the consideration of the Committee.

Sincerely,

DREW.

ABA-UBOA-NTBA FORM REGULATORY REFORM LIAISON GROUP AND ENDORSE H.R. 3663, THE BUS REGULATORY REFORM ACT, JUNE 9, 1982

The American Bus Association (ABA), the United Bus Owners of America (UBOA), and the National Tour Brokers Association (NTBA) have announced today the formation of an intercity bus and passenger tour broker regulatory reform liaison group. In doing so, they declared their unqualified joint support for the Bus Regulatory Reform Act, H.R. 3663, pending in the Senate.

The bus regulatory reform liaison group will be formed to promote constructive implementation of the Bus Regulatory Reform Act and to discuss and explore joint solutions to any problems which may arise. It is being established to assist in meeting the constantly changing needs of the public.

In addressing the formation of the group, Norman R. Sherlock, President and Chief Executive Officer of ABA, stated: "The American Bus Association is cognizant of the concerns NTBA has expressed regarding the legislation. We wish to ease these concerns and believe that the formation of this liaison group will assist greatly in this effort and allow all of us to improve our service to the public."

NTBA President William Grossman stressed: "NTBA welcomes this opportunity to work with ABA and UBOA in this forum to ensure an enhanced level of services for the public. We will work jointly with ABA and UBOA in establishing this regulatory reform liaison group. This liaison group will provide a mechanism whereby common concerns of tour brokers, bus operators, and the traveling public can be addressed. In our view it is desirable to have industry itself handle such problems. We join then with ABA and UBOA in support of the Bus Regulatory Reform Act now pending in the Senate."

The Executive Director of UBOA, Wayne J. Smith, indicated his support of the group in noting: "UBOA is extremely pleased that these three organizations are joining hands

and feels that the liaison group will further assist us in ensuring improved bus and tour services for the traveling public."

TRANSPORTATION CONSUMER ACTION PROJECT,
Washington, D.C., June 1982.

STATEMENT OF CORNISH F. HITCHCOCK, DIRECTOR

Regulatory reform proposals recently approved by the Senate Commerce Committee (H.R. 3663) represent a major step towards improved intercity bus service. The Commerce Committee bill contains some reforms which go beyond the bill passed by the House last year and which would produce greater consumer benefits if enacted.

The Commerce Committee's entry reforms are especially important to improved service, particularly at rural communities. Present ICC regulation is cumbersome and makes it too easy for existing companies to oppose new service that the public may want. While further liberalization (such as the committee adopted for charter and tour operations) would be desirable, the Commerce Committee's proposal makes many necessary reforms and is preferable to the House version.

With respect to fares, the Commerce Committee has improved upon the House's approach towards ending antitrust immunity for the collective setting of certain bus fares. While the abolition of immunity for all collective faresetting (including general rate increases) would produce more competitive rates to the public, the Committee's proposal is a useful first step in that direction.

Finally, both the Committee bill and the House bill take a balanced approach on the issue of pre-empting intrastate regulation of routes and fares along interstate routes. The proposed reforms give state regulators an important role to play in these matters, but also recognize that intercity bus service, even within one state, is part of a national transportation network and should be treated as such.

In short, the Commerce Committee proposals build on the reforms passed by the House in a manner that would provide even more benefits to bus travelers.

(Transportation Consumer Action Project (TCAP) is a nonprofit consumer organization whose members include 15 consumer groups in 14 states around the country. TCAP has testified before Congress on transportation issues affecting consumers, including bus regulatory reform legislation. TCAP has also initiated and taken part in agency proceedings of interest to transportation users and participated in various public forums on transportation issues.)

AMERICAN ASSOCIATION OF RETIRED PERSONS,
Washington, D.C., June 10, 1982.

NORMAN R. SHERLOCK,
President and Chief Executive Officer, American Bus Association, 1025 Connecticut Avenue, Washington, D.C.

DEAR MR. SHERLOCK: Since there has apparently been some misunderstanding of the Associations' position on deregulation of buses, and particularly on H.R. 3663, the Bus Regulatory Reform Act of 1982, I thought it would be useful to clarify our position on this question.

Although we have not lobbied or testifed either on bus deregulation, generally, or specifically on H.R. 3663, we have supported the concept that the bus industry should be opened up to competition, as the airline and trucking industries have been. It appears that our concern that bus service not be abruptly withdrawn from particular destinations has been met by the bill, but we have not taken a position for or against the bill.

Sincerely,

PETER W. HUGHES,
Legislative Counsel.

TRAVEL AND TOURISM,
GOVERNMENT AFFAIRS POLICY COUNCIL,
Washington, D.C., June 9, 1982.

Hon. BOB PACKWOOD,
U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR PACKWOOD: The Travel and Tourism Government Affairs Policy Council endorses H.R. 3663, the Bus Regulatory Reform Act. We believe this legislation is important to the future development of travel and tourism.

The Travel and Tourism Government Affairs Policy Council was created on March 17 by the undersigned organizations to represent the travel and tourism industry on federal government issues. Our organization represents all of the major segments of travel and tourism, which is the third largest retail industry in the United States. The industry garnered over $190 billion in receipts in 1981 and generated approximately $17 billion in federal, state, and local tax revenues. Travel is one of the top three employees in 35 states, providing jobs for nearly 7 million American workers.

The Policy Council has followed Congressional proceedings regarding bus regulatory reform with great interest. The motor coach industry is a substantial generator of tourism business to the many segments making up the industry. More specifically, the bus industry currently has a national impact on the economy of $8.9 billion. In 1980, 373 million passengers traveled 27.7 billion passenger-miles on intercity buses. Travel by bus is clearly one of our most affordable and energy-efficient modes of transport and is important to the furture growth of the travel and tourism industry.

It is our understanding that H.R. 3663, the Bus Regulatory Reform Act, will be considered by the Senate in the near future. Representing the consensus of motor coach interests, H.R. 3663 enjoys the wide support of the industry, Adminstration, appropriate Congressional committees, and regulatory agencies. Most persuasive, however, is the support of consumers who have recognized the legislation as a vehicle to promote industry competition, encourage market entry, and preserve essential service. We urge you to lend your support to this important legislation.

Sincerely,

JAMES E. GAFFIGAN,
Executive Director.

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., June 22, 1982.

Re H.R. 3663—Bus deregulation.

Hon. JOHN C. DANFORTH,
Chairman, Surface Transportation Subcommittee, Senate Commission on Commerce and Transportation, Washington, D.C.

DEAR SENATOR DANFORTH: We believe the Commerce and Transportation Committee acted wisely in amending and approving H.R. 3663, providing for essential deregulation of bus transportation.

Farm Bureau has not been active in the development of this legislation; but we have been fully involved in regulatory reform of airline, motor carriers, and railroads. In the case of motor carriers, we believe the Congress still has a long way to go to achieve a further reduction of the ICC role in the regulation of motor carriers.

The three million plus member families of Farm Bureau representing some 2,800 county Farm Bureaus throughout the Nation support the concept that Federal regulation in general has gone too far and has become too costly. We support efforts to reduce, reform or eliminate burdensome and unnecessary regulation wherever feasible.

We note that some opposition to this legislation has developed, based on the notion that somehow or other rural and farm residents would be harmed by reducing or eliminating ICC regulation of bus services. Those who make such arguments say their fears are based on the disastrous results of air and motor carrier deregulation. We disagree.

Motor carrier regulatory reform has been a success, and further reduction in regulation would be highly desirable. The often expressed fear about loss of service in rural communities has not materialized. We in agriculture have found, over the years, that unregulated transportation of agricultural freight by motor trucks provides a service second to none. Experience with unregulated agricultural trucking has proven that the discipline of the marketplace and the competitive system are the best and only regulators needed.

While we are not experts in the area of bus regulation, we have every reason to think that deregulation of bus transportation would result in better service to the users at reasonable prices dictated by competition. It would be a mistake to think that this legislation would result in monopoly pricing or a lack of service to rural communities. In fact, many rural communities have already made adjustments to the poor bus transportation services. None of the results of regulatory reform in other modes of transportation would indicate such an outcome.

Sincerely,

JOHN C. DATT,
Secretary and Director, Washington Office.

NATION'S TEN LARGEST BUS COMPANIES REPORT DECREASES IN REVENUES, INCOME, AND RIDERSHIP FOR FIRST QUARTER OF 1982

Operating revenues, income, and ridership declined for the Nation's ten largest bus companies during the first quarter of 1982, according to a report released today by the Interstate Commerce Commission's Bureau of Accounts.

Today's report compares the earnings of the ten largest intercity bus companies for the first quarter and the 12 months ended March 31, 1982, with the corresponding periods of 1981. The ten companies account for about 75 percent of the total revenues generated by approximately 50 Class I intercity bus companies.

A comparison of first quarter operations disclosed that: Operating revenues declined 3.5 percent to $227.7 million from $236 million. The carriers also reported a 9.8 percent decrease in revenue passengers carried to 13.8 million.

Net carrier operating losses increased from $15.8 million to $25.9 million. The eight Trailways System Carriers, as a group, reported a reduction in their net carrier operating loss to $3.8 million from $6.9 million. However, the Greyhound Lines' net operat-

ing loss increased by $13.2 million to $22.2 million.

All carriers reported a combined net loss of $9.7 million.

A comparison of results for the 12-month period shows that: Operating revenues rose 3 percent to $1.1 billion. However, revenue passengers carried declined by 9 percent to 64.7 million.

Net carrier operating income declined $7.9 million to $39.5 million. Greyhound Lines reported a 19.2 percent decrease in net carrier operating income to $31.3 million while the eight Trailways System Carriers experienced a $1 million fall in net carrier operating income to $3.6 million.

Net income for all carrriers fell 34 percent to $37.7 million. The eight Trailways System Carriers, as a group, reported a net loss of $5.6 million. This loss reflects the impact of a year-end 1981 write-down of approximately $46 million of Trailways Inc.'s investment in certain affiliated companies.

Rate of return on shareholder's equity less intangible property for all carriers declined to 7.83 percent from 12.24 percent from the prior period.

This report is based primarily upon quarterly reports submitted by the carriers to the ICC, and these reports have not been verified by the Commission.

Copies of this report can be obtained from the Office of the Secretary, Publications Room 2229, Interstate Commerce Commissions, 12th Street and Constitution Avenue, N.W., Washington, D.C. 20423, telephone (202) 275-7307.

[From the Washington Post, May 17, 1982]

BUSES ON THE ROAD TO DEREGULATION

With airlines, rail systems and trucking already deregulated, the government is about to add intercity bus service to its list. By a 15-to-1 vote last week, the Senate Commerce Committee approved legislation that would end more than 50 years of regulation over these bus lines. Enactment of this change is sure to produce objections in those parts of the country where bus routes may be more popular than profitable. But if the legislation works as intended, opportunities for new service in these areas may well be expanded.

The concern about transportation cutoffs is understandable, because many of these same areas were given to believe that when or if train service were cut, they would still have buses. But the federal legislation does contain protections against sudden or drastic elimination of routes. Though some curtailments are likely, the emphasis of the measure is on encouraging more competition, not less, in pricing as well as routes.

The results should not be all that extreme. Ground transportation is even more adaptable to market conditions than air or train travel. Smaller buses, connecting jitney service or other arrangements can be started up profitably and efficiently to replace those services that larger bus lines have been operating unprofitably. In this region, in fact, there already are examples of routes that are better served by smaller bus companies than they were or would be by Metro buses. With the lifting of federal regulatory obstacles to new entrants, more suburb-to-city commuter lines might come into existence.

The deregulation proposals do not mean that bus companies will be allowed to do entirely as they please. There are provisions for preempting state authority on a case-by-case basis if, for example, the Interstate Commerce Commission determined that a state action constituted an unreasonable burden on interstate commerce or too drastic a curtailment of service.

One of the most constructive changes in the legislation is actually regulation, not deregulation: it would bar bus companies from meeting privately and fixing prices—as they now may do under an exemption from antitrust laws. Other provisions would allow firms to adjust prices without strict federal government scrutiny, and would make it easier for new firms to go into business.

The legislation is supported by the industry—large as well as small bus companies—and by the administration and the ICC. It deserves a chance.

Mr. DANFORTH. Mr. President, I ask unanimous consent that for the remainder of the day the record may be left open so that Senators have a chance to insert any statements relating to this bill.

The PRESIDING OFFICER. Does the Senator suggest a time that the record be left open for that purpose?

Mr. DANFORTH. Only so long as the Senate is in session today.

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

Mr. RIEGLE. Mr. President, I hope that this legislation will result in a healthier bus industry and improved service to both rural and urban areas. I appreciate the efforts of the committee in addressing concerns that have been expressed about possible adverse impacts in rural areas. The committee is to be commended for including a statement in the National Transportation Policy which specifically includes the goal of providing and maintaining service to small communities. Since that policy statement is the guide for the Interstate Commerce Commission to follow in carrying out the provisions of the act, this legislation gives the Commission explicit direction to consider the needs of small communities. The entry and exit provisions also specifically direct the Commission to consider the impact on small communities wherever appropriate. The legislation also makes it very easy for carriers to provide new services to communities not regularly served by other carriers. I believe that all of these provisions go a long way toward addressing the concerns that have been expressed and provide an appropriate balance between the need for increased competition in the industry and the need to insure service in all areas of the country.

Nevertheless, not everyone is confident that the actual result will be improved services to small communities. Some individuals have suggested that an interim funding program might be needed to insure a smooth transition by providing financial and technical assistance to smaller carriers who serve rural and small urban areas. I realize that this year's budget precludes the inclusion of any kind of funding package in this bill. Nevertheless, I would sincerely hope that, should the need arise, my colleagues on the Surface Transportation Subcommittee will review such a program during the oversight hearings that will be held next year.

Mr. CANNON. Mr. President, I thank Senator RIEGLE for his remarks. I agree that this bill represents an excellent balance between the need to remove excessive regulation and provide more competition in the bus industry and, at the same time, insure that no part of the country is inadvertently harmed. And I appreciate the distinguished Senator from Michigan reciting all of the things we have included in the bill to insure that rural service is protected.

Section 4 of this act directs and requires the appropriate congressional authorizing committees to hold periodic oversight hearings, at least annually until July 1, 1985. The committee report accompanying the bill clearly states the intention of the committee to hold its first oversight hearing within one year after the effective date. I can assure my colleagues that the committee will include in those hearings consideration of a transitional funding program of the kind Senator RIEGLE has described, should the effects of less regulation on the level of service to small communities prove to be detrimental.

Mr. DANFORTH. Mr. President, at this time I wish to express my appreciation to the very able staff members who contributed to this effort. In particular, I would like to thank Kathy Meier of the Commerce Committee staff for her excellent work in putting this bill together. I would also like to thank Jerry Cox and Susan Schwab of my staff and Cindy Douglas of the Commerce staff.

Mr. ROBERT C. BYRD. Mr. President, I rise in opposition to H.R. 3663, the Bus Regulatory Reform Act of 1982.

West Virginia is a State with a number of small mining and farming communities, and a population dispersed largely among rugged, rural areas. Bus service in a State such as West Virginia is likely to deteriorate under this legislation.

West Virginia did not benefit from the implementation of airline deregulation several years ago. While air travel in the State is slowly improving, routes are inconvenient and fares are high. Whatever positive national effects airline deregulation has had, and there are signs that it has been a successful policy in some States, its effect on West Virginia has not been salutary.

Trucking deregulation has had a different impact on my State. Both large and small trucklines have gone bankrupt, or into serious financial difficulty, in trying to operate on some West Virginia routes—and only two of the major trucklines that serve West Vir-

ginia or nearby States have sustained healthy operating ratios.

In short, it is clear that some of the transportation deregulation measures that have become law in recent years contain hidden pitfalls for West Virginia and other small, largely rural States.

While these regulation measures are seen by many to be satisfactory national transportation policies, the effect that these policies have on my State has not been generally beneficial.

When the airline deregulation bill was before the Senate, Senators from small, rural States were assured that the legislation would not cause a deterioration in service, or a rapid increase in airfares. Both occurred in West Virginia. Assurances that rural areas and small communities will not suffer ill effects from this kind of legislation are no longer persuasive.

The people that would bear the brunt of a loss of bus service, or a reduction in service, are the elderly and those without alternative forms of transportation. Many places in West Virginia are difficult to reach under present circumstances. Any decrease in bus service would only result in greater isolation for these communities.

The chairman of the Public Service Commission of the State of West Virginia, E. Dandridge McDonald, has written to me, on behalf of the Commission, in opposition to H.R. 3663. Chairman McDonald's letter indicates that 39 communities in West Virginia would be threatened with a total loss of bus service if this legislation is enacted. His letter states:

In my opinion this is but a fraction of those communities which would be subject to a loss of bus service if this legislation is passed.

For those reasons, I cannot support this legislation. I ask unanimous consent that a copy of Chairman McDonald's letter on the likely effect of H.R. 3663 in West Virginia be inserted in the RECORD at this point.

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

STATE OF WEST VIRGINIA,
PUBLIC SERVICE COMMISSION,
Charleston, W. Va., May 25, 1982.

Hon. ROBERT C. BYRD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BYRD: I am writing to you on behalf of the West Virginia Public Service Commission to urge you to oppose Section 16 of HR 3663, a bill proposing the Bus Regulatory Reform Act of 1982.

This legislation would empower the ICC to review the Commission's decisions in cases where it has denied a carrier's request to abandon or reduce intrastate bus service. It would place a nearly insurmountable burden upon objecting parties to show that continuation of the service is not an unreasonable burden on interstate commerce. This section would also eliminate state jurisdiction over abandonment where the carrier has received ICC authority to enter certain previously unserved markets.

Based on the evidence received in the two most recent cases filed by major carriers with the Commission, this section would subject the following municipalities and communities to a complete lack of point to point bus service:

Gilbert, Man, Logan, Welch, Pineville, Oceana, Williamson, Romney, Burlington, Mount Storm, Gormania, Aurora, Fellowsville, Grafton, Bridgeport, Pruntytown, Thornton, Erwin, New Creek, Keyser, Capon Bridge, Iaeger, Kimball, Keystone, Clothier, West Hamlin, Northfork, Maybeury, Bramwell, Bluewell, Roderfield, Verner, Chapmanville, Ranger, Branchland, Salt Rock, Madison, Danville, Racine.

In my opinion this is but a fraction of those communities which would be subject to a loss of bus service if this legislation is passed. Consumers in West Virginia who might wish to be heard in cases appealed to the ICC pursuant to this section would be, in effect, precluded from effectively protesting since it would be virtually impossible to muster the resources necessary to retain specialized legal talent to represent them before the ICC in Washington.

Accordingly, I appreciate your consideration and support of these views.

Sincerely,

E. DANDRIDGE MCDONALD,
Chairman, Public Service Commission.

Mr. SCHMITT addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. SCHMITT. Will the Senator yield?

Mr. DANFORTH. I am happy to yield 1 minute to the Senator.

Mr. SCHMITT. The yielding is appreciated, but it is only to compliment the distinguished Senator from Missouri, supported by the chairman of the Commerce Committee, Senator PACKWOOD, who is also here, on this very, very important legislation. It really completes the process begun many years ago—in fact, the same year that the Senator from Missouri and I entered the U.S. Senate, in 1977—when we began with the airline deregulation effort.

They are not perfect. They have made great advances toward more equitable deregulation of our system of commerce. We have to continue diligent oversight, but I think this is a tremendously important issue to that process and I compliment the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. CANNON. Mr. President, if no one else desires time, I am prepared to yield back the remainder of my time. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back or has expired.

Mr. BAKER. Mr. President, there will be no more rollcall votes after this one.

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

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

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. STEVENS. I announce that the Senator from Alabama (Mr. DENTON) and the Senator from California (Mr. HAYAKAWA) are necessarily absent.

I also announce that the Senator from Georiga (Mr. MATTINGLY) is absent due to illness.

I further announce that, if present and voting, the Senator from California (Mr. HAYAKAWA) and the Senator from Georgia (Mr. MATTINGLY) would each vote "yea."

Mr. ROBERT C. BYRD. I announce that the Senator from California (Mr. CRANSTON) and the Senator from Montana (Mr. MELCHER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 85, nays 10, as follows:

[Rollcall Vote No. 206 Leg.]

YEAS—85

Armstrong	Glenn	Moynihan
Baker	Goldwater	Murkowski
Bentsen	Gorton	Nickles
Biden	Grassley	Nunn
Boren	Hart	Packwood
Boschwitz	Hatch	Pell
Bradley	Hatfield	Percy
Brady	Hawkins	Proxmire
Bumpers	Heflin	Pryor
Burdick	Heinz	Quayle
Byrd, Harry F., Jr.	Helms	Riegle
Cannon	Hollings	Roth
Chafee	Huddleston	Rudman
Chiles	Humphrey	Sarbanes
Cochran	Inouye	Sasser
D'Amato	Jackson	Schmitt
Danforth	Jepsen	Simpson
DeConcini	Johnston	Specter
Dixon	Kassebaum	Stafford
Dodd	Kasten	Stennis
Dole	Kennedy	Stevens
Domenici	Laxalt	Symms
Durenberger	Leahy	Thurmond
Eagleton	Levin	Tower
East	Long	Tsongas
Exon	Lugar	Wallop
Ford	Mathias	Weicker
Garn	Matsunaga	Zorinsky
	Metzenbaum	

NAYS—10

Abdnor	Cohen	Randolph
Andrews	McClure	Warner
Baucus	Mitchell	
Byrd, Robert C.	Pressler	

NOT VOTING—5

Cranston	Hayakawa	Melcher
Denton	Mattingly	

So the bill (H.R. 3663), as amended, was passed.

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

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

The motion to lay on the table was agreed to.

Mr. CANNON. Mr. President, I am delighted that the Senate has ratified the action of the Senate Commerce Committee and voted to approve the Bus Regulatory Reform Act. This action continues the progress made by the Congress in reducing Federal regulation in many fields such as transportation, telecommunications and banking.

In the broadest of terms, this legislation is similar to the previous transportation deregulation bills approved by Congress. Excessive Federal regulation is removed and carriers will find it much easier to add new services, change schedules and prices, or take other actions to operate more efficiently.

The American Bus Association, the American Trucking Associations, the United Bus Owners of America, the U.S. Department of Transportation, the Interstate Commerce Commission, and various consumer groups supported this bill. Because the legislation preserves all existing labor protection provisions contained in the Interstate Commerce Act and contains additional employee protection, representatives of the Amalgamated Transit Union and the United Transportation Union have agreed to the legislation.

As is the case in many other States, transportation and tourism are extraordinarily important to the State of Nevada. I believe this legislation will be of vital importance to the bus industry, its employees, and its passengers.

We have come a long way on this issue since I first introduced legislation dealing with the subject last year. I am delighted that all parties—the industry, labor, and the Administration—ended up in basic agreement. I am confident that this legislation will benefit both the bus industry and the passengers who utilize bus carriers.

EXECUTIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate go into executive session for the purpose of considering Calendar No. 805 under new reports and all items on the Executive Calendar thereafter.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Reserving the right to object, Mr. President, there is no objection.

There being no objection, the Senate proceeded to the consideration of executive business.

Mr. STEVENS. Mr. President, I ask unanimous consent that all the nominations on the calendar beginning with Calendar No. 805, including the nominations at the secretary's desk, be considered en bloc and confirmed en bloc.

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

All nominations are considered en bloc and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

[NEW REPORTS]

DEPARTMENT OF COMMERCE

D. Bruce Merrifield, of Connecticut, to be an Assistant Secretary of Commerce.

AIR FORCE

Lt. Gen. Walter D. Druen, Jr., U.S. Air Force, (age 55), for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370.

ARMY

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Jack Neil Merritt, [redacted], U.S. Army.

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Joseph Thomas Palastra, Jr., [redacted] U.S. Army.

The following-named officers for appointment in the Regular Army of the United States to the grade indicated under the provisions of title 10, United States Code, sections 611(a) and 624:

To be brigadier general

Col. Lewis A. Mologne, [redacted], Medical Corps, U.S. Army.

Col. Thomas F. Cole, [redacted] U.S. Army.

Col. John T. Quinn, [redacted] U.S. Army.

Col. J. Hollis V. McCrea, Jr., [redacted], U.S. Army.

Col. Charles E. Edgar III, [redacted], U.S. Army.

Col. Gerald R. Jennings, [redacted], U.S. Army.

Col. James D. Smith, [redacted] U.S. Army.

Col. Walter J. Bickston, [redacted], U.S. Army.

Col. Charles D. Bussey, [redacted] U.S. Army.

Col. William H. Harrison, [redacted], U.S. Army.

Col. Robert M. Bunker, [redacted] U.S. Army.

Col. Robert L. Drudik, [redacted] U.S. Army.

Col. Charles C. Adsit, [redacted] U.S. Army.

Col. John E. Long, [redacted] U.S. Army.

Col. Richard E. Stephenson, [redacted], U.S. Army.

Col. James W. Hunt, [redacted] U.S. Army.

Col. James W. Shufelt, [redacted], U.S. Army.

Col. James B. Allen, Jr., [redacted], U.S. Army.

Col. Eugene R. Lanzillo, [redacted], U.S. Army.

Col. Donald J. Palladino, [redacted], U.S. Army.

Col. Thomas J. P. Jones, [redacted], U.S. Army.

Col. Caleb J. Archer, [redacted] U.S. Army.

Col. Dudley J. Gordon, [redacted], U.S. Army.

Col. Thomas N. Griffin, Jr., [redacted], U.S. Army.

Col. Joseph L. Ecoppi, [redacted] U.S. Army.

Col. Charles J. Buel, [redacted] U.S. Army.

Col. Bobby C. Robinson, [redacted], U.S. Army.

Col. Robert J. Dacey, [redacted] U.S. Army.

Col. Edwin H. Burba, Jr., [redacted], U.S. Army.

Col. Donald R. Infante, [redacted], U.S. Army.

Col. Richard H. Sharp, [redacted], U.S. Army.

Col. George M. Krausz, [redacted], U.S. Army.

Col. Charles M. Murray, [redacted], U.S. Army.

Col. Charles E. Honore, [redacted], U.S. Army.

Col. Joseph L. Nagel, [redacted] U.S. Army.

Col. Harry D. Walker, [redacted] U.S. Army.

Col. Robert L. Gordon, [redacted], U.S. Army.

Col. William T. McLean, [redacted], U.S. Army.

Col. John S. Crow, [redacted] U.S. Army.

Col. Alan B. Salisbury, [redacted], U.S. Army.

Col. John M. Shalikashvili, [redacted] U.S. Army.

Col. Leo M. Childs, [redacted] U.S. Army.

Col. Gary E. Luck, [redacted] U.S. Army.

Col. Michael L. Ferguson, [redacted], U.S. Army.

Col. George A. Joulwan, [redacted], U.S. Army.

Col. Uri S. French, III, [redacted], U.S. Army.

Col. Gerald B. McConnell, [redacted], U.S. Army.

Col. Thomas H. Tait, [redacted] U.S. Army.

Col. Thomas D. Reese, [redacted] U.S. Army.

Col. Charles P. Otstott, [redacted],

Col. Edwin S. Leland, Jr., [redacted], U.S. Army.

Col. Randall A. Greenwalt, [redacted], U.S. Army.

Col. Clarke M. Brintnall, [redacted], U.S. Army.

Col. John S. Peppers, [redacted] U.S. Army.

The following-named officer under the provisions of title 10, United States Code, section 3036 to be assigned as chief of chaplains, U.S. Army:

To be chief of chaplains, U.S. Army

Chaplain (Brigadier General) Patrick John Hessian, [redacted] United States Army.

MARINE CORPS

Lt. Gen. Edward J. Bronars, U.S. Marine Corps, age 55, for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE AIR FORCE, NAVY

Air Force nominations beginning George W. Brown, Jr., to be major, and ending David J. Levy, II, to be major, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 17, 1982.

Air Force nominations beginning Thomas D. Webster, to be determined, and ending Burton W. Campbell, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 17, 1982.

Air Force nominations beginning William U. Cattelle, to be lieutenant colonel, and ending Gloria J. Winans, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 22, 1982.

Air Force nominations beginning Joseph Aisner, to be lieutenant colonel, and ending John R. Shaughnessy, Jr., to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 22, 1982.

Navy nominations beginning Robert Louis Albin, Jr, to be captain, and ending Anthony Joseph Klapp, to be captain, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 17, 1982.

Navy nominations beginning Gregory Hugh Adkisson, to be lieutenant commander, and ending Albert Henrik Jensen, to be lieutenant commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 17, 1982.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the nominations were confirmed en bloc.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I ask that the President be immediately notified of the confirmation of these nominations.

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

LEGISLATIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate return to legislative session.

There being no objection, the Senate resumed the consideration of legislative business.

ROBERT F. HENRY LOCK AND DAM

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar No. 597, S. 2034.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2034) to designate the lock and dam known as the Jones Bluff Lock and Dam, located on the Alabama River, as the "Robert F. Henry Lock and Dam."

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. ROBERT C. BYRD. There is no objection.

There being no objection, the Senate proceeded to consider the bill.

Mr. HEFLIN. Mr. President, I should like to speak in behalf of S. 2034, which I introduced earlier this year for myself and my distinguished colleague, Senator DENTON.

This bill will rename the Jones Bluff lock and dam on the Alabama River in honor of the late Dr. Robert F. Henry of Montgomery, Ala., who died on August 14, 1981.

Dr. Henry was an outstanding Alabamian. He was a civic leader, churchman, and educator. He also served the people as president of Birmingham-Southern College. Although Dr. Henry served the people of his State and his Nation in many civic and charitable ways, he is better remembered for his yeoman efforts in behalf of the full and comprehensive development of the Coosa-Alabama River system.

The development of this mighty river system has been the quest of farsighted men such as Dr. Henry for many years. The improvement of the Coosa-Alabama River system for flood control, power production, navigation, and other purposes was authorized in 1945 and subsequently modified in the River and Harbor Act of 1954. In 1956, the moving force behind this proposal—namely, the Coosa-Alabama River Improvement Association—elected Dr. Henry as its president and Dr. Henry served continuously as the chief executive officer of the association until his death.

Funds for the construction of locks and dams on the river system did not come easy. As amatter of fact, it was not until 1961 that the first planning moneys were approved for the locks and dams. During this time Dr. Henry would head up large delegations of citizens in presenting the case for this river system before the Senate and House Appropriations Committees here in Washington. His leadership and persistence paid dividends. Today the Alabama River is fully developed for power production, flood control, and navigation. At the time of his death, Dr. Henry was working diligently in behalf of improving the Coosa river for navigation from Montgomery to Gadsden, Ala., thence to Rome, Ga.

One of the most imposing structures on the Coosa-Alabama is the Jones Bluff Lock and Dam on the Alabama River between Lowndes and Autauga Counties. It was one of the first projects targeted by Dr. Henry in his quest to develop the river system. The naming of this majestic dam in honor of Dr. Henry would be most fitting and appropriate recognition of his tireless efforts in behalf of the development of the river system, as well as his commitment to a bigger and better economic day for the citizens of his State.

I should like to personally express my appreciation to the chairman of the Senate Committee on Environment and Public Works (Mr. STAFFORD) and to the chairman of the Subcommittee on Water resources (Mr. ABDNOR) and, in fact, to the entire membership of the committee for the understanding and cooperation in approving S. 2034.

The bill was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2034

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Jones Bluff Lock and Dam, located on the Alabama River between Lowndes and Autauga Counties, Alabama, is designated and shall hereafter be known as the "Robert F. Henry Lock and Dam".

(b) Any reference in a law, map, regulation, document, record, or other paper of the United States to that lock and dam shall be deemed to be reference to the "Robert F. Henry Lock and Dam".

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

Mr. ROBERT C. BYRD. I move to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

ORDER FOR SENATE RESOLUTION 368, FALKLAND ISLANDS RESOLUTION, TO BE INDEFINITELY POSTPONED

Mr. STEVENS. Mr. President, I ask unanimous consent that Senate Resolution 368, a resolution dealing with the Falkland Islands, being held at the desk, be indefinitely postponed.

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

ANNE M. FISHER

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of H.R. 3127, and I ask for its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3127) for the relief of Staff Sergeant Anne M. Fisher, United States Army Reserve.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska?

There being no objection, the bill was considered, ordered to a third reading, read the third time, and passed.

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

Mr. ROBERT C. BYRD. I move to lay on the table the motion to reconsider.

The PRESIDING OFFICER. The motion to lay on the table was agreed to.

CONSIDERATION OF CERTAIN ITEMS ON THE CALENDAR

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 633, 644, 646, and 668.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. There is no objection.

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

REINSTATEMENT AND VALIDATION OF AN OIL AND GAS LEASE

The Senate proceeded to consider the bill (S. 1877) to provide for the reinstatement and validation of United States oil and gas lease numbered NM-12846, which had been reported from the Committee on Energy and Natural Resources, with an amendment: On page 2, line 6, strike "continues", through and including the colon on line 7, and insert "continues;".

So as to make the bill read:

S. 1877

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any decision to the contrary heretofore made by the Secretary of the Interior of the United States or his authorized agents or representatives, United States oil and gas lease numbered NM-12846 shall be held not to have terminated by operation of law or otherwise on January 2, 1981, but shall be deemed to be in full force and effect and said lease shall be extended for a period of two years from October 19, 1981, the date the leaseholder of record received notice from the Bureau of Land Management that the lease expired, and for so long thereafter as production continues: *Provided,* That within thirty days after the receipt by the last leaseholder of record of said lease of written notice from the Secretary of the Interior of the amount of rental then accrued to the United States under said lease and unpaid by said leaseholder, said leaseholder shall tender payment of said amount of rental. Notice shall be given by the Secretary within thirty days after the effective date of this Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

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

Mr. ROBERT C. BYRD. I move to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

OIL AND GAS LEASE W-24153

The Senate proceeded to consider the bill (S. 1909) to provide for the reinstatement and validation of U.S. oil and gas lease numbered W-24153.

Mr. NICKLES. Mr. President, I should like to express my appreciation for today's consideration of S. 1909, which provides for the reinstatement and validation of a U.S. oil and gas lease. This bill being considered today was introduced on December 3 by myself and cosponsored by Senator BOREN.

This bill involves a mineral lease in Wyoming. This lease was lost by clerical oversight, not by lack of good faith on the part of the lessees. Devon Energy Corp. and Eason Oil Co. invested hundreds of thousands of dollars in order to develop the minerals only to lose the leases after production because of an overlooked filing of a Federal form.

The Energy and Natural Resources Committee held a hearing on this bill on May 7, 1982, and subsequently unanimously reported the bill favorably after consideration of the bill's merits.

I sincerely hope my colleagues will join me in passing this legislation today.

The bill was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1909

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law or regulation, United States oil and gas lease numbered W-24153 shall be held not to have terminated by operation of law or otherwise on or about May 31, 1980, but shall be deemed to have been duly communitized on such date with United States oil and gas lease numbered W-47820 and shall be deemed otherwise to continue in full force and effect in accordance with its terms so long as oil or gas is produced in paying quantities from the unit so constituted: *Provided,* That, within sixty days of the effective date of this Act, the last recordholder of lease numbered S-24153 and the recordholder of lease numbered W-47820 shall file an agreement in due form with the Secretary or his delegate evidencing the communitization of said leases which agreement shall be approved by the Secretary or his delegate retroactively to a date prior to May 31, 1980: *And provided further,* That within thirty days after the receipt of written notice from the Secretary or his delegate of the amount of any rental then accrued to the United States under lease numbered W-24153 and unpaid by the last recordholder of said lease, said recordholder shall tender payment of said amount of rental. Such notice shall be given by the Secretary within thirty days after the effective date of this Act.

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

Mr. ROBERT C. BYRD. I move to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

OIL AND GAS LEASES W66245, W66246, W66247, AND W62250

The Senate proceeded to consider the bill (S. 2146) to extend the lease terms of Federal oil and gas leases, W66245, W66246, W66247, and W62250, which had been reported from the Committee on Energy and Natural Resources with amendments as follows:

On page 1, line 4, strike "oil or gas", and insert "oil and gas";

On page 2, line 2, strike "W62250", and insert "W66250";

On page 2, line 9, strike "oil and gas", and insert "oil or gas";

On page 2, line 11, strike "Act:", insert "*Provided, however,*";

On page 2, line 14, strike "leases", and insert the following: "leases: *And provided further,* That the Secretary of the Interior is authorized, at the request of the Secretary of Agriculture, to modify the lease stipulations to insure the protection of environmentally sensitive areas.".

So as to make the bill read:

S. 2146

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized and directed to extend United States oil and gas leases issued under section 17 of the Mineral Lands Leasing Act of 1920, as amended, designated "W66245, W66246, W66247, and W66250", and presently known as the Toledo Unit in Lincoln County in the State of Wyoming, and which would otherwise expire forty-eight days after the termination of United States Department of the Interior administrative suspension of operations and lease terms currently in effect, until two years after the effective date of this Act or the termination of the period of suspension, whichever comes later, and so long thereafter as oil or gas is produced in paying quantities as defined under the Mineral Lands Leasing Act: *Provided, however,* That except as specifically modified herein as to such leases, all other provisions of the Mineral Lands Leasing Act of 1920, as amended, shall be applicable as to such leases: *And provided further,* That the Secretary of the Interior is authorized, at the request of the Secretary of Agriculture, to modify the lease stipulations to insure the protection of environmentally sensitive areas.

SEC. 2. The effective date of this Act shall be the date the leases specified in section 1 would have expired by operation of law, but for the passage of this Act.

The amendments were agreed to.

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

The bill was read the third time, and passed.

The title was amended so as to read:

Amend the title so as to read "A bill to extend the lease terms of Federal oil and gas leases, W66245, W66246, W66247, and W66250.".

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

Mr. ROBERT C. BYRD. I move to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

INDIAN TRIBAL MINERAL RESOURCES

The Senate proceeded to consider the bill (S. 1894) to permit Indian tribes to enter into certain agreements for the disposition of tribal mineral resources, and for other purposes, which had been reported from the Select Committee on Indian Affairs with an amendment as follows:

To strike out all after the enacting clause, and insert the following:

That (a) any recognized Indian tribe, band or other group of Indians subject to the jurisdiction of the United States may enter into any joint venture agreement, operating agreement, production sharing agreement, service agreement, managerial agreement, lease agreement, or other agreement approved by the Secretary of the Interior (hereinafter referred to as the "Secretary") for the disposition of oil and gas, geothermal, coal, or other energy or nonenergy mineral resources, owned by a tribe, or for the sale of the production of such tribal minerals. Any such agreement shall be for such term and be subject to such conditions as the Secretary may require by regulation.

(b) Unless the Secretary finds that an agreement is not in the best interest of the tribe, the Secretary shall approve such agreement within (1) one hundred and eighty days of its submission to him or (2) thirty days after after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), or any other requirement of law, whichever is later. Any party to such agreement may enforce the provisions of this subsection pursuant to section 1361 of title 28, United States Code.

(c) Whenever the Secretary approves or disapproves an agreement pursuant to subsection (a), he shall state his findings in writing at least thirty days before making his decision. Such findings shall be made available to the tribe.

(d)(1) Upon secretarial disapproval of such agreement, the parties involved therein have standing, without regard to the requirements of the Administrative Procedures Act, to bring a cause of action in Federal district court.

(2) The district court of the United States shall have jurisdiction to review the Secretary's disapproval action and shall determine the matter de novo. The burden is on the Secretary of the Interior to sustain his action.

(3) Except as to other cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(4) The court may assess against the United States reasonable attorney fees and other reasonable litigation costs incurred in any case under this section in which the complainant has substantially prevailed.

SEC. 2. Individual Indians owning trust or restricted minerals may join with a tribe in an agreement entered into pursuant to section 1 of this Act, subject to the approval of the Secretary of the Interior.

SEC. 3. The Secretary shall review, within ninety days of enactment of this Act, any existing nonlease agreement approved between June 1975 and April 1981, to determine if they comply with the purposes of this Act and any other provisions of law.

SEC. 4. Upon the request of any Indian tribe or any individual Indian owning trust or restricted mineral resources, the Secretary of the Interior shall provide qualified, independent, expert advice to such tribe or individual for determination of potential mineral values, for social, environmental and economic analyses, for legal assistance, and for such other technical services that such tribe or individual may request relating to the valuation, development, production and sale of such minerals as are defined in section 1 of this Act. Costs for such services may be reimbursed pursuant to the provisions of the first section of the Act of February 14, 1920 (41 Stat. 415; 25 U.S.C. 413), as amended.

SEC. 5. Nothing in this Act shall affect the validity of any lease approved or hereafter approved pursuant to the Act of May 11, 1938, as amended (52 Stat. 347; 25 U.S.C. 396a et seq.).

SEC. 6. Within one hundred and eighty days of the date of enactment of this Act, the Secretary of the Interior shall promulgate rules and regulations to facilitate implementation of this Act. The Secretary shall, to the extent practicable, consult with national and regional Indian organizations and tribes with expertise in mineral development both in the initial formulation of rules and regulations and any future revision or amendment of such rules and regulations.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

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

Mr. ROBERT C. BYRD. I move to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

OIL AND GAS LEASES NM 25447 AND NM 25452 ACQ.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 645, S. 1941.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1941) to provide for the reinstatement and validation of U.S. oil and gas leases numbered NM 25447 and NM 25452 Acq.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. ROBERT C. BYRD. There is no objection.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources with amendments as follows:

On page 2, line 6, strike "expired", and insert "terminated";

On page 2, line 8, strike "oil and gas", and insert "oil and gas";

So as to make the bill read:

S. 1941

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any decision to the contrary heretofore made by the Secretary of the Interior or his authorized agents or representatives and upon compliance with the next sentence of this Act, United States oil and gas leases numbered NM 25447 and NM 25452 Acq. shall be held not to have terminated by operation of law or otherwise on July 1, 1980, but shall be deemed to be in full force and effect and the terms of such leases extended for two years from the date on which the lessee received notice that the leases terminated for nonpayment of rent, and so long thereafter as oil and gas is produced in paying quantities. Within thirty days after the receipt of written notice from the Secretary of the Interior of the amount of rental then accrued to the United States under such leases and unpaid by the last recordholder of such leases, the recordholder shall tender payment of the amount of rental. Notice shall be given by the Secretary within thirty days after the date of enactment of this Act.

Mr. STEVENS. Mr. President, I ask unanimous consent that the committee amendments be adopted en bloc.

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

UP AMENDMENT NO. 1058

Mr. STEVENS. Mr. President, I send to the desk an amendment on behalf of Senator TOWER.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Alaska (Mr. STEVENS), for Mr. TOWER, proposes an unprinted amendment numbered 1058.

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

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

The amendment is as follows:

On page 2, line 5, strike "two years from the date on which the lessee received notice that the leases terminated for nonpayment of rent," and insert in lieu thereof the following: "120 days following the enactment of this Act,"

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

The amendment (UP No. 1058) was agreed to.

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

The bill was ordered to be engrossed for a third reading, was read a third time, and passed, as follows:

S. 1941

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any decision to the contrary heretofore made by the Secretary of the Interior or his authorized agents or representatives and upon compliance with the next sentence of this Act, United States oil and gas leases numbered NM 25447 and NM 25452 Acq. shall be held not to have terminated by operation of law or otherwise on July 1, 1980, but shall be deemed to be in full force and effect and the terms of such leases extended for one hundred and twenty days following the enactment of this Act, and so long thereafter as oil and gas is produced in paying quantities. Within thirty days after the receipt of written notice from the Secretary of the Interior of the amount of rental then accrued to the United States under such leases and unpaid by the last recordholder of such leases, the recordholder shall tender payment of the amount of rental. Notice shall be given by the Secretary within thirty days after the date of enactment of this Act.

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

Mr. ROBERT C. BYRD. I move to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

BAR MEMBERSHIP REQUIREMENTS FOR U.S. MAGISTRATES

Mr. STEVENS. Mr. President, on behalf of the Senators from Texas (Mr. TOWER and Mr. BENTSEN), I send a bill to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alaska?

There being no objection, the Senate proceeded to consider the bill (S. 2706) to amend title 28, United States Code, to modify the bar membership requirements for U.S. magistrates.

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

The bill was ordered to be engrossed for a third reading and was read the third time.

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

The bill (S. 2706) was passed as follows:

S. 2706

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 631(b)(1) of title 28, United States Code, is amended by striking out "He is, and has been for at least five years, a member" and inserting in lieu thereof the following: "He has been for at least five years a member in good standing of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands of the United States, and he is a member".

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

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NOMINATION OF JAMES STEARNS—TIME LIMITATION AGREEMENT

Mr. STEVENS. Mr. President, as in executive session, I ask unanimous consent that on Tuesday, July 13, 1982, at 4 p.m. the Senate go into executive session to consider the nomination of James Stearns to be Director of the Securities Investor Protection Corporation, under the following time agreement: 1 hour to be equally divided between the chairman of the Banking Committee and the ranking minority member, or their designees; and that following the conclusion or yielding back of time that the Senate proceed to vote on the confirmation of James Stearns.

Further, I ask that following the vote and any motion to reconsider, and table and the informing of the President that the Senate has given its consent to this nomination, that the Senate resume the pending business.

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

THE SALE OF HORSEMEAT IN NAVAL COMMISSARIES

Mr. MELCHER. Mr. President, I wish to call the Senate's attention to a matter concerning the impropriety of the Navy, our U.S. Navy, selling horsemeat in several of their commissaries.

I note that there are several reasons for objecting to the sale of horsemeat through naval commissaries. I think, first, it might cause people in the Navy to suspect that their cooks are serving them horsemeat when they think they are eating beef.

Second, I believe that in this country horsemeat is not considered as good as beef and there are some objections from the horse lovers throughout the United States to using horsemeat for consumption. And there is a question of the Humane Society and the horse associations as to whether or not the horses are actually being slaughtered in a humane and clean way.

Third, I think a lot of people who are producing beef in this country would prefer that our United States Navy promote beef, pork, or poultry rather than horsemeat.

Mr. President, I ask unanimous consent to have placed in the RECORD a letter which I addressed to the Honorable John F. Lehman, Jr., Secretary of the Navy, on June 30, 1982, and an article entitled "Commissary Shoppers Give Mixed Reviews to Horsemeat."

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

U.S. SENATE,
Washington, D.C. June 30, 1982.

Hon. JOHN F. LEHMAN, Jr.,
Secretary of the Navy,
The Pentagon,
Washington, D.C.

DEAR MR. SECRETARY. The United States Navy has been extremely helpful to American agriculture over the years, especially at times when the Navy has accelerated consumption of America's fine agricultural commodities, particularly those in surplus.

Therefore, I was extremely disappointed to learn that Navy commissaries are now offering horsemeat for sale in competition with the American beef. First, I do not believe that horsemeat is considered by Americans to be as desirable as beef, pork or poultry. Secondly, the Navy is seeking to enhance recruitment of volunteers, and this practice of selling horsemeat in Navy commissaries suggests that it is the meat used for Navy personnel.

For the two years prior to this past January, cattle had been selling for less than their cost of production. The cattle industry had been in a virtual depression. Meanwhile, because of the recession, consumer consumption of beef has been declining.

But beyond the commercial concerns, there are humane considerations which must be dealt with. I have no personal knowledge of the Chevalean Foods Company, which is selling the horsemeat to the commissaries. I assume that their products are inspected by the U.S. Department of Agriculture. But the American Horse Council, the Humane Society of the United States and the American Horse Protection Association have brought to my attention a serious problem associated with the transportation of horses intended for slaughter.

People who do this kind of transporting often overload horses into trucks that are not designed to carry them safely. They are sometimes transported without adequate provision for food and water. Further, as a result of the large increase in European demand for American horsemeat, prices have risen so high that firms seeking horses for slaughter often outbid prospective riding horse purchasers. Horses roaming free on public lands have reportedly been illegally removed for the horsemeat trade.

There are not enough horses in the United States for our armed forces to be promoting the development of a domestic horsemeat market. I urge you, for both commercial and humanitarian reasons, to order that Navy commissaries no longer offer horsemeat for sale.

Best regards.

Sincerely,

JOHN MELCHER.

COMMISSARY SHOPPERS GIVE MIXED REVIEWS TO HORSEMEAT

(By Jeff Barnard)

MIDDLETOWN, R.I.—Figuring that sailors who have seen the world may be willing to sit down to a horsemeat dinner, a Connecticut firm has turned to the U.S. Navy to help wipe out an older taboo.

Horse steaks and horse patties were introduced to several Navy commissaries—and a few supermarkets—in New England last week by Chevalean Foods of Hartford, which last year sold $20 million worth of horsemeat, 99.5 percent of it overseas.

"Customer reaction is very polarized," said commissary officer Lt. Edward B. Haskins of the Newport Navy Commissary here. "One lady asked me if Lassie was going to be next and I assured her that was not the case."

Haskins says he has sold about 150 packages of the meat, which comes from spent saddle horses and race horses. Six quarter-pound patties sell for $1.75, equivalent to $1.17 a pound, he said. By comparison, hamburger sells for $1.72 a pound.

"It provides a lower cost alternative to beef, especially in the economic times we find ourselves in now," said Haskins.

Horsemeat also is being offered at Navy commissaries in New London, Conn., and Brunswick, Maine, and at a few civilian stores in Maine.

Ronald J. Corn, president of Chevalean Foods, said fears that the rising value of the dollar would hurt foreign sales prompted the firm to start selling in the United States.

Corn said a centuries-old taboo against horsemeat in Europe, spread in part by the Roman Catholic Church, started breaking down in the 19th century after the top surgeon in Napoleon's army ordered cavalry horses to be slaughtered to feed starving troops.

"After that, the Catholic Church in France actively started promoting it to help the poor and poverty stricken," Corn said. "It was even a gourmet item and suggested by doctors for its high nutritional value."

Haskins said his horsemeat is USDA-approved and higher in protein than beef, but lower in calories and cholesterol.

The meat comes from horses which have reached the end of their usefulness and are sold to the meat packing plant, Corn said.

Haskins said about 40 percent of the shoppers who tried horsemeat at a store demonstration said they liked it, while about 60 percent turned up their noses and wouldn't even take a nibble.

"I still have people come up to me and say, 'I can't eat Silver or Flicka,'" Corn said.

Why the Navy?

"We were having tremendous difficulty with the private sector and I knew there is a far greater sophistication in terms of eating throughout the world by armed service personnel, having been there myself, and knowing that people in France, Korea, and Japan eat horsemeat," he said.

"A lot of people will realize, maybe, that what we have done in this country for hundreds of years may have been wrong, using horsemeat just for pet food," he said.

THE NORTH ATLANTIC ASSEMBLY

Mr. MATHIAS. Mr. President, during the Memorial Day recess, a U.S. delegation attended the spring meeting of the North Atlantic Assembly in Madeira, Portugal. The Senate members included Senator JOSEPH BIDEN, Senator THOMAS EAGLETON, Senator JAMES MCCLURE, Senator ARLEN SPECTER, Senator WILLIAM ROTH, and me. A delegation of Members of the House of Representatives was led by Representative PHILLIP BURTON.

The North Atlantic Assembly is the interparliamentary assembly of member countries of the North Atlantic Alliance. The aim of the North Atlantic Assembly is to promote and further the aims of the Atlantic Alliance as detailed in the North Atlantic Treaty.

The Assembly operates through five committees which cover the range of the Assembly's activities—economic; education; cultural affairs, and information; military; political; and scientific and technical. The plenary session on the final day of meetings concludes the session. Participation includes discussions, presentation of resolutions, and debate.

The meeting of the Assembly held each spring lays the goundwork for the major fall meeting where substantive resolutions are voted on by the delegates. This year's fall meeting will be held in London in November.

The U.S. delegation to the meeting in Madeira participated actively in the deliberations of the military, political, and economic committees.

Literally, every issue which divides or unites the NATO member countries came up for discussion during several days of meetings.

European delegates expressed particular concern over our high interest rates, the future direction of American arms control efforts, and over talk in this country about possible withdrawal of some American troops now stationed in Europe. There were also extensive discussions about the Middle East, the issue of burden sharing, Poland, Afghanistan, and East-West economic ties.

As is to be expected at a gathering of democratically elected parliamentarians, there were disagreements not only between delegations but within delegations as well concerning many of these issues. What can be said is that there was also a broad based consensus that the member states of NATO remain fully engaged in a cooperative search for solutions to common problems.

This cooperative effort was reflected in the resolution adopted by the Assembly at the plenary session on the last day. I ask unanimous consent that a copy of the resolution, entitled "Resolution 121 on East-West Relations After Poland: The Search for an Alliance Consensus," be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. MATHIAS. I wish to draw particular attention, Mr. President, to the report—an interim report—submitted to the Assembly by its Special Committee on Nuclear Weapons in Europe, which is chaired by Senator BIDEN. The Special Committee will issue an updated version at the Assembly's fall session in London. I ask unanimous consent that the interim report, and also the text of a statement delivered by Senator BIDEN to the Assembly in Maderia, appear at the end of my remarks.

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

(See exhibit 2.)

Mr. MATHIAS. Mr. President, relations between Europe and the United States are troubled at present. We are, it seems, too often irritated by what governments do or do not do on the other side of the Atlantic. I know that many Europeans find our actions disturbing as well.

The meetings of the North Atlantic Assembly each year are excellent occasions for the type of free-flowing dialog between parliamentarians which is vital if misunderstanding within the alliance is to be reduced.

The United States has not always been adequately represented at these meetings. I very much regret this. I hope that members of the Senate with responsibility in the fields of military and foreign affairs will give very serious thought to participating in the fall meeting of the Assembly to be held in London, England, from the 13th to the 19th of November 1982.

EXHIBIT 1

[Resolution Adopted by the North Atlantic Assembly at its Spring Plenary Session, Madeira, May 31, 1982]

RESOLUTION 121 on East-West Relations After Poland: The Search for an Alliance Consensus

The Assembly,

Stressing that the maintenance of political cohesion and consensus within the Alliance is an essential component of collective security and deterrence;

Emphasizing that the Soviet invasion and occupation of Afghanistan violate international agreements and have brought about the current deterioration in overall East-West relations;

Condemning the imposition of martial law in Poland, prompted by the U.S.S.R., as a serious violation of the Helsinki Final Act, demonstrating that the Soviet influence finds its expression in an increasing involvement in repressive activity;

Urging the current Polish leadership to lift martial law, to free all political prisoners, and to restore the process of dialogue and negotiation with the Church and Solidarity;

Aware that Polish developments have given rise to significant differences among the Allies concerning the future conduct of East-West relations;

Recalling that defence and detente, as the Harmel Report concluded, are complementary elements of Alliance security and

Emphasizing, therefore, that Alliance security rests on a maintenance of the balance of forces between East and West as well as on the pursuit of East-West talks and negotiations on various levels, in particular, the Intermediate Nuclear Force and strategic arms negotiations, as well as on the establishment of an efficient and constant procedure of verification;

Confirming the principles laid down in the NATO Treaty, e.g., the defence of freedom and democracy in each of the member countries;

Condemning all acts of torture and terrorism;

Welcoming the world-wide effort in the framework of the United Nations to advance

peace by holding a Special General Assembly on Disarmament;

Urges the member governments of the North Atlantic Alliance:

1. to allocate the necessary resources to meet Alliance requirements for the maintenance of credible deterrence and defence and, in particular, to urgently undertake the strengthening of conventional forces and the establishment of adequate civil defence;

2. to continue humanitarian aid to the Polish people and to be prepared to resume official economic and financial assistance when martial law is lifted, and to intensify relations in the fields of science, culture and athletics;

3. to re-examine Alliance mechanisms for consultation, co-ordination and co-operation in order better to meet common objectives and to avoid conflict between member countries;

4. to develop in the field of East-West economic relations a more co-ordinated policy that respects the interests of the member countries;

5. to co-ordinate efforts in preparation for the 1982 United Nations Special General Assembly on Disarmament;

Urges the Turkish government to free all political prisoners and to re-establish democracy;

Urges the Heads of State and Heads of Government assembling on the occasion of the NATO summit on June 10:

1. to reaffirm the common Western commitment to serious arms control and disarmament negotiations aimed at achieving greater stability at reduced levels of armaments;

2. to remind the Soviet Union that the strict observance of bilateral and multilateral agreements, especially the Helsinki Final Act, is a leading element in improved East-West relations;

3. to signal to the Soviet Union the interest of Alliance countries in developing East-West economic relations on the basis of mutual benefit in improved political circumstances;

Urges all nations participating in the 1982 United Nations Special General Assembly on Disarmament:

To reach agreement on world-wide arms control and disarmament through specific measures, namely, improved confidence building measures, control and limitation of arms sales, support for ongoing bilateral and multilateral arms control and disarmament negotiations, and strengthened nuclear non-proliferation measures.

EXHIBIT 2

INTERIM REPORT OF THE SPECIAL COMMITTEE ON NUCLEAR WEAPONS IN EUROPE

REVIEW OF RECENT DEVELOPMENTS

1. Since the last report of the Special Committee on Nuclear Weapons in Europe was presented to the Assembly last October at the Munich meeting, a number of significant developments have occurred regarding the issues under study. Rather than try to squeeze the review of these developments into the framework of that report, the Co-Rapporteurs have chosen to review major developments in this separate report. At the time of the Autumn session, the framework of the normal report will once again be followed and up-dated.

United States initiatives

2. In his first major foreign policy address on 18th November, 1981, President Reagan outlined several far-reaching proposals for arms control and, in effect, challenged the Soviet Union to approach reductions seriously. The address was marked by four proposals. First, President Reagan proposed the "zero option" as the basis for the bilateral Intermediate Nuclear Force (INF) negotiations in Geneva, that is, he offered to the Soviet Union cancellation of the deployment of the European-based 572 Pershing IIs and cruise missiles if the Soviet Union agreed to dismantle its SS-20s, SS-4s, and SS-5s. In this respect, he explicitly rejected the Soviet argument alleging that a balance of these nuclear forces already exists and charged the Soviet Union with creating a destabilizing imbalance. Secondly, he stated that preliminary talks on the resumption of strategic arms negotiations would take place at the Haig-Gromyko meeting in January and indicated that the United States was interested in substantial reductions to equal, verifiable levels and would pursue "major qualitative and quantitative progress" in the negotiations. Thirdly, the United States, he averred, was strongly interested in a reduction of conventional forces. Fourthly, the President firmly supported the idea of a CSCE Conference on European Disarmament (CDE) to reduce the risks of surprise attack.

3. Soviet reaction to the President's proposals was utter rejection. His speech was described as an attempt to deceive an uninformed public. The "zero option", according to the Soviet press, could not conceivably be taken seriously. Soviet journalists recalled repeatedly President Reagan's statement that a limited nuclear exchange in Europe might be possible without escalation to a full nuclear exchange, saying any nuclear exchange would undoubtedly lead to a total nuclear exchange. Finally, the Soviet Union challenged as "fantastic" the figures President Reagan used to indicate the present balance—6/1 in the Soviet favour.

4. From the Allies, the Reagan address won warm and wide applause both for its substance—it was a long-awaited, supportive statement on arms control programmes as part of American security policy—and for its tone—it was a movement away from the aggressive anti-Soviet rhetoric characteristic of the earlier months of his administration. Moreover, it indicated a strong, realistic commitment to the Alliance, a sensitivity and attentiveness to Allied concerns, and, implicitly, a certain recognition that the Allies could be heard by the United States and even influence the formulation of American nuclear policy. The adoption of the "zero option" in particular was perceived by many Allies as a strong opening position for the Intermediate Nuclear Force (INF) negotiations. The "zero option" was subsequently endorsed firmly by the Nuclear Planning Group (NPG) in two meetings and by the NATO ministerial meetings in December 1981. Chancellor Schmidt of the Federal Republic, welcoming the zero proposal, remarked that in his coming meetings with President Brezhnev, he would convey to the Soviet President NATO's determination to proceed with deployments if the Geneva negotiations did not produce significant reductions.

The Schmidt-Brezhnev meetings

5. Shortly before the Intermediate Nuclear Force (INF) negotiations opened in Geneva on 30th November, three days of meetings (22nd-25th November) took place in Bonn between Federal Republic Chancellor Helmut Schmidt and Soviet President Leonid Brezhnev. The meetings were widely viewed as "setting the stage" for the coming Intermediate Nuclear Force (INF) talks, and it was thought that President Brezhnev might launch a new initiative to open cracks in the Alliance. The meetings were also considered to be of special importance because the Federal Republic of Germany maintains a powerful position in East-West relations generally and because it was the first visit of the Soviet leader to a Western country since the Soviet invasion of Afghanistan.

6. During the meetings, President Brezhnev did, in fact, repeat his offer for a moratorium on deployment of new systems in Europe and added another offer: Soviet Union would reduce unilaterally (by an unspecified number of unspecified weapons systems) Soviet intermediate range systems if the moratorium were accepted and NATO did not deploy. By all accounts of their meetings, Chancellor Schmidt performed valuable services for the Alliance by his firmness in support of the "zero option" and, conversely, his firmness that the NATO weapons would be deployed if the Geneva negotiations did not succeed in reaching the "zero option"; by his insistence that the United States was serious about the negotiations; by his admonitions to the Soviet leader about the destabilizing effects of the Soviet military build-up; by his statements on the increase in international tensions caused by the Soviet invasion of Afghanistan. He also reportedly warned President Brezhnev against trying to influence public opinion against the positions taken by their governments. The Schmidt-Brezhnev meetings were obviously very useful in reinforcing Alliance viewpoints on a series of issues.

The Geneva intermediate nuclear force negotiations

7. The commencement of the Intermediate Nuclear Force (INF) negotiations in Geneva on 30th November is considered the result of NATO determination to proceed with deployment: the Soviet Union finally accepted the NATO 1979 offer to negotiate without preconditions because of NATO solidarity and resolution to proceed. Welcomed on all sides, the Intermediate Nuclear Force (INF) negotiations focus directly on nuclear missile systems. On a more profound level, however, it is clear that the two sides are dealing with ways of reducing the risk of nuclear war, the possibility of which has troubled segments of the European population for some time and, more recently, segments of the American population.

8. At the first meeting, both sides agreed on a "news blackout", restricting all public comment to the barest procedural matters. The negotiators met in December until a Christmas-New Year recess, resumed negotiations in early January, and recessed again on 16th March with 20th May as a date for resumption of negotiations.

9. Despite the new blackout, the general positions of both sides are known, and they are known to be far apart. The definition of which weapons will be the subject of the negotiations is critical. The United States, supported by the Allies, intends to focus on the most dangerous systems—intermediate range land-based missiles—and takes a broad approach on geographic scope. The Soviet Union, rejecting so far the zero proposal, wants the geographic scope restricted to Europe, but seeks a broad approach on the systems negotiated, including United States nuclear capable aircraft—the so-called "forward-based systems"—and the French and United Kingdom nuclear forces.

10. Some idea of the very different perspectives on what forces should be counted can be seen from the official estimates put forward by either side of forces relevant to the European region. The Soviet Union maintains there is now a rough balance of medium-range systems "intended for use in Europe", that is, systems with a range of 1,000 kms, with 986 Western systems and 975 Soviet systems. These figures were explained at the time in the following manner, though it must be kept in mind that the number of SS-20s has now reached 300, according to United States estimates:

U.S. and NATO

IRBM:	
French IRBM	18
French SLBM	80
United Kingdom Polaris	64
Total	162
Aircraft:	
U.S. FB111	65
F111	172
F4	246
Carriers A6/7	240
French Mirage IV	46
United Kingdom Vulcan	55
Total	824
Total	986

U.S.S.R.

SS-20	243
SS-4 and 5	253
SS-N5	18
Total	514
Backfire, Badger, Blinder	461
Total	975

11. The United States, supported by the Allies, argues that no such balance exists; that the United States has nothing comparable to the SS-20; that the Soviet Union cannot logically argue there was a balance in 1979 and two years later, when it has added 200 more SS-20s, still claims there is a balance; that the Soviet Union includes United Kingdom and French forces, which are strategic forces and which the United States can in no way negotiate; that the Soviet Union achieves this figure in a distorted manner. That is, the Soviet figures include F4s with an unrefueled range of under 1,000 kms, but do not include for their own part a number of aircraft, (the Fencer, for example) estimated to have a capability well beyond 1,000 kms. They include FB111s based in the United States, and the Soviet Union calculates the number of A6s and A7s at 240 by including six aircraft carriers-two in the Mediteranean, and four that could be deployed in the North Atlantic in time of crisis—and again comparable Soviet naval-based aircraft are excluded.

12. By contrast, Richard Burt, Director of the United States Department's Bureau of Political-Military Affairs, presented the following figures in support of the claim made by President Reagan in November 1981 of a 6/1 advantage for the Warsaw Pact:

U.S.

IRBMs	0
Aircraft:	
In Europe—F111	164
F4	265
A6/7	68
Total	497
Based in U.S.—FB111	63
Total	560

U.S.S.R.

SS-20	250
SS-4/5	350
SS-12/22	100
SS-N5	30
Backfire	45
Badger/Blinder	350
Fencer, Flogger, Fitter	2,700
Total	3,825

13. No one believes the negotiations will be easy or brief. There is certainly great pressure that they succeed. There have been mutual charges that the other side was not negotiating seriously, but the negotiations have so far been generally described as serious, frank and "businesslike". When the negotiations went into recess in mid-March, chief United States negotiator Paul Nitze stated that while no progress had been made on the central issues, there had been "substantial progress" in "clarifying and dealing with subsidiary issues".

The Special Consultative Group (SCG)

14. The Special Consultative Group (SCG), which was instrumental in the formulation of the NATO-supported United States position at the Intermediate Nuclear Force negotiations, has not been dissolved, nor are there plans to do so. It continues to function as a forum for Allies' consultation and information. The Special Consultative Group has strongly supported the zero proposal and has urged "concrete negotiated results at the earliest possible time". The consultations have reportedly been satisfactory to the Allies, and the United States has indicated great satisfaction with them as well. As Assistant Secretary of State Lawrence Eagleburger, former Special Consultative Group leader, remarked, "The intensity of the Special Consultative Group leader, remarked, "The intensity of the Special Consultative Group consultations since the Rome ministerial meeting in May (1981) symbolizes the American commitment to Allied interests, as well as the common desire of the United States and its Allies to achieve genuine arms control. These consultations played an invaluable role in developing the United States negotiating position".

Soviet proposals

15. In an address to the Soviet Trade Unions on 16th March, President Brezhnev announced that the Soviet Union had unilaterally halted deployment of the SS-20 in the European Soviet Union. He also announced that the Soviet Union intended to make unilateral reductions later in 1982 "unless there is a new aggravation of the international situation", and that it remained ready to negotiate serious reductions of all medium-range nuclear weapons in Europe. The Soviet President's speech was noteworthy for two other passages, one in which he proposed a "mutual restriction of naval operations", and one in which he made a veiled threat to respond to NATO deployments by increasing Soviet nuclear capabilities in the Western hemisphere.

16. The Brezhnev March proposal was not generally considered new. It evoked his November 1981 moratorium proposal to Chancellor Schmidt, when the proposed moratorium was still conditional either on NATO's non-deployment or on a NATO refusal to deploy during the negotiations in Geneva. That earlier Brezhnev proposal, it should be recalled, was immediately rejected, since among other reasons it would not require any reduction of Soviet missiles for the duration of the negotiations. Allied reactions to the "new" proposal were extremely reserved, ranging from a French official's statement that it was "nothing new" to the Italian Foreign Ministry's statement that Brezhnev's intention to negotiate still had to be proved.

17. At its March meeting in Colorado Springs, the Nuclear Planning Group rejected any moratorium proposal, and United States spokesmen have spoken against it firmly and persuasively. Allied officials see the moratorium as freezing the Soviet Intermediate Nuclear Force monopoly of land-based systems and United States medium-range inferiority at the same time that it undermines Soviet incentives to negotiate seriously in Geneva. It is viewed basically as an attempt to appeal to public opinion, to fuel the anti-nuclear "peace" movement, and, ultimately, to split NATO and undo the 1979 dual-track decision. The unilateral Brezhnev moratorium on deployments in Soviet Europe is seen as fundamentally meaningless, since it does not restrain deployments East of the Urals, from where the SS-20s can still threaten Europe, and it would last only as long as the NATO countries did not "actually go over to practical preparations to deploy Pershing II missiles and cruise missiles in Europe". Since preparations have, in fact, already begun, the Soviets could invoke the latter conditions as an escape clause at any time. Moreover, following the 6th April meeting of the Special Consultative Group, the Chairman noted evidence of continuing SS-20 site construction in the European Soviet Union since 16th March.

Continuing deployments

18. In fact, it is clear that the Soviets have not yet reached the end of their deployment programme. 300 SS-20s are now deployed, about 200 targeted on Western Europe. If the Soviet Union completes only its present construction sites, it will have 39 bases for a total of 351 SS-20s, including the five new SS-20 sites known to be under construction for 50 more missiles. More ominously and little noted so far, at least in the public discussion, is the gradual emergence of evidence, apparently not yet conclusive, indicating that SS-20s are probably being deployed with one additional re-load rocket. The SS-20 is known to have a fast re-load capability. The number of SS-20s already deployed, plus the re-load, suggests a very powerful Soviet medium-range nuclear capability.

Strategic arms negotiations

19. The 18th November foreign policy address of President Reagan accented the importance of the resumption of strategic arms negotiations with a plan for substantial reductions. For many of the Allies, it was a welcome emphasis, since earlier Reagan positions indicated little support for arms control, great support for negotiating from strength and renewing the American strategic effort, and little understanding of the importance of arms control negotiations in the security thinking of the Allies. Hopes for a resumption of strategic talks in early 1982 were, unfortunately, dashed with the imposition of martial law in Poland. The Haig-Gromyko discussions in January originally planned to focus on resumption of strategic arms negotiations, centered instead on Poland; the resumption of Strategic Arms Reduction Talks (START) was delayed to a time "when conditions permit", an indirect linkage to the Polish situation. For many Europeans, even this indirect and vague linkage was painful since strategic arms negotiations are considered to be in

the mutual security interests of both East and West. The Allies have continued to insist on the close link between the Intermediate Nuclear Force negotiations in Geneva and strategic arms negotiations, a link explicitly stated in the December 1979 communiqué. Again at the Nuclear Planning Group meeting in March 1982, the communiqué noted strong Allied support "for the United States commitment to negotiate on strategic nuclear weapons with the Soviet Union resulting in substantial reductions".

20. It was undoubtedly a combination of international concern and the growing American anti-nuclear movement centering on "freeze" proposals that moved President Reagan to address the critical issue of strategic arms negotiations in early April. Showing an understanding of the concerns of those who fear nuclear war and a possible new nuclear arms race, President Reagan promised to come forward with proposals that would aim at dramatic reductions in strategic nuclear arms, perhaps reductions of 30-50% on both sides. He supported the United States Senate "freeze" resolution sponsored by Senators Jackson and Warner with the backing of 56 Senate colleagues, proposing that both the United States and the Soviet Union adopt "a long-term, mutual and verifiable freeze at equal and sharply reduced levels of forces". (The Jackson-Warner "freeze" resolution was offered as an alternative to the Hatfield-Kennedy resolution, which called for an immediate freeze on the testing, production and deployment of nuclear weapons, followed by major reductions). Since it came into office, the Reagan administration has been conducting a strategic review, which now appears complete, since there was reportedly a 1st May deadline for an inter-agency draft negotiating position. The START talks could resume in early summer.

The United States nuclear "freeze" movement

21. A significant development in the United States during the past six months has been the growing public concern with the unrestrained proliferation of nuclear weapons, a possible new round in the nuclear arms race, and the threat of nuclear war. President Reagan's earlier position regarding strengthened strategic nuclear programmes, combined with the increased military budget, the large budget deficit, an economic recession, and growing alarm weapons have all played a role in the growing movement. The nuclear concerns have found expression on the grassroots level with town councils in numerous states and on the national level with resolutions tabled in both houses of Congress. The two freeze proposals sponsored by Senators were mentioned briefly above. It should be added that the administration was sharply opposed to the Hatfield-Kennedy resolution calling for an immediate freeze on the testing, production, and deployment of nuclear weapons worldwide. Administration spokesmen opposed it for a variety of reasons. They argued it would freeze the United States in inferiority in some categories. It would also undermine the balance of power and therefore would undermine deterrence. It would deprive the Soviets of any incentive to negotiate. It would present impossible problems for verification. It would cripple the effectiveness of deterrence and undermine the Intermediate Nuclear Force negotiations and NATO solidarity. The administration argument was that deterrence should be reinforced through arms control negotiations and bilateral, balanced arms control reductions. The persuasiveness of the administration's arguments was supplemented by support for the Jackson-Warner resolution described above.

22. The new movement in the United States is undeniably of great political import. It has already prompted the administration to take a more active and energetic position on arms control issues, and it is most likely its political activities will continue to grow. The highly emotional quality that debates on nuclear issues sometime take, both in North America and in Europe, suggests that a broad public information program will be essential everywhere to ensure informed debate.

The debate on no first-use

23. Another indication of the growing United States concern about nuclear weapons was the article in Foreign Affairs authored by four prominent American security thinkers calling for a United States declaration of non-first-use of nuclear weapons. The refusal to declare non-first-use lies at the heart of NATO strategy for the doctrines of flexible response and deterrence. Because of the East-West imbalance in conventional forces, the ambiguity and uncertainty surrounding possible first use have been considered essential for deterrence. Secretary of State Haig has already made a number of serious arguments rejecting the recent proposal, but at the basis of the argument for a NATO declaration of non-first-use is a thorough-going scepticism about actually controlling a nuclear war once the first nuclear weapon is fired. The debate on this proposal has only begun. The Rapporteurs of the Special Committee will monitor and evaluate the debate as it develops.

ACTIVITIES OF THE SPECIAL COMMITTEE

24. In the Autumn report, the Rapporteurs will bring up-to-date the detailed analyses of the political forces in the countries of the five European Allies where Pershing IIs and cruise missiles may be deployed in 1983. In the meantime, they wish to summarize major points concerning the Special Committee's visits to the Hague and to Paris during 8th-12th March.

Holland

25. The Center-Left coalition government that emerged after the May 1981 elections in Holland is composed of the Christian Democratic Appeal (CDA), the Labour Party, and Democrats-66 (D-66). A wide gamut of nuclear concerns is evident among these parties. These range from strong opposition to nuclear weapons in general and the need to stop a nuclear arms race to demands for a reduction of Holland's six nuclear tasks and a more general reduction of nuclear weapons; from disagreement with the 1979 decision because the number of weapons is too high and is seen to encourage a European regional balance, to total opposition to deployment.

26. Concerning the full implementation of the NATO 1979 dual-track decision, the coalition has "agreed to disagree". The Christian Democratic Appeal and Democrats-66 could support a deployment decision under certain conditions, but the Labour Party is wholly opposed to deployment and would bring down the government rather than support a positive decision to deploy. As a result, the decision to deploy has been postponed. When it is considered, the progress of the Geneva Intermediate Nuclear Force talks will be decisive.

27. It must be noted that Holland is maintaining its political position in a balanced way. In a response to a parliamentary question on cruise missile site surveys in the Netherlands on 11th February, Defense Minister Hans Van Mierlo stated that while the Dutch deployment decision was distant, Holland was responding "passively" to official NATO requests concerning "legal and technical" aspects of possible deployment. His answer would appear to keep open the Netherlands option on deployment and set the stage for preliminary site survey work, so that the deployment option is not, de facto, excluded.

28. The refusal to agree to deployment now is not perceived by opponents as damaging the solidarity of the Alliance or as undermining the negotiations in Geneva. While it is granted that Alliance determination fully to implement the 1979 decision has brought the Soviet Union to the negotiating table, Alliance determination is not considered the sole cause. Some Dutch argue that they would indeed be undermining solidarity and negotiations if they had rejected the very basis of the negotiations. They have not done so; in fact they have supported the Geneva Intermediate Nuclear Force negotiations. They certainly do not favour unilateral disarmament. They tend to justify their refusal to take the deployment decision now as a signal to the NATO Allies that people (the Dutch, in particular) can no longer live with nuclear weapons as easily as they could in the past; that people are reaching their psychological limits; that NATO has relied too easily and too much on nuclear weapons; and that the uneasiness, or fear, or insecurity, to which one is more susceptible in areas of high population density, caused by the proliferation of nuclear weapons has implications for future planning that NATO as an Alliance must consider carefully. The grass-roots nature of the anti-nuclear opposition was often noted.

29. Continued strong Dutch participation in NATO, at least among the political party leaders with whom the Committee met, is striking and calls into question the whole notion of "Hollanditis" with its alleged characteristics of pacifism and neutralism. Neither of the latter two was at all in evidence among the politicians, with whom very frank discussions were held. Pacifism and neutralism may be tendencies in some of the anti-nuclear groups, but even the most powerful Dutch anti-nuclear group, which officially holds the position that the two military blocs should gradually be dissolved, does not endorse Dutch withdrawal from NATO at this time. There is some thought being given in the anti-nuclear movement to the eventual denuclearization of Holland as a first step, but the significance of this particular thought even in the anti-nuclear movement is not major at this time and the predominant significance of this thought is, in any case, to send a political signal to the Allies.

30. There is a strong and apparently growing concern in Holland about short-range nuclear weapons. Their battlefield usefulness is suspect; their number is considered dangerously large; their proliferation is considered thoughtless; their military rationale is considered artificially constructed after the event. The long-held reasoning of a nuclear supplement for conventional weakness is being carefully scrutinized and found deficient. It is thought that the number of short-range nuclear systems could be significantly reduced without any damage to Alliance defence. Some unilateral reductions might be implemented, though unilateral disarmament in this area is generally viewed with caution. Opinions vary on how many

such weapons may be needed, their deterrent value, and their military usefulness. However, there is a strong consensus in Holland that the Alliance needs an overall policy review of every aspect of short-range nuclear systems and, as a result of the review, a renewed emphasis on strengthening conventional forces and possibly replacing short-range nuclear weapons with conventional substitutes if necessary. In respect to the need for a review, and in respect to the future decision on deployment of cruise missiles, it is noted with some discomfort that the High Level Group, which would be the proper Alliance forum for such a review and discussion, has not held a meeting since late in 1981, though a meeting has now been planned for May 1982.

France

31. The French nuclear forces are officially described as independent, strategic, credible, and sufficient. Independent: they are under solely French control to serve France's vital national interests. Strategic: they are considered not as intermediate range nuclear forces, but are forces capable of striking a potential aggressor's homeland. They are credible to protect France's vital interests, with a second strike capability, and they are sufficient to implement France's nuclear doctrine.

32. Traditional French nuclear doctrine differs significantly from that of the United States and NATO. France has never accepted the doctrine of flexible response, though its nuclear weapons systems are sufficiently flexible to allow something less than immediate massive retaliation.

33. The French notion of deterrence differs from that of the United States and NATO. Because its nuclear forces are not on the same scale of magnitude as those of the United States or the Soviet Union, France contributes to overall deterrence in two ways: first, by making its defence of French national interests undeniably clear; secondly, as the 1974 Ottawa Declaration acknowledged, by multiplying the risks and uncertainties for a potential aggressor.

34. French nuclear forces are non-negotiable. For the French, there is no scenario imaginable in which their nuclear forces could be brought into United States-Soviet strategic arms negotiations for two basic reasons. First, it would be a reversal of the Ottawa declaration, since French forces would be considered auxiliary to or dependent on United States nuclear forces, thus reducing the centers of uncertainty; French forces are independent and national. Secondly, French nuclear forces are considered so small in comparison to those of the United States and the Soviet Union that any reduction could damage their credibility.

35. Because French nuclear forces are national, independent, and strategic, it is also inconceivable that they be brought into Intermediate Nuclear Force negotiations, such as those now taking place in Geneva. French officials are adamant in rejecting any suggestion that at the Geneva Intermediate Nuclear Force negotiations any compensation, direct or indirect, be given to the Soviet Union to balance French nuclear forces. They expressed concern with such suggestions and consider the rationale for compensation a Soviet tactic.

36. This is not to say that the French government is unconcerned about arms control. It is in French interests that the East-West forces be balanced at as low a level as possible. Moreover, it is precisely because of its concern with arms control issues that the French government advanced in 1978 and continues to support a Conference on European Disarmament (CDE) within the context of the CSCE.

37. While the present French government, led by President François Mitterand, has supported the main lines of traditional French nuclear policy, it has also been noticeably stronger in its support of the NATO 1979 dual-track decision than the previous government. The central reason for this appears to lie in a reassessment of the balance of forces assuring the defence of Europe. The present government sees the balance as deteriorating in favour of the East, with the consequence that part of Europe is beginning to worry about its security. France may be able to defend itself well, but alone it cannot rectify the East-West imbalance. Hence the dual-track decision of December 1979 is perceived as an "equalization of risks" necessary to counter the Soviet modernization programme. The French government strongly supports both tracks. Without the deployment decision, the Soviet Union, with its sharp increase in intermediate nuclear forces, might believe it could hold Europe hostage, and, as mentioned above, an ensured global balance of forces at reduced levels is clearly in French national interests.

38. France's nuclear policy enjoys widespread public and budgetary support. There is no significant anti-nuclear movement in France.

NATO AND THE NUCLEAR FREEZE MOVEMENT

(Statement by Senator JOSEPH R. BIDEN, Jr.)

Mr. Chairman, as chairman of the Assembly's Special Committee on Nuclear Weapons in Europe and as a U.S. Senator who has served for eight years on the Senate Foreign Relations Committee, I thought I might take the opportunity to express my interpretation of the so-called freeze movement in the United States and its significance for the Atlantic Alliance. I know that many of my European and American colleagues here have been deeply troubled by the potentially adverse effect on Alliance solidarity of the so-called peace movement in Europe. I would like to offer an analysis as to why I think its apparent counterpart on my side of the Atlantic can have—and indeed is having—a constructive effect on the Alliance.

Let me begin by stating my view, which I am confident is widely shared in this Assembly, that NATO's primary objective must always be to maintain the East-West military balance. That is the only basis on which we can expect to undertake any effective negotiation with the Soviet Union—whether it be negotiation on arms, to stabilize the balance, or negotiations in other areas, to improve political and economic cooperation between East and West. My concern for military balance made me a supporter of SALT II, which in my judgment represented a codification of strategic balance. And it made me a strong supporter—which I remain today—of the NATO decision of December 1979, the essence of which is to use a combination of deployments and arms control to establish a stable balance in the realm of intermediate-range nuclear weaponry.

It will be remembered by all present that that decision was taken at a time when SALT II ratification was expected. To be sure, the agreement had encountered considerable difficulty in the U.S. Senate. But it was generally understood that a majority in the Senate already supported the treaty, and that the additional support needed to obtain the necessary two-thirds vote for ratification was being developed in the course of discussions between certain Senators and the Administration concerning changes in the U.S. defense budget. Ratification, however, never occurred. As many will recall, the political climate of that period was bedeviled by a dubious but resilient notion know as "linkage," a concept which prescribes that the United States should not consummate agreements with nations if they behave contrary to our standards or interests, notwithstanding that the agreements thereby foregone could directly serve our interests. When the Soviets invaded Afghanistan in December 1979, the bizarre logic of linkage took hold, and further consideration of SALT II was placed in abeyance. With the passage of time and the advent of a new Congress, the treaty was returned, in accordance with Senate procedure, to the Foreign Relations Committee, where it continues to reside as a standing item, on the Committee agenda.

Over the intervening two years, however, American public attitudes toward arms control have evolved considerably. During the SALT II debate in 1979, the dominant impact on national opinion came from the political right, which portrayed the treaty—never persuasively, in my view—as a symbol of American decline. The propagation of this message was nonetheless effective; and in November 1980, the American people elected to the presidency a candidate who avowed the principle of linkage, while denouncing East-West accords in general and SALT II in particular. For our European allies, who I think preponderantly favored SALT II and who have long relied on American leadership in the conduct of East-West relations, this posture was of immediate concern. Among Americans, concern grew more slowly. The majority of the American people support, as I do, a major national defense effort. But after fifteen months of the Reagan presidency, the American people became clearly dismayed, if not alarmed, by the apparent indifference of this Administration to the control of nuclear arms.

The result is a surging public demand for a "freeze" on nuclear deployments. Some observers have misinterpreted this movement as a call for unilateral disarmament. But it is not. For most Americans advocating a "freeze," our goal should be a mutual cessation of deployment by both the United States and the Soviet Union.

In my own judgment, the appearance in the United States of a substantial arms control constituency is a very positive and long overdue development—and one which is likely, in four ways I will enumerate, to strengthen the Atlantic Alliance, on which American and European security depends:

(1) Effect on European Attitudes.—A first and immediate effect should be to reassure our allies that Americans and Europeans have not diverged fundamentally on the need to restrain East-West conflict and avoid nuclear war. Given the limbo of SALT II, Reagan Administration pronouncements have raised serious doubts among Europeans as to whether they can any longer rely on the U.S. for prudent leadership in the conduct of East-West relations. The emerging U.S. arms control constituency, drawing support from all portions of our political spectrum, is helping to reaffirm, at a time when clear reaffirmation is needed, the abiding American commitment to nuclear

sanity, notwithstanding this Administration's idiosyncracies.

(2) Effect on American Attitudes.—Second, the appearance of a broad-based U.S. arms control movement should also have a favorable effect on American attitudes toward the Alliance—by undercutting the tendency of opinion-makers on my side of the Atlantic to portray the European peace movement as anti-American, neutralist, and pacifist. With a strong arms control movement appearing all across our own political spectrum, such inaccurate accustions no longer carry force.

(3) Effect on Arms Control Negotiations.—The third effect relates to the actual process of arms control. In addition to favorably influencing European and American attitudes toward the Alliance, the U.S. arms control movement has registered an effect on the actual policy of this Administration, shifting it away from the disparaging attitude toward arms control it originally displayed. Every American Administration—Democratic or Republican—comprises individuals of conflicting views, and clearly this one is no exception. The effect of an emergent arms control constituency in the United States has been to strengthen the hand of those in this Administration who believes not only that the very process of arms control contributes to Alliance solidarity, but also that well-conceived arms control agreements can positively enhance Western security.

(4) Effect on NATO Conventional Strength.—The final effect I would identify relates to the conventional force posture of the Alliance. Through its public questioning of the current NATO doctrine which envisions the possible first-use of nuclear weapons, the U.S. freeze movement may help to create the transatlantic consensus needed for Alliance efforts to enhance our combined conventional strength. Heretofore, public support for NATO conventional force improvements has, I think, been undercut by the accepted theory that nuclear weapons could compensate for conventional deficiencies. The emerging nuclear debate, which the American public has now joined in full force, could help to foster an Alliance-wide consensus that rejects this theory and supports the conventional force and doctrinal improvements that NATO has long needed but often delayed.

Having described these positive aspects of the emergence of a strong American arms control constituency, I must draw a distinction between the political movement, from which I draw considerable encouragement, and the specific "freeze" proposal, which I find flawed. One important draw-back of a freeze is its impact on Europe, where the prospect for successful East-West negotiation to limit theater nuclear weapons is heavily dependent upon NATO's clear and explicit willingness to undertake a nuclear modernization if negotiation fails. Among Europeans who strongly favor arms control—and I have specifically in mind Chancellor Schmidt—the concept of a "freeze" is worrisome precisely because it could undercut effective arms limitation. From the strategic, as opposed to the theater, perspective the "freeze" concept is also flawed—and for the very plain reason that we have already negotiated something better and the Soviets have agreed to it. That agreement is the SALT II Treaty, which I believe this Administration, despite its initial protestations, will adhere to until a successor agreement is reached and in place.

In conclusion, Mr. Chairman, I recognize that some skepticism still exists in Europe about this Administration's seriousness as regards East-West arms control negotiations. Skepticism still exists on my side of the Atlantic. But I view the trends as plainly positive. And I think those positive trends are today being reinforced by an American public which is demonstrating that the people of America and of Europe still hold a common desire for security that is based upon an East-West military balance which is stabilized by verifiable and effective arms control. My thesis, in sum, is that the public will is working, slowly but inexorably, to strengthen the Alliance. This I find not only gratifying but appropriate. For it is, after all, this process—called democracy—that the Alliance exists to defend.

THE DANFORTH-BENTSEN TRADE BILL

Mr. BENTSEN. Mr. President, today I have asked unanimous consent to be added as a cosponsor of S. 2094, which was introduced earlier this year by Senator DANFORTH. This bill has now been ordered favorably reported by the Committee on Finance after Senator DANFORTH and I cosponsored a substitute for the entire text of the bill. Thus, in asking to be added as a cosponsor of the bill, I intend that I cosponsor the bill as reported out by the Finance Committee. Indeed, I opposed many provisions of the bill as introduced and still do, and offered as a substitute for them my own bill (which was cosponsored by Senators BRADLEY and CHAFEE), S. 2223. The substitute added by the Finance Committee adopts most of the provisions of the bill I previously introduced and rejects those provisions of S. 2094 which I believe were inimical to the trade interests of the United States. Specifically, the bill no longer provides for reciprocity in the form of a provision that international trade retaliation can take place where foreign market opportunities are not substantially equivalent to those available in the United States. This provision, which had first appeared superficially attractive, would not work in practice and, indeed, would probably be harmful to United States interests.

Second, as an example of the improvement worked by the substitute, I would call the Senate's attention to section 3 of the bill which provides for national trade estimates. National trade estimates will for the first time bring to our trade policy a requirement for an organized evaluation of our international trade interests. It will require the U.S. Trade Representative annually to prepare estimates of our major trading problems and what, as a practical matter, can be done about them. I hope as the debate on reciprocity proceeds that the wisdom of the bill as reported by the committee, which has the administration's support, will become apparent to the Senate. In the meantime, I am pleased to add my name to the Danforth-Bentsen bill, S. 2094 as amended by the Committee on Finance.

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 10:29 a.m., a message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks, announced that the Speaker pro tempore had signed the following enrolled bill:

H.R. 3816. An act to improve the operation of the Fishermen's Contingency Fund established to compensate commercial fishermen for damages resulting from oil and gas exploration, development, and production in areas of the Outer Continental Shelf.

The enrolled bill was subsequently signed by the Vice President.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DOLE, from the Committee on Finance, with an amendment in the nature of a substitute, and an amendment to the title:

S. 2094. A bill to amend the Trade Act of 1974 to ensure reciprocal trade opportunities, and for other purposes (with additional and minority views) (Rept. No. 97-483).

By Mr. INOUYE (for Mr. GOLDWATER), from the Select Committee on Intelligence, with an amendment in the nature of a substitute, and an amendment to the title:

S. 2422. A bill to provide for equitable sharing by the spouses of qualifying Central Intelligence Agency officers in benefits paid by the Central Intelligence Agency Retirement and Disability System (Rept. No. 97-484).

By Mr. SIMPSON, from the Committee on the Judiciary:

Report to accompany the bill, S. 2222, a bill to revise and reform the Immigration and Nationality Act, and for other purposes (with additional and minority views) (Rept. No. 97-485).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. McCLURE, from the Committee on Energy and Natural Resources:

Arthur J. Dellinger, Sr., of California, to be Deputy Inspector General of the Department of Energy.

(The above nomination was reported from the Committee on Energy and Natural Resources with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. ROTH, from the Committee on Governmental Affairs:

John A. Terry, of the District of Columbia, to be an Associate Judge of the District of Columbia Court of Appeals for the term of fifteen years;

Steffen W. Graae, of the District of Columbia, to be an Associate Judge of the Su-

perior Court of the District of Columbia for a term of fifteen years; and

George W. Mitchell, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for a term of fifteen years.

By Mr. PERCY, from the Committee on Foreign Relations:

George Quincey Lumsden, Jr., of Maryland, a Foreign Service Officer of Class one, to be Ambassador Extraordinary and Plenipotentiary of the United States to the United Arab Emirates:

Contributions are to be reported for 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.

Nominee: George Quincey Lumsden, Jr.

Post: Abu Dhabi, U.A.E.

Contributions and amount.

1. Self: George Quincey Lumsden, Jr., none.

2. Spouse: Helene Parissis Lumsden, none.

3. Children and Spouses Names: William Alexander Lumsden, Catherine Parissis Lumsden, none.

4. Parents Names: George Quincey Lumsden, Catherine Crippen Lumsden.

All contributions listed were made by my father:

$10, 9/12/79, Montgomery Republican Fund.

$20, 8/14/80, Montgomery Republican Fund.

$15, 4/28/81, Montgomery County Republicans.

$20, 8/22/81, Montgomery Republican Fund.

5. Grandparents Names: Deceased, none.

6. Brothers and Spouses Names: No brothers, none.

7. Sisters and Spouses Names: No sisters, none.

Edward N. Brandt, Jr., of Texas, to be Representative of the United States on the Executive Board of the World Health Organization;

James B. Burnham, of Pennsylvania, to be United States Executive Director of the International Bank for Reconstruction and Developmnt for a term of two years;

Allie C. Felder, Jr., of the District of Columbia, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 1984;

Robert John Hughes, of Massachusetts, to be an Associate Director of the International Communication Agency; and

Dortch Oldham, of Tennessee, to be Commissioner General of the United States Government for Energy-Expo 82.

(The above nominations were reported from the Committee on Foreign Relations with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PRYOR:

S. 2695. A bill to require the establishment of an advocate for competition in each purchasing and contracting office of each executive agency, and for other purposes; to the Committee on Governmental Affairs.

By Mr. PACKWOOD:

S. 2696. A bill for the relief of Chong Hui Schrein; to the Committee on the Judiciary.

By Mr. MELCHER:

S. 2697. A bill to amend section 2 of the act of June 20, 1958 (72 Stat. 216); to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BOREN:

S. 2698. A bill to amend the Internal Revenue Code of 1954 with respect to the tax treatment of industrial development bonds; to the Committee on Finance.

By Mr. BENTSEN:

S. 2699. A bill to suspend the duty on 1,6-hexanediol until July 1, 1985; to the Committee on Finance.

By Mr. CANNON:

S. 2700. A bill to amend title XVI of the Social Security Act to exclude from resources burial plots and niches and certain funds set aside for burial or cremation expenses for purposes of the supplemental security income program; to the Committee on Finance.

By Mr. LONG (for himself and Mr. JOHNSTON):

S. 2701. A bill to provide for the participation of the United States in the 1984 Louisiana World Exposition to be held in New Orleans, La., and for other purposes; to the Committee on Foreign Relations.

By Mr. ANDREWS (for himself, Mr. BAUCUS, Mr. BURDICK, Mr. MELCHER, and Mr. COCHRAN):

S. 2702. A bill to amend section 8(A) of the Small Business Act to treat businesses owned by Indian tribes as socially and economically disadvantaged small business concerns; to the Committee on Small Business.

By Mr. MATHIAS:

S. 2703. A bill to amend the Internal Revenue Code of 1954 to provide for the establishment of, and the deduction of contributions to, education savings accounts, to the Committee on Finance.

By Mr. MURKOWSKI:

S. 2704. A bill to amend the Mineral Lands Leasing Act of 1920, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. LONG:

S. 2705. A bill to suspend the duties on mixtures of mashed or macerated hot red-peppers and salt until the close of June 30, 1985; to the Committee on Finance.

By Mr. STEVENS (for Mr. TOWER) (for himself and Mr. BENTSEN):

S. 2706. A bill to amend title 28, United States Code, to modify the bar membership requirements for U.S. magistrates; considered and passed.

By Mr. PERCY:

S. 2707. A bill to amend section 474 of the Internal Revenue Code of 1954 to provide that small businesses with average annual Gross Receipts not in excess of $10,000,000 may elect to one inventory pool; to the Committee on Finance.

By Mr. GARN:

S.J. Res. 210. Joint resolution to designate July 20 of each year as "Space Exploration Day"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PRYOR:

S. 2695. A bill to require the establishment of an advocate for competition in each purchasing and contracting office of each executive agency, and for other purposes; to the Committee on Governmental Affairs.

FEDERAL PROCUREMENT IMPROVEMENT ACT OF 1982

(The remarks of Mr. PRYOR on this legislation appear earlier in today's RECORD.)

By Mr. BOREN:

S. 2698. A bill to amend the Internal Revenue Code of 1954 with respect to the tax treatment of industrial development bonds; to the Committee on Finance.

TAX TREATMENT OF INDUSTRIAL DEVELOPMENT BONDS

● Mr. BOREN. Mr. President, today I am introducing compromise legislation on tax-exempt bonds for private purposes. This measure is intended to provide a responsible middle ground between the overly restrictive administration proposal which could eliminate the use of tax-exempt financing in many cases and other proposals which by their terms would expand the use of such tax-exempt financing.

The volume of private purpose tax-exempt bonds has grown rapidly. More than $25 billion were issued in 1981, up from $8.5 billion 5 years earlier. Private purpose bonds accounted for 24 percent of the tax-exempt bond market in 1976 but rose to 48 percent in 1981. This expansion of tax-exempt bonds for private purposes affects the market for tax-exempt securities as a whole, raising the cost of State and local governments of financing traditional public services. Thus, there is a legitimate need to provide some meaningful restrictions on the use of this important means of financing.

Under this proposal, any one company or individual would not be allowed to have more than $20 million in private purpose tax-exempt bonds outstanding at any given time. The $20 million would be a national cap. In addition, I would not change the existing $10 million cap on areas. These provisions are designed to discourage the use of tax-exempt financing by those who can obtain financing elsewhere.

This legislation would also prohibit the use of tax-exempt financing for some private purpose activities, such as certain recreational facilities for golf, tennis, and so forth. The list is not intended to be a complete list of proscribed activities, but rather is designed to specifically prohibit financing for those projects which have been most abused.

Because tax-exempt financing provides considerable benefit to those companies who qualify to use them, my provision would limit the additional incentives provided in the Economic Tax Recovery Act. Project using tax-exempt bonds will not be able to accelerate their depreciation on the tax-exempt bond-financed property. They

will be able to use the shortened ACRS lives provided for in the ERTA, while using straight-line depreciation.

The bill leaves unchanged the status of tax-exempt financing for student loans, hospitals, and other tax-exempt organizations. The bill also excludes low-income rental housing and solid-waste disposal facilities from the ACRS limitations imposed on other tax-exempt bond-financed projects. Tax-exempt bonds for farmland and farm equipment will continue to be allowed, within the guidelines of the bill.

In order to provide incentives for individuals to invest in depressed areas of some of our cities and rural areas, the bill contains a provision which eliminates the above restrictions for investments within a targeted area.

The bill also reverses IRS Revenue Ruling 81-225 and allows the use of composite tax-exempt bond issues. This provision will be especially important to small businesses.

The bill will also allow tax-exempt financing to be used for facilities which furnish electric energy or gas within an area consisting of either one city or one county. This will allow the use of tax-exempt financing for these types of facilities in cities whose borders extend over more than one county.

This proposal provides local government with more control over the bonds issued within their jurisdictions, the bill requires that a public hearing be held, and elected official approval be received, before a bond can be issued, all private purpose bonds must be reported to a designate State agency, which in turn will file a report annually with the Secretary of the treasury. The bill does not address the issue of registration of tax-exempt bonds. This bill is designed to offer some middle ground for those of us interested in a stronger bond market. I do not view this measure as perfect, but only as a vehicle to reach a consensus which will strike the proper balance. I welcome constructive suggestions from my colleagues for approving it.●

By Mr. BENTSEN:

S. 2699. A bill to suspend the duty on 1,6-hexanediol until July 1, 1985; to the Committee on Finance.

SUSPENSION OF DUTY OPN 1,6-HEXANEDIOL

● Mr. BENTSEN. Mr. President, today I introduce S. 2699, which would temporarily suspend the column 1 rate of duty for 1,6-hexanediol, classified under item 407.07 of the Tariff Schedules of the United States. Under the bill, this product would enter duty free from column 1 (or non-Communist) countries until July 1, 1985, commencing on the date of enactment. The column 2 (or Communist) rate of duty would remain unchanged. In addition, entries of articles after April 30, 1981, and prior to the enactment of this legislation could receive the benefit of duty-free entry if they otherwise qualified.

The chemical, 1,6-hexanediol, is used as an intermediate in the production of polymers, as a plasticizer, and as a solvent. But domestic consumption of the chemical is used to manufacture polyesters, which are then used to make high-strength polyurethanes for the production of wheels for skate boards, fabric coatings for synthetic leathers, and high-performance metal coatings.

This chemical is not produced in the United States at the present time. Under agreements negotiated in the multilateral trade negotiations that concluded in 1979, the product carries a column 1 or most-favored-nation rate of duty of 13.5 percent ad valorem. The chemical is not scheduled for duty-free entry under the generalized system of preferences, and it receives no other preferential rates of duty. The major importer is the Badische Corp. of Williamsburg, Va., which intends during the 3 years the suspension is in effect to build a plant for the production of this chemical in Freeport, Tex.

According to estimates of the U.S. International Trade Commission, which are based on recent importations, the estimated revenue loss from enactment of this provision in 1982 would be $380,700; in 1983, $417,150; and in 1984, $152,550.

In order to encourage production of this important chemical in the United States, I urge my colleagues serious consideration of S. 2699.●

By Mr. CANNON:

S. 2700. A bill to amend title XVI of the Social Security Act to exclude from resources burial plots and niches and certain funds set aside for burial or cremation expenses for purposes of the supplemental security income program; to the Committee on Finance.

BURIAL EXPENSE EXCLUSION FOR SOCIAL SECURITY ELIGIBILITY

Mr. CANNON. Mr. President, I am pleased to introduce a bill today which will give the Senate the opportunity to eliminate one of the most demeaning and heartless Government practices I have ever known. I am referring to the Department of Health and Human Services policy of including funerary insurance and burial plots in the calculation of assets to determine a person's eligibility for supplemental security income benefits. Because title XVI of the Social Security Act does not explicitly cite funerary arrangements as excludable, they are counted as resources. This must be remedied.

In order to qualify for SSI benefits, a person can possess only $1,500 in assets; a couple, only $2,250. Under the current law, certain essential resources are exempt from this assets calculation, including a home, a car, property used for self-support, and reasonable amounts of life insurance. These exceptions were originally made in recognition of the fact that certain resources and contingencies are essential to everyday living and applicants for assistance should not have to dispose of these items in order to qualify for SSI. Furthermore, Congress sought to create a program which would not discourage people from taking care of themselves as much as possible. I believe that burial plots and plans belong in this same category of essential resources.

The existing policy presents older Americans who are in need of assistance with a terrible, Hobbesian choice: They must either forfeit the arrangements they have made to guarantee a respectable disposition of their bodily remains, or they must forfeit some or all of the benefits that they desperately need to stay alive. Having to make such a decision is a traumatic experience for a person nearing the twilight of life. Because most people are forced to choose the immediate benefits over the funerary plans, they are further confronted with the realization that their final resting place may not be with their loved ones, but rather in some pauper's grave chosen by the State.

In addition to being inhumane and insensitive, this policy is impractical. Once an elderly person makes the decision to sell burial property, he or she is still faced with difficulty and delay before receiving benefits. In the first place, just because something is for sale does not mean that there will be a buyer. Burial property is not readily disposed of or converted to cash like other assets. The fair market value of an elderly person's plot will generally be higher than the price at which the cemetery can sell an equivalent plot in an undeveloped section. Also, few people are interested in purchasing a single lot which is not close to the remains of their own family.

This problem is compounded by section 1613(c)(1) of the Social Security Act which states that, if a person disposes of property at less than fair market value, for the purposes of qualifying for SSI, then the difference between the market value and the sales price will be counted as a resource for 2 years. This discourages people from selling their burial plots at a lower price and also from signing them over to other family members.

Furthermore, there are numerous States with laws which restrict the sale of cemetery property in various ways. For example, some States require approval by the management of the cemetery before a plot can be sold or transferred. Others prohibit the division of family plots. Some States grant a vested ownership interest in

spouses so that cemetery property cannot be sold without the express consent of both parties. In several States, it is illegal to sell cemetery property for a profit; when a plot has been in the family for years, it is difficult to sell at the current value without some profit margin. Finally, some States require the payment of a fee when burial property is sold or transferred. Although this fee is only a nominal one, it can be hard to bear for people already in need of financial assistance.

States also differ in their treatment of funeral insurance regulations. Currently, irrevocable funeral plans are exempt from the assets calculation. In some States, however, irrevocable arrangements are prohibited by law. Consequently, the existing policy discriminates against residents of those States who enter into arrangements which they have no intention of revoking, but which cannot be specifically established as such.

In addition to State regulations, many cemeteries require that lot owners who wish to sell their property first offer it back to the cemetery, generally at a fixed price or at the price originally paid by the purchaser.

The current practice is also inefficient and expensive from the States' perspective. When an indigent dies, the cost of his burial falls on State and local governments which have little choice but to cover it. This expense would not occur if the individual had the resources to pay for his own funeral. Consequently, a policy which discourages people from making their own burial arrangements in advance is costing the States money. I believe that this cost far outweighs any additional expenditures which might be incurred from expanding the SSI and, by reference, the medicaid rolls, to include otherwise needy people who own cemetery property or have funerary insurance. The States recognize this; many have already enacted provisions in their own assistance programs which are similar to the one I propose.

Specifically, S. 2700 would amend title XVI of the Social Security Act to place burial spaces and funds set aside for burial expenses on the list of essential resources which are excluded from the calculation of assets in determining eligibility for supplemental security income benefits. In keeping with the existing statute, this amendment will give the Secretary of HHS the discretion to set a fair and reasonable value limitation of funerary resources. A safety check is also included which provides for the adjustment of benefits should the Secretary learn that an SSI recipient has cashed in his funerary assets and used the money for purposes other than originally intended.

Both the American Cemetery Association and the National Funeral Directors Association have expressed support for this amendment. And in the House, a similar measure has been introduced, H.R. 5911, with nearly 70 cosponsors. I urge my colleagues to join in the passage of this bill to exclude burial plots and plans for calculation as assets, thereby helping to restore a measure of humanity and dignity to a necessary assistance program for the needy.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2700

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1613 (a) of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof a semicolon; and

(3) by inserting after paragraph (6) the following new paragraphs:

"(7) the value of any burial plot or niche (subject to such limits as to size or value as the Secretary may by regulation prescribe) held for the purpose of providing a burial place for the individual, his spouse, or any other member of his immediate family; and

"(8) any funds set aside for burial or cremation expenses, but only as provided in subsection (d).".

(b) Section 1613 of such Act is further amended by adding at the end thereof the following new subsection:

FUNDS SET ASIDE FOR BURIAL OR CREMATION EXPENSES

"(d)(1) In determining the resources of an eligible individual and his spouse (if any) who is living with him in the same household, there shall be excluded an amount that is separately identifiable and has been set aside to meet the burial or cremation expenses, and related expenses, of such individual or spouse if the inclusion of any portion of such amount or amounts would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1611(a).

"(2) If the Secretary finds that any part of the amount excluded under paragraph (1) was used for purposes other than those for which it was set aside, he shall reduce any future benefits payable to the eligible individual (or to such individual and his spouse) by an amount equal to such part.".

(c) The amendments made by subsections (a) and (b) shall become effective on the date of the enactment of this Act.

By Mr. LONG (for himself and Mr. JOHNSTON):

S. 2701. A bill to provide for the participation of the United States in the 1984 Louisiana World Exposition to be held in New Orleans, La., and for other purposes; to the Committee on Foreign Relations.

U.S. PARTICIPATION IN THE 1984 LOUISIANA WORLD EXPOSITION

● Mr. LONG. Mr. President, on behalf of Senator JOHNSTON and myself, I introduce S. 2701, a bill to provide for the participation of the United States in the 1984 Louisiana World Exposition to be held in New Orleans, La., and for other purposes.

The Louisiana World Exposition (LWE) will be held in New Orleans, La., from May 12 through November 11, 1984. The theme of the exposition is, "The World of Rivers—Fresh Water as a Source of Life." Because of its interesting location and important theme, the exposition will draw well over 1 million foreign visitors, who will also visit other sections of the United States as well.

The U.S. Government approved the exposition in 1981, by action that led to formal registration of the event by the Bureau of International Expositions at their April 1981 Plenary Session in Paris, France. On March 4, 1982, President Reagan issued a formal proclamation of the exposition, inviting all of the States and U.S. territories to participate, and also authorizing the Secretary of State to issue invitations to the nations of the world to seek their participation. Such letters of invitation have been sent to over 140 countries.

In addition to the sponsorship of the Louisiana World Exposition by State of Louisiana and the U.S. Government, the Vatican has recently announced its participation. Among its exhibits will be world renowned paintings and other works of art.

Over $54 million has already been raised by LWE as advance funding. This money was provided partially by the State of Louisiana, but primarily by private business and industry in Louisiana that supports the concept of the exposition. Legislation has been introduced in the House of Representatives that authorizes an appropriation of $10 million to carry out U.S. participation in the exposition. This legislative proposal is included in the legislative program of the U.S. Department of Commerce for the 97th Congress.

The amount to be appropriated is far less than the Federal Government's $24 million expenditure for the current World's Fair now being held in Knoxville, Tenn. One of the major reasons why less funding is being required for the New Orleans Exposition as compared to past ones is the unique approach where the U.S. pavilion is to be constructed by the exposition's organizers and leased to the U.S. Government. This unprecedented undertaking will provide a pavilion facility for the U.S. exhibit, but at no cost to either the Government, or the taxpayers for the duration of the exposition. This is an extremely flexible approach

and indicates the tremendous support and involvement of Louisiana to the success of the exposition.

This legislation authorizing the appropriation is modeled after the authorizing legislation for Federal participation in this year's energy exposition and also provides for the design, development, and operations of a U.S. exhibit, the overall Federal responsibilities for the oversight of the exposition by the Commissioner General of the United States, and for his appointment by the President.

Although the exposition will have a substantial economic impact on the State of Louisiana, its benefits will extend far beyond the confines of the State; the impact of past World's Fairs in the United States has been regional rather than simply local. Overwhelmingly, visitors to the expositions tend to come in family groups, and they mainly travel by car. Although the exposition will be their primary destination, they will expect to visit many attractions and make many stopovers on their way to and back from New Orleans. States and communities throughout the Southeast, Southwest and Midwest will all benefit.●

By Mr. ANDREWS (for himself, Mr. BAUCUS, Mr. BURDICK, Mr. MELCHER, and Mr. COCHRAN):

S. 2702. A bill to amend section 8(a) of the Small Business Act to treat businesses owned by Indian tribes as socially and economically disadvantaged small business concerns; to the Committee on Small Business.

INDIAN TRIBES' SMALL BUSINESS CONCERNS

Mr. ANDREWS. Mr. President, I want to introduce today a bill that will amend and strengthen by clarification section 8(a) of the Small Business Act. I do so because it will be beneficial to a minority group in our country that has experienced dramatic economic and social improvement because of the 8(a) program.

Until a few months ago, the SBA considered Indian tribal businesses eligible for the 8(a) program since the section is designed to assist minority small businesses in procuring contracts with Government agencies. My amendment will continue that interpretation of the existing Small Business Act. This amendment would be unnecessary except for the fact that recently the SBA has made a very literal interpretation of the act that will prevent tribally owned businesses from being eligible for the 8(a) program. This will not only keep such minority-owned enterprises out of the program, it could conceivably force out of the program tribal firms now operating under 8(a).

In my research I have been unable to find a clear expression of Congress that, in enacting 8(a), it intended to preclude tribally owned businesses. Furthermore, from SBA's prior actions, it appears such firms were included without any question.

In the light of their excellent record of production of high quality merchandise for Government use, it seems unreasonable to suddenly consider them ineligible under section 8(a).

This new interpretation by the SBA runs counter to administration goals of making minority groups self-sufficient. In fact, it could force several successful tribal businesses to close and place the employees, nearly all of whom are Indians—or native Americans—back on the welfare rolls which would then increase those costs as well as create social problems that have been reduced or eliminated by available employment opportunities on Indian reservations, made possible by 8(a).

Mr. President, the concept of tribal ownership may be foreign to many here in Washington, but those of us who have first-hand knowledge and experience with these people know how successful these tribal businesses can be. I know by direct contact that this is one type of business ownership which has worked out successfully in Indian country.

I am pleased to report to my colleagues here in the Senate that in my State of North Dakota two businesses operating through the 8(a) program are doing very well and have made a significant impact on the lives of tribal members. The Devils Lake Sioux Manufacturing Co. at Fort Totten, because of assistance through 8(a), has been responsible for great progress among those people. There is a dramatic increase in employment, the Indian people have established a work ethic that is being conveyed to the next generation and will be reflected in all future years. This company, alone, without Federal help of any kind, has put some 120 young people to work for the summer months. The educational and social environments on the reservation have improved attitudes and increased incentives for these people to improve their lives and homes.

Another example, Mr. President, is the Turtle Mountain Manufacturing Co. Through the SBA, the Turtle Mountain Band of Chippewa Indians obtained an 8(a) contract which will undoubtedly bring the same good results to that area. I can say, in all honesty, that our Government would be deeply and expensively involved in these reservations without the consideration given tribally owned businesses by the SBA.

Because the Government benefits doubly from this consideration given tribally owned businesses, I urge my fellow Senators to support this worthwhile amendment. In the first place, there is no additional cost to the Government, and secondly, it provides employment and management opportunities to a minority group that now has an enviable record of success.

Mr. President, not to support the amendment would be to force closure of firms that provide a quality product, provide employment opportunities where there otherwise would be none, and to keep people off the welfare rolls that otherwise would be there. This amendment makes sense at any time, and especially in these times of fiscal austerity.

By Mr. MATHIAS:

S. 2703. A bill to amend the Internal Revenue Code of 1954 to provide for the establishment of, and the deduction of contributions to, education savings accounts; to the Committee on Finance.

HIGHER EDUCATION INVESTMENT PLAN

● Mr. MATHIAS. Mr. President, British Prime Minister Benjamin Disraeli, speaking in the House of Commons more than a century ago, said:

> Upon the education of the people of this country the fate of this country depends.

Today well educated citizens are vital to the survival of the United States.

The Congress would do well to note Disraeli's insight as it examines budget proposals and considers new limits on Government services. Higher education has proven one of the best, most cost-effective investments for securing the future of our Nation.

Today more than 12 million Americans from all walks of life are students in colleges and universities. We are closer than ever before to becoming a nation of educated people. Yet we have not begun to meet the economy's demand for educated men and women.

Our country has long recognized that competent students come from every economic background. Federal student assistance programs now aid over 4 million students, or more than one out of every three enrolled in higher education.

The Federal student loan and grant programs have proven very effective in assuring every able student access to higher education and choice in higher education. These Federal programs have permanently changed the higher education landscape of the Nation and are serving our Nation very well.

Although I would prefer and will support continued full funding of the direct aid and loan programs, I believe that inflation is higher education's worst enemy. Thus I reluctantly but realistically anticipate some adjustments and limitations on these Federal assistance programs in the years ahead.

Educators and legislators should recognize that Federal student aid under restraints will be increasingly targeted toward the lowest income students, leaving others with few options. To assure continued access for every able

student to higher education is the challenge we must meet if we are to develop the creativity and talent of our young people.

With this situation in mind, the Citizens League of Baltimore conducted a thorough 2-year study of additional ways to help students and their families pay for higher education. The Citizens League has recommended a higher education investment plan that is practical, administratively simple and economically sound. Today I am pleased to introduce the necessary Federal legislation.

Under the Citizens League plan, individuals who set aside for educational purposes up to $2,000 per year per student beneficiary would be allowed a corresponding income tax deduction. This is the same kind of tax relief now accorded individual retirement accounts. The funds would not be taxed until after the student has graduated, and then the funds would be taxed as income to the beneficiary over a 10-year period in 10 equal parts.

The distinctive feature of this education savings account plan is that it would also benefit those who cannot save as well as those who can. Five percent of the total saved in any State would be placed in that State's scholarship pool for needy students. Taxes on this amount would be forgiven entirely.

In time of shrinking State support for higher education, this 5-percent contribution could place millions of new dollars in State treasuries for higher education. In fact, State scholarship funds could receive a good deal of money the year after the plan goes into operation, long before any contributors would draw from the individual accounts. In Maryland, for example, calculations show that if only half of the eligible families or individuals participated in the plan during its first year of operation, the State scholarship fund would increase by $11.2 million.

The education savings account plan I am introducing will:

Provide incentives for saving;

Defer taxes on principal and earnings for the investor;

Benefit many people in addition to those who can afford to save;

Make scholarship funds available through tax-exempt contributions; and thereby

Provide additional funds to students who are otherwise unable to finance their education.

The incentives in this bill encourage families to act in the public interest by assuming greater responsibility for financing their children's higher education. This proposal is basically a self-help plan which can maintain the opportunity for access and choice in higher education.

Those who have confidence in the future to save to finance education should be able to expect this limited Government incentive. Investments for higher education should reasonably be treated in a manner similar to other capital investments or to investments in individual retirement plans. The philosophy behind governmental encouragement of higher education is that many higher education benefits accrue to society and not merely to the individuals.

When you invest a dollar in higher education in America, you are investing in America's future. You are buying this Nation something it sorely needs. Higher education leads to higher incomes, higher employment rates, greater political stability, and a higher quality of life.

Young people today make up only two-fifths of our population, but they are all of our future. We must act now to assure that higher education will not be out of their reach.

I ask unanimous consent that a summary of the bill prepared by the American Law Divison of the Congressional Research Service and the recommendation of the Citizens League of Baltimore, together with tabular material, be printed in the RECORD.

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

SUMMARY OF BILL TO ESTABLISH TAX DEDUCTIBLE EDUCATION SAVINGS ACCOUNTS

The bill would amend the Internal Revenue Code to permit individuals to deduct payments to education savings accounts on a basis similar to that by which individual retirement accounts are treated under present law.

Section 1(a) of the bill would redesignate present Internal Revenue Code section 223 as 224 and create a new section 223 entitled Education Savings Accounts and would provide for the following:

"New subsection 223(a) would permit a deduction to individuals for contributions of cash or the fair market value of readily tradeable stocks, bonds or other securities to an education savings account for an eligible individual.

"New subsections 223(b) would place limitations on these accounts. Each education savings account could be established only for one individual and an individual could not be the beneficiary of more than one account. There would be a 2,000 dollar limit on the amount which could be contributed to each account each year, but beginning in 1983 that amount would be adjusted annually for inflation. If more than one person contributed to the same account during the year, the $2,000 or the inflation-adjusted amount would be allocated proportionately among all individuals contributing to the account.

"New subsections 223(c) would provide definitions and special rules.

"An 'eligible individual' would include the taxpayer or a child of the taxpayer (as defined in 26 U.S.C. § 151(e)(3), i.e. son, stepson, daughter or stepdaughter of the taxpayer) who is under 21 when the contribution is made and is not a full-time student at an eligible institution in the year the contribution is made.

"An 'education savings account' would be a United States trust for the purpose of paying the educational expenses of an eligible individual. Custodial accounts where the assets were held by a bank or other person satisfactory to the Secretary of the Treasury could constitute educational savings accounts if they would qualify as such accounts but for the fact they were not trusts (new subsection 223(h)).

"The trust must meet certain requirements. First, contributions must be cash or readily tradeable stocks, bonds or other securities and contributions in excess of $2,000, or inflation-adjusted amount, per year cannot be accepted. Second, the trustee must be a bank trust company, an insured credit union, a corporation which is subjected to supervision and examination by the commissioner of banking or other officer under the laws of the State of its incorporation, or another person satisfactory to the Secretary of the Treasury. Third, no part of the trust funds can be invested in life insurance contracts, unless the trust is the beneficiary and the face amount does not exceed the maximum allowable contribution minus the amount actually contributed for all taxable years. Fourth, contributors to the trust may be allowed to direct the investment of the trust funds. Fifth, the assets of the trust must not be commingled with other property except in a common trust fund or a common investment fund. Sixth, any balance in the fund when the beneficiary turns 26 must be returned to the contributor or contributors on that date. Seventh, the trustee must transfer 5% of all contributions to a qualified state educational fund.

"A payment will be deemed to have been made in a particular calendar year up until the time prescribed by law for filing the return for that year (usually April 15) but including extensions. Payments made after the end of the calendar year but before the return is due may be deemed to have been made on the last day of the preceding calendar year. The date for valuation of contributions of securities would be the date of transfer to the account.

"'Educational expenses' would be defined as tuition and fees required for enrollment and attendance of a student at an eligible education institution, fees, books, supplies, and equipment required for courses, and reasonable expense for meals and lodging.

"'Eligible educational institution' would include public and private institutions of higher education and vocational schools. These terms are also defined. An "institution of higher education" means institutions described in section 1201(a) or 491(b) of the Higher Education Act of 1965. (See 20 U.S.C. §§ 1141 and 1088). According to these sections an institution of higher education is one which has high school graduates or holders of an equivalency certificate as regular students, which is legally authorized to provide a postsecondary school education, which provides a program of education leading to a bachelor's degree or provides at least a two-year program which is acceptable for full credit to a bachelor's degree, which is a public or nonprofit institution, and is accredited or, if not accredited, meets certain alternative criteria. Schools of nursing, post secondary vocational institutions, and certain other proprietary institutions of higher education are also included in this definition.

"A 'vocational school' means an area vocational education school, as defined in section 195(2) of the Vocational Education Act of 1963, which is in any State. (See 20 U.S.C. § 2461(2) and (8)) The term 'area vocational education school' means 'a specialized high

school used exclusively or principally for the provision of vocational education to persons who are available for study in preparation for entering the labor market, or the department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to persons who are available for study in preparation for entering the labor market, or a technical or vocational school used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market, or the department or division of a junior college or community college or university operating under the policies of the State board and which provides vocational education in no less than five different occupational fields, leading to immediate employment but not necessarily leading to a baccalaureate degree, if it is available to all residents of the State or an area of the State designated and approved by the State board,' and if it admits as regular students both persons who have completed high school and persons who have left high school. (See 20 U.S.C. § 2461(2).

"'Qualified State education fund' would be a fund established by a State for the purpose of providing scholarship assistance to individuals attending eligible institutions within the State. The trustee must make the 5% payment each year to the state chosen by the contributor.

"New Subsection 223(d)-(f) would set out rules for tax treatment of contributors, beneficiaries and the accounts.

"Distributions from the education savings account would not be taxable to contributors so long as they were used exclusively to pay qualified education expenses of the beneficiary of the account. Excess contributions and any income attributable to the excess must be returned to the contributor and included in his gross income. Distributions made for any non-qualified purpose must be included in the contributor's gross income and his tax liability is increased by 10% of the amount of the improper distribution.

"There would be no tax paid on the distributions going to a qualified state education fund.

"The beneficiary of the account would be taxed on distributions from the account which were spent on qualified educational expenses. His tax liability would begin in the year in which the individual turned age 25, and in each of the nine succeeding years the beneficiary would include in gross income 10% of the amounts so distributed.

"The education savings accounts would be exempt from taxes unless they ceased to be education savings accounts or unless they had unrelated business income taxable under 26 U.S.C. 511. There are a number of ways in which an account could cease to be an education savings account. If the individual who set up the account engages in any of a series of prohibited transactions with the account, the account would retroactively cease to be an education savings account as of the first day of the taxable year. The following transactions between the account and the establishing individual cannot be engaged in, either directly or indirectly:

"1. selling or exchanging, or leasing of any property;

"2. lending money or extending of credit;

"3. furnishing goods, services or other facilities;

"4. using account assets for the individual's own benefit;

"5. dealing with the account assets as if they were the individual's.

"If the account ceases to be an education savings account because of a prohibited transaction, the fair market value of all assets in the account would be treated as distributed on the first day of the taxable year.

"If the beneficiary of an education savings account uses the account or any portion of it as security for a loan, the amount so used is treated as if it had been distributed.

"There is no penalty for distributions made to the taxpayer after the taxpayer becomes disabled, even if the distribution is used for a non-qualifying purpose.

"New subsection 223(g) provides that the section would be applied without regard to any community property laws.

"New subsection 223(h) concerns custodial accounts. (See summary of new subsection 223(c)).

"New subsection 223(i) would require the trustee to make reports to the Secretary of the Treasury and the beneficiary of such information as the Secretary of the Treasury shall require by regulation."

Section 1(b) of the bill would amend section 62 of the Internal Revenue Code to provide that contributions to an education saving account would be a deduction from gross income used in arriving at adjusted gross income. This is what is known as an above-the-line deduction. A taxpayer would not have to itemize in order to take advantage of this deduction.

Section 1(c) of the bill would amend section 4973 of the Code to provide that, like individual retirement accounts, individual retirement annuities, and retirement bonds, education savings accounts would be subject to a 6 percent tax on excess contributions as determined at the close of the year. A new subsection 4973(d) would be added to the Code to provide that the term "excess contributions" would mean the amount by which the amount contributed for the taxable year exceeds the amount allowable as a deduction under section 223(b) for the taxable year. Distributions out of the account and any returns of excess contributions described in proposed section 223(d)(2) would not be treated as amounts contributed.

Section 1(d) of the bill would amend Code section 2503 to provide that payment to an education savings account would not be considered a gift of a future interest in property to the extent that the payment is allowed as a deduction under section 223.

Section 1(e) would amend Code section 4975 by adding a new paragraph (c)(4) limiting the effect of the tax on prohibited transactions in certain cases for education savings accounts. The paragraph provides that the individual for whose benefit an educational savings account is established (*i.e.*, the taxpayer's child) would be exempt from the tax on prohibited transactions imposed by Code section 4975 if the account ceases to be an education saving account because the individual who established the account (i.e. the parent-taypayer) engaged in a prohibited transaction described in proposed section 223(e)(2)(A).

Section 1(f) of the bill would amend Code section 6693 to provide for penalties for failure to provide the reports required by proposed Code section 223(i). There would be a $10 penalty for each failure unless the failure is due to reasonable cause.

Section 1(g) of the bill provides for amending the appropriate tables of contents of sections of the Code to take into account the changes that would be made by the bill.

Section 1(h) of the bill would redesignate Code section 130 as 131 and insert a new section 130. New section 130 would provide that gross income does not include distributions from an education savings account used exclusively for the payment of educational expenses of that individual. Appropriate changes would be made in the table of sections.

Section 1(i) of the bill would add a new paragraph (6) to Code section 152(b) to provide that payments to the beneficiary of the education savings account would not be taken into account in determining support for purposes of the dependency exemption.

Section 1(j) of the bill would make these amendments effective with respect to taxable years beginning after December 31, 1981.

CITIZENS LEAGUE OF BALTIMORE HIGHER EDUCATION INVESTMENT PLAN

THE PLAN

Amend the U.S. Internal Revenue Code to allow an annual income tax deduction to individuals of up to $2,000 per beneficiary for amounts invested in a Higher Education Investment Plan. The $2,000 maximum allowable amount would be indexed to allow for the effects of inflation, as measured by annual changes in the Consumer Price Index of each year the plan is in effect.

ADJUSTING THE PRINCIPAL—A STATE SCHOLARSHIP POOL

Five percent of the total investment will be placed in a scholarship pool of the saver's state of residence for distribution to prospective students in that state according to financial need. Taxes are forgiven on the 5 percent contribution while taxes are deferred on the residual principal sum and on all earnings on principal until withdrawn.

For example:

Original investment in the plan	$2,000
Less: 5 percent contribution (tax forgiven)	100
Equals: Principal (tax deferred)	1,900

The resulting principal investment must remain in the account for at least one year.

USING THE FUNDS

Amounts withdrawn from the account for education expenses will be taxed to the beneficiary of the account over a ten-year period beginning the second year after completion of a course of studies at an approved institution of higher education or vocational school.

Education expenses include tuition, fees, books, supplies and equipment required for courses of instruction at an eligible educational institution, and a reasonable allowance for meals and lodging. An eligible institution is an approved institution of higher education or vocational school.

Each account will be administered by a custodian which is a bank, insured credit union or person satisfactory to the Secretary of the Treasury.

HOW THE PLAN WORKS—A HYPOTHETICAL CASE

Assume an investor with four dependents who has an annual salary of $25,000 invests in the plan. The investor's effective tax rate will be 25 percent federal and 7.5 percent state. The investor is a parent and the beneficiary is the investor's child.

The maximum of $2,000 per year is deposited over a six-year period. Deposits begin three years prior to the beneficiary's entrance into college as shown in Table 1.

TABLE 1.—RETURN TO INDIVIDUAL INVESTOR IN HIGHER EDUCATION INVESTMENT PLAN

Year	Investment year	Beginning of year	Deposit	5 percent contribution	Principal	Interest earned	End of year balance	Withdrawal
(1)	(2)	(3) (8)	(4)	(5)	(6) (4 − 5)	(7)	(8) (6 + 7)	(9)
X	1	X	$2,000	$100	$1,900	$190	$2,090	X
X	2	$2,090	2,000	100	3,990	399	4,389	X
X	3	4,389	2,000	100	6,289	629	6,918	$3,000
1	4	3,918	2,000	100	5,818	582	6,400	3,000
2	5	3,400	2,000	100	5,300	530	5,830	3,000
3	6	2,830	2,000	100	4,730	473	5,203	5,203
4	7	0			0	0	0	0
Total			$12,000	$600		$2,803		$14,203

Source: Citizens League Calculations.

In 1982, it is expected that approximately 226,000 Marylanders will attend college; 171,000 in Maryland institutions and 55,000 in out-of-state institutions. Table 2 illustrates the effects of a 5 percent contribution to the Maryland Scholarship Pool under three participation rates in the plan.

TABLE 2.—EFFECTS OF 5 PERCENT CONTRIBUTION FROM THE PLAN ON STUDENT FINANCING OF HIGHER EDUCATION IN 1982

	Student participation rates		
	5 percent (11,300)	50 percent (113,000)	100 percent (226,000)
Total deposited in the plan at $2,000 maximum per buyer (in millions of dollars)	$22.6	$225.8	$451.6
Amount available from 5 percent contribution (in millions of dollars)	$1.1	$11.3	$22.6
Remaining principal	$21.5	$214.5	$429.0
Interest at 10 percent, 1 year	2.5	21.5	42.9
Number of students which 5 percent contribution pool will support in tuition and fees:			
Public	1,063	10,630	21,260
Private	266	2,655	5,310
Estimated tuition and fees per student in Maryland, 1982: Public—$1,063; private—$4,256			

Note.—The interest earned can be reinvested in the accounts for a greater overall return. Interest earned can also be seen as additional funds for higher education expenditures by individuals as can deferred taxes to be paid by the beneficiary.

Source: Citizens League Calculations.

BENEFITS OF THE PLAN

1. No new federal or state agencies are required to administer this plan.

2. Referring to Table 1, each person who invests a maximum of $2,000 per year per beneficiary or student over a six-year period will have:

$3,705 in taxes deferred on deposits of $12,000.

$195 in taxes forgiven on the 5% contribution to the Scholarship Pool of $600.

$982 in taxes deferred on the interest income of $2,803.

$4,882 is the total of deferred taxes and taxes forgiven.

Since deferred taxes would be paid by the beneficiary or student, later, this $4,882 per investor could represent an additional amount of spending by the investor on higher education.

3. The plan's yield should be consistently 4 to 5 percent greater than market interest rates due to the tax deferred compounding.

4. Investors or buyers can create a possible tax-free source of funds for education which no other plan allows.

5. The fund may counter the coming reduction in government funds for operating costs and student loans.

6. Persons with investment capabilities may benefit others who cannot save.

7. Anyone can now make a charitable contribution, including persons who do not itemize their deductions. The plan is unique since the proposed contribution to the Scholarship Pool would be automatic.

CONSTRUCTING THE PLAN

The Citizens League analyzed the effects of the Higher Education Investment Plan with special emphasis on yield to the investor, funds going to the tuition pool, and taxes forgiven and deferred until payment by the beneficiary. The investor-beneficiary, where a person invests in his or her own education, is also considered.

The financial effects of the plan were calculated using assumptions and projections on participation rates and educational costs. The results are reasonable estimates of the financial effects of the plan. Table 1 summarizes selected participation by 226,000 Maryland residents who would be paying for public and independent higher education in and out of the state in 1982. The projected buyers for that year are based upon Citizens League and State Board of Higher Education forecasts of enrollments in 1982.

It was assumed that 75 percent of all Maryland residents buying higher education in and out of the state will invest in the plan.

The effective yield of the plan is based upon:

1. The interest income earned on the adjusted principal, after the 5 percent scholarship pool contribution is deducted;

2. The taxes forgiven on this contribution; and

3. The value of the taxes deferred on the adjusted principal and its interest income.

It is assumed that the adjusted principal will yield an average of 10 percent, irrespective of the length of time invested. The average investor, it is further assumed, pays a 25 percent federal tax rate and 7.5 percent Maryland tax rate.

The third item, the value of the taxes deferred on the adjusted principal and its interest income, is of major importance. If the investor is a parent, for example, and not a beneficiary, he or she is not obligated to pay income tax on the adjusted principal or on the accumulated income, and the deferral of taxes for this investor is treated as though the taxes are forgiven. This is the case since the beneficiary of the parent's investment will pay deferred taxes at a later date over a ten-year period upon graduation from a higher education institution. The beneficiary will pay the taxes at his or her own rate at the time of repayment. Table 3 illustrates the payback and compares this to the repayment of a student loan.

A comparison of the beneficiary's obligation to pay back taxes and earnings under the plan against a 9 percent student loan is illustrated in Table 3, below. This is especially appropriate at this time, since severe limitations will be placed on U.S. Government Student Loan Funds available to individual students in the immediate future.

TABLE 3.—BENEFICIARY PAYBACK COMPARISON HIGHER EDUCATION INVESTMENT PLAN VERSUS STUDENT LOAN

[Assumptions]

	Percent	Amount
(a) With investment plan principal $2,000 per year or $8,000 over		
(b) Payback period—10 years (120 months)		
(c) Assumed income tax rate:		
1st 2 years	15	$240
2nd 2 years	20	320
3d 2 years	25	400
4th 2 years	30	480
5th 2 years	35	560
(d) With Loan of $8,000		
(e) Payback Period—10 Years (120 months)		
(f) Interest rate—9 percent		

	Higher education plan	Student loan
1. Amount spent on higher education	$8,000	$8,000
2. Total amount required to payback	2,000	15,200
3. Annual payment (average)	[1] 200	[2] 1,520

[1] Taxes

[2] Principal and interest

Note: This table illustrates an either-or situation. Doubtless a combination of the plan and a loan would be appropriate.

QUESTIONS AND ANSWERS ABOUT THE HIGHER EDUCATION INVESTMENT PLAN PROPOSAL

1. What will be the level of administration costs; will there be a maximum; how will they be paid?

The costs of administering the fund will be set by the administering financial institution and will vary depending on the size of the fund in that institution. Usually, the smaller the fund, the larger the percentage of the principal required to offset administrative expenses. The payment of administrative expenses should be deducted from the net return, after the 5 percent contribution to the scholarship pool. Obviously, the higher the administrative costs of an institution, the lower the net return of the plan to the investor, and the less attractive it becomes.

2. Can a rate of return on an investment in the fund be guaranteed?

This will be left up to each institution managing the fund.

3. What happens to the investment of an individual who changes residence from one state to another?

Federal benefits do not depend on the state in which the institution is located. Therefore, at the end of the calendar year, the investment could be moved from an institution in the old state to an institution in the new state, or it could be left in the original institution. The option belongs to the individual investor, and the only difference might be in the burden of state and local taxes.

89-059 O-86-49 (Pt. 11)

4. What percentage of the investor's initial investment should be contributed to the scholarship pool?

The Citizens League believes 5 percent allows the plan to remain attractive enough to potential investors and still make a significant contribution to the students. The more contributed to the pool, the less attractive the plan will become for the investor, so that too high a percent could result in less being contributed.

5. What should be the basis for the distribution of the scholarship pool?

Funds from the pool in each state will be earmarked for scholarships according to students' academic attainment and financial need. This assumes that intellectual achievement and potential have been established by the applicant in accordance with his or her state's criteria.

6. Should the fund be allowed to make loans to individuals?

No. This provision would unnecessarily burden the fund with extra administrative expenses and also preempt other agencies and institutions from organizing to make these loans.

7. Should there be any restrictions on the types of investments made by the institutions administering the fund?

None other than those for an IRA or Keogh Plan.

8. What happens to an investor's fund if it is not used for higher education expenditures?

The 5% contributions to the investor's state scholarship pool would not be returned. If the investor chooses, he or she may withdraw the proceeds and pay a penalty and accumulated taxes on the deferment on principal and interest earned.●

By Mr. MURKOWSKI:

S. 2704. A bill to amend the Mineral Lands Leasing Act of 1920, and for other purposes; to the Committee on Energy and Natural Resources.

COAL LEASING

● Mr. MURKOWSKI. Mr. President, this Nation has vast coal reserves located on Federal lands, and our plans to make this country as energy sufficient as possible, include their lease and production. It has become increasingly obvious that coal is a unique resource with properties that can be used in a number of ways including the production of synthetic fuels.

In 1976 the Congress, demonstrating an understandable concern over the production of coal from Federal leases, enacted the Federal Coal Leasing Amendments Act thereby altering the provisions of the Mineral Leasing Act of 1920. The preference right leasing system was ended and instead future leases were to be granted on only a competitive basis. Also established were strict production obligations, for existing leases and those issued subsequent to the 1976 amendments.

As with many acts of Congress, the legislation enacted in 1976 has had mixed results. On the positive side recent studies have shown that there has been a real improvement in the status of Federal coal lease development, with a high percentage having approved mine plans or mine plans pending. Only 63 of the leases with only approximately 3 percent of the recoverable coal under lease, are unlikely to be developed.

On the negative side, some of the 1976 amendments will soon present additional problems and hence the need for some fine tuning of the mineral leasing provisions and the legislation that I intend to offer today.

The bill that I propose generally tracks H.R. 5895 which was primarily sponsored by Congressman RAY KOGOVSEK in the House. I have added one provision that would take into consideration the vast resources and considerable time needed to produce synthetic fuels from coal.

In general, these amendments are designed to continue the pressure on Federal leaseholders to develop their leases while ending those provisions which do not serve the public interest and impose rigid production obligations that do little to accomplish our final goals.

Specifically my bill would do the following:

First, deletes the provision of the FCLAA that prohibits issuance of leases for any mineral, oil, or gas to anyone who has held a coal lease for 10 years with production in commercial quantities.

Second, deletes the subsection of the MLA which requires logical mining units to be contiguous.

Third, deletes the provision that requires an exhaustion of all coal reserves within a mine within a 40-year period.

Fourth, allows the payment of advance royalties not only in lieu of continued operation but also in lieu of production in commercial quantities or production constituting diligent development, but retains the aggregate number of years for which such royalties can be accepted to 10.

Fifth, deletes the requirement to issue a mine operation and reclamation plan within 3 years of lease issuance. The plan would still be filed but at a more appropriate time.

Sixth, an exemption for coking coal from diligence and continued operation requirements so long as the coal deposits are used in, or planned to be used in, steelmaking facilities.

Seventh, a provision extending the 10-year commercial production mandate to 15 years for coal leases dedicated to synthetic fuels projects. To prevent abuse of this extension the Secretary is given the power to revoke these lease dedications.

Mr. President, I do not think anyone introduces legislation without the thought that it can be improved upon in some manner, and that is my thinking today. These amendments are designed to point out the problems that we are now facing with Federal coal leases, and to offer potential solutions. I am sure as this process goes forward, it may be necessary to alter the specific language or to include additional provisions. I know that some of my colleagues on the Energy Committee have greater expertise in this area than I, and I look forward to their comments and suggestions.

I am also concerned about the problem of speculation in coal leases and while I have offered no amendment at this time, I hope the subject will be explored in depth at any hearings we do hold. While I want to see Federal coal leased and produced, I want to make sure that the public is receiving the maximum benefit for the privilege of making a private profit.

It is in the interest of all parties that we explore these, and other concerns in this area, and by introducing this legislation today, I hope we can spur the same kind of interest in the Senate that has been evidenced in the House.●

By Mr. LONG:

S. 2705. A bill to suspend the duties on mixtures of mashed or macerated hot red peppers and salt until the close of June 30, 1985; to the Committee on Finance.

SUSPENSION OF DUTY ON HOT RED PEPPERS AND SALT

● Mr. LONG. Mr. President, today I am introducing S. 2705, which would permit temporary duty-free entry of imports of mixtures of mashed or macerated hot red peppers and salt. These mixtures, commonly called "mash," are imported for use in preparing hot red pepper sauces.

Mixtures of mashed or macerated hot red peppers and salt are dutiable at a column 1—or most-favored-nation—rate of 12 percent ad valorem.

Previously, duties had been suspended on this product through June 30, 1981.

Several firms in the United States, mostly in Louisiana, produce hot red pepper sauces from pepper mash. The major end user of the imported mash covered by my bill in recent years has been the McIlhenny Co. of Avery Island, La. Only approximately 300 acres of the special variety of pepper which that company uses for its sauce is grown in the United States, 40 of it owned by the McIlhenny Co. itself. Due to increased demand for this product, McIlhenny has been forced to establish new growing operations in several Latin American countries, including Mexico, because domestic production was not sufficient to meet demand. Under my bill, the temporary extension that expired on June 30, 1981 would be extended from that date through June 30, 1985. At the time the previously enacted legislation was introduced, there were no administration or private sector objections to the bill, and I anticipate none now. For these reasons, I urge early Senate

action on the bill to temporarily suspend duties on imported red peppers.●

By Mr. PERCY:

S. 2707. A bill to amend section 474 of the Internal Revenue Code of 1954 to provide that small businesses with average annual gross receipts not in excess of $10,000,000 may elect to use one inventory pool; to the Committee on Finance.

SMALL BUSINESS TAX TREATMENT OF INVENTORY POOLS

● Mr. PERCY. Mr. President, the Economic Recovery Tax Act of 1981 provided for a simplified version of LIFO—last-in, first-out—inventory rules for businesses with less than $2 million in annual gross sales. The purpose of the simplified rules was to extend to small businesses the tax savings available for many years to larger businesses which were able to use the complex LIFO rules because of their size and sophisticated accounting systems.

This legislation has been very helpful to the eligible small businesses. Most small businesses now using the simple LIFO rules were using the first-in, first-out, or FIFO method of accounting prior to the passage of the act. The FIFO method is unfairly burdensome to businesses because inflation causes them to understate the cost of goods sold and therefore overstate their taxable income. It also overstates their tax liability.

In 1979, for example, inadequate inventory accounting added $42.6 billion to taxable profits. Small companies were unable to use the fairer LIFO method because its complexity usually required costly assistance from outside accounting firms. The Economic Recovery Tax Act relieved the very small businesses from their excessive taxes by allowing them to use a single LIFO "pool" to calculate the value of their inventory instead of the variety of pools that are required for larger businesses. The single pool LIFO method is simple and less costly to implement and is thus available to most small businesses.

However, it has been brought to my attention by the Illinois Manufacturer's Association that the eligibility requirement of less than $2 million in sales is too small. Many companies whose sales exceed $2 million also use simple accounting systems that preclude the use of LIFO. Since the intent of the Recovery Act was to make LIFO available to all small businesses, adjustments are necessary in the Tax Code to provide for medium-size small businesses.

The legislation I am introducing today will raise the annual sales limit for using the simplified LIFO rules from $2 million to $10 million. The higher limit will insure that all businesses will have access to LIFO inventory account methods. This legislation is particularly beneficial to the thousands of wholesalers, retailers, and manufacturers that are inventory-intensive as opposed to capital-intensive in nature.

I would like to commend the Illinois Manufacturers Association for its efforts to revise the current law. They have done a great service to not only their small business constituency but for small businesses throughout the country. I would also like to point out that the National Federation of Independent Business strongly supports this legislation.

Mr. President, small businesses face a large number of problems which are not encountered by their larger competitors. Despite this fact, small companies create most of the new jobs in America today. I urge all my colleagues who are concerned with this overburdened but highly productive sector of the economy to support this bill.●

By Mr. GARN:

Senate Joint Resolution 210. Joint resolution to designate July 20 of each year as "Space Exploration Day"; to the Committee on the Judiciary.

SPACE EXPLORATION DAY

● Mr. GARN. Mr. President, in his classic, "Metaphysics," Aristotle wrote that, "All men by nature desire knowledge." This desire has manifested itself in a multitude of ways throughout the history of the human race. No more challenging a manifestation of this desire has been modern man's exploration of space.

Space exploration is a quest for knowledge—knowledge about what lies beyond our thin envelope of air, knowledge about the planet Earth as studied from afar. The knowledge obtained may fit theories or may surprise, may have positive elements or negative, may be useful or puzzling. However, it will enlighten, inform, and inspire. The knowledge from space will add to that basic store of information which mankind uses in the effort to address life, to relate to Earth, to understand fundamental processes and origins, to acquire insight into perplexing mysteries which limit comprehension.

Until recently, no means existed to probe the frontier of space, to venture beyond the atmosphere's limits. Only one generation separates us from the first primitive spacecraft that launched the space age. In the 25 years since, more information has been gathered about the cosmos than had been gleaned in all the centuries before: Remotely controlled spacecraft have been sent on missions extending from near-Earth orbit to far reaches of the solar system; 13 years ago, humans set foot for the first time on truly foreign soil—the lunar crust 240,000 miles from the Earth's surface; in the last decade, the winds of Mars have been measured, the rings of Saturn counted, volcanoes on a moon of Jupiter observed; in the last year, a sophisticated new order of space research potential has been demonstrated by America's Space Shuttle—a machine that allows humans to work in space; permits spacecraft to be launched, retrieved, or serviced in space; returns crew, experiments, and unrepairable spacecraft to Earth; and is reconditioned within a short period for its next launch. Experimental area aboard the Shuttle is booked through 1987, an indication of the high degree in interest. All this and much more is just the beginning—the beginning of a search for knowledge not just of the beyond, but for knowledge about conditions and circumstances critical to the Earth, and for knowledge to be used to advance present technology in a wide range of fields.

To appreciate that space research has already significantly benefited large numbers of people worldwide, one only need look at communications satellites. Today, 124 countries receive direct communications via satellite at moderate cost. This new international tool has profoundly changed modern life, making the world smaller, events immediate, impacts instant, and instruction possible almost anywhere. Domestically, communications satellites promise to lower long-distance telephone rates and bring many new communications services.

Among many other significant space research contributions, two might be cited: the NASTRAN computer program which is being widely used in structural and design applications, and NASA's remote-sensing satellite, Landsat. From Landsat, by measuring the reflection of energy off the surface of the Earth, we can inventory our agricultural resources, search for oil and mineral deposits, monitor floods, and measure the ecological impact of disturbances such as forest fires, earthquakes and volcanic erruptions.

Government, industry, and universities have worked together in the field of space exploration, challenging the new frontier. Few ventures have been as successful. The results so far have been highly encouraging and rewarding; there is every reason to press on.

Questions abound: Why is the Earth active, as volcanoes show, and "alive," while other terrestrial planets—Venus and Mars, for example—seem quiet and "dead"? Did living things produce our atmosphere? What is the explanation for the wide differences in magnetic fields among the planets? Did the Moon "lose" its magnetic field? Could the Earth? Can variations in Earth's climate be traced or predicted based on study of other worlds? Is there life on Mars, or elsewhere? What are the mechanisms that sustain the tremendous energy sources found in

space? What possibilities exist for materials, industrialization, processing, or for human colonization or habitation? What is happening to our atmosphere and what are the consequences?

All of these are questions of profound significance that deserve answering. And they are questions we know how to answer, through continued investment in space research. Earth is one of a family of worlds, all different, but all shaped by the same forces. A study of these other worlds is essential to an understanding of this one.

Perhaps the most compelling aspect of this country's space exploration effort is what it reveals about America's confidence, pride, enthusiasm, hope, expectation, its ability to organize, to innovate. I believe that Americans want to be the new explorers, and that America has the resources and will to blaze the new trails.

I therefore propose that July 20, the anniversary of the first lunar landing, be declared Space Exploration Day, to be observed each year as a tribute to the adventurous spirit and the inquiring mind.●

ADDITIONAL COSPONSORS

S. 234

At the request of Mr. HATCH, the Senator from Nevada (Mr. CANNON), and the Senator from Delaware (Mr. BIDEN) were added as cosponsors of S. 234, a bill to amend the Public Health Service Act to encourage the establishment of home health programs and to amend the Social Security Act to provide expanded coverage of home health services under the medicare and medicaid programs.

S. 1018

At the request of Mr. CHAFEE, the Senator from North Dakota (Mr. ANDREWS), the Senator from Arizona (Mr. DECONCINI), and the Senator from Wisconsin (Mr. KASTEN) were added as cosponsors of S. 1018, a bill to protect and conserve fish and wildlife resources, and for other purposes.

S. 1142

At the request of Mr. HEFLIN, the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 1142, a bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize the Secretary of Transportation to require tire dealers or distributors to provide first purchasers with a form to assist manufacturers in compiling tire defects if the Secretary determines such notice is necessary in the interest of motor vehicle safety.

S. 2000

At the request of Mr. DOLE, the Senator from South Dakota (Mr. ABDNOR) was added as a cosponsor of S. 2000, a bill to amend title 11, United States Code, to establish an improved basis for providing relief under chapter 7, and for other purposes.

S. 2094

At the request of Mr. DANFORTH, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 2094, a bill to amend the Trade Act of 1974 to insure reciprocal trade opportunities, and for other purposes.

S. 2292

At the request of Mr. METZENBAUM, the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 2292, a bill to amend section 205 of the Federal Power Act (16 U.S.C. 824d) relating to inclusion of construction work in progress in the wholesale rate base of public utilities.

S. 2353

At the request of Mr. BENTSEN, the Senator from Massachusetts (Mr. TSONGAS) was added as a cosponsor of S. 2353, a bill entitled "The Life Insurance Taxation Act of 1982."

S. 2386

At the request of Mr. SASSER, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 2386, a bill to provide for the establishment of a system to collect data on the geographic distribution of Federal funds.

S. 2413

At the request of Mr. LONG, the Senator from North Dakota (Mr. ANDREWS), the Senator from Montana (Mr. MELCHER), the Senator from Indiana (Mr. QUAYLE), and the Senator from Kentucky (Mr. HUDDLESTON) were added as cosponsors of S. 2413, a bill to delete the provisions of the Internal Revenue Code of 1954 which treat Members of Congress separately with respect to living expense deductions.

S. 2478

At the request of Mrs. HAWKINS, the Senator from New Mexico (Mr. SCHMITT) was as a cosponsor of S. 2478, a bill to amend the Controlled Substance Act, and for other purposes.

S. 2572

At the request of Mr. THURMOND, the Senator from New Jersey (Mr. BRADY) was added as a cosponsor of S. 2572, a bill to strengthen law enforcement in the areas of violent crime and drug trafficking, and for other purposes.

S. 2600

At the request of Mr. HEINZ, the Senator from New York (Mr. D'AMATO) was withdrawn as a cosponsor of S. 2600, a bill to amend the Export-Import Bank Act of 1945.

S. 2610

At the request of Mr. CHAFEE, the Senator from North Carolina (Mr. EAST), the Senator from Nebraska (Mr. ZORINSKY), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 2610, a bill to delay Treasury regulations on the debt-equity issue.

S. 2617

At the request of Mr. HEINZ, the Senator from South Carolina (Mr. THURMOND), and the Senator from South Dakota (Mr. PRESSLER) were added as cosponsors of S. 2617, a bill to amend the Age Discrimination in Employment Act of 1967 to eliminate mandatory retirement and other forms of age discrimination in employment.

S. 2658

At the request of Mr. SPECTER, the Senator from Pennsylvania (Mr. HEINZ) was added as a cosponsor of S. 2658, a bill to amend title 18 to delimit the insanity defense, and for other purposes.

S. 2676

At the request of Mr. DODD, the Senator from North Dakota (Mr. BURDICK), the Senator from Massachusetts (Mr. TSONGAS), and the Senator from Oregon (Mr. HATFIELD) were added as cosponsors of S. 2676, a bill to establish a National Hostel System Plan, and for other purposes.

SENATE JOINT RESOLUTION 178

At the request of Mr. HATCH, the Senator from Mississippi (Mr. STENNIS) was added as a cosponsor of Senate Joint Resolution 178, a joint resolution to authorize and request the President to proclaim the second week in April as "National Medical Laboratory Week."

SENATE JOINT RESOLUTION 199

At the request of Mr. THURMOND, the Senator from Oklahoma (Mr. NICKLES) was added as a cosponsor Of Senate Joint Resolution 199, a joint resolution proposing an amendment to the Constitution of the United States.

SENATE JOINT RESOLUTION 207

At the request of Mr. DOLE, the Senator from Alabama (Mr. HEFLIN) was added as a cosponsor of Senate Joint Resolution 207, a joint resolution to authorize and request the President to designate the week of August 1, 1982, through August 7, 1982 as "National Purple Heart Week."

SENATE CONCURRENT RESOLUTION 73

At the request of Mr. HEINZ, the Senator from Maryland (Mr. SARBANES), the Senator from Indiana (Mr. LUGAR), the Senator from California (Mr. HAYAKAWA), and the Senator from Wisconsin (Mr. PROXMIRE) were added as a cosponsors of Senate Concurrent Resolution 73, a concurrent resolution to condemn the Iranian persecution of the Baha'i community.

AMENDMENTS SUBMITTED FOR PRINTING

VETERANS DISABILITY COMPENSATION AND SURVIVORS BENEFITS AMENDMENTS OF 1982

AMENDMENT NO. 1909

(Ordered to be printed and referred to the Committee on Veterans' Affairs.)

Mr. SIMPSON submitted an amendment intended to be proposed by him to the bill (S. 2378) to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans; to increase the rates of dependency and indemnity compensation for surviving spouses and children of veterans; to discontinue duplicative payments to certain veterans; to increase the level of disability required for cost-saving improvements in veterans' programs, and for other purposes.

MINIMUM ACTIVE-DUTY SERVICE REQUIREMENTS FOR BENEFITS ELIGIBILITY

Mr. CRANSTON. As ranking minority member of the Veterans' Affairs Committee, Mr. President, I am pleased to join in submitting amendment No. 1909 with my good friend, the committee chairman (Mr. SIMPSON). This legislation would provide for a more uniform minimum-service requirement for eligibility for Federal benefits based on active-duty service.

On September 7, 1980, section 977 of title 10, United States Code, was enacted—in the Department of Defense Authorization Act, 1981—to establish a general 2-year minimum-service requirement for eligibility for any Federal benefit, right, or privilege based on active-duty service for those who originally entered the service after September 7, 1980. I will refer to this provision simply as section 977.

Last year, in section 608 of the Veterans' Disability Compensation, Housing, and Memorial Benefits Amendments of 1981, enacted on October 17, as Public Law 97-66, Congress enacted as section 3103A of title 38, a provision I initiated in the Senate, which superseded—by replacing and modifying—section 977 insofar as eligibility for all benefits under title 38 or other laws administered by the Veterans' Administration is concerned.

Mr. President, in the House and Senate deliberations on the title 38 provision last year, three major problems in section 977 were identified and corrected in the title 38 provisions with respect to title 38 and VA benefits.

First, section 977 applies only to enlisted personnel in the Armed Forces; it does not apply to military officers or to commissioned officers of the Public Health Service or the National Oceanic and Atmospheric Administration. With respect to title 38 and VA benefits, section 3103A of title 38 established a 2-year minimum-service requirement applicable to these officers as well as to enlisted personnel.

Second, section 977 made ineligible a 2-year enlistee who is discharged under section 1171 of title 10, which allows the Armed Forces to discharge a person from active service for the convenience of the Government up to 90 days prior to the expiration of that person's enlistment. The title 38 provision provided an exemption for those who receive such discharges.

Third, section 977 provided an exemption for those who have any service-connected disability, even those that are so minor as not to be rated even 10-percent disabling. The title 38 provision limited the exemption for those with service-connected disabilities to those who have compensable disabilities.

Mr. President, these changes with respect to title 38 and VA benefits, enacted in section 3103A of title 38, were designed to produce a fairer, more equitable minimum-service requirement.

However, in enacting in title 38 a replacement minimum-service requirement with these improvements, the Congress established one set of rules for title 38 and other VA benefits while leaving in place the other set in section 977 for all other benefits provided under Federal law based on active-duty service. Those other benefits include certain social security, civil service, naturalization, Federal Housing Administration, Small Business Administration, and Farmers Home Administration benefits.

In order to provide for a more uniform set of rules, our amendment would amend section 3103A of title 38 to provide a minimum-service requirement—superseding entirely the title 10 provision—for Federal benefits other than those that are provided under title 38 or administered by the VA, as well as for those that are. Our amendment would track closely the policies in the existing title 38 provision and thus would make the same three major improvements, which I discussed earlier, that the title 38 provision made last year in the rules governing title 38 and VA benefits eligibility.

Mr. President, our amendment would also make certain other clarifications and minor adjustments in the minimum-service requirement for non-VA/title 38 benefits. First, it would clarify, consistent with the Social Security Administration's interpretation of section 977, that the only Social Security Act benefit affected by the minimum-service requirement is that provided under section 229(a) of the Social Security Act, under which active-duty personnel are deemed to have been paid additional wages of $100 for each $300 of military pay, up to a maximum of $1,200 per year in deemed wages. Earned social security credits—those based on actual employment and wages and for which social security tax is paid—would be expressly exempted from the minimum-service requirement under our amendment.

Second, our amendment would clarify—consistent with preliminary information I have received regarding the Office of Personnel Management's interpretation of section 977—that the only civil service provisions affected by the minimum-service requirement are the veterans preference provisions other than those for veterans with compensable, service-connected disabilities. It should be noted that those who entered the service after September 7, 1980, who are not service-connected disabled do not qualify for veterans preference at the present time and will qualify in the future only if they serve during a war or in a campaign or expedition for which a campaign badge is authorized. Thus, the minimum-service requirement in section 977 and the superseding one we are proposing in title 38 would have effect on nondisabled veterans only in the event of some future outbreak of hostilities involving the U.S. Armed Forces.

With respect to the calculation of length of Federal service for purposes of retirement credits and the rate at which annual leave is accrued, our amendment would specify that active-duty personnel would not be barred by the minimum-service requirement from receiving credit for any period of time actually served on active duty. This result, the same as for the service of Federal employees regardless of the duration of their service, appears—though I have sought but not yet obtained clarification—to be consistent with the Office of Personnel Management's interpretation of section 977 of title 10.

I would also note that our amendment would expressly exclude unemployment compensation for ex-servicemembers—UCX—from the scope of the minimum-service requirement. The UCX provisions—subchapter II of chapter 85, title 5, United States Code—contain a specific minimum-service requirement that has been amended twice in the last 2 years, and it appears that a further amendment will be enacted this year. It is my understanding that the Department of Labor has not interpreted section 977 as applying to the UCX program. As an original cosponsor of a bill proposing such an amendment—S. 2028, introduced by Senator BRADLEY on January 28, 1982—I believe it is preferable to work out the UCX minimum-service requirement issues in legislation specifically dealing with that benefit in light of its unique purposes.

Mr. President, in preparation for the submission of this amendment, preliminary efforts were made to ascertain

the specific manner in which various departments and agencies with responsibility for administering certain Federal benefits—provided by reason of active-duty service in the Armed Forces—are applying the provisions of section 977 with respect to non-VA, non-title 38 benefits. Full information has not yet been obtained in certain respects and a response to my request, made through the Congressional Research Service, to the Department of Labor has not yet been received but is expected shortly.

Mr. President, I ask unanimous consent that there be printed in the RECORD at the conclusion of my remarks a table, based on the preliminary information now available and on the provisions of section 977 and our amendment, setting forth a comparison between the existing and proposed provisions.

Mr. President, prior to the date scheduled for markup of the bill, S. 2378, that our proposal would amend—August 12, 1982—the Committee on Veterans' Affairs will seek full information from the departments and agencies concerned with respect to how they interpret and apply section 977 with respect to the programs they administer, as well as their views on our amendment. We will also be in touch with the Armed Services Committee to solicit their views and, I hope, to reach agreement on the provisions of the amendment. In addition, I understand that our amendment will be included among the subjects covered in our committee's July 13 hearing.

Thus, prior to committee action on this amendment, we will make every effort to obtain all of the information and views that we should consider before making a final recommendation to the Senate on a fair and more uniform minimum-service requirement.

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

MINIMUM-SERVICE REQUIREMENTS: COMPARISON BETWEEN 10 U.S.C. 977 AND PROPOSED TITLE 38 PROVISION

	10 U.S.C. 977—Bar interpreted as applying?	Proposed title 38 provision—Bar applies?
Social Security:		
Deemed credits	Yes	Yes
Earned credits	No	No
Civil Service:		
Vets preference	Yes [1]	Yes [1]
Length-of-service credit	Unclear [2]	No
Farmers Home Administration	Yes [1]	Yes [1]
FHA	Yes	Yes
SBA	Yes [3]	Yes
Naturalization:		
Waiver for 3 years of service	No	Yes
Waiver for vet of period of hostility	Unclear [1 2]	Yes [1]
Bar applicable to Armed Forces officers and to PHS and NOAA officers?	No	Yes
Exemption for up-to-90 days "early outs"?	No	Yes
Exemption for service-connected disabled vets.	Provided to those with any service-connected disability	Limited to those with compensable disability

[1] Applicable only to veterans of future period of war/armed conflict.
[2] Unclarified as of June 30, 1982.
[3] Not yet being applied.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

Mr. STEVENS. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Reserved Water, of the Committee on Energy and Natural Resources, be authorized to meet during the session of the Senate on Friday, July 2, at 9 a.m., to consider S. 1999, a bill to amend the act to provide for the establishment of the Wolf Trap Farm Park in Fairfax County, Va., and for other purposes; and S. 2436, a bill to designate the Mary McLeod Bethune "Council House" in Washington, D.C., as a national historic site, and for other purposes.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, June 30, at 10 a.m., to hold a business meeting to consider pending calendar business.

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

(Later the following occurred:)

Mr. STEVENS. Mr. President, I ask unanimous consent that the unanimous-consent agreement previously entered into concerning the meeting of the Committee on Energy and Natural Resources today specifically provide that their authority to meet during the session of the Senate except from their consideration S. 2305.

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

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet during the session of the Senate at 9:30 a.m. on Wednesday, June 30, to hold an oversight hearing on Public Law 93-638, the Indian Self-Determination Act.

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

COMMITTEE ON FINANCE

Mr. STEVENS. Mr. President, I ask unanimous consent that the Finance Committee be authorized to meet during the session of the Senate at 9:30 a.m. on Thursday, July 1, to consider the spending and tax reconciliation bill.

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

ADDITIONAL STATEMENTS

ANOTHER STATE DEPARTMENT TREATY TERMINATION

● Mr. GOLDWATER. Mr. President, I must report that the moles are at work again in the State Department. The permanent bureaucrats who do nothing but try to erode the Constitution by absorbing ever-increasing powers for the executive branch, and particularly for the Department of State, are at it again. And, as usual, the Senate will complacently sit back and do nothing while our own powers are being steadily whittled away.

The latest blow to the Constitution is at first glance a minor matter, a trivial event compared with all the controversy over Soviet credits and trade, our China policy, Middle East negotiations, and other major issues. In fact, almost no one in the Congress is aware of this latest grab for power by the State Department.

It is hidden away in the form of a letter to the Foreign Relations Committee dated last Wednesday that gave the committee 1 week's notice of the State Department's design to abrogate a tax treaty with the British Virgin Islands. The Department did not ask the committee or the Senate for its approval. It instructed the Senate what would happen.

Now, the British Virgin Islands Treaty, by itself, is of no great moment, although some banking interests may dislike its cancellation. Other groups will claim our exit from the agreement will eliminate a tax haven. Several similar agreements may be targeted for termination in the future.

To me, the important development is not the abrogation of a minor tax treaty. Rather, it is the determination of the State Department to follow on the heels of former President Carter's unprecedented withdrawal from the defense treaty with Taiwan by setting a new precedent of unilateral executive treaty termination.

The State Department does not seek our participation in this step. It assumes a treaty can be annulled without our advice and consent even though this is contrary to the whole course of American history up to the time of the Mutual Security Treaty with the Republic of China.

The Senate failed to act then. Instead, the Congress enacted a strong Taiwan Relations Act which in some ways replaces the defense treaty.

But now we see it happening again. The State Department is usurping our power, our constitutional duty, to take part in deciding whether or not to terminate the law of the land.

Maybe most Senators do not care. But they should. Every treaty we have is subject to the whim of the State De-

partment if we do not assert our proper constitutional role in deciding on the life or death of our formal international undertakings.

Does anyone here care about NATO? Or what about the Nuclear Nonproliferation Pact?

Is the State Department to possess unchecked power to pull this country out of the Security Treaty with Japan if she does not increase her defense effort or redress our trade imbalance? Can a future Secretary of State give notice that we are withdrawing from the Biological Warfare Convention because of a desire to gain superiority?

The issue cuts across ideological lines. The question is not whether a given treaty is favored or disfavored by conservatives or liberals. The question is whether the Senate, as an institution, will uphold the design of the framers that we should participate in making the policy decision.

Mr. President, I have introduced a resolution, Senate Joint Resolution 31, to establish rules for treaty termination that would insure our joint action, together with the executive branch, whenever a major treaty is terminated by our country. Six Senators have joined as cosponsors. It does not matter to me whether that resolution or another is acted on, but I do believe the Senate should reassert its role in making the important decision or whether a treaty that we participated in making shall be repealed.

I urge the chairman of the Foreign Relations Committee and the majority leader to address this subject with hearings and bring a proposal before the Senate which will preserve the shared authority we were granted as a check on the concentration of all power in the executive branch.●

NEBRASKA AND THE UNITED STATES NEED A SUGAR INDUSTRY

● Mr. ZORINSKY. Mr. President, last summer, I joined 63 of my Senate colleagues in approving the sugar title of the 1981 Food and Agriculture Act. I did so in the belief that a viable domestic sugar industry is in the Nation's best interest. I continue to adhere to that belief.

I was further convinced that the beet sugar industry is also important to Nebraska. It provides jobs and wages, and taxes and, yes, even purchases of soda pop and bakery products. The beet sugar industry is a good customer for Nebraska farm implement dealers, fertilizer suppliers, railroads, and other providers of goods and services.

As telling as any argument for the maintenance of a U.S. sugar production capability, however, is the fact that if this basic commodity were no longer available from nearby American farms, sugar users in Nebraska would be totally beholden to cane refiners in the gulf States or refiners located along the northeastern seaboard—quite a freight haul to Hastings. These distant refiners would, in turn, have to depend on growers in politically unstable Central and South America for a commodity essential to all Nerbaskan households and one that is critical to the State's bottlers, bakers, and confectioners.

Senator TSONGAS of Massachusetts, sponsor of legislation to eliminate the sugar support program, perhaps feels no such concern. The two cane refineries in Boston, one owned by Philippine interests, operate essentially on imported raw sugar. They remain viable by simply passing along their refining costs to consumers, whether they pay 10 cents or $10 per pound for imported raws.

The Quayle-Tsongas approach to reduce the sugar support level for the purpose of having a level that can be conveniently achieved is somewhat like the story of the freshman economics student, who proudly announced that he had, that afternoon, run home beside the bus and achieved a "saving" of 30 cents. His father advised that if, on the following day he would run home beside a taxi, he could achieve a "saving" of $2.

Nebraska sugar beet farmers and processors and other segments of the U.S. sugar industry cannot remain viable in the misnamed world free market when the fact is that this country's sugar industry would be the only group that plays by free trade rules. More that 80 percent of the world's sugar production is marketed in protected home markets—Australian refiners pay 23.8 cents per pound for Aussie-produced raw sugar; sugar imports into Australia are prohibited—or sold under preferential trade arrangements. Russia pays Cuba 31.5 cents per pound for raw sugar under long-term contract, which takes about two-thirds of the Cuban output.

The balance of the world's sugar production, averaging about 20 percent is dumped at whatever price it can bring. It is against such dumped sugar that American farmers must compete and thus a loan program becomes essential to keep the industry afloat in years of world glut. The dividend for American consumers comes in the years of short world supply. During those periods if there were no U.S. industry, Americans would pay dearly for sugar, if indeed it was available at all.

I believe the sugar support program adopted last summer achieves a fair balance among the interests of consumers, taxpayers and the producers of an essential commodity. Agriculture Secretary Block has stated that the import quotas will be removed when the glut induced distressed price of imports advances. The mechanics of the fee arrangement similarly reduce the fees as the prices of imports achieve a more realistic level. I am convinced that, for now, we should keep the sugar support program on the books at its present modest level. I will, therefore, work to defeat the Quayle-Tsongas amendment.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS

● Mr. WALLOP. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD this notice of a Senate employee who proposes to participate in a program, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The Select Committee on Ethics has received a request for a determination under rule 35 which would permit Mr. John Ritch, of the Committee on Foreign Relations staff, to participate in a workshop sponsored by a foreign educational organization, the Friedrich-Ebert-Siftung (Foundation), in Bonn, West Germany, on June 25-26, 1982.

The committee has determined that participation by Mr. Ritch in the program in West Germany, at the expense of the Friedrich-Ebert-Siftung (Foundation), is in the interests of the Senate and the United States.●

SMALL BUSINESS INNOVATION ACT

● Mr. TSONGAS. Mr. President, yesterday the Senate unanimously demonstrated its belief in the unique productiveness of the small business community by passing without objection the Small Business Innovation Act as approved by the House. In December of last year, we approved a similar measure, again unanimously—90 to 0. During the period since December a number of questions have been raised over the effectiveness of this legislation and its potential effects on other members of the research community.

In spite of these questions, I am convinced of the merits of the approach this legislation calls for. It stems from a recognition of the special role the small business community plays in generating the new ideas needed to fuel tomorrow's economic growth. A flourishing small business community full of new firms with new products and ideas offers us the greatest prospects for significant economic growth.

Earmarking a small percentage of research and development budgets of Federal agencies acknowledges the fact that it takes more effort to work with a number of small firms than

with a handful of larger organizations. This bill creates the administrative incentive to make that additional effort. I am convinced we will find this extra effort well rewarded by a high return in innovation and job creation.

Concern has been expressed that this measure will result in harmful cutbacks in research and development funds to other nonprofit research organizations like our universities. I believe these sentiments are more a product of the prospects of cutbacks in overall civilian research and development budgets.

The percentage earmarked for small businesses in this legislation is small: 0.1 percent in the first year; 0.3 percent in the second year; 0.5 percent in the third year; 1 percent in the fourth year; and 1.25 percent in all subsequent years.

During this 5 years phase-in, I urge all of my colleagues to work to diminish the concerns of the university community by reversing the dangerous trend of reductions in research and development budgets. These cutbacks are the worst form of false economies. When we reduce our financial commitment to research and development we reduce our investment in a brighter economic future.

There can be no more discouraging sign of our commitment to long-term economic growth than finding the sources of tomorrow's wealth, the research and development community, reduced to struggling over a shrinking pie of financial commitment. By passing this legislation we have affirmed our commitment to the small business community. I would like to encourage my colleagues to follow this action by redoubling our commitment to the larger research and development community.

I would like to close by thanking a few of my colleagues for their special efforts on behalf of this legislation. Senators RUDMAN, WEICKER, NUNN, HUDDLESTON, KENNEDY, and LEVIN all deserve particular credit for their vigorous and longstanding efforts on behalf of this legislation.●

TRIBUTE TO MAURICE F. BISHOP

● Mr. HEFLIN. Mr. President, on Saturday, June 12, 1982, Alabama lost one of its most outstanding attorneys, when Maurice F. Bishop, a longtime friend, tragically passed away. Widely acknowledged as one of the hardest working attorneys in the State, he once said that he hoped his death came while he was working on a case. At 68, still frequently working 100-hour weeks, Maurice was struck by a fatal hemorrhage.

Rarely has there been a man as totally dedicated to the legal profession as Maurice was. John Foster, a close friend of Maurice's for many years, may best summarize his love for the law: "He was more dedicated to the law and worked harder than anyone I have known. He just liked it."

The high regard in which Maurice was held has been further evidenced by the voluminous expressions of sympathy that have been showered on the Bishop family.

As an attorney specializing in utility ratemaking and land condemnation, Maurice distinguished himself and became nationally known for his extraordinarily effective representation of the State and public interest. His efforts as special valuation and utility counsel for the Alabama Public Service Commission yielded the largest refunds for utility customers in the State's history.

Maurice also served as condemnation counsel for the Birmingham Housing Authority, where his efforts resulted in the acquisition of more than 40 blocks of property for the expansion of the now widely renowned University of Alabama Medical Center.

He served honorably as attorney for Jefferson County for 30 years, and was also special assistant to the city attorney of Birmingham from 1950 to 1960. During this same time, he also served as a special assistant attorney general in highway acquisition work and represented both the Jefferson and Fairfield County Boards of Education.

To his colleagues, Maurice was a shining example of legal scholarship and professional competence. He was a nationally recognized leader in the field of eminent domain, and appeared frequently as a lecturer at legal education seminars throughout the Nation. He authored several handbooks and scholarly articles on the law of condemnation and eminent domain.

For many years, Maurice served on the Committee on Condemnation and Condemnation Procedure of the American Bar Association, where his work was termed "invaluable." He was recognized as a fellow of the American College of Trial Lawyers, and was a member of the American, Alabama, and Birmingham Bar Associations.

Maurice Bishop's many accomplishments, together with his years of work in public service, and the high esteem in which he was held, serve as testimony that we have indeed lost a great American. He will be sorely missed by the Alabama legal community, and by all who knew him. The sadness of his passing is overshadowed only by the magnitude and noble nature of his accomplishments.

Mr. President, I ask that the two newspaper articles from the Birmingham News and the Birmingham Post-Herald be printed in full in the RECORD.

The articles follow:

[From the Birmingham News, June 13, 1982]

ATTORNEY MAURICE F. BISHOP DIES

Maurice F. Bishop, 68 a nationally-known attorney specializing in utility rate-making and land condemnation, died Saturday at a local hospital following a brief illness.

He became widely known in Alabama during the administrations of former Gov. George Wallace and the late Gov. Lurleen B. Wallace when he represented the state and public interests in resisting applications of major utilities for rate increases and litigated the valuation of all major utility properties in Alabama before the Alabama Public Service Commission and in Alabama courts.

He served as special valuation and utility counsel for the PSC and obtained for utility ratepayers the highest utility refunds in the history of the state, exceeding $135 million.

For more than 30 years, Mr. Bishop served as a special assistant attorney general for the state, specializing in land condemnation cases in highway acquisition work.

He was nationally recognized as a legal scholar in the field of eminent domain and appeared frequently as a lecturer at legal seminars in many states.

This led to the authorship of several handbooks and articles for legal publications on land condemnation and eminent domain. For several years he served on the Committee on Condemnation and Condemnation Procedure of the American Bar Association.

Mr. Bishop served as attorney for Jefferson County for 30 years; special assistant to Birmingham's city attorney from 1950 to 1960; attorney for the Jefferson County Board of Education for more than 25 years, and more recently, attorney for the Fairfield Board of Education.

He was condemnation counsel for the Birmingham Housing Authority, handling legal work that resulted in the acquisition of more than 40 blocks of property in the city which has been used for the expansion of the University of Alabama Medical Center.

A native of Irondale, Mr. Bishop received a bachelor's degree from Birmingham-Southern College, a master's from Duke University and his law degree from the University of Alabama.

He was a Fellow of the American College of Trial Lawyers and a member of the American, Alabama and Birmingham Bar Associations.

Funeral will be at 11 a.m. Monday at Valley Chapel, with burial in Elmwood Cemetery. Officiating will be the Rev. Robert Archibald and the Rev. Clarence Patton, both of East Lake United Methodist Church where Mr. Bishop was a member.

Survivors include his wife, Mrs. Minnie R. Bishop, Irondale, and two brothers, Clinton D. Bishop and Julian G. Bishop, both of Birmingham. He was the son of the late W. D. "Wash" Bishop, president of the Jefferson County Commission from 1928 to 1938.

The family suggests any memorials be made to the Methodist Children's Home in Selma or a favorite charity.

[From the Birmingham Post-Herald, June 14, 1982]

FRIENDS REMEMBER BISHOP WANTED TO DIE WORKING

(By Jay Hamburg)

Maurice Bishop, 68, noted legal authority on land condemnation and a former attorney for Jefferson County, is remembered by

friends as a hard worker who said he wanted to die while working on law.

And friends said Bishop, who died Saturday of a cerebral hemorrhage, was stricken while on a case.

Tom Gloor, former Jefferson County Commission president, said, "I used to ask him to slow down a lot of times. He said, 'I don't know anything but work. I'll have to go out working.' "

Colleagues say Bishop worked seven days a week and often put in 16 hours a day.

County Commissioner Chriss Doss said, "Maurice was quite a scholar. He was probably the hardest working attorney in the Birmingham bar. This was his whole life. He thoroughly enjoyed working."

John S. Foster, 75, who knew Bishop for more than 40 years, said, "I just thought he was a wonderful person and always will think so. In a time like this when everyone has their meters running, it's refreshing to know someone like this."

Gloor said Bishop was "talented, dedicated and really cared about people."

Bishop, whose late father, W. D. Bishop, was chairman of the Jefferson County Commission from 1928 to 1938, was known for representing former Gov. George C. Wallace in utility rate cases before the state Public Service Commission.

Born in Irondale in 1913, he studied at Birmingham-Southern College and Duke University. He received his law degree from the University of Alabama in 1938.

Except for military service during World War II, he practiced law in the Birmingham area, specializing in eminent domain cases in Alabama and other Southeastern states.

He served as attorney for Jefferson County for 30 years and was special assistant to the city attorney of Birmingham from 1950 to 1960.

As special evaluation and utility counsel for the Public Service Commission, he obtained for utility ratepayers the highest utility refunds in the state's history.

He served as condemnation counsel for the Birmingham Housing Authority. His work resulted in the acquisition of more than 40 blocks of property for the expansion of the University of Alabama Medical Center.

He also was a special assistant attorney general in highway acquisition work for more than 30 years, and represented the Jefferson County and Fairfield boards of education.

He authored numerous articles for law journals, as well as "How to Handle a Condemnation Case," a legal handbook for Alabama probate judges.

Foster said, "He was more dedicated to the law and worked harder than anyone I have known. He just liked it. I'm absolutely positive of this: It was not any desire as far as money was concerned."

Gloor said, "He'll create quite a vacuum."

Funeral will be at 11 a.m. today at Valley Chapel with burial in Elmwood Cemetery. He is survived by his wife, Mrs. Minnie R. Bishop; and two brothers, Julian G. and Clinton D. Bishop, both of Birmingham.

Memorials may be made to the Methodist Children's Home in Selma or a favorite charity.●

MINORITY BUSINESS AND THE U.S. ECONOMY

● Mr. NUNN. Mr. President, during many of the Senate Small Business Committee's hearings over the past 18 months, we have repeatedly called attention to the impact the economy has had on small business, and the changes that certain program decisions may have had on small businesses' chances for survival.

Last week, the Senate Small Business Committee held a hearing on minority business and its contributions to the U.S. economy. In my view, that hearing demonstrated the vital role which minority business plays in our Nation's economy. In addition, the hearing provided an opportunity for the committee to learn firsthand from successful minority entrepreneurs some of the reasons for their growth and development, and some of the problems which they, and other minority business owners, continue to face.

I particularly want to thank Senator WEICKER, the chairman of the Senate Small Business Committee for agreeing to my request for these hearings, and to Senator GORTON for his chairmanship of these hearings.

Mr. President, I believe our colleagues in the Congress would benefit from the businesses' testimony received at the committee. Therefore, I ask to insert in the RECORD highlights of the statements of the private sector witnesses at the Senate Small Business Committee's June 23, 1982 hearing.

The material follows:

OPENING STATEMENT OF SENATOR NUNN

Mr. Chairman, first I appreciate your receptiveness to my request to schedule these hearings, and for the cooperation and assistance you and your staff have provided.

During the past decade or so, but in the last four or five years in particular, there has been increased attention focused on the need to foster minority business entrepreneurship, and the benefits that such an effort can produce.

Much of that attention has been at the Federal level, but many States, local governments, and the private sector have also undertaken programs that contribute to that effort. Some of these efforts have been highly successful, as our witnesses today will show us. Others have been less successful, and we need to better understand why they have not been as beneficial so that errors will not be repeated.

But unfortunately, most of the attention that has been focused on the Federal efforts to assist in the growth and development of minority businesses have tended to focus on the *negatives* in those programs, including the potential for "waste, fraud, and abuse" or the differences in opinion on the appropriate day-to-day program implementation.

For that reason, I suggested to Senator Weicker that our committee hold a hearing to show the positive contributions that minority businesses provide to the economy and to society, and to highlight both their role in the Nation's economic recovery, and their special relationships with the Federal Government.

As unusual as it may seem, this simple recognition of the contributions that minority businesses make to our society is a very important step at the National level. If we are to allow minority businesses to develop to their maximum, policy-makers at all levels must be aware of the significant role that they play, and what barriers still exist to their further development.

Mr. Chairman, I know what the minority business community contributes to the State of Georgia.

According to the most recent (1977) Commerce Department survey, there are almost 10,000 black-owned businesses alone in the State, with gross receipts approaching $375 million.

These statistics for Georgia are encouraging, and I am sure the results of the current census survey will see them on the rise. But the full extent of this contribution by the minority business community in Georgia, and nationwide, is understated, however, because of the lack of comprehensive, reliable, or timely data on minority business. This lack of data also hinders the policy-making function for us.

We will have with us today some very successful minority businessmen and women who will be able to share their experiences with this Committee, and the Congress. I will be interested in their perspectives.

But I want to be sure we understand that, while we can assemble an impressive witness list of success stories in the minority business community, there are not yet enough successes to be confident that we have addressed the problems which the minority entrepreneur faces.

Thank you again, Mr. Chairman, for calling these hearings. I look forward to the testimony, and the record that we will develop.

OPENING STATEMENT OF LOWELL WEICKER, JR., CHAIRMAN

Today the committee will hear testimony from minority entrepreneurs and Government witnesses about the contributions that minority businesses make to the economy and the country. I would like to start by commending my colleagues, Senators Gorton and Nunn, for their involvement in this important hearing on a very timely subject.

With business failures at record levels and unemployment climbing at an alarming rate, we here in Congress, and those in the administration, must begin to search for solutions. In our search, we must not overlook the essential contributions of minority businesses to our economy and our communities, nor should we overlook the important role they can play in putting that economy back on its feet again.

I would like to point out at the outset that this committee and this chairman have long been committed to programs which foster minority business development. Unfortunately, the full potential of the minority business community has yet to be realized. I am hopeful that this hearing today will identify those factors that inhibit the growth and expansion of minority owned businesses.

To a large extent, the fate of our economic structure rests with our small businesses, which are really the heart of our cities and our local communities. This is also true of minority owned small businesses. If plans for local economic development, jobs creation and the renewal of our urban areas, are to succeed in the months ahead, small business, and particularly minority small business, will have to play a key role.

As I have said before, for people to care about our economic system they must have a stake in it. Therefore, it makes both economic and political sense to promote minority business through effective Federal Gov-

89-059 O-86-50 (Pt. 11)

ernment and private sector advocacy programs.

I trust that, in the formulation of their policies in the months to come, the administration will keep some of the points raised in today's hearing in mind. Certainly we need to continue the process of bringing more minority participants into our country's economic mainstream, and we ought to acknowledge and reaffirm the Federal Government's role and commitment to those goals.

STATEMENT BY EARL G. GRAVES, PRESIDENT, EARL G. GRAVES LTD., EDITOR & PUBLISHER, BLACK ENTERPRISE MAGAZINE

My name is Earl Gilbert Graves. I am president of Earl G. Graves, Ltd., a communications company headquartered in New York City. I want to thank you for the opportunity to present my views on "minority business and its contributions to the U.S. economy." I would also like to think this distinguished committee for providing this forum for such a crucial and timely topic.

As editor and publisher of black Enterprise magazine, it has been my good fortune to record the most recent wave of growth of black-owned businesses in this nation.

Contrary to much of previously recorded history, the stories of successful black businessmen and women are as old as the history of America. Many of the blacks who arrived on the shores of this new land in the seventeenth century as slaves or indentured servants were able to work to purchase their freedom—buy their own land and partake in the mainstream of infant America.

In our proud history, there have been major black shipbuilders and shippers. We have seen highly successful black merchants who pioneered in the fields of catering, barbering and clothing manufacturing. But it was all taken away in the mid-nineteenth century by another set of restrictive laws designed to protect the large influx of European immigrants. In 1930, for example, black Americans owned 70,000 businesses and 134 banks. But, it was all lost during the depression. The last significant period of growth for black businesses began after the civil rights movement in the late sixties.

This June's issue of Black Enterprise magazine examined the growth of the leading black-owned companies in America over the past decade and within the last year. Let me share some of the facts with you.

Total revenues for the "top 100" black-owned businesses grew 24.2 percent in the past year—from $1.5 billion to $1.9 billion. The cutoff point for inclusion on the "black enterprise 100" list was $6.5 million in sales this year, as compared to $5.2 million for last year's list.

More important than the remarkable growth in the past year, is the substantial progress that the "top 100" black-owned businesses made over the past decade. Then years ago when we compiled the first "BE 100" list, that list totalled $459 million in sales. The 1982 list comes very close to $2 billion in sales. When adjusted for inflation, this marks a real increase of more than 80 percent. During this same period, the gross national product grew by only 24 percent in constant dollars.

The bottom line is that the "top 100" black-owned businesses in America grew at a rate of more than three times that of the economy at large during the past decade. That is—I'm sure you'll agree—an incredible achievement in the face of unrelenting inflation, an energy crisis, high interest rates, credit crunches, and our traditional problems of access to capital and markets.

Strongest growth for the "BE 100" occurred in the middle and lower reaches of the list between 1972 and 1981. The median sales for our middle-size companies—those ranked between 50 and 51—skyrocketed more than 500 percent in the last ten years, from $2.35 million in 1972 to $13.45 million in 1981. This represented a gain in constant dollars of 159 percent. The cutoff point for inclusion of the "BE 100" in ten years jumped from $1 million to $6.5 million, while the sales leader for every "BE 100" during this period—Motown Industries—grew slightly from $40 million to $91.7 million.

The first "BE 100" list was dominated by firms in three strong consumer-oriented categories—automobile dealerships, entertainment businesses and publishing firms. In recent years, however, the "top 100" list has become more diversified—showing strong performances by companies involved in new technologies and in energy distribution, as well as firms that cater primarily to black consumers. Construction companies located in major cities where there is considerable black political clout, such as Atlanta, Ga.—Senator Nunn's home state—have also made substantial gains in recent history.

During this same decade, the number of paid employees for the "top 100" companies increased by over 127 percent—from 9,267 paid employees in 1972 to 21,043 paid employees in 1981.

Despite the seeming phenomenal growth experienced by companies listed on the "BE 100", the outlook for the future is still cloudy. We will not know the full impact of the current recession for some time, however, early indications, are not good. In the auto industry, for example, where blacks were once represented in substantial numbers as auto dealership owners and operators, the situation is grave indeed.

Many existing auto dealerships are literally hanging on by their fingernails, wondering how they are going to survive the next few months.

Additionally, the present atmosphere of government budget cuts and changes in regulations of such efforts as the SBA 8(a) program are placing many black-owned firms in a very precarious position. Many of these firms that were once able to secure contracts from the private sector on the basis of their successful participation in the SBA 8(a) and Federal procurement programs are beginning to find that even these limited opportunities are no longer available to them.

While there is widespread debate—even among the black enterprise board of economists—concerning the role the Federal Government should play in private enterprise, there is universal agreement that governmental policies and regulations do have an impact—both positively and negatively—upon the marketplace.

Because discrimination has resulted in a "capital gap", noted economist Dr. William Bradford of the University of Maryland feels that, "there is justification in the government's stepping in to assist people who are going into business."

American Stock Exchange Chairman Arthur Levitt, who also chaired the 1980 White House Conference on Small Business, feels that for government, "not to get involved is tantamount to putting a foreclosure sign on the doors of black businesses."

"The new beginning hailed by this administration," Levitt said, "can and should be a new beginning for black businesses too. It should and must be the beginning of a drive to keep black businesses in the black * * * and very much in business."

As editor and publisher of Black Enterprise magazine, and as a businessman who happens to be black, I would hope that the outcome of these hearings and of any resulting legislation will do just that: "Keep black business in the black * * * and in business."

Thank you.

STATEMENT BY JOHN HALL, PRESIDENT OF MARK BATTLE ASSOCIATES, INC., MEMBER OF PROGRESS, INC., MEMBER OF THE BLACK PRESIDENTS' ROUNDTABLE ASSOCIATION

My name is John Hall. I am president of Mark Battle Associates, Inc., and I am a member of Progress, Inc., and the Black Presidents' Roundtable Association—two minority business trade associations. My background includes more than ten years of consulting in urban economic development, with particular emphasis on small business development. I have recently conducted specific research on the 8(a) program of the U.S. Small Business Administration and its importance as a component of a national minority enterprise development policy, resulting in the document, A Case for Government Support of Minority Enterprise, August 1981.

The research which I have recently conducted on behalf of these two minority business trade associations leads me to use this time to make the case for five specific goals for minority business development policy and programs throughout the Federal Government. These goals are as follows:

The Federal Government should:

Provide incentives, policies and programs for increasing the number of minority-owned businesses;

Provide incentives, policies and programs for increasing the number of fast-growth, minority-owned businesses in the high technology industries which tend to generate jobs at a rapid rate;

Eliminate the artificial barriers to the development of minority businesses, through the full implementation and enforcement of existing laws, regulations and executive orders, and by facilitating the prudent availability of seed and equity capital to minority businesses at affordable rates;

Facilitate the development of well-planned, controlled business environments such as industrial parks and employment centers in low-income areas (exclusive of enterprise zones) which effectively reduce the costs and the risk of doing business in those areas;

Provide incentives, policies and programs for minority as well as nonminority businesses to locate in or near minority communities (exclusive of enterprise zones).

The reasons for promoting the above policies and programs are compelling. It is quite tempting in this recessionary environment to blame the dismally high minority unemployment rates on cyclical factors which are expected to correct themselves when the entire economy recovers. The facts are overwhelming, however, that the huge numbers of unemployed minority Americans, particularly unemployed black Americans concentrated in our central cities, are emerging as a permanent dependent sector of our population which is increasingly desperate for sources of self-sufficiency. We need no innovation in this society to design the model source of self-sufficiency—that model is the small business. The unofficial black unemployment rate has not been under 20 per-

cent in the past five years (this rate includes those who want a job but no longer are actively seeking one as well as part-time workers who want full-time work). This rate currently exceeds 29 percent.

Historical trends further suggest that the problem of minority unemployment is likely to be even more severe in the future than it has been in the past. Not only has the government sector been contracting and laying off workers in recent months, but trends in the location decisions of large manufacturers as well as small businesses suggest that the jobs are going in one direction and minorities are going in another:

There is still an unfortunate lack of adequate data describing the current and historical condition of minority businesses. However, available data indicate that minority-owned firms provide jobs for more than one-half of one percent of the labor force, yet minority Americans account for more than 20 percent of the population. These percentages represent an important opportunity for minority business development policy, for the underutilized capacity in the minority business community represents a tremendous frontier of development, an underutilized source of job creation, innovation, entrepreneurial creativity and competition in an economy facing massive needs for economic stimulation in the central cities.

A review of the 8(a) program of the Small Business Administration is instructive as it relates to how the Federal Government approaches developmental needs of minorities. It focus on the 8(a) program for a purpose. It is clearly a controversial program that has been the subject of a great deal of uncomplimentary publicity. My research on the program revealed the difficulties have been widely disseminated but the notable accomplishments of the 8(a) program are not well known, are not understood and are not appreciated because the 8(a) story has not been conveyed to the public in a balanced way. Numerous studies have been conducted that highlight the positive and negative aspects of the program. The following positive factors are not widely known. The 8(a) program has been effective in:

Providing otherwise inaccessible management experience to thousands of minority-owned firms;

Providing thousands of minority firms with access to an otherwise largely inaccessible governement procurement marketplace (see exhibit 2);

Increasing the capacity in minority Americans for self-sufficiency;

Providing track records for 8(a) firms;

Helping many firms qualify for non-8(a) governement and commerical work;

Illustrating to many skeptical government officials that minority firms can perform effectively;

Providing a variety of types of satisfactory technical and financial assistance to participant firms;

Helping thousands of firms increase sales and income;

Helping many firms resolve bonding problems;

Helping many firms improve credit capabilities;

Expanding the employment and skills mix of 8(a) firms.

Based on the types of developmental needs which exist in minority communites, particularly the absence of sizable programs that help minority entrepreneurs to gain valuable management experience, it becomes clear that the 8(a) program is the most effective federal mechanism developed to date to increase the market share and viable participation of minority Americans in the U.S. economic mainstream. Federal Government intervention in many sectors of the economy has served as a barrier to development. Quite the opposite is true with respect to minority enterprise where certain Federal programs have been quite successful in selected areas and are vital to the health of the entire minority business community.

In 1977, nearly 3,500 minority-owned firms employed more than 50 employees. However, the data make it very clear that minority American businesses are still at an embryonic stage of development. A comparison of the performance of some of the U.S.'s largest minority-owned businesses, the fastest growing small nonminority businesses and the largest established businesses in the U.S. dramatically reveals the magnitude of the underutilized capacity in the minority business sector.

Federal Government policies seriously need to reflect an appreciation for the importance of the interlocking linkages between recovery of the U.S. economy, revitalization of economically depressed areas of our central cities, high minority unemployment rates and minority business development programs. Each minority business is a unit of capacity for minority self-sufficiency. Expanding minority businesses, therefore, expands the minority capacity for self-sufficiency. Failure of the government to exploit this frontier of underutilized capacity through cost-effective minority business development programs perpetuates the disproportionate dependence of minority Americans on the larger economy for jobs and income supports.

STATEMENT BY RAGAN A. HENRY, PRESIDENT OF BROADCAST ENTERPRISES NATIONAL, INC. AND PUBLISHERS ENTERPRISES NATIONAL, INC.

I am particularly concerned with the plight of minority business in the economic climate that presently besets us. Most of these minority businesses were commenced in the last ten years. They were commenced by entrepreneurs who borrowed very heavily, sometimes borrowing 90 percent or more of the capital involved in their business at floating interest rates. Not only am I concerned for those minority businesses that now exist, but I am also concerned with the large number of minority people who were taught for years by their Government to believe that the way to be upwardly mobile in our society was to start and operate small businesses. Again, the present economic climate may make it entirely impossible for many of these people to reach that dream which has been and still is held out before them.

I am in the broadcast business. Traditionally, our industry has grown at a 12 percent growth rate for many years. Recently this growth rate has declined. Many properties, including several of mine, were acquired with loans at the prime rate, plus some additional charge. For much of the last two years, we have thus been faced with 19 to 21 percent interest rates. The first year I was in business we had ten prime rate changes and a one point difference between the high and low. In 1980 we had 41 changes and a ten point difference between the high and low. Even if I am successful in operating my properties, and I believe that I am, the mathematics of the situation will not work over the long run. There is no way that highly leveraged companies can continue to pay 19 to 21 percent interest rates in an industry that is growing at less than 12 percent per year, and my industry's growth is better than most.

I believe that this situation is faced by most minority business people today. There are only two things they can do. One is to fail. If they are fortunate enough, as in our case, to have built up substantial assets, then the alternative is to sell off some of the assets to eliminate debt. Neither alternative is desirable. At a time when a goal is to build up small business, forcing that business to sell off assets actually means smaller and fewer small businesses. Business failure is the ultimate defeat, both for the individual and for the country as a whole. We now live in an economic climate when one can have the most successful business in terms of the old standards and still perish.

In addition to the interest rate climate, minority business could be affected by what may be a developing credit crunch. If the Government operates with huge deficits and has to borrow huge amounts of money, this will leave less money available to lend to large and small private businesses. Since it is largely true that minority businesses are the last to be financed and in many instances are the most highly leveraged in the market place, any credit crunch would mean that they would be left out. Literally, minority businesses are the last to receive credit and, if a shortage of funds to lend develops, they will suffer the most.

Given the above two situations, it is absolutely necessary to consider the importance of government programs as the only real alternatives that minority businesses may have.

The MESBIC programs have filled a much needed role for minority businesses, and their capabilities need to be expanded but on a different basis than they presently operate. The MESBIC program could be greatly improved if the government would buy non-voting stock in the MESBIC's equal to or greater than their present capital with the requirement that MESBIC's be required to invest the proceeds of such stock purchases as pure equity in minority businesses and not as loans.

With the build-up in defense spending and other Governmental spending, the Government may be the best available source of business for many minority entrepreneurs. However, there is reason to think that Government bidding procedures must be reviewed and revised if minority business is to benefit.

In summary, these are very hard times for small business and small minority business in particular. There is a real need for more, not less, support from the Small Business Administration, the MESBIC's and other government programs intended to support minority business.

MARY ALICIA ROACH PAIGE, PRESIDENT, COMPUTER ENGINEERING ASSOCIATES, INC., AVON, MASS.

CEA is a small disadvantaged firm which is currently certified through the Small Business Administration under the 8(a) program. We provide computer services such as software development, on-site support, systems and maintenance support, systems planning and integration, conduct various research activities for both government and commercial industrial organizations.

I started CEA, after having a career in library service, both with the federal govern-

ment and town government, totalling 24 years. CEA was incorporated approximately 3½ years ago.

My two partners joined me at the opening of CEA as employees. They had agreed to work under contract for minimal or no salary for 1½ years. It was agreed that if we were still in business at that time, I would sell them each 20 percent of my stock. Eighteen months later, I was certainly glad for that agreement. Although we had won some small contracts, my start-up money was almost depleted, and the capital investment that my two employees injected into the corporation for their stock purchase certainly helped the situation.

We sustained ourselves by winning small and medium sized contracts competitively through the Commerce Business Daily. In many cases when our proposals were turned down, we were given reasons such as, "You're too small and new," "You don't have the experience" or "You do not have the cash flow we consider necessary to carry the job to its conclusion".

I needed a loan, so I applied to many banks. Banks simply would not even discuss ways I could get a loan with them. It was frustrating. They said I had poor cash flow and needed money too badly. I went to them for a loan because I needed money. I went to SBA to apply for a working capital loan. At this meeting I was told about the 8(a) program. Let me state, at that time I knew nothing about this program. But I decided to apply for 8(a) assistance to strengthen my company. Although I appreciate SBA's assistance, I must say that this agency, had imposed several obstacles. When I carried my initial paperwork into the SBA Region I's office, the gentleman I dealt with looked at me with a smirk on his face and asked, "Ms. Paige, why would you want to open a consulting firm, why didn't you open something like a hat shop". Again, I was facing the old stereotyped attitude.

Finally, after 2½ years of operation and 7 months on the 8(a) program, I was able to finalize a guaranteed loan through SBA with Commercial Credit Financial Corporation. I have not missed a payment since the loan was finalized. By the time I did receive the loan, I was deeply in debt. I had stayed in business only because of our competitively won contracts. Each contract was used to sustain the staff members who executed the contract.

I must admit that the 8(a) contracts that I currently enjoy and have completed would not have been open to me without this certification. I have been very conscientious about the contracts I have received, and because of that fact, I have been successful in changing the mind of a few contracting offices about the abilities of 8(a) firms.

The SBA also has a great need for improvement in its management information system, especially in its database for Small Business and 8(a) assistance. At the present time, they cannot affectively track or assist companies on the 8(a) program simply because of the (PASS) database ineffectiveness.

I personally feel there should be a definitized government policy in the form of more subcontracting opportunities from prime contractors for minority contractors. There is evidence that these primes are making far too little effort to contract with monorities. There should also be a much larger percentage of Federal Procurements made to minority contractors.

There is not need for any fancy reorganization or consolidations. Just make the programs that are now in place work as they were originally intended, so they can be fully effective.

My complaint as a black woman, is that people refuse to believe I am serious. My color gets in their way. I have been marketing my capabilities in the private sector, to insure that in the future I will have the means of added growth, thus removing myself from the program, as this is the programs intent.

I have had a hard time, as a socially and economically disadvantaged person, establishing myself in spite of the prejudices of many persons who are supposed to be in a position to help me attain the American dream. Without sufficient active government support at all levels the situations that now exist for us all will continue and grow stronger. I like all other socially and economically disadvantaged persons, have a great need for government support in both capital and credit.

By persevering, CEA has grown from a company of four people to one that now employs 23 across the nation. Our sales have gone from 0 dollars at start-up in 1979 to over $500,000 last year and still more growth expected this year. I am now moving into a position to be able to help other minority companies in their fight for certification, loans or just plain honesty from agencies like SBA. We, like all other Americans, have rights, and among these is our right to be respected and considered as an integral part of the economy by those we helped put in office.

STATEMENT BY MARCUS M. GRIFFITH, PRESIDENT, THE HAIRLOX CO. INC.

I am Marcus M. Griffith, President of The Hairlox Company, Inc., of Washington, D.C. I am here today representing The American Health and Beauty Aids Institute of which my company is a member. The American Health and Beauty Aids Institute is a recently established association of minority firms that manufacture and market health and beauty aid products.

I think I speak for all the CEOs of our Institute when I say that we are a special breed of minority businessmen who consider ourselves to be rugged individualists and totally self-reliant if not self-made within the limits of such a term. We operate our companies almost exclusively in the private sector and in the best traditions of the Puritan work ethic and the free enterprise system. We represent the oldest industry in which Blacks have been traditionally successful, beginning from the year 1919 to the present. Most of us have built our companies with minimal financial assistance from other sources. Yet today, our member companies employ some 1500 persons with an annual payroll of approximately $25 million and gross sales of approximately $200 million.

I have emphasized these points because I want it to be known from the outset that the Institute does not subscribe to the view that minorities can only succeed in business with massive governmental assistance. There is, in my opinion, a time and place for the right kind of Federal assistance, but that assistance does not necessarily have to be extremely costly, as I will indicate.

I am pleased to report to this Committee that some of our member companies that received Federal assistance at the early stages of their development are now not only successful, but are among the top 100 Black firms in the country. One of these companies, M & M Products Company of Atlanta, Georgia, received the Small Business of the Year Award this year from the Small Business Administration. This company, whose president was recently honored at the White House for its achievements, now employs more than 400 persons and contributes significantly to the welfare of the Atlanta, Georgia community in many other respects.

Another outstanding success story among the Institute's members is that of the Soft Sheen Products Company of Chicago, Illinois. This company received three separate loan guarantees from the Small Business Administration, two of these during the early stages of its development approximately 10 years ago. Without these loan guarantees, the Soft Sheen Company may never have realized its present growth. The result has been a company that has grown from five employees, basically the family, to approximately 400 today.

Mr. Chairman, these are real life examples of minority firms that have received Federal backing at a crucial phase in the company's development which enabled them to attain their status in today's marketplace. There are many other success stories throughout the minority business community that are too numerous to relate at this hearing, but I should emphasize at this time, Mr. Chairman, that the greatest problem of minority business development is the problem of entry. It is true that the embryonic stages are by far the most crucial in the life cycle of all businesses, but traditionally, it has been, and remains, a considerably more difficult stage for minority small businesses.

The minority entrepreneur has to overcome both the customary economic barriers to entry and growth, as well as the artificial barriers based on age-old prejudices and stereotypes. Without various forms of Federal assistance, this dual burden becomes too great in most cases for the average minority entrepreneur to bear.

My own experience with these programs has been in the area of marketing. In 1975, with the help of the Small Business Administration, the Office of Minority Business Enterprise, and four other Federally assisted organizations dedicated to the development of minority business, my company was able to penetrate the private sector of the marketplace in a manner that might not have been possible without such help. As a result, my company was able to develop the cash flow necessary to provide for its growth. My company now employs 32 persons here in Washington, D.C., contributing more than $200,000 annually to the city's payrolls. It is my own opinion that Federal assistance in the areas of marketing and management training is equally as important as loans and loan guarantees, because assistance in these critical areas enables the minority entrepreneur to "fish by himself and for all time," and not merely gives him the proverbial "fish for one day."

In spite of the success stories I have recited, and there are many, many others out there, most of what we hear and see is the government cutting back on this form of support to the minority business community. We do not understand this action, Mr. Chairman. It makes no sense economically, socially or even politically. Throughout this hearing you will hear evidence of successful minority business development due totally or in large part to a constructive and positive government policy. Retreating at any level on this commitment would be disastrous and only add to the economic disen-

franchisement of the minority business community, stifling the economic growth and advancement of Black America and other minority interests.

In closing, although we acknowledge that many positive contributions have been made, we feel that much, much more remains to be done by both the Federal and state governments in order to advance minority business development.

Mr. Chairman, the Black business community does not want "giveaway" assistance. We expect to pay our way, but minority firms undoubtedly need help to overcome the economic and artificial barriers that prevent us from taking our rightful place in the nation's economic mainstream. Whatever this Committee can do to help transmit this message to the decision-makers at all levels of government will be greatly appreciated.

STATEMENT BY EDWARD MAYORGA, PRESIDENT, R. & E. ELECTRONICS, INC., WILMINGTON, N.C.

Mr. Chairman, Members of the Committee, I am very pleased to have been given the opportunity to speak before you on "Minority Business and Its Contributions to the U.S. Economy."

I must admit, my initial contribution was extremely small in scope. I purchased R. & E. Electronics in 1974 for $6,000 borrowed from my parents. That year, R. & E. Electronics had total gross sales of $34,058. In addition to having a large deficit net worth, salaries for the three (3) full time employees totalled $16,044. Equipment suppliers were a major concern of mine. Not only were we purchasing a very small amount of equipment, but we could not ensure that new orders could be paid for.

The SBA turned us down when we applied for a direct loan. We were unable to find a bank that was willing to work with us in the SBA guarantee loan program. We were unable to get into the 8(a) program since we fell below their minimum economic standards.

Six years later, we will now do approximately $3,500,000 in business this year, using 32 full time employees earning a total of $460,000 in salaries. Dukane Corporation sold us approximately $4,600 worth of equipment in 1976. This year we will purchase over $800,000 from them.

We have had a number of hills to climb the last seven years. That initial hurdle was to acquire sufficient capital necessary to support day to day operations and allow us to grow. Our last alternative to reaching this objective was Mesbics. We applied to 78 Mesbics across the country in 1977 for financial assistance. Of the five that corresponded, two stated they would visit our operation. One Mesbic made their visit conditional upon us paying their traveling and per diem expenses. After paying their stipend, they came down, promised the world and never corresponded again. The Sears Mesbic, Tower Ventures made a concerted effort to investigate us fully in order to make a determination on our qualifications for financial assistance. According to Sears, the $30,000 capital assistance loan was reluctantly made under the guise of compassion and a possibility of potential.

In early 1981 we attempted to establish ourselves as a distributor of several major manufacturers in order for us to compete in larger contracts. Northern Telecom, Inc., a major supplier of telecommunications equipment, was receptive to the idea of working with us. We were negotiating with GSA on a contract worth nearly $1,000,000 using Northern Telecom equipment. During final negotiations Northern Telecom arbitrarily and capriciously terminated our agreement without consultation. They took it upon themselves to notify GSA of their action. This deprived us of an important economic right without due process and without the slightest sense of fair play. Because of this, GSA terminated negotiations. We appealed, and GSA relented by giving us 30 days in which to reconfigure an entirely new system using another supplier. Seven days prior to their deadline we were able to get in touch with General Dynamics/Stromberg-Carlson. They literally rolled out the red carpet. Not only did they supply quality, professional assistance, we were able to reduce the price to the Government by $130,000.

Public Law 95-507 is a great tool for Minority owned firms to use in order to achieve market penetration. This tool is only good if the law is enforced. Unfortunately, as in the case of Northern Telecom they feel their support of Minority Owned Business is simply a matter of them certifying they have made an attempt. Unless larger corporations are forced to at least investigate the possibilities of procuring services from Small and Minority Owned Concerns, they will not.

Public Law 95-507 is not a handout program. The end result can only benefit the small business in general. Unless Corporate America is made aware of the fact that our laws will be enforced, Small and Minority Owned Businesses will not be given the opportunity to grow and achieve a viable position in today's economy.

Our growth curve this year will be three hundred and fifty percent (350%) greater than last year. Twenty-five percent (25%) of our work this year will be 8(a). By establishing ourselves as a company capable of negotiating million dollar 8(a) jobs, this has given us the credibility to negotiate and bid on large commercial projects outside the 8(a) program.

Over the years we have picked ourselves up by using a number of sources of help, many of which the Government has directly and indirectly supported. Without the assistance received from organizations and programs such as the SBA, EDA, MESBICS, 95-507, and LAMA, I would not be here today. I am very proud to say that every project we have ever worked on we have completed on time, on schedule, within the budget and always at a competitive price. Every dollar we have ever borrowed, we have paid back with interest. Due to the assistance that we have received in the past, we are able to return to our community a viable business with a substantial tax base and payroll. Additionally, we are supplying a needed product at a competitive price.●

CONGRESSIONAL CONTROL OF SUPREME COURT JURISDICTION: A REPLY TO ATTORNEY GENERAL SMITH

● Mr. EAST. Mr. President, I would like to share with my colleagues an excellent response to Attorney General Smith's recent contention that Congress is limited by a "core function" theory should it endeavor to limit the appellate jurisdiction of the Supreme Court in cases involving prayer in the schools. The author of this scholarly response is Hermine Meyer, who recently published an interesting work on the Constitution entitled, "The History and Meaning of the Fourteenth Amendment."

Writing to Chairman THURMOND and other members of the Senate Judiciary Committee, Dr. Meyer argues convincingly that congressional reliance upon its article III powers to restore prayer to the classroom is entirely in keeping with the intentions of the framers and the doctrine of separation of powers. Moreover, she rightly insists, the Supreme Court usurped the powers of the States over matters involving church-state relations when it incorporated the establishment clause into the due process clause of the 14th amendment. A withdrawal of Federal court jurisdiction over cases involving prayer in the public schools would therefore return us to the original purpose and design of the establishment clause by lodging in the highest courts of each State final authority to review such practices.

Mr. President, I urge my colleagues to examine Dr. Meyer's findings carefully and ask that her letter of June 20, 1982, be printed in the RECORD at the conclusion of my remarks.

The letter follows:

HERMINE HERTA MEYER,
ATTORNEY AT LAW,
Chevy Chase, Md., June 20, 1982.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

Re: A response to the letter of the Attorney General of May 6, 1982, concerning S. 1742.

DEAR MR. CHAIRMAN: My attention has been directed to a letter signed by the Honorable William French Smith, Attorney General of the United States, dated May 6, 1982, addressed to you.

The letter states, "It is written in response to a number of earlier inquiries from members of your Committee concerning S. 1742, a proposal which would withdraw jurisdiction from the Supreme Court to consider 'any case arising out of any State statute, ordinance, rule, [or] regulation * * * which relates to voluntary prayers in public schools and public buildings.'"

It seems that those members of your Committee wanted to have the Attorney General's view on such proposed legislation, and we could accept it as such. But an opinion of the Attorney General carries great weight. Therefore, regrettably, it needs to be shown that this opinion arrives at conclusions which are supported by inferences and conjectures rather than by the Constitution itself and its sources.

The proposed legislation involves two important constitutional questions:

First, What powers has the Constitution granted to Congress over the appellate jurisdiction of the U.S. Supreme Court?

Second, Did the Constitution grant federal judicial power in suits by individuals against a State relating to prayers in State public schools so that the federal courts could rightfully take jurisdiction?

The Attorney General did not consider the second question.

If it can be shown—and I think it can—that, when taking jurisdiction over the suits against the States relating to prayers in

their schools, the federal courts have exercised a power which has not been granted to them by the U.S. Constitution, then, by preventing them from taking jurisdiction in such cases, Congress would not "strip" or "deprive" them of anything, but would merely reestablish constitutional conditions which the Supreme Court has disturbed.

I. The power of Congress over the appellate jurisdiction of the Supreme Court has been given Congress by the U.S. Constitution without any condition and was intended to serve as a check on the Supreme Court.

The judicial power granted to the United States by the U.S. Constitution appears in Article III, Section 2, as follows:

1. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority; —to all Cases affecting Ambassadors, other public Ministers and Consuls; —to all Cases of admiralty and maritime Jurisdiction; —to Controversies to which the United States shall be a party; —to Controversies between two or more States; —between a State and Citizens of another State; —between Citizens of different States, between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

This clause has been modified by the Eleventh Amendment, as follows:

The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Clause 2 of Section 2, Article III, refers, of course, to those cases in which the grant of power is made in Clause 1.

As can be seen, the Constitution has given the Supreme Court original jurisdiction in a few enumerated cases. In all other cases, the Supreme Court has been given appellate jurisdiction "with such Exceptions and under such Regulations as the Congress shall make."

Those who do not wish to concede that Congress has plenary power over the appellate jurisdiction of the Supreme Court, concentrate on the word "exceptions" and argue, as the Attorney General does, that the concept of an "exception" means "an exclusion from a general rule of law." As others who do not wish to concede plenary congressional power over the appellate jurisdiction of the Supreme Court, the Attorney General forgets to mention the word "regulations." Thus he comes to the conclusion, "that Congress can limit the Supreme Court's appellate jurisdiction only up to the point where it impairs the Court's core functions in the constitutional scheme," (at p. 6), without, however, telling us what these "core functions" exactly are. He sees his conclusion supported by events at the Federal Convention of 1787, where the Constitution was drafted, and which he describes as follows: (at p. 6).

"The Resolves which were agreed to by the Convention and given to the Committee of Detail provided, simply, that 'the jurisdiction (of the Supreme Court)* shall extend to all cases arising under the Natl. Laws: And to such other questions as may involve the Natl. peace & harmony.' No mention was made of any congressional power to make exceptions to the Court's jurisdiction. The Committee of Detail, charged with drafting a provision to implement these Resolves, proposed the language of the Exceptions Clause. It seems unlikely that the Committee of Detail could have deviated so dramatically from the Convention's Resolves as to have given Congress the authority to interfere with the Supreme Court's core functions without considerably more attention to the subject at the Convention."

It is strange that the Attorney General would attribute such importance to this Resolve as to infer from it that the exceptions clause was not intended to give Congress plenary power over the Supreme Court's appellate jurisdiction, because this Resolve had disappeared when the exceptions and regulations clause was first proposed by the Committee of Detail.

It seems, however, that the Attorney General ignored the most important events of the Convention. The great controversy was between those who wanted a strong "national" government in which the States were reduced to mere administrative provinces, and those who wanted a federal system in which the "general government" had only such limited powers as were delegated to it by the States, and in which the States retained full sovereignty over the powers not delegated.

The centralists were behind the So-called Virginia Plan [1] which provided for a national government with general undefined powers. Thus, Resolution 6 of that Plan provided for a National Legislature which was to be empowered "to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual (meaning State) Legislation." Resolution 9 provided for a National Judiciary whose jurisdiction was to extend to certain specified cases and over "questions which may involve the national peace and harmony." Resolutions 6 and 8 subjected every State law, before it could go into effect, to the approval of the National Legislature and a Council of Revision, composed for the Executive and members of the National Judiciary.

In the first rush, this plan was largely accepted. But soon opposition grew, and on June 15, 1787, the so-called Patterson Plan was submitted to the Convention [2] which enumerated a number of powers which were to be added to those already "vested in the United States in Congress" (that is under the Articles of Confederation), and which provided for a federal judiciary to consist of a supreme Tribunal with original jurisdiction only over impeachments of federal officers, and appellate jurisdiction over a few specified cases. The jurisdiction over all other cases was to remain in the State courts. There was no national revisionary power of State laws. Instead, it was replaced by Resolution 6 which was to become the supremacy clause, and by which the States accepted as "supreme law of the respective States" the acts of Congress made "in pursuance of the powers hereby and by the articles of confederation vested in them" and all treaties made and ratified under the authority of the United States, "and that the Judiciary of the several States shall be bound thereby in their decisions, anything in the respective laws of the Individual States to the contrary notwithstanding."

Although the Convention first rejected the Patterson Plan and decided to proceed on the Virginia Plan,[3] the fundamental ideas of the Patterson Plan of a central government with limited delegated powers and a residual sovereignty remaining in the States in the end prevailed.

The first determined opposition to the Virginia Plan developed against the participation of judges in the law making process. It was generally felt that the elected representatives of the people ought to be relied on as the guardians of their rights and interests. Also it was argued that confidence in a supreme judiciary will soon be lost if the judges are employed in the task of remonstrating against popular measures of the legislature.[4]

Equally strong was the opposition to the idea that the States would have to submit all their laws to a national authority for approval. This too was thrown out by the Convention.[5] As a substitute for the discarded national veto power on state laws, Luther Martin, Attorney General of Maryland, offered a supremacy clause similar to that of Resolution 6 of the Patterson Plan. This was agreed to unanimously.[6]

On July 23, 1787, the Convention agreed to a motion by Gerry to refer the proceedings of the Convention for the establishments of a National Government to a Committee "to prepare and report a Constitution conformable thereto."[7]

By that time, there had been no general debate concerning an enumeration and definition of the powers of the general government, although there had been early demands for it.[8] Although we have no recorded evidence, I think it is permissible to infer that the Committee of Detail was entrusted with that task, because that is exactly what it did.

From documents printed in 2 Farrand 129-175, we have a pretty good picture of the work of the Committee. Document I evidently represents the proceedings referred to it by the resolution of July 23. It contains the Resolves concerning the powers of the national legislature essentially in the same language as in the Virginia Plan [9] and also the jurisdicational Resolve, namely, "That the Jurisdiction of the national Judiciary shall extend to Cases arising under the Laws passed by the general Legislature, and to such other Questions as involve the national Peace and Harmony."[10]

In Document III(15) the Constitution gave Congress exclusive Power "of instituting a federal judicial Court, to which an Appeal shall be allowed from the judicial Courts of the several States in all Causes wherein Questions shall arise on the Construction of Treaties made by the United States.—or on the Law of Nations—or on the Regulations of United States concerning Trade & Revenue—or wherein United States shall be a Party." All other powers are also enumerated.[11]

Document IV(7) provided: "The jurisdiction of the supreme tribunal shall extend 1. to all cases, arising under the laws passed by the general Legislature, 2. to impeachments of officers, and 3. to *such* other cases, as the national legislature may assign, as involving the national peace and harmony," in certain specified cases. "But this supreme jurisdiction shall be appellate only, except in Cases of Impeachment & (in) those instances, in

*Footnotes at end of article.

which the legislature shall make it original . . ." [12]

Finally, in Document IX, the proposed Constitution appeared largely as it was reported to the Convention on August 6.[13] All powers of the legislature were carefully enumerated. Art.XI, Sect. 3 provided: "The Jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States," and to controversies between certain named parties and concerning certain named subject matters. It was further provided that in a few named cases "this jurisdiction shall be original. In all the other cases before mentioned, it shall be appellate, with such exceptions and under such regulations as the Legislature shall make." [14] Such vague language as "questions as may involve the National peace and harmony," had disappeared.

Two motions to amend the exceptions and regulations clause were made in the Convention on August 27. Only the second one is mentioned in the Attorney General's letter (at p. 6), and only that one appears in Madison's notes.[15] Both are reported in the Journal. The first one reads:

"In all the other cases beforementioned original jurisdiction shall be in the Courts of the several States with appeal both as to Law and fact to the courts of the United States, with such exceptions and under such regulations, as the Legislatures shall make." [16]

This motion was withdrawn. The second motion reads:

"In all other cases before mentioned the Judicial power shall be exercised in such a manner as the Legislature shall direct." [17]

The Attorney General believes that by rejecting this (second) motion, the Convention "rejected a clear statement of plenary congressional power over the Supreme Court's appellate jurisdiction." (at p. 7). However, it must be taken into consideration that the amendment was to follow the enumeration of the cases in which the Supreme Court was to have original jurisdiction. Therefore, the acceptance of the amendment would have given Congress power not only to direct the exercise of the Supreme Court's appellate jurisdiction, but also to add to the Court's original jurisdiction. It could be argued that the amendment was rejected for that reason, a very reasonable argument. If one bears in mind the efforts of several delegates to keep original federal jurisdiction in the state courts.

The first motion was probably withdrawn because a provision in the Constitution authorizing appeals from State courts to lower federal courts had no chance of passing, and it was taken for granted that the State courts would have original jurisdiction in all cases not specifically assigned to federal courts.

But one thing can be said with certainty: the Framers wanted to leave the entire power of regulating the appellate jurisdiction of the Supreme Court to the Congress. This has been clearly stated by Chief Justice Ellsworth in *Wiscart* v. *Dauchy*, 3 U.S. (3 Dall.) 321 (1796), the first case involving the meaning of the exceptions and regulations clause. In that case, the Supreme Court had decided that "civil cases" in § 22 of the Judiciary Act of 1789 included admiralty cases, and that that provision authorized the Court to take jurisdiction in an appeal as to law (writ of error) in an admiralty cause.

Justice Wilson dissented. He said that notwithstanding the provisions of the Judiciary Act, and appeal as to fact (appeal) is the proper mode of removing an admiralty cause. Such an appeal was expressly sanctioned by the constitution. This gave the Supreme Court authority to take jurisdiction over an appeal as to fact in admiralty causes, even if a positive restriction existed by law. In other words, Justice Wilson took the position of the Attorney General that in a certain sphere the Supreme Court could take jurisdiction on appeal without, or even against, congressional legislation, indicating that Congress did not have plenary power to regulate the Supreme Court's appellate jurisdiction.

Against this, Chief Justice Ellsworth found it necessary to write a rebuttal in support of the Court's rule. He stated, the Constitution has given the Supreme Court appellate jurisdiction "with such exceptions and under such regulations, as the Congress shall make." And he continued:

"Here then, is the ground, and the only ground on which we can sustain an appeal. If Congress has provided no rule to regulate our proceedings, we cannot exercise an appellate jurisdiction; and if the rule is provided, we cannot depart from it. The question, therefore, on the constitutional point of an appellate jurisdiction, is simply, whether Congress has established any rule for regulating its exercise?" [18]

This was not a mere dictum, as the Attorney General seemed to believe (at 12). Rather, it was a clarification of the Court's ruling that it could take jurisdiction on appeal only if Congress has made a rule, and only in accordance with that rule. The issue was, after all, whether the Supreme Court had jurisdiction in an appeal as to fact in an admiralty case although Congress had provided no law for it. Justice Wilson said yes, but the Court said no and treated the case as an appeal as to law in a civil case, for which Congress had provided a rule.

The debates of the Federal Convention do not give the slightest indication that there was something like an area called "the core functions of the Supreme Court" into which congressional regulations of the Court's appellate jurisdiction could not intrude. An occurrence on the eventful August 27, 1787, gives us a good picture of what the Framers intended the functions of the Supreme Court to be. This was Madison's reaction to the motion to add a provision extending the Supreme Court's jurisdiction to cases arising under this Constitution. Madison recorded it as follows:

"Docr. Johnson moved to insert the words "this Constitution and the" before the word "laws."

Mr. Madison doubted whether it was not going too far to extend the jurisdiction of the Court generally to cases arising Under the Constitution and whether it ought not to be limited to cases of a Judiciary Nature. The right of expounding the Constitution in cases not of this nature ought not to be given to that Department.

The motion of Docr. Johnson was agreed to nem: con: it being generally supposed that the jurisdiction given was constructively limited to cases of a Judiciary nature—" [19]

This was understood to mean that the Supreme Court would have jurisdiction to decide a constitutional question in a case properly before the Court, and that such a decision was to be binding only on the parties to that suit.[20]

Accordingly, Madison, as a member of the First Congress, and Jefferson and Jackson as Presidents, and Lincoln as President Elect rejected the idea that the Constitution had given the Supreme Court greater authority to determine constitutional questions than to the other branches of government, or that they were bound by the constitutional interpretation of the Supreme Court in an individual case.[21] And in an opinion to the Secretary of State, Jefferson's Attorney General, Levi Lincoln, denied that a Supreme Court decision must be blindly accepted as precedent by the Executive or other courts when they have to act in other cases. While the opinions of so high an authority as the U.S. Supreme Court deserve great deference, he said, still greater deference is due "to their (the acting authorities') own conviction of the meaning of the laws and constitution of the United States, and their oaths to support them." [22]

In short, under the constitutional plan, the functions of the Supreme Court were intended to be what the functions of courts have always been in the entire Western world: to decide individual cases which are binding only on the parties to the suit as to the object of that suit. The later development in the United States which attributes to a Supreme Court decision purporting to interpret a constitutional provision the force and effect of the constitutional provision itself,[23] is a departure from the constitutional plan which is based on the democratic principles of sovereignty and self-government of the people, not on a government of unelected judges.

Finally, the Attorney General finds "a third reason to infer a limited construction of the Exceptions Clause from the lack of debate accompanying its adoption" (to add to two other reasons of "inferences") in the theory of separation of powers. He writes: "The Framers intended that each of the three branches of Government would operate largely independently of the others and would check and balance the other Branches." (at p. 8).

But the power of Congress over the appellate jurisdiction of the Supreme Court is the most important check which the Constitution has provided for the control of the usurpations of the Supreme Court. In the Federalist Papers, Hamilton mentioned it three times.[24] When fears were expressed that "the errors and usurpations of the Supreme Court will be uncontrollable and remediless," Hamilton tried to assuage them by pointing out that the Supreme Court had original jurisdiction only in classes of cases "of a nature rarely to occur." In all other cases of federal cognizance "The Supreme Court would have nothing more than an appellate jurisdiction 'with such *exceptions* and under such *regulations* as Congress shall make.'" [25] and that Congress had ample authority to use this power to obviate or remove any "partial inconveniences" which may appear, including the power to prevent the Supreme Court from taking appellate jurisdiction over questions of fact which had been found by a jury.[26]

As regards the separation of powers, this is not mentioned in the real Constitution, but it allots different functions to each branch.

All legislative powers granted in the Constitution, which includes policy making, have been allotted to a Congress of the United States composed of elected representatives of the people. To the judicial branch, the Constitution has allotted the power of deciding cases and Controversies arising under this Constitution, the laws of the United States, and treaties made under the authority of the United States, as de-

scribed in Article III. These, under the Constitution, are the "core functions" of the Supreme Court. The functions of law- and policy-making have been expressly denied to the Court by the Framers of the Constitution.[27] The Supreme Court itself has acknowledged this repeatedly as, for instance, in *Reid* v. *Coverty*, 354 U.S. 1, 5-6 (1957):

"The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution."

The Supreme Court also has admitted that

"Nothing new can be put into the Constitution except through the amendatory process. Nothing old can be taken out without the same process." *Ullmann* v. *United States*, 350 U.S. 422, 428 (1956).

Regretfully, the Supreme Court did not abide by the "core functions" allotted to it by the Constitution. It has not merely "occasionally exceeded the properly restrained judicial role envisaged by the Framers of the Constitution," as the Attorney General said (at p. 2). Rather, the Supreme Court has established a system of misusing the Fourteenth Amendment for the purpose of taking from the people the retained rights of the States which can be taken from them legally only by a constitutional amendment in accordance with Article V of the Constitution.[28] In the 1960s, it became especially clear that the Supreme Court was determined to force its own policy on the States in the guise of constitutional interpretation. In a number of decisions, the Supreme Court invaded the retained rights of the States in matters which reached deeply into the every day life of the people. Thereby the people were prevented from making their own laws in these fields, as guaranteed by the Tenth Amendment to the Constitution, and they lost control over their local affairs, their schools, their children and their families. As a result, practically all values disappeared from the public schools; discipline deteriorated, often to a point that teaching became impossible; vandalism and violence developed as well as the use of drugs and sexual promiscuity among teenagers with pregnancies as young as twelve years of age.

The people protested, sometimes violently as, for instance, against court ordered school busing. The federal government responded with federal marshals and contempt of court orders, and the people were told, falsely, that "This was THE LAW and must be obeyed." But the people began to doubt that this was THE LAW. They have asked, "Why can these judges make the law for us? We have not elected them."

Especially the fighters for the return of prayers to the public schools could not believe that a Constitution under whose protection school children had prayed in their class rooms for 174 years, could suddenly have made this practice unconstitutional. When some of these groups asked me to explain the Constitution to them, I prepared for them a pamphlet, "Do School-Prayers Violate the Constitution?" Upon special request, I included a chapter, "The Law of the Land in the U.S. Constitution," in which I explained that under the constitutional plan a court decision can never be the law of the land.

The people also complained to Congress, because they had learned that the Constitution has given Congress the authority to protect them from the usurpations of the federal courts by using its power over the jurisdiction of the federal courts. While some members of Congress have always been sympathetic, Congress as a whole refused to act. Not until the people elected the "conservative" 97th Congress, was any serious effort made to explore the possibilities of congressional action to restrain the federal courts. Bills were introduced in both Houses of Congress, most of them designed to prevent the Supreme Court from taking appellate jurisdiction, and the inferior federal courts from taking jurisdiction, in State cases relating to voluntary prayers in public schools and public buildings; to abortion; and to require any individual to attend any particular school.

But soon a formidable opposition developed, especially by lawyers and the news media, two groups who have a considerable self-interest to preserve the rulership of judges. They insist that the proposed legislation would "strip" the Supreme Court of its constitutional right to be the final arbiter of all "constitutional" questions. Even the Attorney General wrote that S. 1742 would "withdraw" jurisdiction from the Supreme Court (at p. 1), and he counseled against "depriving" the Supreme Court of its general appellate jurisdiction over "federal questions" (at p. 16). But he made no attempt to find out whether, in the proposed legislation, any federal questions are involved. Evidently, he accepted on faith without question that prayers in State public schools violate the United States Constitution, just because the Supreme Court has said so.

II. The power to legislate respecting religion belongs to the powers reserved to the States respectively, or to the people. The Constitution has granted no federal judicial power to suits of individuals against a State arising under the powers reserved to the States.

Article VI, clause 3 of the Constitution requires that each member of Congress, the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, "shall be bound by Oath or Affirmation, to support *this* Constitution" (emphasis supplied), that is a Constitution as written and intended by the Framers and as legally amended in accordance with Article V.

Ask any legislator or even any judge whether he/she believes that *this* Constitution is still in effect, and he/she will answer you with "yes." If *this* Constitution still exists, the Supreme Court cannot change it, because *this* Constitution has given the power to change it only to persons elected by, and responsible to, the people, not to unelected, life tenured judges responsible to no one.

However, in the cases in which the Supreme Court declared that prayers in State public schools violated the First and Fourteenth Amendments to the Constitution, the Supreme Court did not interpret the Constitution, but attempted to change it. In none of its decisions in which the Supreme Court destroyed State laws on the ground that they violated the establishment clause of the First Amendment and the due process clause of the Fourteenth Amendment, did the Supreme Court make any attempt to go to the sources of the Constitution in order to find out the meaning of these provisions. Had the Supreme Court done this, as would have been its duty if it had honestly wanted to *interpret* these constitutional provisions, it could not have declared that school prayers violate the Constitution.

Under *this*, the real Constitution, the States have never lost their power to make any law they want respecting religion, limited only by their own constitutions, because that power has never been delegated to the Federal Government by *this*, the real, Constitution.

Permit me to refresh your memory as to what the real Constitution says about the religion clause of the First Amendment and the due process clause of the Fourteenth Amendment.

Any person who knows anything about the making of the Constitution, will know that the powers of the U.S. Government enumerated therein had been delegated by the several States. Among the powers over which the States retained a residual sovereignty were certain provisions for the protection of individual liberties. They were usually listed in a part of the State constitutions called Bill of Rights or Declaration of Rights. All State constitutions guaranteed freedom of religious worship.

In the Articles of Confederation there was no need for such protection of individual liberties because the powers of the old Confederation operated almost exclusively on the States. But in the Federal Convention of 1787,[29] and later in the Federalist Papers,[30] Madison and Hamilton had pointed out repeatedly that the new general government was to operate mostly on individuals. It is, therefore, understandable that there were demands for a Federal Bill of Rights "to serve as a barrier between the general government and the respective States and their citizens."[31] These became Amendments one to eight. They were intended to be special restrictions on the Federal Government, not grants of power. In order to protect the States against an interpretation that other rights retained by them, which had not been singled out as special restrictions on the Federal Government, were assigned to the Federal Government by implication, the Ninth Amendment was added, as follows:

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

The rights retained by the people refer, of course, to the rights retained by the people under the laws of the several States. The Tenth Amendment was intended to make clear that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The first ten amendments were drafted and adopted by the First Congress. The religion clause was included in the First Amendment. Any judge who honestly wants to know what the Framers had in mind when they drafted the religion clause, must therefore consult the debates of the First Congress.[32]

From these debates it appears that some States had feared that Congress might misuse the necessary and proper clause of the Constitution to establish a national church or a national religion to which others would be compelled to conform. The States wanted to prevent this. The Framers had to choose the words carefully. They could not use the word "national" because there was still too much resentment against having it in the Constitution. It had not been forgotten that at the Federal Convention of 1787, the "national government" proposed by the Virginia Plan (supra 3) had aimed at the destruction of the States.

The Framers also were anxious to avoid a language which could be interpreted as forbidding religion altogether, or the support of ministers, or buildings of places of wor-

ship. Already before June 8, 1789, the date on which Madison introduced the First version of the religion clause to the House, the Congress had appointed two Chaplains of different denominations, one in April 1789 for the * * *.

* * * * *

It is interesting how the Supreme Court managed to wrap around such decisions a cloak of constitutional respectability, any provisions of the Constitution notwithstanding. First, the Court interpreted the words, "Congress shall make no law respecting an establishment of religion," as requiring the separation of State and church. Then the Court declared that the establishment clause had been made applicable to the States by the Fourteenth Amendment because the liberties guaranteed by the First Amendment "are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment." [36]

The due process clause of the Fourteenth Amendment reads: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

In my book, "The History and Meaning of the Fourteenth Amendment," pp. 125-149, I have traced the due process clause from its origin in the Magna Carta of 1215 to the Fifth Amendment and finally to the Fourteenth Amendment. When it was included into the Fourteenth Amendment, it was already over 600 years old. Its meaning has always remained the same, namely that no person may be sentenced to death (deprived of his life), or to imprisonment (deprived of his liberty) or to forfeiture of property (deprived of his property) without first having been given an opportunity to answer to the charges and have a proof procedure, today called trial, in accordance with applicable laws. In short, it guarantees to every person charged with crime a trial pursuant to law. Originally, the Supreme Court interpreted the due process clause exactly in this way. See *Frank* v. *Magnum*, 237 U.S. 309, 326 (1915), and cases there cited.

The due process clause of the Fourteenth Amendment was copied from the Fifth Amendment. It is the only clause of the Federal Bill of Rights which the Fourteenth Amendment has made applicable to the States. The Supreme Court itself admitted this in *Bartkus* v. *Illinois*, 359 U.S. 121, 124 (1959), "We have held from the beginning and uniformly that the Due Process Clause of the Fourteenth Amendment does not apply to the States any of the provisions of the first eight amendments as such."

With these words, the Supreme Court practically conceded that it did not interpret the Constitution when it ruled in the school prayer cases that the due process clause had made the First Amendment with its religion clause applicable to the States.

But in the same case the Supreme Court explained that it had assumed the right to include into the due process clause what, in the Court's opinion, are fundamental concepts "implicit in the concept of ordered liberty," and that the Fourteenth Amendment prohibited to the States only those practices "repugnant to the conscience of mankind." 359 U.S., at 127.

As can be seen, the Supreme Court tried hard to connect the freedoms (liberties) of the First Amendment with the word "liberty" in the due process clause of the Fourteenth Amendment. But the due process clause expressly permits the States to take "liberty", except not without due process of law. Moreover, the Supreme Court has said that school prayers violate the establishment clause which does not even contain the word "freedom," so that there is nothing which connects it with the language of the Fourteenth Amendment's due process clause. But this did not seem to disturb the Supreme Court. The simple truth is that the Court's sole interest has been to use, or better misuse, the due process clause of the Fourteenth Amendment as a conduit for transferring retained rights of the States into the U.S. Constitution without a constitutional amendment in order to enable the Court to take jurisdiction for the purpose of declaring them unconstitutional. The Supreme Court knew this, of course, and for a little while it looked as if the Court would return to the Constitution. In *Ferguson* v. *Skrupa*, 372 U.S. 726, 730 (1963), the Court said:

"We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws . . . and this Court does not sit to 'subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure.' " (Citations omitted).

But such insight did not last long. In the school prayer cases the Supreme Court again misused the Fourteenth Amendment to assume jurisdiction over cases over which the Constitution has not granted any federal judicial power.

III. The real question for Congress to consider is not whether it is desirable to revive prayers in the State public schools, but who under the U.S. Constitution is authorized to legislate with respect to religion.

The first attack against school-prayers came in 1962. The target was an innocuous little prayer. The Board of Regents, the governing body of the New York State Public school system, had recommended to all school boards that "at the commencement of each school day, the act of allegiance to the Flag might well be joined with the act of reverence to God: 'Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.' " [37]

No child was forced to participate. Nevertheless, some parents brought suit alleging that this practice violated the religion clause of the First Amendment and Article I, sect. 3 of the New York State Constitution: "The free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed in this State to all mankind." The New York Court of Appeals, New York State's highest court, could not see how the non-compulsory daily recitation of the "Regents' Prayer" in the public schools could violate the constitutional guarantee of freedom of religion.[38]

On June 25, 1962, the U.S. Supreme Court reversed the judgment of the Court of Appeals of New York. However, somehow the Supreme Court must have felt that it could not very well say that the free exercise clause was violated when children practiced their right of free exercise of religion by praying in their class rooms. Probably for that reason, the Supreme Court preferred to declare that the Regents' Prayer violated the establishment clause of the First Amendment, and the Court gave the impression as if the school children in New York had been forced to pray, whether they wanted or not. In its opinion, the Supreme Court said, "that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government." [39]

It seems that this has caused some members of Congress to believe that they could make sure that school prayers would be voluntary by a law providing that the federal courts should not take jurisdiction in cases relating to voluntary prayers, and by including into such a law a definition that "voluntary prayer" shall not include any prayer composed by a State official.

However, the only practical effect of such a law would be to permit the federal courts to take jurisdiction whenever a plaintiff alleges that a school prayer is not truly voluntary, and that will be in every case in which a prayer is said in a class room.

Neither would a constitutional amendment be desirable, not even one as carefully drawn as that which the President sent to Congress on May 17, 1982, which reads:

"Nothing in this Constitution shall be construed to prohibit individual or group prayer in public schools or other public institutions. No person shall be required by the United States or by any state to participate in prayer."

This was the situation as it existed in the States before the Supreme Court conceived the idea to suppress school prayers: no one was required to participate in prayer. The State constitutions have guaranteed freedom of religious worship almost from the beginning of their existence. President Reagan's constitutional amendment proposal, if adopted, would, however create one important difference. Under the real Constitution which exists today and, as I showed, the Supreme Court cannot change, the power to legislate with respect to school prayers belongs to the powers reserved to the States over which federal courts legally cannot take jurisdiction. A constitutional amendment would make it constitutional for the federal courts to take jurisdiction in a case alleging mental coercion of school children to participate in school prayers, because such a case would arise under the Constitution. The argument that school prayers can never be truly voluntary has already been made in the Supreme Court.[40] One reason given was that school children feel compelled to participate because they do not want to be separated from their class mates. Unless the federal courts can be kept out, the people will soon find themselves in the same situation in which they are today.

As long as this Constitution, that is the real Constitution, still exists, the only effective and logical way of assuring the people of the several States that they have the right to make their own laws with respect to religion would be an act of Congress to prohibit the federal courts from taking jurisdiction in such cases. Thereby Congress would not "strip" the federal courts of anything which rightfully belongs to them under the U.S. Constitution, but merely reestablish constitutional conditions by preventing them from taking jurisdiction where the Constitution has not granted any federal judicial power and where, therefore, there is not constitutional authority for the federal courts to take jurisdiction.

The prevention of the federal courts from taking jurisdiction in State school prayer cases could not result in reaching "disparate

conclusions of indentical questions of federal law," as the Attorney General feared (at p. 16). During the 174 years before the Supreme Court interfered with the States' authority to make their own laws respecting religion, cases relating to school prayers were disposed of by the State courts. There were no complaints that there were different interpretations of federal law, simply because no federal questions are involved.

I hope that with this letter I may have been able to convince Congress that the objections to its exercise of its power over the appellate jurisdiction of the Supreme Court have been unfounded. Congress will probably now have a better understanding of the problem since its own authority has been invaded by the U.S. Court of Appeals, D.C. Circuit, by taking jurisdiction over an action alleging that Congress violated the religion clause of the First Amendment by using tax money to pay its Chaplains, *Murray* v. *Buchanan*, decided March 9, 1982 (CA80-01475). The House was quick to object to such invasion of its authority.[41] Rep. Daub (Neb.) correctly remarked that these Chaplains were appointed by the same men who adopted the Constitution and its provisions regarding the establishment of religion. They would hardly have undermined that document in their first official election.[42] Of course, they did not, as I have shown above (supra pp. 13-14).

Congress has the right and the power to protect itself against the invasion of its authority by the federal courts, and it also was given by the Constitution the power to check the invasions of the federal courts into the residual sovereignty of the States. Thus, by enacting a law preventing the Supreme Court from taking appellate jurisdiction, and the federal district courts from taking jurisdiction, in cases relating to prayers in State public schools and public buildings, Congress would reestablish constitutional conditions in this field which the Supreme Court has disturbed. Thereby Congress would be faithful to the oath which every member of Congress has sworn, namely to support *this*, the real, Constitution of the United States.

Sincerely,

HERMINE HERTA MEYER,
Attorney at Law.

FOOTNOTES

*Should read, "of the national juciciary;" see 2 M. Farrand, "The Records of the Federal Convention of 1787," p. 46 (1911).

[1] 1 Farrand 21-22.

[2] 1 Farrand 242-245.

[3] Id. 313, 322.

[4] Id. 97-98, 104, 139-140; 2 Farrand 73, 74-75, 76-77, 80, 299.

[5] 2 Farrand 27-28.

[6] Id. 28-29.

[7] Id. 95.

[8] See I Farrand 54.

[9] 2 Farrand 131-132; supra 3.

[10] Id. 132-133.

[11] Id. 136.

[12] Id. 146-147.

[13] Id. 177-189.

[14] 2 Farrand 173, 186.

[15] Id. 431.

[16] Id. 424.

[17] Id. 431.

[18] 3 U.S. (3 Dall.), at 327.

[19] 2 Farrand 430.

[20] See 2 George Bancroft, "History of the Formation of the Constitution" 198 (New York 1882).

[21] See "First Congress, first Sess.," June 17, 1789, 1 Annals of Congress 500-501; "Letter from Thomas Jefferson to Abigail Adams," Sept. 11, 1804, cited by Walter F. Murphy, "Congress and the Court" 25 (Chicago 1962); "Message of President Jackson to Congress," of July 10, 1832, 8(3) Congressional Debates, 22d Cong., 1st sess., App. 73, 76 (1832); "President Lincoln's First Inaugural Address," Mar. 4, 1861, 5 The Works of Abraham Lincoln 142-143, The University Society, Inc., (New York 1908).

[22] 1 Oppinions of the Attorneys General 119,122.

[23] See *Cooper* v. *Aaron*, 350 U.S. 1, 18 (1958).

[24] The Federalist Papers 481, 488, 491 (New American Library, 1961).

[25] Id. No. 81, at 488. Emphasis original.

[26] Id. No. 80, at 481; No. 81, at 491.

[27] See 1 Farrand 97-98; 2 Farrand 73, 74-77, 80, 299.

[28] See Hermine Herta Meyer, "The History and Meaning of the Fourteenth Amendment. Judicial Erosion of the Constitution through the Misuse of the Fourteenth Amendment" 204-263 (New York 1977).

[29] 1 Farrand 314, 484; 2 Farrand 9; 3 Farrand 473, 474-475, 517, 529.

[30] See The Federalist Papers Nos. 16 and 39.

[31] 3 Farrand 290.

[32] See 1 Annals of Congress, 1st sess. 434, 729-731 (1789).

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[36] See *Abington School District* v. *Schempp*, 374 U.S. 203, 215-216, citing *Cantwell* v. *Connecticut*, 310 U.S. 216, 303 (1940) and *Gillow* v. *New York*, 268 U.S. 652, 666 (1925).

[37] See *Engel* v. *Vitale*, 10 N.Y. 2d. 174, 179; 176 N.E. 2d. 579, 580 (1961).

[38] Id.

[39] *Engel* v. *Vitale*, 370 U.S. 421, 425 (1962).

[40] See *Abington School Dist.* v. *Schempp*, 374 U.S., at 287-292, Brennan, J., concurring.

[41] H. Res. 413, 128 Congressional Record, 97th Cong. 2d sess., daily ed., Mar. 30, 1982, p. H1168-1175.

[42] Id. 1172.●

SUPPORT GROWS FOR STRONG EXIMBANK

● Mr. HEINZ. Mr. President, an article published earlier this month in the Philadelphia Inquirer highlighted once again the need for a strong and aggressive Export-Import Bank. The author of the article, Edwin Gutham, the Inquirer's editor, pointed out that the issue involves the protection of American jobs and the defense of strategic U.S. industries. But by protection, the defense of inefficiency is not suggested but rather the defense of some of the most efficient and highly productive industries in America.

These industries are being jeopardized by the less efficient but highly subsidized industries of America's trade competitors. Through production subsidies and subsidized export financing, foreign producers such as Western Europe's Airbus Industries are unfairly obtaining export sales at the expense of private U.S. companies. Through these subsidies, and not infrequently coupled with political intervention at the highest levels, Airbus has replaced McDonnell-Douglas as the second largest maker of commercial airliners and forced Lockheed to get out of the market completely.

Mr. President, I cannot see how we as public servants constitutionally charged with the defense of American interests can fail to react when our strategic industries are so unfairly under attack; for without the profits from export sales, these companies will not have the research and development resources necessary to maintain America's traditional lead in high technology.

Neither can we allow thousands of American jobs to be lost because of unfair cutthroat competition. As Mr. Guthman sums up

What we don't need ever—and particularly right now—is to allow more American jobs to go out the window.

The only defense that we currently have against these practices is our Export-Import Bank. Yet, at this very time the Eximbank is being denied the resources that it needs to defend our legitimate interests. This is particularly unconscionable when the Bank can be given adequate means to save jobs and give our industries a fair chance at export sales without the expenditure of one nickel of tax revenues.

The Bank is self-supporting, customarily paying a dividend to the Federal Treasury. The Bank's loan guarantee, insurance, and direct loan levels, however, are set by law, through the budgetary and appropriations process. It is here that the Bank is being unwisely limited.

Just how dangerous this policy is, was pointed out to me once again in a recent letter that I received from the president and vice president of Hudson Shipbuilders, Inc., of Pascagoula, Miss. Allow me to cite two paragraphs from their letter.

We at Hudson Shipbuilders, Inc., have competed in the foreign offshore supply/utility vessel market for the past two years. We are a new industry employing 800 persons. We have never asked for government assistance, and don't intend to. However, we cannot be competitive with foreign yards which have a 5 to 6 point advantage in Exim-bank rates as well as government subsidies for manufacturing. Even though we are able to build vessels competitively, we now cannot compete in our established markets because of the high costs of exporting through the U.S. Exim Bank regulations.

Our industry is operating in a depressed market. High interest rates and the recession in the domestic supply boat market will have a devastating effect on the Gulf Coast shipbuilding industry unless we can compete in the foreign offshore supply boat markets. During the past year, we have lost ten boats to foreign competition due to the differential in Exim Bank rates. This number of vessels represents 50 percent of our total annual manufacturing capability.

Mr. President, I wonder how many more sales and jobs we must lose before we finally have an aggressive Eximbank that will respond to the realities of the world market and provide the competitive financing for American exports that it is required to provide by law.

I ask that the article from the Philadelphia Inquirer and the letter from Hudson Shipbuilders, and the two telexes that they received explaining the loss of a recent bid for a foreign sale, be included in the RECORD at this point.

The articles follow:

[From the Philadelphia Inquirer, June 6, 1982]

EXPORT-IMPORT CUTS HURT U.S. INDUSTRY AND WORKERS

(By Edwin Guthman)

The message that Richard W. Welch, president of the Boeing Company's commercial airplane division, brought to Philadelphia on Thurday sounded ominous.

It was that the American commercial airplane industry is seeing its export market evaporating because it can't match the financing arrangements foreign competitors, subsidized by their governments, can offer prospective customers.

With thousands of American jobs depending on the sale of U.S.-built commercial planes that's all we have to hear, particularly with the unemployment rate still rising.

Boeing, which employs more that 4,000 persons at its Vertol plant south of Philadelphia's International Airport, has been the nation's leading exporter of manufactured products for several years with about 60 percent of its commerical jet transports being brought by foreign airlines.

Now it is facing stiff competition mainly from Airbus Industrie, a consortium 70-percent owned by the governments of France, Great Britain, West Germany, Spain, Belgium and the Netherlands. Airbus has moved up behind Boeing and ahead of McDonnell Douglas as the world's second largest builder of wide-body commercial plans.

"U.S. manufacturers of commercial jets face an internationalized public corporation," Welch said in a speech to the Penjerdel Council of the Greater Philadelphia Chamber of Commerce. "The research, development and production of the airbus aircraft were subsidized by the respective governments. This multi-government support continues through the marketing phase with financing and other benefits intrinsic to the authority of governments that U.S. private industry cannot meet.

"Our problem with Airbus Industrie long ago moved from the purely competitive aspects of product-to-product, technology-to-technology and price-to-price considerations. Unequivocally, it is an unbalanced conflict that is pitting the resources of profit-oriented U.S. corporations against the treasuries and political influences of no less than four European countries."

Later in a meeting with The Inquirer Editorial Board, Welch told of having gone to Brazil recently to see about selling the new Boeing 757 and 767 jetliners and not getting a look-in. It was, he said, because Airbus not only was able to offer the Brazilians better terms to finance purchase of its planes, but also had arranged for financing for purchases of other equipment.

Similar examples are occurring with increasing frequency, Welch said, and the long-range threat to U.S. dominance of the commercial airplane market is clear, since sales today set the pattern for 10 to 15 years in the future. And the problem is not confined to the plane manufacturers. American exporters of products ranging from computer chips and office machines to heavy earthmovers and electric power generators face it too, Welch pointed out.

Welch is definitely not a protectionist. He had harsh words for tariffs and other barriers to international trade.

His immediate target is the Export-Import Bank, created by President Franklin D. Roosevelt in 1934 to boost export sales of American products by offering loans, loan guarantees and insurance. The loans are intended to counter predatory financing aid by foreign governments and to provide credit for expensive exports that cannot secure enough commercial credit.

Welch and other Boeing executives and officials of other exporting companies are working overtime to persuade Congress and the Reagan administration to revoke proposed cuts in funds Ex-Im would be authorized to loan in the 1983 fiscal year.

It is a repeat of an intense lobbying effort which last year resulted in restoring the bank's funding to $5.06 billion—more than President Carter had requested and $700 million higher than President Reagan proposed.

As in last year's budget hassle, the Ex-Im authorization is caught in a debate which centers on this question: If Congress is cutting programs for human services, shouldn't it demand similar sacrifices of Boeing and other major corporations?

The answer, of course, is jobs, not only those of the major corporations but those of thousands of subcontractors, and there are some in virtually every congressional district. Still, Congress is having a tough time wrestling with the question and the Reagan administration is ambivalent.

The President, according to his Office of Management and Budget, "believes that American business should be required to compete in the market, unfettered by unnecessary government restriction, but unaided by special government privileges."

And both last year and this year Reagan proposed cutting Ex-Im's authorization as proof his budget cuts would not spare profitable corporations.

The administration, however, did not fight last year against restoring the bank's funding level and appears to be taking the same course now, leaving the decision up to Congress.

Welch would like to see the bank compete on a worldwide basis whenever American exporters encounter special government-aided financing terms as Boeing did in Brazil. That could touch off an export "war" but Welch predicted that "once other exporting nations understand that we're coming to play and win, there is a greater chance of getting agreements" to end predatory financing arrangements.

"There is no way that American business can compete with government consortiums on an equal basis," Welch said. "As the years go by, the American exporter is placed more and more at a disadvantage with foreign competitors supported fully by all agencies of their export-minded governments."

Boeing is clearly fighting for its export life, but the record of American loss of export sales in other industries indicates that his warning should be taken seriously.

What we don't need ever—and particularly right now—is to allow more American jobs to go out the window.

HUDSON SHIPBUILDERS, INC.,
Pascagoula, Miss., May 25, 1982.

Hon. JOHN HEINZ,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HEINZ: The limitations imposed on U.S. Export/Import Bank funding are having a serious negative impact on employment. The conditions for Exim loan guarantees and direct loans are unrealistic and unpredictable. The interest rates are so high in comparison to similar foreign government funding as to effectively eliminate U.S. manufacturers as viable competitors in overseas markets.

For example, government guaranteed financing for exports can be arranged through the Singapore government at 8½ percent for 80 percent of the project costs. Japanese exporters can provide government guaranteed loans at 8¾ percent for 80 percent of the project costs for 7 years, and at 9 percent for the remaining 20 percent of project cost for a shorter period of time; in effect, 100 percent financing through their government. The Korean government makes similar guarantees.

In comparison, U.S. Exim Bank rates presently are 12-13 percent for guaranteed loans and direct loans respectively plus a one percent loan fee. Financing can be arranged for only 60 percent of the project cost. Limitations on dollar amounts of loans change so frequently as to preclude making a firm commitment to a potential customer.

We at Hudson Shipbuilders, Inc., Pascagoula, Mississippi, have competed in the foreign offshore supply/utility vessel market for the past two years. We are a new industry employing 800 persons. We have never asked for government assistance, and don't intend to. However, we cannot be competitive with foreign yards which have a 5 to 6 point advantage in Exim Bank rates as well as government subsidies for manufacturing. Even though we are able to build vessels competitively, we now cannot compete in our established markets because of the high costs of exporting through the U.S. Exim Bank and the limitations imposed by the current Exim Bank regulations.

Attachments (1) and (2) are copies of telexes received by us, which explain why we lost a recent bid to foreign competition, and is one example of the problem addressed herein.

Our industry is operating in a depressed market. High interest rates and the recession in the domestic supply boat market will have a devastating effect on the Gulf Coast shipbuilding industry unless we can compete in the foreign offshore supply boat markets. During the past year, we have lost ten boats to foreign competition due to the differential in Exim Bank rates. This number of vessels represents 50 percent of our total annual manufacturing capability.

The Export/Exim Bank regulations and interest rates must be changed now. We ask for your support.

Sincerely,

WENDLE W. HUDDLESTON,
President.

TRAVIS E. SHORT,
Vice President and General Manager.

ATTN: TRAVIS SHORT

First set specs and G.A. received Sat. 10th April—second set plus letter received today Tuesday.

Regret that despite your very good price for AHIS vessels the price plus excellent financial terms offered by the Japanese won the day.

Your 120 ft. vessels plus two camcraft being offered to ARAMCO.

Will forward cocopies only of Kuwait fire boat requirement at this stage to give you opportunity to examine thoroughly before final commitment.

Reverse Osmosis plant onboard Teal Produces less each day. Full set of membranes filters etc. Being ordered. Sodium laurel sulphate for cleaning membranes not yet located is this known by any other name? Hope

your discussions with manufacturer might provide some answers.

Regards,

PETER EVANS.

TRAVIS SHORT

Many thanks your assistance on camcraft speeds.

F.Y.I. your prices for AHTS were very favourable compared to the Japanese, whose price was also very dependent on exchange rates. Japanese finance of 80 percent loan at 8.75 percent over 7 years from delivery won the day in the end. Additional finance for 20 percent balance also available at 9 percent increasing after two years.

REYR 82-039. What French equipment being fitted?

Regards,

PETER EVANS.●

SMALL BUSINESS INNOVATION DEVELOPMENT ACT OF 1982

● Mr. SASSER. Mr. President, yesterday the Senate concurred in the House amendment to Senate passed bill, S. 881, the Small Business Innovation Development Act of 1982. This action paves the way for the enactment into law of this very important piece of small business legislation. As a cosponsor of S. 881 and of its predecessor in the last Congress, S. 1860, I am very happy to see this final action taken by the Senate.

I have been very worried in recent years over reports that we as a nation were not making the same great strides in the way of innovation that we once did. Much of our strength has come from our ability to stay on the cutting edge of new technological breakthroughs, and we must do everything we can to preserve and enhance our leadership in this area.

That need for innovation and technological leadership is the single most important reason for the passage of the Small Business Innovation Development Act. It will require that Federal agencies with large research budgets hire small businesses, as well as large firms and universities, to do at least a small part of their research.

The reason for this is that small firms have been repeatedly shown to be excellent innovators. Several studies substantiate their tremendous contributions to the Nation in the way of new discoveries. It has been shown, for example, that small businesses have produced over half of the new product and process innovations since World War II. It has also been proven that small firms produce 24 times as many innovations per research dollar than do large firms.

Despite this tremendously impressive performance, less than 4 percent of Federal R. & D. funds go to small businesses. A recent study by the Research and Planning Institute of Cambridge, Mass., on the growth of innovative high-technology firms found that small businesses are unable to receive basic research support from many Federal agencies dispensing research funds. "In fact," the report said, "their ideas are not even given a fair hearing * * *."

Mr. President, this is appalling. We are neglecting the great resource that we have in the small business sector of this economy and we very much need the Small Business Innovation Development Act to address this neglect.

In addition, I would like to commend my colleagues, Senator RUDMAN, Senator WEICKER, and Senator NUNN for their important role in seeing this legislation passed.

The 1980's pose new challenges for our country and we must do everything we can to insure we are up to meeting these challenges. A leadership role in technological innovation is one important way of accomplishing this goal. S. 881, the Small Business Innovation Act will help the small businesses of this country to attain this goal.●

THREE MILE ISLAND CLEAN UP

● Mr. HEINZ. Mr. President, recent hearings were held on my bill, S. 1606, which would establish a method for funding a speedy and thorough cleanup at Three Mile Island. It is an urgent matter for the State of Pennsylvania.

In response to these hearings, I received a letter from the Pennsylvania Rural Electric Association. Their board of directors developed a thoughtful resolution clearly stating their support for my efforts to find an expeditious and complete cleanup at Three Mile Island unit No. 2. I submit for the RECORD the Pennsylvania Rural Electric Association resolution.

The resolution follows:

RESOLUTION ON S. 1606

Whereas, The nation's most serious commercial nuclear power plant accident occurred at Three Mile Island Unit Number Two (TMI-II) in March of 1979; and

Whereas, Because of the significant costs associated with the cleanup effort at TMI-II, the timing of that effort is indefinite; and

Whereas, Each additional day the cleanup effort is extended because of financial uncertainties, a great public health threat to the people of Central Pennsylvania continues unnecessarily, consumers receiving power from the utilities that own TMI continue to pay inflated electric bills unnecessarily, and the future of nuclear power as a reasonably priced energy source for our nation remains clouded unnecessarily; and

Whereas, Members of the Pennsylvania/New Jersey Congressional Delegations, especially Senators John Heinz and Bill Bradley and Representative Allen Ertel, and Pennsylvania Governor Dick Thornburgh have evolved an equitable plan to finance the cleanup of TMI-II; a plan which includes participation by the federal government and the state governments of Pennsylvania and New Jersey, the owners of TMI, and utilities owning nuclear generation; and

Whereas, The National Rural Electric Cooperative Association, (NRECA), without consulting the Pennsylvania Rural Electric Association or notifying it in advance, has presented testimony opposing financial participation by nuclear utilities in the TMI-II cleanup effort: Therefore, be it

Resolved, by the Pennsylvania Rural Electric Association, That we support full financing of the TMI-II cleanup effort by the federal government because the federal government, in large part, is responsible for promoting the development and commercialization of the nuclear power industry and because the federal government has established a longstanding policy of aiding in the recovery after natural and man-made disasters, even those with a limited geographical impact; and be it further

Resolved, That we believe the federal government should play a significant role in financing the cleanup of TMI-II because of inaction on the part of the Nuclear Regulatory Commission to alert nuclear power plant operators of the existence of problems similar to that which caused the accident at Three Mile Island; and be it further

Resolved, That the Pennsylvania Rural Electric Association, realizing that economic, fiscal, and political limitations currently make it highly unlikely that the federal government will fully finance the TMI-II cleanup, supports efforts put forward by our Congressional Delegations and Governor to seek contributions to the cleanup effort from the federal government, the state governments of Pennsylvania and New Jersey, the nuclear power industry, and electric utilities owning nuclear generation; and be it further

Resolved, That the Pennsylvania Rural Electric Association, realizing that all Americans—and especially Americans served by electric utilities owning nuclear generation—have an important stake in the expeditious cleanup of the accident at TMI-II, supports the concept of obtaining contributions from nuclear utilities and their consumers to support the financing of the cleanup effort if full funding for this effort is unavailable from the federal government; and be it further

Resolved, That the Pennsylvania Rural Electric Association, on behalf of the over 600,000 consumers who are served by the rural electric cooperatives of Pennsylvania and New Jersey, supports the provisions of U.S. Senate Bill 1606 relating to the financing of the cleanup of the accident at Three Mile Island Unit Number Two; and be it further

Resolved, That copies of this resolution be sent to the members of the Pennsylvania and New Jersey Congressional Delegations, the Governor of the Commonwealth of Pennsylvania, and the NRECA National Directors from Pennsylvania and New Jersey.●

CUBA ADMITS ARMS BUILDUP

● Mr. CHILES. Mr. President, several times this year, I have addressed the Senate on the topic of Cuba. I have talked about what the Castro regime had done to that once-proud country, and what it is doing to the free world.

Castro's Communist government has brought economic ruin to the Cuban people, strangling them with a Soviet-type centrally planned economy. Over the years, we have watched as Cuba's foreign debt has bloated, its ability to feed its people has shrunk, and its

workers' productivity and morale has declined.

Just as Cuba's economy is kept afloat only by high amounts of Soviet money, its military machine is also fed by the Soviets. Back in February, I spoke about intelligence reports showing that Cuba was undergoing a massive arms buildup. It was obvious that the Soviet Union is giving the Cubans everything from bombers to training in guerrilla tactics. And it was equally obvious that Castro was using Soviet assistance to support terrorism, aid in drug trafficking, and generally undermine democracy around the world.

Earlier this month, Cuba's Vice President confirmed the reports about his country's arms buildup. He stood before the United Nations General Assembly's special session on disarmament and told the delegates that Cuba had almost doubled its military capability in 1 year's time. He admitted that his country had received "huge quantities of modern and sophisticated weapons" in the past few months. Of course, he did not admit that the weapons were coming from the Soviet Union.

The reason for all this? Supposedly, defense against American "aggression." The Cuban Vice President, Carlos Rafael Rodriguez, charged the United States with running a "campaign of lies and slander" against his country. The fact of the matter is, we do not have to manufacture lies about Castro and his regime—their actions speak for themselves.

It is hard to believe that these comments were made at a disarmament conference. Vice President Rafael Rodriguez was trying to defend the arms buildup in his country with the claim that Cuba is pursuing peace through strength. At the same time, he applauded the Soviets—who spend 1½ times as much as we do on their military—for their "sensible and realistic" approach. Yet, Rafael Rodriguez had the audacity to attack the United States for pursuing a strong defense. He claims that for the United States to bring our military forces back up to par "provokes" and "accelerates" the arms race.

Mr. President, 90 miles off the coast of Florida, Fidel Castro's regime is arming itself to the teeth. It is easy to see that Cuba is not arming to work for peace. Mr. Rafael Rodriguez is right about one thing—arms control and world peace should be among everyone's highest priorities. To a large extent, the future of the world hangs on how we handle the arms race. But we sure do not want to handle it on Castro's terms.●

HUNGER IN EAST TIMOR CONTINUES

● Mr. TSONGAS. Mr. President, on several occasions over the past 2 years, I have drawn attention to the continuing tragedy in the former Portuguese colony of East Timor, an island territory that was invaded by Indonesia years ago. On April 28, I rose to submit a concurrent resolution which was also introduced by Representative TONY P. HALL of Ohio in the House, calling upon the President to encourage the Government of Indonesia to change its policies toward East Timor. I did so after receiving consistent, disturbing reports from a wide range of credible sources over a period of many months.

I would like to alert my colleagues to significant new information that confirms past accounts and clearly shows that the situation in East Timor is far worse than I had previously believed. This information is contained in a detailed article that recently appeared in the Philadelphia Inquirer by Rod Nordland, who has shared a Pulitzer Prize for investigative reporting. Mr. Nordland spent 11 days in East Timor in May, the first visit by an American journalist to the territory in 2 years and one of the few by an independent outside observer in the 6 years since Indonesia invaded the island.

To put Mr. Nordland's article in its proper context, I will briefly recount some recent history. Last December 16, I expressed great concern over an account from a distinguished Roman Catholic cleric in East Timor, who charged that an Indonesian military offensive, accompanied by the most gruesome of atrocities, could lead to serious food shortages. I stressed that East Timor was still recovering from the Cambodia-like cataclysm that struck the territory from 1978 through 1980 and suggested that additional food stockpiles be established to help avert further disasters. At that time, I also drew attention to an Amnesty International report which spoke of summary executions and "disappearances" carried out by the Indonesian forces, as well as arbitrary imprisonment, primarily but not exclusively, on the offshore island of Atauro.

Then, on February 8, I cited Australian press accounts of an appeal for food aid made by the Apostolic Administrator of East Timor, Msgr. Martinho da Costa Lopes, to the Australian Catholic Relief Agency. I stated that the Australian Government had responded immediately with a pledge of 1,000 tons of corn for the Australian Catholic Relief shipment, but was careful to note that Australian Catholic Relief had not actually been permitted to enter East Timor to assess the situation and supervise distribution of the food aid. I called for the establishment of full-time, on-the-ground operations by qualified, independent international relief agencies, and expressed my belief that a neutral international presence is needed in East Timor to protect the civilian population from further violence as well as to distribute food and medicine.

On April 28, when I submitted my resolution on East Timor, I stated that I was very pleased to learn that the International Committee of the Red Cross (ICRC) had been allowed to visit East Timor prisons, for the first time since the 1975 Indonesian invasion, over a 2-week period in late Feburary. I registered my hope that ICRC would be able to continue its valuable activities in the territory.

While noting that the ICRC prison visits were undoubtedly a positive step, I emphasized that they only constituted one aspect of the situation. I stressed that the Indonesian Government had flatly refused to accept the 1,000 tons of corn offered by Australia to fortify the Timor food stockpiles. The reason for this stand, according to the Sydney Morning Herald, was "Jakarta's continuing anger over the credence given by the Australian Catholic Relief to Msgr. da Costa Lopes' letter" which the Indonesian Government claimed "was mischievous and false."

I noted that Monsignor Lopes apparently had good reason to worry about the food situation, not to mention the human rights situation in general: The Far Eastern Economic Review had reported on March 19 that "some observers are concerned that food shortages may develop and that Indonesia's angry reaction to international criticism of its East Timor policy may hinder relief activities," and added that relief agencies want some relief work to continue in East Timor but that "Jakarta has been reluctant to admit that there is such a need."

Let us now turn to Rod Nordland's May 28, article in the Philadelphia Inquirer, where he writes that East Timor faces a new wave of famine, the second in 5 years; that evidence of serious food shortages can be found all over the country; that even in the immediate vicinity of the capital, Dili, 18 of 22 children weighed and measured by Mr. Nordland were found to be chronically malnourished, or slowly starving, according to World Health Organization standards.

There was ample time to prevent such a calamity: Warnings of serious food shortages that would result from the Indonesian military offensive of last July through September were issued long ago. Making the situation even worse, top Indonesian military officials in East Timor still deny that a problem exists. Mr. Nordland provides evidence that the Indonesian military tries to intimidate ordinary Timorese into saying that there is enough food when clearly this is false.

While Mr. Nordland's extensive article deals with a wide range of issues and should be read as a whole to capture the full flavor of the situation, I wish to say that I am frankly appalled

at the needless suffering and oppression that the people of East Timor continue to face, at the callousness and disregard with which they are being treated. While the Nordland article is not easy to summarize, its essence is captured in the words of a top Indonesian military official, Col. A. P. Kalangie, as quoted by Mr. Nordland:

He recently contrasted Indonesia's takeover (of East Timor) with the current dispute over the Falkland Islands. "The British generals are bad. You don't give a little bit, a little bit, you go all at once. Like what we did here is all at once—bok!—and then explain to the rest of the world that we are here. This is how to do it, like the Russians in Afghanistan."

The resolution that I have introduced on April 28 has received bipartisan support. It addresses the critical humanitarian problems of East Timor and calls for a just political settlement, in accordance with the principles of international law. I urge all of my colleagues who have not yet done so to support this resolution. Mr. Nordland reports that many of the people he managed to interview privately were fearful about talking, but "dozens did so nevertheless, saying as one did, 'Please tell the world so they can help the Timorese people.'" Now more than ever, the future of the Timorese people may depend on our action.

Mr. President, I ask that Rob Nordland's article from the Philadelphia Inquirer be printed in the RECORD. Mr. Nordland is to be commended for his excellent investigative work, which has provided us with an invaluable firsthand account of this tragedy. I urge all of my colleagues to give his article their closest attention.

The article follows:

[From the Philadelphia Inquirer, May 28, 1982]

HUNGER: UNDER INDONESIA, TIMOR REMAINS A LAND OF MISERY

(By Rod Nordland)

DILI, EAST TIMOR.—East Timor, the former Portuguese colony that was forcibly annexed by Indonesia in 1976, is a land beset by widespread malnutrition and hunger. This year's grain harvest was a dismal failure; now, even as many Timorese suffer through longstanding food shortages they face a new wave of famine, the second in five years.

Adding to the misery of East Timor, the incidence of disease is essentially unchallenged by the province's inadequate medical care; a six-year guerrilla war continues to disrupt the populace, and anti-insurgency measures imposed by a military government have stripped Timorese of their civil rights.

Thousands of people are political prisoners—most of them simply because they are related, often distantly, to a fighter with the guerrilla group known as Fretilin—the Revolutionary Front for Independent East Timor. Hundreds of thousands have been relocated in a policy to depopulate the countryside and deprive the guerrillas of civilian support.

These are some of the conclusions reached during an 11-day tour of the province of East Timor, the first visit by an American journalist in two years and one of the few allowed to an independent outside observer in the six years of Indonesian rule. They are conclusions that are supported by a number of clergymen, civilian officials and aid organizations.

Nevertheless, Indonesian officials hotly contest them all. According to these officials, there was no poor harvest this year, only isolated food shortages; there is no famine, only isolated cases of malnutrition; there are no political prisoners, just a rehabilitation center where the relatives of guerrillas are kept for their own good; the countryside has not been depopulated, it has been "resettled."

"We have nothing to hide in East Timor," Adm. Sudomo of Indonesia's Command for the Restoration of Peace and Order said recently when he issued the invitation to visit the province, which has been a source of international concern since the mid-1970s.

Year after year, the United Nations has condemned as illegal Indonesia's forcible takeover of East Timor and has demanded that it withdraw its troops and allow for self-determination. Portugal itself has refused to acknowledge the annexation, insisting that Fretilin is the appropriate governing power of a free East Timor.

The recent visit included tours by helicopter and jeep of 15 towns and villages in eight of the province's 13 districts. Despite almost perpetual close monitoring by Indonesian military and civilian officials, it was still possible to see obvious signs of large-scale malnutrition and disease, as well as overt depression.

It also was sometimes possible to meet independently with Timorese in and out of government, with clergy of the Roman Catholic Church in the mostly Catholic province and with average Timorese from many walks of life.

While many of the scores of Timorese interviewed were frankly fearful about talking, dozens did so nonetheless, saying, as one did, "Please tell the world so they can help the Timorese people." At least six of those interviewed, it was learned, were summoned afterward to military intelligence headquarters and interrogated about what they had said, often for many hours.

The picture that emerged was one of a population that widely regards the Indonesians as a foreign occupying force. Even many leaders who once favored annexation by Indonesia have become disenchanted—in some cases openly—with Indonesian rule, or at least with the military officials that represent it here.

The behavior of those military authorities "can only be described as being the behavior of conquerors toward a conquered people," said a petition signed by a pro-Indonesian member of the provincial assembly, Joao Pedro Soares, and sent last year to the central government in Jakarta, Indonesia's capital, appealing for relief. A short time later, Soares and three other East Timorese members of parliament whose names appeared on the petition disappeared, reemerging after a month to swear that it was a fake.

The Indonesian rule has been characterized by fear and marred by accusations of torture and widespread abuse of civilians by soldiers. There are virtually no civil liberties. Peasants are told to whom they must sell their coffee and at what price. No one may leave his village or hometown without permission. Telephone calls and telegrams to places outside East Timor are forbidden. No one may leave the province without special—and rarely granted—permission. That applies as well to the more than 4,000 citizens of other countries who live in the province. According to military police statistics, there are 916 Portuguese nationals and 3,158 Taiwanese nationals on East Timor; many of them have requested and been refused permission to return to their own countries.

The Timorese have already suffered a great deal since the 1974 revolution in Portugal brought to power leftists who initiated a precipitous decolonization of Portuguese holdings around the world. One of those holdings was the eastern half of the island of Timor. (West Timor had been a Dutch colony until joining Indonesia when that country won independence from the Dutch on December 27, 1949.)

In East Timor, the initial struggle for power after decolonization ended when the leftist, pro-independence Fretilin wrested control from two other parties, UDT, or Unity, which wanted to remain a colony of Portugal, and Apodite, a small minority party that favored integration with Indonesia.

Fretilin declared the short-lived Democratic Republic of East Timor on November 28, 1975. A week later, Indonesian paratroopers and marines invaded Dili, and within a few months they had taken over most of East Timor. In July 1976, it was proclaimed Indonesia's 27th province.

But serious fighting with the Fretilin guerrillas did not end, and the years-long disruption interfered with planting. The ultimate result was a major famine that devastated the province between 1978 and 1980, with great loss of life.

Word of conditions in East Timor leaked out and, although Indonesia initially denied reports of the famine, in 1980 and 1981 the International Committee of the Red Cross and the Catholic Relief Services of the United States were allowed to begin a relief program in the province. It was terminated last year by the Indonesian government, which said it was no longer necessary.

How many people died in the fighting and famine before the relief program began may never be known for sure, but based on Indonesia's census figures, there were only 550,000 persons in East Timor in 1980; in 1974, the Portuguese authorities had counted 650,000.

The conclusion that may be drawn from these figures is not as obvious as it appears, because the Portuguese census was a voluntary one: People were asked to go to their local administrative centers to be counted, but many lived far in the mountains and did not make the trip. Under the Indonesian regime, on the other hand, people have been concentrated in towns and resettlement centers, and the 1980 census was a thorough, door-to-door affair.

Nevertheless, Catholic authorities doubt the Indonesian results, and the church's own census puts the current population at 425,000, a loss of 225,000 people from the Portuguese figure.

While still recovering from the terrible famine of the late 1970s, Timorese agriculture was dealt another blow last year, when, just as the planting season was beginning and only a few months after the government had ordered the relief program ended, the Indonesian army launched Operation Security.

Every male in the province age 13 or older was ordered into the mountain to help the army to conduct a giant sweep designed to finish the Fretilin once and for all. The ci-

vilians, mostly armed with sticks and farm implements, formed human chains and encircled the rugged mountain fastnesses where the guerrillas were believed to be hiding. Army troops moved ahead of them, theoretically to beat their quarry into this human net.

Many of those caught in the net, however, were civilians who themselves had resisted government attempts to make them leave their homes in the mountains—the traditional dwelling place for Timorese—and move to resettlement centers.

According to the top church authority here, apostolic administrator Msgr. Martinho da Costa Lopes, who is widely known as "the bishop," at least 1,000 civilians perished in the operation, which lasted from two to four months between June and September 1981. In one action alone, he said, 500 civilians were killed at Laclut in Viqueque District.

"Many Timorese were killed, including . . . innocent children, pregnant women and defenseless people without any crimes except their willingness to be independent from all oppression," Msgr. da Costa Lopes said in a recent interview here.

The Indonesian government says, officially, that Operation Security was a success and that it reduced the ranks of Fretilin to 300 men, sharing 120 weapons. Privately, however, several officials say there are still as many as 1,200 armed guerrillas at large.

The greatest casualty of Operation Security, in fact, was the 1981-82 corn and rice crop, much of which was not planted before the rainy season began in September because the men of East Timor were with the army in the mountains.

That crop was to have been harvested in March, but it was a disaster, according to Msgr. da Costa Lopes, clergy elsewhere in the province and other independent sources. The International Committee of the Red Cross, which still has one representative on East Timor, stated in a report in March that, according to official figures, the anticipated crop of 40,000 to 60,000 tons of maize and 30,000 to 40,000 tons of rice would not be harvested in 1982 because of bad weather, attacks by rodents and "movement of population in the second half of 1981 [which] made planting in some areas, specially in the south, insufficient."

According to clergy here, the result has been a famine or near-famine in many parts of the province, particularly in Baucau and Viqueque districts in the east, where the continuing fighting between government troops and Fretilin guerrillas has been most severe.

Msgr. da Costa Lopes hesitates to use the term "famine"; he prefers to say that more than half of the population in those districts, where more than 100,000 people live, has "insufficent food to maintain life." In addition, he said, hunger and malnutrition are endemic throughout the country.

"in Viqueque, they begin to eat the sagu [boiled palm pulp], and this is a sign for Timorese that famine is coming," he said.

Other clergymen stated the case more strongly. "If you quote me as saying this, I'll be killed," said one, who was recently in the eastern part of the province. "Famine is always a relative term, and there is hunger and malnutrition all over the country, but it's truly a famine in this region" of Baucau and Viqueque.

One of the worst-hit towns in Viqueque, according to Msgr. da Costa Lopes, is Uatolari, a mountainside town close to the scene of the heaviest fighting. Not so, East Timor's vice governor, Francisco Xavier Lopes da Cruz.

"The bishop, you know, he just stays here in Dili, he doesn't go very often to the mountains," Lopes da Cruz said. "Uatolari, they have a surplus, plenty of corn. The military commander told me he bought 26 million rupiahs (about $41,000) of corn, so how could they be starving in Uatolari?

"The truth is," he added, "no famine here in East Timor—you can see one or two people who don't have enough food, but not a famine."

A prominent Timorese viewed the issue of famine politically. Like many, he was clearly sympathetic to the guerrilla movement: "The Fretilin is a symbol of resistance" to Indonesia, he said. "In the heart of the people there will always be resistance. That's why I think the Indonesians are happy to see famine. The Timorese people will always be a problem so, they figure, just eliminate the problem."

When a party of officials and a reporter descended on Uatolari by helicopter the grassy public square immediately was crowded with scores of children, standing just at the edge of the rotor wash. Many of them appeared to be severely malnourished, with the classic distended bellies and stick-like limbs that denote long-term, serious hunger.

Or so the reporter thought. Hans Meier-Eybers, the project director for a Catholic Relief Services agricultural recovery program in East Timor, a $5 million, U.S. government-funded program, thought otherwise. Meier-Eybers, a Swiss surveyed the children critically and said, "They look like healthy kids to me. Sure, they're a little dirty, but that is all."

An Indonesian doctor, S.C. Kurniati, approached and was asked if he thought the children appeared to be malnourished. "You can see for yourself," he said, seeming a bit taken aback by the question: "These children are all malnourished."

In another mountainside town in Viqueque District, Uato Carabao, which was also visited by helicopter, the picture of apparent starvation was the same. Tucked onto a narrow, cloud-covered shelf on the mountain's edge, Uato Carabao also is close to the fighting and, as a result, the town's residents are forbidden to go up the mountain slopes to tend their fields. As the helicopter touched down briefly, people emerged wraithlike from the mist and stared without smiling while the helicopter picked up visiting medical personnel and swooped off again.

Although visits were permitted to the districts of Los Palos and Baucau, reportedly the past and present sites of the heaviest fighting with Fretilin, they were confined to the district capitals. No visits at all were permitted to places like Lufa in Los Palos, and Batumacela, Beguia, Quelicai and Laga in Baucau—where clergymen say widespread starvation exists.

In Baucau, district administrative staff member Sinago, an Indonesian, introduced Sister Osario Saurez, a Timorese nun who is principal of the Catholic primary school there.

She listened as Sinago described what a success Operation Security had been. "Everytime we go to a village now," he said, "they are happy to see us."

"Because of the political situation," Sister Saurez said quietly, "because the people had to help the military for the Operation Security, they were not able to plant the fields."

"There is plenty of food here," Sinago said insistently, and a little nervously.

The nun continued to contradict him with a soft-spoken resolve that clearly astonished some of the officials present. "We are very short of food, namely in Baguia, Quelicai and Laga. But even here the food is not sufficient, the health care is not sufficient. Last year it is better, this year it is worse because of Operation Security."

The problem has been complicated, she explained, because much of the population has been resettled in the lowlands, far from the mountainside fields. In Baucau District, for instance, 61,000 of the 74,000 people in the district now live clustered around the town of Baucau town proper.

"They can grow enough food there," aid Sinago.

"More than 50 percent of the people are short of food," Sister Saurez said.

Evidence of serious food shortages can be found all over the country, not just in the hard-hit areas in the eastern districts. On a trip to Aileu, a mountain district just 30 miles south of the capital of Dili by rough jeep road, malnourished people were a frequent sight along the way.

At a resettlement village called Saburia, just outside the district seat of Aileu, the party, which included half a dozen military and civilian officials as well as a journalist, stopped to see the corrugated tin houses the Indonesian government had built for people resettled there from the mountains.

Saburia lies in a deep mountain valley. The village chief is a Timorese, but his "assistant" is an Indonesian, they and a military intelligence major named Marsidik accompanied the journalist as he interviewed residents.

Bernardo, 56, who lives with his wife and 10-year-old son, sat on the bare dirt floor of his house, which was devoid of possessions of any kind; there was also no sign of food in the house. Asked how the harvest had been, he surveyed the circle of officials and, after a long pause, said, "There is not enough to eat."

The next house was identical, except that nine persons lived in it and that it contained a piece of furniture, a table. Under the table—the coolest place at midday in the tin house—lay a boy sweating and shaking in what his family said was a three-day-old malarial fever. Other children in the household had bloated bellies and emaciated limbs. Thomas Ferreria, the family spokesman, was asked through an interpreter about his family's condition.

"Tell him," Maj. Marsidik warned Ferreria in Indonesian, "that it's OK here."

Ferreria did as he was told.

"So even though the crops are bad, you have enough food for the whole family?" he was asked, in English.

"Tell him you have enough until the next rainy season," said Marsidik in Indonesian.

"We have enough until the next rainy season," Ferreria said.

At the Betora parish church on the outskirts of Dili, Sister Josephine Bordalio, a Spanish Carmelite nun who has worked here since 1979, single-handedly runs a clinic in which she sees 160 seriously ill people a day, including "many, many cases of malnutrition," she said. Most of the patients come to her clinic because the government-run facilities often have no medicine and no medical personnel.

"Tuberculosis is the most common disease, but hunger is the biggest problem," she said. "They come here and I give them medicine for TB, but then they go home and they have no food in their houses, so how can they get better?"

In the Lahane neighborhood of Dili, where hundreds of families have been forced to live in temporary huts along the steep banks of a mountain stream, severe malnutrition is widespread and apparent. Most of Lahane's residents were moved to Dili from their farms in the surrounding mountains; in Dili they have no job skills and little work.

Of 22 Lahane children under the age of 12, whose body weights and measurements were taken on May 9, 18 were proved to be chronically malnourished, according to standards adopted by the World Health Organization.

"If the situation is this bad in Dili," said Msgr. da Costa Lopes, "you can imagine what it's like in Baucau or Los Palos. I've been there—to Laga, Baguia, Los Palos last October. Even at that time there was hunger, and now it is far worse."

East Timor's de facto ruler in an army colonel named A. P. Kalangie. A non-Timorese who holds enormous power despite his modest title as East Timor provincial secretary, he noted in a recent interview that Indonesia had refused an Australian donation of 1,000 tons of corn because Australia had continued to criticize conditions in East Timor, which is only 350 miles off its north coast.

In place of the Australian grain, Col. Kalangie said, the Indonesian government is itself sending 1,000 tons of grain to East Timor. "But we won't just give it away," he added. "If you give people something for nothing, they get lazy."

"Yes," agreed Catholic Relief Service's Meier-Eybers, "and soon you have an island of beggars."

"That's what they are always telling me," said a priest in Dili. "We have to stop bringing in food so the people will make it for themselves,' but these people are working hard and still they are hungry.

"What I cannot understand is the reluctance of the Indonesian government to allow one independent team to visit East Timor to see the real situation and assess its normality for themselves," said Michael Whiteley of Australian Catholic Relief, which in the past has been active in raising aid money for the Timorese.

East Timor has enough foreigners who are refereeing us," Col. Kalangie said testily. There are two. Meier-Eybers is one of them, and agreed heartily with Kalangie. The representative of the International Committee of the Red Cross, Cedric Neukomm, is the second. He declined to be interviewed.

"The Red Cross doesn't want to say the truth," said Msgr. da Costa Lopes, "because they are afraid the Indonesian government will throw them out, and they want to stay to provide some help."

"When we were kids," said a man from a Portuguese-Timorese family, "our mothers used to say to us, 'Don't eat so fast, the Indonesians aren't coming.' " It was something the East Timorese long feared.

In December 1975, when the Indonesians finally did come, Col. Kalangie was one of the Commanders of the invasion.

He recently contrasted Indonesia's takeover with the current dispute over the Falkland Islands: "The British generals are bad. You don't give a little bit, a little bit, you go all at once. Like what we did here, is all at once —bok! — and then explain to the rest of the world that we are here. That is how to do it, like the Russians in Afghanistan."

Now he is enthusiastic about the government's far-reaching resettlement policy. Since "integration," 150 new resettlement centers have been built and 50 more are planned by the end of this year, he said. To make it easier to control the population and to provide food and medical aid, education and other amenities, people have been moved from the mountains to these resettlement villages, usually in the lowlands, he explained.

"It is the new Indonesian civilization we are bringing," Kalangie said. "And it is not easy to civilize the backward peoples."

While the resettlement scheme may be effective in denying support to the guerrillas, critics say it has serious flaws. There was a good historical reason for the Timorese aversion to the lowlands: Malaria there is virtually epidemic, water supplies are poor and irregular, and the climate is far hotter than that of the highlands.

Still, under Indonesian rule the province's road system is being vastly improved; color television—as Kalangie is fond of pointing out—was introduced here even before it came to Portugal; there are new public works in virtually every large town, public buses now travel the highways and dozens of government schools have been opened.

"In many things, the Indonesians have done very well, far better than the Portuguese," a Timorese who is generally pro-Indonesian said in an interview. "Only in social justice and health have they fallen down." Later he was seized by military intelligence and interrogated for hours about the interview, according to well-informed sources.

"A referendum now would go in favor of Indonesia," said Lucio Engenio da Encarnacao, 55, manager of the Dili Hotel and a Portuguest citizen who has been trying unsuccessfully to get Indonesian government permission to leave. "I have to admit that in transportation, education, many areas, the Indonesians did in five years what Portugal didn't do in hundreds of years.

"As for freedom," he concluded, "We never had it under Portugal so we don't miss it now."

"Sure, in Portuguese times, many things were bad," said a former colonial government employee. "But it's not a comparison between Indonesia and Portugal, but between Indonesia and the independence we could have had."

"This whole island is just a big prison," said a part-Timorese man who holds Portuguese citizenship and said he wanted to join his family in Australia. According to reliable sources, he is one of 700 Portuguese who have been registered with the Red Cross as would-be emigres. "We are being held hostage here until Portugal recognizes Indonesia's takeover of East Timor," he said.

The people on Atauro Island are hostages of a different sort. Thousands of Timorese are being held on the island, 15 miles north of Dili, and Indonesian authorities have announced their intention of keeping the internees there until every last known Fretilin guerrilla surrenders. Authorities freely acknowledge that the only reason they are being held there is that they are related to known or suspected guerrillas.

Between June and September last year, 3,785 such people—entire families, including young children—were moved to Atauro and left there with no food supplies, according to church sources. Quiet pressure by the International Committee of the Red Cross persuaded the Indonesians to allow the Red Cross to begin an emergency feeding and medical-care program in February.

But by then, according to Indonesian government figures, 176 internees had died in an outbreak of contagious disease. Some think it was cholera; other say it was gastroenteritis. Both are conditions that could have been aggravated by the crowded conditions in what the government calls the "rehabilitation camp."

It consists of 55 plywood and corrugated-tin barracks each measuring 20 by 60 feet and housing an average of 65 people. For privacy, the inhabitants hang plastic sheets as room dividers.

"It is for their own good, and they like to be here," Col. Kalangie contended during a guided tour of the camp. He said many of the internees had been harassed by guerrilla relatives, or forced to provide them with food, and he asked, "Does this look like a concentration camp to you?

In Barracks B-2, many of the more than 50 inhabitants were there because they were related to a single Fretilin member, Onrato da Costa; some were only cousins or distant inlaws. Da Costa's sister, Amelia da Costa Fernandes, was asked through an official interpreter how she felt about being imprisoned.

The interpreter repeated the question and Miss da Costa Fernandes, with bowed head and frightened expression, mumbled one or two words.

"She said they are grateful to the government who take care of them so they don't feel they are prisoners, but like others they can live as they want," the interpreter translated.

He was asked to inquire how long she thought her brother would stay in the mountains.

"God knows," she replied, her head still bowed.

Kalangie acknowledged that at least some residents of the camp were not pleased to be there. "You know, east or west, home is best," he said. "But maybe some of those who are in the mountains will feel their family is unhappy so they will come down. It is a positive system."

And if they don't come down, he said, the prisoners of Atauro Island will stay where they are.

The most serious civil-liberties challenge raised in East Timor came last year in the petition of the four assemblymen, who stressed the lack of legal recourse under military authorities.

"Although five years of integration have passed, although security has been restored by stages and in a variety of ways, although the masses of people have constantly made endless sacrifices," it said, "it is not yet possible to experience the implementation of law and discipline in this young province of East Timor."

The petition cited numerous instances of murder, torture and sexual assault by soldiers and officials against civilians. "These people or groups commit murders without due process or the laws concerning investigation. Feelings of fear are widespread among the people. . . ."

All four of the men who signed the petition now repudiate it as a forgery and say they had nothing to do with it. Msgr. da Costa Lopes said he felt sorry for the men, who he maintained were forced to recant after having been held in solitary confinement on the island of Bali for a month.

The author of the petition is believed to have been Joao Pedro Soares. According to Mulya Lubis, Jakarta director of the Legal Aid Society, Soares visited the society's offices to seek protection after the petition was filed.

Soares, during a tense interview at his home here, first denied ever having visited Lubis. Then, when a reporter mentioned having seen a photograph Lubis had taken of him during the visit, Soares said, "I might have been in their offices, but I didn't take part in this."

One of the central charges in the petition was confirmed by Manuel Carascalao, a prominent coffee planter. Timor produces some of the world's best coffee, much of it grown on small, individually owned plots that provide a source of cash income for peasant families who otherwise make a subsistence living growing corn, rice or cassava.

After integration with Indonesia, Carascalao said, the military authorities granted a coffee monopoly to a Java-based company, P.T. Denok Hernandez International, and all growers, small and large, were ordered to sell their coffee to Denok, which became the only authorized exporter.

The Denok firm is widely believed to be owned by Maj. Gen Leonardus "Benny" Murdani, Indonesia's chief of military intelligence and the man in ultimate command of East Timor.

The prices Denok set for the purchase of coffee were absurdly low; currently they are about 25 cents a pound for arabica coffee and 18 cents for robusta, less than half what buyers pay growers in Java and in other places in Indonesia.

Meanwhile, because of food shortages, the price of rice and other staple foods here is twice what it is elsewhere in Indonesia. The result is that a peasant grower cannot purchase a 50-cent pound of rice with the proceeds from a pound of his coffee.

"During the coffee harvest" in June and July, a knowledgeable Timorese said, "there are searches at all the military checkpoints—but they're not looking for guns. They're looking for coffee."

The soldiers make sure the coffee is sold to Denok, and growers are even prohibited from trading or bartering their coffee for basic necessities in local markets.

One evening, a young Timorese man fell quickly into step beside a reporter on Dili's Rua Antonio de Carvalho. "We are not allowed to speak to foreigners," he said. "But I just want to tell you. Before, we had Portuguese colonialism. Now, we have Indonesian colonialism."

When Indonesians began consolidating control in the province, they told everyone that the East Timorese people would be *sama sama*, which in Indonesian means roughly, "everyone equal." The slogan was less than successful, however, since in Tetum, the chief Timorese dialect, *sama sama* means "trample, trample."●

SUPPORT INDICATED FOR AMENDMENT TO S. 2109, FUTURES TRADING ACT OF 1982

● Mr. ROTH. Mr. President, as I have previously announced, Senator RUDMAN and I intend to offer an amendment on the floor of the Senate to S. 2109 which will allow the States to exercise limited antifraud jurisdiction under State securities and commodities statutes over both on-exchange as well as off-exchange commodity transactions. This amendment is not intended to allow the States to regulate the legitimate futures industry and States will not be allowed to impose registration or other requirements on individuals trading on the exchanges. However, it will allow the States to assist the Commodity Futures Trading Commission, which is charged with regulating the futures industry, in preventing commodity investment fraud and will free the CFTC to concentrate its efforts on the larger, nationwide schemes.

Opponents of the amendment have expressed concern that the States will abuse this authority and will attempt to impose additional regulations upon the legitimate industry. However, every effort has been made to clearly define and limit the antifraud jurisdiction which we propose to grant to the States and, recently, I received a letter from Mr. Thomas Russo in support of these efforts.

Today, I want to take a few moments to bring to the attention of my colleagues this letter regarding the Futures Trading Act of 1982, S. 2109 and the initiatives announced by me and Senator RUDMAN. Mr. Russo, a leading industry attorney, is a former CFTC director of the Division of Trading and Markets and is currently chairman of the Committee on Commodities Regulation of the Association of the Bar of the City of New York. I consider his support for extended State antifraud jurisdiction to be particularly significant.

I am providing this information at this time because the measure, S. 2109 is expected to come before the Senate soon after the July recess. I ask that the letter be printed in the RECORD.

The letter follows:

CADWALADER, WICKERSHAM & TAFT,
Washington, D.C., June 16, 1982.

Hon. WILLIAM V. ROTH, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ROTH: I understand that you plan to offer an amendment to S. 2109, during floor debate on that bill, that will expand the states' ability to prosecute commodities-related fraud. We touched upon this general topic during our meeting on May 12th, and I wanted to expand upon my thoughts via this letter.

I became a strong advocate of exclusive CFTC jurisdiction in 1975, when I served as the first Director of the CFTC's Division of Trading and Markets, and, as a member of the commodities bar and Chairman of the Committee on Commodities Regulation of the Association of the Bar of the City of New York, have continued to extol the virtues of a uniform regulatory super-structure for the commodities industry. However, in light of the proliferation of commodities-related scams, I share your view that some augmentation of the states' antifraud enforcement authority would be desirable. Indeed, the CFTC has itself conceded that it does not have sufficient resources to single-handedly ferret out and prosecute the perpetrators of all commodities-related misdeeds.

In an effort to address this problem, the Congress in 1978 added Section 6d to the Commodity Exchange Act. This Section gives the states the authority to combat commodities crime by proceeding in Federal court under the Commodity Exchange Act and makes clear that the states are not preempted from bringing suit under their "general civil or criminal antifraud" statutes. However, this Section has failed to live up to its initial promise. The states have brought few Federal court actions pursuant to its provisions and have asserted that state civil and criminal antifraud statutes are not useful vehicles for taking quick action against commodities scams. In the latter regard, Michael Unger, Director of the Massachusetts Securities Division, pointed out last Monday, during testimony before the House Oversight and Investigations Subcommittee, that general antifraud statutes often require plaintiffs to satisfy more elements of proof than do securities or commodities antifraud statutes, thus making it more difficult to obtain injunctive relief or to prevail on the merits. Mr. Unger noted, too, that it is sometimes difficult to ascertain which state statutes qualify as "general civil or criminal antifraud" statutes and that, even if appropriate statutes can be identified, those statutes often allow enforcement actions to be brought only by state attorneys general rather than by state securities administrators.

In recognition of these Section 6d shortcomings, S. 2109 and its House counterpart propose to declare an "open season" on individuals who engage in commodity transactions outside of the CFTC's regulatory umbrella. Pursuant to such an "open season" state officials could proceed under any applicable law against persons selling off-exchange instruments that are not regulated by the CFTC and against persons whose activities require them to register with the CFTC, but who are not so registered. In addition, these bills would expand the CFTC's ability to share pertinent law enforcement information with the states.

While both of these proposals are important steps in the right direction, I share your concern that they may not go far enough. Rather, in view of the tremendous enforcement burden presently borne by the CFTC, I believe your proposal to give the states the ability to attack commodities fraud by proceeding in state court under state securities and commodities antifraud statutes represents the logical next step. There is some danger, however, that certain states may utilize expanded antifraud authority as an avenue to impose substantive regulation on the commodities industry. Legislation intended to buttress the commodities antifraud enforcement authority of the states must therefore be carefully crafted to insure that it has no unintended substantive "side-effects." To help insure that this objective is achieved, S. 2109's legislative history could make clear that the Congress intended only to enhance the states' enforcement role and did not intend to undermine the CFTC's regulatory authority. If Congressional intent on this subject can be made clear, I believe legislation adding to the states' commodities fraud enforcement arsenal would be in the best interests of the public and in the best interests of the commodities industry.

Very truly yours,

THOMAS A. RUSSO.●

WHAT'S A MERE $100 BILLION?

● Mr. HARRY F. BYRD, JR. Mr. President, the June 28 issue of U.S. News & World Report has an excellent editorial captioned, "What's a Mere $100 Billion?"

Written by Editor Marvin Stone, it points out that while the budget law can help to keep the deficit from going above the projected level through the months to come, "only congressional heroism will bring it lower, this year or next year, or ever."

Mr. Stone is so right. As he points out, the deficit itself is bigger than our entire Federal spending of just two decades ago.

Federal spending is totally out of control. The budget resolution is not bringing it under control. The projected deficits are staggering. The Senator from Virginia voted against the budget resolution because it provides that during the next 3 years and 5 months spending will exceed revenues by $468 billion; the national debt will be increased 44 percent during that short period of time.

I ask that Mr. Stone's editorial be published at this point in the RECORD.

The editorial follows:

[From the U.S. News & World Report, June 28, 1982]

WHAT'S A MERE $100 BILLION?

(By Marvin Stone)

The Senate and House, after much travail and some circus antics, have devised a budget that calls for a deficit above $100 billion dollars in the fiscal year that begins next October 1—a deficit that itself is bigger than our entire federal spending of just two decades ago.

That 100-billion-plus limit is in the form of a resolution—simply a goal to shoot at when actual appropriations are argued. And the shooting, which will go on all this year, has already begun. Even while the two chambers were patching their resolution together, they were preparing a flank attack on the theoretical budget ceiling—a mortgage subsidy that could cost 3 billion dollars over the next five years. Members tucked it into a supplemental bill essential to the operation of various government agencies in the hope that President Reagan would have to let it go through.

That was only for starters. Diehards are already vowing, for instance, to withstand proposed cuts in medicare, medicaid, food stamps and child nutrition. Without denying the merits of these demands, one has to bear in mind that if they are given priority the money will have to be chopped out somewhere else or the deficit will go up and up.

One thing that unbridled spenders need to admit to themselves is that we have to pay interest on the national debt, and if we must borrow to pay the interest, the borrowings also demand interest. Thus this annual budget item, which already stands above 100 billion, can only tend to get bigger and bigger. It leaves less and less to feed the destitute, bolster defenses and carry on the multitudinous business of government. To avoid this vicious cycle, we can only cut spending or raise revenue—or both.

Every member of Congress should read Theodore White's chapter on the budget in his new book, America in Search of Itself—for the good sense it makes. Tracing the openhearted but inordinately swollen budgets of the '60s and '70s, White sadly attributes them to the illusion of "limitless abundance flowing from unquestioned American power."

We could not pay for it all then and we cannot now. The deficit hardly contributes to hopes of getting interest rates down on loans or mortgages, or reviving plans for investment in new plant and equipment, which is on the decline this year. It chills the prospect for jobs and withers confidence in a continued grip on inflation.

We cannot afford such deficits, nor can we afford the kind of politics that shaped them. "What do you expect?" the cynics ask. "The budget is a political document." The answer is that it ought not to be. Is our tax money sweated out of us to get congressmen elected? The function of a legislator in times as critical as these is to demand the sacrifices needed to save the country and to see that the sacrifices, be they higher taxes or loss of benefits, are fairly shared.

There are those in Congress who are owning to the same conclusion. More than one has spoken out along the same line as Representative Denny Smith, the Oregon Republican who earlier had urged a nearly complete freeze, at existing levels, on federal spending: "I didn't come down here just to get re-elected. I came to help clean up this mess.

Congress works under a budget law that provides supervision throughout the revenue-and-appropriations process. That law can help in the gut fighting to keep the deficit from going above the projected level through the months to come. But only congressional heroism will bring it lower, this year or next year, or ever. Representative Jim Dunn expressed this well in the original debate, when he asked members to join him in a try at balancing the budget: "I challenge each and every one of the members here to commit political suicide along with myself" and vote for the attempt. His colleague Tom Hagedorn added: "The question is whether we commit political suicide or allow this nation to commit economic suicide."

Will heroes please step forward?●

SHANNON LOWDER

● Mr. HEFLIN. Mr. President, it is with great sadness that I note the death of Shannon Lowder of Montgomery, Ala. Those who knew Shannon will miss not only his valued friendship but also his enthusiastic commitment to his community and his profession. Throughout his career, Shannon demonstrated an intense and active interest in the success of his industry.

It has been said that a man's true value may be measured by his willingness to help his fellow man. Applying this standard to Shannon reveals a man of unyielding compassion and impeccable character. Shannon always took a keen interest in helping young newcomers to the building profession. His advice was always highly valued and many will attest that their success can be attributed to his guidance. Shannon's uncompromising dedication to the homebuilding association was duly recognized in 1979 when he received their highest honor by being selected as "Man of the Year."

Shannon's career in the housing industry is indeed a story of dedication and success. Shannon entered the building profession in 1956. He was actively involved in the national and local Homebuilders Association. In 1959, he put the local housing association back on its feet when he served as the "Parade of Homes" chairman. Subsequently, Shannon served on almost every committee of the Homebuilders Association including the finance committee, the membership committee, and the housing and urban development committee. The highlight of Shannon's service to the Homebuilders Association of Alabama was his service as president for this organization in 1969. He served this organization with dignity and dedication as was one of the most respected members ever to be associated with this outstanding organization. Shannon's commitment to this organization did not end when his term as president expired. Rather, he continued to be as active in the affairs of the association for the rest of his life. The Alabama Association of Realtors also benefited from Shannon's expertise as he served with honor on the board of directors of this organization. Shannon was also a member of the Montgomery Board of Realtors and served as its president in 1972. In addition, he also served as president of the Greater Montgomery Homebuilders Association. Shannon enjoyed an immense amount of respect from his fellow association members. Shannon's many contributions to these organizations will long be remembered and will serve the housing industry for many years to come.

Shannon's active interest in the well-being of his community is evidenced by his service as treasurer of the Montgomery District of the National Kidney Foundation. His active involvement with this organization was a major factor in the opening of a dialysis center in Montgomery to serve those who were suffering from kidney desease. Shannon also served on the Committee of the Montgomery Area Council on Aging. Shannon's concern for civic affairs is also evidenced by the fact that he was one of the founders and charter members of the Montgomery Civitan Club.

Shannon was a fine christian of the highest moral fiber and was extremely active in the Normandale Methodist Church. He served as chairman on the board of trustees, chairman of the building fund, and chairman of the finance committee. In addition, Shannon served as chairman of the Montgomery District Board of Missions.

Shannon Lowder was an outstanding citizen in every respect. His uncompromised dedication was reflected in his unyielding service to his community, to his church, to his profession, and by his devotion to his family. Everyone who knew Shannon Lowder was fortunate to have known such an outstanding individual. Indeed Shannon's

memory will live in the hearts of all who knew him and serve as an inspiration for generations to come.●

AUTHORITY TO RECEIVE DULY ENROLLED BILL

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate be authorized to receive an enrolled bill from the House of Representatives and that the Vice President or the President pro tempore be authorized to sign that duly enrolled bill.

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

ORDERS FOR THURSDAY

ORDER FOR RECESS UNTIL 9 A.M.

Mr. STEVENS. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 9 a.m. on tomorrow, Thursday, July 1.

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

ORDER FOR RECOGNITION OF CERTAIN SENATORS TOMORROW

Mr. STEVENS. Mr. President, I ask unanimous consent that following the recognition of the two leaders on Thursday, the following Senators be recognized for not to exceed 15 minutes each: Senators PACKWOOD, BAKER, STEVENS, TSONGAS, and CHILES.

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

ORDER FOR PERIOD FOR TRANSACTON OF ROUTINE MORNING BUSINESS TOMORROW

Mr. STEVENS. Mr. President, following the recognition of the five Senators in the order just entered, I ask unanimous consent that there be a period for the transaction of routine morning business for not to exceed 20 minutes with statements therein limited to 5 minutes each.

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

JOB TRAINING BILL

Mr. STEVENS. Mr. President, following the period for the transaction of routine morning business, it will then be the intention of the leadership to call up Calendar No. 650, S. 2036, the jobs training bill.

Rollcall votes are anticipated during the session of the Senate on Thursday.

RECESS UNTIL 9 A.M. TOMORROW

Mr. STEVENS. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess in accordance with the previous order.

There being no objection, the Senate, at 6:57 p.m. recessed until Thursday, July 1, 1982, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 30, 1982:

DEPARTMENT OF COMMERCE

D. Bruce Merrifield, of Connecticut, to be an Assistant Secretary of Commerce.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

IN THE AIR FORCE

Lt. Gen. Walter D. Druen, Jr., U.S. Air Force, age 55, for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370.

IN THE ARMY

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Jack Neil Merritt, [redacted], U.S. Army.

IN THE MARINE CORPS

Lt. Gen. Edward J. Bronars, U.S. Marine Corps, age 55, for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370.

IN THE ARMY

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsiblity designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Joseph Thomas Palastra, Jr., [redacted] U.S. Army.

The following-named officers for appointment in the Regular Army of the United States to the grade indicated under the provisions of title 10, United States Code, sections 611(a) and 624:

To be brigadier general

Col. Lewis A. Mologne, [redacted], Medical Corps, U.S. Army.
Col. Thomas F. Cole, [redacted], U.S. Army.
Col. John T. Quinn [redacted], U.S. Army.
Col. J. Hollis V. McCrea, Jr., [redacted], U.S. Army.
Col. Charles E. Edgar, III [redacted], U.S. Army.
Col. Gerald R. Jennings, [redacted], U.S. Army.
Col. James D. Smith, [redacted], U.S. Army.
Col. Walter J. Bickston, [redacted], U.S. Army.
Col. Charles D. Bussey, [redacted], U.S. Army.
Col. William H. Harrison, [redacted], U.S. Army.
Col. Robert M. Bunker, [redacted], U.S. Army.
Col. Robert L. Drudik, [redacted], U.S. Army.
Col. Charles C. Adsit, [redacted], U.S. Army.
Col. John E. Long [redacted], U.S. Army.
Col. Richard E. Stephenson, [redacted], U.S. Army.
Col. James W. Hunt, [redacted] U.S. Army.
Col. James W. Shufelt, [redacted] U.S. Army.
Col. James B. Allen, Jr., [redacted] U.S. Army.
Col. Eugene R. Lanzillo, [redacted] U.S. Army.
Col. Donald J. Palladino, [redacted] U.S. Army.
Col. Thomas J. P. Jones, [redacted] U.S. Army.
Col. Caleb J. Archer, [redacted] U.S. Army.
Col. Dudley J. Gordon, [redacted] U.S. Army.
Col. Thomas N. Griffin, Jr., [redacted] U.S. Army.
Col. Joseph L. Ecoppi, [redacted] U.S. Army.
Col. Charles J. Buel, [redacted] U.S. Army.
Col. Bobby C. Robinson, [redacted] U.S. Army.
Col. Robert J. Dacey, [redacted] U.S. Army.
Col. Edwin H. Burba, Jr. [redacted] U.S. Army.
Col. Donald R. Infante, [redacted] U.S. Army.
Col. Richard H. Sharp, [redacted] U.S. Army.
Col. George M. Krausz, [redacted] U.S. Army.
Col. Charles M. Murray, [redacted] U.S. Army.
Col. Charles E. Honore, [redacted] U.S. Army.
Col. Joseph L. Nagel, [redacted] U.S. Army.
Col. Harry D. Walker, [redacted] U.S. Army.
Col. Robert L. Gordon, [redacted] U.S. Army.
Col. William T. McLean, [redacted] U.S. Army.
Col. John S. Crow, [redacted] U.S. Army.
Col. Alan B. Salisbury, [redacted] U.S. Army.
Col. John M. Shalikashvili, [redacted] U.S. Army.
Col. Leo M. Childs, [redacted] U.S. Army.
Col. Gary E. Luck, [redacted] U.S. Army.
Col. Michael L. Ferguson, [redacted] U.S. Army.
Col. George A. Joulwan, [redacted] U.S. Army.
Col. Uri S. French, III, [redacted] U.S. Army.
Col. Gerald B. McConnell, [redacted] U.S. Army.
Col. Thomas H. Tait, [redacted] U.S. Army.
Col. Thomas D. Reese, [redacted] U.S. Army.
Col. Charles P. Otstott, [redacted] U.S. Army.
Col. Edwin S. Leland, Jr. [redacted] U.S. Army.
Col. Randall A. Greenwalt, [redacted] U.S. Army.
Col. Clarke M. Brintnall, [redacted] U.S. Army.
Col. John S. Peppers, [redacted] U.S. Army.

The following-named officer under the provisions of title 10, United States Code, section 3036 to be assigned as Chief of Chaplains, U.S. Army:

To be chief of chaplains, U.S. Army

Chaplain (Brigadier General) Patrick John Hessian, [redacted] U.S. Army.

IN THE NAVY

Navy nominations beginning Robert Louis Albin, Jr., to be captain, and ending Anthony Joseph Klapp, to be captain, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on June 17, 1982.

Navy nominations beginning Gregory Hugh Adkisson, to be lieutenant commander, and ending Albert Henrik Jensen, to be lieutenant commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on June 17, 1982.

IN THE AIR FORCE

Air Force nominations beginning George W. Brown, Jr., to be major, and ending David J. Levy II, to be major, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on June 17, 1982.

Air Force nominations beginning Thomas D. Webster, to be determined, and ending Burton W. Campbell, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on June 17, 1982.

Air Force nominations beginning William U. Cattelle, to be lieutenant colonel, and ending Gloria J. Winans, to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on June 22, 1982.

Air Force nominations beginning Joseph Aisner, to be lieutenant colonel, and ending John R. Shaughnessy, Jr., to be lieutenant colonel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on June 22, 1982.

EXTENSIONS OF REMARKS

ENTERPRISE ZONES: OFFERING DIGNITY TO DISADVANTAGED WORKERS

HON. STEWART B. McKINNEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 30, 1982

● Mr. McKINNEY. Mr. Speaker, at a time when unemployment and economic distress seem to be everywhere, new approaches to these chronic problems are especially welcome. That is why I am a cosponsor of H.R. 6009, the Enterprise Zones bill.

The best hope of reversing the long-term, deep-seated despair found all too often among the urban poor is contained in a fresh approach to the basic problem—lack of jobs. The Enterprise Zone plan before Congress is notable for what it does not do—that is to establish another costly Government program to raise false hopes for economic development which fail once the Federal funds stop flowing. Instead, the plan calls for removing Government involvement by reducing taxes and lifting burdensome regulations.

With these impediments out of the way, business can thrive and offer people long-lasting, meaningful work. In this context, I would like to insert in the RECORD an editiorial from the Boston Herald American which appeared earlier this year and draw particular attention to the last paragraph which emphasizes the positive potential of Enterprise Zones for disadvantaged workers.

I am proud that my own State has been a leader in pioneering the implementation of enterprise zones at the State level by passing legislation that complements the proposed Federal approach. As a result of Connecticut's early efforts through this innovative concept, some 20,000 jobs have been either saved or created. Because of State and local tax incentives provided in our State, more than 200 companies have invested approximately $400 million in distressed urban areas.

As the editorial notes, Enterprise Zones "will offer disadvantaged and minority workers an opportunity to enter the labor force with dignity and hope for the future. That is an opportunity they deserve, and one that the array of Federal programs tried up to now has failed to provide."

Also, Mr, Speaker, when the House returns from the district work period, the Economic Stabilization Subcommittee of the Banking Committee will conduct an additional 2 days of hearings on Enterprise Zones. As the ranking Republican on the Economic Stabilization Subcommittee, I am pleased to see a continuation of our efforts to address the needs of the Nation's distressed urban areas. I hope the administration will recognize the extent of the problems as we do. UDAG is one step; enterprise zones are another. But much more is needed, in fact, is demanded.

Mr. Speaker, I insert this editorial in the RECORD.

[From the Boston Herald American (Boston, Mass.), Feb. 7, 1982]

REAGAN'S ZONES OF HOPE

Some of the loudest applause during the President's state-of-the-union message came when Mr. Reagan said he would not try to balance the budget on the backs of American taxpayers. He might have added, to answer his Democratic critics, that he also does not intend to balance the budget on the backs of the poor.

That pledge is implicit in the president's assurances that neither his current attempts to control the federal budget nor his proposed transfer of responsibility for many welfare and social programs to the states would be undertaken at the expense of the needy or the unemployed.

Indeed, his announcement that the administration is ready to offer legislation to create urban enterprise zones may offer more solid hope to the poor than 20 years of federal effort to alleviate poverty and chronic unemployment in inner cities.

The concept of enterprise zones is not original with the Reagan administration, but it is ripe for backing by the president at this time. Mr. Reagan anticipates an economic turnaround by the middle of the year. Enterprise zones can assure that renewed growth in business and industrial activity create jobs where they are needed most.

The plan calls for granting special tax and regulatory concessions to firms starting labor-intensive enterprises in designated areas of chronic high unemployment. Originating in England, and already being pioneered in a few American states, the concept was introduced at the federal level by Reps. Jack Kemp and Robert Garcia of New York.

Discussion of the Kemp-Garcia legislation during the last year has given the administration an opportunity to spot the strengths and weakness of the concept and to anticipate problems in getting its own plan through Congress. While business is generally supportive of the idea, some of the proposed tax credits may be viewed as giving an unfair competitive advantage to firms operating in the zones. Labor unions may resist the plan to exempt teen-age employees in a zone from the minimum wage.

Another problem is to persuade state and local governments to go along, offering their own tax and regulatory considerations to lure new enterprise into a zone.

The best argument for the enterprise zones lies in the evidence now coming in that the idea will work. Seven states either have enacted legislation to set up zones on their own, or are considering it. Connecticut has had a program on the books for three years.

By the end of last year, more than 200 companies had taken advantage of state and local tax incentives to start up or expand enterprises within the Connecticut zones. They have invested some $400 million in what had been considered blighted urban areas. Connecticut can point to 20,000 jobs that were either created or saved because of the program.

The size of the federal deficit is not the reason why urban grant programs dating from the Kennedy-Johnson eras should now be abandoned. The reason is that putting billions into those programs has failed to break the cycle of proverty and unemployment in the problem areas of our cities.

Urban enterprise zones will offer disadvantaged and minority workers an opportunity to enter the labor force with dignity and hope for the future. That is an opportunity they deserve, and one that the array of federal programs tried up to now has failed to provide.●

HUD TO CITIES: "DROP DEAD"

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 30, 1982

● Mr. WEISS. Mr. Speaker, with the revelation of the Department of Housing and Urban Development's draft urban policy report last week, the Reagan administration has revived its consistent message to American cities: "Drop dead."

The report informs us that cities must now turn to private investment to stimulate their revitalization. As one who represents an urban district in New York, I know from personal experience that private industry is neither willing nor able to feed hungry children, house unsheltered families, or fuel deteriorating mass transit system improvements, to any significant extent.

On the contrary, evidence has borne out that big business often escapes its responsibilities to cities when urban decay creeps up to its doorsteps. It is precisely the same business community that the Reagan administration believes will save our cities that has far too frequently deserted urban areas for the low-rent promise of the Sun Belt in recent years.

The reality is that mosts major cities are reeling from the 1982 funding cuts that were wrought by Reaganomics. They are already raising taxes and cutting vital services to cope with the recession and more anticipated service funding cuts. The tax bases in these cities are simply too narrow for them

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

to support any significant self-revitalization. To assert that cities can rebound without Federal assistance suggests the true disregard that the administration has for our cities.

The Reagan administration has confessed that the draft HUD urban policy report requires some revision before it becomes final. However, the battlelines have been drawn. The President and HUD must return to their drawing board and create an urban policy that meets the needs of cities. We must reject the premise that the Federal commitment to American cities can be so easily abandoned.●

CHAIRMAN BILL FORD ON "THE FEDERAL BRAIN DRAIN"

HON. MICHAEL D. BARNES

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 30, 1982

● Mr. BARNES. Mr. Speaker, recently our colleague BILL FORD submitted a trenchant analysis of the problems facing the best and brightest Federal personnel in Government in an era of low morale, RIF's, and budget cuts. BILL's analysis of "The Federal Brain Drain" appeared in the May issue of Senior Executive Action, the publication of the Senior Executives Association.

As chairman of the House Post Office and Civil Service Committee, BILL FORD has been a vigorous opponent of the Reagan administration's misguided attacks on Federal employees and retirees. He has led his committee in a vigorous exploration of ways to make the Federal Government work better while maintaining the morale of Federal employees and the need for Government to keep its commitments to its workers. No one in the Congress has a clearer understanding of the importance of maintaining a quality Federal service we can be justly proud of.

Chairman FORD's article follows:

THE FEDERAL BRAIN DRAIN

(By Congressman WILLIAM FORD)

At the National Institutes of Health key positions go unfilled and resignations of top-flight doctors and scientists have become routine.

At the National Aeronautics and Space Administration, the best qualified people are leaving in astonishing numbers.

The average retirement age of FBI agents is just a little over 50, well below the mandatory retirement age.

In the Internal Revenue Service, career employees spurn top positions.

In agencies and departments all through the government similar horror stories are being told about attracting and holding senior executives.

It is clear to me that this nation is headed for real trouble unless we wake up to the fact that we have a serious problem on our hands.

Our best and brightest executives are fleeing Federal service for more lucrative positions in the private sector. We see it happening every day. Yet we refuse to face up to the problem. Sadly, many of my colleagues discuss the plight of the senior executive corps as if they were talking about the farm problem in a foreign country.

No private corporation would tolerate the kind of mass exodus we are witnessing in managerial ranks of the Federal government. The stockholders of General Motors would throw out the top policymakers if they sat twiddling their thumbs while the best engineers, the best stylists, the best marketing people and the best personnel managers left to take better paying jobs at Ford.

Yet this is precisely what is happening where Federal executives are concerned.

One reason that this is allowed to happen is the low public esteem in which all public workers are held. In the public mind there is the terribly erroneous stereotype of the government worker. They are thought to be indolent paper shufflers who are overpaid and underworked. Sadly, highly competent and highly motivated executives in the Federal government are tarred with the same brush.

The truth is that we have Federal employees and executives to manage them because we need their skills and services. Jobs in the Federal government are not sinecures—they are meaningful and vital. They protect the people's health and property. They implement foreign policy. They collect revenue. They provide invaluable assistance to farmers and small businessmen. Our country could not survive without them.

And, quite obviously, the system could not perform without a cadre of dedicated and competent managers.

It is difficult to understand why this essential group of Americans is held in such low public regard. In large measure it is due to political attack. Whenever there is a budget crisis, politicians swing their axes at public workers, reenforcing the public notion that they are most expendable.

It is past time to turn around the public thinking on this issue, lest we awaken some morning to find this valuable public resource in disarray for lack of trained managers and technicians.

During the last year the popular press has begun to understand the problem. Newsweek Magazine and the New York Times have written articles to dramatize what is now called the "Federal Brain Drain." Other publications as well have discovered that maligning Federal executives is a disservice to the public. We still have a long way to go, however, to turn the tide of public opinion.

The House Post Office and Civil Service Committee has, over the past year, dug deeply into the problem. We have held extensive hearings, many of them well publicized, to determine what is happening in the Federal executive ranks. The results have been alarming. They produced convincing evidence that we are headed for a management crisis unless we act to correct the causes of the executive flight.

The committee has not been impressed with criticism from some quarters that senior executives have complicated the problem by injecting themselves too deeply in policy decisions. This is a smoke screen thrown up by those who want to obscure the real issues.

Congressional action last year to raise the executive pay cap helped ease the situation, but only ever so slightly. But it did not go nearly far enough. The new cap is not adequate to prevent private industry from continuing to siphon off the very best.

Moreover, we have failed to address the issue of benefits, which lag far behind those in the private sector. Any unbiased comparison of benefits in the public and private sectors destroys the old myth that these are sufficient inducements. In the health field alone benefits have been reduced significantly during the last year and are far below those enjoyed by executives in the private sector.

It has become painfully clear that the Federal government can no longer compete with private industry for top-notch people. If something isn't done, we will end up with a second-rate executive corps.

And if this is allowed to happen, the Federal work force will indeed be transformed into the public stereotype.

Some of us in Congress are doing all we can to turn things around. But we will be able to influence public, congressional and White House thinking only if Federal executives themselves devise effective means of dramatizing the seriousness of the problem and the consequences.●

ROSE DE BARBIERI SHERIDAN MARXEN

HON. DAN ROSTENKOWSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 30, 1982

● Mr. ROSTENKOWSKI. Mr. Speaker. A friend of mine has brought to my attention that Mrs. Marxen will be 100 years old on December 1, 1982. However, her family and friends will celebrate this centennial on August 1, since they will come from around the Nation to help her celebrate her birthday.

Mrs. Marxen is truly an outstanding human being. She is independent and still lives alone, providing for her own needs, and even finds time to manage several properties which she still owns. She is active and vigorous, but this is in keeping with her lifestyle that she has maintained for almost 100 years. During World War I she was with the Red Cross Volunteer Corps and the Veterans' Auxiliary. Today she is still active in her church and community affairs.

Mrs. Marxen was born in the same house in which she lives today. After graduating from high school she married William Sheridan in June of 1903, but he was killed unfortunately in 1911. The Sheridans had two children, Louis who died in 1950 and Marie who is a retired nurse presently living in Buffalo. In 1915 she married Carl Marxen who was an insurance executive and they lived together until his death in 1971.

Her grandson, Dr. John Bird, presently lives in Wilmette, Ill.

At a time of intense debate over budgets and policy, it is important to pause to recognize the accomplishments of distinguished citizens such as Mrs. Marxen.

I know that my colleagues will want to join with me in wishing Mrs. Marxen a happy birthday and wishing her good health for the future.●

A SALUTE TO THE CHILDREN'S BUREAU OF LOS ANGELES

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 30, 1982

● Mr. WAXMAN. Mr. Speaker, I wish to take this opportunity to applaud the efforts and achievements of the Children's Bureau of Los Angeles, a nonprofit social service agency in its 78th year of operation.

The children's bureau, with its outstanding record of helping troubled children and their parents, is a model of community service. Operating four group homes in the Los Angeles area, the CBLA offers to youngsters who have been abused or neglected the sort of care and understanding they so desperately need. These children are given the opportunity to live in a family environment, complete with carefully selected house parents and other children. The "parents" chosen to head the therapeutic group homes are married couples who commit themselves to a year of service. The first of these four homes was opened in 1972 and along with the three that followed, achieved a remarkable reputation.

The children's bureau also operates a 24-hour family crisis center in North Hollywood for children and parents who are in danger of abuse. This facility is the only one of its kind in the State of California. For up to 3 days, these abuse victims are given a place to stay along with professional counseling. Potential abusers are counseled as well.

Among the other valuabe services provided by CBLA are parent education classes, counseling, foster care, and adoptive services. As one would expect from an agency so devoted to and concerned with promoting the best interests and rights of families and children, the CBLA seeks to keep families together whenever possible. Their motto has always been "We mend families. We build families." Professional staff is available for counseling even if the child is moved back with its family, or if adoption takes place.

In addition to its present role in the community, the children's bureau has also been a key ally in the fight for legislation to protect the rights of juveniles. Since 1904, the CBLA has helped secure child labor laws, medical services in public schools, and neighborhood parks and playgrounds.

The success of the Children's Bureau of Los Angeles can be attributed to the hard work and dedication of its staff of trained professionals and volunteers. They are the force behind the CBLA's pioneering spirit, and their example deserves our deepest gratitude and highest recognition.●

ISRAEL'S SECURITY

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 30, 1982

● Mr. WEISS. Mr. Speaker, sadly, Israel's attacks on the Palestine Liberation Organization in Lebanon have led to much destruction, to the loss of many lives and to the injury of many others—Lebanese, Palestinians, and Israelis. Fairness demands that Israel's actions are viewed and understood in the context of the increasing threats to Israeli security in recent years.

Since its founding in 1948, Israel has been the target of ongoing violence by several neighboring nations. When the PLO established headquarters in Beirut in 1970 and occupied parts of southern Lebanon, Israel's security—along with the citizens of southern Lebanon—was greatly endangered.

Although the PLO's constant war against Israel has been met with repeated condemnation by leaders of most nations, the incessant string of PLO attacks on Israelis around the globe has gone on unrestrained. Not even the failure of most Arab nations to rally around the PLO during the recent conflict has deterred the PLO.

Merely holding the PLO at bay has required Israel's fullest efforts. Most recently, the PLO launched assaults on residents of Israel, using road mines, bombs in public gathering places, and missile attacks on defenseless towns and villages. The Lebanese Government has been helpless to restrict these acts of terrorism. Furthermore, the PLO's purchase of a new generation of Soviet-made missiles, with longer range capabilities and greater accuracy, has severely heightened the PLO threat to Israel and has left Israel little choice but to attack PLO strongholds.

Israel is the Middle East's only democracy and a reliable ally of the United States America's policy of opposing actions which risk Israel's security and independence has been in place since 1948 and must be maintained.

Since the late 1960's, the expansion of the PLO as a force in the Middle East has been a primary concern there. Prior to "Black September" in 1970 when Jordan's King Hussein purged the PLO from his country, the PLO had begun establishing bases in other Arab nations. The weakness of the Lebanese Government appealed to the PLO and, in 1969, the Palestinians sought control of Lebanon.

Consequently, Arab nations sided with the Palestinians as a way of keeping the PLO out of their own nations. This assured the PLO free reign along Israel's northern border and encouraged the PLO to step up its assault on Israel. Eventually, the skirmishing provoked Israel to attack PLO fortresses in southern Lebanon in 1978.

Syria's reentry into the active campaign against Israel in the midseventies, when it placed 25,000 troops in southern Lebanon, was instrumental in leading to Israel's 1978 retaliation. Since then, the Syrians have increased support for the PLO supplying 21 missile batteries that were recently destroyed by Israeli air forces. Despite Israel's efforts to forge a cease-fire in the current conflict, Syrian forces have sought repeated battles with Israeli troops.

The Israelis have withstood more than 150 violations of the 1981 U.S.-arranged cease-fire in less than 1 year without retaliation. As it became clear that the PLO and the Syrians would refuse to return to a peaceful state, Israel responded as it was forced to—by pushing the PLO away from its borders.

I mourn all of the lost lives in Lebanon and the damage wrought on the towns and villages there. Tragically, many of these are the very people who have lived in constant fear of PLO occupation.

Regrettably, so long as the PLO continues to use Lebanon as its base, lasting Mideast peace cannot occur. Israel must try to prevent further PLO occupation of Lebanon and restore self-determination to the Lebanese people.

Israel has clearly stated its intent to return Lebanon to the Lebanese, but it simply cannot risk allowing the PLO to return to its position of threat.

Israel's withdrawal can come only following the establishment of a peacekeeping force to insure that neither Lebanon nor Israel will be threatened anew. It is imperative that the United Nations work to implement a lasting peace that precludes continued PLO terrorism and violence against the people of Israel.●

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this infor-

mation, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, July 1, 1982, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

JULY 2

9:00 a.m.
Energy and Natural Resources
Public Lands and Reserved Water Subcommittee
To hold hearings on S. 1999, providing for the establishment of the Wolf Trap Farm Park in Fairfax County, Va., and S. 2436, designating the Mary McLeod Bethune Council House in Washington, D.C., as a national historic site.
3110 Dirksen Building

9:30 a.m.
Finance
Business meeting, to continue consideration of proposed legislation to meet reconciliation expenditures as imposed by Senate Concurrent Resolution 92, setting forth recommended levels of total budget outlays, Federal revenues, and new budget authority for fiscal years 1983, 1984, and 1985, and revising the congressional budget for fiscal year ending September 30, 1982.
2221 Dirksen Building

Joint Economic
To hold hearings on the employment/unemployment situation for June.
2128 Rayburn Building

2:00 p.m.
Finance
Business meeting, to continue consideration of proposed legislation to meet reconciliation expenditures as imposed by Senate Concurrent Resolution 92, setting forth recommended levels of total budget outlays, Federal revenues, and new budget authority for fiscal years 1983, 1984, and 1985, and revising the congressional budget for fiscal year ending September 30, 1982.
2221 Dirksen Building

JULY 12

2:00 p.m.
Agriculture, Nutrition, and Forestry
Business meeting, to resume mark up of S. 2352, S. 2392, S. 2480, and S. 2493, bills authorizing funds for the food stamp program.
324 Russell Office Building

JULY 13

9:30 a.m.
Veterans' Affairs
To hold hearings on S. 2378, increasing the rates of disability compensation for disabled veterans, increasing the rates of dependency and indemnity compensation for surviving spouses and children of veterans, discontinuing duplicative payments to certain veterans, increasing the level of disability required for the payment of dependent's allowances, and providing for cost-saving improvements in veterans' programs.
412 Russell Building

Select on Indian Affairs
To hold hearings on S. 1795, providing for the transfer of certain lands in Arizona between the Hopi and Navajo Indian Tribes.
457 Russell Building

10:00 a.m.
Agriculture, Nutrition, and Forestry
Business meetings, to continue mark up of S. 2352, S. 2392, S. 2480, and S. 2493, bills authorizing funds for the food stamp program.
324 Russell Building

Environment and Public Works
Business meeting, to consider pending calendar business.
4200 Dirksen Building

2:00 p.m.
Agriculture, Nutrition, and Forestry
Business meeting, to continue mark up of S. 2352, S. 2392, S. 2480, and S. 2493, bills authorizing funds for the food stamp program.
324 Russell Building

Foreign Relations
East Asian and Pacific Affairs Subcommittee
To resume hearings in open and closed session to examine political, economic, and military interest in Southeast Asia.
S-116, Capitol

JULY 14

9:30 a.m.
Select on Indian Affairs
To hold hearings on S. 2294, providing for the settlement of certain land claims of the Chitimacha Indian Tribe of Louisiana.
6226 Dirksen Building

10:00 a.m.
Labor and Human Resources
Alcoholism and Drug Abuse Subcommittee
Employment and Productivity Subcommittee
To hold joint hearings to review employee assistance programs for alcohol and drug abuse problems.
4232 Dirksen Building

JULY 15

9:00 a.m.
Commerce, Science, and Transportation
To hold hearings on S. 2204, promoting interstate commerce by prohibiting discrimination in the writing and selling of insurance contracts.
235 Russell Building

10:00 a.m.
Labor and Human Resources
Investigations and General Oversight Subcommittee
To hold hearings to review Federal and State expenditures for the purchase of children's vaccines.
4232 Dirksen Building

Veterans Affairs
Business meeting, to mark up S. 2379, requiring veterans to pay a funding fee on guaranteed home loans, and certain provisions of S. 2378, proposed veterans' disability compensation and survivors' benefits amendments, relating to cost-savings improvements in veterans' programs, and other related measures.
412 Russell Building

2:00 p.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings to discuss assistance to El Salvador.
1114 Dirksen Building

JULY 20

9:30 a.m.
Labor and Human Resources
Labor Subcommittee
Business meeting, to mark up S. 1541, amending the Employee Retirement Income Security Act (ERISA) by simplifying both reporting and disclosure requirements, and the process for employers to provide retirement income to employees, and providing incentives for employers to provide pension benefits to employees.
4232 Dirksen Building

10:00 a.m.
Environment and Public Works
Business meeting, to consider pending calendar business.
4200 Dirksen Building

JULY 21

9:30 a.m.
Labor and Human Resources
Labor Subcommittee
Business meeting, to continue mark up of S. 1541, amending the Employee Retirement Income Security Act (ERISA) by simplifying both reporting and disclosure requirements, and the process for employers to provide retirement income to employees, and providing incentives for employers to provide pension benefits to employees.
4232 Dirksen Building

Select on Indian Affairs
To hold hearings on H.R. 3731, relating to the use of distribution of certain judgment funds awarded by the Indian Claims Commission or the U.S. Court of Claims.
6226 Dirksen Building

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
3110 Dirksen Building

Environment and Public Works
Environmental Pollution Subcommittee
To hold hearings on proposed legislation revising certain provisions of the Clean Water Act.
4200 Dirksen Building

Judiciary
To hold oversight hearings on Government merger enforcement policy.
2228 Dirksen Building

JULY 22

9:30 a.m.
Judiciary
Juvenile Justice Subcommittee
To hold hearings to explore the problems of runaway youths.
2228 Dirksen Building

10:00 a.m.
Energy and Natural Resources
Energy Regulation Subcommittee
To hold hearings on S. 2500, reducing conflicts in the licensing of hydroelectric powerplants and expediting the development of and simplifying the regulation of hydroelectric powerplants.
3110 Dirksen Building

Environment and Public Works
Environmental Pollution Subcommittee
To continue hearings on proposed legislation revising certain provisions of the Clean Water Act.
4200 Dirksen Building

JULY 27

9:30 a.m.
Energy and Natural Resources
Energy and Mineral Resources Subcommittee
To resume oversight hearings on America's role in the world coal export market, focusing on foreign coal ports and the international transportation of coal.
3110 Dirksen Building

10:00 a.m.
Environment and Public Works
Business meeting, to consider pending calendar business.
4200 Dirksen Building

JULY 28

9:30 a.m.
Labor and Human Resources
Aging, Family and Human Services Subcommittee
To hold hearings to discuss alternative means of providing legal services to the poor.
4232 Dirksen Building

Veterans' Affairs
To hold hearings on proposed legislation clarifying certain United States Code provisions relating to veterans' employment programs.
412 Russell Building

Select on Indian Affairs
To hold hearings on S. 2153, providing for the distribution of funds awarded the confederated tribes of the Warm Springs Indian Reservation in Oregon by the Indian Claims Commission.
6226 Dirksen Building

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
3110 Dirksen Building

Environment and Public Works
Environmental Pollution Subcommittee
To resume hearings on proposed legislation revising certain provisions of the Clean Water Act.
4200 Dirksen Building

2:00 p.m.
Environment and Public Works
Toxic Substances and Environmental Oversight Subcommittee
To resume hearings on S. 2131, authorizing funds through fiscal year 1986 for the safe drinking water program.
4200 Dirksen Building

JULY 29

9:30 a.m.
Energy and Natural Resources
Energy and Mineral Resources Subcommittee
To resume hearings on America's role in the world coal export market, focusing on the condition of U.S. coal ports.
3110 Dirksen Building

10:00 a.m.
Environment and Public Works
Environmental Pollution Subcommittee
To continue hearings on proposed legislation revising certain provisions of the Clean Water Act.
4200 Dirksen Building

AUGUST 4

10:00 a.m.
Labor and Human Resources
Education, Arts, and Humanities Subcommittee
To hold hearings on S. 1405, proposed Carl Albert Congressional Research and Studies Center Endowment Act.
4232 Dirksen Building

AUGUST 5

10:00 a.m.
Labor and Human Resources
Alcoholism and Drug Abuse Subcommittee
To hold hearings on the effects of alcohol and drugs on individuals while driving.
4232 Dirksen Building

AUGUST 11

9:30 a.m.
Select on Indian Affairs
To hold hearings on S. 1652, restoring certain lands in Arizona to the Colorado River Indian Reservation to be held in trust by the United States, S. 2418, permitting the Twenty-nine Palms Band of Luisena Mission Indians to lease certain trust lands for 99 years, S. 1799 and H.R. 4364, bills providing for the transfer of certain land in Pima County, Ariz., to the Pascua Yaqui Indian Tribe, and the substance of H.R. 5916, providing for certain Federal lands to be held in trust for the Ramah Band and the Navajo Indian Tribe.
6226 Dirksen Building

AUGUST 12

9:30 a.m.
Veterans' Affairs
Business meeting, to mark up S. 2378, proposed veterans' disability compensation and survivors' benefits amendments, and proposed legislation clarifying certain United State Code provisions relating to veterans' employment programs.
412 Russell Building

SEPTEMBER 21

10:30 a.m.
Veterans' Affairs
To hold hearings to receive American Legion legislative recommendations for fiscal year 1983.
318 Russell Building