HOUSE OF REPRESENTATIVES—*Monday, December 13, 1982*

The House met at 12 o'clock noon.

The SPEAKER. Today we have the pleasure of an old friend and former Chaplain of this House beloved by all of us, the Reverend Edward G. Latch, former Chaplain of the U.S. House of Representatives.

Rev. Edward G. Latch, D.D., former Chaplain of the House of Representatives, offered the following prayer:

Be strong and of good courage; be not afraid, neither be thou dismayed: for the Lord Thy God is with thee whithersoever thou goest—Joshua 1: 9.

Almighty God, our Heavenly Father, we pray that Thy spirit may be on our minds and in our hearts as we move through the hours of this day and as we conduct the business that relates to the welfare of our beloved country. Give to the Members of this body the insight to see clearly the steps they should take, the patience to take each step carefuly and the strength to keep on until right decisions are made for the highest good of our Nation. Continue to guide our President, our Speaker, the Members of this House and all who work under the dome of the Capitol that justice and peace and good will may come to new life in our country and in our world: to the glory of Thy holy name and the good of our human race. Amen.

THE JOURNAL

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

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

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills and a joint resolution of the House of the following titles:

H.R. 2329. An act conferring jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma;

H.R. 6417. An act to amend Public Law 96-432 relating to the U.S. Capitol Grounds; and

H.J. Res. 595. Joint resolution designating December 11, 1982, as "Fiorello H. LaGuardia Memorial Day."

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a joint resolution of the House of the following title:

H.J. Res. 531. Joint resolution to provide for the designation of the week beginning on October 24, 1982, as "National Parkinson's Disease Week."

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 2336) entitled "An act to authorize appropriations for fiscal year 1983 for certain maritime programs of the Department of Transportation, and for other purposes," agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. PACKWOOD, Mr. GORTON, Mr. STEVENS, Mr. LONG, and Mr. INOUYE to be the conferees on the part of the Senate.

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

S. 1562. An act to provide comprehensive national policy dealing with national needs and objectives in the Arctic;

S. 2279. An act to designate the Alben Barkley National Historic Site;

S. 3081. An act to modify the judicial districts of West Virginia, and for other purposes;

S.J. Res. 254. Joint resolution designating September 22, 1983, as "American Business Women's Day"; and

S.J. Res. 263. Joint resolution to authorize the President to issue a proclamation designating the week beginning on March 13, 1983, as "National Surveyors Week."

LET US MONITOR EVENTS IN POLAND

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

Ms. MIKULSKI. Mr. Speaker, I was relieved to hear this weekend that Polish authorities plan to partially lift martial law restrictions. I am cautiously optimistic that this marks a first step in reestablishing some of the basic freedoms that Poles enjoyed for a brief period.

The repression of the last year has caused enormous suffering for the Polish people both in terms of basic human needs and political freedom. I welcome any movement toward the restoration of political freedom and the easing of shortages in food, medical supplies, and other family essentials.

I want to stress, however, that the announcement this weekend is in no way a substitute for the full recognition of Solidarity and acceptance of the Gdansk Shipyard Agreement. I believe that Polish authorities must recognize that no regime or government can claim legitimacy without first taking these steps. The gains that were made by Polish patriots must not be denied.

I ask that my colleagues pay special attention to the situation in Poland over the coming weeks and months. Our commitment to free people everywhere demands nothing less.

COMMITTEE ORDER NO. 34—ALLOWANCE FOR OFFICIAL EXPENSES

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

Mr. HAWKINS. Mr. Speaker, the Committee on House Administration, under the Authority granted in Public Law 92-184 and Public Law 94-440, last Thursday issued committee order No. 34, which is effective on January 3, 1983.

I include committee order No. 34 in the RECORD at this point:

COMMITTEE ORDER (34)

Resolved, That effective January 3, 1983, until otherwise provided by the Committee on House Administration, the Allowance for Official Expenses is as follows:

1. The base allowance for Official Expenses is increased to $52,000.

2. The Travel Allowance is increased to a minimum of $5,700, and the multiplier in the formula used to compute the variable for travel is increased to a range of 21 to 35 cents.

Expenditures of these funds shall be made in accordance with rules and regulations established by the Committee on House Administration.

KGB LEADERSHIP FOR THE SOVIET UNION

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

Mr. McDONALD. Mr. Speaker, a lot of nonsense has appeared in the popular press relative to the rise to leadership of Yuri Andropov in the Soviet Union. Specifically, some claim he is really a "liberal" with Western tastes and that, somehow, we should all feel hopeful. However, the evidence we have does not agree with this theory.

The evidence is that Andropov's rise to power started some time before the death of Brezhnev, and that Brezhnev, while still alive and in very failing health, was not really ruling the

Soviet Union during his last year on this Earth.

It was noticeable that after death on January 25, 1982, of the U.S.S.R's brittle ideolog—Mikhail Suslov—that some things began to change in foreign policy. Most notably serious moves to heal rifts with Communist China and Yugoslavia now took place. Andropov also moved back to the Central Committee Secretariat in April, where he could now have a direct influence on U.S.S.R. foreign and military policies.

Also prior to Brezhnev's death, there were a series of leaks to the Western press, probably orchestrated by the KGB, regarding the alleged crimes of friends and family of Brezhnev. For such things to be in open circulation in Moscow is rather unprecedented.

As for Andropov himself, we should note that he has been the head of the Soviet secret police—the KGB—longer than anyone in its history. He is also known to have played a major role in the subjugation of the Karelo Finns after the winter war (1939-40), with Finland and during the Hungarian revolt in 1956. During his tenure the KGB achieved new high levels of refinement of KGB tactics in repression, and espionage. All of this hardly adds up to great hopes for the free world. In order to provide additional details on this important topic, I am placing an expanded version of this statement in Extensions of Remarks today.

AMERICAN SAMOA FACES ECONOMIC DISASTER

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

Mr. SUNIA. Mr. Speaker, over the weekend, I circulated a dear colleague letter to the offices of all Members with the hope that they will have a chance to see it before floor consideration of H.R. 7397, the Caribbean Basin Economy Recovery Act. If that bill were to pass in its present form, American Samoa, the Nation's lone territory in the South Pacific, faces a real economic disaster.

All that is necessary to avert that disaster is for canned tuna to be excluded. A motion by RICHARD GEPHARDT to that extent was narrowly defeated during committee markup.

Mr. Speaker, tuna canning is American Samoa's only industry. If Caribbean-packed tuna were to be allowed to enter duty free, tuna packed in the U.S. territories—where all of the Nation's laws, rules, and regulations must be obeyed—stands no chance to compete.

When our industry is gone, sir, the alternative is to seek additional Federal appropriations for general support. While this Congress has been more than generous to my territory in the recent past, we feel a nearness to our goal of economic self-sufficiency, through the further development of tuna canning operations in our islands. There is no other resource available.

I know this Congress, the Federal Government, will come to our aid, as it has in the past. But Mr. Speaker, the pride and self-respect that comes from knowing you are beginning to pay your own keep, will be dealt a fatal blow.

We do not oppose the President's Caribbean Basin Initiative. We only ask that tuna canning be excluded.

"SOCPAC"—ALL-INCLUSIVE SOLUTION

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

Mr. CONTE. Mr. Speaker, today, because of the confusion in the other body on the major issues facing this lameduck session, I am forced to offer a solution so we can go home before the 98th Congress takes over.

My solution will solve the 5-cent gas tax filibuster, provide funds for improving our rail and road system, alleviate the MX crisis, contribute to a nuclear freeze, and assist in creating jobs. I call this solution the "SILVIO O. CONTE Put 'em on Amtrack Cars," or SOCPAC solution. SOCPAC is a nonnuclear approach to solving the window of vulnerability. The plan envisions putting rockets without nuclear warheads on railcars and buses all over the country. The money that we give DOD for this system would be used to improve our rail beds and roadways and thus provide jobs.

We can meet the arms control objectives of the nuclear freeze because the missiles will not have nuclear warheads on them. The warheads will be removed and stored at another location, only to be joined with the rocket in time of emergency. This will eliminate the criticism that we are building a first strike system. Yet, it will pose a targeting problem to the Soviets which they cannot solve.

Then, as Art Buchwald suggests, we can give the Soviets the Amtrak schedules and they will never be sure where anything in the system is.

Hopefully, someone will see the wisdom of SOCPAC in order to get our colleagues on the other side of this building out of their trance before Santa Claus comes.

UPDATE ON BANKRUPTCY LEGISLATION

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

Mr. BUTLER. Mr. Speaker, on June 28, 1982, the Supreme Court of the United States in the now famous Marathon Pipeline case determined that much of the jurisdiction granted the Bankruptcy Court in 1978 is unconstitutional; and gave the Congress until October 4 to do something about it.

Relying on representations of great progress in Congress, and expectation of early resolution of the problems created by this decision, the Supreme Court on October 4, extended the time for congressional action to December 24.

The indicated legislative response was passed by the full Judiciary Committee on August 19, 1982, as H.R. 6978, supporting comments have been in the hands of our colleagues for some little time. Chairman RODINO has extensive remarks on the subject in the RECORD on December 8, 1982; and I have suggested possible areas of compromise in a separate bill, H.R. 7349, and my comments are in the RECORD of December 1, 1982.

On Friday of last week, the Attorney General of the United States by letter to the Speaker reviewed the situation once more and reminded the Speaker once more "that it is imperative that the necessary remedial legislation be enacted before the end of this session."

It is implicit in such a letter from the Attorney General that the Department of Justice does not intend to ask the Supreme Court of the United States for additional time if the Congress does not act by December 24; and it is my own view that the possibility of a further stay by the Supreme Court under these circumstances is extremely remote even if asked.

Mr. Speaker, it is quite apparent to me that there will be chaos in the bankruptcy courts if Congress does not act to create the appropriate article III bankruptcy judges before adjournment; and the blood will be on our hands.

HON. CLAIR W. BURGENER—A STANDUP, STANDOUT CONGRESSMAN

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

Mr. O'BRIEN. Mr. Speaker, what we all will miss in bidding goodby to CLAIR BURGENER of California, is many things, the extraordinary qualities that made him such a standup, standout Congressman. He had a singular talent for getting to the heart of the matter. In committee or in the well, he rarely spoke unless the issue under consideration was of great importance. And he never failed to contribute something of value. With Mr. BURGENER acrimonious argument yielded to eloquent, gentle persuasion, always acknowledging the good points in the

other Member's case, unerringly pointing out the greater merit of his. He was formidable as an ally or as an opponent; but he was never a foe.

For the way in which I would like to be pictured by the folks at home, his portrait is the prototype. Intelligence, wit, eloquence, impeccable moral standards, a stunning wife, CLAIR has it all. The Congress and candidly the whole Nation will be the losers when Mr. BURGENER strikes his last word and leaves the well for the last time. For all of us heading into the 98th Congress, it will be a gloomy day.

□ 1215

JOB CREATION EFFORTS

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

Mrs. MARTIN of Illinois. Mr. Speaker, we have all heard about the job creation effort attached to the continuing resolution. While the effort should be complimented, I do think the "nuts and bolts" of the proposal has serious problems. We should not cast a stamp of approval for an effort which will really help only a small segment of the unemployed of this Nation. We need more than political expediency.

If this Congress is serious about helping the unemployed, and I believe it is, then we should consider efforts that will help our idle workers secure gainful, meaningful employment. It is important to get our workers back to work but not jobs that will be nonexistent in just a few months.

I plan to introduce legislation that I believe goes hand in hand with the job creation efforts currently under discussion. My legislation, the Job Opportunity and Business Stimulation Act (JOBS), will allow States and hard-hit localities the flexibility to address their own particular problems in creating jobs and stimulating business. My legislation will allow States and hard-hit localities the leeway to initiate projects which will be most beneficial to the needs of their area. My legislation acknowledges differing needs not only from State to State but also from county to county within a State.

I fear the Congress may approve a job creation effort that really will not be much more than a pacifier to the voting constituencies back home. Job creation should and must be geared toward permanent, marketable employment. I urge your cosponsorship of my proposal and your help to make this effort a reality.

IS IT $700,000 OR IS IT $134,700 OR LESS?

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

Mr. HUBBARD. Mr. Speaker, I am a longtime admirer of the beloved late former Vice President Alben Barkley, a native of my home county and a former resident of Paducah, Ky., who rose from McCraken County judge to be Vice President of the United States. In fact, Alben Barkley, is one of my predecessors as First District U.S. Representative of Kentucky.

I am a supporter of efforts to make his Paducah home a national historic site.

Legislation was introduced in the U.S. Senate last March 24 for this purpose and allocates up to $700,000 for the "acquisition of lands and interests therein." This bill, S. 2279, was quietly, adroitly and by voice vote passed in the U.S. Senate last Friday, December 10.

Press accounts in Kentucky yesterday indicated that a respected member of the Kentucky House delegation will push this bill through the House for passage under unanimous consent this week—possibly as early as today.

It would be unfair to my colleagues in the House if I did not point out that a fair appraisal of the real estate in question—13 acres and the Barkley homeplace—is a lot less than even $200,000. In fact, the total 30.9 acres including the homeplace is listed for tax purposes at 100 percent valuation in the McCracken County Courthouse, Paducah, Ky., for $134,700.

I can assure my colleagues in the House that this legislation deserves hearings and adequate consideration by the House. Incidentally, during the brief Senate action on this bill last Friday, the cost to the Federal Government—"not to exceed $700,000 for the acquisition of lands and interests therein"—was never mentioned. Also, opposition to the cost of this legislation by the U.S. Department of the Interior and the National Park Service was never mentioned.

There has been tremendous pressure, even this morning, upon me to support this bill today in the U.S. House of Representatives.

A fair question is why, may I ask, is there such a rush?

ROBERT F. HENRY LOCK AND DAM

Mr. FLIPPO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate 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," and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The Clerk read the Senate bill, 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 a reference to the "Robert F. Henry Lock and Dam".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FLIPPO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the Senate bill just considered.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

ROBERT B. GRIFFITH WATER PROJECT

Mr. KAZEN. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from the further consideration of the Senate bill (S. 1681) to designate the Southern Nevada water project the "Robert B. Griffith Water Project," and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1681

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the southern Nevada water project, in Clark County, Nevada, shall hereafter be known and designated as the "Robert B. Griffith Water Project". Any reference in a law, map, regulation, document, record or other paper of the United States to that water project shall be held and considered to be a reference to the "Robert B. Griffith Water Project".

Mr. KAZEN. Mr. Speaker, S. 1681 changes the name of the southern Nevada project, which furnishes water for municipal and industrial purposes

to the Las Vegas area, to the "Robert B. Griffith Water Project."

This simple, noncontroversial bill honors a Nevada pioneer largely through whose efforts the project was constructed. I know of no objection to the bill.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KAZEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the Senate bill just considered.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Pursuant to the provisions of clause 5, rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken today after debate has been concluded on all motions to suspend the rules.

EXPRESSING SENSE OF CONGRESS WITH RESPECT TO SCIENTIFIC AND TECHNOLOGICAL SUPERIORITY OF COMMUNICATIONS AND ELECTRONICS INDUSTRY IN THE UNITED STATES

Mr. FUQUA. Mr. Speaker, I move to suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 130) expressing the sense of the Congress that the advancement of science and technology in the communications and electronics industry is vital to the needs of the United States.

The Clerk read as follows:

S. CON. RES. 130

Whereas the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Energy and Commerce of the House of Representatives, the Federal Communications Commission, and the Congress have long recognized the importance of scientific and technological developments in the United States in meeting its defense, industrial, and other needs;

Whereas such scientific and technological developments in the communications and electronics industry are of particular importance to the United States in meeting its defense, industrial, and other needs;

Whereas the traditional technological superiority enjoyed by the United States in the area of communications and electronics is dwindling due to the disparity in the commitment;

Whereas it is in the best interest of the United States to reverse the trend of declining United States technological superiority and to continue to lead in all areas of communications and electronics;

Whereas it is in the best interest of the United States to support the establishment of a national center dedicated to the advancement of science and technology in communications and electronics; and

Whereas such a national center would promote the interest of the public at large in such advancements in communications and electronics; tie the corporate and governmental worlds together to reach a common goal: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress shall take an active and leading role in making the public, and the corporate and governmental worlds aware of the importance of assuring and maintaining the scientific and technological superiority of the United States in the area of electronics and communications, and to encourage the establishment within the United States of a national center dedicated to communications and electronics.

The SPEAKER. Pursuant to the rule, a second is not required on this motion.

The gentleman from Florida (Mr. FUQUA) will be recognized for 20 minutes, and the gentleman from Pennsylvania (Mr. WALKER) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. FUQUA).

GENERAL LEAVE

Mr. FUQUA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on Senate Concurrent Resolution 130.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

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

Mr. Speaker, today we are considering Senate Concurrent Resolution 130, which expresses the sense of the Congress that the Congress shall take an active and leading role in making the public, and the corporate and governmental worlds aware of the importance of assuring and maintaining the scientific and technological superiority of the United States in the area of electronics and communications, and to encourage the establishment within the United States of a national center dedicated to communications and electronics.

My colleague, DOUG BARNARD, introduced a similar resolution (H. Con. Res. 204) which was considered by the Committee on Science and Technology in markup on August 3, 1982, and by unanimous voice vote the committee favorably reported House Concurrent Resolution 204 without amendment. On December 1, the Senate passed Senate Concurrent Resolution 130 which was referred jointly to the Committee on Energy and Commerce and the Committee on Science and Technology on December 6. Both committees support the adoption of the language proposed by the Senate in Senate Concurrent Resolution 130.

Senate Concurrent Resolution 130 is based on the views that the traditional technological superiority enjoyed by the United States in the area of communications and electronics is dwindling due to the disparity in the commitment, and that it is in the best interest of the United States to support the establishment of a national center dedicated to the advancement of science and technology in communications and electronics.

As we all know, America's international position in both science and technology is currently being challenged. The national security and the economic and social well-being of the United States will in a large measure rest on the ability of our country to remain in the forefront of the rapidly advancing communications and electronics technologies. The proposed science center could provide the assistance necessary to encourage young people to enter these important fields which are currently experiencing a shortage of qualified scientists.

This resolution does not authorize or appropriate Federal funds, but would assist the nonprofit foundation created by leaders in communications and electronics in their effort to obtain funds to build this science center. I urge my colleagues to pass Senate Concurrent Resolution 130.

The SPEAKER pro tempore (Mr. KILDEE). The Chair recognizes the gentleman from Pennsylvania (Mr. WALKER) for 20 minutes.

Mr. WALKER. Mr. Speaker, the gentleman from Florida has done an excellent job of explaining this bill. I know of no controversy. It was passed out, as the gentleman indicated, from the Committee on Science and Technology unanimously.

The minority is certainly in agreement with the gentleman that this is a policy that this Nation should pursue, and we wholly concur with the gentleman in saying that the Congress should go ahead and pass this legislation.

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

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. FUQUA) that the House suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 130).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the

Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

A similar House concurrent resolution (H. Con. Res. 204) was laid on the table.

TELECOMMUNICATIONS FOR THE DISABLED ACT OF 1982

Mr. WIRTH. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2355) to amend the Communications Act of 1934 to provide that persons with impaired hearing are insured reasonable access to telephone service, as amended.

The Clerk read the Senate bill, as follows:

S. 2355

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 "Telecommunications for the Disabled Act of 1982".

SEC. 2. The Congress finds that—

(1) all person should have available the best telephone service which is technologically and economically feasible;

(2) currently available technology is capable of providing telephone service to some individuals who, because of hearing impairments, require telephone reception by means of hearing aids with induction coils, or other inductive receptors;

(3) the lack of technical standards ensuring compatibility between hearing aids and telephones has prevented receipt of the best telephone service which is technologically and economically feasible; and

(4) adoption of technical standards is required in order to ensure compatibility between telephones and hearing aids, thereby accommodating the needs of individuals with hearing impairments.

SEC. 3. Title VI of the Communications Act of 1934 (47 U.S.C. 601 et seq.) is amended by adding at the end thereof the following new section:

"TELEPHONE SERVICE FOR THE DISABLED

"SEC. 610. (a) The Commission shall establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing.

"(b) The Commission shall require that essential telephones provide internal means for effective use with hearing aids that are specially designed for telephone use. For purposes of this subsection, the term 'essential telephones' means only coin-operated telephones, telephones provided for emergency use, and other telephones frequently needed for use by persons using such hearing aids.

"(c) The Commission shall establish or approve such technical standards as are required to enforce this section.

"(d) The Commission shall establish such requirements for the labeling of packaging materials for equipment as are needed to provide adequate information to consumers on the compatibility between telephones and hearing aids.

"(e) In any rulemaking to implement the provisions of this section, the Commission shall specifically consider the costs and benefits to all telephone users, including persons with and without hearing impairments. The Commission shall ensure that regulations adopted to implement this section encourage the use of currently available technology and do not discourage or impair the development of improved technology.

"(f) The Commission shall complete rulemaking actions required by this section and issue specific and detailed rules and regulations resulting therefrom within one year after the date of enactment the Telecommunications for the Disabled Act of 1982. Thereafter the Commission shall periodically review such rules and regulations. Except for coin-operated telephones and telephones provided for emergency use, the Commission may not require the retrofitting of equipment to achieve the purposes of this section.

"(g) Any common carrier or connecting carrier may provide specialized terminal equipment needed by persons whose hearing, speech, vision, or mobility is impaired. The State commission may allow the carrier to recover in its tariffs for regulated service reasonable and prudent costs not charged directly to users of such equipment.

"(h) The Commission shall delegate to each State commission the authority to enforce within such State compliance with the specific regulations that the Commission issues under subsections (a) and (b), conditioned upon the adoption and enforcement of such regulations by the State commission.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Colorado (Mr. WIRTH) will be recognized for 20 minutes, and the gentleman from California (Mr. DANNEMEYER) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Colorado (Mr. WIRTH).

GENERAL LEAVE

Mr. WIRTH. Mr. Speaker, I ask unanimous consent to revise and extend my own remarks and to insert letters of support, and that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

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

There was no objection.

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

Mr. Speaker, I ask unanimous consent to revise and extend my remarks, to insert in the RECORD letters of support, and to allow Members 5 legislative days to revise and extend their remarks.

The Telecommunications for the Disabled Act of 1982 represents a consensus approach the need of persons with hearing impairments or other physical disabilities to have access to the telecommunications services that are vital to life in modern society. The bill has been endorsed by each of the major carriers and by representatives of the telephone manufacturing industry. It is supported by groups representing the disabled, including Easter Seals, the American Association of Retired Persons, and the Disabled American Veterans. It is a common sense and economic approach to a problem that has vexed several Congresses. It recognizes the historic commitment of the telephone companies to accommodate the handicapped and relies on that tradition, rather than on Government subsidies and Federal regulation.

The Committee on Energy and Commerce has unanimously reported S. 2355, the Telecommunications for the Disabled Act of 1982. This legislation takes two constructive steps to insure that disabled Americans continue to have access to our telephone network. First, the bill modifies a regulation issued by the Federal Communications Commission (FCC) that would prevent State regulators from making specialized telephone equipment available to the disabled. Second, the legislation directs the FCC to establish a technical standard to insure that telephones needed by persons with impaired hearing are compatible with hearing aids.

Unless Congress acts during the special session, the FCC regulation will become effective on January 1, and disabled Americans will no longer be able to obtain new terminal equipment under State-supervised tariffs. As the executive director of the Paralyzed Veterans of America recently wrote to me:

> I want to express my gratitude for your efforts. The FCC regulation would preclude many individuals from obtaining this necessary, and often only, means of contact with other people, including vital medical and emergency personnel . . . Telephone companies would be prevented from subsidizing special and unique equipment to meet the needs of handicapped individuals . . . in certain cases, preventing their gainful employment. This decision . . . presents a great hardship and peril to many of our most catastrophically disabled citizens.

More than one-third of all Americans over 65 wear hearing aids. The legislation recognizes the difficulties that these persons encounter when they need to use noncompatible telephones. All standard Bell telephones are now compatible; AT&T, GTE, and some independent telephone companies have also retrofitted coin telephones. Nonetheless, places of business are installing increasing numbers of noncompatible telephones, generally because they are unaware that many of their customers will be unable to use them. The result is an unnecessary hardship, since at the present time new telephones can be manufactured to be compatible without any significant increase in cost.

A broad coalition has recognized the need for this legislation. The Nation's major telephone carriers have joined the North American Telephone Association in approving the Telecommunications for the Disabled Act. Representatives of the handicapped community and the medical profession (including the Disabled American Veterans and the American Association of Retired Persons) also endorse S. 2355.

Historically, the telephone industry (particularly Bell Labs) has done an outstanding job of developing technology that allows the disabled to use our telephone network. An intrusive Federal regulation should not interfere with the development of these technologies or prevent telephone carriers from making them available to the handicapped in cooperation with the State commissions. I urge your support for this consensus legislation, which is vital to America's elderly and disabled citizens.

MODIFYING THE COMPUTER RULE

After the introduction of this bill, AT&T petitioned the Commission for a temporary waiver of the computer rule, 47 CFR 64.702, which precludes a carrier from offering terminal equipment on a regulated basis. Subsequently, Mr. David Saks on behalf of the Organization for the Use of the Telephone requested that the Commission extend such a waiver to allow all telephone companies to offer specialized terminal equipment under tariff. Mr. Saks subsequently clarified that he intended such a waiver to be permanent.

Passage of this legislation moots the pending waiver proceedings by removing specialized terminal equipment from the jurisdiction of the computer rule. The Commission will be required to adopt a permanent modification of the computer rule to allow States to tariff specialized equipment.

For years, the special needs of the disabled have not received adequate attention at the Commission. The Commission has taken no action to resolve the issues raised in Docket 78-50, opened 4 years ago to consider standards for hearing aid compatibility and to resolve problems facing the deaf. There is no evidence that the Commission gave any consideration to the needs of the disabled during the second computer inquiry, which led to the indescriminate prohibition on the tariffing of terminal equipment.

Given such neglect, explicit legislative guidance is required. The Commission must forbear from forcing the States to deregulate any device that the disabled need in order effectively to use the Nation's telephone services. Specialized equipment now includes teletypewriters for the deaf, "hands off" equipment for quadriplegic telephone users, and artificial larynxes for persons unable to speak. It also includes optional equipment, such as speakerphones and automatic dialers, but only provided that tariffs are limited to those users who need these features in order to use telephone services effectively and independently. Automatic dialers and speakerphones could only be made available under tariff only to persons with impaired memory or mobility, not to the public at large.

In the future, the Commission may define by rule the scope of the "specialized terminal equipment" which this bill authorizes States to tariff; the Commission may attempt to enjoin tariffs that it regards as overbroad. The legislation intends a flexible reading of the term, placing primacy on the needs of the handicapped and on the desirability of making new technologies broadly available to disabled groups.

The legislation recognizes that States will not necessarily require that carriers offer terminal equipment under tariff. It recognizes that many carriers will continue their outstanding efforts of providing below-cost equipment on a deregulated basis, subsidized by charitable contributions from its shareholders. In such a case, there may be no reason for the State to prescribe tariffs for the affected equipment.[1] The bill simply states that the Commission cannot interfere with the State's decision to tariff such equipment and to allow the recovery of reasonable and prudent costs not charged directly to the user in tariffs for regulated services.

The Commission should continue to prevent distortions in the nationwide markets for terminal equipment by precluding a State from allowing recovery of any excess over the reasonable and prudent costs of providing terminal equipment on a subsidized basis. In particular, the State may not authorize a carrier to recover in tariffs for regulated services the costs of discriminatory procurement practices. Moreover, the State may not include as expenses in any regulated rate base contributions made to an affiliated entity ostensibly to subsidize equipment, unless such entity files tariffs (or other justifications of costs) to show that the costs of such equipment exceeded the price at which it was sold by an amount not less than the contribution allowed from the rate base.

The principle of the legislation is straightforward. The Commission can only preempt a State tariff when it demonstrates one of three conditions: First, the tariff concerns equipment other than specialized terminal equipment; that is, it involves devices that are not necessary for the disabled to use generally available telecommunications services (or those services that have been specially designed for their use) effectively or without assistance. Second, the tariff makes specialized equipment which has general utility (such as speakerphones) to persons who do not require it by virtue of a physiological impairment. Third, a tariff for regulated services includes costs of providing equipment that are not "reasonable and prudent," including any claimed reduction in the price at which an unregulated affiliate offers equipment that the carrier does not demonstrate to be below the actual costs of production and distribution.

ESTABLISHING A TECHNICAL STANDARD FOR EFFECTIVE USE OF TELEPHONES WITH HEARING AIDS

The second purpose of the legislation is to insure that persons with impaired hearing have access to essential telephones that are compatible with hearing aids. Today, these citizens face a hardship that is totally unnecessary, since current technology allows new telephones to be manufactured for compatibility without any significant increase in cost. A uniform technical standard is essential to insure that these Americans can travel among the States, transact business, and seek employment without discrimination based on their disability.

Persons with impaired hearing have experienced special difficulty in obtaining telephone service offered to the public in hotels and other places of public accommodation. While traveling away from home, these persons have been unable to call their families from certain hotel rooms, to use telephones in business meeting rooms, or even to seek emergency aid from elevators. Although the hotel industry has attempted to accommodate these guests, it was often prevented from doing so by the absence of a uniform technical standard and adequate labeling requirements. Therefore, the bill does not require that hotel owners retrofit telephones (other than emergency phones). Except with regard to emergency phones, the bill does not extend the jurisdiction of the Commission, nor does it express or imply an intention with regard to any pending or future proceeding under sections 201 and 208 of the Communications Act, or affect the tariffing obligations under those sections which the Commission recently recognized in its Competitive Carrier rulemaking.

The purpose of the bill is not to freeze technology. It does not mandate any particular method for achieving compatibility with hearing aids. Currently, magnetic induction provides a means for providing compatibility without incurring additional manufacturing costs. In the future, new technologies may make possible improved service to the ordinary user. This bill promotes efficiency by encouraging the development of those new technologies while holding the hearing-impaired user harmless from any potential degradation of hearing-aid compatible service.

[1] The bill does not "specify that offerings of specialized terminal equipment be under tariff," and it is "permissible for carriers to offer such equipment under tariff or on a deregulated basis." The State commission may direct the carrier to provide affordable specialized equipment to the handicapped; the carrier may elect to do so on an unregulated basis subsidized by the shareholders rather than on a regulated basis subsidized by the ratepayers.

□ 1230

Mr. KAZEN. Mr. Speaker, will the distinguished gentleman yield?

Mr. WIRTH. I am glad to yield to the gentleman from Texas.

Mr. KAZEN. Mr. Speaker, I am very glad to hear the explanation the gentleman has made. I have been contacted by motel and hotel people who were under the impression that this measure would make it mandatory for them to have these telephones in every single room.

Mr. WIRTH. That is not the case. That was the case in previous legislation, but it seemed to us on the committee that this was an onerous provision.

Let me add at this point that the objections of some members of the hotel and motel industry to not reflect on the general attitude or record of hotel and motel owners across our country to accommodate all their guests, including those with physical disabilities. Today, without the benefit of a uniform standard, equipment is manufactured with a variety of inductive characteristics, and it is not possible to design a hearing aid that is compatible with all of them. As a result, hotel owners often do not know whether the equipment they buy is or is not compatible. In the future, virtually all equipment will have the same magnetic characteristics and will be compatible with hearing aids. The hotel owner will know any exceptions—noncompatible equipment will be clearly packaged. Hotels will have the opportunity, which they generally do not have today, to choose whether they want to have compatible equipment. With comparable prices, one would expect the overwhelming majority of the hospitality industry to accommodate their guests. The requirements placed on those who choose, for some reason, to buy noncompatible systems is minimal. In the face of these minimal burdens, we have a substantial benefit to the hearing-impaired population. Over one-third of all Americans over 65 is hearing impaired. This bill assures that they will be able to phone home when they travel, to participate equally in conventions and business meetings, and to summon help if they are trapped in an elevator.

Mr. KAZEN. It certainly would be if that were to be the requirement because there are not that many people who are hotel guests in proportion to the people who do not need the telephones, so it is not necessary to have the entire industry go to this great expense of converting.

Mr. Speaker, will the gentleman go over that requirement again or explain the suggestion again?

Mr. WIRTH. Mr. Speaker, I will be glad to do that.

As far as having coin telephones be compatible, the industry is very happy with doing that. They are in the process of doing it anyway.

Mr. KAZEN. Mr. Speaker, does the gentleman refer to the manufacturing industry?

Mr. WIRTH. The manufacturers, the distributors, and the carriers.

Mr. KAZEN. All right.

Mr. WIRTH. The manufacturers are in the process of moving toward that kind of standard so that all equipment is compatible with hearing aids. The suppliers want uniformity. Since all instruments have to have a magnetic field, it makes sense to adjust telephones to have uniform strength and orientation so that hearing aids can work with telephones from different manufacturers

Let us consider the perspective of service providers, say, a hotel or motel. If you were operating a motel in downtown Dallas, the law would not apply (except to emergency phones) until you bought a new telephone system. Compatible systems are available at comparable prices, so one would expect that most hotels would simply buy compatible phones. But if, for some reason, a hotel elects a system that is not compatible, it can simply maintain a reasonable number of instruments for hearing-aid wearers to use on demand. These could be rooms reserved for the hearing impaired, or there could even be portable instruments that the hearing impaired could request. But there is no requirement that every telephone in the lobby or every room would have to have telephones that are compatible with hearing aids.

Mr. KAZEN. Mr. Speaker, what does the gentleman consider as a reasonable requirement?

Mr. WIRTH. We had a similar discussion in hearings on H.R. 5158. We encouraged the FCC to work with the industry. Working together, so that the manufacturing industry will come in, along with the motel and hotel industry, and we say that a 20-percent level could be reached in the lobbies, and that there would be 1 out of 10 rooms that would be compatible. And then the Commission would determine what was a reasonable number.

I would also point out, if I may, that this is in a transitional period. As telephones are being replaced, older hotels and motels are going to be replacing their equipment as they go along anyway, and virtually all the new equipment manufactured after this legislation would be compatible anyway. So 5 years from now or 8 years from now it is not going to be a concern. It is in the transitional phase that the FCC should give particular concern to encouraging voluntary compliance with the legislation and its purposes.

Mr. KAZEN. Mr. Speaker, I thank the gentleman.

Mr. WIRTH. Mr. Speaker, I thank the gentleman for his questions.

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

Mr. WIRTH. I yield to the gentleman from Georgia.

Mr. McDONALD. Mr. Speaker, I appreciate the gentleman's yielding.

I was curious about one aspect of this. What is the estimated cost that would be required for hotels and motels? Can the gentleman give us a cost estimate?

Mr. WIRTH. Mr. Speaker, a great number of the motels and hotels already have this equipment available, and as to installing any kind of new hearing compatible phone, there is no greater cost now. One can go, for example, to the Bell Telephone System or its new subsidiary and find that all standard telephones are compatible. You just cannot buy a nonconforming telephone. From most other manufacturers, the cost of a hearing compatible phone is no different from the cost of a regular telephone. I am pleased to submit representative letters from manufacturers which assured us that this legislation will not increase the cost of new telephones.

TELTONE,
December 9, 1982.

Hon. TIMOTHY WIRTH,
Chairman, House Telecommunications Subcommittee, Washington, D.C.

DEAR SIR: Teltone Corporation is a manufacturer of telecommunications equipment. This letter will confirm that S. 2355 presents a good solution to assure electromagnetic compatibility between the telephone and the hearing aid.

It is our opinion, as a manufacturer and supplier of related products, that such compatibility insofar as new telephone instruments are concerned, can be realistically achieved within the time frame proposed by legislation and with insignificant additional cost to the manufacturer.

Sincerely,

TELTONE CORPORATION,
DALE E. JOHNSON,
Vice President, Sales.

CREST INDUSTRIES, INC.,
Puyallup, Wash., December 9, 1982.

Hon. TIMOTHY WIRTH,
Chairman, House Telecommunications Subcommittee, Rayburn Building, Washington, D.C.

DEAR MR. WIRTH: As manufacturers of telephone equipment including miniature transfer keys, two-line telephones and modular hardware, this is to confirm that S. 2355 and the corresponding House Bill present a feasible and affordable solution to the problem of ensuring electromagnetic compatibility between telephone receivers and hearing aids. It is our opinion as a supplier of telephone instruments and related products, that such compatibility insofar as new telephone instruments are concerned, can be realistically achieved within the time frame proposed by legislation and at insignificant additional cost to manufacturers.

Should you have any questions, please contact me at Crest Industries, Puyallup, Washington, telephone 927-6922.

Sincerely,

EARL L. MASON,
Vice President, Corporate Planning.

Mr. McDONALD. Mr. Speaker, if the gentleman will yield further, I was particularly curious about the small hotels and motels. Would there be any cost to them?

Mr. WIRTH. There would be no significant costs. There is no retrofitting required under the legislation. If you have a hotel or a motel now that has no hearing compatible telephones, there is no requirement for retrofitting. All we are saying is that when new telephones are put in, the standards are there anyway and these are going to have the technical capability of handling the hearing-impaired.

So we do not say that you would have to go back and redo rooms or tear out telephones of that sort. It is all for new installations.

Mr. McDONALD. Mr. Speaker, I thank the gentleman.

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

Mr. WIRTH. I am pleased to yield to the gentleman from Illinois.

Mr. SIMON. Mr. Speaker, I simply want to join with the gentleman from Colorado (Mr. WIRTH), and I want to express my appreciation to him and to the subcommittee for providing leadership here in an area that is extremely important to a great many Americans. I am pleased to join in support of this legislation.

Mr. Speaker, the Telecommunications for the Disabled Act is a vital step in assuring that the handicapped members of our society have an equal opportunity to participate in the social and work opportunities in this Nation. The act requires the establishment of uniform standards to insure that essential telephones—those phones which are to be found in public facilities, workplaces, businesses, and which are to be used to summon help in case of emergencies—are accessible to the disabled population.

The telephone companies of this country have done an admirable job in designing and providing equipment for the handicapped. The Bell System in particular has demonstrated a substantial commitment to providing the best feasible service to disabled customers. In most cases, it has been a cooperative effort between telephone companies, State utility commissions and the Federal Communications Commission to insure that the disabled have reasonable access to telephone service. In many cases, the physically impaired have been able to afford these innovations only because telephone companies have provided specialized equipment at below cost. However, a recent Federal Communications Commission decision prohibits telephone companies from subsidizing terminal equipment and requires users to pay the full cost of equipment in their homes and places of business. The effect of this ruling could be devastating to the handicapped. The Telecommunications for the Disabled Act would only insure that individuals with disabilities would have access to telephone services at affordable costs. I encourage you to support this important legislation.

Mr. WIRTH. Mr. Speaker, I thank the gentleman from Illinois.

In closing, Mr. Speaker, let me point out that this legislation is also cosponsored by the ranking minority member of the Energy and Commerce Committee, the gentleman from North Carolina (Mr. BROYHILL) and was unanimously reported out of the full committee. Our subcommittee held hearings on this issue on March 27, 1980 and February 26, 1982. Extensive hearings were also held on the Senate side, with various aspects of the industry represented.

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

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

Mr. Speaker, on behalf of my colleague, the gentleman from Virginia (Mr. BLILEY), a member of the subcommittee, who met with an unfortunate accident this morning and cannot be on the floor to address the House concerning this legislation, I would like to make this following statement on behalf of the gentleman relative to S. 2355.

The remarks of the gentleman from Virginia (Mr. BLILEY), are as follows:

Though I concur with the bill's purpose of insuring telephone service for the deaf and other handicapped individuals, the manner of achieving this goal poses several questions which need further consideration.

The Telecommunications Subcommittee, which has jurisdiction over S. 2355, never held a hearing or markup session. Only one witness was heard on "related provisions" of H.R. 5158. The bill was brought before the Energy and Commerce Committee on extremely short notice during consideration of other unrelated measures.

In urging local telephone companies to continue to provide subsidized service to the handicapped, the bill would require an alteration of the FCC's "computer II" decision which was upheld by the U.S. court of appeals only last month. And it would require that the changes be made before January 1, 1983, only 3 weeks away.

S. 2355 would preempt all State regulations on the subjects covered and then ask States to bear the burden of enforcing the Federal law. The bill would regulate not only technical standards for phone equipment but require "detailed guidance as to the locations where * * * telephones must be available" in drugstores, gas stations, private clubs, workplaces, and hotels and motels.

Over 80 percent of all telephones in the United States are already hearing aid-compatible. Every coin-operated phone in the Bell and GTE systems is already in compliance. Hotel and motel operators have offered to work with organizations for the handicapped to voluntarily insure that phone service is available.

In short, this bill is a prime example of "duck fever." An attractive title hides a vast and probably unneeded new regulatory program. Affected industries and consumers deserve the courtesy of a hearing and proper legislative procedure.

● Mr. BROYHILL. Mr. Speaker, I would like to make one point in order to clarify an ambiguity in this legislation. S. 2355 does not grant jurisdiction to any Government agency to require any person to manufacture "essential" telephones or to market such telephones to anyone desiring to purchase or lease an essential telephone. There is every reason to believe that the marketplace will insure that a large supply of essential telephones are manufactured and marketed. But if it does not, no one can point to this bill as granting jurisdiction to any Government agency to require that such phones are either manufactured or marketed.●

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

Mr. WIRTH. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. MINETA).

Mr. MINETA. Mr. Speaker, I rise in support of S. 2355, the Telecommunications for the Disabled Act of 1982.

Unless Congress acts now, Federal Communications Commission regulations prohibiting State regulators from making subsidized specialized telephone equipment available to the disabled will go into effect on January 1, 1983. It is vital to the very existence of the hearing impaired and disabled that they are insured access to our telephone network. Use of a telephone is not a luxury, it is a necessity. Particularly for the disabled person, access to a telephone could mean the difference between life and death.

State regulators must be allowed to set a subsidized rate for the specialized terminal equipment. The full cost of this equipment would put it out of reach of most hearing impaired and handicapped individuals.

S. 2355 would also require that all new telephones be made compatible with hearing aids. Although all Bell telephones are currently compatible with the aids, the proliferation of new telephone equipment has seen a rise in noncompatible terminals. One-third of all Americans over 65 wear hearing

aids. It is imperative that these people have access to our network telephone. This bill would direct the FCC to establish a technical standard for the manufacture of compatible telephones to insure this access.

S. 2355 has the backing of the Nation's major telephone carriers, State regulators, the handicapped community, and the medical profession. I urge a "yes" vote.

● Mr. CORRADA. Mr. Speaker, I rise in support of S. 2355, to amend the Federal Communication Act of 1934 to provide that persons with impaired hearing are insured reasonable access to telephone service.

Telephone services have become the most important means of communication in today's fast growing world. The telephone companies have been providing services to the physically disabled by selling these users special telephone equipment below cost, and the unrecovered cost of including these persons in the network are shared by all users. According to a new regulation issued by the FCC, that will become effective January 1, 1983, the telephone company will be impeded from subsidizing the physically disabled users to pay the full costs of the equipment.

This bill will help the many U.S. citizens with impaired hearing in Puerto Rico as well as the mainland, to have access to telephone services by requiring the Federal Communications Commission to develop regulations to assure reasonable access to the hearing impaired and other handicapped persons and allowing the State regulatory commission to permit the telephone company to recover costs of providing such equipment by spreading the costs among all users of the system.

I urge my colleagues to vote in favor of S. 2355 and thank them for their support.●

● Mr. LONG of Maryland. Mr. Speaker, I rise in support of S. 2355, as amended, the Telecommunications for the Disabled Act of 1982.

The purpose of this bill is simple: to insure that hearing-impaired and other physically disabled Americans can enjoy greater access to the telephone network in our Nation.

Every day more telephones are being installed in homes, hospitals, schools and businesses with receivers that are useless to hearing-aid users. These receivers work, and look, like any other telephone receiver, except for one important difference—they do not give off an electromagnetic signal strong enough to be picked up by the magnetic pickup or "telecoil" in many hearing aids. They are thus incompatible with hearing aids. Of the 170 million telephones in the United States today, an estimated 40 million are incompatible with hearing aids and the number is growing.

Is the problem serious? With millions of Americans—estimates run as high as 16 million—suffering impaired hearing, and with as many as 3 million of these reliant on hearing aids, the answer is "Yes."

The incompatibility of telephone equipment with hearing aids is especially serious for the many hearing-impaired elderly who are homebound and heavily dependent upon the telephone.

The problem affects not only the hearing impaired—their family, friends, coworkers, and others who must communicate with them. With incompatible phone units such communication for personal, social, and business purposes—not to mention vital health and emergency needs—becomes impossible.

The Telecommunications for the Disabled Act recognizes and begins to address this problem by insuring that hearing impaired Americans have reasonable access to telephones that are compatible with hearing aids. It requires that all essential telephones—public and emergency phones, and telephones frequently used by the hearing impaired, for example—be made compatible with hearings aids.

Although S. 2355 does not go as far as my bill, H.R. 375, in requiring that all telephones work with all hearing aids, everywhere, it does insure that the hard of hearing are not completely excluded from the communications system.

I ask my colleagues to join me in voting for S. 2355, the Telecommunications for the Disabled Act of 1982.

The Telecommunications for the Disabled Act does not require expensive retrofitting of those phones now in place.

It does not require research and testing of new, expensive technologies.

The telephone industry supports the bill and has advised the Subcommittee on Telecommunications that making telephones compatible with hearing aids will not increase the costs of new telephones.●

● Mr. HARKIN. Mr. Speaker, the Telecommunications for the Disabled Act of 1982 recognizes that although the telephone has come to be a basic necessity of life, many hearing impaired people may not have full access to the telephone. This bill will go a long way toward removing one of the major obstacles to integration into society that the hearing impaired face. By allowing telephone companies to continue to provide specialized equipment to deaf and other handicapped individuals under the approval of State regulatory commissions, S. 2355 changes a Federal Communications Commission regulation that would hinder this ability. This regulation, now scheduled to go into effect on January 1, 1983, would prevent many disabled people from obtaining specialized terminal equipment at reasonable prices. Consumers with special needs would be thus faced with two alternatives—to forego the use of the telephone or to pay charges considerably higher than those borne by the general public.

A second beneficial aspect of this bill is the provision directing telephone companies to provide reasonable access to telephone services for persons with impaired hearing by making telephones that are compatible with hearing aids. Telephones can now be manufactured to be compatible without any significant increase in cost. Coin operated telephones, emergency service telephones, and others frequently used by the hearing impaired would be required by this bill to be compatible hearing aids.

Many disabled persons rely on specialized telephone equipment to lead productive, self-sufficient, independent lives. Since the elderly and other hearing-impaired individuals are more likely than others to feel isolated from the mainstream of society their ability to use the telephone becomes even more important. Lack of access to telephones exacerbates problems of emergency protection and the ability of the hearing impaired to obtain employment. Moroever, for those with restricted mobility the telephone may be their only means of contact, either for social purposes or in case of an emergency.

More than one-third of all Americans over age 65 wear hearing aids. Numerically, this translates into about 10.8 million citizens, many of whom are elderly. Unfortunately, not all telephones in the United States are compatible with hearing aids and not all those who need specialized terminals are able to purchase the equipment. This legislation recognizes the difficulties that hearing impaired individuals face, and I urge the House to support it.●

Mr. WIRTH. Mr. Speaker, I have no further requests for time.

Mr. DANNEMEYER. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Colorado (Mr. WIRTH) that the House suspend the rules and pass the Senate bill, S. 2355, as amended.

The question was taken.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

STATE COMMISSIONS ON TEACHER EXCELLENCE

Mr. SIMON. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 429) to establish State commissions on teacher excellence, as amended.

The Clerk read as follows:

H.J. RES. 429

Whereas the education of Americans is the foundation on which the future well-being and progress of the Nation depend;

Whereas the quality of the Nation's teachers is vital to the quality of that education; and

Whereas under the American federal system it is the responsibility of the States to regulate the certification and licensing of those teachers: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds and declares—

(1) that the governments of the States should carefully evaluate the training and performance requirements which they specify for teachers and teacher preparation institutions to ensure the competence and encourage the excellence of their teachers;

(2) that such an evaluation by any individual State could well profit from the investigation of teacher recruitment, selection, training, certification, licensing, and retention in other States;

(3) that, in order to promote this evaluation, the States should establish commissions on teacher excellence to undertake consideration of the broad range of factors involved in the entire process by which teachers are recruited, selected and trained from admission to college and university degree programs through preparation for teaching in the current educational environment, certification, licensing, and retention, and continuing professional development; and

(4) that, in addition to the progress which could be obtained by the use of this evaluation by State and local government, the national interest in the continuous improvement of the Nation's teachers would be served if the results of these investigations were made available to the President and Congress, together with recommendations from the States on ways in which improvements in the quality of school instruction could be assisted by research, evaluation, new policy initiatives, and changes in existing Federal laws.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Illinois (Mr. SIMON) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. ERLENBORN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Illinois (Mr. SIMON).

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

Mr. Speaker, I think we have a matter of some importance, but not a matter of great controversy. This resolution simply calls on the State governments to appoint commissions—and some of them have the commissions already—to take a look at the whole question of teacher excellence.

The subcommittee which I chair held hearings on this question. We had witnesses from the Department of Education, the National Education Association, the American Federation of Teachers, various schools of teacher education, the NIE, and others.

The reality is that in the last 8 years those entering the field of teaching, those going to our schools to prepare themselves to become teachers, have dropped 79 points in the SAT tests, more than any other profession.

Equally disconcerting, studies in the States of Wisconsin and North Carolina suggest that the ablest teachers too often are leaving the teaching profession and those of the least ability too often are staying. I should add that this Nation has many fine, dedicated teachers of whom we should be proud.

I am not suggesting that one can always measure dedication or concern for young people by tests, but the tests show clearly that we are not appealing to the ablest in our society to become teachers, and if we believe that we build the future of this Nation through education, and if we believe the key ingredient in that process is the teacher, then we have a problem of major proportions.

It became clear in the course of the hearings that there is nothing very specific that the Federal Government can do or ought to be doing, and that the jurisdiction is one that is left to State and local governments. There are some answers that are fairly obvious. One is pay, but it is much more complicated than that.

So after consultation with my colleagues on the subcommittee, we ended up with this resolution calling on States to examine this problem to see what they should do. They may make recommendations to the Federal Government. It involves no expenditures at the Federal level at all, and it could result in some significant progress on a problem that, frankly, we are not facing up to at this point.

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

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

Mr. Speaker, I rise in opposition to House Joint Resolution 429, which expresses the sense of Congress that States should establish commissions on teacher excellence.

Mr. Speaker, this resolution was not unanimously agreed to in the Education and Labor Committee, and several members of our committee signed report language expressing opposition to the resolution.

I oppose this resolution for two reasons. The first reason is that the resolution calls for a new layer of bureaucracy at the State level to study a problem that we all know exists. It is common knowledge that good teachers are leaving the field of teaching for more lucrative jobs in the private sector; that there is a shortage of math and science teachers; that teachers as a whole score lower on standardized tests than many other professional groups; that there is a lack of inservice training to keep teachers up to date on changes in their academic fields; and that there is a lack of incentives to keep good teachers in the classroom. In response to these problems, many States have already moved to reduce teacher "dropout" rates, to improve and increase the number of inservice training programs, and to revamp the teacher training process in teacher colleges to provide personnel better prepared to deal with the actual classroom experience. As of March this year, 23 States, including Illinois, Delaware, Texas, Maryland, Missouri, New Jersey, and Virginia, have reevaluated their teacher training and certification requirements in an effort to improve the quality of teachers sent to the classroom.

It seems to me that the requirements of House Joint Resolution 429 are superfluous and will result in an unnecessary expense of time, effort, and money by the States.

The second reason I oppose House Joint Resolution 429 is that it presupposes that the Federal Government has or should have an active role in teacher education. The resolution calls for any reports or recommendations made by the State commissions to be forwarded to the President and the Congress for study. While teacher preparation, training, and certification is, of course, of interest to everyone—Congress included—it has always been the responsibility of the State and local units of government. I do not believe that the Federal Government should begin meddling in this area of educational policy, and I see this resolution as the first step toward Federal involvement in teacher education.

□ 1245

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

I would just like to simply respond briefly to my colleague from Illinois (Mr. ERLENBORN).

First of all, he says we are creating a new layer of bureaucracy. In fact, we are just asking States to look at this problem, a problem that we are not facing in this Nation. We could go along blithely and ignore the problem and that is basically what my colleague is suggesting that we do, but I do not think that is in the national interest.

My colleague frequently joins those who say that the Federal Government should not be getting involved in things. For that very reason he ought to be standing up here saying, "Let us pass this resolution," because this is a resolution that simply asks the States

to look at the problem. It does not ask the Federal Government to do a single thing.

Let me add this to my colleagues: Just as sure as PAUL SIMON is standing here, if we continue to ignore this problem—and that is basically what my colleague from Illinois is suggesting—within a few years we are going to be standing here with major Federal programs to tackle this problem.

Let us see if we cannot tackle this problem at the State level and the local level and face up to it rather than simply ignoring the problem, as my colleague suggests.

I hope we pass this resoundingly.

Let me add again, as my colleague pointed out, it did pass the subcommittee and the full committee unanimously, though there are now some voices of dissent on the report.

Mr. ERLENBORN. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. DANNEMEYER).

Mr. DANNEMEYER. I thank the gentleman for yielding and would like to ask my colleague from Illinois a question if I may.

I have heard the presentation on behalf of this proposal, House Joint Resolution 429. Although I am not privileged to serve on the Committee on Education and Labor with the gentleman from Illinois, I laud the goal of what this proposes to do.

But I am puzzled. In my State of California, for instance, we have a State board of education whose members are appointed by the Governor of our State. Their responsibility is to evaluate the curriculum for the public school system in California and make recommended changes to the legislature.

In addition to that, we have an assembly committee in the State assembly called the education committee whose responsibility it is to evaluate various matters relating to the subject of education.

Then we have a similar committee in the State senate that evaluates provisions of law relating to public education in California.

These three entities are now in existence. Assuming—maybe it is incorrect to assume—but let us assume for the purpose of this discussion that these entities are discharging their responsibilities, that is, looking out for the status of public education in California and making recommended changes. What is it that this commission that the gentleman is talking about would do that these three entities that are in existence now are not doing?

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

Mr. DANNEMEYER. I yield to the gentleman from Illinois.

Mr. SIMON. I cannot tell the gentleman. I do not know the specifics of the California situation and cannot tell him specifically what they are or are not doing.

I will tell the gentleman that in the large majority of States, almost all of the States, we are not paying attention to this problem at all. Whether California is one of those States I do not know.

If California is doing something, then the resolution does no harm whatsoever. If California is not paying attention to this problem, then it can do no harm for this body to call the attention of the board of education in California and the legislature in California to the fact that we have a problem of major dimensions here.

Let me emphasize that this is a problem of major dimensions.

If we do not take this timid step we are going to be back here in another couple of years with legislation calling for much more drastic actions because events will force us into it.

Mr. DANNEMEYER. Let me ask the gentleman from Illinois another question. I know in my State of California a public school principal may not administer corporal punishment to youngsters in a classroom except with the approval of the parent. That is not the way this Member from California believes it should be but that is the way it is today.

How is it in Illinois, the gentleman's home State? Can a principal of a public school classroom, in dealing with a youngster in the sixth grade, who has dedicated his or her life to the objective of making sure that something less than decorum exists in a public classroom, can that teacher administer corporal punishment to that youngster without the aproval of the parent?

Mr. SIMON. There have been court cases and I have to tell my colleague from California I am not precisely sure what the status is in the State of Illinois. But it has relatively little to do with the resolution at hand which I hope by colleague from California will join me in voting for.

Mr. DANNEMEYER. In response to the gentleman's observation, in my humble opinion I think the fundamental problem of the public school system in my State, and I do not know if this exists in other States of the Union, is that we have permitted a philosophy of permissiveness to come into our public school rooms when we tell the person in charge, the principal or the teacher, that in order to administer corporal punishment to some child that is disrupting the learning environment we have to get the approval of the parent.

It strikes this Member from California that when we get things turned around in our State, and our Nation, that when we have discipline in a public schoolroom we can then create an environment where students can learn, at least those that want to learn, and they will have the quiet and the concentration that is necessary as a prerequisite for any learning to take place.

Mr. SIMON. If my colleague will yield again, discipline is one of the problems but it is one of many problems.

For example, to my left is the distinguished chairman of the Committee on Science and Technology. We have a major problem in securing quality science and mathematics teachers in our public schools.

The SPEAKER pro tempore. The time of the gentleman from California (Mr. DANNEMEYER) has expired.

Mr. SIMON. Mr. Speaker, I yield the gentleman 2 minutes of my time.

For example, I would say to the gentleman, believe it or not, we now have more school districts in this Nation than we have physics teachers in this Nation. That is a problem that is not going to be solved by solving the discipline problem the gentleman mentioned.

There are discipline problems, of course.

What I am suggesting in this resolution to the States of this Nation is let us look at the problem. If the problem can be solved in part in the discipline area, let us move on that. If we have science and technology and mathematics problems, let us move on them. If we have pay problems let us look at them and how we can pay teachers adequately.

There are a whole host of things. I am simply suggesting: let us not bury our head in the sand. Let us look at the problems.

This resolution calls upon the State governments to appoint commissions or to use their boards of education to somehow look at the problem.

Mr. DANNEMEYER. I thank the gentleman and yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. SIMON) that the House suspend the rules and pass the joint resolution, House Joint Resolution 429, as amended.

The question was taken.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. SIMON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the

joint resolution, House Joint Resolution 429.

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

There was no objection.

AUTHORIZING GSA TO DONATE CERTAIN PROPERTY TO STATE AND LOCAL GOVERNMENTS

Mr. FUQUA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1856) to authorize the Administrator of General Services to donate to State and local governments certain Federal personal property loaned to them for civil defense use, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1856

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Federal personal property—

(A) transferred by a component of the Department of Defense to the Defense Civil Preparedness Agency by July 15, 1979,

(B) which is, on the date of enactment of this Act, on loan to a State or a State and local government jointly as a result of a written loan agreement executed by such Agency, and

(C) which was transferred with the functions and property of such Agency to the Federal Emergency Management Agency,

shall be disposed of in accordance with subsection (b).

(b) The Administrator of General Services shall transfer title to the property described in subsection (a) to the State or local government holding the property on the date of enactment of this Act upon receipt of a certification by the Director of the Federal Emergency Management Agency that the property is being used by the State or local government concerned for a purpose consistent with that for which it was furnished.

The SPEAKER pro tempore. Is a second demanded?

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

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida (Mr. FUQUA) will be recognized for 20 minutes, and the gentleman from New York (Mr. HORTON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. FUQUA).

GENERAL LEAVE

Mr. FUQUA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 1856, presently under consideration.

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

There was no objection.

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

Mr. Speaker, H.R. 1856 will authorize the Administrator of the General Services Administration to donate to State and local governments certain Federal personal property that is already on loan to those governments for civil defense use. This noncontroversial piece of legislation is intended to close out the personal property loan program which was initiated in 1971 by the Defense Civil Preparedness Agency when it was a component of the Department of Defense. As a unit of DOD, the Civil Preparedness Agency was able to obtain property and loan it out for civil defense use, with title remaining in the United States. From 1971 to July of 1979, when the Civil Preparedness Agency functions were transferred to the new Federal Emergency Management Agency, nearly 30,000 pieces of property have been loaned. No new property has been added to the inventory to be loaned because a 1976 amendment to the Federal Property and Administrative Services Act severely restricted the circumstances in which excess property could be loaned to State and local governments. This bill will simply straighten out title to those previously loaned pieces of property. On certification that the property continues to be used for a purpose consistent with that for which it was loaned, GSA would transfer ownership of the property to the State or local government that holds the property.

CBO estimates that the cost of transferring the items currently on loan will be about $35,000. The bill will produce annual savings of approximately $200,000 because FEMA will no longer incur the cost of monitoring the property and processing loan renewals.

I urge adoption of this bill.

Mr. Speaker, this bill came out of the Committee on Government Operations unanimously. I am handling the bill for our distinguished chairman, the gentleman from Texas (Mr. BROOKS), who unavoidably is detained today and not able to be here.

I think there is no controversy in connection with the bill.

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

Mr. Speaker, I rise in support of H.R. 1856. This bill is essentially a housekeeping measure. It is designed to eliminate restrictions on the use of surplus Defense Department property lent to State and local governments more than 3 years ago.

The property in question was of no use to DOD when it was lent, and there is no expectation that DOD will ever need it again. The program under which it was transferred has not been in operation since mid-1979, so all outstanding loans, and the equipment which they concern, are old. Given these circumstances, the use restrictions which accompanied the loans serve no purpose other than imposing paperwork requirements on both State and local governments and the Federal Emergency Management Agency, the Federal agency which carried on what remains of this program.

When we balance the unlikely need of the Federal Government to recoup any of this equipment against the cost on insuring that State and local governments comply with use restrictions, I can see no reason for continuing this paperwork burden. Ending the fiction of automatically renewed loans, by transferring title for this surplus equipment to the governments which now hold it, seems a prudent course to me.

The measure placed before the House in the motion of the distinguished gentleman from Florida differs slightly from the bill endorsed by the committee itself. I want to assure the Members that the change is a very small one, designed to cure a technical problem in the bill. We have examined it on this side and agree that it improves the legislation.

Mr. FUQUA. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Georgia (Mr. BRINKLEY).

This bill was jointly referred to the Committee on Armed Services and to the subcommittee chaired by the distinguished gentleman from Georgia.

□ 1300

Mr. BRINKLEY. I thank my friend, the gentleman from Florida, for yielding.

Mr. Speaker, I rise in support of the bill H.R. 1856 that has been reported jointly by the Committees on Government Operations and Armed Services.

The bill is straightforward. Its cost is minimal. It is simply a housekeeping measure that will clean up the books on Federal personal property on loan to State and local units of government from the old Defense Civil Preparedness Agency. The bill does not provide for any new loan authority.

A similar measure, S. 1444, cleared the Senate on October 5. To my knowledge, the bill has unanimous support. It is an administration request that deserves enactment.

As a supporter of a strong dual use civil defense program for the United States, I consider the property loan program a valuable tool for helping the State and local civil defense agencies improve their capabilities for meeting their obligations—both in peacetime and wartime. These agencies are the backbone of the U.S. civil defense system. The equipment that the agencies have received under the loan program, much of it in lieu of actual financial assistance, has provided them with the day to day resources that are so necessary for them to do their jobs. In many cases, these agen-

cies have incurred significant expenses in rehabilitating the equipment, such as trucks, bulldozers, and communication gear, much of which is at least 7 to 20 years old. Therefore, these agencies have not received a bonanza at the expense of the Federal Government or the American taxpayer. Rather, they are putting to good use equipment that would otherwise end up in the junkyard or scrap heap.

Unfortunately, the loan program is no longer available to these groups because the Federal Emergency Management Agency does not have the authority to continue it. Personally, I would prefer to see the program continued and in my judgment the pending bill, H.R. 1856, would be improved if language were included that provided FEMA with that authority. However, in the interest of at least obtaining part of the package, I support H.R. 1856 and urge my colleagues to vote for it.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. FUQUA) that the House suspend the rules and pass the bill, H.R. 1856, as amended.

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

A motion to reconsider was laid on the table.

Mr. FUQUA. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1444) to authorize the Administrator of General Services to donate to State and local governments certain Federal personal property loaned to them for civil defense use, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

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

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1444

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) all Federal personal property which—

(A) was transferred by a component of the Department of Defense to the Defense Civil Preparedness Agency by July 15, 1979,

(B) is, on the date of enactment of this Act, on loan to a State or a State and local government jointly as a result of a written loan agreement executed by such Agency, and

(C) was transferred with the functions and property of such Agency to the Federal Emergency Management Agency,

shall be disposed of in accordance with subsection (b).

(b) Whenever the Director of the Federal Emergency Management Agency certifies that property described in subsection (a) is being used by the State or local government holding such property for a purpose consistent with the purpose for which the property was furnished, the Administrator of General Services shall transfer title to such property to the appropriate State or local government.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 1856) was laid on the table.

CRITICAL MATERIALS ACT OF 1982

Mr. GLICKMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4281) to provide for a Council on Critical Materials, for development of a continuing and comprehensive national materials policy, and for programs necessary to carry out that policy, as amended.

The Clerk read as follows:

H.R. 4281

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Critical Materials Act of 1982".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) the availability of adequate supplies of strategic and critical industrial materials continues to be essential for national security, economic well-being, and industrial production;

(2) research, development, and technological innovation are important factors which contribute to and affect the availability and use of materials;

(3) there exists no single Federal entity with the authority and responsibility for establishing critical materials policy and for coordinating and implementing that policy; and

(4) the importance of materials to national policies requires an organizational means for the coordination, within and at a suitably high level of the Executive Office of the President, of existing policies within the Federal Government.

(b) It is the purpose of this Act to establish a Council on Critical Materials under and reporting to the Executive Office of the President—

(1) to provide for necessary coordination of critical materials policies, including research and development, among the various agencies and departments of the Federal Government, and for the implementation of such policies;

(2) to bring to the attention of the President, the Congress, and the general public such materials issues and concerns, including research and development, as are deemed critical to the economic and strategic health of the Nation; and

(3) to insure adequate and continuing consultation with the private sector concerning critical materials, materials research and development, Federal materials policies, and related matters.

ESTABLISHMENT OF THE COUNCIL ON CRITICAL MATERIALS

SEC. 3. There is hereby established a Council on Critical Materials (hereinafter referred to as the "Council") under and reporting to the Executive Office of the President. The Council shall be composed of three members who shall be appointed by the President and who shall serve at the pleasure of the President. Members so appointed who are not already Senate confirmed officers of the Government shall be appointed by and with the advice and consent of the Senate. The President shall designate one of the members to serve as chairman. Each member shall be a person who, as a result of training, experience, and achievement, is qualified to carry out the duties and functions of the Council, with particular emphasis placed on fields relating to materials policy or materials science and engineering. In addition, at least one of the members shall have a background in and understanding of environmentally related issues.

RESPONSIBILITIES AND AUTHORITIES OF THE COUNCIL

SEC. 4. (a) It shall be the primary responsibility of the Council—

(1) to assist and advise the President in establishing a coherent national materials policy consistent with other Federal policies, and in carrying out activities necessary to implement such a policy;

(2) to coordinate Federal materials-related policies, programs, and research and development activities, including those related to critical materials;

(3) to review and appraise the various programs and activities of the Federal Government in accordance with the policy and directions given in the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601), and to determine the extent to which such programs and activities are contributing to the achievement of such policy and directions;

(4) to formulate and recommend to the President national policies designed to improve conditions affecting the mineral and materials needs and resources of the Nation, and to meet the social, economic, and national security goals of the Nation;

(5) to advise the President of mineral and material trends, both domestic and foreign, the implications thereof to the United States and world economies and to national security, and the probable effects of such trends on domestic industries; and

(6) to make or furnish such studies, analyses, reports, and recommendations with respect to matters of materials-related policy and legislation as the President may request.

(b) In carrying out its responsibilities under this section the Council shall have the authority—

(1) to establish such special advisory panels as it considers necessary, with each such panel consisting of representatives of industry and other members of the private sector, not to exceed ten members, and being limited in scope of subject and duration; and

(2) to establish and convene such Federal interagency committees as it considers necessary in carrying out the intent of this Act.

(c) In seeking to achieve the goals of this and related Acts, the Council and other Federal departments and agencies with responsibilities or jurisdiction related to materials or materials policy, including the National Security Council on Environmental Quality,

the Office of Management and Budget, and the Office of Science and Technology Policy, shall work collaboratively and in close cooperation.

RESEARCH AND DEVELOPMENT POLICY

SEC. 5. In addition to the responsibilities described in section 104, the Council shall have specific responsibility for overseeing and collaborating with appropriate agencies and departments of the Federal Government relative to Federal materials research and development policies and programs. Such policies and programs shall be consistent with the policies and goals described in the National Materials and Minerals Policy, Research and Development Act of 1980. In carrying out this responsibility the Council shall—

(1) review annually the materials research and development authorization requests and budgets of all Federal agencies and departments; and in this activity the Council shall, in cooperation with the Office of Science and Technology Policy, the Office of Management and Budget, and all other Federal offices and agencies deemed appropriate, ensure close coordination of the goals and directions of such programs with the policies as determined by the Council; and

(2) assist the Office of Science and Technology Policy in the preparation of such long range materials assessments and reports as may be required by the National Materials and Minerals Policy, Research and Development Act of 1980, and assist other Federal entities in the preparation of analyses and reporting related to critical materials.

COMPENSATION OF MEMBERS AND REIMBURSEMENTS

SEC. 6. (a) Members of the Council who serve full time and the chairman of the Council, if not otherwise paid officers or employees of the Government, shall be paid at the rate of basic pay provided for level II of the Executive Schedule. The other members of the Council shall be paid at a rate per diem comparable to the rate of basic pay provided for level III of the Executive Schedule.

(b) The Council may accept reimbursement from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, or from any State or local government, for reasonable travel expenses incurred by any member or employee of the Council in connection with such member's or employee's attendance at any conference, seminar, or similar meeting.

POSITION OF EXECUTIVE DIRECTOR

SEC. 7. (a) There shall be within the Council an Executive Director (hereinafter referred to as the "Director"), who shall be chief administrator of the Council. The Director shall be appointed by the Council and shall be paid, if not otherwise a paid officer or employee of the Government, at the rate of basic pay provided for level IV of the Executive Schedule.

(b) The Director is authorized—

(1) to employ such personnel as may be necessary for the Council to carry out its duties and functions under this Act, but not to exceed twelve compensated employees;

(2) to obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code; and

(3) to develop rules and regulations necessary to carry out the purposes of this Act.

(c) Notwithstanding section 367(b) of the Revised Statutes (31 U.S.C. 665(b)), the Council may utilize voluntary and uncompensated labor and services in carrying out its duties and functions.

RESPONSIBILITIES AND DUTIES OF THE DIRECTOR

SEC. 8. (a) In carrying out his functions the Director shall assist and advise the Council on policies and programs of the Federal Government affecting critical materials by—

(1) providing the professional and administrative staff and support for the Council;

(2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, including research and development, which affect critical materials availability and needs;

(3) cataloging, as fully as possible, research and development activities of the Government, private industry, and public and private institutions;

(4) monitoring and evaluating the critical materials needs of basic industry and the Government, including the critical materials research and development needs of the private and public sectors;

(5) initiating Government and private studies and analyses, including those to be conducted by or under the auspices of the Council, designed to advance knowledge of critical materials issues and develop alternatives, including research and development, to resolve national critical materials problems;

(6) issuing a biennial report providing a domestic inventory of critical resources with projections on the prospective needs of government and industry for these resources, including a long range assessment, prepared in conjunction with the Office of Science and Technology Policy in accordance with the National Materials and Minerals Policy, Research and Development Act of 1980 and in conjunction with such other Government departments or agencies as may be considered necessary, of the prospective major critical materials problems which the United States is likely to confront in the immediate years ahead and providing advice as to how these problems may best be addressed, with the first such report being due on April 1, 1984; and

(7) recommending to the Congress such changes in the current policies, activities, and regulations of the Federal Government, and such legislation, as may be considered necessary to carry out the intent of this Act and the "National Materials and Minerals Policy, Research and Development Act of 1980".

(b) In exercising his responsibilities and duties under this Act, the Director—

(1) may consult with representatives of science, industry, labor, State and local governments, and other groups; and

(2) shall utilize to the fullest extent possible the services, facilities, and information (including statistical information) of public and private agencies, organizations, and individuals.

AUTHORITY

SEC. 9. (a) The Council is authorized—

(1) to prescribe such rules and regulations as may be necessary for its operation;

(2) to enter into contracts and acquire property necessary for its operation;

(3) to publish or arrange to publish critical materials information that it deems to be useful to the public and private industry to the extent that such publication is consistent with the national defense and economic interest;

(4) to request available information from private and public sources which it considers necessary in the discharge of its duties if—

(A) in the case of a request for information from a private source, the furnishing of such information will not create an undue burden or hardship on such sources; or

(B) in the case of a request for information from a public source, the furnishing of such information is permitted by law; and

(5) to exercise such authorities as may be necessary and incidental to carrying out its responsibilities and duties under this Act.

(b) The authority to enter into contracts and acquire property under subsection (a)(2), and to pay compensation to members of the Council and the Director under section 6(a) and 7(a), shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

AUTHORIZATION OF APPROPRIATIONS

SEC. 10. There is hereby authorized to be appropriated to carry out the provisions of this Act a sum not to exceed $1,000,000 for the fiscal year ending on September 30, 1984, and such sums as may be necessary thereafter.

DEFINITION

SEC. 11. As used in this Act, the term "materials" has the meaning given it by section 2(b) of the National Materials and Minerals Policy, Research and Development Act of 1980.

The SPEAKER pro tempore. Is a second demanded?

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

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Kansas (Mr. GLICKMAN) will be recognized for 20 minutes, and the gentleman from Michigan (Mr. DUNN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kansas (Mr. GLICKMAN).

GENERAL LEAVE

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill under consideration.

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

There was no objection.

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

Mr. Speaker, as I and others have noted in the past, we are at the same juncture regarding our import vulnerability with respect to critical materials today as we were regarding oil imports a little more than a decade ago. As I am sure you and other Members of this Chamber are aware, we are highly dependent on a broad range of critical materials necessary for both our economic as well as the Nation's strategic concerns.

In recognizing this problem, the 96th Congress passed into law the Na-

tional Materials and Minerals Policy, Research and Development Act of 1980 (Public Law 96-479), the first comprehensive legislation on materials in over three decades. This law called for, among other things, the President to provide a program plan for implementation of policies and directives of the act. One of those directives was that the President would provide for a permanent and continuing organizational mechanism, at a sufficiently high policy level to deal with the complex issues related to a national materials policy. In April of this year—some 6 months beyond the legislated deadline—the President presented to Congress his national minerals program plan and study. Although a number of important questions were addressed, including strategic stockpiling and reemphasis of the importance of materials research and development, the President's plan focused primarily on minerals production and failed to deal with such vital issues as materials processing and the use of critical materials. To be specific, industry and our defense establishment is less concerned with a pile of raw materials than they are with a final, usable product in their hands. Finally, and perhaps more importantly, the issue of a permanent organizational mechanism to deal with the long-term, critical materials issues was sidestepped.

I would note at this point that in the area of materials research and development alone, the Federal Government spends over $1 billion annually between some 14 different Federal agencies and departments. There is no coordination and certainly no overall policy guidance regarding such R&D.

Because of the importance of policy oversight and program coordination, Mr. FUQUA and I were joined by 23 other Members last year in introducing what I believe is the next important step in dealing with our national materials problems. H.R. 4281, the Critical Materials Act of 1982, continues where the National Materials and Minerals Policy, Research and Development Act of 1980 left off. It provides for a continuing three-man council to coordinate and review the various Federal materials related policies, programs and R&D be under and report to the Executive Office of the President, and would act as the focal point for all materials activities in the Federal Government. The Council on Critical Materials will focus attention for the public and private sectors on materials-related issues considered critical to the Nation's economic and strategic well-being. Importantly, the Council will establish, coordinate and implement materials policy. The Council would serve the President additionally by providing analyses of the materials policy ramifications of our defense and foreign policies as well as of our energy and environmental policies among others. The need for careful attention to the long-term balance between the production of critical materials, energy consumption and a clean environment is persistent.

The idea here is not to create yet another bureaucracy. Rather we are attempting to focus attention on these important issues for those people in the White House, OMB and the various agencies and departments whose decisions can most influence the improvement of our materials vulnerability situation. During markup before the full Committee on Science and Technology, we took further steps to provide flexibility to the administration in establishing such a Council by allowing current administration experts to serve on the Council.

I should point out that the administration opposes this legislation because they feel it is unnecessary. I would quietly note that this is the same position held when the original materials policy act was being considered in 1980 and which is now pointed to as the legislative mandate governing our Government's current materials policy.

The Committee on Science and Technology has carefully weighed these and other arguments. We have held two sets of full hearings as well as heard from numerous organizations, companies, and individuals over the past 2 years. Almost all have concluded that this next step is necessary. In reporting the bill a strong bipartisan vote of 37 to 1 favoring enactment underscored this conclusion.

I urge my colleagues in the House to join me in passing the bill H.R. 4281, the Critical Materials Act of 1982.

Mr. Speaker, I think that we have an extraordinarily serious problem regarding the issues of materials policy, the issues of chromium, cobalt, titanium, of the mineral shortages that are subjecting the United States to the same kind of squeeze as we found in oil. The fact of the matter is, many of our materials for many industries, the aviation industry, for one, but particularly for our defense industry, those materials are subject to either worldwide shortages or the fact of the matter is, they are held in either tenuous or unfriendly hands. Based upon our sets of full hearings, as well as testimony from numerous organizations, companies, and individuals, we have concluded that this is the next step necessary in a materials policy, for our failure to act in this area may be far more significant even than our failure to act in the oil and gas import situation.

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

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

Mr. Speaker, clearly, there is a fundamental relationship between the availability of critical materials and the national security of this country. This relationship was consistently ignored in past administrations. When Congress passed the National Materials and Minerals Policy, Research and Development Act of 1980, the stockpile of strategic materials was at a dangerously low level.

This administration recognizes the importance of a strong materials policy, and has taken several-steps to accomplish this. In March of last year the first major addition in 20 years was made to the stockpile of strategic materials. In addition, steps have been taken to enhance domestic production through regulatory reform and tax incentives. And, recognizing the vital role that the private sector can play in Research and Development, this administration has encouraged greater participation in this area also by providing tax credits for investment in R&D. To coordinate materials policy, President Reagan has reorganized and strengthened the Committee on Materials (Comat).

I believe this administration has been responsive to Congresses concerns in this area and has gone a long way to change the course of neglect it found 2 years ago. However, it is the feeling of our committee that materials policy is still fragmented, and too vulnerable to changes in administrations. This bill attempts to correct this by coordinating materials policy under a 3-man council reporting to the Executive Office of the President.

When this bill was first introduced, the minority had some serious reservations about the addition of yet another bureaucratic layer to accomplish what could be accomplished within the present bureaucracy. However, as amended, this bill now allows council members to serve a dual role by providing the President the option of selecting council members from among his existing staff.

I believe this bill now represents a good compromise that we can all support. It accomplishes our objectives—and it does it without mandating a lot of unnecessary growth in the Federal Government.

I yield to my friend and colleague, the gentleman from Alaska (Mr. YOUNG), for a question.

Mr. YOUNG of Alaska. I thank the gentleman for yielding.

I am a supporter of this bill and a sponsor of the bill. But one of the things that disturbs me is the constant trend of this Congress to take lands out of production of those critical materials which we are so short of today.

I was wondering if the gentleman would address that issue for me, and what is the position of the bill and the position of the honorable gentleman from Michigan on that issue.

Mr. DUNN. First, I would say that this is a different area. The gentleman

is talking about a national policy regarding our own resources. This bill is an attempt to establish a mechanism to determine the nature of strategic materials, how much of each we have on hand at any given time, and how much we should have.

Now, the two policies are, of course, going to cross at various points. The gentleman from Alaska makes the point that as a general policy we have in the past tied up too much of our land by Federal law and not allowed the minerals that lie beneath those lands to become either part of the free enterprise system or, as in this case, part of the strategic materials stockpile.

Certainly, the three-man council should consider the remarks of my colleague from Alaska as it develops and oversees an overall strategic materials policy.

Mr. YOUNG of Alaska. I thank the gentleman for his response.

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

Mr. DUNN. I yield to the gentleman from Georgia.

Mr. McDONALD. I thank the distinguished gentleman from Michigan for yielding.

Mr. Speaker, there were hearings on this bill before the Seapower and Strategic and Critical Materials Subcommittee of the Committee on Armed Services, and the Committee on Armed Services did not take a position on this bill, citing that the administration witnesses indicated that current problems relating to critical materials stem from a lack of adequate funding for programs, not a lack of definition of problems, a lack of policy or a lack of research.

Citing one particular administration witness, Dr. Morgan said as follows: "I think existing mechanisms are wholly adequate" referring to the background problems of the Defense Production Act. Dr. Morgan went on to say, "I think these are far more pressing issues than the question of a council, which I believe would be superfluous," and stating that "such a provision that this bill would create would be just an addition."

In the subcommittee hearings itself, a member of the subcommittee from South Carolina (Mr. SPENCE) cited that the various problems that we have had addressed in the southland, particularly from kudzu to fire ants, there might be a natural inclination to have a commission to study each one of these, because there is this constant tendency here for almost every problem that requires a will, we bypass the will and instead create a new agency.

□ 1315

To solve the problems that we have in critical materials, these problems are well known. But there has been a lack of will in one administration after the other. And there has been a natural tendency by one administration after another to loot from the strategic minerals in case of national emergency and to sell those off and to place the money into the general fund as a means of making the deficits look not so bad.

In fact, just recently as a result of Gramm-Latta and the budget reconciliation, the Armed Services Committee, in the process of reconciliation, was forced to sell out of the strategic stockpile once again as required during the budget reconciliation of Gramm-Latta.

The General Counsel for the Department of Defense felt that they would take a position opposing H.R. 4281, since the establishment of a council to perform those duties already is assigned at the present time to the Cabinet council, and the feeling that creating a new council would just once again be redundent.

With regard to the Cabinet council, the Department of Defense, Secretary of Defense, Mr. Weinberger feels that this is an adequate situation for the defense needs, that he has ample access for counsultation at the present time.

The General Services Administration, in a letter on November 8, 1981, states:

As a result of Public Law 96-479, the President assigned the Cabinet Council on Natural Resources and Energy the responsiblity for considering the strategic and critical materials policy and of assuring coordination among federal agencies. This council uses the expertise existing within all federal agencies and requires no additional resources. In our view the council fully meets the objectives prescribed in Section 2(b) of H.R. 4281 which seeks to establish a Council on Critical Materials, reporting to the Executive Office of the President. The proposed council would require additional resources and create an overlap in jurisdiction among the agencies involved in the critical materials, with no improvement in effective coordination or counsulation. Additionally, the Federal Emergency Management Agency now carries out many specific functions described in sections 4 and 5 of the bill.

And that is a recent letter from the General Services Administration.

For these and many reasons, many of us on the House Armed Services Committee oppose this bill in the belief that it really will not solve the problem but create another layer of agency. And I think it is high time that we refrained from the temptation to solve every problem by picking up a handful of money and throwing it, and if that does not work move to two handfuls, or simply creating another bureaucracy, so we can go back home and tell the people we are taking some steps on the problem.

I think the basic lack in this whole area has been one of will in one administration after the other, not a lack of governmental agencies.

Mr. DUNN. I thank my colleague from Georgia. I think the gentleman has done a very articulate job of stating, among others, my reservations in the original bill.

The gentleman spoke in particular about the defense community. They do have many reservations. Many environmentalists have their own reservations. May I remind the gentleman that the committee added an amendment to the bill that allows, should the President desire, that this council be picked from staff already employed and familiar with the problems.

I must correct the gentleman on one matter. There is nothing in the bill that mandates that new funds must be appropriated or a new bureaucracy be created. In fact, it is my hope that the administration will choose from those already on its payroll. While not completely answering all the gentleman's reservations, the committee reached good compromise, and I urge its adoption.

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

Mr. GLICKMAN. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Nevada (Mr. SANTINI), the congressional expert on minerals materials policy.

Mr. SANTINI. Mr. Speaker, I thank the gentleman for yielding and for the generous title he conferred on me.

As chairman of the Committee on Mines and Mining, I have shared with many Members of this body an ongoing concern about the problems of materials, minerals, availability, dependency, and the significant decline in our Nation's industrial base.

Anyone who has invested more than 10 seconds of passing interest in the subject would concede that the absence of available mineral and material resources is an aggravating and contributing factor to the very distressing decline in this Nation's industrial base.

Whether it is the steel industry or the automotive industry, the homebuilding industry, or the processing industry in general, we are bringing ourself to the climax that was well described by the gentleman from Kansas as he introduced the legislation. We are building ourselves into a corner that will replicate the disastrous consequences of the oil embargo days of 1973.

We do not have a policy, a plan, a program to deal with any of the serious and substantial questions of minerals, materials, and an industrialized nation's dependency thereon.

The stockpile program is ad hoc, willy nilly, and ought to serve as a condemnation of any administration who professes that there is a policy in place. It is a joke.

We sell silver when it is at an all-time low, we buy cobalt when the price

is declining, refuse to buy copper when the copper prices are at a historic low in the United States. We continue to ignore the fact that cobalt, with manganese, titanium, the critical base metals that make automobiles, make buildings, make industrial tools, that we must depend on either the region of southern Africa or the Soviet Union as the supplier of 82 to 97 percent of these critical minerals.

It is disaster time in potential consequence. What this modest piece of legislation seeks to do is not a dramatic redress. It is not a panacea. Anyone stepping back two or three steps and critically analyzing the problem would have to concede that point. But what we hope it is is a step, one, two, or three, in a positive direction to do something substantial about this ongoing and very serious problem.

The present mechanism that exists for addressing the problem is folly, is nonsense, is repudiated and refuted by the fact that we have done nothing and are doing nothing about establishing a policy, a plan, and a program.

Of course the existing bureaucracy opposes, as they have opposed over the last 14 years, any attempt to meaningfully redress this problem, because to recognize that there is a problem is to admit they have failed and to admit that they have failed is institutionally impossible within any conscientious bureaucratic structure.

Now, these three persons are not going to revolutionize decisionmaking within the governmental structure. But these three persons will represent at least at the top of the pyramid of decisionmaking some consideration of the overall ramifications of our materials and minerals actions that is taken either legislatively or by an administrative body and hopefully provide some focus and direction, and a plan and program, which is not in place.

These three individuals are required by the legislation to have experience, these three individuals are required, as the gentleman observed, to take into consideration military implications and dependencies, and requirements.

I feel that this body can strike a measured blow for commonsense redirection by endorsing this legislation. It is a step in the right direction.

I stress it is not a panacea. I stress it is not a total solution. But the three individuals that we are seeking here to provide some direction for this Nation and its future as it deals with materials and minerals policy can well be the coordination point of a policy, plan, and program that is sorely needed in the United States of America. And I hope very much that any conscientious and concerned Members of this body, whatever their committee of origin, and whatever their party or philosophical disposition, will recognize the merits of this appeal.

Mr. GLICKMAN. Mr. Speaker, I thank the gentleman for his extraordinary comments.

Mr. Speaker, I yield such time as he may consume to the distinguished chairman of the Committee on Science and Technology, the gentleman from Florida (Mr. FUQUA).

Mr. FUQUA. Mr. Speaker, I rise in support of H.R. 4281, the Critical Materials Act of 1982, and urge its passage.

Mr. Speaker, I want to commend our distinguished colleague from Nevada, who is retiring from Congress this year, for the valuable years that he has given to his country in trying to help bring about some semblance of sanity in the field of minerals policy.

He has been a great, not only crusader, but a person who has worked very closely with the Committee on Science and Technology in other legislative matters related to mineral policy.

I want to commend the gentleman and say that his services to his country in this field are going to be surely missed in the next Congress. We will miss his guidance and his help and all the valuable storehouse of information that he possesses in this matter.

As the gentleman from Nevada pointed out, this bill is no panacea, it does not solve all the problems, but it is a step in the right direction.

It has been carefully reviewed as the gentleman from Michigan pointed out. It was amended in committee, to give the President a lot of flexibility. And is trying to help us do a better job, not just for the military, but also for the civilian strategic minerals.

Mr. Speaker, from my perspective as chairman of the Committee on Science and Technology, I do not think that we can afford to wait any longer in establishing a permanent and continuing means for developing policy and implementing programs which deal with the Nation's long-term problem of critical and strategic materials. In aviation, for example, alloys of aluminum, chromium, cobalt, niobium, nickel, tantalum, and titanium are critical to the manufacture of the modern jet engines used in both civilian and military aircraft. Only in the case of titanium is our import dependence less than 50 percent; for five others, more than 90 percent of our domestic consumption is met by imports—often from countries with divergent national interests to those of the United States. Testimony before the committee has led me to believe that research, development, and technological innovation could well reduce our vulnerability to interruption in supply of these critical and strategic materials. This, however, requires proper development, coordination, and implementation of a national materials and minerals policy. Such policy should include, among others, conservation, substitution, and recycling as well as the development of processes which reduce our dependence on foreign and uncertain sources of critical and strategic materials.

H.R. 4281 provides for a permanent three-man Council on Critical Materials under the Executive Office of the President to oversee the Nation's materials policies while avoiding the creation of a burdensome bureaucracy or spreading such responsibilites through several agencies or departments. I urge my colleagues to respond favorably to this bill.

Mr. YOUNG of Alaska. Mr. Speaker, will the gentleman yield?

Mr. FUQUA. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. I thank the gentleman for yielding.

I would like to compliment the gentleman's statement about the gentleman from Nevada (Mr. SANTINI), his position, his voice in this body that frankly has not been listened to concerning the minerals of this Nation.

Unfortunately, those who are seeking to provide the independence of this Nation, to keep us from buying from the Third World, and to actually develop those minerals which we have the capability of providing for the security of this Nation, the working class of people, those people are not being listened to. They have been ignored, accused as profiteers, of rapers of the soil, destroyers of the environment. And yet today we find ourselves dependent upon foreign countries for the strategic metals as well as some of those not strategic.

As the gentleman from Nevada has tried to express, we need a mineral policy. I can tell the gentleman that this administration is coming closer than other administrations but not close enough yet today. It is unfortunate, though, that the Congress itself does not have a minerals policy. The secret is not saving and stockpiling necessarily. The secret is production, so we are no longer dependent upon the foreign countries. The gentleman from Nevada has said this.

This bill we are voting on today is not the greatest thing in the world, but maybe it is a step. Maybe some Congressman will realize we must also produce as well as buy and stockpile. Today we are going to be dealing with legislation, bills that do continue to lock up resources. Yet there will be people advocating dependency from the strategic metals, and yet they will turn around and lock up lands.

The gentleman from Nevada is going to be sorely missed in this Congress as a crusader and outspoken on our national policy concerning minerals, and hopefully he will someday return to the body and be able to do the job he is trying to do.

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

Mr. FUQUA. I yield to the gentleman from Georgia.

Mr. McDONALD. I thank the chairman of the committee for yielding.

Let me also add my word of praise to the insight and wisdom of the gentleman from Nevada. I have certainly been in agreement with his concerns over our strategic minerals, and the fact that so much of them have as a source lands which are in unfriendly hands.

The problem is, it is not just foreign policy problems, it is not just the hand of southern Africa or the Soviet Union. It also might be the unfriendly hands of the Department of Interior, because we have locked up the cobalt source in this country in the wilderness areas. And we have locked up large sections of Alaska from development of some of these very same strategic minerals. And just as in Pogo, Walt Kelly said, "We have met the enemy and they is us," so often it has been this body in its deliberations on wilderness areas that has denied for this generation and future generations the opportunity of getting at these same very strategic minerals, and the unfriendly hands have so often been American hands.

But it is very convenient in this bill just to shovel the responsibility away and say we are going to solve this by creating a council, not of three individuals, but in section 7, subparagraph (b), not only three individuals, but also a staff not to exceed 12, compensated employees. And here we go again.

□ 1330

Here is another agency, another bureaucracy, and we are off to the races. What we lack in this problem is the will. We do not lack for commissions or councils.

Mr. FUQUA. Mr. Speaker, I thank the gentleman. I appreciate the gentleman's contribution and I urge adoption of the House resolution.

I appreciate the work of the gentleman from Kansas, the chairman of the subcommittee, and his fine efforts, and the gentleman from Michigan for their dedicated work in bringing this bill to the floor.

Mr. GLICKMAN. Mr. Speaker, I thank the gentleman.

Just a couple of final comments; first, that this is not new bureaucracy. This Council on Critical Materials would basically replace the current Cabinet Council. It would replace it with a permanent entity to try to get some cohesion on minerals and materials policy in this country; issues such as not only the issue of stockpiling, but the issue of mining, whether we need more production, as the gentleman from Alaska suggested; the issue of substitution, new materials through research and development that we can come up with, perhaps substitute those that we are either running out of or have no control over; recycling, advanced processing and a lot of other things.

This is not an abstract issue. Many materials on airplanes, the sources are running out. For example, the new generation of aircraft, the Boeing Aircraft, many of the materials are composites. They are graphite, they are ceramics; many things that through research and development have come up as substitutes for shortages of other minerals that we do not have.

The fact of the matter is that there is no central coordinating place to determine the answers to a lot of these issues. I would say to my colleague, the gentleman from Georgia, the Department of Defense is not even represented on the current Cabinet Council of Natural Resources and Environment, which is the policymaking entity in the administration. I can think of no more important agency to be represented in a broad variety of materials and minerals issues than the Department of Defense.

This is a small bill, one that just might make this country a little stronger and in this era of very weak industrial development in America, of high unemployment, just might provide some additional impetus to insure that our industrial base in the next 20 years remains strong.

So for all those reasons, Mr. Speaker, I would urge adoption of the legislation.

● Mr. WALGREN. Mr. Speaker, I rise in support of H.R. 4281. As my colleagues are well aware, a healthy steel industry is basic to this Nation's defense and economy. With more than 100,000 workers on layoff and another 25,000 working short weeks, this basic industry is suffering badly under the pressure of foreign competition for domestic markets. Steel imports accounted for only 2.3 percent of the U.S. market during the 1950's. More recently, imports have risen to 26 percent. Operating rates have dropped below 50 percent of capacity. Similar concerns exist regarding the titanium, aluminum, copper, and other metals producing industries.

In short, our domestic materials processing and producing industries are no longer competitive in the world marketplace. What is lacking in the United States is a coordinated and well understood policy as to the importance of a strong domestic metals producing industry. H.R. 4281, the Critical Materials Act, effectively addresses this issue. I believe that with proper coordination and direction we can deal in the short term with unfair subsidization of foreign imports and in the long term with a lack of comprehensive investments by the metals producing industries in new, innovative technologies and facilities.

Both short-term and long-term problems will require a concerted effort by the Federal Government to deal with imports and to motivate the industry to reinvest in this basic industry. The materials processing and metals producing capabilities of the Nation should be among the issues treated in providing a national materials policy. I, therefore, share the view of my distinguished colleagues, Mr. FUQUA and Mr. GLICKMAN, in urging passage of H.R. 4281.●

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

Mr. DUNN. Mr. Speaker, we have no further requests on this side.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. FUQUA) that the House suspend the rules and pass the bill, H.R. 4281 as amended.

The question was taken.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

FURTHER MESSAGE FROM THE SENATE

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

H.R. 6758. An act to authorize the sale of defense articles, defense services, and unclassified defense service publications to U.S. companies for incorporation into end items to be sold to friendly foreign countries.

STUDENT INTERNS AT THE INTERNAL REVENUE SERVICE

Mrs. SCHROEDER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6519) to amend title 5, United States Code, to permit student internships at the Internal Revenue Service, as amended.

GENERAL LEAVE

Mrs. SCHROEDER. Pending that motion, Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on this bill, H.R. 6519.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

The Clerk read as follows:

H.R. 6519

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sec-

tion 3111(c) of title 5, United States Code, is amended—

(1) by striking out "(c) Any" and inserting in lieu thereof "(c)(1) Except as provided in paragraph (2), any"; and

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

"(2) In addition to being considered a Federal employee for the purposes specified in paragraph (1), any student who provides voluntary service as part of a program established under subsection (b) of this section in the Internal Revenue Service, Department of the Treasury, shall be considered an employee of the Department of the Treasury for purposes of—

"(A) section 552a of this title (relating to disclosure of records);

"(B) subsections (a)(1), (h)(1), (k)(6), and (l)(4) of section 6103 of title 26 (relating to confidentiality and disclosure of returns and return information);

"(C) sections 7213(a)(1) and 7431 of title 26 (relating to unauthorized disclosures of returns and return information by Federal employees and other persons); and

"(D) section 7423 of title 26 (relating to suits against employees of the United States);

except that returns and return information (as defined in section 6103(b) of title 26) shall be made available to students under such program only to the extent that the Secretary of the Treasury or his designee determines that the duties assigned to such students so require.".

The SPEAKER pro tempore. Is a second demanded?

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

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

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Colorado (Mrs. SCHROEDER) will be recognized for 20 minutes, and the gentleman from California (Mr. DANNEMEYER) will be recognized for 20 minutes.

The Chair recognizes the gentlewoman from Colorado (Mrs. SCHROEDER).

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

Mr. Speaker, H.R. 6519 allows the Internal Revenue Service to use student volunteer interns, who are in valid academic internship programs, for a wider variety of functions than presently permitted. As you know, the present laws protecting the privacy of taxpayers forbid access to tax returns and return information by anyone other than IRS employees. Since current law does not permit interns to have access to this information, their usefulness to IRS is limited. Indeed, the IRS has used second and third year law students, under the authority provided in the Civil Service Reform Act of 1978, to perform legal research, assist in the preparation of cases for trial, and other jobs. But, IRS reports that "their usefulness is seriously impaired because in the course of performing voluntary services they cannot have access to tax information."

This bill says that the Secretary of the Treasury can consider students to be employees of IRS for purposes of access to tax information where that access is necessary for the performance of their duties. So, this is a very narrow grant of authority. If the students are given access to tax information, they are subject to the same liability as other IRS employees for the wrongful disclosure of that information. The law is very clear on the confidentiality of tax returns and student interns will be subject to the same restrictions and liable to the same punishment for violation.

The student internship program, authorized by the Civil Service Reform Act, has been widely used in Federal agencies to provide a meaningful educational opportunity for students. The Subcommittee on Civil Service polled agencies on the use of this authority and found widespread enthusiasm for the program. Literally, thousands of students have participated. Yet, usage of this program has been limited to a few agencies. Some have not used student interns at all, while others have taken only a few. The subcommittee encourages agencies to make wide use of this authority. Some agencies, or parts of agencies, have been unable to use student interns because of disclosure laws similar to those faced by the Internal Revenue Service. We urge those agencies which think a special provision, such as that contained in this bill, would permit them to set up an internship program, to come forward and ask for the necessary legislation.

I hope that the program we are authorizing today will help create an understanding of the IRS for a new generation of tax lawyers. Many tax lawyers go into private tax practice with an antipathy for the Internal Revenue Service which comes from a lack of understanding of the Service's mission and responsibility. A semester of work at the IRS should help reduce this problem.

H.R. 6519 amends current section 3111 of title 5, United States Code. We do not change how this section applies to other agencies. Indeed, this bill incorporates all the other provisions of section 3111 into the law for student interns at the Internal Revenue Service. Therefore, the restriction on using student interns to displace regular employees applies in full to the IRS. Student intership programs are not designed as a method of reducing the work force or cutting the budget and they must not be used for these purposes.

The amendment to H.R. 6519, which I am offering, makes a number of the technical amendments suggested by the Department of the Treasury and tightens up the coverage of the bill. With this amendment, the bill is fully supported by the administration. The Treasury Department reports that the bill will have no budgetary impact. I ask that a letter from the Department of the Treasury to Chairman FORD be printed in the RECORD at this point.

DEPARTMENT OF THE TREASURY,
Washington, D.C., September 28, 1982.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On May 27, 1982, Representative Schroeder introduced H.R. 6519, a bill to permit student internships at the Internal Revenue Service. The Department of the Treasury strongly supports this legislation. We do recommend two slight technical changes, however.

The Civil Service Reform Act of 1978 included a provision (5 U.S.C. 3111) which permits the head of an agency to accept the uncompensated volunteer services of students enrolled in high schools, trade schools, colleges, or universities. Under this provision, the Internal Revenue Service has utilized the assistance of second and third year law students to perform legal research, assist in the preparation of cases for trial, and perform other similar functions. The Civil Service Reform Act provision specifies, however, that student volunteers shall be considered Federal employees only for purposes of compensation for injury and tort claims. Section 6103(h)(1) of the Internal Revenue Code provides that returns and return information are open to inspection by or disclosure to officers and employees of the Department of the Treasury for tax administration purposes. Thus, under present law, student volunteers would not be considered Treasury Department employees for purposes of the disclosure statute, and their usefulness is seriously impaired because in the course of performing volunteer services they cannot have access to tax information.

H.R. 6519 would amend 5 U.S.C. 3111 to treat students performing volunteer tax administration services for the Department of Treasury as Federal employees for purposes of section 6103(a)(1), (h)(1), (k)(6), and (l)(4), and section 7213(a)(1) of the Internal Revenue Code. Thus, returns and return information could be disclosed to and by student volunteers for tax administration purposes, and they could have access to tax information for necessary use in Treasury personnel matters. Similarly, these student volunteers would be subject to criminal sanctions under section 7213 of the Internal Revenue Code for willfully making an unauthorized disclosure of returns or return information.

We would suggest two minor technical changes to the bill. First, we would add to the lsit of affected disclosure provisions in the bill a reference to 5 U.S.C. 552a. That section, added by the Privacy Act of 1974, restricts disclosure of certain information, but provides an exception for disclosure of information to employees of an agency who require the information in the performance of their duties. By treating student volunteers performing tax administration services for the Treasury Department as employees of the Department, disclosure of necessary information would be permitted under section 552a, consistent with the objectives of H.R. 6519.

Second, as a technical drafting matter, we would clarify that I.R.S. student volunteers

will be treated as employees of the Treasury Department (in addition to being employees of the United States). Because the bill provides only that I.R.S. student volunteers are treated as employees of the United States, and not, specifically, as employees of the Treasury Department, a question could be raised whether such student volunteers are authorized to receive confidential information under the statutory provisions authorizing disclosure to employees of the Treasury Department.

Accordingly, we propose the following modifications to H.R. 6519:

(1) Strike out "and" on page 2, line 5 of the bill.

(2) Strike out line 9 on page 2 of the bill and substitute "persons; and".

(3) Add following line 9 on page 2 of the bill:

"(5) Section 552a of this title (relating to the disclosure of records).

"Such students who provide voluntary service for the Department of the Treasury shall, in addition, be considered employees of such Department for purposes hereof."

We urge that the Committee give favorable consideration to this bill as a means of expanding the usefulness of the student volunteer program. There would be no budgetary impact. As specified by 5 U.S.C. 3111, no I.R.S. employees would be displaced.

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.

Sincerely,

DAVID G. GLICKMAN,
Deputy Assistant Secretary (Tax Policy).

Mr. DANNEMEYER. Mr. Speaker, we have no requests for time.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentlwoman from Colorado (Mrs. SCHROEDER) that the House suspend the rules and pass the bill, H.R. 6519, as amended.

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

The title was amended so as to read: "A bill to amend title 5, United States Code, to allow student interns of the Internal Revenue Service to have access to certain information required by such students in the performance of their official duties.".

A motion to reconsider was laid on the table.

MAIL ORDER CONSUMER PROTECTION AMENDMENTS OF 1982

Mr. FORD of Michigan. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7044) to amend title 39, United States Code, to strengthen the investigatory and enforcement powers of the Postal Service by authorizing certain inspection authority and by providing for civil penalties for violations of orders under section 3005 of such title (pertaining to schemes for obtaining money by false representations or lotteries), and for other purposes, as amended.

The Clerk read as follows:

H.R. 7044

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 "Mail Order Consumer Protection Amendments of 1982".

CEASE-AND-DESIST ORDERS; "MIRROR IMAGE DOCTRINE"; TEST PURCHASE AUTHORITY

SEC. 2. (a) Section 3005(a) of title 39, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting lieu thereof "; and"; and

(3) by adding after paragraph (2) the following new paragraph:

"(3) requires the person or his representative to cease and desist from engaging in any such scheme, device, lottery, or gift enterprise.".

(b) The first sentence of section 3005(d) of title 39, United States Code, is amended—

(1) in paragraph (1), by striking out the last "or";

(2) in paragraph (2), by striking out the period and inserting in lieu thereof ", or"; and

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

"(3) an advertisement promoting the sale of a book or other publication, or a solicitation to purchase or a purchase order for any such publication, if (A) such advertisement is not materially false or misleading in its description of the publication, and contains no material misrepresentations of fact, (B) the advertisement accurately discloses the source of any statements quoted or derived from the publication and any opinions expressed about such publication, and (C) neither the publication nor the advertisement is designed to promote the sale of some other product as part of a commercial scheme.".

(c) Section 3005 of title 39, United States Code, is amended by adding at the end thereof the following new subsection:

"(e)(1) In conducting an investigation to determine if a person is engaged in any of the activities covered by subsection (a) of this section, the Postmaster General (or any duly authorized agent of the Postmaster General) may tender, at any reasonable time and by any reasonable means, the price advertised or otherwise requestd for any article or service that such person has offered to provide through the mails.

"(2) A failure to provide the article or service offered after the Postmaster General or his agent has tendered the money or property in the manner described in paragraph (1) of this subsection, and any reasons for such failure, may be considered in a proceeding held under section 3007 of this title to determine if there is probable cause to believe that a violation of this section has occurred.

"(3) The Postmaster General shall prescribe regulations under which any individual seeking to make a purchase on behalf of the Postal Service under this subsection from any person shall—

"(A) identify himself as an employee or authorized agent of the Postal Service, as the case may be;

"(B) state the nature of the conduct under investigation; and

"(C) inform such person that the failure to complete the transaction may be considered in a proceeding to determine probable cause, in accordance with paragraph (2) of this subsection.".

CIVIL PENALTIES; SEMIANNUAL REPORTS

SEC. 3. (a) Chapter 30 of title 39, United States Code, is amended by adding after section 3011 the following new sections:

"§ 3012. Civil penalties

"(a) Any person—

"(1) who, through the use of the mail, evades or attempts to evade the effect of an order issued under section 3005(a)(1) or 3005(a)(2) of this title;

"(2) who fails to comply with an order issued under section 3005(a)(3) of this title; or

"(3) who (other than a publisher described by section 3007(b) of this title) has actual knowledge of any such order, is in privity with any person described by paragraph (1) or (2) of this subsection, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with any such order, as the case may be, through the use of the mail;

shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each day that such person engages in conduct described by paragraph (1), (2), or (3) of this subsection. A separate penalty may be assessed under this subsection with respect to the conduct described in each such paragraph.

"(b)(1) Whenever, on the basis of any information available to it, the Postal Service finds that any person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), the Postal Service may commence a civil action to enforce the civil penalties established by such subsection. Any such action shall be brought in the district court of the United States for the district in which such conduct occurred or in which the defendant resides, transacts business, or receives mail.

"(2) If the district court determines that a person has engaged, or is engaging, in such conduct, the court shall determine the amount of any civil penalty under this section, taking into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to conduct lawful business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

"(c) All penalties collected under authority of this section shall be paid into the Treasury of the United States.

"§ 3013. Semiannual reports on investigative activities of the Postal Service

"The Postmaster General shall submit semiannual reports to the Board summarizing the investigative activities of The Postal Service. Each such report shall be submitted within sixty days after the close of the reporting periods ending March 31, and September 30, respectively, and shall include with respect to the reporting period involved—

"(1) a summary of any proceedings instituted under section 3005 of this title, and the results of those and of any other such proceedings decided, settled, or otherwise concluded during such period;

"(2) the number of cases in which the purchasing authority described in section 3005(e) of this title was used;

"(3) the number of applications for temporary restraining orders or preliminary injunctions submitted under section 3007 of this title and, of those applications, the number granted;

"(4) the total expenditures and obligations attributable to investigative activities of the Postal Service; and

"(5) such other information relating to the investigative activities of the Postal Service as the Board may require. Upon approval of a report submitted under the first sentence of this section, the Board shall transmit such report to the Congress.".

(b) Section 3012 of title 39, United States Code, as added by subsection (a), shall apply with respect to conduct which occurs on or after the date of the enactment of this Act.

(c) The analysis for chapter 30 of title 39, United States Code, is amended by adding after the item relating to section 3011 the following new items:

"3012. Civil penalties.
"3013. Semiannual reports on investigative activities of the Postal Service.".

CONSUMER EDUCATION PROGRAM ON SCHEMES INVOLVING FALSE REPRESENTATIONS

SEC. 4. (a) As soon as practicable after the date of the enactment of this Act, the Postmaster General or his designee, following consultation with representatives of the mail order industry, shall develop and carry out a program designed to provide consumer education to the public on schemes involving false representations through use of the mails, including the dissemination of information on recognizing practices commonly associated with such schemes, as well as appropriate measures to take upon receiving mail matter which the individual believes may be part of such a scheme.

(b) A summary of any activities carried out under subsection (a) shall be included in each annual report rendered by the Postmaster General under section 2402 of title 39, United States Code.

SEC. 5. Section 202(b) of title 39, United States Code, is amended by adding at the end thereof the following new sentence: "A Governor may serve during the term following the expiration of his term until his successor has taken office.".

The SPEAKER pro tempore. Is a second demanded?

Mr. GILMAN. Mr. Speaker I demand a second.

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan (Mr. FORD) will be recognized for 20 minutes, and the gentleman from New York (Mr. GILMAN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan (Mr. FORD).

Mr. FORD of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we have a bill before us that is a tribute to the distinguished chairman and members of the Select Committee on Aging who have had under study for a long time now the reprehensible use of the mails for scams aimed at the weakest in our society: the old, the sick, and the unemployed. Chairman PEPPER has worked extraordinarily hard to produce the basis for this legislation.

I also want to compliment the chairman of the Subcommittee on Postal Personnel and Modernization, the Honorable MICKEY LELAND, who handled this bill on the House side in a very statesmanlike way.

I am pleased to tell the House that as a result of the good offices of the gentleman from Florida (CLAUDE PEPPER) and his committee and the gentleman from Texas (MICKEY LELAND) and his people, we come to the floor today with a bill that I really believe has no controversy left in it. This bill has been, at one time or another during its consideration, somewhat controversial. When the bill passed from the Committee on Post Office and Civil Service, it passed by a vote of 13 to 1. The gentleman from California (Mr. DANNEMEYER) who I see on the floor was the one vote. It might come as a surprise to the House that the gentleman from California (Mr. DANNEMEYER) and I had, preceding that vote, joined together in a good deal of serious criticism of the legislation in the form in which it came to us from the Senate and in which it was originally introduced in the House.

I am pleased to say that in part, because of his persistence and the very strong efforts that he made, we were able to come to a consensus to remove from the bill the section that contained the provisions which were the focus of the principal amendments which he offered in committee. I hope that the gentleman from California (Mr. DANNEMEYER) will now join us in supporting this much-needed bill.

H.R. 7044 is intended to plug holes in the existing postal law without infringing on anyone's constitutional rights. It has built-in procedural and substantive protections to insure that the new investigative and enforcement authority which we are granting is used properly and prudently.

The amendment to the reported bill which we are offering today is designed to extinguish even the remote possibility that we might be granting the Postal Service too much authority, because we have removed all of section 3, the civil investigation demand powers. In removing the CID section from the bill, we hope we are reestablishing the virtually unanimous support which the legislation has had and which it deserves.

Today we culminate a 2-year-long, bipartisan effort the likes of which the Congress has rarely seen in recent years. The bill which we bring before the House today has one simple purpose: To protect the American public from being injured by false representation schemes which utilize the mails.

H.R. 7044 is a refined version of the bill H.R. 3973, which was introduced last year by the Honorable CLAUDE PEPPER as the result of his Aging Committee's intensive study of the financial, physical, and emotional damage which mail-order scams are inflicting upon this Nation's senior citizens. H.R. 3973 quickly attracted some 300 House cosponsors. The Senate version of the legislation, S. 1407, has already passed that body by voice vote.

The clean bill which is before us today, H.R. 7044, was ordered reported to the House by the Post Office and Civil Service Committee—by a vote of 13 to 1. But it is, in fact, the result of a closely coordinated joint effort with Chairman PEPPER's Aging Committee. Extensive hearings by both of our committees conclusively proved the need for this legislation. The existing civil postal statute is simply too easily circumvented by today's sophisticated mail-order con men. As a result mail-order schemes are proliferating as never before, and the American public is paying the price.

H.R. 7044 plugs the holes in existing law without infringing on anyone's constitutional rights. The reported bill contains numerous procedural and substantive protections to insure that the new investigative and enforcement authority which we are granting is used properly and prudently.

The amendment to the reported bill which we are offering today is designed to extinguish even the most remote possibility that we might be granting the Postal Service too much authority. The amendment strikes all of section 3 of the bill, thereby removing the civil investigative demand provisions in their entirety. Although Chairman PEPPER and I are doing this with some reluctance, we feel it is the prudent course. The "CID" provision, although it would have provided a useful investigative tool, has in recent weeks simply become too controversial, and has deflected too much attention from the tragic problem which this bill is trying to solve.

In removing the CID section from the bill, we hope we are reestablishing the virtually unanimous support which this legislation has had and which it deserves. As Chairman PEPPER's recent Aging Committee report so clearly demonstrates, "Business and Investment Frauds Perpetrated Against the Elderly: A Growing Scandal" it is time to give the Postal Service and the courts the tools they need to better protect our senior citizens. Chairman PEPPER's report is filled with horrifying case histories illustrating the nature of the national problem we are seeking to cope with. The most vulnerable members of our society—the elderly, the sick, the unemployed—are being victimized in alarming proportions. Our Federal postal system is being perverted by the operators of these schemes, and it is time to put an end to it.

The amended bill, even without the CID section, contains investigatory and enforcement provisions which will

be of immense and immediate assistance:

First, the bill provides that the Postal Service—after a full adversarial hearing before an administrative law judge—may issue orders to require persons to cease and desist from engaging in false representation schemes. Presently, the Postal Service may only issue stop-mail orders, which are easily circumvented by experienced con men, who simply move to a new address under a new business name.

Second, the bill also permits the Postmaster General or his agent to tender in person the price of any item or service advertised through the mail. The Postal Service agent must accurately identify himself, state the nature of the conduct under investigation, and inform the advertiser that failure to complete the transaction may be presented to a court as a factor to be weighed by the court in deciding whether there is probable cause to issue a temporary stop-mail order under the existing provisions of 39 U.S.C. 3007. This provision will speed the investigative process and help prevent harm to the public. Presently, by the time the Postal Service obtains an advertised product through the mail for testing, the operator of the scam has left town.

Third, the bill also provides for civil penalties for violators of false representation orders issued pursuant to 39 U.S.C. 3005. Only a U.S. district court may enforce such penalties—which may be in an amount up to $10,000 per day—and then only after the court makes an independent determination that the subject person is engaging in, or has engaged in, violative conduct. The court shall determine the amount of the penalty, if any. All penalties will be paid into the General Treasury of the United States. This provision should help solve one of the major problems with today's civil statute: the total lack of any deterrent effect. A stop-mail order alone is no obstacle for the operators of today's increasingly sophisticated, mobile, and ruthless scams.

Fourth, the bill also required the Postmaster General to develop and carry out an extensive consumer education program as a positive means of helping prevent injury to the public. And so that we may closely monitor the conduct of the Postal Service's investigative and enforcement efforts, the bill also requires the Postmaster General to submit detailed, twice yearly reports to the U.S. Postal Service Governors and to the Congress on the investigative activities of the Postal Service.

I strongly urge the passage of H.R. 7044.

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

Mr. FORD of Michigan. I yield to the gentleman.

Mr. KINDNESS. Mr. Speaker, I thank the gentleman for yielding.

In order to identify the amendment with exactness, is a copy available of the exact nature of the amendment?

Mr. FORD of Michigan. Yes; the gentleman should have one there at the desk. It is at the desk here.

It contains the change. Basically all it does is strike section 3 of the bill as it was reported from the committee.

Mr. KINDNESS. That is working from Union Calendar No. 582?

Mr. FORD of Michigan. That is correct. The gentleman will see a little notation at the top that says:

Note: See changes on pages 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16 and 17, and an amendment to the title.

Mr. KINDNESS. I have something that has just appeared before me that conforms with that description, which does not change a word in the title to the bill, the word being "inspections."

I understood it was intended or considered that that might be changed to "investigatory."

Would the gentleman describe the decision on that?

Mr. FORD of Michigan. I really do not understand what that would do to affect it, even though it is only in the title.

Mr. KINDNESS. If the gentleman will yield further, I would not assert that there in any particular meaning to that.

Mr. FORD of Michigan. The gentleman is raising a question about what word in the title?

Mr. KINDNESS. In the third line of the language following, "A bill to amend title 39," in the middle of the line the word "inspection"; I understood that was supposed to be changed to read "investigatory" and in the short title to the bill below the bill number, the same change there.

□ 1345

Mr. FORD of Michigan. If you look on page 17, you will find that that change is made in the amendment to the title.

Mr. KINDNESS. I thank the gentleman. The gentleman I think has satisfied my curiosity. I appreciate his yielding.

There was a little confusing language about just what the document is.

Mr. BEREUTER. Mr. Speaker, will the gentleman yield to me for a question?

Mr. FORD of Michigan. I would be happy to yield to the gentleman from Nebraska.

Mr. BEREUTER. I thank the gentleman for yielding.

Mr. Speaker, it has come to my attention that the administration has asked for at least two significant clarifications, and I wonder if I might read them to the chairman of the committee and receive a reaction on the part of those two clarifications which they are hoping to have in the conference.

The first is to limit the number of U.S. Postal Service officials authorized to issue the civil investigative demands to supervisor-level personnel in order to avoid civil liberties concerns; and second, to more effectively limit the official use of information obtained under a CID outside the context of criminal enforcement.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman clarify his question?

Mr. BEREUTER. Yes.

Mr. FORD of Michigan. What does the gentleman mean by "administration"; the administration of the Postal Service, which is the agency administering this, or somebody else? Who are we talking about?

Mr. BEREUTER. I believe it is the administration speaking from the White House level and the advisers to the White House.

Mr. FORD of Michigan. Mr. Speaker, I do not believe that in view of our amendment today, they have any further concerns about this bill.

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

Mr. FORD of Michigan. I yield to the gentleman from Texas, the chairman of the subcommittee.

Mr. LELAND. Mr. Speaker, will the gentleman from Nebraska repeat his question?

Mr. BEREUTER. The gentleman from Michigan (Mr. FORD) has the time.

Mr. LELAND. Mr. Speaker, it is my understanding that the gentleman from Nebraska has some reservation and I would like to respond.

Mr. BEREUTER. Mr. Speaker, the reservation was expressed in the hope that we could have a resolution of these matters by a clarification in conference; that we would limit the number of U.S. Postal Service officials authorized to issue the civil investigative demands to the supervisor-level personnel in order to avoid civil liberties concerns.

Mr. FORD of Michigan. Mr. Speaker, if I may reclaim the balance of my time, that is no longer an issue. The entire civil investigative demand section is being removed from the bill.

Mr. BEREUTER. Mr. Speaker, will the gentleman yield further for a clarification on another point?

Mr. FORD of Michigan. I certainly yield to the gentleman from Nebraska.

Mr. BEREUTER. I thank the gentleman for yielding further.

Mr. Speaker, the other point that was raised, and perhaps this has also been taken care of, is to make clear that the documents obtained by the Postal Service under a CID be available for use in criminal prosecutions.

Would the chairman care to react to that?

Mr. FORD of Michigan. Again, that issue, I believe, was removed when section 3 was removed from the bill. That was an issue raised, incidentally, by the ACLU. I am surprised that they and the White House are so well connected, but we resolved the complaints of both the American Civil Liberties Union and the White House by taking the civil investigative demand section out of the bill.

Mr. BEREUTER. Mr. Speaker, I appreciate the assurances offered by the distinguished gentleman from Michigan in that, but I thank the gentleman for yielding.

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

Mr. Speaker, I rise in support of the motion to suspend the rules and pass H.R. 7044, as amended, the Mail Order Consumer Protection Amendments of 1982. I commend my colleague, the gentleman from Florida (Mr. PEPPER) for taking the initiative to introduce last session the legislation, H.R. 3973, from which the measure now before us was fashioned. I also commend the chairman of the Committee on Post Office and Civil Service, the gentleman from Michigan (Mr. FORD), and my colleague, the gentleman from Texas (Mr. LELAND), who chairs the Subcommittee on Postal Personnel and Modernization, of which I am the ranking minority member, for their constructive roles in bringing H.R. 7044 to the floor.

H.R. 7044 and H.R. 3973, and S. 1407, a similar measure passed by the Senate, are designed to combat the increasing array of mail fraud schemes. As the gentleman from Florida has pointed out, all too often the target of such fraudulent undertakings are our Nation's senior citizens. Indeed, hearings conducted by the Select Committee on Aging revealed that over 60 percent of those victimized by deceptive mail order operations peddling phony health remedies, and fraudulent land deals and work-at-home schemes were senior citizens.

During this past summer, our subcommittee conducted a comprehensive series of hearings on the mail fraud problem during which the Postal Service, victims of mail fraud, and major users of the mail provided their perspectives on the problem. These hearings focused on the task of providing the Postal Service with the additional means to effectively combat fraudulent mail offerings while assuring at the same time that increased power to investigate such mail schemes did not collide with the freedoms of citizens exercising legitimate rights while using the mails.

I believe the measure before us now has gone a long way to accomplishing that objective. The provision of H.R. 7044 which would have provided the Postal Service with the authority to issue written investigative demands has been deleted. While that provision was merely similar to the power given Inspectors General of other Federal agencies, I know that section of the bill was troublesome to many of my colleagues.

Under the current measure, the Postal Service will be provided with the authority to issue cease and desist orders to those conducting deceptive mail schemes and be able to purchase promptly an item offered for sale. Moreover, civil penalties can be assessed by a U.S. district court against violators of false representation orders.

Mr. Speaker, in an earlier Congress I introduced legislation designed to help crack down on fraudulent mail offerings. While I recognize that the majority of mail order businesses are legitimate operations, I am pleased that we have before us now a measure which I believe will provide the Postal Service with the additional tools to help put many of the fraudulent mail operations out of business.

Accordingly, I urge my colleagues to vote to suspend the rules and pass H.R. 7044, so that we may begin to remedy a swiftly growing problem ensnaring so many unsuspecting citizens.

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

Mr. GILMAN. I would be pleased to yield to my colleague on the committee, the gentleman from Illinois.

Mr. CORCORAN. I thank the gentleman for yielding.

Mr. Speaker, I rise to discuss and urge support for the amendment which causes the deletion of section 3 of H.R. 7044. As the gentleman from New York (Mr. GILMAN) knows, and in particular the gentleman from Michigan (Mr. FORD) and the gentleman from Florida (Mr. PEPPER) also know, there has developed a considerable concern about the potential violation of individual rights and liberties in connection with the civil investigative demand provisions of section 3 of H.R. 7044. With this section in the bill I would stand in vigorous opposition to the whole bill despite its otherwise good intentions.

I think that the leadership of the committee has prudently decided to remove this very controversial section from the bill. Perhaps in some future Congress we can try again to see whether or not we can balance the need for dealing with the mail order scams that prey upon the elderly, the infirm, and disadvantaged without violating the constitutional rights that section 3 violates.

Mr. GILMAN. Mr. Speaker, I thank the gentleman for his comment.

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

Mr. GILMAN. I would be happy to yield to the gentleman from Texas.

Mr. PAUL. I thank the gentleman for yielding.

Mr. Speaker, the Post Office Committee has finally seen fit to delete the most controversial section of the legislation, H.R. 7044, section 3005(a). While this action is a step in the right direction, it represents only a partial solution to the problems posed by the legislation itself.

Congress, the legislative body of the Federal Government, promulgates paperwork, reports, and bills, to the point where we have a compilation of rules, regulations, and laws that no one really understands or can locate in the law books.

Clause after subclause after sub-subclauses are added to legislation and amended to the point where the law books can serve as a ladder to scale Mount Everest.

H.R. 7044 is another chief example; there are already sufficient laws within the Criminal Code to deal with mail fraud. This legislation is not going to solve anything, nor will it make the Postal Service's job any easier. I would state that there is nothing in this revised proposal that does not already exist in law, specifically within title 18 of the United States Code dealing with fraud.

H.R. 7044 is nothing more than a sideshow, an attraction designed to show the people that we are doing something.

At first, some Members, including myself, had strong reservations about the powers within the original proposal under section 3005(a), but the chairman of the committee saw fit to revise the bill by deleting the section.

I would certainly like to commend the gentleman for this action, but I would still like to express my reservations about the bill as revised. While it is more palatable than its predecessor, what real purpose does it serve? I say none.

H.R. 7044 is a repetitious bill reiterating things already existing in law. There is no need to further clutter the law books and I would urge my colleagues not to pass the bill.

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

Mr. FORD of Michigan. Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. LELAND).

Mr. SCHUMER. Mr. Speaker, will the gentleman from Texas yield to me?

Mr. LELAND. I would be happy to yield to the gentleman from New York.

Mr. SCHUMER. I thank the gentleman for yielding.

Mr. Speaker, from a civil liberties viewpoint, I had reservations about this bill because of section 3. I was concerned that section 3 might obligate the fourth amendment.

The chairman of our committee and the subcommittee chairman have diligently guided this legislation, the thrust of which is meritorious. Now that they have had the wisdom to excise this section, we have an excellent bill and I rise both to support the measure and to thank the chairman and the subcommittee chairman for their help and foresight on this measure.

Mr. Speaker, there is a serious problem that now confronts the elderly of this country and those who can ill afford it in these economically difficult times. Mail fraud employs the trusted channels of the U.S. Postal Service to carry out pernicious schemes to dupe individuals out of their hard earned moneys. It takes its highest toll on our elderly. Thirty percent of our senior citizens each year are deceived by these schemes. Sophisticated con men prey upon our senior citizens who grew up in a more trusting era, prey upon their daily fears that they cannot support themselves on a pension, let alone leave something of their hard earned money to their children. Every year countless men and women lose their savings that may have taken a lifetime to build, to schemes selling land underwater, false promises of weight loss, arthritis cures. These con men will stop at nothing: There are even those who read the obituaries so that they may send fraudulent bills to the families of the deceased.

Let me tell you of some of the most heinous of these crimes. Recently we learned of a man who lost $30,000 he had received as reparation for being in Dachau, to a scheme selling land underwater in Florida. In Massachusetts, it was recently discovered that several senior citizens spent more than $40,000 each for absolutely worthless health insurance. In another instance, the Postal Service blocked a scheme selling guaranteed weight loss brochures that contained only the most basic program of exercises and vitamins. At $22.50 a brochure, the promoters were raking in $112,000 a day.

These are only a few of the 200,000 mail fraud schemes reported to the Postal Service each year. These schemes were investigated and stopped, but they are the exception. The 2,000 highly respected postal inspectors can devote only 25 percent of their time to investigating and prosecuting mail fraud schemes. All too often their efforts go to naught, as the sophisticated con men know all too well how to circumvent the enforcement process. Presently, all that postal inspectors can do is make a test purchase of the suspect material. By the time the scheme has been detected and the purchase made, the con man has filled all his orders and shut down. Or if he is caught and a stop mail order issued, he merely moves his scheme to another State, or changes his address or adopts an 800 telephone number and continues to extort the public.

So mail fraud continues to escalate, particularly now, in these times of high unemployment, and there is not sufficient means to arrest its growth. While the mails are used to dupe the public, mail fraud is slowly undermining public confidence in the U.S. Postal Service.

We believe that H.R. 7004 is essential for the restoration of confidence in the mails and halting the deplorable extortion of our senior citizens.

The Subcommittee on Postal Personnel and Modernization held five hearings on this legislation, even though the Senate had reported the bill on a voice vote. We did so because we were very concerned that the powers being granted to the Postal Service might be too broad and too loosely defined. Although we had every confidence that the Postal Service would not use the new authority in any manner except that which was intended, we did not even want the potential for such a situation to exist.

We heard testimony from every interest group and organization that expressed interest in doing so. These included the mail order industry; the book, magazine, and newspaper publishing industries; and retiree organizations. We also solicited written comments from every interest group and organization that we thought might have some concern or expertise about this subject.

The consensus of these viewpoints was that a serious problem does indeed exist, and that it will continue to grow if the authorities are not given the authority they need to crack down on these schemes. However we also found that there was agreement with our concern that the nature and extent of the additional authority might be unnecessarily broad and loosely defined. We; then decided to rewrite the entire bill. In the rewriting process, we dealt with every one of our concerns, deleting some sections, and defining the new authority in very strict langauge which will insure that it can be used precisely for the purposes intended and for nothing else. This new bill H.R. 7044, has the full support of Chairman PEPPER, author of the original bill, the Senate sponsors, and those who had expressed concerns about the original bill.

We have dealt with this issue in great depth and detail. We have devoted all of the time and attention necessary to consider every possible effect that this new legislation might have. We are presenting to you a carefully thought out and precise instrument for effectively combating one of the fastest growing criminal activities in this country.

I urge you to support H.R. 7044.

Mr. LELAND. Mr. Speaker, I would like to commend the chairman for his expeditious manner in handling this bill. He has done an excellent job in terms of finding all of the difficulties and weeding them out, and has met most of the concerns, particularly those that raised the gravest concerns.

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

Mr. LELAND. Mr. Speaker, I would like to yield now to the gentleman from Connecticut, who held hearings in his district in Connecticut and who has found that in his district, just a small city in his district, as I understand, has been really ravaged by this kind of concern.

Mr. RATCHFORD. I thank the gentleman for yielding.

Mr. Speaker, hearings held by the Select Committee on Aging have heavily documented the fact that senior citizens are the primary victims of mail order pirates, who promise arthritis and cancer cures, cures to extend the lifespan, or halt the aging process. Sixty-five percent of all documented mail fraud cases in the country are perpetrated against the elderly, and, we have learned that big money is involved. The Arthritis Foundation has estimated that $1 billion a year is lost to phony claims promising a cure for arthritis.

Medical experts have also testified that many miracle cures and alleged health restoring devices, can actually aggravate the user's condition, and cause even greater suffering. The U.S. Postal Inspection Service has testified before a hearing held in Hartford, Conn., last year that one medical fraud promotion that was stopped, was receiving 5,000 pieces of mail and an average of $112,000 per day.

Fraudulent promotions for work-at-home schemes have robbed thousands of individuals, most of them elderly, of hundreds of thousands of dollars: This is their lifesavings. In Hartford, victims were persuaded into investing $3,500 to begin a jewelry franchise. Through seemingly legitimate advertising, over 160 people were robbed of $600,000 in this fraudulent scheme in just the 6 short months it was open.

As you can see, the variety of fraudulent schemes is seemingly endless. I urge my colleagues to support this bill, to help protect the vulnerable, the elderly, by keeping the mails free from abuse.

Mr. LELAND. I thank the gentleman from Connecticut.

Mr. Speaker, I would also like to commend the minority member of the committee, the gentleman from New York (Mr. GILMAN).

Mr. FORD of Michigan. Mr. Speaker, I yield 4 minutes to the gentleman from Florida (Mr. PEPPER).

Mr. PEPPER. Mr. Speaker, I warmly commend the distinguished gentleman

from Michigan, the chairman of this committee, and all the members of his committee upon bringing forth this measure to the floor of the House.

This bill is a very wisely revised version of my original bill, H.R. 3973, which was cosponsored by over 300 Members of the House.

There were certain weaknesses in our bill that raised some questions in the Committee on the Judiciary, and the chairman of this committee and his committee have wisely, I think, revised my original bill to make it acceptable to the Committee on the Judiciary and I hope acceptable generally.

This bill, Mr. Speaker, is for the purpose of protecting, to a greater extent than is now done, the elderly people, particularly, of this country who are the victims of fraudulent schemes of conspiring people who take advantage of them in various ways.

Our committee, the Select Committee on Aging, held a hearing on this matter. We received testimony and have had several hearings, as a matter of fact. A dozen or more kinds of fraud have been perpetrated upon the elderly people, particularly, because some of them have a little money to invest and they are looking for some sound investment. Somebody makes a persuasive presentation to them and they fall victim to the fraud and lose the money that they otherwise would have preserved.

□ 1400

So, this bill also provides very important procedural changes in the authority of the Post Office Inspector. It makes possible for the Post Office Inspector to get access to the substance; that is, the fraudulent substance or the material that is the basis of the fraud that is about to be perpetrated. So, it will make enforcement by the Postal Service very much more effective than it has been heretofore, yet it does not grant the subpena power we provided originally in our original legislation.

It also provides additional punishment to be imposed by the courts upon those who are convicted of the perpetration of these fraudulent schemes, so I think, I feel morally certain, that this measure when it becomes law will to a large extent certainly diminish, if it does not prevent, the great number of frauds that have been perpetrated by conspiratorial characters upon the elderly people of this country.

I warmly commend the distinguished gentleman from Michigan (Mr. FORD) and his subcommittee upon the excellent job they have done in bringing this measure to the floor.

Mr. Speaker, I am please to join the distinguished chairman of the House Post Office Committee, Mr. WILLIAM D. FORD in support of H.R. 7044. This legislation, which we have introduced together, is the result of more than a dozen hearings by our Committee on Aging which examined various frauds being perpetrated against the elderly.

Mr. Speaker, I will take advantage of this opportunity to release a report "Business and Investment Frauds Perpetrated Against the Elderly: A Growing Scandal," which has as its primary recommendation the enactment of H.R. 7044. The purpose of H.R. 7044 is to give the U.S. Postal Service a greater arsenal with which to fight fraud perpetrated against the aged through the U.S. mails.

Our committee, in the course of preparing this report, investigated work-at-home schemes, securities frauds, franchise, distributorship and commodities frauds and found that such business and investment swindles perpetrated against the elderly are a growing national problem. We estimate a minimum of $5 billion a year which could be lost in these ripoffs. This is a growing national scandal.

The report details thousands of case histories taken from committee files such as the following. Nita Brumley of Lubbock, Tex., a retired nurse lost some $3,475 she invested in a phony jewelry distributorship. Arthur Shaffer of Columbia, S.C., a retired Army captain invested $9,000 for certain vending machines and received nothing for his money. Seventy-three-year-old D. H. Brinson of Reidsville, N.C., thought he was dealing with a reputable commodities dealer—He lost $52,000. Mr. and Mrs. Barney Dial mortgaged their home to invest in a plant-growing franchise; they lost $6,500. Mr. and Mrs. Ed Steinleitner from Pennsylvania lost $30,000 in a work-at-home scheme in which they were told they could make money by growing earthworms which the offering firm would buy from them. The firm left town with the money without buying back so much as a single nightcrawler.

The report offers these major conclusions:

First, fraud is a massive problem in our society today and it is growing at a rapid rate.

Second, the elderly and the poor are disproportionately represented in the victims of fraud. The elderly make up 11 percent of the population but 30 percent of the victims of crime—both violent and white-collar crime.

Third, the elderly are especially vulnerable because: They grew up in a more trusting era, some of them have a little money put away; many of them are not accustomed to making large investments; they have time on their hands and want to keep busy; and they have the desire not only to have more money on which to live but to leave a little something for their children and grandchildren.

Fourth, the elderly are particularly vulnerable to business and investment schemes which prey on the fear that many of them will not have adequate income to support themselves in their old age. In general, these fears are real; some 25 percent of the elderly have incomes placing them at or near the established poverty line.

Fifth, business and investment frauds are particularly prevalent because of the large amount of money involved and because it is often impossible to tell fraud from the great majority of legitimate business and investment opportunities.

Sixth, like most other kinds of frauds, business and investment schemes make heavy use of the U.S. mails. The fraud usually begins with an advertisement in a local newspaper. The victim responds to the ad and does not receive what was advertised; often the victim receives nothing at all.

Seventh, the primary authority to stopping such frauds rests with the States, but few have enacted specific business opportunity statutes.

Eighth, the Federal Bureau of Investigation has been increasing its efforts to fight white collar fraud with good results but neither the Federal Trade Commission or the Securities and Exchange Commission are doing the job they once did.

Ninth, the U.S. Postal Service has done an excellent job through its Inspection Service to fight fraud but it is understaffed. There are only 2,000 postal inspectors in the United States and they spend only 25 percent of their time dealing with mail fraud and false representation cases.

Tenth, the U.S. Postal Service does not have the authority it needs to do the job. Congress has invested in the Inspection Service the responsibility for identifying and prosecuting fraud but, has not given the Service even that rudimentary investigative tool—the power of subpena.

Eleventh, penalties imposed in false representation cases are too light and recidivism is a common problem.

Mr. Speaker, H.R. 7044 attempts to deal with these problems. It is a revised version of my bill, H.R. 3973 which has been cosponsored by over 300 Members of the House. The bill will help the Inspection Service by giving them the authority to tender a postal money order and gain immediate access to a product which is the subject of a false representation investigation. In the past the Postal Service was required to send away from the product. The crooks knew the procedure. Typically, they would wait 2 months and fill all the orders at once as they were closing down their operation. By the time the Inspection Service got its hands on the product it was too late. As I said, this bill will

give the Inspection Service immediate access to questionable products. This will permit testing and help them to move more quickly and thus prevent many thousands from being defrauded each year.

Another provision of this important bill will allow a U.S. district court judge to impose fines up to $10,000 for each violation of a judically imposed stop order. In other words, if a Federal judge imposes a stop order and a certain firm seeks to defraud the public by perpetrating essentially the same scheme, the U.S. Postal Service may ask and the district judge may impose the fines I mentioned. This should go far to stop recidivism.

Mr. Speaker, this is an important bill, I commend Mr. FORD and the Post Office Committee. I urge its immediate enactment.

Mr. GILMAN. Mr. Speaker, I yield 5 minutes to the distinguished member of our committee, the gentleman from California (Mr. DANNEMEYER).

Mr. DANNEMEYER. Mr. Speaker, I thank my colleague for yielding me the time.

It has been said by a famous justice of the U.S. Supreme Court that, "Government is to be feared the most when its purposes are benevolent."

On the basis of this statement, I pose my opposition to the bill in the form that it is now before us. I would like to alert the Members of the House as to truly what is going on in the Post Office Department for the purpose of protecting, allegedly, the interests of the citizens of this country. It goes back to a change that was made in our law in 1967, when at that time, in order for the Post Office to move on these scams, they had to prove intent to defraud. The law in that year, 1967, was modified to change it to its present posture of permitting the Post Office Department to move when the evidence is false and misleading, and on that point, with the change made in 1967, I would like to quote from my distinguished colleague from Michigan, Mr. WILLIAM D. FORD, who made some comments when the law was adopted in 1967:

> I am of the view that the Post Office Department has as its primary mission delivery of the mail in this nation. There has been a tendency of late to add to that mission examination and control of the content of the mails that are delivered. I do not believe that the Post Office Department is the proper agency to concern itself with the content of the mails, and I believe that measures of this type dealing with sensitive determinations as to mail content should never be placed for administration in the hands of the Post Office Department.

I happen to believe what Mr. FORD said in 1967 has matured with the last 15 years, and should be his position today. We should note today, Members, that we have arrived at 1984 even though it is only the end of 1982, because we, through the Post Office Department, employ readers who have checked and are checking a list of magazines to determine if they contain any false and misleading information.

Now, the Post Office Department has divided the regions of the country into four—Eastern, Western, and so forth. I will read a few of these magazines that are routinely read by members of the Post Office Department for the purpose of determining if, in the opinion of the reader, it contains any false and misleading information. American Legion; At Home; Chic; Cycle News; Dynamic Years; Entrepreneur; Esquire; Essence; Fetish Times; Gentlemen's Quarterly; Gordon-Star; Income Opportunities; Lapidary Journal; McCalls; Impulse; Modern Maturity; Modern Screen; Moneymaking Opportunities; Movie Stars; Players Magazine; Playgirl; Rolling Stone; San Francisco Ball; Self; Shape; Teen; The Advocate; The Sun; Mothering, and Venture.

This is just the list that is routinely read by folks working for the Post Office Department in the Western region of the country. Then, when they find something that in their opinion is false and misleading, they go after that person because they are allegedly perpetrating a fraud. Pursuant to this authority the record before the committee disclosed that we in this country—now listen to this—we in this country have banned no less than 20 books, acting through the benevolent purposes of the Post Office Department, because the Post Office Department believed that the contents of these books was something that was false and misleading.

We have reached the point in this country, notwithstanding the first amendment, that if in the opinion of somebody in the Post Office, the book, the article, the ad contains false and misleading information, that person can be taken into an administrative hearing, and if they are found to be wanting in terms of the opinion of the presiding officer of the administrative hearing, the written material can be banned, and pursuant to that authority we have banned about 20 books.

Now, I happen to believe that as a matter of law what we in the Congress should be doing is going back to what the law was in 1967, and requiring the Post Office to prove intent to defraud in order for them to have authority. The bill in the amended form before us is significantly improved over what it contained when it was originally introduced. I thank my chairman, Mr. FORD, for making the modifications that he has made.

The SPEAKER pro tempore. The time of the gentleman from California has expired.

Mr. GILMAN. Mr. Speaker, I yield 3 additional minutes to the gentleman from California.

Mr. DANNEMEYER. There are two features of this bill that I think the Members of the House should have their attention directed to, and are at the basis of my opposition in its present form. The first one relates to the addition of a new power called cease and desist.

Now, under existing law as it was modified in 1967, if something is determined to be false and misleading, the Post Office can issue a stop order as to the post office box through which the material flows. In addition to this stop order authority, which I think they should have, they want to add a new feature called cease and desist. In other words, not only do they want to reach the post office box in terms of the ability of mail to flow through, but they want the ability to issue an in personam order; that is, to the person owning the post office box.

As to this feature, this is what the American Bar Association has said in opposition to this particular provision, and contrary to the aspersions of one of the previous speakers, this bill has never been referred to the Judiciary Committee. In my humble opinion it should have been, but it has not been. The ABA has said in opposition to this particular feature:

> The procedure under which cease and desist orders would be issued by the Postal Service under section 3 of S. 1407 amending 39 U.S.C., paragraph 305 should be clarified and set forth. This is a new grant of power to the Postal Service, and one that should be carefully limited to appropriate situations. There is considerable concern in our section about granting such powers to a non-governmental instrumentality, a concern that we shall discuss further at the end of this letter.

In other words, I think from a conceptual standpoint the law should be modified to give the Postal Department the ability to get a cease-and-desist order, but as a condition precedent to getting it there should be at least some modicum of a court proceeding in order to get it. It is not unlike a search warrant, and to get a search warrant in this country, in a criminal matter, you must show probable cause that a public offense is being committed. In terms of propriety, I think in this instance we should add a provision that a court order must first be obtained, even if it is ex parte, in order to obtain a cease-and-desist order against a particular owner of one of these post office boxes through which the mail flows.

The second basis of my objection relates to the quantity of money that this legislation will authorize for a fine. Under the form that is before us, up to $10,000 a day can be assessed against a person found in violation. Let me give the Members an example of a monetary fine which may be levied under the existing provisions of the law for violations of postal law:

If you commit mail fraud the maximum is $1,000; if you have a fictitious name or address, the maximum is $1,000.

The SPEAKER pro tempore. The time of the gentleman from California has again expired.

Mr. GILMAN. Mr. Speaker, I yield 2 minutes to the gentleman from California.

Mr. DANNEMEYER. If you commit a theft of the mail by an officer or employee, it is $2,000; if you commit theft of a newspaper, it is $100; if you misappropriate funds, the maximum is $1,000; if you falsify postal returns to increase compensation, the maximum is $500; if you issue a money order with payment, it is $500; if you mail a firearm, the maximum is $1,000; if you mail poison, poisonous animals or explosives, the maximum fine is $10,000.

In this bill they want to authorize up to a fine of $10,000 per day for violating one of these cease-and-desist orders I have talked about previously. Admittedly, to get the monetary fine you must first go to a judge to get it, but I think that is not sufficient protection before you get to the point where the defendant has to be facing that kind of strangling economic force against his business. The court should issue a prior order.

I think what we should do is reject this bill in its present form, send it back to the committee and make very clear to the Post Office Department that we do not want them in the business of acting as big brother in our name.

In a nutshell, any effort to empower the Post Office to investigate on its own and then begin a prosecution should be narrowly drawn so that procedural due process is assured.

Mr. FORD of Michigan. I want to respond to the assertion by the gentleman from California concerning the magnitude of this bill's civil penalty provisions. When one contemplates the heinous activity which we are trying to deter, and the enormous amounts of money which the operators of these scams are making by swindling innocent people, I wonder whether a $10,000 penalty is sufficient. Nonetheless, I wish to call everyone's attention to the following list of existing civil penalty provisions in our Federal law.

LIST OF CIVIL PENALTY PROVISIONS

7 U.S.C. §§ 193, 213—permit the Secretary of Agriculture to assess a civil penalty of up to $10,000 for each violation of the Packers and Stockyards Act of 1921.

7 U.S.C. § 3805—allows Secretary of Agriculture to assess up to $10,000 for each violation of the Swine Health Protection Act, other than a violation for which a criminal penalty has been imposed.

12 U.S.C. § 1817—allows the "appropriate Federal banking agency" to assess a $10,000 per day civil penalty for willful violation of the law re change in control of insured banks.

15 U.S.C. § 18a—pertaining to premerger notification and waiting period filing, allows the Federal Trade Commission to assess a civil penalty of up to $10,000 per day of violation.

15 U.S.C § 45(1)—sets a civil penalty of $10,000 per day for violation of a Federal Trade Commission cease and desist order, recoverable in a civil action brought by the Attorney General.

15 U.S.C. § 2008—permits the Secretary of Transportation to assess against an automobile manufacturer for violating automotive fuel economy provisions a civil penalty of up to $10,000 for each violation, with each day of continuing violation as a separate violation.

16 U.S.C. § 1100 b-7—pertaining to offshore shrimp fisheries, allows the Secretary of Commerce to set civil penalties up to $10,000.

16 U.S.C. § 1375—concerning marine mammal protection, allows the Secretary of Commerce to assess a civil penalty of up to $10,000 for each violation.

16 U.S.C. § 1540—allows the Secretary of Commerce to assess civil penalties of up to $10,000 for each violation of various statutes and regulations by a person engaged in business as an importer or exporter of fish, wildlife or plants.

16 U.S.C. § 2407—concerning Antarctic conservation, allows the Director of the National Science Foundation to assess a civil penalty of up to $10,000 for each knowing violation, with each day of a continuing violation as a separate offense.

16 U.S.C. § 3142—on Alaska national interest lands conservation, allows the Secretary of Interior to assess a civil penalty of $10,000 per day, with each day of a continuing violation as a separate offense, for having violated an approved exploration plan.

16 U.S.C. § 3371—concerning control of illegally taken fish and wildlife, allows the Secretaries of Interior and Commerce to assess civil penalties of up to $10,000 for each violation.

19 U.S.C. § 1337—allows the International Trade Commission to recover in federal court civil penalties of up to $10,000 per day for violation of its cease and desist orders.

29 U.S.C. § 666—the Occupational Safety and Health Act, allows the Secretary of Labor to assess civil penalties of up to $10,000 for each willful or repeated violation of orders or regulations promulgated under the Act.

30 U.S.C. § 820—the Coal Mine Safety and Health Act, allows the Secretary of Labor to assess a civil penalty of up to $10,000 for each occurrence of a violation of a mandatory health or safety standard and $1,000 per day for failure to correct such violation.

30 U.S.C. § 1226—allows the Secretary of the department in which the Coast Guard is operating to assess a civil penalty of up to $10,000 for violation of the Ports and Waterways Safety Act.

33 U.S.C. § 1344—concerning navigable waters, allows assessment by the Secretary of the Army of up to $10,000 per day civil fine for each day of violation of a permit for dredged or fill material.

33 U.S.C. § 1517—concerning deepwater ports, allows the Secretary of Transportation to assess a $10,000 civil penalty for discharge of oil into the marine environment from a vessel that has received oil at a deepwater port.

42 U.S.C. § 300e-9—allows the Secretary of Health and Human Services to assess a $10,000 civil penalty against an employer for each 30-day period of non-compliance with various employee health benefit plan requirements.

42 U.S.C. § 300h-3—sets $5,000 per day as the civil penalty for violation of the Safe Drinking Water Act's requirement for compliance with an applicable requirement of an undergound injection control program; willful violation is punishable by a fine of up to $10,000 per day.

42 U.S.C. §§ 1857f-4 and 1857f-6(c)—sets various penalties for violations of the Clean Air Act up to a $10,000 per day civil penalty recoverable by the United States in federal district court.

42 U.S.C. § 6384a—the Energy and Conservation Act, permits the Comptroller General to access civil penalties of up to $10,000 per day for failure to comply with a Comptroller General subpoena.

42 U.S.C. § 7217—allows the Secretary of Energy to assess a civil penalty of up to $10,000 for each violation of various conflict of interest provisions.

42 U.S.C. § 7545—allows the Administrator of the Environmental Protection Agency to assess $10,000 per day civil penalty for each day of continuance of violation of fuel registration laws or regulations or failure to comply with administrative subpoenas.

43 U.S.C. § 1350—regarding the Outer Continental Shelf, authorizes the Secretary of Energy to assess civil penalties of up to $10,000 per day for each day of violation of a term of a lease, license or permit issued.

46 U.S.C. § 170—forbidding the carrying of explosives or dangerous cargo on vessels, permits the Secretary of the Treasury to assess civil penalties for knowing violations for up to $10,000 for each day of violation.

46 U.S.C. § 391—authorizes the Secretary of department in which the Coast Guard is operating to assess a $25,000 fine, with each day of a continuing violation assessable for up to $25,000, for violations of provisions governing vessels carrying certain hazardous cargoes in bulk.

49 U.S.C. § 1471—allows the Secretary of Commerce to assess civil penalties of up to $10,000 for shipments involving hazardous cargoes with each day of a continuing violation to constitute a separate offense.

49 U.S.C. § 1809—allows the Secretary of Transportation to assess civil penalties of up to $10,000 for shipments of hazardous materials violating laws or regulations, each day of a continuing violation to constitute a separate offense.

50 U.S.C. § 1705—the International Emergency Economic Powers Act, sets a civil penalty of up to $10,000 for violation of a license, order, or regulation.

50 U.S.C. App. § 2410(c)—the Export Administration Amendments Act of 1981, allows the heads of agencies exercising functions under the Act to impose a $10,000 civil penalty for each violation of the Act and permits the payment of a penalty to be imposed as a condition of restoring or continuing a license under the Act.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentlewoman from Cleveland, Ohio (Ms. OAKAR).

Ms. OAKAR. Mr. Speaker, I thank my chairman and fine minority leader for yielding. I certainly support H.R. 7044. I am an original sponsor of the bill, and I must say that Chairman FORD, with the great, able assistance of Chairman LELAND, cleaned up the bill to address the constitutional issue, which was a legitimate concern with

so many members of the committee, and certainly our good friend from California.

But, I just wanted to mention a few things. I had hearings in my own district on the issue. I serve on both committees, and I had access to the committee hearings, and the countless, literally hundreds of mail scheme frauds that are perpetrated through the mail is really unconscionable. Our message in this bill, in my judgment, is extremely clear. It simply says that if you use the mail to defraud citizens of our country, and in particular we know that older Americans and other various vulnerable groups have unfortunately been victimized in this area, that you will be prosecuted to the full extent of the law; and that the Postal Service, which really has access to so much of the material, and so forth, will have the necessary investigatory powers.

We are just simply trying to alleviate the various forms of medical quackery and mail fraud and I know in my own district we had hearings on the subject.

□ 1415

Mr. Speaker, I was literally amazed at how many people jammed the hearing room because they read a little article in the paper that we were having congressional hearings. We had hundreds attending because these individuals were being victimized and defrauded through the mails. Besides medical quackery, one instance that I can recall was an investment scheme in which these people were promised large amounts of money for their investments. Of course, the promise was not fulfilled and hundreds were bilked of their savings.

The SPEAKER pro tempore. The time of the gentlewoman from Ohio (Ms. OAKAR) has expired.

Mr. GILMAN. Mr. Speaker, I yield 1 additional minute to the gentlewoman from Ohio (Ms. OAKAR).

Ms. OAKAR. Mr. Speaker, I thank my friend, the gentleman from New York (Mr. GILMAN), for yielding extra time to me.

Mr. Speaker, there have been some people beyond Members of Congress who, I think, deserve some credit for this bill. As I remember, as a member of the Aging Committee several years ago, Val Halamandaris, who is no longer going to be a staff member of the Committee on Aging, came before the chairman and put forth his knowledge of the situation and called it to our attention. He did an extraordinary job. Of course, on our side—Post Office Committee—we have the able staff of the chairman, including Jim Cregan, and the able staff of the gentleman from Texas (Mr. LELAND). They are to be commended.

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

Mr. Speaker, I urge my colleagues to respond to the obvious need for protecting unsuspecting citizens from mail fraud by supporting this measure.

● Mr. ANNUNZIO. Mr. Speaker, I rise in support of H.R. 7044, the mail order consumer protection amendments of 1982. The purpose of this bill is to give the Postal Service the additional tools it desperately needs to fight mail-order fraud.

As chairman of the Subcommittee on Consumer Affairs and Coinage, I have seen an incredible number of these mail-order frauds dealing with the sale of coins. Disreputable coin merchants use a variety of outrageous advertising techniques to persuade potential customers that worthless tokens are valuable collectors items. They tell people that privately minted medallions are official U.S. coins. Some ads claim that quite commonplace coins are rare collectibles. Others state that the offers are "once in a lifetime deals." In each and every case, the items have huge price tags—sometimes with markups as high as 1,000 percent.

As the law now stands, it is difficult for the Postal Service to do anything about even the most obvious cases of fraud. They have no means of examining the fraudulent goods. The only way that they can get them is by putting in an order just like any other customer. These orders may be filled too late to help protect other consumers, or may never be filled at all.

Even when the Postal Service negotiates a consent agreement, the situation is rarely solved. This is because most of these operators change their names and addresses as often as most people change their socks. And every time the merchants start the fraudulent activity under a new name, the Postal Service must begin new proceedings against the new entity.

I believe that H.R. 7044 will help solve both of these problems. This bill should certainly help get to the mail fraud problem before it is too late. In addition, the bill has a section that deals with repeat offenders. It provides that when one is found guilty of mail fraud and violates the order, the Postal Service could approach the courts and ask them to impose fines. I think that this provision will go a long way in helping to crack down on those who simply do the same thing over and over again under a new name.

It is about time that we give the Postal Service the basic powers that it needs in order to enforce the law. If we do not, the only ones who will suffer are the victims of these frauds—the American consumer.●

● Mr. BIAGGI. Mr. Speaker, as a cosponsor of the pending bill I rise in total support and urge the House to take an important step in our never-ending battle to protect the elderly consumer of this Nation.

This legislation is directed at those who are using the mails to defraud older individuals—who oftimes are totally unaware of the perils which may come from simply opening their daily mail. I point out with considerable pride that this legislation was initiated after dogged investigatory work by the House Select Committee on Aging on which I serve as an original member. We conducted hearings and issued an important report spotlighting the increasing use of the mails to rip off unsuspecting senior citizens.

At one particular hearing which I participated in my home city of New York, together with Mrs. FERRARO, we heard graphic testimony about older people being duped into purchasing what we know as medical quackery devices. People were induced into believing in the value of absolutely worthless products—through slick advertising delivered to one's home in the mail—and they purchased these products and learned the hard way of their lack of value.

People who prey on the elderly through mail order consumer fraud schemes deserve the increased penalties which are provided as part of this legislation. If we are in fact going to provide sufficient deterrents to those who would defraud the elderly through the mails we must make it not worth their cost to continue these illegal practices. H.R. 7044 could subject a violator to a fine of $10,000 for each day of fraudulent conduct and knowing sometimes of the the slowness of mail service, this could result in a substantial penalty. Too often in the past, violators found it financially worthwhile to continue to engage in mail fraud for the amount they made was far in excess of any penalty they might pay. This bill should make a few more think twice before breaking the law.

H.R. 7044 also strengthens the investigative and enforcement authority of the Postal Service to halt false mail-order schemes. It would allow the Postal Service to buy a given advertised product or service with proper notice and identification. The bill would also authorize the Postal Service to issue cease and desist orders to perpetrators of mail-order schemes.

Today we are dealing with the few bad apples which exist in the $25 billion a year mail-order business. The problem is we have not vested the Postal Service with sufficient authority to weed out these bad apples. H.R. 7044 would do so while also insuring sufficient punishment for those who violate the law.

It is unfortunate that so many of our elderly citizens are subject to fraud by mail. For too many the mail is their only form of daily contact with the outside world. Older people are more trusting—more vulnerable to the

fast and furious sell—even if it is deceptive or fraudulent. Let us address this problem in a way which will lead to its eradication. H.R. 7044 is a vitally important step forward.●

● Mr. DERWINSKI. Mr. Speaker, this bill will strengthen the investigatory and enforcement powers of the Postal Service for the purpose of cracking down on the increasingly widespread problem of mail fraud.

The Mail Order Consumer Protection Act of 1982 has received careful scrutiny and extensive review. The Committee on Post Office and Civil Service, of which I am the ranking minority member, conducted a comprehensive series of hearings during which the Postal Service and a broad spectrum of mail users testified about the mail fraud issue and the most appropriate way that problem might be resolved. As the Postal Service indicated in its testimony:

Over the past several years, we have found increasing public concern about the problem of mail-order schemes built upon false advertising. Many of these schemes tend to prey most heavily on the elderly, the poor, and other more disadvantaged members of our society.

While our committee's hearings demonstrated broad support for attacking the mail fraud problem, a number of witnesses expressed concern that the earlier legislation granted the Postal Service unwarranted investigatory authority. I believe that the amendment offered by the gentleman from Michigan (Mr. FORD), which deletes the Postal Service's authority to issue civil investigative demands for documentary materials relevant to false representation investigations adequately addresses that concern.

The major provisions of the bill will permit an intensified effort against mail fraud. The Postal Service is given the authority to issue orders requiring persons to cease and desist from engaging in false representation schemes. In addition, the Postal Service will be able to purchase directly from advertisers samples of mail-order products sold under potentially false advertising. Now, the Postal Service purchases such samples by mail and the advertiser can forestall proceedings to enforce the statute by delaying shipment of the product. Finally, the bill will allow U.S. district courts to assess civil penalities of up to $10,000 per day against persons who repeat advertising schemes after an administrative law judge has determined that the scheme violates the statute.

While the vast majority of firms conducting business through the mails are legitimate operations, H.R. 7044 is an important step in providing the Postal Service with the necessary tools to help combat effectively those firms engaged in fraudulent mail schemes. For that reason, I urge my colleagues to vote to suspend the rules and pass H.R. 7044, with the amendment offered.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. FORD) that the House suspend the rules and pass the bill, H.R. 7044, as amended.

The question was taken.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provision of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 5447, FUTURES TRADING ACT OF 1982

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight, December 13, 1982, to file a conference report on the bill (H.R. 5447) to extend the Commodity Exchange Act, and for other purposes.

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

There was no objection.

ETHICS IN GOVERNMENT ACT AMENDMENTS OF 1982

Mr. SAM B. HALL, JR. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2059), to change the coverage of officials and the standards for the appointment of a special prosecutor in the special prosecutor provisions of the Ethics in Government Act of 1978, and for other purposes, as amended.

S. 2059

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 "Ethics in Government Act Amendments of 1982".

SEC. 2. (a)(1) Chapter 39 of title 28 of the United States Code is amended by—

(A) striking out "special prosecutor" wherever it appears and inserting in lieu thereof "independent counsel"; and

(B) striking out "special prosecutor's" wherever it appears and inserting in lieu thereof "independent counsel's".

(2) The tables of chapters for title 28 of the United States Code and for part II of title 28 are amended by striking out the item relating to chapter 39 and inserting in lieu thereof the following new item:

"39. Independent Counsel.".

(b)(1) Section 49 of title 28 of the United States Code is amended by—

(A) striking out "special prosecutor" wherever it appears and inserting in lieu thereof "independent counsel";

(B) striking out "special prosecutors" wherever it appears and inserting in lieu thereof "independent counsels"; and

(C) striking out "special prosecutor's" wherever it appears and inserting in lieu thereof "independent counsel's".

(2) The item for section 49 in the table of sections for chapter 3 of title 28 of the United States Code is amended by striking out "special prosecutors" and inserting in lieu thereof "independent counsels".

(c) Title VI of the Ethics in Government Act of 1978 is amended by—

(1) striking out "SPECIAL PROSECUTOR" in the heading for section 601 and and inserting in lieu thereof "INDEPENDENT COUNSEL";

(2) striking out "special prosecutors" in subsection (c) of section 601 and inserting in lieu thereof "independent counsels"; and

(3) striking out "SPECIAL PROSECUTORS" in the heading for section 602 and inserting in lieu thereof "INDEPENDENT COUNSELS".

SEC. 3. Paragraphs (3) through (6) of subsection (b) of section 591 of title 28 of the United States Code are amended to read as follows:

"(3) any individual working in the Executive Office of the President who is compensated at or above a rate equivalent to level II of the Executive Schedule under 5313 of title 5;

"(4) any Assistant Attorney General and any individual working in the Department of Justice compensated at a rate at or above level III of the Executive Schedule under section 5314 of title 5;

"(5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

"(6) any individual who held any office or position described in any of paragraphs (1) through (5) of this subsection during the period consisting of the incumbency of the President such individual serves plus one year after such incumbency, but in no event longer than two years after the individual leaves office;

"(7) any individual described in paragraph (6) who continues to hold office for not more than 90 days into the term of the next President during the period such individual serves plus one year after individual leaves office; and

"(8) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of the campaign exercising authority at the national level, such as the campaign manager or director, during the incumbency of the President.".

SEC. 4. (a)(1) Section 591(a) of title 28 of the United States Code is amended by striking out "specific information" and by inserting in lieu thereof "information sufficient to constitute grounds to investigate".

(2) Section 591 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(c) Whenever the Attorney General receives information sufficient to constitute grounds to investigate that any person not described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense, the Attorney General may conduct an investigation and apply for an independent counsel pursuant to the provisions of this chapter if the Attorney General determines that investigation of such person by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest".

(b) Section 592(a) of title 28 of the United States Code is amended to read as follows:

"(a)(1) Upon receiving information that the Attorney General determines is sufficient to constitute grounds to investigate that any person covered by the Act has engaged in conduct described in subsection (a)

or (c) of section 591 of this title, the Attorney General shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate. In determining whether grounds to investigate exist, the Attorney General shall consider—

"(A) the degree of specificity of the information received, and

"(B) the credibility of the source of the information.

"(2) In conducting preliminary investigations pursuant to this section, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpenas.".

(c) Section 592(b)(1) of title 28 of the United States Code is amended by striking out "that the matter is so unsubstantiated that no further investigation or prosecution is warranted" and inserting in lieu thereof "that there are no reasonable grounds to believe that further investigation or prosecution is warranted".

(d) Section 592(c)(1) of title 28 of the United States Code is amended by—

(1) striking out "finds that the matter warrants further investigation or prosecution" and inserting in lieu thereof "finds reasonable grounds to believe that further investigation or prosecution is warranted";

(2) striking out "that the matter is so unsubstantiated as not to warrant further investigation or prosecution" and inserting in lieu thereof "that there are no reasonable grounds to believe that further investigation or prosecution is warranted"; and

(3) adding at the end thereof the following new sentence: "In determining whether reasonable grounds exist to warrant further investigation or prosecution, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.".

(e) Section 592(c)(2) of title 28 of the United States Code is amended—

(1) in clause (A) by striking out "specific information" and inserting in lieu thereof "information sufficient to constitute grounds to investigate"; and

(2) in clause (B) by striking out "such information warrants" and inserting in lieu thereof "reasonable grounds exist to warrant".

SEC. 5. Section 593 of title 28 of the United States Code is amended by adding at the end thereof the following new subsections:

"(f) Upon a showing of good cause by the Attorney General, the division of the court may grant a single extension of the preliminary investigation conducted pursuant to section 592(a) of this title for a period not to exceed sixty days.

"(g) Upon request by the subject of an investigation conducted by an independent counsel pursuant to this chapter, the division of the court may, in its discretion, award reimbursement for all or part of the attorney's fees incurred by such subject during such investigation if—

"(1) no indictment is brought against such subject; and

"(2) the attorney's fees would not have been incurred but for the requirements of this chapter.".

SEC. 6. (a) Subsection (a) of section 594 of title 28 of the United States Code is amended by—

(1) striking out "and" at the end of paragraph (8);

(2) striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and "and"; and

(3) adding after paragraph (9) the following:

"(10) consulting with the United States Attorney for the district in which the violation was alleged to have occurred.".

(b) Subsection (f) of section 594 of title 28 of the United States Code is amended by—

(1) striking out "to the extent that such special prosecutor deems appropriate" and inserting in lieu thereof "except where not possible"; and

(2) striking out "written policies" and inserting in lieu thereof "written or other established policies."

(c) Section 594 of title 28 of the United States Code is amended by adding at the end thereof the following new subsection:

"(g) The independent counsel shall have full authority to dismiss matters within his prosecutorial jurisdiction without conducting an investigation or at any subsequent time prior to prosecution if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.".

(d) Paragraph (1) of subsection (a) of section 596 of title 28 of the United States Code is amended by striking out "extraordinary impropriety" and inserting in lieu thereof "good cause".

SEC. 7. Section 598 of title 28 of the United States Code is amended by striking out "after the date of enactment of this chapter" and inserting in lieu thereof "after the date of enactment of the Ethics in Government Act Amendments of 1982".

The SPEAKER pro tempore. Is a second demanded?

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

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas (Mr. SAM B. HALL, JR.) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. KINDNESS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. SAM B. HALL, JR.).

Mr. SAM B. HALL, JR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill, as amended, amends the special prosecutor provisions of title 28, United States Code. It extends the special prosecutor provisions for 5 years from the date of enactment, however the bill substantially amends the provisions of current law. This bill will reduce the number of lesser officials who are covered. It will adjust the mechanism for triggering a preliminary investigation by the Attorney General as well as the mechanism for the appointment of a special prosecutor. The bill will provide for an extension of time for the preliminary investigation by the Attorney General. It provides the court with discretion to reimburse subjects of investigations by special prosecutors, but who are not indicted, for all or part of their attorneys fees expended on account of the requirements of the special prosecutor provisions. Finally, the bill changes the name of the special prosecutor to independent counsel.

The bill before the House today is identical to the bill as passed by the Senate with three amendments. The Senate-passed bill added the President's spouse, children, and their spouses as well as the President's parents, brothers, and sisters and their spouses to the class of individuals covered by the special prosecutor provisions. The bill as amended deletes this provision, so that these family members are not covered. The Senate-passed bill provides that the Attorney General may apply for the appointment of a special prosecutor to investigate persons other than the class of individuals specifically covered whenever the Attorney General determines a personal, financial, or political conflict of interest or the appearance thereof may result if an officer of the Department of Justice conducts the investigation. The bill as amended deletes the reference to appearances, and thereby requires the Attorney General to determine that an actual conflict may exist in order to utilize the special prosecutor procedures. Finally, the amended bill reduces the maximum length of time a covered individual is subject to the special prosecutor provisions after he or she leaves office to 2 years. The Senate-passed bill provided coverage for a maximum of 5 years after leaving office.

This bill as amended is the product of extensive careful consideration by the Senate Subcommittee on Oversight of Government Management of the Governmental Affairs Committee as well as by the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee. The record on this bill includes testimony by former special prosecutors, officials of both the Carter and the Nixon administrations as well as Department of Justice and public-interest-group witnesses. The measure has broad support. It passed the Senate by voice vote. Even the Department of Justice, which questions the need for the special prosecutor provisions in principle, favors the amendments to the current law.

I urge my colleagues to support this measure. The potential for conflicts of interest is inherent in the practice of criminal law generally and the possibility of conflicts exists when the Department of Justice must investigate allegations of criminal activity by high-ranking Government officials. The special prosecutor provisions should be retained. This bill amends the provisions of current law to make the scope of coverage more rational, to make the process less burdensome and more equitable.

Mr. KINDNESS. Mr. Speaker, I yield 4 minutes to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, first of all, I want to congratulate the gentleman from Texas (Mr. SAM B. HALL, JR.) for his leadership in bringing this legislation to the floor. I realize that this is a sensitive subject, and I guess it is something that no Attorney General or no Department of Justice cares to have because in a sense it reflects upon the Department of Justice and indicates that in certain cases it would not be able or could not be trusted to handle prosecutions of cases. Yet we have had the experience, it seems to me, of the utility of this kind of legislation in the special prosecutor who was appointed to investigate the antics of Billy Carter, Hamilton Jordan, Tim Kraft, and I am sure, some others. There is a public demand for this kind of legislation, for a provision in the Federal law for a special prosecutor in certain cases which are sensitive and where it might appear to be a conflict of interest and the Department should not fully handle the investigation or the prosecution of a given case.

We have placed some limitations on this legislation. For one thing, we have a sunset clause in it, and at the end of 5 years it will go out of existence, so we are not putting it on the books forever. Likewise, we have considered very thoughtfully the kinds of offenses which would be subject to investigation and possible prosecution.

I think there is some misunderstanding as to whether or not the offenses have to be very serious and have to consist of felonies, or whether certain misdemeanors might not also be included. I for one feel that we should consider the inclusion of misdemeanors because they might affect the moral climate in which we would feel a special prosecutor was needed.

The legislation, has limited application. I think that there is a public demand for it. I think it is healthy to continue it. I know there is strong support for it in the other body. I have been in communication with my colleague in the other body, Senator COHEN, a Member with whom I had the opportunity to serve when we served on the Impeachment Committee, and I know he is well aware of the sensitivity of offenses in which the executive branch is involved or where there may be other needs for the appointment of a special prosecutor. I know that he and others feel very strongly about this. I certainly do not feel that this could do any harm to the Department, and I feel it would be a very useful piece of legislation for us to enact.

Mr. Speaker, I ask for support of this legislation.

GENERAL LEAVE

Mr. SAM B. HALL, JR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation presently under consideration.

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

There was no objection.

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

Mr. Speaker, with respect to the Senate bill, S. 2059, there has been only favorable comment up to now, and now comes the fly in the ointment.

Mr. Speaker, today we vote to place every Member of this body under the provision of the Special Prosecutor Act § 4(c). Moreover, the awesome machinery of a Special Prosecutor can be triggered by a misdemeanor, on evidence that does not even rise to the level of probable cause. The reach of the act also extends 2 years after leaving office and even covers alleged crimes unrelated to office and alleged to occur after such service ended. Ever since it was enacted, this law has been used to harass, embarrass, and vilify; and not a single case has been made.

The act unfairly exposes persons, whose cases would ordinarily be summarily dismissed, to the intrusive investigation of a specially appointed Federal official. The enormous publicity that accompanies the appointment of a Special Prosecutor only compounds the harm. Reputations are savaged, effectiveness in office is crippled, and there is lingering suspicion even though an investigatory target is exonerated.

To say this is the price of public service is intellectually myopic. It typifies legislation that discourages qualified persons from serving in Government. Every Executive decision or legislative vote becomes a gamble because there could be raised a mere suspicion of a conflict of interest.

Since it became law the act has been trivialized. Officials on both sides of the aisle have spent a small fortune in legal expenses during the course of the investigations. It is an ordeal no other citizen must endure.

Nonetheless, the operation of the act has taught us some valuable lessons; not the least of which is that it is unconstitutional on its face. The law divests the Executive of its basic function to see that the laws are faithfully executed. Power, authority and duties given the special prosecutor are Executive functions. Prosecutorial power belongs solely to the President and changing the name to special counsel has not altered the prosecutorial function.

Another provision of the underlying law contravenes the appointments clause of the Constitution. Officers of the United States must be appointed by the President with the advice and consent of the Senate. This law places the appointment power with the courts, thereby ignoring the Senate and the President.

Both on its face and in its application the Special Prosecutor Act has been sadly deficient. This bill does not cure that, and does not belong on the suspension calendar. It should not be mixed with the legislative tumbleweeds blown across this intellectual prairie in the closing days of this Congress. I ask my colleagues to hold this legislation over to the next Congress. There is no urgency. Let us not act in haste—there is a profound need to rethink and rewrite this bill to meet a constitutional necessity and numerous practical problems.

□ 1430

Mr. SAM B. HALL, JR. Mr. Speaker, I have not further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SAM B. HALL, JR.) that the House suspend the rules and pass the Senate bill, S. 2059, as amended.

The question was taken.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

PERMISSION FOR COMMITTEE ON RULES TO FILE PRIVILEGED REPORT ON HOUSE JOINT RESOLUTION 631

Mr. LONG of Louisiana. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until midnight tonight, Monday, December 13, 1982, to file a privileged report on House Joint Resolution 631.

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

There was no objection.

U.S. CAPITOL HISTORICAL SOCIETY

Mr. SAM B. HALL, JR. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4491) to exempt the U.S. Capitol Historical Society from certain taxes, as amended.

The Clerk read as follows:

H.R. 4491

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to incorporate the United States Capitol Historical Society",

approved October 20, 1978 (36 U.S.C. 1201 et seq.), is amended by adding at the end thereof the following new section:

"EXEMPTION FROM CERTAIN TAXES

"SEC. 19. Notwithstanding section 105 of title 4, United States Code, or title 47, chapter 26 of the District of Columbia Code (1973), or any other provision of the District of Columbia Code, the Corporation shall not be required to pay, collect, or account for any tax specified in such sections applicable to taxable events occurring within the United States Capitol building and grounds on or after January 1, 1964.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Texas (Mr. SAM B. HALL, JR.) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. MCCLORY) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. SAM B. HALL, JR.).

Mr. SAM B. HALL, JR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill, as amended by the committee, amends the charter of the U.S. Capitol Historical Society to make it clear that sales by the Society on the Capitol Grounds are not subject to the District of Columbia sales tax.

The committee reported this bill on March 5, 1982, following hearings by the Subcommittee on Administrative Law and Governmental Relations in December 1981. The Judiciary Committee report sets forth the rationale for this bill at length, so I will be brief.

I think all of us are acquainted with the operation of the U.S. Capitol Historical Society in the Capitol. Most of us are at least familiar with their excellent historical calendars. The Society has operated its souvenir stand in the Capitol since 1964. In November 1981, the District of Columbia sued the Society for nearly $750,000. The District alleged that the Society is liable for sales tax on sales made in the Capitol after August 1, 1966. Subsequently, upon the request of the Architect of the Capitol, the United States sued the District of Columbia in Federal court on behalf of the Society and denied the alleged tax liability.

The clarification made by this bill is needed to preserve the efforts of the Society and to protect the sovereignty of the Congress and the Government of the United States. The clarification has two sound legal bases.

First, the U.S. Capitol Historical Society is not subject to District of Columbia sales tax because it is an instrumentality of the Federal Government. Though the United States does permit State and local governments to levy taxes on Federal property pursuant to provisions of the Buck Act, the Buck Act specifically does not authorize the "levy or collection of tax on or from the United States or any instrumentality thereof." The Society has continuously operated its sales booth in cooperation with the Congress for the convenience of visitors to the Capitol. The profits of sales have been devoted to the improvement of the Capitol Building, historical research, and educational projects. Since 1968 the Society, pursuant to contract with the Architect of the Capitol, has fulfilled the functions mandated by title III of the National Visitors Center Facilities Act of 1968 to provide tourists with information, assistance and educational materials. Clearly, the Society is an instrumentality of the Federal Government.

In addition, the committee report concludes that the U.S. Capitol, the site of the sales, is not now and never has been within the jurisdiction of the District of Columbia. As indicated by a map in appendix 2 of the committee report, the Capitol is located on property reserved for the exclusive use of the U.S. Government by the proclamation of President Washington in 1798, 2 years before the District of Columbia was created. The United States has maintained exclusive control over this property upon which we stand ever since. The District of Columbia government has no jurisdiction in this enclave except that expressly granted by Congress.

The position of the committee has received support in the Federal District Court for the District of Columbia. On September 3, 1982, that court granted the motion for summary judgment by the plaintiff, the United States in its countersuit against the District of Columbia. The court agreed with the committee that the Society is an instrumentality of the United States and is therefore not subject to District of Columbia sales tax. The District of Columbia filed notice of appeal from this order on November 4, 1982.

I urge my colleagues to support this bill. It makes a helpful clarification in the law that will both preserve the worthwhile efforts of a great organization and will preserve the legitimate sovereignty of Congress and the Government of the United States in the District of Columbia.

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

Mr. Speaker, since it was chartered in 1962 the U.S. Capitol Historical Society has received no Federal subsidies or reimbursement of any kind, yet it has returned to the Capitol hundred of thousands of dollars in improvements, art works, antiques, and historic preservation. In addition, for the convenience of tourists the Society runs a visitor information center in the Capitol under the authority of the National Visitor Center Facilities Act of 1968. At the center books, pamphlets, and memorabilia are sold, together with film and souvenirs. Sales tax has never been collected on any of these items. Profit from such sales by the Society is required by law to be returned to the Capitol, through improvements and programs that promote an appreciation of the Capitol and what it stands for. Nevertheless, the District of Columbia has filed a tax lien against the Society for sales tax beginning from 1968. As a matter of law, the merits of the case for the District of Columbia are doubtful. As a practical matter, payment of the taxes would bankrupt the Society.

But through this controversy a far larger issue has been raised. What is the authority of the District of Columbia in the Capitol and on the Capitol Grounds? The power to tax implies many other powers—the power to audit, to inspect, to enter, to confiscate for nonpayment, and to require reports. The Home Rule Act never addressed these questions and in my opinion was never intended to extend to such far-reaching jurisdiction as some officials of the D.C. government have claimed.

Mr. Speaker, I support this legislation not only to save the Capitol Historical Society, but also as a reflection of congressional intent as to the powers of the District of Columbia in the Capitol and on the Capitol Grounds.

The legislation about which we are speaking was referred to our committee because our action on the Federal charter was introduced by my colleague from New York (Mr. CONABLE).

I am happy at this time to yield to my colleague from New York (Mr. CONABLE) such time as he may consume.

Mr. CONABLE. I thank the gentleman for yielding and greatly appreciate the statements of the distinguished gentleman from Texas and the gentleman from Illinois on this important matter. It is important to the Capitol Historical Society.

As a matter of fact, if this lawsuit were successful it would wipe out the Society's treasury and leave us without any chance to perform the good works on behalf of the Capitol that we have done over the years. The Society is a nonprofit association dedicated to the beautification and enrichment of the traditions of the Captiol.

I quite agree with the statements the gentlemen have made to the effect of the Congress never really intended to cede jurisdiction over the Capitol Building itself for any purpose to the District of Columbia government.

In fact, this was part of the reserved area at the time the District of Columbia was established, reserved to Federal governmental purposes and not made in any way subject to any lesser jurisdiction.

In fact, also, this activity which is being taxed is incident to the oper-

ation of the Capitol Building. We provide an information desk at which a very modest number of tourist aids are made available for the convenience of the American public who own this building.

It would be indeed most unfortunate if the activities of this Society were to be made retroactively subject to the jurisdiction of the District of Columbia government and, in fact, I would be surprised if there were not almost unanimity of opinion among the Members here that we had no intention of giving them substantial jurisdiction for taxing or other purposes over these sacred premises.

It seems to me the body ought to vote as one to preserve the function, which is de facto and de jure as part of the operation of the Congress, as a federally chartered institution. The District of Columbia government has been ill advised to try to impose its sales tax, as though the Society were a normal commercial institution, operating on private property. This bill should pass. It should not have been necessary.

I appreciate the gentleman yielding.

□ 1445

Mr. McCLORY. I quite agree with the gentleman, and I want to commend the gentleman on his initiative in connection with this legislation.

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

Mr. KINDNESS. I thank the gentleman for yielding. I will not take the full 2 minutes, but I rise in support of the bill. I wish to clarify that on this occasion, as contrasted or as compared to the previous bill, the gentleman from Illinois and I are very much in agreement. I wish to associate myself with his remarks in support of the bill, and I would hope that we would all agree to its passage.

Mr. SAM B. HALL, JR. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. PICKLE).

Mr. PICKLE. Mr. Speaker, the U.S. Capitol Historical Society was chartered by the Congress in 1978 and given broad authorities to research and disseminate information on the Capitol and the Congress. It was specifically charged "to preserve and improve the Capitol." Toward that end, the Society has made many contributions to the collections of the Capitol including the sponsorship of recently dedicated murals of the late Allyn Cox in the House Corridors. The U.S. Capitol Historical Society works closely with numerous committees of the Congress, and it operates the Capitol Information Center in the Capitol by congressional authority. It is in every sense of word, and as adjudged by the Committee on the Judiciary, "an instrumentality of the Federal Government." As a member of the executive committee—and I have served in that capacity for some 12 years, I think I speak first hand of the great contributions this Society has made.

The District of Columbia government has attempted to exercise its taxing authority inside the U.S. Capitol Building by requiring the U.S. Capitol Historical Society to pay local sales tax on items sold in the Capitol. Such imposition would impair the ability of the U.S. Capitol Historical Society to continue its contributions to the Capitol itself—contributions of lasting value for the enjoyment and inspiration of all Americans. The Congress, itself, would be deprived of some of the most important services rendered by the U.S. Capitol Historical Society. Of far greater importance juridically, the exercise of the taxing power by any subordinate government within the Capitol Building and its grounds would violate the exclusive jurisdiction of the Congress. That exclusive jurisdiction emanated from the Constitution. It was further delineated in law by the proclamation of President George Washington on March 2, 1797, and the proclamation of President John Adams of July 23, 1798, both of which conferred title for these Capitol Grounds and their subsequent buildings "To the Use of the United States forever." In light of these historic facts and congressional history, the Committee of the Judiciary's Report on H.R. 4491 stated that

> The Committee concludes that the United States Capitol Building and Grounds are within the exclusive jurisdiction of the Federal Government and that the taxing authority of the District of Columbia does not and should not extend to sales within this Federal enclave.

Thus, in accordance with the recommendation of the House Committee on the Judiciary, its Subcommittee on Administrative Law and Government Relations under the distinguished former Chairman George Danielson and its present distinguished chairman, the Honorable SAM HALL, I urge passage of H.R. 4491, thereby prohibiting the taxing authority of the District of Columbia government within the U.S. Capitol Building. This action is of absolute necessity, so that the Congress may continue to carry out its responsibilities under article I, section 8, clause 17 of the Constitution of the United States, and to maintain the inviolability of the Presidential proclamations of 1797 and 1798, and to preserve the exclusive jurisdiction of the Congress over the Capitol and its Grounds.

Mr. SAM B. HALL, JR. Mr. Speaker, will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Texas.

Mr. SAM B. HALL, JR. Mr. Speaker, I appreciate the comments of the gentleman. I have just seen a letter here signed by George Washington, dated 1797.

Mr. PICKLE. Yes. That is correct.

Mr. SAM B. HALL, JR. And then another one signed by John Adams in 1798. I tell you, it makes one feel good when you see men like that on the same side that the gentleman from Texas (Mr. PICKLE) is on, and I appreciate the thought that the gentleman has expressed.

Mr. PICKLE. I would want to observe also that you are on our side too, so we are all together on this. I believe all Members are in agreement.

As a matter of historical fact, President Washington, by proclamation, did on March 2, 1797, delineate this Federal enclave, and it was further proclaimed by President John Adams. So I think it is clear in the early days of the Republic that this was the intent of our Founding Fathers and now we ought to see it again in bold language, statutory language.

GENERAL LEAVE

Mr. SAM B. HALL, JR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill under consideration.

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

There was no objection.

Mr. SAM B. HALL, JR. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SAM B. HALL, JR.) that the House suspend the rules and pass the bill, H.R. 4491, as amended.

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

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 7019, DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, 1983

Mr. SABO submitted the following conference report and statement on the bill (H.R. 7019) making appropriations for the Department of Transportation and Related Agencies for the fiscal year ending September 30, 1983, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 97-960)

The Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7019) "making appropriations for the Department of Transportation and Related Agencies for the fiscal year ending September 30, 1983, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 10, 14, 25, 27, 35, 39, 41, 44, 48, 63, 73, 94, 95, and 99.

That the House recede from its disagreement to the amendments of the Senate numbered 4, 7, 8, 19, 21, 22, 26, 29, 30, 37, 38, 40, 49, 50, 52, 54, 57, 58, 60, 61, 64, 65, 67, 68, 70, 71, 74, 76, 78, 79, 80, 82, 84, 85, 86, 87, 88, 89, and 90, and agree to the same.

Amendment numbered 1:

That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$31,000*; and the Senate agree to the same.

Amendment numbered 3:

That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$3,220,000*; and the Senate agree to the same.

Amendment numbered 5:

That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$4,900,000*; and the Senate agree to the same.

Amendment numbered 9:

That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$409,000,000*; and the Senate agree to the same.

Amendment numbered 12:

That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment insert *$5,000,000*; and the Senate agree to the same.

Amendment numbered 13:

That the House recede from its disagreement to the amendment of the Senate numbered 13, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment insert *$54,574,000*; and the Senate agree to the same.

Amendment numbered 20:

That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$18,255,000*; and the Senate agree to the same.

Amendment numbered 23:

That the House recede from its disagreement to the amendment of the Senate numbered 23, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following: *"$625,000,000, of which $7,450,000 shall be derived from the unobligated balances of 'Grants-in-aid for airports'"*; and the Senate agree to the same.

Amendment numbered 24:

That the House recede from its disagreement to the amendment of the Senate numbered 24, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$103,000,000*; and the Senate agree to the same.

Amendment numbered 31:

That the House recede from its disagreement to the amendment of the Senate numbered 31, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$74,000,000*; and the Senate agree to the same.

Amendment numbered 32:

That the House recede from its disagreement to the amendment of the Senate numbered 32, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$21,685,000*; and the Senate agree to the same.

Amendment numbered 33:

That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$28,375,000*; and the Senate agree to the same.

Amendment numbered 34:

That the House recede from its disagreement to the amendment of the Senate numbered 34, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$9,507,000*; and the Senate agree to the same.

Amendment numbered 36:

That the House recede from its disagreement to the amendment of the Senate numbered 36, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$13,000,000*; and the Senate agree to the same.

Amendment numbered 42:

That the House recede from its disagreement to the amendment of the Senate numbered 42, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to read as follows:

(Including Transfer of Funds);

and the Senate agree to the same.

Amendment numbered 51:

That the House recede from its disagreement to the amendment of the Senate numbered 51, and agree to the same with an amendment, as follows:

In lieu of the sum named in said amendment insert *$5,000,000*; and the Senate agree to the same.

Amendment numbered 62:

That the House recede from its disagreement to the amendment of the Senate numbered 62, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$240,000,000*; and the Senate agree to the same.

Amendment numbered 75:

That the House recede from its disagreement to the amendment of the Senate numbered 75, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$405,000,000*; and the Senate agree to the same.

Amendment numbered 81:

That the House recede from its disagreement to the amendment of the Senate numbered 81, and agree with an amendment, as follows:

In lieu of the sum named in said amendment insert *$5,000,000*; and the Senate agree to the same.

Amendment numbered 83:

That the House recede from its disagreement to the amendment of the Senate numbered 83, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$95,000,000*; and the Senate agree to the same.

Amendment numbered 100:

That the House recede from its disagreement to the amendment of the Senate numbered 100, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment, amended to change the section number to 326; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 2, 6, 11, 15, 16, 17, 18, 28, 43, 45, 46, 47, 53, 55, 56, 59, 66, 69, 72, 77, 91, 92, 93, 96, 97, 98, and 101.

WILLIAM LEHMAN,
MARTIN O. SABO,
LES AUCOIN,
WILLIAM H. GRAY III,
WILLIAM R. RATCHFORD,
JAMIE WHITTEN,
LAWRENCE COUGHLIN,
SILVIO O. CONTE,
JACK EDWARDS,
CARL PURSELL,
Managers on the Part of the House.

MARK ANDREWS,
THAD COCHRAN,
JAMES ABDNOR,
BOB KASTEN,
ALFONSE D'AMATO,
MARK O. HATFIELD,
LAWTON CHILES,
JOHN C. STENNIS,
ROBERT C. BYRD,
TOM EAGLETON
(except No. 92),
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7019) making appropriations for the fiscal year ending September 30, 1983, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

TITLE I—DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

SALARIES AND EXPENSES

Amendment No. 1: Provides not to exceed $31,000 for official reception and representation expenses instead of $27,000 as proposed by the House and $35,000 as proposed by the Senate.

Amendment No. 2: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following:

$40,000,000, of which $1,000,000 shall be transferred and made available to the Motor Carrier Ratemaking Study Commission and

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 3: Provides that $3,220,000 shall be available for the Minority Business Resource Center instead of

$2,220,000 as proposed by the House and $4,220,000 as proposed by the Senate.

Amendment No. 4: Inserts the word "unexpended" as proposed by the Senate in lieu of "unobligated" as proposed by the House.

TRANSPORTATION PLANNING, RESEARCH, AND DEVELOPMENT

Amendment No. 5: Appropriates $4,900,000 instead of $2,000,000 as proposed by the House and $7,800,000 as proposed by the Senate.

COAST GUARD

HEADQUARTERS ADMINISTRATION

Amendment No. 6: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter inserted by said amendment, insert the following:

HEADQUARTERS ADMINISTRATION

(Including Transfer of Funds)

For necessary expenses, not otherwise provided for, of providing administrative services at the headquarters location of the Coast Guard, including, but not limited to, executive direction; budget, planning and policy; command, control, communication, and operations; financial management; legal; engineering; civil rights; and personnel and health services for the Coast Guard, $72,440,000, of which $14,000,000 shall be derived by transfer from appropriations for Retired pay.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

OPERATING EXPENSES

Amendment No. 7: Appropriates $1,518,963,000 as proposed by the Senate instead of $1,587,908,000 as proposed by the House.

The conferees concur in the language contained in the Senate report directing the Coast Guard to continue to work to reduce the incidence of child and spouse abuse among Coast Guard personnel.

The conferees remain concerned about the removal of large numbers of buoys from Northeastern navigable waters and request that the Coast Guard submit a written justification to the Appropriations Committees prior to any action.

The conferees agree that of the amount provided for Coast Guard Operations the necessary requirements for the 7th District law enforcement initiative is included.

Amendment No. 8: Deletes $14,000,000 transfer proposed by the House.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

Amendment No. 9: Appropriates $409,000,000 instead of $287,000,000 as proposed by the House and $425,000,000 as proposed by the Senate.

The conference agreement includes the following amounts:

Vessels	$170,700,000
Aircraft	171,920,000
Shore Facilities	37,180,000
Aids to Navigation	10,000,000
Administration	19,200,000

The conferees concur in the specific earmarkings contained in the House and Senate committee reports.

As a result of a devastating storm in the winter of 1978, the pier at this nation's oldest lighthouse, the Boston Lighthouse in Hull, Massachusetts, was destroyed. Consequently, the lighthouse cannot be serviced by Coast Guard buoy tenders. In light of the frequency of severe winter storms in Boston Bay, the conferees direct the Coast Guard to devote up to $500,000 for the construction of a new Boston Lighthouse pier capable of withstanding anticipated weather conditions.

The conference agreement includes $6,600,000 for phase II of the redevelopment project for the Coast Guard Support Center in Boston.

The conference agreement includes $9,600,000 over the amended budget request for the medium range surveillance (MRS) aircraft program. This program provides significant assistance to the Coast Guard's primary missions and, in particular, to its search and rescue and drug interdiction responsibilities. The additional appropriation will allow for better spare parts provisioning and longer periods of support by technical representatives than originally planned several years ago—both have been problems resulting in unacceptable rates of aircraft down time. Accordingly, it is the intention of the conferees that the additional $9,600,000 be spent solely for increased support and training at the 5 sites in fiscal year 1983 as well as for an improved supply of spare parts.

The conference agreement includes the necessary funds for the 7th District for service life extension and rehabilitation of the fleet.

ALTERATION OF BRIDGES

Amendment No. 10: Appropriates $12,700,000 as proposed by the House instead of $12,000,000 as proposed by the Senate. The conference agreement includes the following amounts:

Point Pleasant Canal, Point Pleasant, N.J. (New Jersey DOT Highway 88)	$7,900,000
Willamette River, Portland, Oreg. (Burlington Northern RR)	1,800,000
Illinois River, Peoria, Ill. (Peoria and Pekin Union RR)	3,000,000

RESERVE TRAINING

Amendment No. 11: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following:

$50,000,000 together with an amount not to exceed $4,000,000 which shall be derived from appropriations for Retired pay

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND

Amendment No. 12: Appropriates $5,000,000 instead of $10,000,000 as proposed by the Senate.

FEDERAL AVIATION ADMINISTRATION

HEADQUARTERS ADMINISTRATION

Amendment No. 13: Appropriates $54,574,000 instead of $55,574,000 as proposed by the Senate.

OPERATIONS

Amendment No. 14: Appropriates $2,456,783,000 as proposed by the House instead of $2,463,220,000 as proposed by the Senate.

The conferees note that the National Oceanic and Atmospheric Administration (NOAA) estimates that it performs $27,000,000 worth of aviation weather program work for the FAA, and that it should be reimbursed under provisions in the Tax Equity and Fiscal Responsibility Act of 1982. The FAA claims that it would not object to this reimbursement, provided that NOAA, in turn, reimburses the FAA for an estimated $45,000,000 worth of weather services it provides to NOAA.

The conferees direct both the FAA and NOAA to meet and resolve this issue as soon as possible, and to report to the Committees on Appropriations no later than April 1, 1983, after which the Committees will consider supplemental budget requests to the degree required and recommended by the two agencies.

The conferees direct that the Owensboro-Daviess County Airport control tower be considered a high priority for reopening and that the necessary resources be provided to avoid delays in the operation of the Aircrafts Registry Administration System.

Section 529 of the Airport and Airway Improvement Act of 1982 (P.L. 97-248) authorizes appropriations from the Airport and Airway Trust Fund for the FAA to continue the Explosive Detection K-9 Team Training Program. The conferees support this important aviation safety program by which FAA, through a reimbursable agreement with the United States Air Force, has sponsored local law enforcement officials for canine explosive detection training provided by the Air Force. Rather than developing a cumbersome program to provide funding to local communities, which in turn need to reimburse the Air Force, the conferees direct the FAA to continue this program in its current fashion by which the FAA designates who will undergo training and reimburses the Air Force directly for providing that training. The conferees believe this approach will keep indirect program administration costs to a minimum, be more efficient, and reduce the possibility of delays in scheduling local law enforcement personnel for this important training.

It has come to the conferees' attention that the Federal Aviation Administration has received in excess of 2500 claims for retroactive compensation under the Fair Labor Standards Act Amendments of 1974. The claims are for additional compensation for work performed as GS-856-12 Electronic Technicians. Each claim covers a period of up to six prior years. The FAA estimates that it will require an average of 40 staff hours to process each claim and that the final payment will not be made before September, 1983. As a result of the foregoing, the conferees urge the Administrator to accelerate claim payments if:

(1) the claim is determined valid by the deciding official,

(2) the claim can be settled to the satisfaction of all parties concerned, and

(3) the settlement will reduce administrative costs related to search and validation of records, etc.

In the event existing regulations prohibit the above short cuts in arriving at settlements, the Administrator is urged to employ on a temporary basis any additional personnel needed and/or to obtain contract services and/or to authorize necessary overtime in an attempt to make final claim payments before September, 1983.

Under the provision of Section 509 of the Airport and Airway Improvement Act of 1982 (P.L. 97-248), airport project applications submitted prior to September 30, 1980, and not acted on positively are now eligible for reapplication and reconsideration by the Federal Aviation Administration. The conferees direct that priority consideration be

given to the reapplication from the Orlando International Airport dated December 1, 1982, submitted under this provision of law.

The conferees further direct that priority consideration be given to any application for runway extensions to accommodate jet aircraft at the Municipal Airport in Fairhope, Alabama.

The conferees direct that the comment period on Federal Aviation Administration Docket No. 22480 regarding "regulation by objective" be extended until April 1, 1983, to permit hearings by the appropriate Committees on the National Transportation Safety Board's analysis of this proposal.

The conferees urge that the study and the analysis relative to eligibility of flight service station specialists for early retirement under Public Law 92-297 be referred to the General Accounting Office for evaluation, analysis and report.

The bill includes a limitation of $600,000,000 on obligations for airport development and planning grants which are financed under contract authority for fiscal year 1983. This amount is the same as the budget request. Within the obligation level recommended, it is the intent of the conferees to exempt from this limitation the unobligated balances previously authorized and carried over from prior years.

Amendment No. 15: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides that $1,464,150,000 of the appropriation for Operations shall be derived from the Airport and Airway Trust Fund. The House bill proposed to provide $1,000,000,000 from the Airport and Airway Trust Fund.

Amendment No. 16: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $5,000,000 for reimbursement of expenses incurred by certificated air carriers in the security screening of passengers traveling in foreign air transportation systems.

Amendment No. 17: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter inserted by said amendment, insert the following:

: Provided further, That the Federal Aviation Administration shall not undertake any reorganization of its regional office structure without the prior approval of both House and Senate Appropriations Committees

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 18: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which earmarks $500,000 for a windshear study to be conducted by the National Academy of Sciences in cooperation with the FAA and provides that $150,000 shall be available for doubling the number of windshear sensors at Moisant Airport in Kenner, Louisiana.

The conferees intend that the windshear study be in addition to the FAA's ongoing windshear efforts.

FACILITIES, ENGINEERING AND DEVELOPMENT

Amendment No. 19: Inserts the words "lease or" as proposed by the Senate.

Amendment No. 20: Appropriates $18,255,000 instead of $16,200,000 as proposed by the House and $20,310,000 as proposed by the Senate.

The conference agreement includes the following amounts:

Aircraft regulations and aviation security	$11,445,000
Aviation medicine	1,810,000
Environmental research	1,500,000
Facilities and equipment	3,500,000

FACILITIES AND EQUIPMENT

(AIRPORT AND AIRWAY TRUST FUND)

Amendment No. 21: Inserts the words "lease or" as proposed by the Senate.

Amendment No. 22: Provides for the acquisition of 21 aircraft as proposed by the Senate instead of 20 aircraft as proposed by the House.

Amendment No. 23: Appropriates $625,000,000 (including $7,450,000 derived by transfer) instead of $382,980,000 (including $7,450,000 derived by transfer) as proposed by the House and $725,000,000 as proposed by the Senate.

The conference agreement includes the following amounts:

Air route traffic control centers	$82,111,900
Airport towers and terminal equipment	201,204,200
Flight service stations	111,100,100
Air navigation facilities	114,705,100
Aircraft and related equipment	81,070,200
Miscellaneous facilities	34,808,500

The conferees question the FAA's ability to obligate the full amount of the budget request in fiscal year 1983. In making this reduction, the conferees expect the FAA to utilize the funds so as not to adversely affect aviation safety, efficiency or economy, and to continue the MLS and FSS modernization programs on schedule without any reductions. In the event the FAA finds itself in the position of being able to accelerate its activities under this heading beyond the funding level provided, the conferees will expect the FAA to so advise the Committees on Appropriations so that a supplemental budget request can be considered. The conferees direct that ILS and DME be installed immediately at the Tupelo Airport, Mississippi.

RESEARCH, ENGINEERING, AND DEVELOPMENT

(AIRPORT AND AIRWAY TRUST FUND)

Amendment No. 24: Appropriates $103,000,000 instead of $93,000,000 as proposed by the House and $113,000,000 as proposed by the Senate.

The conferees believe that the reduction from the Senate bill can be achieved without any serious impact on modernizing the system, and the FAA will be expected to take the reduction in those areas which do not compromise aviation safety, efficiency, and economy.

FEDERAL HIGHWAY ADMINISTRATION

LIMITATION ON GENERAL OPERATING EXPENSES

Amendment No. 25: Limits General operating expenses to $188,500,000 as proposed by the House instead of $191,562,000 as proposed by the Senate.

Amendment No. 26: Provides that $38,000,000 of the appropriation shall remain available until expended as proposed by the Senate instead of $33,000,000 as proposed by the House.

The conference agreement includes $5,000,000 for the Rural Transportation Assistance Program.

The conferees direct the Department to conduct a study to determine the feasibility and costs of designating and constructing approximately 69 miles of highway extending from Interstate Route I-95 southeasterly to United States Route 17 in Myrtle Beach, South Carolina, at a cost not to exceed $500,000.

MOTOR CARRIER SAFETY

Amendment No. 27: Appropriates $11,600,000 as proposed by the House instead of $11,705,000 as proposed by the Senate.

HIGHWAY BEAUTIFICATION

Amendment No. 28: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $500,000.

RAILROAD-HIGHWAY CROSSINGS DEMONSTRATION PROJECTS

Amendment No. 29: Deletes language proposed by the House reallocating unobligated funds appropriated for the Wheeling, West Virginia project.

INTERSTATE TRANSFER GRANTS—HIGHWAYS

Amendment No. 30: Deletes $500,000,000 appropriation proposed by the House. The appropriation for this program is contained in Public Law 97-276.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

OPERATIONS AND RESEARCH

Amendment No. 31: Appropriates $74,000,000 instead of $70,000,000 as proposed by the House and $78,133,000 as proposed by the Senate.

The conference agreement includes the following amounts:

Rulemaking	$5,500,000
Enforcement	9,600,000
Highway safety	9,300,000
Highway safety, salaries and expenses	(5,000,000)
Alcohol programs	(1,300,000)
Occupant restraint usage programs	(1,200,000)
Countermeasure improvement programs	(500,000)
State program management	(1,300,000)
Research and analysis	34,000,000
Research and analysis, salaries and expenses	(6,550,000)
Passenger vehicle research	(10,000,000)
Heavy duty vehicle research	(350,000)
Highway safety research	(2,100,000)
NCSA data collection and analysis	(15,000,000)
General administration	15,600,000
Permanent positions	(640)

The conferees direct that at least $250,000 of the amount provided for NCSA data collection and analysis be used for special interest accident investigations. The conferees also direct that the fiscal year 1984 NHTSA budget submission be restructured to show a separate line item for the Office of the Administrator. This account should include all salaries and expenses for the administrator's immediate office, the Office of Civil Rights, the Office of the Chief Counsel, and the Office of Public Affairs/Consumer Participation.

The conferees remain concerned about the effectiveness of the $27 million program developed by NHTSA to increase safety belt usage in the United States. Over the past decade, NHTSA has undertaken numerous

efforts at significant cost to promote safety belt usage. These efforts have had no lasting effect. In fact, the national safety belt usage rate has steadily declined from 25 percent in 1974 to 11 percent in 1981. Although NHTSA contends that its new program is significantly different from past programs, the conferees have been presented with little evidence to support claims that it will have any better long term results than past efforts.

The conferees are aware of a draft GAO report which finds that NHTSA has not determined whether the benefits to be achieved under this program will outweigh program costs. That report also asserts that past campaigns cited by NHTSA as evidence that this new program can work offer little insight into the potential success of this program.

The conferees therefore direct NHTSA to immediately refrain from obligating an additional Operations and research funds for new contracts related to this program until the following conditions are met:

(1) A program plan is established which specifies the increase in the safety belt usage rate expected to be achieved by this program, the time frame in which that goal will be accomplished, and the estimated outyear costs necessary to maintain belt usage at that level.

(2) A Government-wide mandatory safety belt use policy for Federal employees is established to set an example for the private sector to adopt similar policies.

NHTSA shall not obligate additional contract funds until the House and Senate Appropriations Committees have approved written submissions from NHTSA describing how these conditions have been met.

Amendment No. 32: Provides that $21,685,000 of the appropriation be derived from the Highway Trust Fund instead of $19,949,000 as proposed by the House and $22,794,000 as proposed by the Senate.

Amendment No. 33: Provides that $28,375,000 of the appropriation remain available until expended instead of $25,000,000 as proposed by the House and $29,724,000 as proposed by the Senate.

Amendment No. 34: Provides that $9,507,000 of the amount appropriated to remain available until expended be derived from the Highway Trust Fund instead of $8,374,000 as proposed by the House and $9,869,000 as proposed by the Senate.

Amendment No. 35: Provides that $2,000,000 of the amount appropriated be used for research and analysis projects at the Transportation Systems Center in Cambridge, Massachusetts, as proposed by the House. The Senate proposed to delete the specific earmarking for the Transportation Systems Center.

FEDERAL RAILROAD ADMINISTRATION

OFFICE OF THE ADMINISTRATOR

Amendment No. 36: Appropriates $13,000,000 instead of $12,322,000 as proposed by the House and $15,241,000 as proposed by the Senate.

RAILROAD SAFETY

Amendment No. 37: Appropriates $28,000,000 as proposed by the Senate instead of $23,232,000 as proposed by the House.

Amendment No. 38: Provides that $4,800,000 shall remain available until expended as proposed by the Senate instead of $1,000,000 as proposed by the House.

RAILROAD RESEARCH AND DEVELOPMENT

Amendment No. 39: Appropriates $17,000,000 as proposed by the House instead of $20,000,000 as proposed by the Senate.

RAIL SERVICE ASSISTANCE

Amendment No. 40: Appropriates $31,675,000 as proposed by the Senate instead of $30,840,000 as proposed by the House.

The conference agreement includes the following amounts:

Local rail service assistance	$20,750,000
Washington Union Station	3,825,000
Administration and special projects	7,100,000

CONRAIL LABOR PROTECTION

Amendment No. 41: Restores the word "protection" in the heading as proposed by the House instead of the word "assistance" as proposed by the Senate.

Amendment No. 42: Conforms heading.

Amendment No. 43: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

Restore the matter stricken by said amendment amended to read as follows:

, of which $10,000,000 shall be derived from the unobligated balances of "Redeemable preference shares": Provided, That such sum shall be considered to have been appropriated to the Secretary under said section 713 for transfer to the Railroad Retirement Board for the payment of benefits under section 701 of the Regional Rail Reorganization Act of 1973, as amended: Provided further, That, for purposes of section 710 of the Regional Rail Reorganization Act of 1973 as added by section 1143 of the Northeast Rail Service Act of 1981, such sum shall be considered to have been appropriated under section 713 of the Regional Rail Reorganization Act of 1973 and counted against the limitation on the total liability of the United States

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 44: Restores the work "further" as proposed by the House.

GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

Amendment No. 45: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: *$700,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 46: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

Restore the matter stricken by said amendment amended to read as follows:

: Provided further, That, of the funds available, $25,000,000 shall be held in reserve for 6 months after the date of enactment of this Act to be available for the rehabilitation, renewal, replacement, and other improvements on the line between Indianapolis, Indiana, Shelbyville, Indiana, and Cincinnati, Ohio: Provided further, That, of the funds available, $5,000,000 shall be made available only for the rehabilitiation, renewal, replacement, and other improvements on the line between Attleboro, Massachusetts, and Hyannis, Massachusetts, to ensure that such track will meet a minimum of class III standards as prescribed by applicable Federal Railroad Administration regulations

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees direct Conrail not to dispose of the track and signals on its Cincinnati to Indianapolis line for the 6 months following the date of enactment of this act, in order to allow sufficient time for State, local or private entities to enter into an agreement to purchase the line. During that 6-month period, Amtrak is directed to reserve $25,000,000 of the $700,000,000 appropriated to be used for the rehabilitation and improvement of that line in the event that a purchase of that line is completed with Conrail.

COMMUTER RAIL SERVICE

Amendment No. 47: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following:

For necessary expenses to carry out the commuter rail activities authorized by section 601(d) of the Rail Passenger Service Act (45 U.S.C. 601), as amended, $15,000,000, to remain available until expended, and to be derived from the unobligated balances of "Redeemable preference shares", and for necessary expenses to carry out section 1139(b) of Public Law 97-35, $75,000,000, to remain available until expended and to be derived from the unobligated balances of "Payments for purchase of Conrail securities".

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement allocates the total fiscal year 1982 and fiscal year 1983 funds appropriated for Commuter rail service as follows:

New York MTA/Conn. DOT	$59,000,000
Philadelphia SEPTA	39,000,000
New Jersey Transit	22,000,000
MdDOT/Commuter Services Corp	5,000,000
Subtotal	125,000,000
Chicago RTA	35,000,000
Total	160,000,000

PAYMENTS TO THE ALASKA RAILROAD REVOLVING FUND

Amendment No. 48: Deletes appropriation of $49,575,000 proposed by the Senate.

RAILROAD REHABILITATION AND IMPROVEMENT FINANCING FUNDS

Amendment No. 49: Limits the aggregate principal amount of guarantees and commitments to guarantee obligations under section 511 of Public Law 94-210 to $600,000,000 as proposed by the Senate instead of $770,000,000 as proposed by the House.

Amendment No. 50: Limits commitments to guarantee new loans under section 511 during fiscal year 1983 to $100,000,000 as proposed by the Senate instead of $275,000,000 as proposed by the House.

The conferees note and concur in the Senate floor colloquy pertaining to the section 511 loan guarantee program and its availability for small feeder railroads serving small communities.

REDEEMABLE PREFERENCE SHARES

Amendment No. 51: Authorizes that $5,000,000 shall be expended instead of $10,000,000 as proposed by the Senate. The conference agreement distributes these funds as follows:

The Bloomer Shippers Railroad Redevelopment League	$3,000,000
Iowa—Rock Island	2,000,000

URBAN MASS TRANSPORTATION ADMINISTRATION

ADMINISTRATIVE EXPENSES

Amendment No. 52: Appropriates $28,081,000 as proposed by the Senate instead of $28,250,000 as proposed by the House.

RESEARCH, DEVELOPMENT, AND DEMONSTRATIONS AND UNVERSITY RESEARCH AND TRAINING

For advanced systems research, the sum of $14,500,000 is recommended for the continued development of the Advanced Group Rapid Transit (AGRT) System, including magnetic levitation, with no more than $600,000 thereof to be used for UMTA's support contractors. The conferees do not agree with UMTA's budget proposal which allocates no funds for this research. The conferees direct UMTA to utilize the $14,500,000 recommended to maximum effectiveness in building controls, test track, and vehicle equipment, as necessary, to validate AGRT with initial test results in 1984 so that the performance benefits of AGRT may be demonstrated to the transit properties. Notwithstanding the technical objectives, efforts should be directed toward making applications information on AGRT available to the transit properties.

URBAN DISCRETIONARY GRANTS

Amendment No. 53: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum proposed by said amendment, insert the following: *$1,606,000,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes the following amounts:

Bus and bus facilities	$500,000,000
Existing rail modernization and extensions	840,000,000
New systems and new extensions	206,000,000
Baltimore (rail)	(30,000,000)
Buffalo (light rail)	(19,500,000)
Miami (rail)	(32,400,000)
Atlanta (rail)	(20,000,000)
Miami (circulator)	(27,100,000)
Detroit (automated system)	(30,500,000)
Los Angeles (engineering and right-of-way)	(25,000,000)
Santa Clara (engineering and right-of-way)	(15,000,000)
Portland	(5,000,000)
Seattle	(1,500,000)
Planning	50,000,000
Innovative techniques and technology introduction	10,000,000

Within the funds recommended for rail modernization and extensions, the conferees direct that $24,000,000 be allocated as a grant for the purchase of the Rock Island rail line between Ft. Worth and Dallas (including necessary rights-of-way and easements). The conferees also direct that $12,500,000 be allocated for purchase of certain Rock Island and Milwaukee railroad commuter lines by the Chicago RTA. Under application by appropriate officials of Tampa, Florida, not less than $2,000,000 shall be made available to rehabilitate the existing rail passenger station to provide multi-modal transportation facilities.

The conferees direct that the $5,000,000 earmarked for Portland is for the federal share of street and transit improvements in downtown Portland related to the Banfield Light Rail alignment.

In the Portland Metropolitan Region, that portion of the $76,800,000 letter of intent issued in 1982 for non-rail projects, which represents an inflation component, shall be used for non-rail projects and for completion of the Banfield Project as may be determined locally by the Metropolitan Service District without an increase in the full funding contract as approved by UMTA in March of 1982.

If presently available locally allocated interstate transfer funds supplemented as above are determined as of March 31, 1983, to be insufficient to complete the project as presently designed and contracted for in the full-funding contract, the conferees direct that UMTA report the amount and timing of the shortfall to the Appropriations Committees. It is the intent of the conferees that UMTA fund any shortfall with additional section 3 funds as soon as the shortfall has been determined.

The conference agreement includes $5,000,000 for innovative techniques and $5,000,000 for technology introduction.

The conferees direct UMTA to issue a letter-of-no-prejudice before April 1, 1983, covering the purchase of rolling stock for the Guadalupe light rail system in Santa Clara County, California. This letter-of-no-prejudice should specify that, if such rolling stock is purchased under the safe harbor leasing provisions of the Tax Equity and Fiscal Responsibility Act of 1982, the Federal tax subsidy afforded under such provision shall be excluded from any amount credited against the local share of future UMTA grants.

Of the funds made available for the Guadalupe light rail system, the conferees direct UMTA to consider right-of-way acquisition and relocation costs as an eligible expense.

The conferees reiterate report language directing UMTA to continue funding planning and technical studies and analyses and to participate in the preparation of environmental statements, including heavy rail, light rail, commuter rail, busway, bus and automated guideway alternatives which UTMA determines are likely to be cost-effective. The conferees specifically direct UMTA to fund and participate in continuing analyses including engineering in Portland (south corridor and westside).

It is the intent of the conferees that Federal funding for public projects such as rail transit, road and bridge construction, and the myriad of other transportation related projects covered by Federal funds assist the American worker and domestic contractors and suppliers to the maximum extent feasible within the bounds of statutory requirements. The conferees direct UMTA to be especially sensitive to the letter and spirit of statutory "Buy America" requirements when making "new start" rail transit grants.

NON-URBAN FORMULA GRANTS

Amendment No. 54: Appropriates $68,500,000 as proposed by the Senate instead of $32,000,000 as proposed by the House.

Amendment No. 55: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which adds the words "and allocated".

Amendment No. 56: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following:

data from the 1970 decennial census for one-quarter of the sums appropriated and the remainder shall be apportioned and allocated on the basis of data from the 1980 decennial census

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

URBAN FORMULA GRANTS

Amendment No. 57: Conforms heading.

Amendment No. 58: Appropriates $1,200,000,000 as proposed by the Senate instead of $1,300,000,000 as proposed by the House.

The conference agreement includes the following amounts:

Tier I	$680,000,000
Tier II	125,000,000
Commuter rail/fixed guideway	70,000,000
Bus and bus facilities	325,000,000

Amendment No. 59: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

Restore the matter stricken by said amendment amended to read as follows:

1970 decennial census for one-quarter of the sums appropriated and the remainder shall be apportioned and allocated on the basis of data from the

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

It is the sense of the conferees that this year represents the last year in which the 1970 census will be used to determine distribution of either Urban or Non-urban formula grants.

Amendment No. 60: Deletes transfer of $880,000,000 proposed by the House.

INTERSTATE TRANSFER GRANTS—TRANSIT

Amendment No. 61: Deletes $365,000,000 appropriation proposed by the House. The appropriation for this program is contained in Public Law 97-276.

WASHINGTON METRO

Amendment No. 62: Appropriates $240,000,000 instead of $230,000,000 as proposed by the House and $250,000,000 as proposed by the Senate.

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

RESEARCH AND SPECIAL PROGRAMS

Amendment No. 63: Appropriates $20,022,000 as proposed by the House instead of $21,300,000 as proposed by the Senate.

The conference agreement includes the following amounts:

Operations	$10,722,000
Research and development	5,800,000
Natural gas pipeline safety grants	3,500,000

TITLE II—RELATED AGENCIES

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

SALARIES AND EXPENSES

Amendment No. 64: Appropriates $2,020,000 as proposed by the Senate instead of $1,900,000 as proposed by the House.

CIVIL AERONAUTICS BOARD

SALARIES AND EXPENSES

Amendment No. 65: Provides not to exceed $4,000 for official reception and representation expenses as proposed by the Senate instead of $5,000 as proposed by the House.

Amendment No. 66: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following:

$23,125,000: Provided, That of the foregoing amount, not to exceed $10,625,000 shall be made available for the period between April 1, 1983, and September 30, 1983

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees concur with the language of the Senate report and have acted to promote the progress toward sunset of the CAB by stipulating a lesser amount for the last half of the fiscal year than for the first half. Further, the conferees direct that the Board submit to Congress a comprehensive, budgetary and programmatic phase-out plan toward sunset, showing quarterly reductions, in conjunction with the fiscal year 1984 budget.

The conferees direct the Civil Aeronautics Board, in conjunction with the Justice Department, to conduct a study of the computer reservations systems which are leased to travel agents by the airlines and to determine the effects on competition and any anti-trust implications which may exist. Specifically, the Board and the Justice Department shall investigate the following:

—Lease costs to travel agents and any conditions of the lease which may inhibit competition;

—Charges to other airlines in order to co-host the system with the airline which offers the system for lease; whether these charges discriminate against other airlines; and whether these charges are designed to inhibit competition and violate anti-trust laws;

—The display of the schedules and the fares of those air carriers which co-host the system and those carriers which do not host the system and whether these displays unfairly discriminate against either of those class of carriers.

This study should be concluded within 45 days of the enactment of this Act, and shall be forwarded to the Congress at that time.

Within 30 days after the study has been concluded and submitted to Congress, the CAB after consultation with the Department of Justice, shall take the necessary actions to remove any biases in the display of schedules and fares, to eliminate any discriminatory costs which could inhibit competition and which discriminate against other airlines and/or travel agents. Within this time period, the Board and the Department of Justice shall report those actions taken and shall make recommendations to the Congress of any legislative actions which may be necessary in order to prevent discriminatory action by the airlines which offer for lease these automated computer reservations system that may inhibit competition in the air travel industry.

PAYMENTS TO AIR CARRIERS

Amendment No. 67: Deletes the words "section 406 and" proposed by the House.

Amendment No. 68: Deletes "1376 and" proposed by the House.

Amendment No. 69: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which terminates the section 406 air carrier subsidy program but continues payments to air carriers.

INTERSTATE COMMERCE COMMISSION

SALARIES AND EXPENSES

Amendment No. 70: Appropriates $65,600,000 as proposed by the Senate instead of $66,300,000 as proposed by the House.

Amendment No. 71: Deletes limitation on standard level user payments proposed by the House.

PANAMA CANAL COMMISSION

OPERATING EXPENSES

Amendment No. 72: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter inserted by said amendment, insert the following:

not to exceed $8,000 for official reception and representation expenses of the Board;

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 73: Deletes language proposed by the Senate related to wages.

Amendment No. 74: Inserts the words "of the Administrator" as proposed by the Senate.

Amendment No. 75: Appropriates $405,000,000 instead of $392,084,000 as proposed by the House and $410,402,000 as proposed by the Senate.

Amendment No. 76: Deletes earmarkings proposed by the House.

The conference agreement includes the following limitations:

Operation of guide services	$230,000
Residence for the Administrator, exclusive of wages	70,000
Employee recreation and community projects	25,000
Consultant services	560,000
Employee housing	5,700,000
Expenses of the Supervisory Board	90,000

Amendment No. 77: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which permits the Commission to incur obligations in advance of adequate receipts in the Fund.

CAPITAL OUTLAY

Amendment No. 78: Appropriates $29,024,000 as proposed by the Senate instead of $24,666,000 as proposed by the House:

Amendment No. 79: Deletes earmarkings proposed by the House.

The conference agreement includes the following amounts:

Transit projects	$21,831,000
General support projects	3,886,000
Utilities projects	2,403,000
Quarters improvements	904,000

REIMBURSEMENT OF GENERAL FUND

Amendment No. 80: Deletes language proposed by the House authorizing the Panama Canal Commission Fund to reimburse the general fund of the Treasury for the unreimbursed balance of the fiscal year 1980 appropriation for the Commission.

DEPARTMENT OF THE TREASURY

OFFICE OF THE SECRETARY

INVESTMENT IN FUND ANTICIPATION NOTES

Amendment No. 81: Appropriates $5,000,000 instead of $10,000,000 as proposed by the Senate.

UNITED STATES RAILWAY ASSOCIATION

ADMINISTRATIVE EXPENSES

Amendment No. 82: Appropriates $2,950,000 as proposed by the Senate instead of $2,000,000 as proposed by the House.

TITLE III—GENERAL PROVISIONS

Amendment No. 83: Limits obligations for State and community highway safety to $95,000,000 instead of $92,500,000 as proposed by the Senate and $100,000,000 as proposed by the House.

Amendment No. 84: Inserts language proposed by the Senate exempting Public Law 97-125 from the limitation on obligations for Federal-aid highways and Highway safety construction programs.

Amendment No. 85: Limits obligations for Federal-aid highways and Highway safety construction programs to $8,100,000,000 as proposed by the Senate instead of $8,000,000,000 as proposed by the House.

Currently the Federal Highway Administration (FHWA) reimburses States for advance construction Interstate projects over a 36 month period. This payback schedule was imposed to control Federal cash outflow during a period of financial difficulty for the Federal Highway Trust Fund. Increased revenues to the Highway Trust Fund resulting from an increase in the Federal tax on motor fuels should eliminate the need for these temporary fiscal controls, and therefore the conferees direct that upon enactment of such revenue increases, FHWA shall, to the extent cash is available, discontinue imposition of the 36 month payback schedule period and make full payment upon request by a State. Furthermore, upon request by a State, to the extent cash is available, FHWA shall waive the payback schedule on advance construction projects presently under commitment.

Elimination of the payback schedule will accelerate reimbursements to the States, making available additional funds for matching Federal highway apportionments, accelerating contract lettings and employment in construction and related industries and contributing to the nation's economic recovery.

Amendment Nos. 86, 87, and 88: Delete the words "or allocated" proposed by the House.

Amendment No. 89: Deletes language proposed by the House giving priority in the redistribution formula to those States having large unobligated balances of funds apportioned under section 104 of title 23, United States Code.

Amendment No. 90: Deletes language proposed by the House exempting the Dodge Island Bridge from the highway obligation limitation.

Amendment No. 91: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate

which cancels the remaining debt of the St. Lawrence Seaway Development Corporation.

The conferees intend that tolls should be retained at least at the present levels to ensure that the Seaway meets all of its existing and future costs.

Amendment No. 92: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which prohibits after October 1, 1983, the apportionment of highway funds to any State which imposes a vehicle width limitation other than 102 inches on any segment of the Interstate System or any other qualifying Federal-aid highway.

Amendment No. 93: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter inserted by said amendment, insert the following:

SEC. 322. (a) Any air carrier having a claim for compensation under section 406 or 419(a)(7)(B) of the Federal Aviation Act of 1958, decided by the Civil Aeronautics Board (hereinafter referred to as the "Board") may bring an action directly on the claim in the United States Claims Court as provided in section 10(a) of the Contract Disputes Act of 1978 with respect to claims which have been decided by a contracting officer. Failure by the Board to issue a final decision on a final claim within one year after it was filed with the Board, or by the date of enactment of this section, whichever is later, shall be deemed to be a decision by the Board denying the claim, and will authorize an action on the claim as provided in this section. This section shall apply to any claim decided, or deemed to have been decided, by the Board after January 1, 1981, including any claim remanded to the Board by a United States court of appeals, irrespective of when the claim was filed with the Board. Any action under this section shall be filed within one hundred and twenty days after the claim has been decided or is deemed to have been decided by the Board, or within one hundred and twenty days after the date of enactment of this section, whichever is later. Any petition for review of a decision of the Board with respect to any such claim pending in a United States court of appeals on the date of enactment of this section shall be dismissed without prejudice upon motion of the petitioner.

(b) Except as provided herein, the following provisions of the Contract Disputes Act of 1978 shall apply with respect to any claim to which this section applies as if such claim were a claim with respect to a decision of a contracting officer under section 10(a) of such Act and as if the Board were a contracting officer:

(1) Section 12, relating to interest, which shall be payable by decision of the Board or the Court of Claims at the rates provided in such section, not to precede the date of enactment of the Contract Disputes Act of 1978.

(2) Section 13, relating to the payment of claims and judgments.

(3) Section 14(i), relating to the jurisdiction of the United States Claims Court.

(c) If an administrative law judge has issued an initial decision after a hearing on the record in the case before the Board, the court may, in its discretion, rely upon the evidence adduced at such hearing and may give such initial decision such weight as it deems appropriate.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The language adopted by the conferees revises the Senate language to limit the payment of interest to the period beginning with the effective date of the Contract Disputes Act of 1978, rather than from the date when the claim was filed; and to incorporate technical changes required by the Federal Courts Improvement Act of 1982 which, *inter alia*, splits the jurisdiction of the Court of Claims between two newly created courts,—a United States Claims Court, and a United States Circuit Court of Appeals for the Federal Circuit. Since the trial jurisdiction of the present Court of Claims will be transferred to the United States Claims Court, which alone will have jurisdiction to render final judgments, the revised language makes it clear that review of a CAB decision is to be by the United States Claims Court rather than the new Circuit Court of Appeals.

Amendment No. 94: Deletes language proposed by the Senate prohibiting funds for the transportation of any employees between his domicile and his place of employment, except for the Secretary of Transportation.

Amendment No. 95: Deletes language proposed by the Senate related to standard level user charges.

Amendment No. 96: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the section number named in said amendment, insert: *323*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 97: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter inserted by said amendment, insert the following:

SEC. 324. No funds appropriated under this Act shall be expended to pay for any travel initiated after January 1, 1983, by the Administrator of the Federal Aviation Administration as passenger or crew member aboard any Department of Transportation aircraft to any destination served by a regularly scheduled air carrier: Provided, That this limitation shall not apply if no regularly scheduled carriers' flight arrives at the destination of the Administrator within 6 hours local time of the desired time of arrival: Provided further, That this limitation shall not apply to costs incurred by any flight which is essentially for the purpose of inspecting, investigating, or testing the operations of any aspect of the Federal Aviation Administration system designed to aid and control air traffic, or to maintain or improve aviation safety: Provided further, That this limitation shall not apply to costs incurred by any flight in Department of Transportation aircraft which is necessary in times of emergency or disaster, or for security reasons, or to fulfill official diplomatic representation responsibilities in foreign countries: Provided further, That written certifications shall be issued quarterly on all flights initiated in the previous quarter subject to this limitation and shall be made readily available to Congress and the general public.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees are concerned with a draft report by the General Accounting Office which is reported to suggest that adequately stringent controls are not always exercised by Federal Aviation Administration officials in the use of agency aircraft. The GAO, based primarily on analysis of FAA aircraft records and travel vouchers, is said to have concluded that thousands of dollars may have been spent needlessly through the use of agency aircraft when commercial transportation would have sufficed. While the conferees agree with the intent of the Senate amendment to this bill, they have modified the language in the bill in order to provide a better balance of administrative flexibility and legislative accountabilty. The conferees further direct the Secretary to: 1) review the official use of all DOT aircraft; 2) determine the circumstances in which official use of DOT aircraft is warranted, taking into account such factors as mission accomplishment, alternatives, and relative costs; 3) scrutinize the procedures now in effect to assure that DOT aircraft are being utilized in the best interests of the government; 4) retain for a period of at least 1 year, detailed records of official use of DOT aircraft, to include the rationale which validates the use of such aircraft; and 5) report to the Appropriations Committees no later than April 1, 1983, on the measures taken to review current procedures and any new methods instituted to insure that official use of departmental aircraft is in the best interest of the government. The department is admonished that the conferees intend to carefully review all matters relative to this issue, and have not, in any way, disposed of their alternative to set more stringent legislative criteria should the administrative response to this very serious Congressional concern prove inadequate.

Amendment No. 98: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the section number named in said amendment, insert: *325*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 99: Deletes language proposed by the Senate related to air service between New Orleans and London, England.

While the conferees have stricken section 328 added by the Senate, the Department of Transportation and the CAB are directed to take every reasonable action to gain the necessary international agreements or to take other appropriate actions for ther reinstatement of direct commercial air service between New Orleans and London. The conferees are in agreement that such service is vital for the success of the 1984 Louisiana World Exposition.

Amendment No. 100: Inserts language proposed by the House related to certain water line facilities crossing under I-80 and I-94 in Hammond, Indiana, and conforms section number.

Amendment No. 101: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

Restore the matter stricken by said amendment amended to read as follows:

SEC. 327. Notwithstanding any other provision of law, the Secretary of Transportation shall approve, upon request of the State of Indiana, not to exceed $4,000,000, to be made available from funds available for re-

distribution under 23 U.S.C. 118(b) for the construction of an interchange to appropriate standards as I-94 and County Line Road at the Porter-LaPorte County Line near Michigan City, Indiana. Such amount shall be subject to the obligation limitation enacted for fiscal year 1983 or any fiscal year thereafter on obligations for Federal-aid highways and highway safety construction programs.

SEC. 328. Notwithstanding any other provision of this Act, the Secretary of Transportation is authorized to transfer appropriated funds between the Coast Guard Operating expenses appropriation and the Coast Guard Headquarters administration appropriation and between the Federal Aviation Administration appropriation for Operations and the Federal Aviation Administration appropriation for Headquarters administration: Provided, That the Coast Guard and Federal Aviation Administration Headquarters administration appropriations shall be neither increased nor decreased by more than 7.5 per centum by any such transfers: Provided further, That any such transfers shall be reported promptly to the Committees on Appropriations and the appropriate authorizing committees in the House and the Senate.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees direct that future budget requests be submitted to include separate appropriation requests for headquarters administration for the Coast Guard and FAA.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1983 recommended by the Committee of Conference, with comparisons to the fiscal year 1982 amount, the 1983 budget estimates, and the House and Senate bills for 1983 follow:

New budget (obligational) authority, fiscal year 1982	$10,749,715,927
Budget estimates of new (obligational) authority, fiscal year 1983	[1] 10,720,311,919
House bill, fiscal year 1983	[2] 11,199,399,919
Senate bill, fiscal year 1983	10,956,399,919
Conference agreement, fiscal year 1983	10,646,348,919
Conference agreement compared with:	
New budget (obligational) authority: fiscal year 1983	−103,367,009
Budget estimates of new (obligational) authority, fiscal year 1983	−73,963,000
House bill, fiscal year 1983	−553,051,000
Senate bill, fiscal year 1983	−310,051,000

[1] Includes $323,500,000 of budget estimates not considered by the House, and includes $400,000,000 of budget estimates for programs funded in Public Law 97-276.

[2] Includes $865,000,000 in appropriations for programs funded in Public Law 97-276.

WILLIAM LEHMAN,
MARTIN O. SABO,
LES AUCOIN,
WILLIAM H. GRAY III,
WILLIAM R. RATCHFORD,
JAMIE WHITTEN,
LAWRENCE COUGHLIN,
SILVIO O. CONTE,
JACK EDWARDS,
CARL PURSELL,
Managers on the Part of the House.

MARK ANDREWS,
THAD COCHRAN,
JAMES ABDNOR,
BOB KASTEN,
ALFONSE D'AMATO,
MARK O. HATFIELD,
LAWTON CHILES,
JOHN C. STENNIS,
ROBERT C. BYRD,
TOM EAGLETON
(except No. 92),
Managers on the Part of the Senate.

MAKING IN ORDER ON TOMORROW OR ANY DAY THEREAFTER CONSIDERATION OF CONFERENCE REPORT ON H.R. 7019, DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, 1983

Mr. SABO. Mr. Speaker, I ask unanimous consent that consideration of the conference report on the bill (H.R. 7019) making appropriations for the Department of Transportation and Related Agencies for the fiscal year ending September 30, 1983, and for the purposes, be in order on tomorrow or any day thereafter.

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

There was no objection.

PAYMENT OF LOSSES INCURRED IN TRIS-TREATED FABRICS

Mr. SAM B. HALL, JR. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 823) to provide for the payment of losses incurred as a result of the ban on the use of the chemical tris in apparel, fabric, yarn, or fiber, and for other purposes, as amended.

The Clerk read as follows:

S. 823

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the United States Claims Court shall have jurisdiction to hear, determine, and render judgment upon any claim for losses sustained by any producer, manufacturer, distributor, or retailer of children's sleepwear, or by any producer, converter, manufacturer, distributor, or retailer of fabric, yarn, or fiber contained in or intended for use in children's sleepwear, (1) if those losses resulted from the actions taken by the Federal Government under the Federal Hazardous Substances Act on April 8, 1977, and thereafter relating to apparel, fabric, yarn, or fiber containing Tris (2,3-dibromopropyl) phosphate, and (2) if such children's sleepwear or such fabric, yarn, or fiber, as the case may be, at the time of its manufacture was subject to the requirements of or was subject to use in compliance with the mandatory Federal flammability standard FF3-71 or FF5-74.

(b)(1) In determining the validity of any claim under this Act and the amount of the losses sustained for which such a claim is brought, the court shall consider the following factors:

(A) The degree to which reasonable alternatives to Tris (2,3-dibromopropyl) phosphate existed at the time the Federal Government established the applicable mandatory Federal flammability standard referred to in subsection (a).

(B) Whether it would have been feasible or reasonable for the claimant to have tested Tris (2,3-dibromopropyl) phosphate for chronic hazards at the time the Federal Government established such flammability standard.

(C) The degree to which the Federal Government or other nationally known researchers tested Tris (2,3-dibromopropyl) for toxicity or other health hazards and disseminated the results of those tests.

(D) The degree of good faith demonstrated by the claimant in seeking to comply fully with such Federal flammability standard.

(E) The extent to which a claimant may have relied in good faith upon assurances from suppliers that the products containing Tris (2,3-dibromopropyl) phosphate were safe.

(F) The degree to which the claimant acted reasonably in using Tris (2,3-dibromopropyl) phosphate.

(G) The degree to which the claimant, in good faith, complied with actions taken by the Federal Government under the Federal Hazardous Substances Act on April 8, 1977.

(H) The degree to which the claimant, in good faith, complied with those provisions relating to exports contained in section 14 of the Federal Hazardous Substances Act and section 18 of the Consumer Product Safety Act.

(2) The court may not enter judgment in favor of a claimant under this Act, nor may the Attorney General agree to any settlement with a claimant under this Act, unless the claimant produces proof, to the satisfaction of the court or the Attorney General, as the case may be, that the claimant lawfully disposed of the apparel, fabric, yarn, or fiber with respect to which the claim was brought.

(3) In determining the amount of the losses for which a claim is brought under this Act, the amount of such losses shall not include lost profits, proceeds from distress sales, attorney's fees, or interest on any loss suffered by any producer, converter, manufacturer, distributor, or retailer of children's sleepwear, or by any producer or manufacturer of fabric, yarn, or fiber.

(c)(1) The measure of losses for any producer or manufacturer of children's sleepwear shall be the cost of producing or manufacturing the sleepwear garment, plus the cost of the fabric, yarn, or fiber used for such production or manufacture, or the cost of such sleepwear, fabric, yarn, or fiber held in stock on the date of the enactment of this Act, less the fair market value, if any, of the sleepwear garment or the fabric, yarn, or fiber. If such garment, fabric, yarn, or fiber was resold after April 8, 1977, but prior to such date of enactment, then the measure of losses shall be the cost of producing or manufacturing the sleepwear garment plus the cost of the fabric, yarn, or fiber, less the proceeds from any such sale.

(2) The measure of losses for any producer, converter, or manufacturer of fabric, yarn, or fiber shall be the cost of producing, converting, or manufacturing the fabric, yarn, of fiber, plus the cost of the raw materials used for such production, converting, or manufacturing, or the cost of such fabric, yarn, or fiber held in stock on the date of the enactment of this Act, less the fair market value, if any, of the fabric, yarn, or fiber on such date. If the fabric, yarn, or

fiber was resold after April 8, 1977, but prior to such date of enactment, then the measure of losses shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber plus the cost of the raw materials used for such production, converting, or manufacturing, less the proceeds from any such sale.

(3) The measure of losses for any distributor or retailer shall be the distributor's or retailer's purchase price for the children's sleepwear, fabric, yarn, or fiber involved, less the fair market value, if any, of such sleepwear, fabric, yarn, or fiber, and less the amount of any reimbursement received for such sleepwear, fabric, yarn, or fiber.

(4) In addition to the losses determined under paragraphs (1), (2), and (3) of this subsection, a claimant may also be compensated for (A) unreimbursed costs of transportation paid for the return of the sleepwear garments, fabric, yarn, or fiber involved, and (B) unreimbursed costs of the lawful disposal of such garments, fabric, yarn, or fiber.

(d) No claim under this Act may be brought as a class action. No claim under this Act may be brought by two or more parties unless damages are claimed to be jointly recoverable or are disputed among the parties.

(e) Upon payment of any claim under this Act, whether or not such payment is the result of a court judgment or a settlement, the United States shall be subrogated to the claimant's rights to recover losses or to assert a claim against any person relating to the subject matter of such claim paid by the United States. The claimant shall take the necessary steps, as determined by the Attorney General, to secure such rights in the United States in order to be entitled to the entry of a judgment by the court or payment under this Act, and the failure of the claimant to take such steps shall constitute cause to deny the entry of such judgment or such payment. The failure of the claimant to take such steps shall not limit or adversely affect the right of the United States to act as subrogee or assignee to the full extent of its payments under this Act. Any purported limitation on the right of the United States to act as assignee or to become subrogated to the rights of a claimant shall be without any effect, to the extent that the United States has made payments under this Act.

(f) Any claim under this Act shall be barred unless commenced within two years after the date of the enactment of this Act.

(g) No person shall have any claim under this Act who, on or after June 14, 1978, (1) exported from the United States any apparel, fabric, yarn, or fiber containing Tris (2,3-dipromopropyl) phosphate which was produced, converted, manufactured, or sold for use in the United States, or (2) transferred any apparel, fabric, yarn, or fiber described in clause (1) to another person with knowledge that such apparel, fabric, yarn, or fiber would be exported from the United States.

(h) Before payment is made on any claim under this Act, the Attorney General shall notify the Administrator of the Small Business Administration of the claim. The Administrator shall, after receipt of such notification, notify the Attorney General as soon as possible of—

(1) any unpaid loans made by the Small Business Administration under the Small Business Act, and

(2) other amounts owing to the Small Business Administration on account of loans made under the Small Business Act,

for the purpose of assisting the claimant on account of losses sustained as a result of the actions taken by the United States under the Federal Hazardous Substance Act on April 8, 1977, and thereafter relating to apparel, fabric, yarn, or fiber containing Tris (2,3-dibromopropyl) phosphate. The Attorney General shall offset, from the amount of the payment on the claim under this Act, the amount of any such unpaid loans or other amounts owing to the Small Business Administration. The amount of any offset under this subsection shall be treated as accrued and paid to the claimant in ten equal annual installments beginning with the first year in which payment on the claim under this Act is made.

(i) Nothing in this Act shall be construed as an admission of fault or liability on behalf of the United States for any personal injury which may hereafter be claimed to arise from exposure to Tris (2,3-dipromopropyl) phosphate.

The SPEAKER pro tempore. Is a second demanded?

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

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas (Mr. SAM B. HALL, JR.) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. KINDNESS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. SAM B. HALL, JR.).

Mr. SAM B. HALL, JR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 823 would allow the U.S. Claims Court to determine the claims of all those who were harmed by the Consumer Product Safety Commission ban on the sale of certain children's sleepwear.

The history behind this bill begins in 1971, when the Consumer Product Safety Commission (CPSC) issued regulations containing flammability standards for children's sleepwear. At the time it issued the standards, the CPSC knew that those who produced the children's sleepwear—and material for such sleepwear—would treat the fabric with a chemical named tris in order to meet the flammability standard. The CPSC also knew that the safety of the chemical for that use had not been adequately tested. Nevertheless, the CPSC issued the standards, and, as expected, the producer used tris to meet the standard.

Six years later, new information developed that tris was a carcinogenic chemical. On April 8, 1977, the CPSC, based on this information, banned the sale of all tris-treated children's sleepwear—and material for such sleepwear. As a result of this ban, all tris-treated garments and fabrics were withdrawn from the market. Losses were incurred by retailers, distributors, manufacturers, converters, and producers of children's sleepwear and fabric who, as the result of the original CPSC flammability standards, had flameproofed their products by the use of tris.

Mr. Speaker, I emphasize that this bill does not grant any of the claims made by those who suffered due to the ban on tris. This bill simply allows the claimants to have the court determine whether their claims are valid. Only if the court determines that the claims satisfy the standards set forth in the bill will any compensation be paid.

Mr. Speaker, I also want to emphasize the provisions included in this bill, which answer most of the concerns regarding the legislation.

First, S. 823 as amended requires that a claimant prove that he has lawfully disposed of tris-treated products before he obtains compensation. This is to guarantee that none of these garments inadvertently end up being used by children.

Second, S. 823 as amended prohibits any recovery by a claimant who knowingly exported tris-treated products after June 14, 1978, when the CPSC ban on the export of those products was announced.

Third, S. 823 as amended requires that any claimant who received Small Business Administration loans or guarantees due to losses resulting from the ban on tris-treated products must repay from any compensation under this bill any amounts still owed the SBA. Moreover, to assure that these amounts are repaid to the SBA, the bill provides that the amounts owed by deducted from the compensation before it is paid to the claimant.

Finally, S. 823 as amended states that this legislation does not constitute an admission of liability by the United States for any personal injuries the users of tris-treated products may later claim.

Mr. Speaker, this is a carefully crafted bill. It would provide a method of compensation for those who actually suffered losses due to governmental actions. At the same time, it assures that the only persons compensated are those who actually suffered losses due to their good faith attempts to comply with Government regulations.

This is a good bill; this is a fair bill. I urge its passage.

Mr. Speaker, I insert in the RECORD at this point a short explanation of S. 823, as amended:

PURPOSE

The purpose of the proposed legislation, as amended, is to confer jurisdiction on the United States Claims Court to hear, determine, and render judgment on claims by producers, manufacturers, distributors, converters or retailers of children's sleepwear or of fabric, yarn, or fiber contained in or intended for use in such sleepwear. These claims relate to losses sustained in connection with U.S. governmental action, under the Federal Hazardous Substances Act, on

April 8, 1977, and thereafter, in banning apparel, fabric, yarn, or fiber containing Tris.

STATEMENT

The history of the efforts of the Government to set standards as to the flammability of fabrics dates to 1953, when the Commerce Department issued flammability standards for fabrics. In the same year, the Flammable Fabrics Act was enacted and made effective July 1, 1954. In 1967, the act was amended to give the Secretary of Commerce power to issue mandatory flammability standards, and he did so on July 29, 1971, as FF3-71. This applied to children's sleepwear sizes 0 to 6x and went into effect on July 28, 1972. Under the 1972 Consumer Product Safety Act, this regulatory function regarding flammability standards was transferred to the Consumer Product Safety Commission (Commission), which issued a second flammability standard FF5-74 for children's sleepwear sized 7 to 14 which was made effective May 1, 1974. Generally, manufacturers achieved compliance with FF3-71 and FF5-74 through the application of a chemical flame-retardant to the textile fibers, yarn, or uncut fabric used to make the finished garment.

The FF3-71 and FF5-74 flammability standards were performance standards which required only that the material used for children's sleepwear meet certain nonflammability criteria. Thus, neither standard required that manufacturers utilize Tris or any other specific flame-retardant chemical. Nonetheless, Tris became the most widely used flameproofing chemical because it provided an effective and inexpensive means of treating numerous synthetic fibers. Also, material treated with Tris remained relatively soft and comfortable, unlike many other flameproofed fabrics, thus retaining consumer appeal.

In March 1976, the Environmental Defense Fund (EDF), a health-oriented public interest organization, petitioned the Commission to require cautionary labeling for wearing apparel containing Tris surface concentrations in excess of 100 parts per million. This petition was based on data that showed that Tris was capable of causing mutations in Salmonella typhimurium when tested in both the presence and absence of metabolic activating systems. The petition asserted that this test has been shown to be a "highly reliable predictor" of carcinogenicity.

To evaluate the scientific issues raised in the EDF petition, the Commission conducted a search of the existing literature in April 1976, and initiated a biological testing program in its own laboratories in June 1976. In addition, the Commission asked the National Cancer Institute (NCI) to expedite its rate and mouse carcinogenicity feeding studies involving Tris that were already underway. The NCI agreed to provide the Commission with preliminary results from these studies as they became available.

On February 4, 1977, the Commission obtained the preliminary NCI test data. Within 2 weeks, the Commission's Bureau of Biomedical Science provided a statistical analysis of the NCI rat and mouse bioassay study. On February 8, 1977, the EDF petitioned the Commission, on the basis of its own analysis of the same NCI preliminary test results, to ban the sale of wearing apparel containing Tris.

On April 7, 1977, the Commission formally considered the EDF petition at its regularly scheduled meeting and, effective April, 8, 1977, issued its interpretation that children's wearing apparel made from Tris-treated fabric and uncut Tris-treated fabric intended for use in children's wearing apparel were to be banned hazardous substances under section 2(q)(1)(A) of the Federal Hazardous Substances Act. The Commission's interpretation further defined the above substances as those which are introduced into interstate commerce after April 8, 1977, or which had not yet been washed (even if they have been sold before the date.)

As a result of this ban, all Tris-treated garments and fabrics were withdrawn from the market. Losses were incurred by retailers, distributors, manufacturers, converters and producers of children's sleepwear and fabrics which, as a result of FF3-71 and FF5-74, had been flameproofed by the use of Tris. Though the exact amount of losses has never been adjudicated, the American Apparel Manufacturers Association stated that it believes the actual losses suffered by all children's sleepwear manufacturers to be about $50 million. This includes garments, uncut fabric in apparel plants, and "to date" indirect costs such as transportation, administration, and storage.

PROVISIONS OF S. 823

Under the proposed legislation, the United States Claims Court is granted jurisdiction to "hear, determine, and render judgment" on the claims submitted. This Court would hear all the facts, weigh the evidence, and determine whether there is liability on the part of the United States. The burden of proof is on the claimants to show that, in the light of the standards contained in the proposed legislation, there is a responsibility and obligation on the part of the United States to pay compensation for the losses incurred.

The standards by which the Court is to determine liability are intended to aid in the evaluation of the degree of good faith demonstrated by an individual claimant with regard to the Federal flammability standards and in the determination of whether or not that claimant met the applicable legal responsibilities under the Federal Flammability Standards. The criteria as set forth in subsection (b)(1) of the bill are as follows:

(A) The degree to which reasonable alternatives to Tris (2,3-dibromopropyl) phosphate existed at the time the Federal Government established the applicable mandatory Federal flammability standard.

(B) Whether it would have been feasible, or reasonable, for the claimant to have tested Tris (2,3-dibromopropyl) phosphate for chronic hazards at the time the Federal Government established such flammability standard.

(C) The degree to which the Federal Government, prior to establishing such flammability standard, tested Tris (2,3-dibromopropyl) phosphate for toxicity, or other health hazards, and disseminated the results of these tests.

(D) The degree of good faith demonstrated by a claimant in seeking to comply fully with such Federal flammability standard.

(E) The extent to which a claimant may have relied in good faith on assurances from suppliers that the products containing Tris (2,3-dibromopropyl) phosphate were safe.

(F) The degree to which a claimant acted reasonably in using Tris (2,3-dibromopropyl) phosphate for the time period that such substance was used.

(G) The degree to which a claimant, in good faith, complied with actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977.

If the claimant is unable to meet the burden of proof in demonstrating losses and satisfying these standards, the Court shall deny the claim.

This version of S. 823 contains several provisions that differ from those contained in the Senate-passed version.

(1) A new provision prohibits entry of judgment by a Court or settlement of a claim by the Attorney General unless a claimant produces proof of lawful disposal of Tris-treated products on which recovery is sought.

(2) A new provision which allows a claimant to recover the costs involved in lawfully disposing of Tris-treated products. This means that disposal must be carried out in a manner approved by the Commission. Since firms cannot simply stack hundreds and even thousands of pounds of garments in trash bins, (which could result in their somehow being diverted for use by children) some costs must be incurred for lawful disposal. These costs represent a direct loss from the Tris ban. (The bill already provided for a similar type of recovery in section 4, where it states that "unreimbursed cost of transportation paid for the return" of sleepwear may be recovered.) However, this recovery is limited to actual losses incurred as a result of lawful disposal. Thus, for example, if a firm sells the banned products for use as rags, any amount received from such sale must be deducted from the amount to be recovered. Obviously, any approved use of the product, such as for training employees who sew garments, provides a benefit to the company and does not add extra disposal costs. However, outright destruction of the goods, which in the end may be most desirable as a public policy matter, will probably give rise to out-of-pocket expenses which are recoverable.

(3) A new subsection (g) prohibits any recovery by a claimant who knowingly allowed the export of Tris-treated products after the Commission published its ban on the export of such products on June 14, 1978 (the date the Commission approved the export ban was May 5, 1978). If a claimant exported Tris-treated products after the initial ban on domestic sales in 1977 but before the export ban in 1978, the Court may consider this fact as part of its equitable judgment in determining whether and to what extent a claimant should obtain recovery, however such acts would not prohibit recovery. (See sections (b)(1) (D), (G), and (H) of the bill.)

(4) A new subsection (h) requires a claimant to repay the Small Business Administration (SBA) from any recovery any amounts owed or unpaid due to loans granted or guaranteed because of losses due to the ban on Tris-treated products.

This provision ensures that no claimant receives a double recovery of any losses attributable to the Tris situation: one in the form of a long-term, low-interest loan from the SBA and the other in the form of a judgment under this legislation.

The term "unpaid loans" in subsection (h)(1) means the outstanding balances of loans granted under section 7 of the Small Business Act (15 U.S.C. 636). It also includes balances outstanding where repayment has for some reason been waived by the SBA. The term "other amounts owing" in subsection (h)(2) refers to amounts due to SBA from a claimant who had obtained an SBA guaranteed loan on which the claimant then defaulted, with the result that the SBA had to pay the holder of the loan. In either case, offsets would be imposed only where the loan or guarantee was made primarily for

the purpose of assisting the claimant because of losses resulting from the Tris ban.

If a judgment is rendered for or a settlement reached with a claimant who has an unpaid loan or other amounts owing to the SBA, the Attorney General is required to offset such amounts; that is, such amounts must be deducted from the judgment or settlement and only the excess of such amounts is to be paid to the claimant.

Any award under the Act, including the amount of the offset for unpaid Tris loans, will be taxable. However, since a large portion of the award will be retained by the SBA as an offset, many manufacturers will receive less in payment than the amount of taxes they owe on the entire award. For example, a manufacturer who suffered a $3 million loss in the Tris recall may have an outstanding SBA loan for $2.5 million. On an award of $3 million, that manufacturer will have to pay $1.35 million in federal taxes, although the manufacturer will receive only $500,000 from the award. Therefore, this section provides that any offsets will be treated as accrued in ten annual installments. This mitigates the tax burden by treating the amount of the offset (an amount that the manufacturers never actually receive) as paid to them over a period of ten years. This will spread the tax liability over that same period. The manufacturer with a $3 million award and a $2.5 million offset will pay taxes of $368,000 on $800,000 for the first year (the amount actually received from the award plus one-tenth of the offset amount). In each of the next nine years, the manufacturer will pay taxes on one-tenth of the offset.

(5) A new subsection (i) provides that this bill does not constitute admission of liability by the United States for any personal injuries that may be alleged to have resulted from the use of Tris-treated products.

SECTION BY SECTION

SECTION 1

Subsection (a) provides that the Court of Claims is to have jurisdiction to hear, determine, and render judgment upon claims for losses resulting from actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977, and thereafter relating to apparel, fabric, yarn, or fiber containing Tris (2,3-dibromopropyl) phosphate suffered either by producers, manufacturers, distributors, or retailers of children's sleepwear, or by any producer, converter, manufacturer, distributor, or retailer of fabric, yarn, or fiber contained in or intended for use in children's sleepwear. Products for which claims are asserted must have been subject to the requirements of, or for use in compliance with, the mandatory Federal flammability standard, FF3-71, or FF5-74, at the time of its manufacture.

Subsection (b)(1) outlines factors which must be considered by the court in determining the validity of a claim and in assessing losses. They are:

(A) Whether reasonable alternatives to Tris (2,3-dibromopropyl) phosphate existed at the time the Federal Government established the applicable mandatory Federal flammability standard;

(B) Whether the claimant could or should have tested Tris (2,3-dibromopropyl) phosphate for chronic hazards at the time the Federal Government established the flammability standard;

(C) The extent the Federal Government tested Tris (2,3-dibromopropyl) phosphate for toxicity, or other health hazards, and disseminated the test results prior to establishing the flammability standards;

(D) The degree of good faith demonstrated by a claimant in seeking to comply fully with the Federal flammability standard.

(E) The extent to which a claimant may have relied in good faith on assurances from suppliers that the products containing Tris (2,3-dibromopropyl) phosphate were safe.

(F) The degree to which a claimant acted reasonably in using Tris (2,3-dibromopropyl) phosphate for the time period that such substance was used.

(G) The degree to which a claimant, in good faith, complied with actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977.

(H) The degree to which a claimant, in good faith, complied with those provisions relating to exports contained in § 14 of the Federal Hazardous Substances Act (15 U.S.C. 1273) and § 18 of the Consumer Product Safety Act (15 U.S.C. 2067). (This subsection was included to allow the court to consider, in making its decision, whether the claimant exported Tris apparel, fabric, yarn, or fiber after the Commission announced that such export was prohibited under the Commission's interpretation of the applicable law. It does not bar or limit recovery by those companies which in good faith exported Tris apparel, fabric, yarn, or fiber during the period that the Commission interpreted the law as allowing such export.)

Subsection (b)(2) prohibits entry of judgment or settlement of Tris-related claims unless the claimant produces proof of lawful disposal of the products upon which such claims are based. The term "lawful disposal" means in a manner that does not violate the CPSC's Export Ban dated May 5, 1978 and the CPSC's Policy Statement dated April 8, 1977, which prohibited the sale of such products in the United States. Therefore, the term includes the destruction of such products so they would not be introduced into the marketplace.

Subsection (b)(3) provides that lost profits, proceeds from distress sales, attorneys fees, or interest on any such loss resulting to any producer, converter, maufacturer, distributor, or retailer of such children's sleepwear, or to any producer or manufacturer of fabric, yarn, or fiber shall not be included as a loss compensated under the bill.

Subsection (c)(1) sets forth the measure of losses for claims of producers or manufacturers of children's sleepwear. The measure of such losses is the cost of producing or manufacturing the sleepwear garment plus the cost of the materials, held in stock on the date of enactment, less the fair market value, if any, of the sleepwear garment or the fabric, yarn, or fiber. If the sleepwear garment or material has been resold after April 8, 1977, but prior to enactment, then the amount determined by the above measure of damages shall be reduced by the proceeds from any such sale.

Subsection (c)(2) sets forth the measure of losses for claims of producers, converters, or manufacturers of fabric, yarn, or fiber. The measure of such losses is the cost of producing, converting, or manufacturing the fabric, yarn, or fiber plus the cost of the raw materials used for such production, converting or manufacture held in stock on the date of enactment, less the fair market value, if any of such products. If the products were resold after April 8, 1977, but prior to the date of enactment, the proceeds of the sale is to be deducted from the amount determined by the above measures of damages.

Subsection (c)(3) sets forth the measure of losses for claims of distributors and retailers. The measure of such losses shall be the distributor's or the retailer's purchase price for children's sleepwear, fabric, yarn or fiber, less the amount of any reimbursement received. Some distributors and retailers destroyed such goods or returned them to manufacturers. Therefore, the substitute language reported by the Committee deletes the requirement that reimbursement be available only for goods held in stock on the date of enactment of this Act and enables a distributor or retailer to qualify to claim for the unreimbursed portion of its losses, as limited by paragraph (3) of subsection (c), notwithstanding the lack of possession of such merchandise.

Subsection (c)(4) provides that, any claimant may be compensated for unreimbursed costs of transportation paid for such sleepwear garments, fabrics, yarn or fiber and for any reasonable costs incurred in otherwise lawfully disposing of such goods.

Subsection (d) provides that claims may not be brought by two or more parties unless damages are claimed to be jointly recoverable or are disputed among these parties.

Subsection (e) provides that the United States is to be subrogated to a claimant's right to recover damages or assert a claim against any person relating to the subject matter of the claim when the claim is paid by the United States, pursuant to a judgment or settlement. The claimant will be required to execute and deliver instruments and papers and take necessary steps to secure such rights in the United States prior to entry of a judgment by the Court and payment under this bill. The failure of a claimant to perform such acts or take such steps shall constitute cause to deny the entry of such judgment and payment. However, the failure of the claimant to perform such acts or to take such steps shall not limit or adversely affect the right of the United States to act as subrogee or assignee to the full extent of its payments under this Act, and any purported limitation on the right of the United States to act as assignee or to become subrogated to the rights of a claimant upon payment shall be without any effect.

Subsection (f) provides for the time limitation as to claims under this legislation. Any claim shall be barred unless commenced within two years after the enactment of the bill.

Subsection (g) prohibits recovery by any claimant who knowingly allowed the export of Tris-treated products after the June 14, 1978 notice of the Consumer Product Safety Commission Export Ban of May 5, 1978.

Subsection (h) requires administrative offset of any judgment or settlement obtained by a claimant against any unpaid loans or amounts owing to the SBA.

Subsection (i) provides that this bill does not constitute admission of liability by the United States for any personal injuries that may result from the use of Tris-treated products.

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

Mr. Speaker, both Houses of Congress passed a similar bill several years ago, similar, that is, to S. 823 in its basic purpose. The House voted overwhelmingly for the legislation during the 95th Congress. The final tally was 304 to 90. But later, President Carter pocket vetoed the bill; and, although

there were enough votes to overturn the veto, by that time the Congress had already adjourned sine die. Now we have had a long delay in this Congress in bringing the measure to the House floor, but I welcome this opportunity as a matter of doing justice only by allowing the opportunity for justice to be done.

Neither the earlier bill nor this bill provides for any direct reimbursement to a manufacturer. This bill does not appropriate or authorize 1 red cent. It would merely allow those who have suffered direct losses to bring their petition to the Court of Claims. But if you read our bill, application to the Court of Claims is no guarantee of reimbursement. As a matter of fact, we established nine separate tests before an applicant becomes eligible for recovery. The total burden is placed upon petitioners to prove that:

First, there were no reasonable alternatives to tris;

Second, whether the manufacturer should have tested tris themselves;

Third, the extent to which the Government had tested for tris and the information was publicly available;

Fourth, the degree of good faith exercised by the manufacturers in complying with the standards;

Fifth, the extent to which the manufacturers of sleepwear relied upon the assurances of the chemical manufacturer;

Sixth, the degree to which the sleepwear manufacturer acted reasonably during the time tris was used;

Seventh, the degree of good faith compliance with the ban on tris;

Eighth, the degree of good faith in complying with the antiexport law; and, finally

Ninth, petitioners are to receive only actual out-of-pocket expenses. That is, profits, attorneys' fees or inflation costs are not allowed for, are prohibited.

May I also point out that in the hearings of our subcommittee earlier this year it was made known that the burn standard for children's sleepwear has been revised in such a way that chemicals are no longer needed to meet the Federal flammability regulations, just as a bit of background as to how outlandish this whole thing has proven to be, at the cost of many small businesses in particular.

This legislation is so tough that a substantial portion of those who suffered losses may not be able to recover at all. Mr. Speaker, let us end this ordeal for the many small manufacturers who have been hurt by the tris mess by voting for this bill. I urge support for the bill.

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

□ 1500

Mr. SAM B. HALL, JR. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK. Mr. Speaker, I want to join in support of this bill. This piece of legislation has been I think unfairly characterized by some as somehow an effort to undo proper regulation.

In my judgment, Mr. Speaker, it is in fact an example of how regulation ought to be done wisely.

We have a situation here where there may have been a number of particularly small manufacturers caught in a bind between two regulations. In a good faith effort to comply with one, they may have run afoul, through no bad motive of their own, of another.

What this bill does is to establish a very sensible set of procedures for determining how to undo some of that harm.

As the gentleman from Ohio just said, there is a list of conditions that have to be satisfied, dealing with whether or not people unfairly exported this, dealing with whether or not they had knowledge of its harmful properties, and so forth.

I think the bill is very well drafted. I say as one who believes that regulation of the proper sort is very much needed to achieve the quality of life we all want, if we are not prepared to show the kind of flexibility this bill shows, and if we are not prepared to take into account those rare occasions when a glitch develops in the regulatory process, then we undermine the case for regulation. Regulation is necessary. It plays an important role in gaining some goals that we all need. But it has to be done in a reasonable way.

I would also add that the interests at stake in this bill, it is obvious but sometimes the obvious gets ignored, are not just the small manufacturers, but the people who work for them. The International Ladies Garment Workers Union, for instance, is understandably quite eager to see passage of this bill because they represent some of the working men and women who might find themselves without a livelihood if we do not take what I think is a very responsible action in this case.

I commend the gentleman from Texas for bringing this bill forward and I would hope that the bill would pass.

Mr. KINDNESS. Mr. Speaker, I yield 4 minutes to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Mr. Speaker, first of all, I want to commend the gentleman from Ohio and the gentleman from Texas on this legislation and call to the attention of the Members the importance of these measures that emanate from the Subcommittee on Administrative Law of the House Committee on the Judiciary.

This is in the nature of special legislation, providing recourse to the courts where no other remedy is available. Our Constitution permits persons to petition their government for the redress of grievances. In this bill we temporarily relax the doctrine of soverign immunity to take care of persons that have been seriously hurt by regulation.

And so in a sense this epitomizes a prerogative of the citizen and a constitutional right of the citizen which is being exercised and which is being implemented by the work of this subcommittee and thereafter by the Members of this House.

Mr. Speaker, from recent history everyone knows that tris is a chemical flame retardant. It was used on wearing apparel to meet required Federal flammability standards. Several years later this chemical was banned because it was found or claimed to have carcinogenic properties.

I agree that such items should be banned, but we overlooked the permanent damages inflicted on small manufacturers. Seventy percent of the manufacturers affected by the tris ban were small businesses with 100 or less employees. Moreover, the apparel industry already had enough problems to worry about. With the tris ban millions upon millions of dollars of manufactured clothing became worthless. Losses incurred by compliance with a specific Government mandate is not insurable. Since clothing is such a marginal business there was no tax writeoff to speak of. Hard, out-of-pocket losses put the industry near bankruptcy. And the foreign apparel manufacturers would have been only too happy to see dozens of our domestic manufacturers go under. Fortunately, the Small Business Administration came to the rescue with emergency loans to insure the survival of these manufacturers. These loans are maturing and there is a need for replacement capital. Therefore, this bill enables these manufacturers to recoup some of these hard, out-of-pocket losses.

Even though I would have preferred direct reimbursement, we have, nonetheless, through this bill only, provided that manufacturers be able to bring their petition to the court of claims. Under the quantum of proof necessary to secure reimbursement petitioners have to overcome nearly impossible evidentiary barriers to insure that only the deserving qualify.

Mr. Speaker, a similar bill passed the House overwhelmingly during the 95th Congress and it should pass with the same margin.

Mr. SAM B. HALL, JR. Mr. Speaker, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Texas.

Mr. SAM B. HALL, JR. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I would like to take this opportunity to comment about the gentleman who has just spoken. This will probably be one of the last

times that BOB MCCLORY from Illinois will be before this body with reference to a bill of this nature.

I can only say that during the 6 years that I have been a member of the Committee on the Judiciary I have not known of any man who has been any more sincere and any more dedicated in the work that he has done on that committee. He is going to be missed. I can tell the gentleman now, my friend, you will be sorely missed by this body. And I wish you the best in the future.

Mr. MCCLORY. Mr. Speaker, I am very grateful for the generous remarks of the gentleman from Texas.

Mr. KINDNESS. Mr. Speaker, I yield 4 minutes to the gentleman from South Carolina (Mr. CAMPBELL).

Mr. CAMPBELL. Mr. Speaker, before I go into my remarks, I wish to thank the gentleman from Texas (Mr. SAM B. HALL, JR.), the gentleman from Ohio (Mr. KINDNESS), and particularly the gentleman from Illinois (Mr. MCCLORY) for being gentlemen, No. 1, and for being outstanding legislators who have done a very commendable job. This body will miss BOB MCCLORY. He is not only a gentleman and a fine legislator, he is probably one of the best that we have in the House of Representatives.

Mr. Speaker, I am pleased to rise in support of S. 823, a bill providing for reimbursement for direct losses following the Consumer Product Safety Commission's ban on and recall of children's sleepwear treated with the chemical tris.

The tris bill is not a bailout. It simply confers jurisdiction on the U.S. Claims Court to hear claims by those who unavoidably incurred losses because of the tris ban. The bill does not authorize payment of any funds. It only gives the courts jurisdiction to hear these claims on their merits and to recommend the amount of payments, if any, to be made. The bill provides a series of criteria—including good faith—which a manufacturer must meet in order to even be eligible for indemnification, and specifically excludes from compensation any firm which exported in violation of Federal Government prohibition. There is no provision for automatic compensation in S. 823; each manufacturer will have to prove his case.

Nor does S. 823 set a precedent. The tris situation is a unique catch-22 situation: several years after forcing chemical treatment on sleepwear manufacturers in spite of the industry's documented warnings of unknown health hazards, the same Federal agency then required the manufacturers to recall those garments and pay for millions of dollars' worth of goods which they were forced by Federal regulation to treat chemically in the first place.

It should be noted, moreover, that the industry had no reason to believe that tris was any more or less dangerous than any other chemical it may have used. As a matter of fact, recognizing that any chemical the industry turned to after the tris ban might turn out to be dangerous, the Consumer Product Safety Commission actually changed the flammability standards after the ban. No chemical treatment is now necessary to meet the new flammability standards.

Mr. Speaker, this is a reasonable measure which represents simple equity. It is a clear-cut, limited bill which will rectify the great damage done mainly to small children's sleepwear manufacturers by Federal overregulation. I urge Members to vote yes.

Mr. SAM B. HALL, JR. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. STRATTON).

Mr. STRATTON. Mr. Speaker, I rise in support of the legislation. I am familiar with this problem because I had in my district the same kind of situation that has been referred to by the gentleman from South Carolina (Mr. CAMPBELL) and other Members talking on this.

We have here a very simple situation, as the gentleman from South Carolina just indicated; namely, that the Federal Government first required manufacturers to use a particular chemical that would retard fire hazards in children's sleepwear and then subsequently told them that they could not use material permeated with that chemical, after they had purchased hundreds of yards of the material, because it was likely to cause cancer.

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Here is a case where on the one hand our Government did not know what the other hand was doing. The Government clearly fouled up. Obviously, the economic costs were not the fault of the manufacturer in any sense. It was a clear-cut Government responsibility.

We got the bill through both the House and the Senate and then-President Carter, who was really not fully briefed on what had happened by his staff, simply pocket vetoed it in spite of all the damage and harm that it did to little people and small businesses all over the country.

In Cohoes, N.Y., for example, the Swan-Knit Co., with about 130 women employees, working in a small, old-fashioned mill building, were making their living producing these children's garments. This second ruling of the Government almost put this small company out of business. They have hung on, however.

If Congress wants to help people keep jobs in this period of unemployment, I cannot think of anything better than to provide a little overdue financial assistance to those companies who, through no fault of their own, sustained very serious financial losses because of a Government failure.

Mr. Speaker, I urge approval of the bill.

Mr. KINDNESS. Mr. Speaker, I yield myself such time as I may consume, solely for the purpose of joining in and associating myself with the remarks of the gentleman from Texas (Mr. SAM B. HALL, JR.) with respect to the service of our colleague, the gentleman from Illinois (Mr. MCCLORY). Having slipped a little bit in the opportunity to have my say earlier, I must join in saying that my association with the gentleman from Illinois over the 8 years that I have served on the Judiciary Committee has been an association that I think to be most enjoyable as well as enlightening. I expect to learn from my colleagues in great numbers, but perhaps more than others I have learned from the gentleman from Illinois (Mr. MCCLORY), not just perhaps legislative and intellectual matters, but I am still working on trying to develop as much spring in my step as he has, there being some slight difference in our ages. I hope that I can somehow perfect that ability. It has something to do with weight and exercise, I think.

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

Mr. KINDNESS. I yield to the gentleman from New York.

Mr. STRATTON. Mr. Speaker, since I was concerned about the tris bill, I did not want to interrupt the proceedings earlier; but I certainly do want to join in commending the gentleman from Illinois (Mr. MCCLORY). We will miss him. He is very modest; but one of his major legislative achievements is that he and I and the gentleman from New Jersey (Mr. RODINO) joined together some years ago in creating four Monday national holidays, including Columbus Day as a national holiday, so that tourism and family associations could be better spent. That is just one of the great achievements that the gentleman from Illinois will be remembered for. Even though some people may not particularly like that change, I think the majority does, especially Columbus Day.

Mr. KINDNESS. Mr. Speaker, I thank the gentleman for pointing that out. I have been wondering who to blame for that. Now I know. I thank the gentleman for his very kind contribution, in any event.

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

Mr. SAM B. HALL, JR. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Virginia (Mr. DAN DANIEL).

Mr. DAN DANIEL. Mr. Speaker, I rise in strong support of this proposed legislation (S. 823), and thank the gentleman for yielding and for bringing this matter to the floor. Its passage will clear up contradictions in the regulations. As now written, they are not unlike Federal regulations imposed upon the highway construction industry. One set of regulations required that bells be attached to the equipment in order that it could be heard, and the next set required the workers to wear ear plugs.

In the late sixties, there developed considerable concern about children being killed when their sleepwear caught fire accidentally. Accordingly, in 1971 and again in 1974, performance standards were developed which prohibited the sale of children's sleepwear which did not meet charring and flame-resistant standards.

There are other chemicals which can be applied to fabric, but tris—2,3-dibromopropyl phosphate—was one of the most effective, and the most widely used.

On April 8, 1977, the Consumer Product Safety Commission banned tris, because it was found to cause cancer in rats and mice. All garments which had been treated or made from treated fabric were immediately removed from sale, at a cost to manufacturers, retailers, et cetera, of some $50 million.

Legislation which passed in the 95th Congress to rectify this situation was vetoed by President Carter. A bill to meet his objections was introduced in the 96th Congress, but hearings were never held in either House.

The present bill is said to meet the objections to the 1977 bill, which were:

First, it violated the established law, which states that the Federal Government is not liable for the economic impact of regulatory actions; and

Second, the Government should not be held liable in the absence of fault by Government officials.

The bill will give the Court of Claims jurisdiction to render judgment for losses resulting from actions taken by the United States, subject to certain criteria to insure there are no frivolous or fraudulent claims filed.

I strongly recommend a "yes" vote.

Mr. SAM B. HALL, JR. Mr. Speaker, I have no further requests for time and yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SAM B. HALL, JR.) that the House suspend the rules and pass the Senate bill, S. 823, as amended.

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

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SAM B. HALL, JR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the legislation just passed.

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

There was no objection.

MISCELLANEOUS LAW REVISIONS

Mr. HUGHES. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7378) to codify without substantive change recent laws related to money and finance and to improve the United States Code.

The Clerk read as follows:

H.R. 7378

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

AMENDMENTS TO TITLE 31

SECTION 1. Title 31, United States Code, is amended as follows:

(1)(A) Chapter 5 is amended by inserting the following after section 503:

"§ 504. Office of Federal Procurement Policy

"The Office of Federal Procurement Policy, established under section 5(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 404(a)), is an office in the Office of Management and Budget.".

(B) The analysis of chapter 5 is amended by inserting the following immediately below item 503:

"504. Office of Federal Procurement Policy.".

(2) Section 1105(a) is amended by adding at the end the following:

"(25) a separate statement, for each agency having an Office of Inspector General, of the amount of the appropriation requested for the Office.".

(3) Section 1113(a) is amended by—

(A) inserting "(1)" after "(a)"; and

(B) adding at the end the following:

"(2) When requested by a committee of Congress, additional information related to the amount of an appropriation originally requested by an Office of Inspector General shall be submitted to the committee.".

(4) Section 1305(6) is amended to read as follows:

"(6) to pay the interest on the fund derived from the bequest of James Smithson, for the construction of buildings and expenses of the Smithsonian Institution, at the rates determined under section 5590 of the Revised Statutes (20 U.S.C. 54).".

(5) Section 3102(a) is amended by striking out "$70,000,000,000" and substituting "$110,000,000,000".

(6) Section 3105(b) is amended to read as follows:

"(b)(1) With the approval of the President and except as provided in paragraph (2) of this subsection, the Secretary may—

"(A) fix the investment yield for savings bonds; and

"(B) change the investment yield on an outstanding savings bond, except that the yield on a bond for the period held may not be decreased below the minimum yield for the period guaranteed on the date of issue.

"(2) The investment yield on a series E savings bond shall be at least 4 percent a year compounded semiannually beginning on the first day of the month beginning after the date of issue of the bond and ending on the last day of the month before the date of redemption.

"(3) With the approval of the President, the Secretary may prescribe regulations providing that—

"(A) owners of series E and H savings bonds may keep the bonds after maturity or after a period beyond maturity during which the bonds have earned interest and continue to earn interest at rates consistent with paragraph (1) of this subsection; and

"(B) series E and H savings bonds earning a different rate of interest before the regulations are prescribed shall earn a rate of interest consistent with paragraph (1).".

(7) Section 3105(c)(5) is amended by striking out "(expressed in terms of the maturity value)".

(8) Section 3106(b) is amended by striking out the first sentence.

(9) Section 3121 is amended by adding at the end the following:

"(g)(1) In this subsection, 'registration-required obligation' means an obligation except an obligation—

"(A) not of a type offered to the public;

"(B) having a maturity (at issue) of not more than one year; or

"(C) described in paragraph (2) of this subsection.

"(2) An obligation is not a registration-required obligation if—

"(A) there are arrangements reasonably designed to ensure that the obligation will be sold (or resold in connection with the original issue) only to a person that is not a United States person; and

"(B) for an obligation not in registered form—

"(i) interest on the obligation is payable only outside the United States and its territories and possessions; and

"(ii) a statement is on the face of the obligation that a United States person holding the obligation is subject to limitations under the United States income tax laws.

"(3) Every registration-required obligation of the Government shall be in registered form. A book entry obligation is deemed to be in registered form if the right to principal and stated interest on the obligation may be transferred only through a book entry consistent with regulations of the Secretary.

"(4) The Secretary shall prescribe regulations necessary to carry out this subsection when there is a nominee.".

(10) Section 3302(b) is amended by striking out "An" and substituting "Except as provided in section 3718(b) of this title, an".

(11) Section 3331 is amended by adding at the end the following:

"(f) Under conditions the Secretary may prescribe, the Secretary may delegate duties and powers of the Secretary under this section to the head of an agency. Consistent with a delegation from the Secretary under this subsection, the head of an agency may delegate those duties and powers to an officer or employee of the agency.".

(12) Section 3512 is amended by redesignating subsections (b)-(d) as subsections (d)-(f), respectively, and by inserting the following immediately below subsection (a):

"(b)(1) To ensure compliance with subsection (a)(3) of this section and consistent with standards the Comptroller General prescribes, the head of each executive agency shall establish internal accounting

and administrative controls that reasonably ensure that—

"(A) obligations and costs comply with applicable law;

"(B) all assets are safeguarded against waste, loss, unauthorized use, and misappropriation; and

"(C) revenues and expenditures applicable to agency operations are recorded and accounted for properly so that accounts and reliable financial and statistical reports may be prepared and accountability of the assets may be maintained.

"(2) Standards the Comptroller General prescribes under this subsection shall include standards to ensure the prompt resolution of all audit findings.

"(c)(1) In consultation with the Comptroller General, the Director of the Office of Management and Budget—

"(A) shall establish by December 31, 1982, guidelines that the head of each executive agency shall follow in evaluating the internal accounting and administrative control systems of the agency to decide whether the systems comply with subsection (b) of this section; and

"(B) may change a guideline when considered necessary.

"(2) By December 31 of each year (beginning in 1983), the head of each executive agency, based on an evaluation conducted according to guidelines prescribed under paragraph (1) of this subsection, shall prepare a statement on whether the systems of the agency comply with subsection (b) of this section, including—

"(A) if the head of an executive agency decides the systems do not comply with subsection (b) of this section, a report identifying any material weakness in the systems and describing the plans and schedule for correcting the weakness; and

"(B) a separate report on whether the accounting system of the agency conforms to the principles, standards, and requirements the Comptroller General prescribes under section 3511(a) of this title.

"(3) The head of each executive agency shall sign the statement and reports required by this subsection and submit them to the President and Congress. The statement and reports are available to the public, except that information shall be deleted from a statement or report before it is made available if the information specifically is—

"(A) prohibited from disclosure by law; or

"(B) required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.".

(13)(A) Section 3701 is amended to read as follows:

"§ 3701. Definitions and application

"(a) In this chapter—

"(1) 'administrative offset' means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government;

"(2) 'calendar quarter' means a 3-month period beginning on January 1, April 1, July 1, or October 1;

"(3) 'consumer reporting agency' means—

"(A) a consumer reporting agency as that term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)); or

"(B) a person that, for money or on a cooperative basis, regularly—

"(i) gets information on consumers to give the information to a consumer reporting agency; or

"(ii) serves as a marketing agent under an arrangement allowing a third party to get the information from a consumer reporting agency.

"(4) 'executive or legislative agency' means a department, agency, or instrumentality in the executive or legislative branch of the Government;

"(5) 'military department' means the Departments of the Army, Navy, and Air Force;

"(6) 'system of records' has the same meaning given that term in section 552a(a)(5) of title 5;

"(7) 'uniformed services' means the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the National Oceanic and Atmospheric Administration, and Commissioned Corps of the Public Health Service.

"(b) In subchapter II of this chapter, 'claim' includes amounts owing on account of loans insured or guaranteed by the Government and other amounts due the Government.

"(c) In sections 3716 and 3717 of this title, 'person' does not include an agency of the United States Government, of a State government, or of a unit of general local government.

"(d) Sections 3711(f) and 3716-3719 of this title do not apply to a claim or debt under, or to an amount payable under, the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), or the tariff laws of the United States.".

(B) Item 3701 in the analysis of chapter 37 is amended to read as follows:

"3701. Definitions and application.".

(14) Section 3702(b)(2) is amended by inserting "this" before "subsection".

(15) Section 3711 is amended by adding at the end the following:

"(f)(1) When trying to collect a claim of the Government under a law except the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.), the head of an executive or legislative agency may disclose to a consumer reporting agency information from a system of records that an individual is responsible for a claim if—

"(A) notice required by section 552a(e)(4) of title 5 indicates that information in the system may be disclosed to a consumer reporting agency;

"(B) the head of the agency has reviewed the claim and decided that the claim is valid and overdue;

"(C) the head of the agency has notified the individual in writing—

"(i) that payment of the claim is overdue;

"(ii) that, within not less than 60 days after sending the notice, the head of the agency intends to disclose to a consumer reporting agency that the individual is responsible for the claim;

"(iii) of the specific information to be disclosed to the consumer reporting agency; and

"(iv) of the rights the individual has to a complete explanation of the claim, to dispute information in the records of the agency about the claim, and to administrative repeal or review of the claim;

"(D) the individual has not—

"(i) repaid or agreed to repay the claim under a written repayment plan that the individual has signed and the head of the agency has agreed to; or

"(ii) filed for review of the claim under paragraph (2) of this subsection;

"(E) the head of the agency has established procedures to—

"(i) disclose promptly, to each consumer reporting agency to which the original disclosure was made, a substantial change in the condition or amount of the claim;

"(ii) verify or correct promptly information about the claim on request of a consumer reporting agency for verification of information disclosed; and

"(iii) get satisfactory assurances from each consumer reporting agency that the agency is complying with all laws of the United States related to providing consumer credit information; and

"(F) the information disclosed to the consumer reporting agency is limited to—

"(i) information necessary to establish the identity of the individual, including name, address, and taxpayer identification number;

"(ii) the amount, status, and history of the claim; and

"(iii) the agency or program under which the claim arose.

"(2) Before disclosing information to a consumer reporting agency under paragraph (1) of this subsection and at other times allowed by law, the head of an executive or legislative agency shall provide, on request of an individual alleged by the agency to be responsible for the claim, for a review of the obligation of the individual, including an opportunity for reconsideration of the initial decision on the claim.

"(3) Before disclosing information to a consumer reporting agency under paragraph (1) of this subsection, the head of an executive or legislative agency shall take reasonable action to locate an individual for whom the head of the agency does not have a current address to send the notice under paragraph (1)(C).".

(16)(A) Subchapter II of chapter 37 is amended by adding at the end the following:

"§ 3716. Administrative offset

"(a) After trying to collect a claim from a person under section 3711(a) of this title, the head of an executive or legislative agency may collect the claim by administrative offset. The head of the agency may collect by administrative offset only after giving the debtor—

"(1) written notice of the type and amount of the claim, the intention of the head of the agency to collect the claim by administrative offset, and an explanation of the rights of the debtor under this section;

"(2) an opportunity to inspect and copy the records of the agency related to the claim;

"(3) an opportunity for a review within the agency of the decision of the agency related to the claim; and

"(4) an opportunity to make a written agreement with the head of the agency to repay the amount of the claim.

"(b) Before collecting a claim by administrative offset under subsection (a) of this section, the head of an executive or legislative agency must prescribe regulations on collecting by administrative offset based on—

"(1) the best interests of the United States Government;

"(2) the likelihood of collecting a claim by administrative offset; and

"(3) for collecting a claim by administrative offset after the 6-year period for bringing a civil action on a claim under section 2415 of title 28 has expired, the cost effectiveness of leaving a claim unresolved for more than 6 years.

"(c) This section does not apply—

"(1) to a claim under this subchapter that has been outstanding for more than 10 years; or

"(2) when a statute explicitly provides for or prohibits using administrative offset to collect the claim or type of claim involved.

"§ 3717. Interest and penalty on claims

"(a)(1) The head of an executive or legislative agency shall charge a minimum annual rate of interest on an outstanding debt on a United States Government claim owed by a person that is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage point. The Secretary of the Treasury shall publish the rate before November 1 of that year. The rate is effective on the first day of the next calendar quarter.

"(2) The Secretary may change the rate of interest for a calendar quarter if the average investment rate for the 12-month period ending at the close of the prior calendar quarter, rounded to the nearest whole percentage point, is more or less than the existing published rate by 2 percentage points.

"(b) Interest under subsection (a) of this section accrues from the date—

"(1) on which notice is mailed after October 25, 1982, if notice was first mailed before October 25, 1982; or

"(2) notice of the amount due is first mailed to the debtor at the most current address of the debtor available to the head of the executive or legislative agency, if notice is first mailed after October 24, 1982.

"(c) The rate of interest charged under subsection (a) of this section—

"(1) is the rate in effect on the date from which interest begins to accrue under subsection (b) of this section; and

"(2) remains fixed at that rate for the duration of the indebtedness.

"(d) Interest under subsection (a) of this section may not be charged if the amount due on the claim is paid within 30 days after the date from which interest accrues under subsection (b) of this section. The head of an executive or legislative agency may extend the 30-day period.

"(e) The head of an executive or legislative agency shall assess on a claim owed by a person—

"(1) a charge to cover the cost of processing and handling a delinquent claim; and

"(2) a penalty charge of not more than 6 percent a year for failure to pay a part of a debt more than 90 days past due.

"(f) Interest under subsection (a) of this section does not accrue on a charge assessed under subsection (e) of this section.

"(g) This section does not apply—

"(1) if a statute, regulation required by statute, loan agreement, or contract prohibits charging interest or assessing charges or explicitly fixes the interest or charges; and

"(2) to a claim under a contract executed before October 25, 1982, that is in effect on October 25, 1982.

"(h) In conformity with standards prescribed jointly by the Attorney General and the Comptroller General, the head of an executive or legislative agency may prescribe regulations identifying circumstances appropriate to waiving collection of interest and charges under subsections (a) and (e) of this section. A waiver under the regulations is deemed to be compliance with this section.

"§ 3718. Contracts for collection services

"(a) Under conditions the head of an executive or legislative agency considers appropriate, the head of the agency may make a contract with a person for collection services to recover indebtedness owed the United States Government. The contract shall provide that—

"(1) the head of the agency retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action; and

"(2) the person is subject to—

"(A) section 552a of title 5, to the extent provided in section 552a(m); and

"(B) laws and regulations of the United States Government and State governments related to debt collection practices.

"(b) Notwithstanding section 3302(b) of this title, a contract under subsection (a) of this section may provide that a fee a person charges to recover indebtedness owed the United States Government is payable from the amount recovered.

"(c) A contract under subsection (a) of this section is effective only to the extent and in the amount provided in an appropriation law.

"(d) This section does not apply to the collection of debts under the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.).

"§ 3719. Reports on debt collection activities

"(a) In consultation with the Secretary of the Treasury and the Comptroller General, the Director of the Office of Management and Budget shall prescribe regulations requiring the head of each agency with outstanding debts to prepare and submit to the Director and the Secretary at least once each year a report summarizing the status of loans and accounts receivable managed by the head of the agency. The report shall contain—

"(1) information on—

"(A) the total amount of loans and accounts receivable owed the agency and when amounts owed the agency are due to be repaid;

"(B) the total amount of receivables and number of claims at least 30 days past due;

"(C) the total amount written off as actually uncollectible and the total amount allowed for uncollectible loans and accounts receivable;

"(D) the rate of interest charged for overdue debts and the amount of interest charged and collected on debts;

"(E) the total number of claims and the total amount collected; and

"(F) the number and total amount of claims referred to the Attorney General for settlement and the number and total amount of claims the Attorney General settles;

"(2) the information described in clause (1) of this subsection for each program or activity the head of the agency carries out; and

"(3) other information the Director considers necessary to decide whether the head of the agency is acting aggressively to collect the claims of the agency.

"(b) The Director shall analyze the reports submitted under subsection (a) of this section and shall report annually to Congress on the management of debt collection activities by the head of each agency, including the information provided the Director under subsection (a).".

(B) The analysis of subchapter II of chapter 37 is amended by adding at the end the following:

"3716. Administrative offset.
"3717. Interest and penalty on claims.
"3718. Contracts for collection services.
"3719. Reports on debt collection activities.".

(17) Section 3721(b) is amended by striking out "$15,000" and substituting "$25,000".

(18)(A) Subtitle III is amended by adding at the end the following:

"CHAPTER 39—PROMPT PAYMENT

"Sec.
"3901. Definitions and application.
"3902. Interest penalties.
"3903. Regulations.
"3904. Limitations on discount payments.
"3905. Reports.
"3906. Relationship to other laws.

"§ 3901. Definitions and application

"(a) In this chapter—

"(1) 'agency' has the same meaning given that term in section 551(1) of title 5 and includes an entity being operated, and the head of the agency identifies the entity as being operated, only as an instrumentality of the agency to carry out a program of the agency.

"(2) 'business concern' means—

"(A) a person carrying on a trade or business; and

"(B) a nonprofit entity operating as a contractor.

"(3) 'proper invoice' is an invoice containing or accompanied by substantiating documentation the Director of the Office of Management and Budget may require by regulation and the head of the appropriate agency may require by regulation or contract.

"(4) the head of an agency is deemed to receive an invoice on the later of the dates that—

"(A) the designated payment office or finance center of the agency actually receives a proper invoice; or

"(B) the head of the agency accepts the applicable property or service.

"(5) a payment is deemed to be made on the date a check for the payment is dated.

"(6) a contract to rent property is deemed to be a contract to acquire the property.

"(b) This chapter applies to the Tennessee Valley Authority. However, regulations prescribed under this chapter do not apply to the Authority, and the Authority alone is responsible for carrying out this chapter as it applies to contracts of the Authority.

"§ 3902. Interest penalties

"(a) Under regulations prescribed under section 3903 of this title, the head of an agency acquiring property or service from a business concern, who does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due. The interest shall be computed at the rate the Secretary of the Treasury establishes for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611). The Secretary shall publish each rate in the Federal Register.

"(b) Except as provided in section 3906 of this title, the interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made. However, a penalty may not be paid if payment for the item is made—

"(1) when the item is a meat or meat food product described in section 3903(2)(A) of this title, before the 4th day after the required payment date;

"(2) when the item is an agricultural commodity described in section 3903(2)(B) of this title, before the 6th day after the required payment date; or

"(3) when the item is not an item referred to in clauses (1) and (2) of this subsection,

before the 16th day after the required payment date.

"(c) An amount of an interest penalty unpaid after any 30-day period shall be added to the principal amount of the debt, and a penalty accrues thereafter on the added amount.

"(d) This section does not authorize the appropriation of additonal amounts to pay an interest penalty. The head of an agency shall pay a penalty under this section out of amounts made available to carry out the program for which the penalty is incurred.

"(e) A recipient of a grant from the head of an agency may provide in a contract for the acquisition of property or service from a business concern that, consistent with the usual business practices of the recipient and applicable State and local law, the recipient will pay an interest penalty on amounts overdue under the contract under conditions agreed to by the recipient and the concern. The recipient may not pay the penalty from amounts received from an agency. Amounts expended for the penalty may not be counted toward a matching requirement applicable to the grant. An obligation to pay the penalty is not an obligation of the United States Government.

"§ 3903. Regulations

"The Director of the Office of Management and Budget shall prescribe regulations to carry out section 3902 of this title. The regulations shall—

"(1) provide that the required payment date is—

"(A) the date payment is due under the contract for the item of property or service provided; or

"(B) 30 days after a proper invoice for the amount due is received if a specific payment date is not established by contract;

"(2) for the acquisition of meat or a meat food product (as defined in section 2(a)(3) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(3))), provide a required payment date of not later than 7 days after the meat or meat food product is delivered; and

"(3) for the acquisition of a perishable agricultural commodity (as defined in section 1(4) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(4))), provide a required payment date consistent with that Act;

"(4) provide separate required payment dates for a contract under which property or service is provided in a series of partial executions or deliveries to the extent the contract provides for separate payments for partial execution or delivery; and

"(5) require that, within 15 days after an invoice is received, the head of an agency notify the business concern of a defect or impropriety in the invoice that would prevent the running of the time period specified in clause (1)(B) of this section.

"§ 3904. Limitations on discount payments

"The head of an agency offered a discount by a business concern from an amount due under a contract for property or service in exchange for payment within a specified time may pay the discounted amount only if payment is made within the specified time. The head of the agency shall pay an interest penalty on an amount remaining unpaid in violation of this section. The penalty accrues as provided under sections 3902 and 3903 of this title, except that the required payment date for the unpaid amount is the last day specified in the contract that the discounted amount may be paid.

"§ 3905. Reports

"(a) By the 60th day after the end of each fiscal year, the head of each agency shall submit to the Director of the Office of Management and Budget a report on interest penalty payments made under this chapter during that fiscal year. The report shall include the number, amounts, and frequency of the payments and the reasons the payments were not avoided by prompt payment.

"(b) By the 120th day after the end of each fiscal year, the Director shall submit to the Committees on Governmental Affairs, Appropriations, and Small Business of the Senate and the Committees on Government Operations, Appropriations, and Small Business of the House of Representatives a report on agency compliance with this chapter. The report shall include a summary of the report of each agency submitted under subsection (a) of this section and an analysis of progress made in reducing interest penalty payments by that agency from prior years.

"§ 3906. Relationship to other laws

"(a) A claim for an interest penalty not paid under this chapter may be filed under section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605).

"(b)(1) An interest penalty under this chapter does not continue to accrue—

"(A) after a claim for a penalty is filed under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.); or

"(B) for more than one year.

"(2) Paragraph (1) of this subsection does not prevent an interest penalty from accruing under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) after a penalty stops accruing under this chapter. A penalty accruing under section 12 may accrue on an unpaid contract payment and on the unpaid penalty under this chapter.

"(c) Except as provided in section 3904 of this title, this chapter does not require an interest penalty on a payment that is not made because of a dispute between the head of an agency and a business concern over the amount of payment or compliance with the contract. A claim related to the dispute, and interest payable for the period during which the dispute is being resolved, is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).".

(B) The analysis of subtitle III is amended by inserting the following immediately below item 37:

"39. PROMPT PAYMENT ..... 3901".

(19) Section 5103 is amended by inserting ", public charges, taxes, and dues" after "debts" the first time it appears.

(20) Section 5112(f)(1) is amended—

(A) by inserting in the matter before clause (A), a comma after "10,000,000)"; and

(B) by striking out of clause (C) "two hundred and fiftieth" and substituting "250th".

(21) Section 5132(a)(2) is amended by striking out "$54,706,000" and "1982" and substituting "$50,165,000" and "1983", respectively.

(22) Section 5154 is amended by striking out "United States coins and currency circulating within its jurisdiction" and substituting "other forms of money".

(23)(A) Chapter 61 is amended by inserting after section 6102 the following:

"§ 6102a. Assistance awards information system

"(a) The Director of the Office of Management and Budget shall—

"(1) maintain the United States Government assistance awards information system established as a result of the study conducted under section 9 of the Federal Program Information Act; and

"(2) update the system on a quarterly basis.

"(b) To carry out subsection (a) of this section, the Director—

"(1) may delegate the responsibility for carrying out subsection (a) of this section to the head of another executive agency;

"(2) shall review a report the head of an agency submits to the Director on the method of carrying out subsection (a) of this section; and

"(3) may validate, by appropriate means, the method by which an agency prepares the report.".

(B) The analysis of chapter 61 is amended by inserting immediately below item 6102 the following:

"6102a. Assistance awards information system.".

(24) Section 6501(1)(B) is amended by striking out "the law of".

(25) Section 6709(a) is amended by adding at the end the following:

"(5) For quarterly payments made for quarters beginning after December 31, 1982, the New Jersey Franchise and Gross Receipts Taxes (N.J. Rev. Stat. 54:30A-18.1) transferred to a unit of general local government in New Jersey in each of the years beginning January 1, 1980, January 1, 1981, and January 1, 1982, are deemed to be an adjusted tax of the unit under paragraph (2) of this subsection.".

(26) Section 9101 is amended by striking out "(K) the National Consumer Cooperative Bank.".

(27) Sections 9107(c)(3) and 9108(d)(2) are each amended by striking out "the National Consumer Cooperative Bank,".

CONFORMING AND TECHNICAL PROVISIONS

SEC. 2. (a) Title 5, United States Code, is amended as follows:

(1) In section 552a(b) and (m), strike out "section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))" and substitute "section 3711(f) of title 31".

(2) In section 5514(a)(3), strike out "the Federal Claims Collection Act of 1966 (31 U.S.C. 951 et seq.)" and substitute "sections 3711 and 3716-3718 of title 31".

(b) Section 1114 of title 18 is amended by striking out "the Federal Claims Collection Act of 1966 (31 U.S.C. 951 et seq.)" and substituting "sections 3711 and 3716-3718 of title 31".

(c) The Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) is amended as follows:

(1) Sections 405(b)(1) and 409(a) are each amended by striking out "the Second Liberty Bond Act, as amended" and "Act" and substituting "chapter 31 of title 31" and "chapter", respectively.

(2) Section 454(c)(2) is amended by striking out "the Second Liberty Bond Act" and substituting "chapter 31 of title 31".

(3) Section 1037(a) is amended by striking out "the Second Liberty Bond Act" and "Act" and substituting "chapter 31 of title 31" and "chapter", respectively.

(4) Section 6103(m)(2) is amended by striking out "section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 952)" wherever appearing and substituting "sections 3711, 3717, and 3718 of title 31".

(d) Title 28, United States Code, is amended as follows:

(1) Section 1961(b) is amended by striking out "section 1302 of the Act of July 27, 1956 (31 U.S.C. 724a)" and substituting "section 1304(b) of title 31".

(2) Section 2415 of title 28 is amended by striking out "section 5 of the Federal Claims Collection Act of 1966" and substituting "section 3716 of title 31".

(e) Title 38, United States Code, is amended as follows:

(1) Section 210(b)(2)(A) is amended by striking out "section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11(a))" and substituting "section 1105 of title 31".

(2) Section 1823(c) is amended by striking out "the Second Liberty Bond Act" wherever appearing and substituting "chapter 31 of title 31".

(3) Section 4207 is amended by striking out "section 3523 of title 31" and substituting "chapter 35 of title 31".

(4) Sections 5010(a)(1) and 5011(f) are each amended by striking out "section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11(a))" and substituting "section 1105 of title 31".

(f) Section 2007 of title 39, United States Code, is amended by striking out "the Second Liberty Bond Act" wherever appearing and substituting "chapter 31 of title 31".

(g) The amendment made by section 1(17) of this Act applies only to claims arising after July 27, 1982.

(h) The amendment made by section 1(25) of this Act is effective after December 31, 1982, only if the Governor of New Jersey notifies the Secretary of the Treasury that, before January 1, 1983, the State amended the New Jersey Franchise and Gross Receipts Taxes statute to provide for the collection and retention of those taxes by units of general local government for years beginning as of January 1, 1983.

(i) The amendments made by section 1(11), (14), (19), (22), (24), (26), and (27) are effective as of September 13, 1982.

LEGISLATIVE PURPOSE AND CONSTRUCTION

SEC. 3. (a) Sections 1 and 2 of this Act restate, without substantive change, laws enacted before December 1, 1982, that were replaced by those sections. Sections 1 and 2 may not be construed as making a substantive change in the laws replaced. Laws enacted after November 30, 1982, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

(b) A reference to a law replaced by sections 1 and 2 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(c) An order, rule, or regulation in effect under a law replaced by sections 1 and 2 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

(d) An action taken or an offense committed under a law replaced by sections 1 and 2 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(e) An inference of a legislative construction is not to be drawn by reason of the location in the United State Code of a provision enacted by this Act or by reason of the caption or catchline of the provision.

(f) If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

REPEALS

SEC. 4. (a) The repeal of a law enacted by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.

(b) The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this Act:

SCHEDULE OF LAWS REGULATED—STATUTES AT LARGE

Date	Chapter or public law	Section	Statutes at large Volume	Page
1902:				
June 28	1302	8	32	484
1917:				
Sept. 24	56	28		
1921:				
June 10	18	201(k)		
1922:				
Mar. 20	104	1(par. under heading "General Accounting Office.").	42	444
1950:				
Sept. 12	946	113(b)(last sentence), (d).		
1966:				
July 19	89-508	3(d)-(g), 5		
1972:				
Oct. 20	92-512	109(e)(3)		
1982:				
May 21	97-177		96	85
July 28	97-226		96	245
Sept. 3	97-248	287, 289(a), (c), 310(a).	96	570, 571, 572, 595
Sept. 8	97-253	202	96	790
	97-255		96	814
Oct. 15	97-326	8	96	1609
Oct. 25	97-365	3, 10-13	96	1749, 1754

The SPEAKER pro tempore. Is a second demanded?

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

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

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. HUGHES) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. McCLORY) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. HUGHES).

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

Mr. Speaker, H.R. 7378 incorporates in title 31 of the United States Code laws that became effective after April 15, 1982. That date was the cutoff for inclusion of a law in the original codification of title 31 that was enacted into positive law by Public Law 97-258. Because title 31 is now law—rather than merely prima facie evidence of the law—it can be changed only by direct amendment. The bill also contains several technical amendments to clarify certain sections enacted in the original codification.

The bill was prepared for the House Judiciary Committee by the Office of the Law Revision Counsel under its authority under section 285b of title 2, United States Code, as part of the program of the Office to prepare and submit to the House Judiciary Committee, for enactment into positive law, all titles of the United States Code.

Mr. Speaker, I include a detailed explanation of H.R. 7378 at this point in the RECORD:

DETAILED EXPLANATION OF H.R. 7378—REVISION OF TITLE 31, UNITED STATES CODE, "MONEY AND FINANCE"

Purpose.—The purpose of the bill is to codify without substantive change recent laws related to money and finance and to improve the United States Code. Specifically, the bill will amend primarily title 31, United States Code, which has been enacted into positive law, to reflect changes in that title by laws that did not specifically amend that title. In the restatement, simple language has been substituted for awkward and obsolete terms, and superseded, executed, and obsolete statutes have been eliminated. This bill is a part of the program of the Office of the Law Revision Counsel of the House of Representatives to prepare and submit to this Committee, for enactment into positive law, all titles of the United States Code.

Background.—This bill is the second phase in the codification of title 31. The first phase was completed on September 13, 1982, with the enactment of title 31, United States Code, "Money and Finance", by Public Law 97-258. Other laws have been enacted that did not specifically amend that title. This bill codifies those recently enacted laws.

Revision notes.—A revision note has been prepared for each section of the bill. The revision notes explain the changes made in the source laws. Each note identifies the statutory basis or source of the section and explains significant changes in, and omissions of, language. When practical, word-for-word substitutions of language are identified and explained. Standard changes made throughout the revision to achieve internal consistency are not explained each time they are made.

Standard changes.—Certain standard changes are made uniformly throughout the revised title 31. The most significant of the other standard changes are explained in the following paragraphs:

As far as possible, the statute is stated in the present tense and in the active voice. When there is a choice of 2 or more words, otherwise of equal legal effect, the more commonly understood word is used.

The word "shall" is used in the mandatory and imperative sense. The word "may" is used in the permissive and discretionary sense, as "is permitted to" and "is authorized to". The words "may not" are used in a prohibitory sense, as "is not authorized to" and "is not permitted to". The words "person may not" mean that no person is required, authorized, or permitted to do the act.

The words "duties and powers" are substituted for "powers, duties, and functions" and any variation of that phrase. The word "duties" includes that which a person is required to do. The word "powers" includes that which a person is required to do.

The words "any part of" means "all or part of" and "in whole or in part". The word "includes" means "includes but is not limited to". The word "considered" denotes the exercise of judgment. The word "deemed" is used where a legal fiction, or what may in some cases be a legal fiction, is intended. The word "is" is used for statements of fact.

When a right is conferred, the words "is entitled" or their equivalent are used.

The first time a descriptive title is used in a section, the full title is used. Thereafter,

in the same section, a shorter title is used unless the context requires the full title to be used. For example, "Secretary of Treasury" is used the first time the title appears in a section. Subsequently, in the same section, the title "Secretary" is used.

"United States Government" is substituted for "United States" (when used in referring to the Government), "Federal Government", and other terms identifying the Government the first time the reference appears in a section. Thereafter, in the same section, "Government" is used unless the context requires the complete term to be used to avoid confusion with other governments.

The word "law" is substituted for "Act" and "joint resolution" for clarity because the word "law" includes Acts and joint resolutions.

The word "record" includes all terms previously used for records, documents, accounts, reports, files, memoranda, papers, things, and other similar items.

The words "under section ———" are used instead of "pursuant to section ———" and "in accordance with section ———".

The word "such" is not used as a demonstrative adjective. The use of the word "each", "any", "every", or "all" is confined to instances in which it is feared that doubt would arise if the word were not used.

Provisos are not used. An exception or limitation is introduced by the words "except that" or "but" or by placing the excepting or limiting provision in a separate sentence.

Substantive change not made.—Like other codifications undertaken to enact into positive law all titles of the United States Code, this bill makes no substantive change in the law. It is sometimes feared that mere changes in terminology and style will result in changes in substance or impair the precedent value of earlier judicial decisions and other interpretations. This fear might have some weight if this were the usual kind of amendatory legislation where it can be inferred that a change of language is intended to change substance. In a codification statute, however, the courts uphold the contrary presumption: the statute is intended to remain substantively unchanged. The following authorities affirm this principle:

Steward v. *Kahn* (11 Wall. 493, 502 (1871)).

Smythe v. *Fiske* (28 Wall. 374, 382 (1874)).

McDonald v. *Hovey* (110 U.S. 619, 628 (1884)).

United States v. *Ryder* (110 U.S. 729, 740 (1884)).

United States v. *Sischo* (262 U.S. 165, 168 (1923)).

Fourco Glass Co. v. *Transmirra Products Corp.* (353 U.S. 222, 227 (1957)).

Trailer Marine Transport Corp. v. *Federal Maritime Commission* (D.C. Cir., 602 F. 2d 379, 383 (1979)).

Atchison, Topeka and Santa Fe Railway Co. v. *United States* (7th Cir. 617 F. 2d 485, 490, 491 (1980)).

Walsh v. *Commonwealth* (224 Mass. 239, 112 N.E. 486, 487 (1916)).

State ex rel. Rankin v. *Wilbaux County Bank* (85 Mont. 532, 281 Pac. 341, 344 (1929)).

In re Sullivan's Estate (38 Ariz. 387, 300 Pac. 193, 195 (1931)).

Sigal v. *Wise* (114 Conn. 297, 158 Atl. 891, 894 (1932)).

Martin v. *Dyer-Kane Co.* (113 N.J. Eq. 88, 166 Atl. 227, 229 (1933)).

Norfolk & Portsmouth Bar Ass'n. v. *Drewry* (161 Va. 833, 172 S.E. 282, 285 (1934)).

Sutherland, Statutory Construction (4th ed., Sands, 1972), secs. 28.10, 28.11.

Tables.—Tables are provided at the end of this statement to show the disposition of laws affected by this codification.

SECTION-BY-SECTION SUMMARY

SECTION 1—EXPLANATION OF AMENDMENTS TO TITLE 31

Section 1 of the bill amends various sections of title 31, United States Code. A revision note for each paragraph of section 1 of the bill has been prepared to explain the amendments made by that paragraph.

SECTION 1(1)

Revised section	United States Code	Statutes at Large
504	No source	

The section is included to provide in subchapter I of chapter 5 of title 31 a complete list of the organizational units established by law that are in the Office of Management and Budget or are subject to the direction and supervision of the Director of the Office of Management and Budget.

SECTION 1(2): SECTION 1105

Revised section	United States Code	Statutes at large
1105(a)(25)	31 App.:11(k)(1)	June 10, 1921, ch. 18, 42 Stat. 20, § 201(k)(1); added Sept. 8, 1982, Pub. L. 97-255, § 3, 96 Stat. 815.

The words "The President shall include in the supporting detail accompanying each Budget" are omitted as being included in the introductory provisions of 31:1105(a). The words "submitted on or after January 1, 1983" are omitted as executed. The words "by the President" and "if any" are omitted as surplus.

SECTION 1(3): SECTION 1113

Revised section	United States Code	Statutes at Large
1113(a)(2)	31 App.:11(k)(2)	June 10, 1921, ch. 18, 42 Stat. 20, § 201(k)(2); added Sept. 8, 1982, Pub. L. 97-255, § 3, 96 Stat. 815.

SECTION 1(4)

This amends 31:1305(6) to conform to the Smithsonian Institution charter as amended by section 1 of the Act of June 22, 1982 (Pub. L. 97-199, 96 Stat. 121).

SECTION 1(5): SECTION 3102

Revised section	United States Code	Statutes at Large
3102(a)	31 App.:752 (2d par. less form of bonds).	Sept. 3, 1982, Pub. L. 97-248, § 289(c), 96 Stat. 572.

SECTION 1(6): SECTION 3105

Revised section	United States Code	Statutes at Large
3105(b)(1)	31 App.:757c(b)(1) (2d sentence).	Sept. 3, 1982, Pub. L. 97-248, § 289(a)(1)(A), (B), (D), 96 Stat. 571.
3105(b)(2)	31 App.:757c(b)(3)	
3105(b)(3)	31 App.:757c(b)(2)	

In subsection (b)(1), before clause (A), the words "and except as provided in paragraph (2) of this subsection" are added for clarity. In clause (B), the word "change" is substituted for "provide for increases and decreases in" to eliminate unnecessary words. The word "investment" is omitted the 2d time it appears as surplus.

SECTION 1(7): SECTION 3105

Revised section	United States Code	Statutes at Large
3105(c)	31 App.:757c(b)(1) (3d sentence).	Sept. 3, 1982, Pub. L. 97-248, § 289(a)(1)(C), 96 Stat. 571.

SECTION 1(8): SECTION 3106

Revised section	United States Code	Statutes at Large
3106(b)	31 App.:757c-2(b)(1) (2d sentence).	Sept. 3, 1982, Pub. L. 97-248, § 289(a)(2), 96 Stat. 571.

SECTION 1(9): SECTION 3121

Revised section	United States Code	Statutes at Large
3121(g)	31 App.:757c-5	Sept. 24, 1917, ch. 56, 40 Stat. 288, § 28; added Sept. 3, 1982, Pub. L. 97-248, § 310(a), 96 Stat. 595.

In subsection (g)(1), before clause (A), the words "Except as provided in paragraph (2)" and "(2) The term 'registration-required obligation' shall not include any obligation if" are omitted because of the restatement. Clause (C) is added for clarity.

In subsection (g)(2)(B)(i), the words "territories and" are added for consistency in the revised title and with other titles of the United States Code.

In subsection (g)(3), the words "(or of any agency or instrumentality thereof)" are omitted as included in "Government". The words "For purposes of subsection (a)" are omitted as surplus. The words "is deemed to be" are substituted for "shall be treated as" for consistency in the revised title and with other titles of the code.

In subsection (g)(4), the words "or chain of nominees" are omitted as included in "nominee" and because of 1:1.

SECTION 1(10): SECTION 3302

Revised section	United States Code	Statutes at Large
3302(b)	31 App.:484	Oct. 25, 1982, Pub. L. 97-365, § 13(a), 96 Stat. 1757.

The reference to "952(g)(2)" in 31 App.:484 is incorrect and should be "952(f)(2)".

SECTION 1(11)

This restates, as 31:3331(f), section 3646(h) of the Revised Statutes that was inadvertently omitted from the codification of title 31 by the Act of Sept. 13, 1982 (Pub. L. 97-258, 96 Stat. 1084). It provides authority for the Secretary of the Treasury to delegate duties and powers related to issuing substitute checks to heads of other agencies.

The words "terms and" are omitted as surplus. The words "duties and powers" are substituted for "power, authority, or discretion" for consistency in the revised title and with other titles of the United States Code. The words "in whole or in part" are omitted as surplus. The words "to such individuals

as he may designate within the Treasury Department" are omitted because of 31:321(b)(2). The word "agency" is coextensive with and substitued for "other department or agency of the Government or of any Federal Reserve bank" because of 31:101. The words "terms and conditions" are omitted as surplus.

SECTION 1(12): SECTION 3512

Revised section	United States Code	Statutes at Large
3512(b)	31 App.:66a(d)(1)	Sept. 12, 1950, ch. 946, 64 Stat. 832, § 113(d); added Sept. 8, 1982, Pub. L. 97-255, § 2, 96 Stat. 814.
3512(c)(1)	31 App.:66a(d)(2)	Sept. 12, 1950, ch. 946, 64 Stat. 832, § 113(b)(last sentence); added Sept. 8, 1982, Pub. L. 97-255, § 4, 96 Stat. 815.
3512(c)(2)(A)	31 App.:66a(d) (3), (4)	
3512(c)(2)(B)	31 App.:66a(b) (last sentence).	
3512(c)(3)	31 App.:66a(d)(5)	

In subsections (b)(1) and (c)(1)(A), the words "the requirements of" are omitted as surplus.

In subsection (b)(1), before clause (A), the words "the head of" are added for consistency in the revised title and with other titles of the United States Code. The word "provide" is omitted as surplus. In clause (B), the word "all" is substituted for "funds, property, and other" to eliminate unnecessary words.

In subsection (c)(1)(A), the words "the head of each executive agency shall follow" are substituted for "agencies" for clarity and consistency in the revised title and with other titles of the Code.

In subsection (c)(2), before clause (A), the words "beginning in" are substituted for "succeeding" because of the restatement. The words "on whether the systems of the agency comply with subsection (b) of this section" are substituted for 31 App.: 66a(d)(3)(A) to eliminate unnecessary words. In clause (B), the word "related" is omitted as surplus.

In subsection (c)(3)(A), the words "provision of" are omitted as surplus.

SECTION 1(13): SECTION 3701

Revised section	United States Code	Statutes at Large
3701(a)(1)	31 App.:954(e)(1)	July 19, 1966, Pub. L. 89-508, 80 Stat. 308, § 5(e); added Oct. 25, 1982, Pub. L. 97-365, § 10(2), 96 Stat. 1755.
3701(a)(2)	31 App.:952(e)(1) (last sentence).	July 19, 1966, Pub. L. 89-508, 80 Stat. 308, § 3(e)(1) (last sentence), (8); added Oct. 25, 1982, Pub. L. 97-365, § 11, 96 Stat. 1755, 1756.
3701(a)(3)	31 App.:952(d)(4)(A)	July 19, 1966, Pub. L. 89-508, 80 Stat. 308, § 3(d)(4); added Oct. 25, 1982, Pub. L. 97-365, § 3, 96 Stat. 1750.
3701(a) (4), (5)	31: 3701 (1), (2)	July 19, 1966, Pub. L. 89-508, 80 Stat. 308, § 3(g); added Oct. 25, 1982, Pub. L. 97-365, § 13, 96 Stat. 1758.
3701(a)(6)	31 App.:952(d)(4) (B), (C).	
3701(a)(7)	31:370(3)	
3701(b)	31 App.:952(g)	
3701(c)	31 App.: 952(e)(8); 31 App.:954(e)(2).	Oct. 25, 1982, Pub. L. 97-365, § 8(e) (related to §§ 3, 10(2)-12, 13(b)), 96 Stat. 1754.
3701(d)	31 App.:954 (note) (related to 31 App.:952(d)-(f), 954, 955).	

In subsections (a)(1), (b), and (c), the word "Government" is added for consistency in the revised title and with other titles of the United States Code.

In subsection (a)(3)(B), before clause (i), the word "money" is substituted for "monetary fees, dues" to eliminate unnecessary words. The words "engaged in whole or in part in the practice of" are omitted as surplus. In clause (i), the words "credit or other" and "(as defined in clause (i) of this subparagraph)" are omitted as surplus.

In subsection (a)(6), 31 App.:952(d)(4)(C) is omitted as unnecessary.

In subsection (b), the words "all . . . from fees, duties, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, taxes, forfeitures, and other sources" are omitted as surplus.

In subsection (c), the words "unit of general" are added for consistency in the revised title.

In subsection (d), the word "arising" is omitted as surplus.

SECTION 1(14)

This amends 31:3702(b)(2) by inserting a word inadvertently omitted in the codification of title 31.

SECTION 1(15): SECTION 3711

Revised section	United States Code	Statutes at Large
3711(f)(1)	31 App.:952(d)(1)	July 19, 1966, Pub. L. 89-508, 80 Stat. 308, § 3(d)(1)-(3); added Oct. 25, 1982, Pub. L. 97-365, § 3, 96 Stat. 1749.
3711(f)(2)	31 App.:952(d)(2)	
3711(f)(3)	31 App.:952(d)(3)	

In subsection (f)(1), before clause (A), the word "Government" is substituted for "United States" for consistency in the revised title and with other titles of the United States Code. The words "subsection (a) of this section, or under any other" are omitted as surplus. The word "law" is substituted for "statutory authority" to eliminate unnecessary words. In clause (A), the words "for the system of records" are omitted as surplus. In clause (C)(iii), the word "intended" is omitted as surplus. In clause (E)(ii), the words "as appropriate" and "any or all" are omitted as surplus. In clause (E)(iii), the words "all laws of the United States" are coextensive with and substituted for "the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and any other Federal law".

SECTION 1(16): SECTION 3716

Revised section	United States Code	Statutes at Large
3716(a)	31 App.:954(a) (words before last comma), (c).	July 19, 1966, Pub. L. 89-508, 80 Stat. 308, § 5(a)-(d); added Oct. 25, 1982, Pub. L. 97-365, § 10(2), 96 Stat. 1754.
3716(b)	31 App.:954(b)	
3716(c)(1)	31 App.:954(a) (words after last comma).	
3716(c)(2)	31 App.:954(d)	

In the subchapter, the words "or his designee" are omitted as unnecessary.

In subsection (a)(1) the words "head of the" are added for consistency in the revised title and with other titles of the United States Code.

In subsection (b)(1) the word "Government" is added for consistency in the revised title and with other titles of the Code.

In subsection (b)(3) the word "civil" is added for consistency in the revised title and with other titles of the Code.

In subsection (c)(2) the word "either" is omitted as surplus.

SECTION 3717

Revised section	United States Code	Statutes at Large
3717(a)	31 App.:952(e)(1) (1st-3d sentences).	July 19, 1966, Pub. L. 89-508, 80 Stat. 308, § 3(e)(1)(1st-3d sentences), (2)-(7); added Oct. 25, 1982, Pub. L. 97-365, § 11, 96 Stat. 1755.
3717 (b), (c)	31 App.:952(e)(5)	
3717(d)	31 App.:952(e)(6)	
3717(e)	31 App.:952(e)(2)	
3717(f)	31 App.:952(e)(7)	
3717(g)(1)	31 App.:952(e)(3) (1st sentence).	
3717(g)(2)	31 App.:952(e)(4)	
3717(h)	31 App.:952(e)(3) (2d, last sentences).	

In subsection (a), the words "percentage point" and "percentage points" are substituted for "per centum" for clarity.

In subsections (a)(1) and (e), the words "Except as provided in paragraph (3)" are omitted as surplus.

In subsection (a)(2), the words "for a calendar quarter" are substituted for "quarterly", and the words "prior calendar quarter" are substituted for "that quarter", for clarity.

In subsection (b), before clause (1), the words "Subject to paragraph (6)" and "except as provided in subparagraph (B)" are omitted as surplus. In clause (2), the words "on the claim" are omitted as surplus. The words "if notice is first mailed after October 24, 1982" are added for clarity.

In subsection (c), the words "on a claim" are omitted as surplus.

In subsection (g)(1), the words "applicable" and "either" are omitted as surplus. The word "assessing" is added for clarity. The words "that apply to claims involved" are omitted as surplus.

In subsection (h), the words "under this section" are added for clarity.

SECTION 3718

Revised section	United States Code	Statutes at Large
3718(a)	31 App.:952(f)(1) (1st sentence words after 2d comma, last sentence).	July 19, 1966, Pub. L. 89-508, 80 Stat. 308, § 3(f); added Oct. 25, 1982, Pub. L. 97-365, § 13(b), 96 Stat. 1757.
3718(b)	31 App.:952(f)(2)	
3718(c)	31 App.:952(f)(3)	
3718(d)	31 App.:952(f)(1)(1st sentence words before 2d comma).	

In subsections (a) and (b), the word "Government" is added for consistency in the revised title and with other titles of the United States Code.

In subsection (a), before clause (1), the words "terms and" are omitted as surplus. The words "or organization" are omitted because of 1:1. In clause (1), the words "bring a civil action" are substituted for "initiate legal action" for consistency in the revised title and with other titles of the Code. In clause (2)(B), the words "including the Fair

Debt Collection Practices Act (15 U.S.C. 1692 et seq.)" are omitted as being included in "laws and regulations of the United States Government".

In subsection (b), the words "the head of an agency" are omitted as surplus.

In subsection (c), the word "advance" is omitted as surplus.

In subsection (d), the words "Notwithstanding the provisions of any other law governing the collection of claims owed the United States" and "unpaid or underpaid" are omitted as surplus.

SECTION 3719

Revised section	United States Code	Statutes at Large
3719(a)	31 App.:955(a)	Oct. 25, 1982, Pub. L. 97-365, § 12, 96 Stat. 1756.
3719(b)	31 App.:955(b)	

In subsection (a), before clause (1), the words "of the United States" are omitted as surplus. The words "the head of" are added for consistency in the revised title and with other titles of the United States Code. In clause (1)(C), the words "uncollectible loans and accounts receivable" are added for clarity. In clause (1)(F), the words "Attorney General" are substituted for "Department of Justice" for consistency in the revised title and with other titles of the Code, including 28:503, 509.

In subsection (b), the word "submitted" is substituted for "received by each agency" for clarity.

SECTION 1(17): SECTION 3721

Revised section	United States Code	Statutes at Large
3721(b)	31 App.:241 (a)(1), (b)(1).	July 28, 1982, Pub. L. 97-226, § 1(a), 96 Stat. 245.

SECTION 1(18)

CHAPTER 39—PROMPT PAYMENT

Sec.
3901. Definitions and application.
3902. Interest penalties.
3903. Regulations.
3904. Limitations on discount payments.
3905. Reports.
3906. Relationship to other laws.

SECTION 3901

Revised section	United States Code	Statutes at Large
3901(a)	31 App.:1805	May 21, 1982, Pub. L. 97-177, §§ 6, 7(c), 96 Stat. 87, 88.
3901(b)	31 App.:1806	

In the chapter, the words "the head of" are added for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (a)(1), the word "Federal" is omitted as unnecessary and for consistency in the revised title and with other titles of the Code. The words "for this purpose" are omitted because of the restatement. The words "the purpose of" and "or more" are omitted as surplus.

In subsection (a)(5), the words "deemed to be" are substituted for "considered" for consistency in the revised title and with other titles of the Code.

In subsection (a)(6), the words "real or personal" are omitted as surplus. The words "deemed to be" are added for consistency in the revised title and with other titles of the Code.

In subsection (b), the words "the authority of" are omitted as surplus.

SECTION 3902

Revised section	United States Code	Statutes at Large
3902(a)	31 App.:1801 (a)(1), (b)(1) (2d, last sentences).	May 21, 1982, Pub. L. 97-177, § 2(a)(1), (b)-(d), 96 Stat. 85.
3902(b)	31 App.:1801(b)(1) (1st sentence).	
3902(c)	31 App.:1801(b)(2)	
3902(d)	31 App.:1801(c)	
3902(e)	31 App.:1801(d)	

In subsection (a), the words "under section 3903 of this title" are substituted for "by the Director of the Office of Management and Budget" because of the restatement. The words "in accordance with this section" are omitted as surplus.

In subsection (b), before clause (1), the words "on amounts due to a business concern under this chapter . . . to the business concern", "of the amount due", and "complete delivered . . . of property or service concerned" are omitted as surplus.

In subsection (c), the words "which remains" are omitted as surplus.

In subsection (e), the words "terms and" and "non-Federal" are omitted as surplus. The word "Government" is added for consistency in the revised title and with other titles of the United States Code.

SECTION 3903

Revised section	United States Code	Statutes at Large
3903	31 App.:1801(a)(2)	May 21, 1982, Pub. L. 97-177, § 2(a)(2), 96 Stat. 85.

In the section, before clause (1), the words "The Director of the Office of Management and Budget shall prescribe regulations to carry out section 3902 of this title" are added because of the restatement. In clause (1)(A), the words "the terms of" are omitted as surplus. In clause (1)(B), the words "of the payment" are omitted as surplus.

SECTION 3904

Revised section	United States Code	Statutes at Large
3904	31 App.:1802	May 21, 1982, Pub. L. 97-177, § 3, 96 Stat. 86.

The word "otherwise" is omitted as surplus. The words "may pay the discounted amount" are substituted for "may make payment in an amount equal to the discounted price" to eliminate unnecessary words. The words "on such unpaid amount" and "the regulations prescribed pursuant to" are omitted as surplus. The words "specified in the contract that the discounted amount may be paid" are substituted for "of the specified period of time described in subsection (a)" for clarity.

SECTION 3905

Revised section	United States Code	Statutes at Large
3905(a)	31 App.:1804 (a), (b)	May 21, 1982, Pub. L. 97-177, § 3, 96 Stat. 87.
3905(b)	31 App.:1804(c)	

In subsection (a), the word "detailed" is omitted as surplus.

In subsection (b), the words "the requirements of" are omitted as surplus.

SECTION 3906

Revised section	United States Code	Statutes at Large
3906(a)	31 App.:1803(a)(1)	May 21, 1982, Pub. L. 97-177, § 3, 96 Stat. 87.
3906(b)	31 App.:1803(a) (2), (3)	
3906(c)	31 App.:1803(b)	

In the section, the words "be construed to" are omitted as surplus.

In subsection (a), the words "not paid under this chapter" are substituted for "which a Federal agency has failed to pay in accordance with the requirements of section 2 or 3 of this chapter" to eliminate unnecessary words.

In subsection (b)(2), the word "accruing" is added for clarity. The word "both" is omitted as surplus.

In subsection (c), the words "with respect to disputes concerning discounts", "by the required payment date", and "other allegations concerning" are omitted as surplus.

SECTION 1(19)

This restores to 31:5103 the reference to public charges, taxes, and dues because they are not considered to be debts. See, Hagar v. Reclamation District No. 108, 111 U.S. 701, 706 (1884).

SECTION 1(20)

This amends 31:5112(f)(1) to make technical and conforming changes.

SECTION 1(21): SECTION 5132

Revised section	United States Code	Statutes at Large
5132(a)(2)	31 App.:369	Sept. 8, 1982, Pub. L. 97-253, § 202, 96 Stat. 790.

SECTION 1(22)

This restates 31:5154 to clarify the intent of the section. See 26 Cong. Rec. 7152, 7170 (1894).

SECTION 1(23): SECTION 6102a

Revised section	United States Code	Statutes at Large
6102a	31 App.:6102 (note)	Oct. 15, 1982, Pub. L. 97-326, § 8, 96 Stat. 1609.

In subsection (a)(1), the words "operate and" are omitted as surplus. The words "United States Government" are substituted for "Federal" for consistency in the revised title and with other titles of the United States Code. The words "information system" are substituted for "data system" for consistency with 31:6102. The words "by the Director" are omitted as surplus.

In subsection (b)(1), the words "the head of another executive agency" are substituted for "any authority of the executive branch of the Federal Government" for consistency in the revised title and with other titles of the Code.

In subsection (b)(2), the words "the head of" are added for consistency in the revised title and with other titles of the Code.

SECTION 1(24)

This amemds 31:6501(1)(B) to clarify the section as enacted by the Act of Sept. 13, 1982 (Pub. L. 97-258, 96 Stat. 1005).

SECTION 1(25): SECTION 6709

Revised section	United States Code	Statutes at Large
6709(a)(5)	31 App.:1228(e)(3) (A), (B) (words before 2d comma), (C).	Oct. 20, 1972, Pub. L. 92-512, 86 Stat. 919, § 109(e))(3) (A), (B) (words before 2d comma), (C); added Sept. 3, 1982, Pub. L. 97-248, § 287(a), 96 Stat. 570.

The words "The provisions of subparagraph (A) shall be given effect" are omitted because of the restatement. The word "general" is added for consistency in the revised title. The words "each of" are added for clarity. The text of 31 App.:1228(e)(3)(C) is omitted as executed.

SECTION 1(26)

This amends 31:9101(2) because the National Consumer Cooperative Bank is no longer a mixed-ownership Government corporation. Section 396(h)(1) and (i) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, 95 Stat. 440) provided that the Bank would cease being a mixed-ownership Government corporation on the day after the Final Government Equity Redemption Date. Section 501(36) of the Act of December 23, 1981 (Pub. L. 97-101, 95 Stat. 1440), provided that the Redemption Date was December 31, 1981.

SECTION 1(27)

This amends 31:9107(c)(3) and 9108(d)(2) because the National Consumer Cooperative Bank is no longer a mixed-ownership Government corporation. Section 396(h) (2) and (3) and (i) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, 95 Stat. 440) provided that references to the Bank in sections 302 and 303(d) (2d sentence) of the Government Corporation Control Act would be deleted on the day after the Final Government Equity Redemption Date. Section 501(36) of the Act of December 23, 1981 (Pub. L. 97-101, 95 Stat. 1440), provided that the Redemption Date was December 31, 1981.

SECTION 2—CONFORMING AMENDMENTS

Section 2(a)-(d)

Section 2(a)-(d) of the bill makes technical and conforming changes to various sections of titles 5, 18, and 28, United States Code, and to various sections of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.).

Section 2(e)(1)

Section 2(e)(1) of the bill makes a technical and conforming change to section 210(b)(2)(A) of title 38, United States Code.

Section 2(e)(2)

Section 2(e)(2) of the bill makes technical and conforming changes to section 1823(c) of title 38, United States Code.

Section 2(e)(3)

Section 2(e)(3) of the bill makes a technical and conforming change to section 4207 of title 38, United States Code, to clarify the amendment made by section 4(89) of the Act of October 12, 1982 (Pub. L. 97-295, 96 State. 1312).

Section 2(e)(4)

Section 2(e)(4) of the bill makes a technical and conforming change to sections 5010(a)(1) and 5011(f) of title 38, United States Code.

Section 2(f)

Section 2(f) of the bill makes technical and conforming changes to section 2007 of title 39, United States Code.

Section 2(g)

Section 2(g) of the bill is necessary because of 31 App.:241(note), as enacted by section 1(b) of the Act of July 28, 1982 (Pub. L. 97-226, 96 Stat. 245).

Section 2(h)

Section 2(h) of the bill is necessary because of 31 App.:1228(e)(3)(B)(words after 2d comma), as enacted by section 287 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, 96 Stat. 570).

Section 2(i)

Section 2(i) of the bill provides an effecitve date of September 13, 1982 (the date of enactment of the codification of title 31, United States Code), for provisions that make technical and clerical corrections to that codification.

SECTION 3—LEGISLATIVE PURPOSE AND CONSTRUCTION

Section 3 of the bill contains a statement of the legislative effect in enacting sections 1 and 2, savings provisions, and provisions to assist in interpreting and applying the provisions of law enacted by the bill.

SECTION 4—REPEALS

Section 4 of the bill relates to the repeal of those statutes that are codified and reenacted by the bill and other statues that are executed, superseded, obsolete, or otherwise of no present legal effect.

Subsection (a) provides that a repeal of a law may not be construed as a legislative inference that the provision was or was not in effect before its repeal.

Subsection (b) contains the schedule of laws to be repealed. It also preserves the rights, duties, and penalties incurred, and proceedings begun, before the date of enactment of the bill.

TABLE 1—MASTER DISPOSITION TABLE

This table shows the disposition of all laws affecting the restatement of title 31, United States Code, that are repealed by this bill and reenacted as part of title 31. The table is in 2 parts. Table 1A shows the disposition according to United States Code citation. Table 1B shows the disposition according to Statutes at Large citation. When a law is restated in the bill, the citation to the provision of the restatement is shown. When a law listed in the table is not restated in section 1, the table contains a reference to table 2 or 3 or another section of the bill. The table or section refereed to explains the reaons why the law is omitted from the restatement in section 1.

TABLE 1A.—UNITED STATES CODE

United States Code, title, and section	United States Code revised	
	Title	Section
31 App.:		
11(k)(1)	31	1105
11(k)(2)	31	1113
66a(b) (last sentence), (d)	31	3512
757c-5	31	3121
952(d) (1)-(3)	31	3711
952(d)(4)	31	3701
952(e)(1) (1st-3d sentences)	31	3717
952(e)(1) (last sentence)	31	3701
952(e)(2)-(7)	31	3717
952(e)(8)	31	3701
952(f)	31	3718
954(a)-(d)	31	3716
954(e)	31	3701
955	31	3719
1228(e)(3)	31	6709
1801(a)(1)	31	3902
1801(a)(2)	31	3903
1801(b)-(d)	31	3902
1802	31	3904
1803	31	3906
1804	31	3905
1805, 1806	31	3901

TABLE 1B.—STATUTES AT LARGE

Statutes at Large					United States Code Revised		Table
Date	Chapter or Public Law	Section	Volume	Page	Title	Section	
1902: June 28	1302	8	32	484			2B
1917: Sept. 24	56	28			31	3121	
1921: June 10	18	201(k)(1)			31	1105	
		201(k)(2)			31	1113	
1922: May 20	104	1 (par. under heading "General Accounting Office.")	42	444			2B
1950: Sept. 12	946	113(b) (last sentence), (d)			31	3512	
1966: July 19	89-508	3(d) (1)-(3)			31	3711	
		3(d)(4)			31	3701	
		3(e)(1) (1st-3d sentences)			31	3717	
		3(e)(1) (last sentence)			31	3701	
		3(e) (2)-(7)			31	3717	
		3(e)(8)			31	3701	
		3(f)			31	3718	
		3(g)			31	3701	
		5(a)-(d)			31	3716	
		5(e)			31	3701	
1972: Oct. 20	92-512	109(e)(3) (A), (B) (words before 2d comma)			31	6709	
		109(e)(3)(B) (words after 2d comma)				(1)	
		109(e)(3)(C)			31	6709	

TABLE 1B.—STATUTES AT LARGE—Continued

Date	Chapter or Public Law	Section	Statutes at Large Volume	Statutes at Large Page	United States Code Revised Title	United States Code Revised Section	Table
1982:							
May 21	97-177	1	96	85			2B
		2(a)(1)	96	85	31	3902	
		2(a)(2)	96	85	31	3903	
		2(b)-(d)	96	85	31	3902	
		3	96	86	31	3904	
		4	96	87	31	3906	
		5	96	87	31	3905	
		6	96	87	31	3901	
		7 (a), (b)	96	88			2B
		7(c)	96	88	31	3901	
July 28	97-226	1(a)	96	245	31	3721	
		1(b)	96	245		(2)	
		1(c), 2	96	245			2B
Sept. 3	97-248	287(a) "Sec. 109(e)(3) (A), (B) (words before 2d comma), (C)"	96	570	31	6709	
		287(a) "Sec. 109(e)(3)(B) (words after 2d comma)	96	570		(1)	
		287(b)	96	570			2B
		289(a)(1)	96	571	31	3105	
		289(a)(2)	96	571	31	3106	
		289(b)	96	571			3B
		289(c)	96	572	31	3102	
		310(a)	96	595	31	3121	
Sept. 8	97-253	202	96	790	31	5132	
	97-255	1	96	814			2B
		2	96	814	31	3512	
		3 "Sec. 201(k)(1)"	96	815	31	1105	
		3 "Sec. 201(k)(2)"	96	815	31	1113	
		4	96	815	31	3512	
Oct. 15	97-326	8	96	1609	31	6102a	
Oct. 25	97-365	3 "Sec. 3(d) (1)-(3)"	96	1749	31	3711	
		3 "Sec. 3(d)(4)"	96	1750	31	3701	
		8(e) (related to §§ 3, 10(2)-12, 13(b))	96	1754	31	3701	
		10(1)	96	1754			2B
		10(2) "Sec. 5(a)-(d)"	96	1754	31	3716	
		10(2) "Sec. 5(e)"	96	1755	31	3701	
		11 "Sec. 3(e)(1) (1st-3d sentences)	96	1755	31	3717	
		11 "Sec. 3(e)(1) (last sentence)	96	1755	31	3701	
		11 "Sec. 3(e) (2)-(7)	96	1755	31	3717	
		11 "Sec. 3(e)(8)	96	1756	31	3701	
		12	96	1756	31	3719	
		13(a)	96	1757	31	3302	
		13(b) "3(f)"	96	1757	31	3718	
		13(b) "3(g)"	96	1758	31	3701	

[1] See sec. 2(h) of bill. [2] See sec. 2(g) of bill.

TABLE 2.—LAWS OMITTED AND REPEALED

This table shows the laws omitted because of the restatement of title 31, United States Code, and repealed by the bill. The table lists the laws according to Statutes at Large citation.

TABLE 2.—STATUTES AT LARGE

Date	Chapter or Public Law	Section	Statutes at Large Volume	Statutes at Large Page	United States Code Title	United States Code Section	Explanation
1902: June 28	1302	8	32	484			Obsolete. Authorized the Secretary of the Treasury to issue bonds to defray expenditures authorized by this Act and to dispose of the bonds.
1922: May 20	104	1 (par. under heading "General Accounting Office.").	42	444			Executed. Provided that the Comptroller General audit the financial transactions of the United States Shipping Board Emergency Fleet Corporation.
1982:							
May 21	97-177	1	96	85	31 App.	1801 (note)	Obsolete. References to short titles are no longer necessary because of the restatement.
		7(a)	96	88	31 App.	1801 (note)	Executed. Provided that this Act applied to the acquisition of property or services on or after the beginning of the first calendar quarter beginning more than 90 days after May 21, 1982.
		7(b)	96	88	31 App.	1801 (note)	Executed. Provided that the provisions of this Act requiring promulgation of regulations were effective on May 21, 1982, and that the regulations were to be promulgated not later than 90 days after May 21, 1982.
July 28	97-226	1(c)	96	245	31 App.	241	Obsolete. Amended section 3(a)(1) and (3) of the Military Personnel and Civilian Employees' Claims Act of 1964 (Pub. L. 88-558, 78 Stat. 767). The Act was repealed by section 5(b) of the Act of Sept. 13, 1982 (Pub. L. 97-258, 96 Stat. 1080).
		2	96	245	31 App.	241 (note)	Executed. Provided that no funds could be obligated or expended pursuant to the amendments made by this Act before Oct. 1, 1982.
Sept. 3	97-248	287(b)	96	570	31 App.	1228 (note)	Executed. Provided that the amendment made by this section was effective after Sept. 30, 1982.
Sept. 8	97-255	1	96	255	31 App.	65 (note)	Obsolete. References to short titles are no longer necessary because of the restatement.
Oct. 25	97-365	10(1)	96	1754	31 App.	951 (note)	Executed. Redesignated sec. 5 of the Federal Claims Collection Act of 1966 as sec. 6.

TABLE 3.—LAWS OMITTED BUT NOT REPEALED

This table shows the laws omitted because of the revision of title 31, United States Code, as not being permanent and general. The table lists the laws according to Statutes at Large citation.

TABLE 3.—STATUTES AT LARGE

Date	Chapter or Public Law	Section	Statutes at Large Volume	Statutes at Large Page	United States Code Title	United States Code Section	Explanation
1982: Sept. 3	97-248	289(b)	96	571	31 App.	757c (note)	Limited interest. Provided that for a savings bond issued before the 30th day after Sept. 3, 1982, for purposes of secs. 22 and 22A of the Second Liberty Bond Act, the minimum yield for the period held is the scheduled investment yield for the period in effect on the 30th day.

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

Mr. Speaker, the legislation before us is purely technical. It was recommended to us by the Law Revision Counsel. It makes no substantive change as far as the law is concerned. It is technical, as I say.

I strongly support it and urge my colleagues to support it.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. HUGHES) that the House suspend the rules and pass the bill, H.R. 7378.

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

A motion to reconsider was laid on the table.

GENERAL LEAVE

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

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

There was no objection.

MISCELLANEOUS LAW REVISIONS

Mr. HUGHES. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6993) to revise, codify, and enact without substantive change certain general and permanent laws related to transportation as subtitle I and chapter 31 of subtitle II of title 49, United States Code, "Transportation," as amended.

The Clerk read as follows:

H.R. 6993

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SUBTITLE I AND CHAPTER 31 OF SUBTITLE II OF TITLE 49, UNITED STATES CODE

SECTION 1. (a) Certain general and permanent laws of the United States, related to transportation, are revised, codified, and enacted by subsection (b) of this section without substantive change as subtitle I and chapter 31 of subtitle II of title 49, United States Code, "Transportation". Those laws may be cited as "49 U.S.C. § ———".

(b) Title 49, United States Code, is amended by striking out the table of subtitles at the beginning of the title and substituting the following new table of subtitles and subtitles I and II:

TITLE 49—TRANSPORTATION

SUBTITLE I—DEPARTMENT OF TRANSPORTATION

CHAPTER 1—ORGANIZATION

§ 101. Purpose

(a) The national objectives of general welfare, economic growth and stability, and security of the United States require the development of transportation policies and programs that contribute to providing fast, safe, efficient, and convenient transportation at the lowest cost consistent with those and other national objectives, including the efficient use and conservation of the resources of the United States.

(b) A Department of Transportation is necessary in the public interest and to—

(1) ensure the coordinated and effective administration of the transportation programs of the United States Government;

(2) make easier the development and improvement of coordinated transportation service to be provided by private enterprise to the greatest extent feasible;

(3) encourage cooperation of Federal, State, and local governments, carriers, labor, and other interested persons to achieve transportation objectives;

(4) stimulate technological advances in transportation;

(5) provide general leadership in identifying and solving transportation problems; and

(6) develop and recommend to the President and Congress transportation policies and programs to achieve transportation objectives considering the needs of the public, users, carriers, industry, labor, and national defense.

§ 102. Department of Transportation

(a) The Department of Transportation is an executive department of the United States Government at the seat of Government.

(b) The head of the Department is the Secretary of Transportation. The Secretary is appointed by the President, by and with the advice and consent of the Senate.

(c) The Department has a Deputy Secretary of Transportation appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary—

(1) shall carry out duties and powers prescribed by the Secretary; and

(2) acts for the Secretary when the Secretary is absent or unable to serve or when the office of Secretary is vacant.

(d) The Department has 4 Assistant Secretaries and a General Counsel appointed by the President, by and with the advice and consent of the Senate. The Department also has an Assistant Secretary of Transportation for Administration appointed in the competitive service by the Secretary, with the approval of the President. They shall carry out duties and powers prescribed by the Secretary. An Assistant Secretary or the General Counsel, in the order prescribed by the Secretary, acts for the Secretary when the Secretary and the Deputy Secretary are absent or unable to serve, or when the offices of the Secretary and Deputy Secretary are vacant.

(e) The Department shall have a seal that shall be judicially recognized.

§ 103. Federal Railroad Administration

(a) The Federal Railroad Administration is an administration in the Department of Transportation. To carry out all railroad safety laws of the United States, the Administration is divided on a geographical basis into at least 8 safety offices. The Secretary of Transportation is responsible for all acts taken under those laws and for ensuring that the laws are uniformly administered and enforced among the safety offices.

(b) The head of the Administration is the Administrator who is appointed by the President, by and with the advice and consent of the Senate. The Administrator reports directly to the Secretary.

(c) The Administrator shall carry out—

(1) duties and powers related to railroad safety vested in the Secretary by section 6(e)(1), (2), and (6)(A) of the Department of Transportation Act (49 U.S.C. 1655(e)(1), (2), and (6)(A)); and

(2) additional duties and powers prescribed by the Secretary.

(d) A duty or power specified by subsection (c)(1) of this section may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5. A decision of the Administrator in carrying out those duties or powers and involving notice and hearing required by law is administratively final.

§ 104. Federal Highway Administration

(a) The Federal Highway Administration is an administration in the Department of Transportation.

(b)(1) The head of the Administration is the Admininstrator who is appointed by the President, by and with the advice and consent of the Senate. The Administrator reports directly to the Secretary of Transportation.

(2) The Administration has a Deputy Federal Highway Administrator who is appointed by the Secretary, with the approval of the President. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

(3) The Administration has an Assistant Federal Highway Administrator appointed in the competitive service by the Secretary, with the approval of the President. The Assistant Administrator is the chief engineer of the Administration. The Assistant Administrator shall carry out duties and powers prescribed by the Administrator.

(c) The Administrator shall carry out—

(1) duties and powers vested in the Secretary by chapter 4 of title 23 for highway safety programs, research, and development related to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian safety;

(2) duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 31 of this title; and

(3) additional duties and powers prescribed by the Secretary.

(d) A duty or power specified by subsection (c)(2) of this section may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5. A decision of the Administrator in carrying out those duties or powers and involving notice and hearing required by law is administratively final.

§ 105. National Highway Traffic Safety Administration

(a) The National Highway Traffic Safety Administration is an administration in the Department of Transportation.

(b) The head of the Administration is the Administrator who is appointed by the President, by and with the advice and consent of the Senate. The Administration has a Deputy Admininstrator who is appointed by the Secretary of Transportation, with the approval of the President.

(c) The Administrator shall carry out—

(1) duties and powers vested in the Secretary by chapter 4 of title 23, except those related to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian safety; and

(2) additional duties and powers prescribed by the Secretary.

(d) The Secretary may carry out the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.) through the Administrator.

(e) The Adminstrator shall consult with the Federal Highway Administrator on all matters related to the design, construction, maintenance, and operation of highways.

§ 106. Federal Aviation Administration

(a) The Federal Aviation Administration is an administration in the Department of Transportation.

(b) The head of the Administration is the Administrator. The Administration has a Deputy Administrator. They are appointed by the President, by and with the advice and consent of the Senate. When making an appointment, the President shall consider the fitness of the individual to carry out efficiently the duties and powers of the office. The Administrator reports directly to the Secretary of Transportation.

(c) The Administrator must—

(1) be a citizen of the United States;

(2) be a civilian; and

(3) have experience in a field directly related to aviation.

(d)(1) The Deputy Administrator must be a citizen of the United States and have experience in a field directly related to aviation. An officer on active duty in an armed force may be appointed as Deputy Administrator. However, if the Administrator is a former regular officer of an armed force, the Deputy Administrator may not be an officer on active duty in an armed force, a retired regular officer of an armed force, or a former regular officer of an armed force.

(2) An officer on active duty or a retired officer serving as Deputy Administrator is entitled to hold a rank and grade not lower than that held when appointed as Deputy Administrator. The Deputy Administrator may elect to receive (A) the pay provided by law for the Deputy Administrator, or (B) the pay and allowances or the retired pay of the military grade held. If the Deputy Administrator elects to receive the military pay and allowances or retired pay, the Administration shall reimburse the appropriate military department from funds available for the expenses of the Administration.

(3) The appointment and service of a member of the armed forces as a Deputy Administrator does not affect the status, office, rank, or grade held by that member, or a right or benefit arising from the status, office, rank, or grade. The Secretary of a military department does not control the member when the member is carrying out duties and powers of the Deputy Administrator.

(e) The Administrator and the Deputy Administrator may not have a pecuniary interest in, or own stock in or bonds of, an aeronautical enterprise, or engage in another business, vocation, or employment.

(f) The Secretary shall carry out the duties and powers, and controls the personnel and activities, of the Administration. The Secretary may not submit decisions for the approval of, nor be bound by the decisions or recommendations of, a committee, board, or organization established by executive order.

(g) The Administrator shall carry out—

(1) duties and powers of the Secretary related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous materials) and vested in the Secretary by section 308(b) of this title and sections 306-309, 312-314, 1101, 1105, and 1111 and titles VI, VII, IX, and XII of the Federal Aviation Act of 1958 (49 U.S.C. 1347-1350, 1353-1355, 1421 et seq., 1441 et seq., 1471 et seq., 1501, 1505, 1511, and 1521 et seq.); and

(2) additional duties and powers prescribed by the Secretary.

(h) Section 103 of the Federal Aviation Act of 1958 (49 U.S.C. 1303) applies to duties and powers specified in subsection (g)(1) of this section. Any of those duties and powers may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5. A decision of the Administrator in carrying out those duties or powers is administratively final.

(i) The Deputy Administrator shall carry out duties and powers prescribed by the Administrator. The Deputy Administrator acts for the Administrator when the Administrator is absent or unable to serve, or when the office of the Administrator is vacant.

§ 107. Urban Mass Transportation Administration

(a) The Urban Mass Transportation Administration is an administration in the Department of Transportation.

(b) The head of the Administration is the Administrator who is appointed by the President, by and with the advice and consent of the Senate. The Administrator reports directly to the Secretary of Transportation.

(c) The Administrator shall carry out duties and powers prescribed by the Secretary.

§ 108. Coast Guard.

(a) Except when operating as a service in the Navy, the Coast Guard is a part of the Department of Transportation. The Secretary of Transportation exercises all duties and powers related to the Coast Guard vested in the Secretary of the Treasury, and other officers and offices of the Department of Treasury, immediately before April 1, 1967.

(b) The Commandant is the Chief of the Coast Guard. In addition to carrying out the duties and powers specified by law, the Commandant shall carry out duties and powers prescribed by the Secretary of Transportation. The Commandant reports directly to the Secretary.

§ 109. Maritime Administration

(a) The Maritime Administration transferred by section 2 of the Maritime Act of 1981 (46 U.S.C. 1601) is an administration in the Department of Transportation.

(b) The Administrator of the Administration appointed under section 4 of the Maritime Act of 1981 (46 U.S.C. 1603) reports directly to the Secretary of Transportation.

§ 110. Saint Lawrence Seaway Development Corporation

(a) The St. Lawrence Seaway Development Corporation established under section 1 of the Act of May 13, 1954 (33 U.S.C. 981), is subject to the direction and supervision of the Secretary of Transportation.

(b) The Administrator of the Corporation appointed under section 2 of the Act of May 13, 1954 (33 U.S.C. 982), reports directly to the Secretary.

CHAPTER 3—GENERAL DUTIES AND POWERS

SUBCHAPTER I—DUTIES OF THE SECRETARY OF TRANSPORTATION

SUBCHAPTER II—ADMINISTRATIVE

SUBCHAPTER I—DUTIES OF THE SECRETARY OF TRANSPORTATION

§ 301. Leadership, consultation, and cooperation

The Secretary of Transportation shall—

(1) under the direction of the President, exercise leadership in transportation matters, including those matters affecting national defense and those matters involving national or regional emergencies;

(2) provide leadership in the development of transportation policies and programs, and make recommendations to the President and Congress for their consideration and implementation;

(3) promote and undertake the development, collection, and dissemination of technological, statistical, economic, and other information relevant to domestic and international transportation;

(4) consult and cooperate with the Secretary of Labor in compiling information regarding the status of labor-management contracts and other labor-management problems and in promoting industrial harmony and stable employment conditions in all modes of transportation;

(5) promote and undertake research and development related to transportation, including noise abatement, with particular attention to aircraft noise;

(6) consult with the heads of other departments, agencies, and instrumentalities of the United States Government on the transportation requirements of the Government, including encouraging them to establish and observe policies consistent with maintaining a coordinated transportation system in procuring transportation or in operating their own transport services; and

(7) consult and cooperate with State and local governments, carriers, labor, and other interested persons, including, when appropriate, holding informal public hearings.

§ 302. Policy standards for transportation

(a) The Secretary of Transportation is governed by the transportation policy of sections 10101 and 10101a of this title in addition to other laws.

(b) Subtitle I and chapter 31 of subtitle II of this title and the Department of Transportation Act (49 U.S.C. 1651 et seq.) do not authorize, without appropriate action by Congress, the adoption, revision, or implementation of a transportation policy or investment standards or criteria.

(c) The Secretary shall consider the needs—

(1) for effectiveness and safety in transportation systems; and

(2) of national defense.

§ 303. Policy on lands, wildlife and waterfowl refuges, and historic sites

(a) It is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

(b) The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities.

(c) The Secretary may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if—

(1) there is no prudent and feasible alternative to using that land; and

(2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

§ 304. Joint activities with the Secretary of Housing and Urban Development

(a) The Secretary of Transportation and the Secretary of Housing and Urban Development shall—

(1) consult and exchange information about their respective transportation policies and activities;

(2) carry out joint planning, research, and other activities;

(3) coordinate assistance for local transportation projects; and

(4) jointly study methods by which policies and programs of the United States Government can ensure that urban transportation systems most effectively serve both transportation needs of the United States and the comprehensively planned development of urban areas.

(b) The Secretaries shall report on April 1 of each year to the President, for submission to Congress, on their studies and other activities under this section, including legislative recommendations they consider desirable.

§ 305. Transportation investment standards and criteria

(a) Subject to sections 301-304 of this title, the Secretary of Transportation shall develop standards and criteria to formulate and economically evaluate all proposals for investing amounts of the United States Government in transportation facilities and equipment. Based on experience, the Secretary shall revise the standards and criteria. When approved by Congress, the Secretary shall prescribe standards and criteria developed or revised under this subsection. This subsection does not apply to—

(1) the acquisition of transportation facilities or equipment by a department, agency, or instrumentality of the Government to provide transportation for its use;

(2) an inter-oceanic canal located outside the 48 contiguous States;

(3) defense features included at the direction of the Department of Defense in designing and constructing civil air, sea, or land transportation;

(4) foreign assistance programs;

(5) water resources projects; or

(6) grant-in-aid programs authorized by law.

(b) A department, agency, or instrumentality of the Government preparing a survey, plan, or report that includes a proposal about which the Secretary has prescribed standards and criteria under subsection (a) of this section shall—

(1) prepare the survey, plan, or report under those standards and criteria and on the basis of information provided by the Secretary on the—

(A) projected growth of transportation needs and traffic in the affected area;

(B) the relative efficiency of various modes of transportation;

(C) the available transportation services in the area; and

(D) the general effect of the proposed investment on existing modes of transportation and on the regional and national economy;

(2) coordinate the survey, plan, or report—

(A) with the Secretary and include the views and comments of the Secretary; and

(B) as appropriate, with other departments, agencies, and instrumentalities of the Government, States, and local governments, and include their views and comments; and

(3) send the survey, plan, or report to the President for disposition under law and procedure established by the President.

§ 306. Prohibited discrimination

(a) In this section, "financial assistance" includes obligation guarantees.

(b) A person in the United States may not be excluded from participating in, be denied the benefits of, or be subject to discrimination under, a project, program, or activity because of race, color, national origin, or sex when any part of the project, program, or activity is financed through financial assistance under section 332 of this title, section 211 or 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721, 726), title V or VII of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq., 851 et seq.), or section 4(i) or 5 of the Department of Transportation Act (49 U.S.C. 1653(i), 1654).

(c) When the Secretary of Transportation decides that a person receiving financial assistance under a law referred to in subsection (b) of this section has not complied with that subsection, a Federal civil rights law, or an order or regulation issued under a Federal civil rights law, the Secretary shall notify the person of the decision and require the person to take necessary action to ensure compliance with that subsection.

(d) If a person does not comply with subsection (b) of this section within a reasonable time after receiving a notice under subsection (c) of this section, the Secretary shall take at least one of the following actions:

(1) direct that no more Federal financial assistance be provided the person.

(2) refer the matter to the Attorney General with a recommendation that a civil action be brought against the person.

(3) carry out the duties and powers provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(4) take other action provided by law.

(e) When a matter is referred to the Attorney General under subsection (d)(2) of this section, or when the Attorney General has reason to believe that a person is engaged in a pattern or practice violating this section, the Attorney General may begin a civil action in a district court of the United States for appropriate relief.

§ 307. Safety information and intervention in Interstate Commerce Commission proceedings

(a) The Secretary of Transportation shall inspect promptly the safety compliance record in the Department of Transportation of each person applying to the Interstate Commerce Commission for authority to provide transportation or freight forwarder

service. The Secretary shall report the findings of the inspection to the Commission.

(b) When the Secretary is not satisfied with the safety record of a person applying for permanent authority to provide transportation or freight forwarder service, or for approval of a proposed transfer of permanent authority, the Secretary shall intervene and present evidence of the fitness of the person to the Commission in its proceedings.

(c) When requested by the Commission, the Secretary shall—

(1) provide the Commission with a complete report on the safety compliance of a carrier providing transportation or freight forwarder service subject to its jurisdiction;

(2) provide promptly a statement of the safety record of a person applying to the Commission for temporary authority to provide transportation;

(3) intervene and present evidence in a proceeding in which a finding of fitness is required; and

(4) make additional safety compliance surveys and inspections the Commission decides are desirable to allow it to act on an application or to make a finding on the fitness of a carrier.

§ 308. Annual reports

(a) As soon as practicable after the end of each fiscal year, the Secretary of Transportation shall report to the President, for submission to Congress, on the activities of the Department of Transportation during the prior fiscal year. The report shall include a complete statement on the effectiveness of the United States Railway Association and the Consolidated Rail Corporation in carrying out the purposes of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

(b) The Secretary shall submit to the President and Congress each year a report on the aviation activities of the Department. The report shall include—

(1) collected information the Secretary considers valuable in deciding questions about—

(A) the development and regulation of civil aeronautics;

(B) the use of airspace of the United States; and

(C) the improvement of the air navigation and traffic control system; and

(2) recommendations for additional legislation and other action the Secretary considers necessary.

(c) The Secretary shall submit to Congress each year a report on the conditions of the public ports of the United States, including the—

(1) economic and technological development of the ports;

(2) extent to which the ports contribute to the national welfare and security; and

(3) factors that may impede the continued development of the ports.

SUBCHAPTER II—ADMINISTRATIVE

§ 321. Definitions

In this subchapter, "aeronautics", "air commerce", and "air navigation facility" have the same meanings given those terms in section 101(2), (4), and (8) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(2), (4), (8)), respectively.

§ 322. General powers

(a) The Secretary of Transportation may prescribe regulations to carry out the duties and powers of the Secretary. An officer of the Department of Transportation may prescribe regulations to carry out the duties and powers of the officer.

(b) The Secretary may delegate, and authorize successive delegations of, duties and powers of the Secretary to an officer or employee of the Department. An officer of the Department may delegate, and authorize successive delegations of, duties and powers of the officer to another officer or employee of the Department. However, the duties and powers specified in sections 103(c)(1), 104(c)(1), and 106(g)(1) of this title may not be delegated to an officer or employee outside the Administration concerned.

(c) On a reimbursable basis when appropriate, the Secretary may, in carrying out aviation duties and powers—

(1) use the available services, equipment, personnel, and facilities of other civilian or military departments, agencies, and instrumentalities of the United States Government, with their consent;

(2) cooperate with those departments, agencies, and instrumentalities in establishing and using aviation services, equipment, and facilities of the Department; and

(3) confer and cooperate with, and use the services, records, and facilities of, State, territorial, municipal, and other agencies.

(d) The Secretary may make expenditures to carry out aviation duties and powers, including expenditures for—

(1) rent and personal services;

(2) travel expenses;

(3) office furniture, equipment, supplies, lawbooks, newspapers, periodicals, and reference books, including exchanges;

(4) printing and binding;

(5) membership in and cooperation with domestic or foreign organizations related to, or a part of, the civil aeronautics industry or the art of aeronautics;

(6) payment of allowances and other benefits to employees stationed in foreign countries to the same extent authorized for members of the Foreign Service of comparable grade;

(7) investigations and studies about aeronautics; and

(8) acquiring, exchanging, operating, and maintaining passenger-carrying aircraft and automobiles and other property.

(e) The Secretary may negotiate, without advertising, the purchase of technical or special property related to air navigation when the Secretary decides that—

(1) making the property would require a substantial initial investment or an extended period of preparation; and

(2) procurement by advertising would likely result in additional cost to the Government by duplication of investment or would result in duplication of necessary preparation that would unreasonably delay procuring the property.

§ 323. Personnel

(a) The Secretary of Transportation may appoint and fix the pay of officers and employees of the Department of Transportation and may prescribe their duties and powers.

(b) The Secretary may procure services under section 3109 of title 5. However, an individual may be paid not more than $100 a day for services.

§ 324. Members of the armed forces

(a) The Secretary of Transportation—

(1) to ensure that national defense interests are safeguarded properly and that the Secretary is advised properly about the needs and special problems of the armed forces, shall provide for participation of members of the armed forces in carrying out the duties and powers of the Secretary related to the regulation and protection of air traffic, including providing for, and research and development of, air navigation facilities, and the allocation of airspace; and

(2) may provide for participation of members of the armed forces in carrying out other duties and powers of the Secretary.

(b) A member of the Coast Guard on active duty may be appointed, detailed, or assigned to a position in the Department of Transportation, except the position of Secretary, Deputy Secretary, or Assistant Secretary for Administration. A retired member of the Coast Guard may be appointed, detailed, or assigned to a position in the Department.

(c) The Secretary of Transportation and the Secretary of a military department may make cooperative agreements, including agreements on reimbursement as may be considered appropriate by the Secretaries, under which a member of the armed forces may be appointed, detailed, or assigned to the Department of Transportation under this section. The Secretary of Transportation shall send a report each year to the appropriate committees of Congress on agreements made to carry out subsection (a)(2) of this section, including the number, rank, and position of each member appointed, detailed, or assigned under those agreements.

(d) The Secretary of a military department does not control the duties and powers of a member of the armed forces appointed, detailed, or assigned under this section when those duties and powers pertain to the Department of Transportation. A member of the armed forces appointed, detailed, or assigned under subsection (a)(2) of this section may not be charged against a statutory limitation on grades or strengths of the armed forces. The appointment, detail, or assignment and service of a member under this section to a position in the Department of Transportation does not affect the status, office, rank, or grade held by that member, or a right or benefit arising from that status, office, rank, or grade.

§ 325. Advisory committees

(a) Without regard to the provisions of title 5 governing appointment in the competitive service, the Secretary of Transportation may appoint advisory committees to consult with and advise the Secretary in carrying out the duties and powers of the Secretary.

(b) While attending a committee meeting or otherwise serving at the request of the Secretary, a member of an advisory committee may be paid not more than $100 a day. A member is entitled to reimbursement for expenses under section 5703 of title 5. This subsection does not apply to individuals regularly employed by the United States Government.

(c) A member of an advisory committee advising the Secretary in carrying out aviation duties and powers may serve for not more than 100 days in a calendar year.

§ 326. Gifts

(a) The Secretary of Transportation may accept and use conditional or unconditional gifts of property for the Department of Transportation. The Secretary may accept a gift of services in carrying out aviation duties and powers. Property accepted under this section and proceeds from that property must be used, as nearly as possible, under the terms of the gift.

(b) The Department has a fund in the Treasury. Disbursements from the fund are made on order of the Secretary. The fund consists of—

(1) gifts of money;

(2) income from property accepted under this section and proceeds from the sale of that property; and

(3) income from securities under subsection (c) of this section.

(c) On request of the Secretary of Transportation, the Secretary of the Treasury may invest and reinvest amounts in the fund in securities of, or in securities whose principal and interest is guaranteed by, the United States Government.

(d) Property accepted under this section is a gift to or for the use of the Government under the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.).

§ 327. Administrative working capital fund

(a) The Department of Transportation has an administrative working capital fund. Amounts in the fund are available for expenses of operating and maintaining common administrative services the Secretary of Transportation decides are desirable for the efficiency and economy of the Department. The services may include—

(1) a central supply service for stationery and other supplies and equipment through which adequate stocks may be maintained to meet the requirements of the Department;

(2) central messenger, mail, telephone, and other communications services;

(3) office space;

(4) central services for document reproduction, and for graphics and visual aids; and

(5) a central library service.

(b) Amounts in the fund are available without regard to fiscal year limitation. Amounts may be appropriated to the fund.

(c) The fund consists of—

(1) amounts appropriated to the fund;

(2) the reasonable value of stocks of supplies, equipment, and other assets and inventories on order that the Secretary transfers to the fund, less the related liabilities and unpaid obligations;

(3) amounts received from the sale or exchange of property; and

(4) payments received for loss or damage to property of the fund.

(d) The fund shall be reimbursed, in advance, from amounts available to the Department or from other sources, for supplies and services at rates that will approximate the expenses of operation, including the accrual of annual leave and the depreciation of equipment. Amounts in the fund, in excess of amounts transferred or appropriated to maintain the fund, shall be deposited in the Treasury as miscellaneous receipts. All assets, liabilities, and prior losses are considered in determining the amount of the excess.

§ 328. Transportation Systems Center working capital fund

(a) The Department of Transportation has a Transportation Systems Center working capital fund. Amounts in the fund are available for financing the activities of the Center, including research, development, testing, evaluation, analysis, and related activities the Secretary of Transportation approves, for the Department, other agencies, State and local governments, other public authorities, private organizations, and foreign countries.

(b) Amounts in the fund are available without regard to fiscal year limitation. Amounts may be appropriated to the fund.

(c) The capital of the fund consists of—

(1) amounts appropriated to the fund;

(2) net assets of the Center as of October 1, 1980, including unexpended advances made to the Center for which valid obligations were incurred before October 1, 1980;

(3) the reasonable value of property and other assets transferred to the fund after September 30, 1980, less the related liabilities and unpaid obligations; and

(4) the reasonable value of property and other assets donated to the fund.

(d) The fund shall be reimbursed or credited with—

(1) advance payments from applicable funds or appropriations of the Department and other agencies, and with advance payments from other sources, the Secretary authorizes, for—

(A) services at rates that will recover the expenses of operation, including the accrual of annual leave and overhead; and

(B) acquiring property and equipment under regulations the Secretary prescribes; and

(2) receipts from the sale or exchange of property or in payment for loss or damage of property held by the fund.

(e) The Secretary shall deposit at the end of each fiscal year, in the Treasury as miscellaneous receipts, amounts accruing in the fund that the Secretary decides are in excess of the needs of the fund.

§ 329. Transportation information

(a) The Secretary of Transportation may collect and collate transportation information the Secretary decides will contribute to the improvement of the transportation system of the United States. To the greatest practical extent, the Secretary shall use information available from departments, agencies, and instrumentalities of the United States Government and other sources. To the extent practical, the Secretary shall make available to other Government departments, agencies, and instrumentalities and to the public the information collected under this subsection.

(b) The Secretary shall—

(1) collect and disseminate information on civil aeronautics (other than that collected and disseminated by the National Transportation Safety Board under title VII of the Federal Aviation Act of 1958 (49 U.S.C. 1441 et seq.) or the Civil Aeronautics Board under title IV of that Act (49 U.S.C. 1371 et seq.));

(2) study the possibilities of developing air commerce and the aeronautical industry; and

(3) exchange information on civil aeronautics with governments of foreign countries through appropriate departments, agencies, and instrumentalities of the Government.

(c)(1) On the written request of a person, a State, territory, or possession of the United States, or a political subdivision of a State, territory, or possession, the Secretary may—

(A) make special statistical studies on foreign and domestic transportation;

(B) make special studies on other matters related to duties and powers of the Secretary;

(C) prepare, from records of the Department of Transportation, special statistical compilations; and

(D) provide transcripts of studies, tables, and other records of the Department.

(2) The person or governmental authority requesting information under paragraph (1) of this subsection must pay the actual cost of preparing the information. Payments shall be deposited in the Treasury in an account that the Secretary shall administer. The Secretary may use amounts in the account for the ordinary expenses incidental to getting and providing the information.

(d) To assist in carrying out duties and powers under the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.), the Secretary of Transportation shall maintain separate cooperative agreements with the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration for the timely exchange of information on their programs, policies, and requirements directly related to carrying out that Act.

§ 330. Research contracts

(a) The Secretary of Transportation may make contracts with educational institutions, public and private agencies and organizations, and persons for scientific or technological research into a problem related to programs carried out by the Secretary. Before making a contract, the Secretary must require the institution, agency, organization, or person to show that it is able to carry out the contract.

(b) In carrying out this section, the Secretary shall—

(1) give advice and assistance the Secretary believes will best carry out the duties and powers of the Secretary;

(2) participate in coordinating all research started under this section;

(3) indicate the lines of inquiry most important to the Secretary; and

(4) encourage and assist in establishing and maintaining cooperation by and between contractors and between them and other research organizations, the Department of Transportation, and other departments, agencies, and instrumentalities of the United States Government.

(c) The Secretary may distribute publications containing information the Secretary considers relevant to research carried out under this section.

§ 331. Service, supplies, and facilities at remote places

(a) When necessary and not otherwise available, the Secretary of Transportation may provide for, construct, or maintain the following for officers and employees of the Department of Transportation and their dependents stationed in remote places:

(1) emergency medical services and supplies.

(2) food and other subsistence supplies.

(3) messing facilities.

(4) motion picture equipment and film for recreation and training.

(5) living and working quarters and facilities.

(6) reimbursement for food, clothing, medicine, and other supplies provided by an officer or employee in an emergency for the temporary relief of individuals in distress.

(b) The Secretary shall prescribe reasonable charges for services, supplies, and facilities provided under subsection (a)(1), (2), and (3) of this section. Amounts received under this subsection shall be credited to the appropriation from which the expenditure was made.

(c) When appropriations for a fiscal year for aviation duties and powers have not been made before June 1 immediately before the beginning of the fiscal year, the Secretary may designate an officer, and authorize that officer, to incur obligations to buy and transport supplies to carry out those duties and powers at installations outside the 48 contiguous States and the District of Columbia. The amount obligated under this subsection in a fiscal year may be not more than 75 percent of the amount available for buying and transporting supplies to those installations for the then cur-

rent fiscal year. Payment of obligations under this subsection shall be made from appropriations for the next fiscal year when available.

§ 332. Minority Resource Center

(a) In this section, "minority" includes women.

(b) The Department of Transportation has a Minority Resource Center. The Center may—

(1) include a national information clearinghouse for minority entrepreneurs and businesses to disseminate information to them on business opportunities related to the maintenance, rehabilitation, restructuring, improvement, and revitalization of the railroads of the United States;

(2) carry out market research, planning, economic and business analyses, and feasibility studies to identify those business opportunities;

(3) assist minority entrepreneurs and businesses in obtaining investment capital and debt financing;

(4) design and carry out programs to encourage, promote, and assist minority entrepreneurs and businesses in getting contracts, subcontracts, and projects related to those business opportunities;

(5) develop support mechanisms (including venture capital, surety and bonding organizations, and management and technical services) that will enable minority entrepreneurs and businesses to take advantage of those business opportunities;

(6) participate in, and cooperate with, United States Government programs and other programs designed to provide financial, management, and other forms of support and assistance to minority entrepreneurs and businesses; and

(7) make arrangements to carry out this section.

(c) The Center has an advisory committee of 5 individuals appointed by the Secretary of Transportation. The Secretary shall make the appointments from lists of qualified individuals recommended by minority-dominated trade associations in the minority business community. Each of those trade associations may submit a list of not more than 3 qualified individuals.

(d) The United States Railway Association, the Consolidated Rail Corporation, and the Secretary shall provide the Center with relevant information (including procurement schedules, bids, and specifications on particular maintenance, rehabilitation, restructuring, improvement, and revitalization projects) the Center requests in carrying out this section.

§ 333. Responsibility for rail transportation unification and coordination projects

(a) The Secretary of Transportation may develop and make available to interested persons any plans, proposals, and recommendations for mergers, consolidations, reorganizations, and other unification or coordination projects for rail transportation (including arrangements for joint use of tracks and other facilities and acquisition or sale of assets) that the Secretary believes will result in a rail system that is more efficient and consistent with the public interest.

(b) To achieve a more efficient, economical, and viable rail system in the private sector, the Secretary, when requested by a rail carrier and under this section, may assist in planning, negotiating, and carrying out a unification or coordination of operations and facilities of at least 2 rail carriers.

(c)(1) The Secretary may conduct studies to determine the potential cost savings and possible improvements in the quality of rail transportation that are likely to result from unification or coordination of at least 2 rail carriers, through—

(A) elimination of duplicating or overlapping operations and facilities;

(B) reducing switching operations;

(C) using the shortest or more efficient and economical routes;

(D) exchanging trackage rights;

(E) combining trackage and terminal or other facilities;

(F) upgrading tracks and other facilities used by at least 2 rail carriers;

(G) reducing administrative and other expenses; and

(H) other measures likely to reduce costs and improve rail transportation.

(2) When the Secretary requests information for a study under this section, a rail carrier shall provide the information requested. In carrying out this section, the Secretary may designate an officer or employee to get from a rail carrier information on the kind, quality, origin, destination, consignor, consignee, and routing of property. This information may be obtained without the consent of the consignor or consignee notwithstanding section 11910(a)(1) of this title. When appropriate, the designated officer or employee has the powers described in section 203(c) of the Regional Rail Reorganization Act of 1973 to carry out this section, but a subpena must be issued under the signature of the Secretary.

(d)(1) When requested by a rail carrier, the Secretary may hold conferences on and mediate disputes resulting from a proposed unification or coordination project. The Secretary may invite to a conference—

(A) officers and directors of an affected rail carrier;

(B) representatives of rail carrier employees who may be affected;

(C) representatives of the Interstate Commerce Commission;

(D) State and local government officials, shippers, and consumer representatives; and

(E) representatives of the Federal Trade Commission and the Attorney General.

(2) A person attending or represented at a conference on a proposed unification or coordination project is not liable under the antitrust laws of the United States for any discussion at the conference and for any agreements reached at the conference, that are entered into with the approval of the Secretary to achieve or determine a plan of action to carry out the unification or coordination project.

(e) When the approval of a proposal submitted by a rail carrier for a merger or other action is subject to the jurisdiction of the Interstate Commerce Commission under section 11343(a) of this title, the Secretary may study the proposal to decide whether it satisfies section 11344(b) of this title. When the proposal is the subject of an application and proceeding before the Commission, the Secretary may appear in any proceeding related to the application.

§ 334. Limit on aviation charges

The Secretary of Transportation may impose a charge for an approval, test, authorization, certificate, permit, registration, transfer, or rating related to aviation that has not been approved by Congress only when the charge (1) was in effect on January 1, 1973, and (2) is not more than the charge that was in effect on that date. However, this section does not apply to a charge for a test, authorization, certificate, permit, or rating related to an airman or repair station administered or issued outside of the United States, as defined in section 101(41) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(41)).

§ 335. Authorization of appropriations

(a) The following amounts may be appropriated to the Secretary of Transportation:

(1) for necessary expenses of the Office of the Secretary (including not more than $27,000 for allocation within the Department of Transportation of official reception and representation expenses as determined by the Secretary) not more than $35,193,204 for each of the fiscal years ending September 30, 1983, and September 30, 1984.

(2) for necessary expenses of carrying out transportation planning, research, and development activities, including collecting national transportation statistics, $10,486,615 for each of the fiscal years ending September 30, 1983, and September 30, 1984.

(3) for necessary expenses of the Minority Business Resource Center not otherwise provided for, not more than $10,000,000 for each of the fiscal years ending September 30, 1983, and September 30, 1984, to remain available until expended.

(4) for necessary expenses of carrying out the duties and powers of the Research and Special Programs Administration, not more than $32,300,000 for the fiscal year ending September 30, 1983, and $33,300,000 for the fiscal year ending September 30, 1984.

(b) The Secretary may use only amounts appropriated for the Office of the Secretary that are authorized for that Office by subsection (a) of this section.

CHAPTER 5—SPECIAL AUTHORITY

SUBCHAPTER I—DUTIES AND POWERS

SUBCHAPTER II—PENALTIES

SUBCHAPTER I—DUTIES AND POWERS

§ 501. Definitions and application

(a) In this chapter—

(1) the definitions in section 10102 of this title apply.

(2) "migrant worker" has the same meaning given that term in section 3101 of this title.

(3) "motor carrier of migrant workers" means a motor carrier of migrant workers subject to the jurisdiction of the Secretary of Transportation under section 3102(c) of this title.

(b) This chapter only applies in carrying out—

(1) chapter 31 of this title; and

(2) other duties and powers transferred to the Secretary under section 6(e) of the Department of Transportation Act (49 U.S.C.

1655(e)) and vested in the Interstate Commerce Commission before October 15, 1966.

§ 502. General authority

(a) The Secretary of Transportation shall carry out this chapter.

(b) The Secretary may—

(1) inquire into and report on the management of the business of rail carriers and motor carriers;

(2) inquire into and report on the management of the business of a person controlling, controlled by, or under common control with those carriers to the extent that the business of the person is related to the management of the business of that carrier; and

(3) obtain from those carriers and persons information the Secretary determines to be necessary.

(c) In carrying out this chapter as it applies to motor carriers, motor carriers of migrant workers, and motor private carriers, the Secretary may—

(1) confer and hold joint hearings with State authorities;

(2) cooperate with and use the services, records, and facilities of State authorities; and

(3) make cooperative agreements with a State to enforce the safety laws and regulations of a State and the United States related to highway transportation.

(d) The Secretary may subpena witnesses and records related to a proceeding or investigation under this chapter from a place in the United States to the designated place of the proceeding or investigation. If a witness disobeys a subpena, the Secretary, or a party to a proceeding or investigation before the Secretary, may petition the district court for the judicial district in which the proceeding or investigation is conducted to enforce the subpena. The court may punish a refusal to obey an order of the court to comply with a subpena as a contempt of court.

(e)(1) In a proceeding or investigation, the Secretary may take testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding or investigation pending before the Secretary may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding or investigation is at issue on petition and answer. If a witness fails to be deposed or to produce records under this subsection, the Secretary may subpena the witness to take a deposition, produce the records, or both.

(2) A deposition may be taken before a judge of a court of the United States, a United States magistrate, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding or investigation.

(3) Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

(4) The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

(5) The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Secretary or agreed on by the parties by written stipulation filed with the Secretary. The deposition shall be filed with the Secretary promptly.

(f) Each witness summoned before the Secretary or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

§ 503. Service of notice and process on certain motor carriers of migrant workers and on motor private carriers

(a) Each motor carrier of migrant workers (except a motor contract carrier) and each motor private carrier shall designate an agent by name and post office address on whom service of notices in a proceeding before, and actions of, the Secretary of Transportation may be made. The designation shall be in writing and filed with the Secretary. The carrier also shall file the designation with the authority of each State in which it operates having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of that State. The designation may be changed at any time in the same manner as originally made.

(b) A notice of the Secretary to a carrier under this section is served personally or by mail on that carrier or its designated agent. Service by mail on the designated agent is made at the address filed for the agent. When notice is given by mail, the date of mailing is considered to be the time when the notice is served. If the carrier does not have a designated agent, service may be made by posting a copy of the notice in the office of the secretary or clerk of the authority having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of the State in which the carrier maintains headquarters and with the Secretary.

(c) Each of those carriers, including such a carrier operating in the United States while providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country, shall designate an agent in each State in which it operates by name and post office address on whom process issued by a court with subject matter jurisdiction may be served in an action brought against that carrier. The designation shall be in writing and filed with the Secretary and with the authority of each State in which the carrier operates having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of that State. If a designation under this subsection is not made, service may be made on any agent of the carrier in that State. The designation may be changed at any time in the same manner as originally made.

§ 504. Reports and records

(a) In this section—

(1) "association" means an organization maintained by or in the interest of a group of rail carriers, motor carriers, motor carriers of migrant workers, or motor private carriers that performs a service, or engages in activities, related to transportation of that carrier.

(2) "carrier" means a motor carrier, motor carrier of migrant workers, motor private carrier, and rail carrier.

(3) "lessor" means a person owning a railroad that is leased to and operated by a rail carrier, and a person leasing a right to operate as a motor carrier, motor carrier of migrant workers, or motor private carrier to another.

(4) "lessor" and "carrier" include a receiver or trustee of that lessor or carrier, respectively.

(b)(1) The Secretary of Transportation may prescribe the form of records required to be prepared or compiled under this section by—

(A) carriers and lessors; and

(B) a person furnishing cars or protective service against heat or cold to or for a rail carrier.

(2) The Secretary may require—

(A) carriers, lessors, associations, or classes of them as the Secretary may prescribe, to file annual, periodic, and special reports with the Secretary containing answers to questions asked by the Secretary; and

(B) a person furnishing cars or protective service against heat or cold to a rail carrier to file reports with the Secretary containing answers to questions about those cars or service.

(c) The Secretary, or an employee designated by the Secretary, may on demand and display of proper credentials—

(1) inspect the equipment of a carrier or lessor; and

(2) inspect and copy any record of—

(A) a carrier, lessor, or association;

(B) a person controlling, controlled by, or under common control with a carrier, if the Secretary considers inspection relevant to that person's relation to, or transaction with, that carrier; and

(C) a person furnishing cars or protective service against heat or cold to or for a rail carrier if the Secretary prescribed the form of that record.

(d) The Secretary may prescribe the time period during which records must be preserved by a carrier, lessor, and person furnishing cars or protective service.

(e)(1) An annual report shall contain an account, in as much detail as the Secretary may require, of the affairs of a carrier, lessor, or association for the 12-month period ending on the 31st day of December of each year. The annual report shall be filed with the Secretary by the end of the 3d month after the end of the year for which the report is made unless the Secretary extends the filing date or changes the period covered by the report.

(2) The annual report and, if the Secretary requires, any other report made under this section shall be made under oath.

(f) No part of a report of an accident occurring in operations of a motor carrier, motor carrier of migrant workers, or motor private carrier and required by the Secretary, and no part of a report of an investigation of the accident made by the Secretary, may be admitted into evidence or used in a civil action for damages related to a matter mentioned in the report or investigation.

§ 505. Arrangements and public records

(a) The Secretary of Transportation may require a motor carrier, motor carrier of migrant workers, or motor private carrier to file a copy of each arrangement related to a matter under this chapter that it has with another person. The Secretary may disclose the existence or contents of an arrangement between a motor contract carrier and a shipper filed under this section only if the disclosure is consistent with the public interest and is made as part of the record in a formal proceeding.

(b) Except as provided in subsection (a) of this section, all arrangements and statistics,

tables, and figures contained in reports filed with the Secretary by a motor carrier under this chapter are public records. Such a public record, or a copy or extract of it, certified by the Secretary under seal is competent evidence in a proceeding of the Secretary, and, except as provided in section 504(f) of this title, in a judicial proceeding.

§ 506. Authority to investigate

(a) The Secretary of Transportation may begin an investigation under this chapter on the initiative of the Secretary or on complaint. If the Secretary finds that a rail carrier, motor carrier, motor carrier of migrant workers, or motor private carrier is violating this chapter, the Secretary shall take appropriate action to compel compliance with this chapter. The Secretary may take action only after giving the carrier notice of the investigation and an opportunity for a proceeding.

(b) A person, including a governmental authority, may file with the Secretary a complaint about a violation of this chapter by a carrier referred to in subsection (a) of this section. The complaint must state the facts that are the subject of the violation. The Secretary may dismiss a complaint the Secretary determines does not state reasonable grounds for investigation and action. However, the Secretary may not dismiss a complaint made against a rail carrier because of the absence of direct damage to the complainant.

(c) The Secretary shall make a written report of each proceeding involving a rail carrier or motor carrier conducted and furnish a copy to each party to that proceeding. The report shall include the findings, conclusions, and the order of the Secretary. The Secretary may have the reports published for public use. A published report of the Secretary is competent evidence of its contents.

§ 507. Enforcement

(a) The Secretary of Transportation may bring a civil action to enforce—

(1) an order of the Secretary under this chapter when violated by a rail carrier; and

(2) this chapter or a regulation or order of the Secretary under this chapter when violated by a motor carrier, motor carrier of migrant workers, motor private carrier, or freight forwarder.

(b) The Attorney General may, and on request of the Secretary shall, bring court proceedings to enforce this chapter or a regulation or order of the Secretary under this chapter and to prosecute a person violating this chapter or a regulation or order of the Secretary.

(c) A person injured because a rail carrier or freight forwarder does not obey an order of the Secretary under this chapter may bring a civil action to enforce that order under this subsection.

(d) In a civil action brought under subsection (a)(2) of this section against a motor carrier, motor carrier of migrant workers, or motor private carrier—

(1) trial is in the judicial district in which the carrier operates;

(2) process may be served without regard to the territorial limits of the district or of the State in which the action is brought; and

(3) a person participating with the carrier in a violation may be joined in the civil action without regard to the residence of the person.

SUBCHAPTER II—PENALTIES

§ 521. Civil penalties

(a)(1) A person required under section 504 of this title to make, prepare, preserve, or submit to the Secretary of Transportation a record about rail carrier transportation, that does not make, prepare, preserve, or submit that record as required under that section, is liable to the United States Government for a civil penalty of $500 for each violation.

(2) A rail carrier, and a lessor, receiver, or trustee of that carrier, violating section 504(c)(1) of this title, is liable to the Government for a civil penalty of $100 for each violation.

(3) A rail carrier, a lessor, receiver, or trustee of that carrier, a person furnishing cars or protective service against heat or cold, and an officer, agent, or employee of one of them, required to make a report to the Secretary or answer a question, that does not make a report to the Secretary or does not specifically, completely, and truthfully answer the question, is liable to the Government for a civil penalty of $100 for each violation.

(4) A separate violation occurs for each day a violation under this subsection continues.

(5) Trial in a civil action under this subsection is in the judicial district in which the rail carrier has its principal operating office or in a district through which the railroad of the rail carrier runs.

(b)(1) A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under this chapter about transportation by motor carrier, or an officer, agent, or employee of that person, that (A) does not make the report, (B) does not specifically, completely, and truthfully answer the question, or (C) does not make, prepare, or preserve the record in the form and manner prescribed by the Secretary, is liable to the Government for a civil penalty of not more than $500 for each violation and for not more than $250 for each additional day the violation continues.

(2) Trial in a civil action under this subsection is in the judicial district in which (A) the motor carrier has its principal office, (B) the motor carrier was authorized to provide transportation under subtitle IV of this title when the violation occurred, (C) the violation occurred, or (D) the offender is found. Process in the action may be served in the judicial district of which the offender is an inhabitant or in which the offender may be found.

§ 522. Reporting and record keeping violations

(a) A person required to make a report to the Secretary of Transportation, or make, prepare, or preserve a record, under section 504 of this title about transportation by rail carrier, that knowingly and willfully (1) makes a false entry in the report or record, (2) destroys, mutilates, changes, or by another means falsifies the record, (3) does not enter business related facts and transactions in the record, (4) makes, prepares, or preserves the record in violation of a regulation or order of the Secretary, or (5) files a false report or record with the Secretary, shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

(b) A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under section 504 of this title about transportation by motor carrier, motor carrier of migrant workers, or motor private carrier, or an officer, agent, or employee of that person, that (1) willfully does not make that report, (2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary requires the question to be answered, (3) willfully does not make, prepare, or preserve that record in the form and manner prescribed by the Secretary, (4) knowingly and willfully falsifies, destroys, mutilates, or changes that report or record, (5) knowingly and willfully files a false report or record with the Secretary, (6) knowingly and willfully makes a false or incomplete entry in that record about a business related fact or transaction, or (7) knowingly and willfully makes, prepares, or preserves a record in violation of a regulation or order of the Secretary, shall be fined not more than $5,000.

§ 523. Unlawful disclosure of information

(a) A motor carrier, or an officer, receiver, trustee, lessee, or employee of that carrier, or another person authorized by that carrier to receive information from that carrier, may not knowingly disclose to another person (except the shipper or consignee), and another person may not solicit, or knowingly receive, information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier without the consent of the shipper or consignee if that information may be used to the detriment of the shipper or consignee or may disclose improperly to a competitor the business transactions of the shipper or consignee.

(b) This chapter does not prevent a motor carrier, motor carrier of migrant workers, or motor private carrier from giving information—

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; and

(3) to another motor carrier, motor carrier of migrant workers, or motor private carrier, or its agent, to adjust mutual traffic accounts in the ordinary course of business.

(c) An employee of the Secretary of Transportation delegated to make an inspection under section 504 of this title who knowingly discloses information acquired during that inspection, except as directed by the Secretary, a court, or a judge of that court, shall be fined not more than $500, imprisoned for not more than 6 months, or both.

§ 524. Evasion of regulation of motor carriers

A person, or an officer, employee, or agent of that person, that by any means knowingly and willfully tries to evade regulation of motor carriers under this chapter shall be fined at least $200 but not more than $500 for the first violation and at least $250 but not more than $2,000 for a subsequent violation.

§ 525. Disobedience to subpenas

A motor carrier, motor carrier of migrant workers, or motor private carrier not obeying a subpena or requirement of the Secretary of Transportation under this chapter to appear and testify or produce records shall be fined at least $100 but not more than $5,000, imprisoned for not more than one year, or both.

§ 526. General criminal penalty when specific penalty not provided

When another criminal penalty is not provided under this chapter, a person that

knowingly and willfully violates a provision of this chapter, or a regulation or order of the Secretary of Transportation under this chapter, related to transportation by motor carrier, motor carrier of migrant workers, or motor private carrier, shall be fined at least $100 but not more than $500 for the first violation and at least $200 but not more than $500 for a subsequent violation. A separate violation occurs each day the violation continues.

SUBTITLE II—TRANSPORTATION PROGRAMS

PART A—[RESERVED—REGIONAL RAIL REORGANIZATION]

PART B—[RESERVED—OTHER RAIL PROGRAMS]

PART C—MOTOR VEHICLES

PART D—[RESERVED—AVIATION]

PART E—[RESERVED—AVIATION FACILITIES AND NOISE ABATEMENT]

PART F—[RESERVED—MISCELLANEOUS]

[PARTS A AND B—RESERVED]

PART C—MOTOR VEHICLES

CHAPTER 31—MOTOR CARRIER SAFETY

§ 3101. Definitions

In this chapter—

(1) "migrant worker" means an individual going to or from employment in agriculture as defined in section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) or section 203(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)).

(2) "motor carrier", "motor common carrier", "motor private carrier", "motor vehicle", and "United States" have the same meanings given those terms in section 10102 of this title.

(3) "motor carrier of migrant workers" means a person (except a motor common carrier) providing transportation referred to in section 10521(a) of this title by a motor vehicle (except a passenger automobile or station wagon) for at least 3 migrant workers at a time to or from their employment, but the term does not include a migrant worker providing transportation for migrant workers and their immediate families.

§ 3102. Requirements for qualifications, hours of service, safety, and equipment standards

(a) This section applies to transportation—

(1) described in sections 10521 and 10522 of this title; and

(2) to the extent the transportation is in the United States and is between places in a foreign country, or between a place in a foreign country and a place in another foreign country.

(b) The Secretary of Transportation may prescribe requirements for—

(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and

(2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.

(c) The Secretary may prescribe requirements for the comfort of passengers, qualifications and maximum hours of service of operators, and safety of operation and equipment of a motor carrier of migrant workers. The requirements only apply to a carrier transporting a migrant worker—

(1) at least 75 miles; and

(2) across the boundary of a State, territory, or possession of the United States.

§ 3103. Research, investigation, and testing

(a) The Secretary of Transportation may investigate and report on the need for Federal regulation of sizes, weight, and combinations of motor vehicles and qualifications and maximum hours of service of employees of a motor carrier subject to subchapter II of chapter 105 of this title and a motor private carrier. The Secretary shall use the services of each department, agency, or instrumentality of the United States Government and each organization of motor carriers having special knowledge of a matter being investigated.

(b) In carrying out this chapter, the Secretary may use the services of a department, agency, or instrumentality of the Government having special knowledge about safety, to conduct scientific and technical research, investigation, and testing when necessary to promote safety of operation and equipment of motor vehicles. The Secretary may reimburse the department, agency, or instrumentality for the services provided.

§ 3104. Identification of motor vehicles

(a) The Secretary of Transportation may—

(1) issue and require the display of an identification plate on a motor vehicle used in transportation provided by a motor private carrier and a motor carrier of migrant workers subject to section 3102(c) of this title (except a motor contract carrier); and

(2) require each of those motor private carriers and motor carriers of migrant workers to pay the reasonable cost of the plate.

(b) A motor private carrier or a motor carrier of migrant workers may use an identification plate only as authorized by the Secretary.

[PARTS D-F—RESERVED]

TRANSFER OF FUNCTIONS

SEC. 2. (a) The Federal-Aid Highway Act of 1966 (Public Law 89-574, 80 Stat. 766), the Federal-Aid Highway Act of 1962 (Public Law 87-866, 76 Stat. 1145), the Federal-Aid Highway Act of 1954 (ch. 181, 68 Stat. 70), the Act of September 26, 1961 (Public Law 87-307, 75 Stat. 670), the Highway Revenue Act of 1956 (ch. 462, 70 Stat. 387), the Highway Beautification Act of 1965 (Public Law 89-285, 79 Stat. 1028), the Alaska Omnibus Act (Public Law 86-70, 73 Stat. 141), the Joint Resolution of August 28, 1965 (Public Law 89-139, 79 Stat. 578), the Act of April 27, 1962 (Public Law 87-441, 76 Stat. 59), and the Highway Safety Act of 1966 (Public Law 89-564, 80 Stat. 731) are amended by striking out the words "Secretary of Commerce" wherever they appear and substituting "Secretary of Transportation".

(b) Reorganization Plan No. 7 of 1949 (5 App. U.S.C.) is amended by striking out the words "Department of Commerce" and "Secretary of Commerce" and substituting "Department of Transportation" and "Secretary of Transportation", respectively.

(c) The Act of March 19, 1918 (15 U.S.C. 261-264), the Act of March 4, 1921 (15 U.S.C. 265), and the Uniform Time Act of 1966 (15 U.S.C. 260, 260a, 261-263, 266, 267) are amended by striking out the words "Interstate Commerce Commission" wherever they appear and substituting "Secretary of Transportation".

(d)(1) Section 7 of the Act of March 4, 1915 (33 U.S.C. 471), rule 9 of section 1 of the Act of February 8, 1895 (33 U.S.C. 258), section 5 of the Act of August 18, 1894 (33 U.S.C. 499), sections 7 and 13 of the Act of June 21, 1940 (33 U.S.C. 517 and 523), the Act of August 21, 1935 (33 U.S.C. 503-507), the Act of March 23, 1906 (33 U.S.C. 491-498), and the General Bridge Act of 1946 (33 U.S.C. 525-533) are amended by striking out the words "Secretary of War" wherever they appear and substituting "Secretary of Transportation".

(2) The 5th paragraph of section 1 of the Act of June 21, 1940 (33 U.S.C. 511), is amended to read as follows:

"The term 'Secretary' means the Secretary of Transportation.".

(3) Section 502(c) of the General Bridge Act of 1946 (33 U.S.C. 525(c)) is amended further by striking out the words "Public Roads Administration" and substituting "Secretary of Transportation".

(e)(1) Section 2(h) of the Oil Pollution Act, 1961 (33 U.S.C. 1001(h)) is amended to read as follows:

"(h) The term 'Secretary' means the Secretary of Transportation;".

(2) The amendment made by paragraph (1) of this subsection is repealed when the amendment to section 2(h) of the Oil Pollution Act, 1961, made by section 2(1)(F) of the Oil Pollution Act Amendments of 1973 (Public Law 93-119; 87 Stat. 424), becomes effective.

(f) Section 9 of the Act of March 3, 1899 (33 U.S.C. 401), is amended to read as follows:

"SEC. 9. It shall not be lawful to construct or commence the construction of any bridge, causeway, dam, or dike over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for (1) the bridge or causeway shall have been submitted to and approved by the Secretary of Transportation, or (2) the dam or dike shall have been submitted to and approved by the Chief of Engineers and Secretary of the Army. However, such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Secretary of Transportation or by the Chief of Engineers and Secretary of the Army before construction is commenced. When plans for any bridge or other structure have been approved by the Secretary of Transportation or by the Chief of Engineers and Secretary of the Army, it shall not be lawful to deviate from such plans either before or after completion of the structure unless modification of said plans has previously been submitted to and received the approval of the Secretary of Transportation or the Chief of Engineers and the Secretary of the Army. The approval required by this section of the location and plans or any modification of plans of any bridge or causeway does not apply to any bridge or causeway over waters that are not subject to the ebb and flow of the tide and that are not used and are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce.".

CONFORMING EXECUTIVE PAY SCHEDULE PROVISIONS

SEC. 3. Title 5, United States Code, is amended as follows:

(1) In section 5313, add at the end thereof the following new item:

"Administrator, Federal Highway Administration.".

(2) In section 5314, strike out "Administrator, Federal Highway Administration." and substitute "Administrator of the National Highway Traffic Safety Administration.".

(3) In section 5315, strike out "Director of Public Roads." and substitute "Deputy Federal Highway Administrator.".

(4) In section 5316, strike out "Director, National Highway Safety Bureau." and substitute "Assistant Federal Highway Administrator.".

(5) In section 5316, strike out "Director, National Traffic Safety Bureau." and substitute "Deputy Administrator of the National Highway Traffic Safety Administration.".

CONFORMING PROVISIONS

SEC. 4. (a) Section 103 of the Water Resources Planning Act (42 U.S.C. 1962a-2) is amended—

(1) by inserting the subsection designation "(a)" at the beginning of the text of the section; and

(2) by adding at the end of the section the following new subsection:

"(b) The Council shall develop standards and criteria for economic evaluation of water resource projects. For the purpose of those standards and criteria, the primary direct navigation benefits of a water resource project are defined as the product of the savings to shippers using the waterway and the estimated traffic that would use the waterway. 'Savings to shippers' means the difference between (1) the freight rates or charges prevailing at the time of the study for the movement by the alternative means, and (2) those which would be charged on the proposed waterway. Estimated traffic that would use the waterway will be based on those freight rates, taking into account projections of the economic growth of the area.".

(b) Effective October 17, 1978—

(1) section 202(f) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210, 90 Stat. 39) is repealed;

(2) sections 304(j) and 603 of the Regional Rail Reorganization Act of 1973 (Public Law 93-236, 87 Stat. 985) are repealed; and

(3) section 4(d) of the Act of October 17, 1978 (Public Law 95-473, 92 Stat. 1470), is amended by striking out "chapter 169" and substituting "chapter 292".

(4) section 10504 of title 49 is amended by adding at the end of the section the following new subsection:

"(c) Notwithstanding subsection (b) of this section, a local public body, described in subsection (b), is subject to applicable laws of the United States related to—

"(1) safety;

"(2) the representation of employees for collective bargaining; and

"(3) employment retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.".

(c) Section 307(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(b)) is amended by adding at the end thereof the following new sentence: "The Secretary may, subject to such regulations, supervision, and review as he may prescribe, from time to time make such provision as he shall deem appropriate authorizing the performance by a Federal department or agency, with the consent of the department or agency, of any function under this subsection.".

CONFORMING CROSS-REFERENCES

SEC. 5. (a) Title 11, United States Code, is amended as follows:

(1) In item 1166 of the analysis of chapter 11, strike out "Interstate Commerce Act" and substitute "subtitle IV of title 49".

(2) In section 1166—

(A) in the catchline, strike out "Interstate Commerce Act" and substitute "subtitle IV of title 49"; and

(B) in the text, strike out "the Interstate Commerce Act (49 U.S.C. 1 et seq.)" and substitute "subtitle IV of title 49".

(3) In section 1169, strike out "the Interstate Commerce Act (49 U.S.C. 1 et seq.)" and substitute "subtitle IV of title 49".

(b) Section 42(e) of title 14, United States Code, is amended by striking out "section 9(d)(1) of the Department of Transportation Act (80 Stat. 944; 49 U.S.C. 1657)" and substituting "section 324(d) of title 49".

(c) Section 2341(3) of title 18, United States Code, is amended by striking out "the Interstate Commerce Act" and substituting "subtitle IV of title 49".

(d) Title 23, United States Code, is amended as follows:

(1) In section 117(e), strike out "section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f))" and substitute "section 303 of title 49".

(2) In the analysis of chapter 3, strike out item 303.

(3) In section 322(a), strike out ", conducted under authority of the Act entitled 'An Act to authorize the Secretary of Commerce to undertake research and development in high-speed ground transportation, and for other purposes', approved September 30, 1965 (49 U.S.C. 1631 et seq.)".

(e) The Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) is amended as follows:

(1) In section 7701(a)(33)(F), strike out "part III of the Interstate Commerce Act" and substitute "subchapter III of chapter 105 of title 49".

(2) In section 7701(a)(33)(H), strike out "part I of the Interstate Commerce Act" and substitute "subchapter I of chapter 105 of title 49".

(f) Section 1337 (a) and (b) of title 28, United States Code, is amended by striking out "section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11)) or section 219 of part II of such Act (49 U.S.C. 319)" and substituting "section 11707 of title 49".

(g) Subtitle IV of title 49, United States Code, is amended as follows:

(1) In section 10526(a)(5), strike out "section 1141j(a) of title 12" and substitute "section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a))".

(2) In section 10544(d)(1)(B), strike out "chapters 23 and 23A of title 46" and substitute "the Shipping Act, 1916 (46 U.S.C. 801 et. seq.) or the Intercoastal Shipping Act, 1933 (46 U.S.C. 843-848)".

(3) In section 10562(1), strike out "section 1141j(a) of title 12" and substitute "section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a))".

(4) In the first sentence of section 10705(c), strike out "subtitle" and substitute "title".

(5) In section 10703(a)(4)(D)(ii), strike out "section 801 or sections 843-849 of title 46" and substitute "section 1 of the Shipping Act, 1916 (46 U.S.C. 801) or the Intercoastal Shipping Act, 1933 (46 U.S.C. 843-848)".

(6) In section 10925(d)(1), strike out "certificate" and substitute "certificate or permit".

(7) In section 11346(a), strike out "section 1654(c)" and substitute "section 333(c)".

(8) In section 11348(a)—

(A) insert "504(f)," immediately before "10764"; and

(B) strike out "11711,".

(9) In section 11361(b), strike out "section 205" and substitute "subchapter IV".

LEGISLATIVE PURPOSE AND CONSTRUCTION

SEC. 6. (a) Sections 1-5 of this Act restate, without substantive change, laws enacted before November 15, 1982, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. Laws enacted after November 14, 1982, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

(b) A reference to a law replaced by sections 1-5 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(c) An order, rule, or regulation in effect under a law replaced by sections 1-5 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

(d) An action taken or an offense committed under a law replaced by sections 1-5 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(e) An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline thereof.

(f) If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

REPEALS

SEC. 7. (a) The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.

(b) The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this Act:

Schedule of Laws Repealed

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large Volume	Statutes at Large Page
1887 Feb. 4	104	25(g), 203(a)(22), (23), 204(a)(1) ("qualifications" through period), (2) ("qualifications" through period), (3), (3a), (5), 220(f), 226.	24	379
1910 Apr. 14	160	6	36	299
1935 Aug. 9	498		49	546
1937 Aug. 26	818	"Sec. 26(g)"	50	837

Schedule of Laws Repealed—Continued

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large Volume	Statutes at Large Page
1940				
Sept. 18	722	14(b) (related to "Sec. 25(g)"), 20(b)(4), 24.	54	919, 922, 926
1956				
Aug. 3	905	1, 2	70	958
1958				
Aug. 23	85-726	301(a), (b), 302(a)-(d), (f), (h), (i), (k), 303(a)-(c)(1), (d), (e), 311, 313(e).	72	744, 746, 747, 748, 749, 751, 753
1961				
Oct. 4	87-367	205	75	791
1962				
Oct. 11	87-793	1001(h)	76	864
1964				
Aug. 14	88-426	305(16)(B), (C)	78	424
1965				
Sept. 30	89-220	4	79	893
1966				
Sept. 9	89-564	201	80	735
Oct. 15	89-670	2, 3(a)-(e), 4(a), (b), (e)-(g), 5(a)-(e), 6(a)(1)(B), (C), (E)-(M), (2)(A) (related to §4 of the Act of Sept. 30, 1965), (4), (6)(B), (b)(1), (2), (c)(1) (1st sentence proviso, 2d, last sentences), (e)(5), (6)(B)-(D), (f)(2), (3), (g)(1)-(4)(B), (E) (5), (6), 7, 8(g)(2), (h), 9(a)-(g), (j)-(q)(3), (r), 11, 12, 17.	80	931, 933, 934, 937, 938, 939, 940, 941, 943, 944, 945, 947, 949
1968				
Aug. 23	90-495	18(b)	82	824
1970				
May 21	91-258	51(a)(1)	84	234
Dec. 31	91-605	202(a)	84	1739
1972				
Aug. 22	92-401	6	86	617
1974				
Jan. 2	93-236	602	87	1022
Oct. 28	93-496	16	88	1533
1975				
Jan. 3	93-633	113(d), (e)	88	2163
1976				
Feb. 5	94-210	401, 905, 906	90	61, 148, 149
July 8	94-348	6	90	820
July 12	94-353	16	90	882
1978				
Mar. 27	95-251	2(a)(12) "Sec. 9(a)".	92	183
Oct. 24	95-504	45	92	1753
1980				
Feb. 15	96-192	28	94	48
May 30	96-254	207	94	413
Oct. 3	96-371	2	94	1362
Oct 19	96-470	112(e)	94	2240
1981				
Aug. 6	97-31	12(8)	95	154
Aug. 13	97-35	1194(a), 1197	95	702, 703

United States Code

Title	Section
23	303

Reorganization Plans

Year	Plan No.	Section	Statutes at Large Volume	Statutes at Large Page
1968	2	2, 3	82	1369

The SPEAKER pro tempore. Is a second demanded?

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

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

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. HUGHES) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. McCLORY) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. HUGHES).

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

Mr. Speaker, H.R. 6993, as amended, restates in comprehensive form, without substantive change certain general and permanent laws, related to transportation, as subtitle I, the Department of Transportation, and chapter 31 of subtitle II, Motor Carrier Safety. The floor amendments to the bill being offered are merely technical and clarifying in nature.

The bill was prepared for the House Judiciary Committee by the Office of the Law Revision Counsel under its authority under section 285b of title 2, United States Code, as part of the program of the Office to prepare and submit to the House Judiciary Committee, for enactment into positive law, all titles of the U.S. Code.

Mr. Speaker, I ask unanimous consent that a detailed explanation of H.R. 6993, as amended, be printed at this point in the RECORD.

Mr. Speaker, I include a detailed explanation of H.R. 6993, as amended, at this point in the RECORD:

DETAILED EXPLANATION OF H.R. 6993 REVISION OF TITLE 49, UNITED STATES CODE, "TRANSPORTATION"

Purpose.—The purpose of the bill is to restate in comprehensive form, without substantive change, certain general and permanent laws related to transportation and to enact those laws as subtitle I and chapter 31 of subtitle II of title 49, United States Code. In the restatement, simple language has been substituted for awkward and obsolete terms, and superseded, executed, and obsolete statutes have been eliminated. This bill is a part of the program of the Office of the Law Revision Counsel of the House of Representatives to prepare and submit to this Committee, for enactment into positive law, all titles of the United States Code.

Background.—In 1966, Congress mandated in the Department of Transportation Act (Pub. L. 89-670, 80 Stat. 931), a codification of the transportation laws. Congressional committees also expressed a strong desire that the Interstate Commerce Act and related statutes be codified. Considerable progress was made toward this end from 1968 to 1972 by the Joint Interagency Codification Project, a joint effort of the Department of Transportation, the Interstate Commerce Commission, and the Law Revision Counsel of the Committee on the Judiciary of the House of Representatives. More recently, in enacting section 312 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210, 90 Stat. 60), Congress required the Interstate Commerce Commission to submit to Congress by February 4, 1978, a proposed revision and codification of the laws related to interstate commerce.

Effective in 1975, the Office of the Law Revision Counsel was established as a separate office in the House of Representatives with overall responsibility to prepare bills to codify and enact into positive law the remaining uncodified titles of the United States Code. In view of consistent congressional concern in having the transportation laws codified in title 49, the Law Revision Counsel concluded that work on completing the codification of those laws should be resumed. He therefore proposed to the Interstate Commerce Commission and the Secretary of Transportation that joint codification efforts be resumed, and they concurred.

The revision and codification of the Interstate Commerce Act and related laws as subtitle IV of title 49 was completed first because of the statutory deadline of February 4, 1978. The Act of October 17, 1978 (Pub. L. 95-473, 92 Stat. 1337), enacted subtitle IV into positive law.

H.R. 6993 is the next phase in the codification of title 49. The bill codifies certain general and permanent transportation laws in title 49 as subtitle I, the Department of Transportation, and subtitle II, Motor Carrier Safety. A draft of the bill was submitted to the Secretary of Transportation.

Revision of language.—To restate the laws related to transportation in one comprehensive title, it is necessary to make changes in language. Some of the changes are necessary to attain uniformity within the title. Others are necessary as the result of consolidating related provisions of law and to conform to common contemporary usage. In making changes in the language, precautions have been taken against making substantive changes in the law.

Revision notes.—A revision note has been prepared for each section of revised subtitle I and chapter 31 of subtitle II of title 49. The revision notes explain the changes made in the source laws. Each note identifies the statutory basis or source of the section and explains significant changes in, and omissions of, language. When practical, word-for-word substitutions of language are identified and explained. Standard changes made throughout the revision to achieve internal consistency are not explained each time they are made.

Standard changes.—Certain standard changes are made uniformly throughout the revised title 49. The most significant of the other standard changes are explained in the following paragraphs:

As far as possible, the statute is stated in the present tense and in the active voice. When there is a choice of 2 or more words,

otherwise of equal legal effect, the more commonly understood word is used.

The word "shall" is used in the mandatory and imperative sense. The word "may" is used in the permissive and discretionary sense, as "is permitted to" and "is authorized to". The words "may not" are used in a prohibitory sense, as "is not authorized to" and "is not permitted to". The words "person may not" mean that no person is required, authorized, or permitted to do the act.

The words "duties and powers" are substituted for "powers, duties, and functions" and any variation of that phrase. The word "duties" includes that which a person is required to do. The word "powers" includes that which a person is authorized to do.

The words "any part of" means "all or part of" and "in whole or in part". The word "includes" means "includes but is not limited to". The word "considered" denotes the exercise of judgment. The word "deemed" is used where a legal fiction, or what may in some cases be a legal fiction, is intended. The word "is" is used for statements of fact.

When a right is conferred, the words "is entitled" or their equivalent are used.

The first time a descriptive title is used in a section, the full title is used. Thereafter, in the same section, a shorter title is used unless the context requires the full title to be used. For example, "Secretary of Transportation" is used the first time the title appears in a section. Subsequently, in the same section, the title "Secretary" is used.

"United States Government" is substituted for "United States" (when used in referring to the Government), "Federal Government", and other terms identifying the Government the first time the reference appears in a section. Thereafter, in the same section, "Government" is used unless the context requires the complete term to be used to avoid confusion with other governments.

The word "law" is substituted for "Act" and "joint resolution" for clarity because the word "law" includes Acts and joint resolutions.

The word "record" includes all terms previously used for records, documents, accounts, reports, files, memoranda, papers, things, and other similar items.

The words "under section ——" are used instead of "pursuant to section ——" and "in accordance with section ——".

The word "such" is not used as a demonstrative adjective. The use of the word "each", "any", "every", or "all" is confined to instances in which it is feared that doubt would arise if the word were not used.

Provisos are not used. An exception or limitation is introduced by the words "except that" or "but" or by placing the excepting or limiting provision in a separate sentence.

Substantive change not made.—Like other codifications undertaken to enact into positive law all titles of the United States Code, this bill makes no substantive change in the law. It is sometimes feared that mere changes in terminology and style will result in changes in substance or impair the precedent value of earlier judicial decisions and other interpretations. This fear might have some weight if this were the usual kind of amendatory legislation where it can be inferred that a change of language is intended to change substance. In a codification statute, however, the courts uphold the contrary presumption: the statute is intended to remain substantively unchanged. The following authorities affirm this principle:

Steward v. *Kahn* (11 Wall. 493, 502 (1871)).
Smythe v. *Fiske* (28 Wall. 374. 382 (1874)).
McDonald v. *Hovey* (110 U.S. 619, 628 (1884)).
United States v. *Ryder* (110 U.S. 729, 740 (1884)).
United States v. *Sischo* (262 U.S. 165, 168 (1923)).
Fourco Glass Co. v. *Transmirra Products Corp.* (353 U.S. 222, 227 (1957)).
Trailer Marine Transport Corp. v. *Federal Maritime Commission* (D.C. Cir., 602 F. 2d 379, 383 (1979)).
Atchison, Topeka and Santa Fe Railway Co. v. *United States* (7th Cir., 617 F. 2d 485, 490, 491 (1980)).
Walsh v. *Commonwealth* (224 Mass. 239, 112 N.E. 486, 487 (1916)).
State ex rel. Rankin v. *Wilbaux County Bank* (85 Mont. 532, 281 Pac. 341, 344 (1929)).
In re Sullivan's Estate (38 Ariz. 387, 300 Pac. 193, 195 (1931)).
Sigal v. *Wise* (114 Conn. 297, 158 Atl. 891, 894 (1932)).
Martin v. *Dver-Kane Co.* (113 N.J. Eq. 88, 166 Atl. 227, 229 (1933)).
Norfolk & Portsmouth Bar Ass'n. v. *Drewry* (161 Va. 833, 172 S.E. 282, 285 (1934)).

Sutherland, Statutory Construction (4th ed., Sands, 1972), secs. 28.10, 28.11.

Tables.—Tables are provided at the end of this statement to show the disposition of laws affected by this codification.

AGENCY COMMENTS

The following agency letters have been received on the title 49 codification:

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., November 22, 1982.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On September 7, 1982, I received your request for the Department's review of H.R. 6993, a bill "To revise, codify, and enact without substantive change certain general and permanent laws related to transportation as subtitle I and Chapter 31 of subtitle II of title 49, United States Code, "Transportation"."

Also included for review was a committee print of a draft report explaining the bill.

The bill has previously been analyzed by the Department and with the assistance of the Law Revision Counsel, matters requiring technical corrections have been resolved. We support H.R. 6993 and its passage.

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 proposed legislation to the Congress.

Sincerely,

JOHN M. FOWLER.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., November 23, 1982.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to your request, the Department of Justice has reviewed H.R. 6993, a bill to revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitle I and chapter 31 of title 49, United States Code.

The Department of Justice defers to other interested agencies, such as the Department of Transportation, as to whether this legislation should be enacted.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General.

SECTION-BY-SECTION SUMMARY

SECTON 1—EXPLANATION OF REVISED TITLE 49

Section 1 of the bill enacts certain general and permanent laws of the United States, related to transportation, as subtitle I and chapter 31 of subtitle II of title 49, United States Code.

Title 49—Transportation

Subtitle Section
I. Department of Transportation
II. Transportation Programs
III. [Reserved—Air Transportation]
IV. Interstate Commerce
V. [Reserved—Miscellaneous]

Subtitle I—Department of Transportation

Chapter Section
1. Organization
3. General duties and powers
5. Special authority

CHAPTER 1—ORGANIZATION

Section
101. Purpose.
102. Department of Transportation.
103. Federal Railroad Administration.
104. Federal Highway Administration.
105. National Highway Traffic Safety Administration.
106. Federal Aviation Administration.
107. Urban Mass Transportation Administration.
108. Coast Guard.
109. Maritime Administration.
110. St. Lawrence Seaway Development Corporation.

SECTION 101

Revised section	United States Code	Statutes at Large
101(a)	49:1651(a)	Oct. 15, 1966, Pub. L. 89-670, § 2(a), (b)(1), 80 Stat. 931.
101(b)	49:1651(b)(1)	

In subsections (a) and (b), the introductory declaratory words are omitted as surplus.

In subsection (a), the words "national objectives of" are inserted for clarity. The words "United States" are substituted for "Nation" and "Nation's", respectively, for consistency. The word "contribute" is substituted for "conducive" because the substituted word is more commonly used. The word "those" is substituted for "utilization".

In subsection (b)(2), the word "greatest" is substituted for "maximum" for consistency.

In subsection (b) (3) and (6), the word "national" is omitted before "transportation" as unnecessary and for consistency.

In subsection (b)(3), the word "persons" is substituted for "parties" as being more precise.

In subsection (b)(6), the words "transportation objectives" are substituted for "these objectives" for clarity and consistency. The words "full and appropriate" and "for approval" are omitted as surplus.

SECTION 102

Revised section	United States Code	Statutes at Large
102(a)	49:1652(a) (1st sentence)	Oct. 15, 1966, Pub. L. 89-670, § 3 (a), (c), (d), 80 Stat. 931.
102(b)	49:1652(a) (less 1st sentence).	
102(c)	49:1652(b) (less words between parentheses).	Oct. 15, 1966, Pub. L. 89-670, § 3(b), 80 Stat. 931; Oct. 28, 1974, Pub. L. 93-496, § 16(a), 88 Stat. 1533.
102(d)	49:1652(b) (words between parentheses), (c), (d).	
102(e)	49:1657(k)	Oct. 15, 1966, Pub. L. 89-670, § 9(k), 80 Stat. 946.

In subsection (a), the words "There is hereby established" and "to be known as" are omitted as executed. The words "(hereafter referred to in this chapter as the 'Department')" are omitted as unnecessary because of the style used in codifying the revised title. The words "of the United States Government" are added for clarity.

In subsection (b), the words "(hereafter referred to in this chapter as the 'Secretary')" are omitted as unnecessary because of the style used in codifying the revised title.

In subsection (c), the words "carry out duties and powers" and "acts for" are substituted for "act for and exercise the powers of" and "perform such functions, powers, and duties", respectively, for consistency and to eliminate surplus words. The words "unable to serve" are substituted for "disability" for consistency and clarity.

In subsection (d), the words "in the competitive service" are substituted for "under the classified civil service" to conform to 5:2102. The words "from time to time" are omitted as surplus. The words "acts for" are substituted for "act for, and exercise the powers of" for consistency and to eliminate surplus words. The words "when the Secretary and the Deputy Secretary are absent or unable to serve, or when the offices of Secretary and Deputy Secretary are vacant" are substituted for "during the absence or disability of the Deputy Secretary, or in the event of a vacancy in the office of a Deputy Secretary" as being more precise and for consistency.

In subsection (e), the words "The Secretary shall cause a . . . of office" and "of such device" are omitted as unnecessary because of the restatement. The words "as he shall approve" are omitted as unnecessary because subsection (b) of the section establishes the Secretary of Transportation as the head of the Department of Transportation.

SECTION 103

Revised section	United States Code	Statutes at large
103(a)	49:1652(e)(1) (1st sentence related to FRA).	Oct. 15, 1966, Pub. L. 89-670, §§ 3(e) (related to FRA) (1), (3), (4), 6(f)(3)(C) (related to FRA), 80 Stat. 932, 940.
	49:1652a	July 8, 1976, Pub. L. 94-348, § 6, 90 Stat. 820.
103(b)	49:1652(e) (related to FRA (1) (2d, last sentences), (3) (last sentence).	
103(c)	49:1655(f)(3)(A)	Oct. 15, 1966, Pub. L. 89-670, § 6(f)(3)(A), 80 Stat. 940; Aug. 22, 1972, Pub. L. 92-401, § 6, 86 Stat. 617; Jan. 3, 1975, Pub. L. 93-633, § 113(e)(1), 88 Stat. 2163.
103(d)	49:1652(e)(3) (related to FRA) (less last sentence).	
	49:1652(e)(4) (related to FRA).	
	49:1655(f)(3)(C) (related to FRA).	

In subsection (a), the words "To carry out" are substituted for "for purposes of administering and enforcing" in 49:1652a for consistency and to eliminate surplus words. The words "under those laws" are substituted for "pursuant to Federal railroad safety laws" to eliminate surplus words. The words "is responsible" are substituted for "shall retain full and final responsibility" and "shall be responsible" to eliminate surplus words. The words "and for the establishment of all policies with respect to implementation of such laws" are omitted as surplus.

In subsection (b), the words "Each of these components" are omitted as surplus.

In subsection (c), the words "vested in the Secretary" are substituted for "as set forth in the statutes transferred to the Secretary" in 49:1655(f)(3)(A) for clarity and consistency. The words "section 6(e)(1), (2), and (6)(A) of the Department of Transportation Act (49 U.S.C. 1655(e)(1), (2), and (6)(A))" are substituted for "subsection (e) of this section (other than subsection (e)(4) of this section)" in 49:1655(f)(3)(A) for clarity.

In subsection (d), the word "law" is substituted for "statute" in 49:1652(e)(4) for consistency. The words after "administratively final" in 49:1655(f)(3)(C) are omitted as unnecessary because of the restatement of the revised title and those laws giving a right to appeal.

SECTION 104

Revised section	United States Code	Statutes at Large
104(a)	49:1652(e)(1)(1st sentence related to FHWA).	Oct. 15, 1966, Pub. L. 899-670, §§ 3(e) (related to FHWA)(1), (3), (4), 6(f)(3)(C) (related to FHWA), 80 Stat. 932, 940.
104(b)(1)	49:1652(e) (related to FHWA)(1) (less 1st sentence), (3) (last sentence).	
104(b)(2)	23:303(a)(1) (1st, 2d sentences).	
104(b)(3)	23:303(a)(1) (last sentence), (b), (c).	
104(c)	49:1655(f)(3)(B)	Oct. 15, 1966, Pub. L. 89-670, § 6(f)(3)(B), 80 Stat. 940; Jan. 3, 1975, Pub. L. 93-633, § 113(e)(2), 88 Stat. 2163.
	23:401(note)	Sept. 9, 1966, Pub. L. 89-564, § 201(b)(1), 80 Stat. 735; Oct. 15, 1966, Pub. L. 89-670, § 8(h), 80 Stat. 943; restated Dec. 31, 1970, Pub. L. 91-605, § 202(a), 84 Stat. 1740.
	49:1652(e)(3) (related to FHWSA) (less last sentence).	
104(d)	49:1652(e)(4) (related to FHWA).	
	49:1655(f)(3)(C) (related to FHWA).	

In subsection (b)(1), the words "Each of these components" are omitted as surplus.

In subsection (b)(2), the words "In addition to the Administrator of the Federal Highway Administration authorized by section 3(e) of the Department of Transportation Act" in 23:303(a)(1) (1st sentence) are omitted as surplus.

In subsection (b)(3), the words "In the competitive service" are substituted for "under the classified civil service" to conform to 5:2102. The text of 23:303(b), (c) is omitted as unnecessary because sections 322 and 323 of the revised title restate the authority of the Secretary of Transportation.

In subsection (c), the source provisions are consolidated. The words "The Administrator shall carry out duties and powers" are substituted for "The Secretary shall carry out through the Federal Highway Administration those provisions of the Highway Safety Act of 1966 . . . for" in 23:401 (note) and "carry out the functions, powers, and duties of the Secretary" in 49:1655(f)(3)(B) as being more precise, to eliminate unnecessary words, and for consistency. The words "vested in the Secretary" are substituted for "as set forth in the statutes transferred to the Secretary" in 49:1655(f)(3)(B) for clarity and consistency.

In subsection (d), the word "law" is substituted for "statute" in 49:1652(e)(4) for consistency. The words after "administratively final" in 49:1655(f)(3)(C) are omitted as unnecessary because of the restatement of the revised title and those laws giving the right to appeal.

SECTION 105

Revised section	United States Code	Statutes at Large
105	23:401(note)	Sept. 9, 1966, Pub. L. 89-564, § 201(a)(less pay of Administrator and Deputy Administrator), (b)(2), (c), (d), 80 Stat. 735; Oct. 15, 1966, Pub. L. 89-670, § 8(h), 80 Stat. 943; restated Dec. 31, 1970, Pub. L. 91-605, § 202(a), 84 Stat. 1739.

In subsection (a), the words "The . . . is an administration in the" are substituted for "There is hereby established within the", in section 201(a) (1st sentence) of the Highway Safety Act of 1966 (Pub. L. 89-564, 80 Stat. 731) to conform to other sections of the revised title. The words "(hereafter in this section referred to as the 'Administration')" are omitted as unnecessary.

In subsection (c), the words "carry out . . . duties and powers . . . prescribed by the Secretary" are substituted for "perform such duties as are delegated to him by the Secretary" to eliminate surplus words and for consistency. The list of excepted programs in clause (1) is substituted for "highway safety programs, research and development not specifically referred to in paragraph (1) of this subsection", in section 201(b)(2) of the Highway Safety Act of 1966 for clarity.

In subsection (d), the words "Administration . . . authorized by this section" are omitted as surplus.

The text of section 201(d) of the Highway Safety Act of 1966 is omitted as executed.

SECTION 106

Revised section	United States Code	Statutes at Large
106(a)	49:1341(a)(1st sentence)	Aug. 23, 1958, Pub. L. 85-726, §§ 301(a), (b), 302(a), (b), 72 Stat. 744; Aug. 14, 1964, Pub. L. 88-426, § 305(16)(B), (C), 78 Stat. 424.
	49:1652(e)(1)(related to FAA).	Oct. 15, 1966, Pub. L. 89-670, § 3(e) (related to FAA), 80 Stat. 932.

Revised section	United States Code	Statutes at Large
106(b)	49:1341(a)(2d sentence), (b) (1st sentence less 1st–10th words.). 49:1342(a)(1st sentence less 1st-11th words.). 49:1652(e)(related to FAA)(1) (less 1st sentence), (3) (last sentence.).	
106(c)	49:1341(b) (1st sentence 1st–10th words, 2d sentence). 49:1652(e)(2)(related to Administrator).	
106(d)	49:1342(b)(1st sentence 1st-11th words, 2d sentence, 4th-6th sentences). 49:1652(e)(2)(1st sentence less Administrator). 49:1343(a)(2)(related to deputy Administrator).	Aug. 23, 1958, Pub. L. 85–726, § 302(c)(2) (related to Deputy Administrator), 72 Stat. 745.
106(e)	49:1341(b)(less 1st, 2d sentences). 49:1342(b)(3d sentence)	
106(f)	49:1341(a)(less 1st, 2d sentences).	
106(g)	49:1652(e)(3) (related to FAA) (less last sentence). 49: 1655(c)(1)(1st sentence proviso.)	Oct. 15, 1966, Pub. L. 89–670; § 6(c)(1) (1st sentence proviso, 2d, last sentences), 80 Stat. 938; Jan. 3, 1975, Pub. L. 93–633, § 113(d), 88 Stat. 2163.
106(h)	49:1652(e)(4) (related to FAA). 49:1655(c)(1) (2d, last sentences).	
106(i)	49:1342(a) (2d, last sentences).	

In subsections (a) and (b), the source provisions are combined for clarity.

In subsection (a), the words "referred to in this chapter as the 'Administration'" are omitted because of the style of the revised title.

In subsection (b), the word "due" in 49:1342(b) (1st sentence less 1st–11th words) is omitted as surplus. The words "the duties and powers" are substituted for "the powers and duties vested in and imposed upon him by this chapter" to eliminate surplus words and for consistency. The word "consider" is substituted for "with . . . regard to" for clarity.

In subsections (c) and (d), the words "At the time of his nomination" are omitted as unnecessary and for consistency.

In subsection (c), the text of 49:1652(e)(2) (last sentence) is omitted as executed.

In subsection (d)(1), the words "Nothing in this chapter or other law shall preclude" in 49:1342(b) (4th sentence) are omitted as unnecessary because of the positive statement of authority. The words "armed force" are substituted for "armed services" to conform to title 10. The words "to the position of" are omitted as surplus.

In subsection (d)(2), the word "continue" is omitted as surplus. The words "pay provided by law for the Deputy Administrator" are substituted for "compensation provided for the Deputy Administrator" in 49:1342(b) because the pay provisions were repealed and replaced by 5:5315. The words "(including personal money allowance)" are omitted as being within the meaning of "allowance" in title 37. The words "as the case may be" are omitted as surplus. The words 'of the military grade held" are substituted for "military . . . payable to a commissioned officer of his grade and length of service" to eliminate unnecessary words. The words "administration" and "military" are added for clarity. The words "to defray" are omitted as surplus.

In subsection (d)(3), the words "acceptance of, and" are omitted as unnecessary. The word "held" is substituted for "may occupy or hold" to eliminate unnecessary words. The words "right or benefit" are substituted for "emolument, perquisite, right, privilege, or benefit" to eliminate unnecessary words. The words "incident to or" before "arising" are omitted as surplus.

In subsection (f), the word "Secretary" is substituted for "Administrator" because of the transfer of aviation functions to the Secretary under 49:1655(c)(1). The words "In the exercise of his duties and the discharge of his responsibilities under this chapter" are omitted as surplus.

In subsection (g), the words "are hereby transferred to" in 49:1655(c)(1) are omitted as executed. The words "carry out" are substituted for "it shall be his duty to exercise" in 49:1655(c)(1) for clarity, consistency, and to eliminate surplus words. The words "In addition to such functions, powers, and duties as are specified in this chapter" in 49:1652(e)(3) are omitted as unnecessary because of the restatement.

In subsection (h), the first sentence is substituted for 49:1655(c)(1) (2d sentence) for clarity and consistency. The word "law" is substituted for "statute" in 49:1652(e)(4) for consistency. The words "carrying out" in 49:1655(c)(1) (last sentence) are substituted for "the exercise of" for consistency. The words after "administratively final" are omitted as unnecessary because of the restatement of the revised title and those laws giving a right of appeal.

In subsection (i), the words "and exercise the powers of" are omitted as surplus. The words "when the office of the Administrator is vacant" are inserted to conform to section 102 of the revised title.

SECTION 107

Revised section	United States Code	Statutes at large
107	49:1608 (note)	Reorg. Plan No. 2 of 1968, eff. July 1, 1968, § 3, 82 Stat. 1369.

In subsection (b), the words, "and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314)" are omitted as surplus because of 5:5314.

SECTION 108

Revised section	United States Code	Statutes at large
108(a)	49:1655(b)(1), (2)	Oct. 15, 1966, Pub. L. 89–670, §§ 3(e)(3) (related to USCG), 6(b)(1), (2), 80 Stat. 932, 938.
108(b)	49:1652(e)(3) (related to USCG).	

Subsection (a) reflects the transfer of the Coast Guard to the Department of Transportation as provided by the source provisions and 14:1. The words "Except when operating as a service of the Navy" are substituted for 49:1655(b)(2) because of 14:3. The words "The Secretary of Transportation exercises . . . vested in the Secretary of the Treasury . . . immediately before April 1, 1967" are substituted for "and there are hereby transferred to and vested in the Secretary . . . of the Secretary of the Treasury" to reflect the transfer of duties and powers to the Secretary of Transportation on April 1, 1967, the effective date of the Department of Transportation Act (Pub. L. 89–670, 80 Stat. 931).

In subsection (b), the first sentence is included to provide the name of the officer in charge of the Coast Guard, as reflected in 14:44. In the 2d sentence, the words "carrying out the duties and powers specified by law" are substituted for "such functions, powers, and duties as are specified in this chapter to be carried out", and the words "carry out duties and powers prescribed" are substituted for "carry out such additional functions, powers, and duties as", for consistency.

SECTION 109

Revised section	United States Code	Statutes at large
109	No source	

The section is included to provide in chapter 1 of the revised title a complete list of the organizational units established by law that are in the Department of Transportation or are subject to the direction and supervision of the Secretary of Transportation.

SECTION 110

Revised section	United States Code	Statutes at large
110(a)	No source	
110(b)	33:981 note	Oct. 15, 1966, Pub. L. 89–670, § 8(g)(2), 80 Stat. 943.

Subsection (a) is included to provide in chapter 1 of the revised title a complete list of the organizational units established by law that are in the Department of Transportation or are subject to the direction and supervision of the Secretary of Transportation.

CHAPTER 3—GENERAL DUTIES AND POWERS

SUBCHAPTER I—DUTIES OF THE SECRETARY OF TRANSPORTATION

SUBCHAPTER II—ADMINISTRATIVE

334. Limit on aviation charges.
335. Authorization of appropriations.

SUBCHAPTER I—DUTIES OF THE SECRETARY OF TRANSPORTATION

SECTION 301

Revised section	United States Code	Statutes at large
301	49:1653(a)	Oct. 15, 1966, Pub. L. 89-670, § 4(a), 80 Stat. 933.

In the introductory clause before "shall", the words "in carrying out the purposes of this chapter . . . among his responsibilities" are omitted as surplus.

In clause (4), the word "compiling" is substituted for "gathering" for consistency.

SECTION 302

Revised section	United States Code	Statutes at large
302(a)	49:1653(b)(1)	Oct. 15, 1966, Pub. L. 89-670, § 4(b), 80 Stat. 933.
302(b)	49:1653(b)(2)	
302(c)	49:1653(b)(3)	

In subsection (a), the words, "In carrying out his duties and reponsibilities under this chapter" before "Secretary of Transportation" are omitted as surplus. The words "the transportation policy of sections 10101 and 10101a of this title in addition to other laws" are substituted for "all applicable statutes including the policy standards set forth in the Federal Aviation Act of 1958, as amended [49 U.S.C. 1301 et seq.]; the national transportation policy of the Interstate Commerce Act, as amended; title 23, relating to Federal-aid highways; and title 14, titles 52 and 53 of the Revised Statutes, the Act of April 25, 1940, as amended, and the Act of September 2, 1958, as amended, relating to the United States Coast Guard" because of the omitted laws is now applicable to the Secretary of Transportation and the Department of Transportation as the result of the restatement of those laws, and the Secretary is therefore bound to follow those laws by their own terms.

In subsection (c), the words, "In exercising the functions, powers, and duties conferred on and transferred to the Secretary by this chapter" before "Secretary" are omitted as surplus. The word "consider" is substituted for "give full consideration to" to eliminate surplus words. The words "for operational continuity of the functions transferred" after "the needs" are omitted as executed.

SECTION 303

Revised section	United States Code	Statutes at large
303(a)	49:1651(b)(2) 49:1653(f) (1st sentence)	Oct. 15, 1966, Pub. L. 89-670, § 2(b), 80 Stat. 931. Oct. 15, 1966, Pub. L. 89-670, § 4(f), 80 Stat. 934; restated Aug. 23, 1968, Pub. L. 92-495; § 18(b), 82 Stat. 824.
303(b)	49:1653(f) (2d sentence)	
303(c)	49:1653(f) (less 1st, 2d sentences).	

In subsection (a), the words, "hereby/declared to be" before "the policy" are omitted as surplus. The words "of the United States Government" are substituted for "national" for clarity and consistency.

In subsection (b), the words "crossed by transportation activities or facilities" are substituted for "traversed" for clarity.

In subsection (b), before clause (1), the words "After August 23, 1968" after "Secretary" are omitted as executed. The word "transportation" is inserted before "program" for clarity. In clause (2), the words "or project" are added for consistency.

SECTION 304

Revised section	United States Code	Statutes at large
304(a)	49: 1653(g) (less 3d sentence).	Oct. 15, 1966, Pub. L. 89-670, § 4(g), 80 Stat. 934.
304(b)	49: 1653(g) (3d sentence)	

In subsection (a), the text of 49: 1653(g) (last sentence) is omitted as executed.

In subsection (a)(4), the word "ensure" is substituted for "assure" as being more precise. The words "of the United States Government" are substituted for "Federal," and the words "United States" are substituted for "national" for clarity and consistency.

In subsection (b), the words "The Secretaries shall report on April 1 of each year" are substituted for "They shall, within one year after the effective date of the Act, and annually thereafter, report" to omit executed words and to specify the date of April 1 because the President prescribed April 1, 1967, as the effective date of the Department of Transportation Act (Pub. L. 89-670, 80 Stat. 931) by Executive Order No. 11340, March 30, 1967 (32 F.R. 5443). The word "consider" is substituted for "determine" for consistency.

SECTION 305

Revised section	United States Code	Statutes at large
305(a)	49: 1656(a) (less next-to-last par.).	Oct. 15, 1966, Pub. L. 89-670, § 7 (less (a) next-to-last par.), 80 Stat. 941.
305(b)	49: 1656 (less (a))	

In subsection (a), before clause (1), the words "consistent with national transportation policies" after "develop standards and criteria" are omitted as unnecessary because of section 302 of the revised title. The words "Based on experience" are substituted for "in the light of experience", and the words "shall prescribe" are substituted for "be promulgated by the", to conform to other sections of the revised title. The words "from time to time" after "shall revise" are omitted as unnecessary. The words "This subsection does apply to" are substituted for "except such proposals as are concerned with" for clarity. In clause (1), the words "a department, agency, or instrumentality of the Government" are substituted for "Federal agencies" for clarity and consistency. Similar conforming changes are made throughout the section. The word "services" after "provide transportation" is omitted as unnecessary. In clause (2), the words "48 contiguous States" are substituted for "contiguous United States" for clarity.

The text of 49:1656(a) (last par.) that provided that the Secretary of Transportation was a member of the Water Resources Council on matters pertaining to navigation features of water resource projects is omitted as superseded because 42:1962(a) gave the Secretary membership on the Council without limitation.

In subsection (b)(2), the words "unit of" before "governments" are omitted as surplus. In clause (3), the word "thereafter" after "send" is omitted as surplus.

SECTION 306

Revised section	United States Code	Statutes at large
306(a)	45:803(f)	Feb. 5, 1976, Pub. L. 94-210, § 905, 90 Stat. 148.
306(b)	45:803(a)	
306(c), (d)	45:803(b)	
306(e)	45:803(c)-(e)	

In subsection (b), the enumerated laws are substituted for "through financial assistance under this Act", meaning the Rail Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210, 90 Stat. 31) and laws amended by that Act. The laws cited in the subsection are substituted for "through financial assistance under this Act" for clarity. The enumerated laws include provisions of the Railroad Revitalization and Regulatory Reform Act of 1976 that amend other laws as well as provisions that are not amendments to other laws. A reference to the Urban Mass Transportation Act of 1964 (Pub. L. 98-365, 78 Stat. 302) is omitted because this section related to that Act is superseded by 49:1615.

In subsection (c), the word "decides" is substituted for "determines" for consistency. The word "ensure" is substituted for "assure" as being more precise.

In subsection (d), the words "at least one of the following actions" are substituted for "and/or" for clarity and consistency.

In subsection (e), the text of 45:803(d) is omitted as unnecessary because section 322 of the revised title gives the Secretary of Transportation general authority to prescribe regulations and other provisions of the revised title give the Secretary general authority to carry out his duties and powers. The text of 45:803(e) is omitted as unnecessary.

SECTION 307

Revised section	United States Code	Statutes at large
307(a)	49:1653(e)(1)	Oct. 15, 1966, Pub. L. 89-670, § 4(e), 80 Stat. 934.
307(b)	49:1653(e)(2)	
307(c)	49:1653(e)(3), (4)	

In the section, the words "be the duty of" before "Secretary shall" are omitted as surplus.

In subsection (a), the word "inspect" is substituted for "investigate" as being more appropriate. The words "person applying to the Interstate Commerce Commission for authority to provide transportation or freight forwarder service" are substituted for "applicant seeking operating authority from the Interstate Commerce Commission" as being more precise and to conform to subtitle IV of the revised title. The words "of the inspection" are inserted for clarity.

In subsection (b), the words "person applying for permanent authority to provide transportation or freight forwarder service" are substituted for "applicant for permanent operating authority" as being more precise and to conform to subtitle IV of the revised title. The words "proposed transfer of permanent authority" are substituted for "proposed transaction involving transfer of operating authority" to eliminate surplus words and for clarity because the transfer only involves permanent authority.

In subsection (c)(1), the words "providing transportation or freight forwarder service subject to its jurisdiction" are inserted for clarity.

Subsection (c)(2) is substituted for 49:1653(e)(3) for clarity and to conform to subtitle IV of the revised title. The words "freight forwarder service" are not used because the law does not provide for temporary authority for freight forwarders.

In subsection (c)(3) and (4), the word "finding" is substituted for "determination" to conform to subtitle IV of the revised title.

In subsection (c)(3), the words "necessary or" before "desirable" are omitted as surplus.

SECTION 308

Revised section	United States Code	Statutes at Large
308(a)	45:792	Jan. 2, 1974, Pub. L. 93–236, § 602, 87 Stat. 1022.
	49:1658	Oct. 15, 1966, Pub. L. 89–670, § 12, 80 Stat. 949; Feb. 5, 1976, Pub. L. 94–210, § 906(1), 90 Stat. 149.
308(b)	49:1354(e)	Aug. 23, 1958, Pub. L. 85–726, § 313(e), 72 Stat. 753.
308(c)	15:1519a	Oct. 3, 1980, Pub. L. 96–371, § 2, 94 Stat. 1362; Aug. 6, 1981, Pub. L. 97–31, § 12(8), 95 Stat. 154.

In subsection (a), the words "As part of his annual report each year" in 45:792 are omitted as unnecessary because of the restatement of the source provisions.

In subsection (b), before clause (1), the words "aviation activities of the Department" are substituted for "work performed under this chapter" because of the restatement. The words "The report shall include" are substituted for "Such report shall contain" for consistency. In clause (1), the words "and data" after "information" are omitted as surplus. The words "airspace of the United States" are substituted for "National airspace" for clarity and consistency. In clause (2), the words "the Secretary considers necessary" are substituted for "as may be considered" for clarity.

SUBCHAPTER II—ADMINISTRATIVE

SECTION 321

Revised section	United States Code	Statutes at Large
321	No source.	

A number of the source provisions of the subchapter are taken from 49:ch. 20. The text of 49:ch. 20 contains general definitions, some of which are used in those source provisions. The section includes those definitions from 49:ch. 20 that are used in the source provisions included in the subchapter.

SECTION 322

Revised section	United States Code	Statutes at Large
322(e)	49:1657(e)(1) (last 19 words), (2) (last 19 words), (f), (g).	Oct. 15, 1966, Pub. L. 89–670, § 9(e)–(g), 80 Stat. 944.
322(b)	49:1344(d) (less words after semicolon).	Aug. 23, 1958, Pub. L. 85–726, §§ 302(k), 303(a), (d) (less words after semicolon), 80 Stat. 747, 749.
	49:1657(e)(1) (less last 19 words), (2) (less last 19 words), (3) 5 App. U.S.C.	Reorg. Plan No. 2 of 1968, eff. July 1, 1968, § 2, 82 Stat. 1369.
322(c)	49:1343(i)	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, § 303(e); added May 21, 1970, Pub. L. 91–258, § 51(a)(1), 84 Stat. 234; July 12, 1976, Pub. L. 94–353, § 16, 90 Stat. 882, Oct. 19, 1980, Pub. L. 96–470, § 112(e), 94 Stat. 2240.
322(d)	49:1344(a)	
322(e)	49:1344(e)	

In the chapter, the words "Secretary of Transportation" and "Secretary" are substituted for "Administrator" in the provisions of the Federal Aviation Act of 1958 (Pub. L. 85–726, 72 Stat. 731) restated in the revised chapter because of the transfer of aviation functions to the Secretary under 49:1655(c)(1).

In subsection (a), the words "may prescribe regulations to carry out the duties and powers" are substituted for "may make such rules and regulations as may be necessary to carry out . . . functions, powers, and duties" for consistency and to eliminate unnecessary words. The text of 49:1657 (f) and (g) is omitted as executed because the transfer of personnel, assets, and liabilities, etc., has been accomplished.

In subsection (b), the words "Except where this chapter vests in any administration, agency or board, specific functions, powers, and duties" before "the Secretary may" in 49:1657(e)(1) are omitted because of the specific wording of sections 103, 104, and 106 of the revised title. The words "in addition to the authority to delegate and redelegate contained in any other Act in the exercise of the functions transferred to or vested in the Secretary in this chapter" before "delegate" in 49:1657(e)(1) are omitted because the authority of the Secretary to delegate is consolidated in the subsection. The words "the duties and powers of the Secretary" are substituted for "any of his residual functions, powers, and duties" in 49:1657(e)(1) and "any of the functions transferred to him by this reorganization plan" in section 2 of Reorganization Plan No. 2 of 1968 (eff. July 1, 1968, 82 Stat. 1369), for clarity and consistency. The words "as he may designate" and "of such functions, powers, and duties as he may deem desirable" are omitted as surplus each place they appear in 49:1657(e) (1) and (2). The text of section 322(b) (1st sentence) of the revised title is substituted for 49:1344(d) (less words after semicolon) for clarity and because of the transfer of aviation functions to the Secretary of Transportation under 49:1655(c)(1). The text of 49:1657(e)(2) (words before 2d comma) is omitted as unnecessary because the authority of an officer to delegate is consolidated in the subsection. The words "the duties and powers of the officer" are substituted for "such functions, powers, and duties" in 49:1657(e)(2) for clarity and consistency. The words "the duties and powers specified in section 103(c)(1), 104(c)(1), and 106(g)(1) of this title" are substituted for "any of the statutory duties and responsibilities specifically assigned to them by this chapter" in 49:1657(e)(3) for clarity. The words "may not be delegated to an officer or employee outside the Administration concerned" are substituted for "The Administrators established by section 1652(e) of this title . . . may not delegate . . . outside of their respective administrations" in 49:1657(e)(3) for clarity and because of the restatement of the section.

In subsection (c), before clause (1), the words "aviation duties and powers" are added because the source provisions being restated only applies to carrying out duties and powers related to the Federal Aviation Administration. In clause (2), the words "those departments, agencies, and instrumentalities" are substituted for "such other agencies and instrumentalities" in 49:1343(i) for clarity and consistency. The words "aviation . . . Department" are substituted for "Administration" in 49:1343(i) because of the transfer of aviation functions to the Secretary under 49:1655(c)(1).

In subsection (d), before clause (1), the words "aviation duties and powers" are substituted for "for the exercise and performance of the powers and duties vested in and imposed upon him by law" in 49:1344(a) because the source provisions being restated only applies to carrying out duties and powers related to the Federal Aviation Administration. The words "at the seat of government and elsewhere as may be necessary" after "expenditures" and "and as from time to time may be appropriated for by Congress" are omitted as surplus. In clause (8), the words "passenger-carrying aircraft and automobiles" are substituted for "passenger-carrying automobiles and aircraft" in 49:1344(a) for clarity. The words "such . . . as is necessary in the exercise and performance of the powers and duties of the Secretary" after "aircraft" in 49:1344(a) are omitted as unnecessary because of the restatement of the section. The text of 49:1344(a) (proviso) is omitted as unnecessary.

In subsection (e), before clause (1), the words "or in support of" are omitted as surplus. In clause (1), the words "making the property" are substituted for "for manufacture" for clarity. In clause (2), the word "formal" is omitted as unnecessary. The word "unreasonably" is substituted for "unduly" for consistency.

SECTION 323

Revised section	United States Code	Statutes at Large
323(a)	49:1343(d)	Aug. 23, 1958, Pub. L. 85–726, § 302(f), 72 Stat. 746; Oct. 4, 1961, Pub. L. 87–367, § 205(b), 75 Stat. 791; Oct. 11, 1962, Pub. L. 87–793, § 1001(h), 76 Stat. 864.
	49:1343(f)	Aug. 23, 1958, Pub. L. 85–726, § 302(h), 72 Stat. 746; Oct. 4, 1961, Pub. L. 87–367, § 205(a) 75 Stat. 791
	49:1657(a)	Oct. 15, 1966, Pub. L. 89–670, § 9(a), (b), 80 Stat. 944; Mar. 27, 1978, Pub. L. 95–251, § 2(a)(12), 92 Stat. 183.
323(b)	49:1343(g) (1st sentence 33d–43d words); 49:1657(b).	Aug. 23, 1958, Pub. L. 85–726, § 302(i) (1st sentence 31st–41st words), 72 Stat. 747.

In the section, the word "pay" is substituted for "compensation" for consistency with title 5.

In subsection (a), the words "In addition to the authority contained in any other Act which is transferred to and vested in the Secretary, the National Transportation Safety Board, or any other officer in the Department" before "the Secretary" and "subject to the civil service and classification laws" before "to select" in 49:1657(a) are omitted as unnecessary because of title 5, especially sections 3301, 5101, and 5331. The word "appoint" is substituted for

"select, employ, appoint" because it is inclusive. The words "attorneys, and agents" after "employees" in 49:1343(c) and "including investigators, attorneys, and administrative law judges" after "employees" in 49:1657(a) are omitted as included in "officers and employees". The words "of the Department of Transportation" are substituted for "as are necessary to carry out the provisions of this chapter" for consistency.

The text of 49:1343(d) (words after 1st comma) is omitted because of section 414(a)(1)(B) of the Civil Service Reform Act of 1978 (Pub. L. 95-454, 92 Stat. 1177). The text of 49:1343(f) is omitted because of section 414(a)(2)(A) of that Act.

In subsection (b), the word "procure" is substituted for "obtain" to conform to 5:3109. The words "unless otherwise specified in an appropriation Act" after "individuals" in 49:1657(b) are omitted as surplus.

SECTION 324

Revised section	United States Code	Statutes at Large
324(a)(1)	49:1343(a)(1) (1st sentence).	Aug. 23, 1958, Pub. L. 85-726, § 302(c) (1), (2) (related to cooperative agreements), 72 Stat. 745.
324(a)(2)	49:1657(c) (1st sentence)	Oct. 15, 1966, Pub. L. 89-670, § 9(c), (d), 80 Stat. 944.
324(b)	49:1657(p)	Oct. 15, 1966, Pub. L. 89-670, § 9(p), 80 Stat. 947; Oct. 28, 1974, Pub. L. 93-496, § 16(b), 88 Stat. 1533.
324(c)	49:1343(a)(1) (less 1st sentence); 49:1657(c) (less 1st sentence), (d)(2).	
324(d)	49:1343(a)(2) (related to cooperative agreements); 49:1657(d)(1).	

In the section, the words "members of the armed forces" are substituted for "military personnel", "Members of the Army, the Navy, the Air Force, or the Marine Corps", and "members of the armed services" for clarity and to conform to title 10.

In subsection (a)(2), the words "other duties and powers of the Secretary" are substituted for "the functions of the Department" for clarity and consistency.

In subsection (b), the words "Notwithstanding any provision of this chapter or other law" before "a member" and "subject to the provisions of title 5" before "a retired" are omitted as unnecessary.

In subsection (c), the words "The Secretary of Transportation and the Secretary of a military department may make cooperative agreements under which" are substituted for "by the appropriate Secretary, pursuant to cooperative agreements with the Secretary of Transportation" in 49:1343(a)(1) and 49:1657(c) for clarity. The words "or the Coast Guard" before "may be detailed" in 49:1343(a)(1) (2d sentence) are omitted because of the transfer of the Coast Guard to the Secretary under 49:1655(b) and the transfer of aviation functions to the Secretary under 49:1655(c)(1). The words "may be appointed, detailed, or assigned" are substituted for "may be detailed" for clarity and consistency in 49:1343(a)(1) and 49:1657(c). The words "to the Department of Transportation" are substituted for "for service in the Administration to effect such participation" in 49:1343(a)(1) because of the transfer of aviation functions to the Secretary under 49:1655(c)(1) and to eliminate unnecessary words. The words "in writing" after "annually" in 49:1657(d)(2) are omitted as unnecessary. The words "each member appointed, detailed, or assigned" are substituted for "personnel appointed" and "members of the armed services detailed" in 49:1657(d)(2) for clarity and consistency.

In subsection (d), the words "The Secretary of a military department" are substituted for "his armed force or any officer thereof" in 49:1657(d)(1) and "the department from which detailed or appointed or by any agency or officer thereof" in 49:1343(a)(2) for clarity and consistency. The words "directly or indirectly" before "with respect to" are omitted as surplus. The words "the duties and powers of . . . when those duties and powers pertain to the Department of Transportation" are substituted for "with respect to his responsibilities under this chapter or within the Administration" in 49:1343(a)(2) and "with respect to the responsibilities exercised in the position to which appointed, detailed, or assigned" in 49:1657(d)(1) for consistency and because of the transfer of aviation functions to the Secretary under 49:1655(c)(1). The words "does not control" are substituted for "No . . . shall be subject to direction or control by" in 49:1343(a)(2) and "shall not be subject to direction by or control by" 49:1657(d)(1) for clarity. The words "the acceptance of" before "and service" and "any appointive or other" before "position" in 49:1657(d)(1) are omitted as unnecessary. The words "a member" are added because of the restatement of the section. The words "that member" are substituted for "commissioned officers or enlisted men" in 49:1343(a)(2) and "officers and enlisted men" in 49:1657(d)(1) because of the restatement of the section and to eliminate unnecessary words. The word "held" is substituted for "may occupy or hold" to eliminate unnecessary words. The words "right or benefit" are substituted for "emolument, perquisite, right, privilege, or benefit" to eliminate unnecessary words. The words "incident to or" before "arising" are omitted as surplus.

SECTION 325

Revised section	United States Code	Statutes at Large
325(a)	49:1343(g) (1st sentence 1st-32d words).	Aug. 23, 1958, Pub. L. 85-726, § 302(i) (Less 1st sentence 31st-41st words), 72 Stat. 747.
	49:1657(o) (1st sentence).	Oct. 15, 1966, Pub. L. 89-670, § 9(o), 80 Stat. 947.
325(b)	49:1343(g) (1st sentence 44th-53d words, last sentence).	49:1657(o) (last sentence).
325(c)	49:1343(g) (1st sentence 54th-last words).	

In subsection (a), the words "provisions of title 5 governing appointment in the competitive service" are substituted for "civil service laws" in 49:1657(o) for clarity and consistency. The words "as shall be appropriated for the purpose of" before "consultation" in 49:1657(o) are omitted as surplus. The words "the Secretary in carrying out the duties and powers of the Secretary" are substituted for "the Department in performance of its functions" in 49:1657(o) and "the Administration in performance of its functions hereunder" in 49:1343(g) for clarity and consistency because the duties and powers are vested in the Secretary of Transportation.

In subsection (b), the word "compensation" after "may be paid" in 49:1657(o) is omitted as surplus. The words "not more than $100 a day" are substituted for "at rates not exceeding those authorized for individuals under subsection (b) of this section" in 49:1657(o) for clarity because that is the rate under 49:1657(b). The words "A member is entitled to reimbursement for expenses under section 5703 of title 5" are substituted for 49:1343(g) (last sentence) and 49:1657(o) (last sentence words after 4th comma) for clarity.

In subsection (c), the words "A member of an advisory committee advising the Secretary" are substituted for "in the case of any individual" in 49:1343(g) for clarity. The words "may serve" are added for clarity and because of the restatement of the section. The words "in carrying out aviation duties and powers" are added because the source provisions being restated only applies to carrying out duties and powers related to the Federal Aviation Administration.

SECTION 326

Revised section	United States Code	Statutes at Large
326(a)	49:1344(c)(1)	Aug. 23, 1958, Pub. L. 85-726, § 303(c)(1), 72 Stat. 748.
	49:1657(m)(1) (1st, 3d sentences).	Oct. 15, 1966, Pub. L. 89-670, § 9(m), 80 Stat. 946.
326(b)	49:1657(m)(1) (2d sentence), (3) (less 1st sentence).	
326(c)	49:1657(m)(3) (1st sentence).	
326(d)	49:1657(m)(2)	

In the section, the word "gifts" is substituted for "gifts and bequests" in 49:1657(m)(1) because it is inclusive.

In subsection (a), the words "accept and use" are substituted for "accept, hold, administer, and utilize", and the words "for the department" are substituted for "for the purpose of aiding or facilitating the work of the Department" in 49:1657(m)(1), to eliminate unnecessary words. The word "property" is substituted for "property, both real and personal" in 49:1657(m)(1), and "gift or donation of money or other property, real and personal" in 49:1344(c)(1) to eliminate unnecessary words. The words "aviation duties and powers" are added because the source provisions being restated only applies to carrying out duties and powers related to the Federal Aviation Administration. The words "under this section and proceeds from that property" are substituted for "pursuant to this paragraph, and the proceeds thereof" in 49:1657(m)(1) for clarity.

In subsection (b), the words "The Department has a" and "The fund consists of" are added for clarity and because of the restatement of the section. The word "separate" before "fund" is omitted as unnecessary and for consistency. The words "from the fund" are added for clarity. The words "accepted under this section" are substituted for "held by the Secretary pursuant to paragraph (1)" for clarity. The words "that property" are substituted for "other property received as gifts or bequests" to eliminate unnecessary words. The words "from securities under subsection (c) of this section" are substituted for "accruing from such securities" for clarity.

In subsection (c), the words "amounts in the fund" are substituted for "any moneys contained in the fund provided for in paragraph (1)" for clarity and consistency.

In subsection (d), the words "under this section" are substituted for "under paragraph (1)" because of the restatement of the section. The words "the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)" are substituted for "For the purpose of Federal

income, estate, and gift taxes" for consistency.

SECTION 327

Revised section	United States Code	Statutes at Large
327(a)	49:1657(j) (1st sentence less 11th–17th words).	Oct. 15, 1966, Pub. L. 89–670, § 9(j), 80 Stat. 945.
327(b)	49:1657(j) (1st sentence 11th–17th words, 2d sentence, 18th–22d words).	
327(c)	49:1657(j) (2d sentence less 18th–22d words, 4th sentence).	
327(d)	49:1657(j) (less 1st, 2d, 4th sentences).	

In subsection (a), the words "Department of Transportation has" are substituted for "Secretary is authorized to establish" because the working capital fund has been established. The words "administrative" before "working" and "Amounts in the fund are available" are added for clarity. The words "the Secretary of Transportation decides are" are substituted for "as he shall find to be" for clarity. The words "desirable for the economy" are substituted for "desirable in the interest of economy" to eliminate unnecessary words. The words "such services as" before "a central supply service" and "in whole or in part" before "the requirements of the Department" are omitted as surplus. The words "the requirements of the Department" are substituted for "the requirements of the Department and its agencies" because they are inclusive.

In subsection (b), the words "Amounts in the fund" are added for clarity. The words "Amounts may be appropriated to the fund" are substituted for "(which appropriations are hereby authorized)" for clarity.

In subsection (c), the words, "The fund consists of" are substituted for "The capital of the fund shall consist of" and "The fund shall also be credited with" for clarity. The word "reasonable" is substituted for "fair and reasonable" because it is inclusive. The words "amounts appropriated to the fund" are substituted for "of any appropriations made for the purpose of providing capital" for clarity. The words "amounts received from the sale" are substituted for "receipts from the sale", and the words "payments received for loss" are substituted for "receipts in payment for", as being more precise.

In subsection (d), the words "agencies and offices in" after "available funds of" are omitted because they are included in "Department". The words "Amounts in the fund, in excess of amounts" are added for clarity. The words "any surplus found in the fund . . . above the" after "miscellaneous receipts" are omitted because of the restatement of this section. The words "to establish and" before "maintain" are omitted because the working capital fund has been established. The words "deposited in the Treasury" and substituted for "covered into the United States Treasury" for consistency. The words "are . . . in determining the amount of the excess" are added for clarity.

SECTION 328

Revised section	United States Code	Statutes at Large
328(a)	49:1657(r)(1) (1st sentence, 2d sentence words before last comma, last sentence).	Oct. 15, 1966, Pub. L. 89–670, 80 Stat. 931, § 9(r); added May 30, 1980, Pub. L. 96–254, § 207, 94 Stat. 413.
328(b)	49:1657(r)(1) (2d sentence words after last comma), (2)(B) (words after last comma).	
328(c)	49:1657(r)(2)(A), (B) (words before last comma), (C).	
328(d)	49:1657(r)(3)	
328(e)	49:1657(r)(4)	

In subsection (a), the words "Department of Transportation has" are substituted for "Secretary is authorized to establish" because the working capital fund has been established. The text of 49:1657(r)(1) (2d sentence words before last comma) are omitted as executed. The words "The Transportation Systems Center is authorized to perform" are omitted as unnecessary because of the restatement. The word "approves" is substituted for "direct . . . and, when approved by the Secretary" to eliminate unnecessary words. The words "or his designee" are omitted because of section 322(b) of the revised title.

In subsection (c)(3) and (4), the words "fair and" are omitted as surplus.

In subsection (c)(3), the words "by the Department and other agencies of the Government" are omitted as surplus.

In subsection (c)(4), the words "from other sources" are omitted as surplus.

In subsection (d)(1), before clause (A), the words "or his designee" are omitted because of section 322(b) of the revised title.

In subsection (e), the words "The Secretary shall deposit" are substituted for "there shall be transferred" for clarity and consistency. The words "in the fund" are added for clarity.

SECTION 329

Revised section	United States Code	Statutes at Large
329(a)	49:1634	Sept. 30, 1965, Pub. L. 89–220, § 4,79 Stat. 893.
	49:1655(a)(2)(A) (related to 49:1634).	Oct. 15, 1966, Pub. L. 89–670, §§ 6(a)(2)(A) (related to § 4 of the Act of Sept. 30, 1965), 9(n), 80 Stat. 937, 946.
329(b)	49:1352	Aug. 23, 1958, Pub. L. 85–726, § 311, 72 Stat. 751.
329(c)(1)	49:1657(r)(1) (less last 17 words).	
329(c)(2)	49:1657(r)(1) (last 17 words), (2).	
329(d)	49:1343(b)	Aug. 23, 1958, Pub. L. 85–726, § 302(d), 72 Stat. 746.

In subsection (a), the word "information" is substituted for "data, statistics, and other information" in 49:1634 to eliminate unnecessary words. The words "transportation system of the United States" are substituted for "national transportation system" in 49:1634 for clarity and consistency. The words "in carrying out this activity" before "the Secretary shall" in 49:1634 are omitted as surplus. The words "departments, agencies, and instrumentalities of the United States Government" are substitutes for "Federal agencies" in 49:1634 for clarity and consistency. The words "To the greatest extent practical" are substituted for "insofar as practicable" in 49:1634 for consistency. The words "The Secretary shall" are added for clarity.

In subsection (b), the words "by the National Transportation Safety Board under title VII of the Federal Aviation Act of 1958 (49 U.S.C. 1441 et seq.) or the Civil Aeronautics Board under title IV of that Act (49 U.S.C. 1371 et seq.)" are substituted for "the Board under subchapter IV and VII of this chapter)" in 49:1352 because 49:1655(d) (1st sentence) transferred duties of the Civil Aeronautics Board under 49:ch. 20, subch. VII to the Secretary of Transportation to be carried out through the National Transportation Safety Board. The reference to the National Transportation Safety Board is to the independent Board established by section 303(a) of the Independent Safety Board Act of 1974 (Pub. L. 93–633, 88 Stat. 2167) outside the Department of Transportation and not to the prior Board that was a part of the Department. The words "departments, agencies, and instrumentalities of the Government" are substituted for "government channels" in 49:1352 for clarity and consistency.

In subsection (c)(1), the words "of the United States" are added for clarity and consistency. The words "of a State, territory, or possession" are substituted for "thereof" after "subdivision" for clarity. The words "related to the duties and powers of the Secretary" are substituted for "falling within the province of the Department" for clarity and consistency.

In subsection (c)(2), the words "governmental authority requesting information under paragraph (1) of this subsection" are substituted for "body requesting it" for clarity and consistency. The word "separate" before "account" is omitted as unnecessary and for consistency. The words "must pay" are substituted for "upon the payment" after "other records" for clarity. The words "preparing the information" are substituted for "such work" after "actual cost of" for clarity. The word "payments" is substituted for "All moneys received by the Department in payment of the cost of work under paragraph (1)" to eliminate unnecessary words. The words "in the Treasury" are added for clarity and consistency. The words "The Secretary may use amounts in the account" are substituted for "These moneys may be used, in the discretion of the Secretary" for clarity and to eliminate unnecessary words. The words "to getting and providing the information" are substituted for "to the work and/or to secure in connection therewith the special services of persons who are neither officers nor employees of the United States" for clarity and to eliminate unnecessary words.

In subsection (d), the words "in carrying out duties and powers under the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.)" are substituted for "in discharge of responsibilities under this chapter" in 49:1343(b) because of the transfer of aviation functions to the Secretary under 49:1658(c)(1) and for consistency. The words "directly related to carrying out that part" are substituted for "directly relating to such responsibilities" in 49:1343(b) because of the restatement of the source provisions.

SECTION 330

Revised section	United States Code	Statutes at Large
330(a)	49:1657(q)(1)	Oct. 15, 1966, Pub. L. 89–670, § 9(q)(1)–(3), 80 Stat. 947.
	49:1657(q)(2) (1st sentence).	
330(b)	49:1657(q)(2) (less 1st sentence).	
330(c)	49:1657(q)(3)	

In subsection (a), the words "may make contracts" are substituted for "is authorized

to enter into contracts" to eliminate unnecessary words. The words "the conduct of" before "scientific" are omitted as surplus. The words "a problem" are substituted for "any aspect of the problems" because of the style of the revised title. The words "carried out by the Secretary" are substituted for "of the Department which are authorized by statute" because the Secretary of Transportation is vested with all duties and powers. The words "Before making a contract" are substituted for "with which he expects to enter into contracts pursuant to this subsection" for clarity and to eliminate unnecessary words. The words "is able to carry out the contract" are substituted for "have the capability of doing effective work" for clarity.

In Subsection (b), before clause (1), the words "In carrying out this section" are added for clarity. In clause (1), the word "give" is substituted for "furnish" before "such advice" for consistency. The words "duties and powers of the Secretary" are substituted for "mission of the Department" for clarity and consistency. In clause (4), the word "contractors" is substituted for "the institutions, agencies, organizations, or persons" to eliminate unnecessary words. The words "departments, agencies, and instrumentalities of the United States Government" are substituted for "Federal agencies" for clarity and consistency.

In subsection (c), the words "considers relevant" are substituted for "as he deems pertinent" as more precise. The words "from time to time" before "disseminate" and "in the form of reports or . . . to public or private agencies or organizations, or individuals" before "such information" are omitted as unnecessary.

SECTION 331

Revised section	United States Code	Statutes at Large
331(a)	49:1657(*l*) (less last sentence).	Oct. 15, 1966, Pub. L. 89–670, § 9(*l*), 80 Stat. 946.
331(b)	49:1657(*l*) (last sentence)	
331(c)	49:1344(b)	Aug. 23, 1958, Pub. L. 85–726, § 303(b), 72 Stat. 748.

In subsection (a), the text of 49:1657(*l*) (words before 3d comma) is omitted as unnecessary. The words "of the Department of Transportation" are added for clarity. In clause (6), the words "individuals in distress" are substituted for "distressed persons" as being more precise.

In subsection (b), the words "The Secretary shall prescribe reasonable charges" are substituted for "shall be at prices reflecting reasonable value as determined by the Secretary" for clarity and to eliminate surplus words. The words "services, supplies, and facilities provided under subsection (a) (1), (2), and (3) of this section" are substituted for "The furnishing of medical treatment under paragraph (1) and the furnishing of services and supplies under paragraphs (2) and (3) of this subsection" to eliminate surplus words. The words "Amounts received under this subsection" are substituted for "and the proceeds therefrom" for clarity.

In subsection (c), the words "aviation duties and powers" are substituted for "the Administration" in 49:1344(b) because of the transfer of aviation functions to the Secretary of Transportaton under 49:1655(c)(1). The words "before June 1" are substituted for "prior to the first day of March" in 49:1344(b) to conform to the change in the start of the fiscal year from July 1 to October 1 under 31:1020(a)(2). The words "and materials necessary" after "supplies" in 49:1344(b) are omitted as surplus. The words "to carry out those duties and powers" are substituted for "necessary to the proper execution of the Secretary of Transportation's functions" in 49:1344(b) for clarity and consistency. The words "the 48 contiguous States and the District of Columbia" are substituted for "the continental United States" in 49:1344(b) for clarity. The words "including those in Alaska" before "in amounts" In 49:1344(b) are omitted as unnecessary because of the restatement of the section. The words "The amount obligated under this subsection in a fiscal year" in 49:1344(b) are added for clarity. The words "available for buying and transporting supplies to those installations" are substituted for "made available for such purposes" in 49:1344(b) for clarity. The word "succeeding" after "next" in 49:1344(b) is omitted as surplus.

SECTION 332

Revised section	United States Code	Statutes at Large
332(a)	49:1657a(e)	Oct. 15, 1966, Pub. L. 89–670, 80 Stat. 931, § 11; added Feb. 5, 1976, Pub. L. 94–210, § 906(2), 90 Stat. 149.
332(b)	49:1657a(a), (c)	
332(c)	49:1657a(b)	
332(d)	49:1657a(d)	

In subsection (b), before clause (1), the word "has" is substituted for "The Secretary shall, within 180 days after February 5, 1976, establish" because the time for establishing the Center has expired and the Center has been established. The words "The Department of Transportation" are added because of the restatement of the section. The words "(hereafter in this section referred to as the 'Center')" after "minority Resource Center" are omitted because of the style of the revised title.

In subsection (b)(1), the word "include" is substituted for "establish and maintain", and the words "to disseminate information" are substituted for "and disseminate information from", for clarity. The words "to them . . . related to" are substituted for "to such entrepreneurs and businesses . . . with respect to" to omit unnecessary words. The words "for purposes of furnishing . . . information" before "with respect to" are ommitted as surplus.

In subsection (b)(2), the words "those business opportunities" are substituted for "such opportunities" after "identify" for clarity.

In subsection (b)(4), the words "these business opportunities" are substituted for "the maintenance, rehabilitation, restructuring, improvement, and revitalization of the Nation's railroads" to eliminate surplus words.

In subsection (b)(5), the words "related to the maintenance, rehabilitation, restructuring, improvement, and revitalization of the nation's railroads" are omitted as unnecessary because of the restatement.

In subsection (b)(7), the words "make arrangements" are substituted for "enter into such contracts, cooperative agreements, or other transactions" to eliminate unnecessary words. The words "as may be necessary" after "transactions" are omitted as surplus. The words "to carry out this section" are substituted for "in the conduct of its functions and duties" for clarity and consistency.

In subsection (c), the words "The Secretary shall make the appointments" and the words "Each of these trade associations may submit a list of not more than" are added for clarity and because of the restatement of the section.

In subsection (d), the words "in carrying out this section" are substituted for "in connection with the performance of its functions" for clarity and consistency.

SECTION 333

Revised section	United States Code	Statutes at Large
333(a)	49:1654(a)	Oct. 15, 1966, Pub. L. 89–670, 80 Stat. 931, § 5(a)–(e); added Feb. 5, 1976, Pub. L. 94–210, § 401, 90 Stat. 61.
333(b)	49:1654(b)	
333(c)	49:1654(c)	
333(d)	49:1654(d)	
333(e)	49:1654(e)	

In the section, the word "transportation" is substituted for "services" for consistency.

In subsection (a), the words "feasible" and "but not limited to" are omitted as surplus.

In subsection (b), the words "In order" are omitted as surplus. The words "at least 2" are substituted for "two or more" for consistency.

In subsection (c)(1), the words "as are deemed" are omitted as unnecessary.

In subsection (c)(2), the words "and the study described in section 901 of the Railroad Revitalization and Regulatory Reform Act of 1976" and "or such section 901" are omitted as executed. The word "nature" is omitted as covered by "kind". The word "When" is substituted for "to the extent" for consistency. The word "necessary" is omitted as being included in "appropriate". A cross-reference to section 203(c) of the Regional Rail Reorganization Act of 1973 is included eventhough the law is unclear because section 1149 of the Omnibus Reconciliation Act of 1981 (Pub. L. 97-35, 95 Stat. 675) amended section 203 to repeal the powers referred to in the source provisions. No position is taken as to whether the powers described in section 203(c) are still in existence.

In subsection (d)(1)(A), the word "appropriate" is omitted as surplus.

In subsection (d)(1)(C), the words "representatives of" are added for consistency in the section.

In subsection (e), the words "in his judgment" are omitted as unnecessary and covered by "decide". The word "satisfies" is substituted for "is in accordance with the standards set forth in" to eliminate unnecessary words.

SECTION 334

Revised section	United States Code	Statutes at Large
334	49:1341(note)	Oct. 24, 1978, Pub. L. 95–504, § 45(a), 92 Stat. 1753.
	49:1341(note)	Oct. 24, 1978, Pub. L. 95–504, 92 Stat. 1753, § 45(b), (c); added Feb. 15, 1980, Pub. L. 96–192, § 28, 94 Stat. 48.

The words "fee . . . or price" are omitted as included in "charge".

SECTION 335

Revised section	United States Code	Statutes at Large
335	49:1660	Oct. 15, 1966, Pub. L. 89-670, 80 Stat. 931, § 17; added Aug. 13, 1981, Pub. L. 97-35, § 1194(a), 95 Stat. 702.
	49:1653 (note)	Aug. 13, 1981, Pub. L. 97-35, § 1197, 95 Stat. 703.

In subsection (a), the words "ending September 30, 1982" and 49:1660(2) are omitted as executed..

In subsection (a)(1), the words "Office of the Secretary" are substituted for "Secretary of Transportation" in 49:1660 for clarity.

In subsection (a)(4), the words "Notwithstanding any other provision of law" are omitted as unnecessary because of the restatement.

CHAPTER 5—SPECIAL AUTHORITY

SUBCHAPTER I—DUTIES AND POWERS

SUBCHAPTER II—PENALTIES

SUBCHAPTER I—DUTIES AND POWERS

SECTION 501

Revised section	United States Code	Statutes at Large
501(a)	No source	
501(b)	45:15	Apr. 14, 1910 ch. 160 § 6, 36 Stat. 299.
	49:26(g)	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 25(g); added Aug. 26, 1937, ch. 818, 50 Stat. 837; Sept. 18, 1940, ch. 722, § 14(b), 54 Stat. 919.
	49:1655(f)(2)	Oct. 15, 1966, Pub. L. 89-670, § 6(f)(2), 80 Stat. 940.

In the chapter, the source provisions are those in effect on March 31, 1967, the day before the effective date of the Department of Transportation Act (Pub. L. 89-670, 80 Stat. 931), because 49:1655(f)(2) gave the Secretary of Transportation the same powers enumerated in 49:1655(f)(2) that the Interstate Commerce Commission had before certain duties and powers under 49:1655(e) were transferred on April 1, 1967, from the Commission to the Secretary. All references to brokers in the source provisions are omitted as not being applicable to the duties and powers transferred to the Secretary of Transportation.

Subsection (a) is included to ensure that the identical definitions that are relevant are used without repeating them. The source provisions for the definitions are found in the revision notes for sections 3101, 3102(c), and 10102 of the revised title.

In subsection (b), the provisions of law to which the chapter applies are only certain laws listed in 49:1655(e). Those laws include the source provisions restated in chapter 31 of the revised title and 45:4, 5, 6 (in carrying out 45:4 and 5), 11, 12, 13 (proviso), 13 (less proviso in carrying out 45:11, 12, and 13 (proviso)), and 61-64b, and 49:26(a)-(f) (words before last semicolon) and (h). The administrative powers of the Secretary under the chapter are based on the administrative powers of 49:1655(f)(2). That provision lists administrative powers the Commission had under the Interstate Commerce Act (ch. 104, 24 Stat. 379) to carry out the Act, and certain other laws authorized the Commission to use its powers under the Act to carry out those other laws. The administrative powers listed in 49:1655(f)(2) and codified in the chapter therefore apply only to a law listed in 49:1655(e) that was a part of the Interstate Commerce Act or to which the powers of the Commission under the Act were applied. The text of 45:61-64b is included because section 4 of the Act of March 4, 1907 (ch. 2939, 34 Stat. 1417), stated, "It shall be the duty of the Interstate Commerce Commission to execute and enforce the provisions of this Act, and all powers granted to the Interstate Commerce Commission are hereby extended to it in the execution of this Act". The transfer to the Secretary was executed on March 31, 1967. The Act of March 4, 1907, was restated by the Act of December 26, 1969 (Pub. L. 91-169, 83 Stat. 463); section 4 was not included in the restatement. However, repeal by implication is not favored and the transfer was completed on March 31, 1967. Therefore, the text of 45:61-64b is included within the scope of the chapter. The text of 49:304(a)(3) (last sentence 1st-7th words) and (3a) (last sentence 1st-5th words) is omitted as executed.

SECTION 502

Revised section	United States Code	Statutes at Large
502	49:1655(f)(2)	Oct. 15, 1966, Pub. L. 89-670, § 6(f)(2), 80 Stat. 940.
1502(c)-(f)	49:304(a)(3) (last sentence) (related to "Sec. 305").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3) (last sentence) (related to "Sec. 205"); added Aug. 9, 1935, ch. 498, 49 Stat. 546.
	49:304(a)(3a) (last sentence) (related to "Sec. 305").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3a) (last sentence) (related to "Sec. 205"); added Aug. 3, 1956, ch. 905, § 2, 70 Stat. 958.

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 502	49 United States Code	Revised section
(a), (b)	12(1)(a) (1st sentence, 2d sentence, and last sentence words before 1st semicolon).	10321
	304(a) (matter before (1)), (6), (7) (Less words after semicolon).	10321
(c)	305(f)	11502
(d)	12(1)(a) (last sentence words after last semicolon), (2), (3).	10321
	305(d) (related to Commission subpena power).	10321
(e)(1)-(3)	12(4)	10321
	305(d) (related to depositions taken by Commission).	10321
(e)(4) and (5)	12(5), (6)	10321
	305(d) (related to depositions taken by Commission).	10321
(f)	12(7)	10321
	18(1) (last sentence)	10321
	305(d) (related to depositions taken by Commission).	10321

See the revision notes for the revised sections for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

The text of 49:305(a)-(c), (e), and (g)-(j) is not included for motor carriers of migrant workers and motor private carriers because those provisions, while included in the enumeration in 49:304(a)(3) and (3a), are not included in the specific enumeration of 49:1655(f)(2)(B)(ii).

In subsection (b), the text of 49:12(1)(a)(2d sentence words after semicolon) is omitted as unnecessary because the Secretary of Transportation already has authority under chapter 3 of the revised title to make recommendations to Congress.

In subsections (c)-(f), the text of 49:304(a)(3) (last sentence 1st-7th words) and (3a) (last sentence 1st-5th words) is omitted as executed.

In subsection (c), the words "economic and" are omitted as not being transferred to the Secretary. The text of 49:305(f) (last sentence) is omitted as not applicable to this chapter.

In subsection (d), the reference to joint boards in 49:305(d) is omitted as not applicable to this chapter because 49:305(a) (establishing joint boards) is not included in the specific enumeration of 49:1655(f)(2)(B)(ii).

SECTION 503

Revised section	United States Code	Statutes at Large
503	49:304(a)(3) (last sentence) (related to "Sec. 321").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3) (last sentence) (related to "Sec. 221"); added Aug. 9, 1935, ch. 498, 49 Stat. 546.
	49:304(a)(3a) (last sentence) (related to "Sec. 321").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3a) (last sentence) (related to "Sec. 221"); added Aug. 3, 1956, ch. 905, § 2, 70 Stat. 958.
	49:1655(e)(6)(D) (related to "Sec. 321(a), (c)").	Oct. 15, 1966, Pub. L. 89-670, § 6(e)(6)(D), (related to "Sec. 221(a), (c)"), 80 Stat. 940.

The section is included because 49:1655(e)(6)(D) transferred to the Secretary of Transportation all functions, powers, and duties of the Interstate Commerce Commission under 49:321(a) and (c) to the extent those subsections relate to motor carriers of migrant workers and motor private carriers. The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 503	49 United States Code	Revised section
(a), (b)	321(a)	10329
(c)	321(c)	10330

See the revision notes for the revised sections for an explanation of changes make in the text. Changes not accounted for in those revision notes are as follows:

In the section, the words "motor carriers" are omitted because 49:1655(e)(6)(D) applies 49:321(a) and (c) only to motor carriers of migrant workers, other than motor contract carriers, and to motor private carriers, and 49:1655(f)(2)(B)(ii) contains no reference to 49:321. The text of 49:321(b) and (d) is not included because those provisions, while included in the enumeration in 49:304(a)(3) and (3a), are not included in the specific enumeration of 49:1655(e)(6)(D).

In subsection (b), the text of 49:321(a) (less 1st-5th sentences) is omitted as not applicable to this chapter.

SECTION 504

Revised section	United States Code	Statutes at Large
504	49:304(a)(3) (last sentence) (related to "Sec. 320(a) (1st, 2d sentences), (b)-(g)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3) (last sentence) (related to "Sec. 220(a) (1st, 2nd sentences), (b)-(g)"); added Aug. 9, 1935, ch. 498, 49 Stat. 546.
	49:304(a)(3a) (last sentence) (related to "Sec. 320(a) (1st, 2d sentences), 9b)-(g)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3a) (last sentence) (related to "Sec. 220(a) (1st, 2d sentences), (b)-(g)"); added Aug. 3, 1956, ch. 905, § 2, 70 Stat. 958.
	49:1655(f)(2)	Oct. 15, 1966, Pub. L. 89-670, § 6(f)(2), 80 Stat. 940.
504(f)	49:320(f)	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 220(f); added Sept. 18, 1940, ch. 722, § 24, 54 Stat. 926.

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 504	49 United States Code	Revised section
(a)(1), (3), and (4)	20(8)	3501, 11141
	320(e)	11141
(a)(2)	No source	
(b)(1)	20(5) (1st sentence), (6) (2d sentence, 1st cl.), (7)(b) (proviso).	11144
	320(d) (1st sentence)	11144
(b)(2)	20(1) (1st sentence less manner and form of reports), (6) (2d sentence, 2d cl.).	11145
	320(a) (1st sentence)	11145
(c)	20(5) (less 1st sentence), (6) (less 2d sentence).	11144
	320(d) (3d and 4th sentences)	11144
(d)	20(7)(b) (proviso)	11144
	320(d) (less 1st, 3d, and 4th sentences)	11144
(e)	20(1) (1st sentence related to manner and form of reports).	11145
	320(a) (2d sentence), (b)	11145

See the revision notes for the revised sections for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

The provisions of 49:320(c) are not included for motor carriers of migrant workers and motor private carriers because those provisions, while included in the enumeration in 49:334(a)(3) and (3a), are not included in the specific enumeration of 49:1655(f)(2)(B)(ii).

In the section, the text of 49:304(a)(3) (last sentence 1st-7th words) and (3a) (last sentence 1st-5th words) is omitted as executed. The text of 49:320(b) (related to 13-period accounting year) and (g) is not included because it was enacted after the effective date of the transfer authority under 49:1655.

In subsection (a), references to "water line" and "pipe line" are omitted as not applicable to this chapter. Clause (2) is added to provide a simple phrase to refer to all types of carriers to which the section applies.

In subsection (f), the words "the course of the" are omitted as surplus. The words "civil action" are substituted for "suit or action" because of rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

SECTION 505

Revised section	United States Code	Statutes at Large
505	49:1655(f)(2)	Oct. 15, 1966, Pub. L. 89-670, § 6(f)(2), 80 Stat. 940.
505(a)	49:304(a)(3) (last sentence) (related to "Sec. 320(a) (less 1st, 2d sentences)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3) (last sentence) (related to "Sec. 220(a) (less 1st, 2d sentences)"); added Aug. 9, 1935, ch. 498, 49 Stat. 546.
	49:304(a)(3a) (last sentence) (related to "Sec. 320(a) (less 1st, 2d sentences)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3a) (last sentence) (related to "Sec. 220(a) (less 1st, 2d sentences)"); added Aug. 3, 1956, ch. 905, § 2, 70 Stat. 958.

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 505	49 United States Code	Revised section
(a)	320(a) (less 1st, 2d sentences)	10764
(b)	16(13)	10303
	304(d) (related to administrative matters)	10303

See the revision notes for the revised sections for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

In subsection (a), the text of 49:320(a) (proviso) is not included for motor carriers of migrant workers and motor private carriers because that provision, while included in the enumeration in 49:304(a)(3) and (3a), is not included in the specific enumeration of 49:1655(f)(2)(B)(ii). The text of 40:304(a)(3) (last sentence 1st-7th words) and (3a) (last sentence 1st-5th words) is omitted as executed. The words "also" and "with it" are omitted as surplus. The words "contract, agreement, or" are omitted as covered by "arrangement". The words "carrier or" are omitted as covered by "person". The words "related to a matter under this chapter" are substituted for "in relation to any traffic affected by the provisions of this chapter" for clarity because of section 501 of the revised title.

Subsection (b) does not apply to reports made to the Secretary by a rail carrier because 49:16(13) is not included in the specific enumeration of 49:1655(f)(2)(ii). The subsection does not apply to motor carriers of migrant workers and motor private carriers because 49:304(d) only applies to motor carriers and 49:304(a)93) and (3a) do not apply 49:304(d) to motor carriers of migrant workers and motor private carriers. References to schedules, classifications, and tariffs are omitted as not applicable to this chapter. The words "Except as provided in subsection (a) of this section" are added for clarity. The words "except as provided in section 504(f) of this title" are added for clarity and consistency because of the restatement of the chapter.

SECTION 506

Revised section	United States Code	Statutes at Large
506	49:1655(f)(2)	Oct. 15, 1966, Pub. L. 89-670, § 6(f)(2), 80 Stat. 940.
506(a), (b)	49:304(a)(3) (last sentence) (related to "Sec. 304(c)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3) (last sentence) (related to "Sec. 204(c)"); added Aug. 9, 1935, ch. 498, 49 Stat. 546; Sept. 18, 1940, ch. 722, § 20(b)(4), 54 Stat. 922.
	49:304(a)(3a) (last sentence) (related to "Sec. 304(c)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3a) (last sentence) (related to "Sec. 204(c)"); added Aug. 3, 1956, ch. 905, § 2, 70 Stat. 958.

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 506	49 United States Code	Revised section
(a)	13(1) (1st sentence less words before semicolon, last sentence), (2) (1st, 2d sentences).	11701
	304(c) (1st sentence words after 5th comma, 2d sentence).	11701
(b)	13(1) (1st sentence words before semicolon).	11701
	13(2) (less 1st, 2d sentences)	11701
	304(c) (less 1st sentence words after 5th comma, 2d sentence).	11701
(c)	14	10310
	304(d) (related to reports)	10310

See the revision notes for the revised sections for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

In subsections (a) and (b), the text of 49:304(a)(3) (last sentence 1st-7th words)

and (3a) (last sentence 1st-5th words) is omitted as executed.

Subsection (a) is patterned after 49:304(c). The words "violating this chapter" are substituted for "failed to comply with any such provision or requirement" for clarity.

In subsection (b), the text of 49:13(2) (last sentence) is omitted because 49:13(3) is not included in the specific enumeration of 49:1655(f)(2)(B)(ii). The words "referred to in subsection (a) of this section" are added for clarity.

Subsection (c) does not apply to motor carriers of migrant workers and motor private carriers because 49:304(d) applies only to motor carriers and 49:324(a) (3) and (3a) do not apply 49:304(d) to motor carriers of migrant workers and motor private carriers. The word "processing" is substituted for "investigation" for clarity and to conform to other sections of the revised title. The word "findings" is added for clarity. The word "decision" is omitted as covered by "conclusions". The words "or requirement" are omitted as covered by "order". The words "in the premises" are omitted as surplus. The words "and in case damages are awarded, such report shall include the findings of fact on which the award is made" are omitted as not applicable to this chapter. The words "entered of record", "and decisions in such form and manner as may be best adapted for public information and use", and "in all courts of the United States and of the several States without any further proof or authentication thereof" are omitted as surplus. The text of 49:14(3) (last sentence) is omitted as unnecessary.

SECTION 507

Revised section	United States Code	Statutes at Large
507	49:1655(f)(2)	Oct. 15, 1966, Pub. L. 89-670, § 6(f)(2), 80 Stat. 940.
507(a), (d)	49:304(a)(3)(last sentence)(related to "Sec. 322(b)").	Feb. 4, 1887, ch. 104, 24 stat. 379, § 204(a)(3)(last sentence) (related to "Sec. 222(b)"); added Aug. 9, 1935, ch. 498, 49 Stat. 546.
	49:304(a)(3a) (last sentence)(related to "Sec. 322(b)").	Feb 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3a)(last sentence)(related to "Sec. 222(b)"); added Aug. 3, 1956, ch. 905, § 2, 70 Stat. 958.

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 507	49 United States Code	Revised section
(a)	16(12) (related to Commission action)	11702
	322(b)(1) (less 1st sentence last 18 words, 2d sentence, last sentence).	11702
	1017(b)(1) (related to Commission action)	11702
(b)	12(1)(a) (last sentence less words before 1st semicolon and after last semicolon).	11703
	16(12) (related to action by the Attorney General).	11703
	20(9)	11703
(c)	16(12) (related to action by private person).	11705
(d)	1017(b)(1) (related to action by the Attorney General).	11703
	322(b)(1) (1st sentence last 18 words, 2d sentence, last sentence).	11702
	1017(b)(1) (related to action by a private person).	11705

See the revision notes for the revised sections for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

In the section, the text of 49:322(b)(2) and (3) is not included for motor carriers of migrant workers and motor private carriers because those provisions, while included in the enumeration in 49:304(a)(3) and (3a), are not included in the specific enumeration of 49:1655(f)(2)(B)(ii).

In subsections (a) and (d), the text of 49:304(a)(3) (last sentence 1st-7th words) and (3a) (last sentence 1st-5th words) is omitted as executed.

In subsection (a), the words "or of any term or condition of any certificate or permit" are omitted as not applicable to this chapter.

In subsection (a)(1), reference to a civil action to enforce an order for the payment of money is omitted as not applicable to this chapter.

SUBCHAPTER II—PENALTIES

SECTION 521

Revised section	United States Code	Statutes at Large
521	49:1655(f)(2)	Oct. 15, 1966, Pub. L. 89-670, § 6(f)(2), 80 Stat. 940.

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 521	49 United States Code	Revised section
(a)	20(7)(a), (c)-(e)	11901
(b)	322(h)	11901

See the revision notes for the revised section for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

In subsection (a)(3), the words "against heat and cold" are inserted for consistency with sections 11105 and 11901 of the revised title.

Subsection (b) does not apply to motor carriers of migrant workers and motor private carriers because 49:322(h) (1st sentence) only applies to motor carriers and 49:304(a) (3) and (3a) do not apply 49:322(h) (1st sentence) to motor carriers of migrant workers and motor private carriers. The reference to 49:303(c), 306(a)(1), and 309(a)(1) is omitted as not applicable to this chapter.

SECTION 522

Revised section	United States Code	Statutes at Large
522	49:1655(f)(2)	Oct. 15, 1966, Pub. L. 89-670, § 6(f)(2), 80 Stat. 940.
522(b)	49:304(a)(3) (last sentence) (related to "Sec. 322(g)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3) (last sentence) (related to "Sec. 222(g)"); added Aug. 9, 1935, ch. 498, 49 Stat. 546.
	49:304(a)(3a) (last sentence) (related to "Sec. 322(g)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3a) (last sentence) (related to "Sec. 222(g)"); added Aug. 3, 1956, ch. 905, § 2, 70 Stat. 958.

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 522	49 United States Code	Revised section
(a)	20(7)(b)(less proviso)	11909
(b)	322(g)	11909

See the revision notes for the revised section for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

The text of 49:304(a)(3) (last sentence 1st-7th words) and (3a) (last sentence 1st-5th words) is omitted as executed.

SECTION 523

Revised section	United States Code	Statutes at Large
523	49:1655(f)(2)	Oct. 15, 1966 Pub. L. 89-670, § 6(f)(2), 80 Stat. 940.
523(b)	49:304(a)(3) (last sentence) (related to "Sec. 322(f)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3) (last sentence) (related to "Sec. 222(d), (f)"); added Aug. 9, 1935, ch. 498, 49 Stat. 546.
	49:304(a)(3a) (last sentence) (related to "Sec. 322(f)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3a) (last sentence) (related to "Sec. 222(d), (f)"); added Aug. 3, 1956, ch. 905, § 2, 70 Stat. 958.
523(c)	49:304(a)(3) (last sentence) (related to "Sec. 322(d)") 49:304(a)(3a) (last sentence) (related to "Sec. 322(d)").	

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 523	49 United States Code	Revised section
(a)	322(e)	11910
(b)	322(f)	11910
(c)	20(7)(f)	11910
	322(d)	11910

See the revision notes for the revised section for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

Subsection (a) does not apply to motor carriers of migrant workers and motor private carriers because 49:322(e) only applies to motor carriers and 49:304(a)(3) and (3a) do not apply 49:322(e) to motor carriers of migrant workers and motor private carriers. The words "engaged in interstate or foreign commerce" are omitted as unnecessary because of the restatement of the chapter.

In subsections (b) and (c), the text of 49:304(a)(3) (last sentence 1st-7th words) and (3a) (last sentence 1st-5th words) is omitted as executed.

SECTION 524

Revised section	United States Code	Statutes at Large
524	49:1655(f)(2)	Oct. 15, 1966, Pub. L. 89-670, § 6(f)(2), 80 Stat. 940.

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 524	49 United States Code	Revised section
	322(c) (related to evasion of regulation).	11906

See the revision notes for the revised section for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

The section does not apply to motor carriers of migrant workers and motor private carriers because 49:322(c) (related to evasion of regulation) only applies to motor carriers and 49:304(a) (3) and (3a) do not apply 49:322(c) (related to evasion of regulation) to motor carriers of migrant workers and motor private carriers.

SECTION 525

Revised section	United States Code	Statutes at Large
525	49:304(a)(3) (last sentence) (related to "Sec. liability)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3) (last sentence) (related to "Sec. 205(d) (related to liability)"); added Aug. 9, 1935, ch. 498, 49 Stat. 546.
	49:304(a)(3a) (last sentence) (related to "Sec. 305(d) (related to liability)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3a) (last sentence) (related to "Sec. 205(d) (related to liability)"); added Aug. 3, 1956, ch. 905, § 2, 70 Stat. 958.
	49:1655(f)(2)	Oct. 15, 1966, Pub. L. 89-670, § 6(f)(2), 80 Stat. 940.

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the tranfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 525	49 United States Code	Revised section
	305 (d) (related to liability).	11913

See the revision notes for the revised section for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

The section does not apply to the liability of a rail carrier because 49:46 is not included in the specific enumeration of 49:1655(f)(2)(B)(ii). The text of 49:304(a)(3) (last sentence 1st-7th words) and (3a) (last sentence 1st-5th words) is omitted as executed. The words "under this chapter" are added for clarity.

SECTION 526

Revised section	United States Code	Statutes at Large
526	49:304(a)(3) (last sentence) (related to "Sec. 322(a)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3) (last sentence) (related to "Sec. 222(a)"); added Aug. 9, 1935, ch. 498, 49 Stat. 546.
	49:304(a)(3a) (last sentence) (related to "Sec. 322(a)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3a) (last sentence) (related to "Sec. 222(a)"); added Aug. 3, 1956, ch. 905, § 2, 70 Stat. 958.
	49:1655(f)(2)	Oct. 15, 1966, Pub. L. 89-670, § 6(f)(2), 80 Stat. 940.

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transporation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 526	49 United States Code	Revised section
	322(a)	11914

See the revision note for the revised section for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

The reference to a certificate, permit, or license is omitted as not applicable to this chapter. The text of 49:304(a)(3)(last sentence 1st-7th words) and (3a)(last sentence 1st-5th words) is omitted as executed.

Subtitle II—Transportation Programs

Part A—[Reserved—Regional Rail Reorganization]

Part B—[Reserved—Other Rail Programs]

Part C—Motor Vehicles

Chapter: Sec. 31. Motor Carrier Safety.

Part D—[Reserved—Aviation]

Part E—[Reserved—Aviation Facilities and Noise Abatement]

Part F—[Reserved—Miscellaneous]

Part C—Motor Vehicles

Chapter 31—Motor Carrier Safety

Sec.

3101. Definitions.

3102. Requirements for qualifications, hours of service, safety, and equipment standards.

3103. Research, investigation, and testing.

3104. Identification of motor vehicles.

SECTION 3101

Revised section	United States Code	Statutes at Large
3101(1)	49:303(a)(23)	Feb. 4, 1887, ch. 104, 24 Stat. 397, § 203(a)(22), (23); added Aug. 3, 1956, ch. 905, § 1, 70 Stat. 958.
3101(2)	No source	
3101(3)	49:303(a)(22)	

In clause (1), the words "going to or from" are substituted for "proceeding to or returning from" for clarity.

Clause (2) is included to ensure that the identical definitions that are relevant are used without repeating them. The source provisions for the quoted definitions are found in the revision notes for section 10102 of the revised title.

In clause (3), the words "including any 'contract common carrier by motor vehicle'" are omitted as covered by the definition of "motor carrier". The words "referred to in section 10521(a) of this title" are substituted for "in interstate or foreign commerce" for clarity and consistency in the revised title. The word "except" is substituted for "but not including" for clarity. The words "at least" are substituted for "or more", and the words "but the term does not include" are substituted for "except", for consistency.

SECTION 3102

Revised section	United States Code	Statutes at Large
3102(a)	No source	
3102(b)(1)	49:304(a)(1)-(2) (related to qualifications, hours of service, and safety).	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(1)-(2) (related to qualifications, hours of service, and safety), (3) (1st sentence); added Aug. 9, 1935, ch. 498, 49 Stat. 546.
3102(b)(2)	49:304(a)(3) (1st sentence).	
	49:1655(e)(6)(C)	Oct. 15, 1966, Pub. L. 89-670, § 6(e)(6)(C), 80 Stat. 939.
3102(c)	49:304(a)(3a) (1st sentence).	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3a) (1st sentence); added Aug. 3, 1956, ch. 905, § 2, 70 Stat. 958.
	49:1655(e)(6)(C)	

Throughout the chapter, the words "Secretary of Transportation" are substituted for "Interstate Commerce Commission" because 49:1655(e)(6)(B)-(D) transferred the authority of the Interstate Commerce Commission under the provisions restated in this chapter to the Secretary of Transportation.

Subsection (a) is included to maintain the jurisdictional scope of the source provisions from which subsections (b) and (c) of the revised section are taken. Subsections (b) and

(c) are based on 49:304 which, as part of 49:ch. 8, is now restated as subchapter II of chapter 105 of the revised title. In addition, 49:303(a)(11) (last sentence) extended the jurisdictional scope of 49:304 as provided in subsection (a) of the revised section.

In subsection (b), before clause (1), the words "and to that end" are omitted as surplus. The word "prescribe" is substituted for "establish" for consistency. The word "reasonable" is omitted as surplus.

In subsection (b)(1), the words "as provided in this chapter" are omitted as unnecessary because of the restatement. The term "motor carrier" is substituted for "common carriers by motor vehicle" and "contract carriers by motor vehicle" because they are inclusive.

In subsection (b)(2), the words "when needed" are substituted for "if need therefor is found" to eliminate unnecessary words.

In subsection (c), the word "prescribe" is substituted for "establish" for consistency. The word "reasonable" is omitted as surplus. The words "for a total distance of" are omitted as unnecessary because of the restatement. The words "at least" are substituted for "more than" for consistency. The word "line" is omitted as surplus. The words "possession of the United States" are added for consistency in the revised title. The words "a foreign country" and "the District of Columbia" are omitted as unnecessary because a carrier crossing the boundary of a foreign country or the District of Columbia into or from the United States would necessarily cross the boundary of a State and be covered by the provision related to a State.

SECTION 3103

Revised section	United States Code	Statutes at Large
3103(a)	49:325	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 226; added Aug. 9, 1935, ch. 498, 49 Stat. 566; Sept. 18, 1940, ch. 722, § 26(b), 54 Stat. 929.
	49:1655(e)(6)(B)	Oct. 15, 1966, Pub. L. 89-670, § 6(e)(6)(B), (C), 80 Stat. 939.
3103(b)	49:304(a)(5)	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(5); added Aug. 9, 1935, ch. 498, 49 Stat. 546.
	49:1655(e)(6)(C)	

In subsection (a), the words "subject to subchapter II of chapter 105 of this title" are added for clarity. The word "services" is substituted for "assistance" for consistency. The words "department, agency, or instrumentality of the United States Government" are substituted for "departments or bureaus of the Government" for consistency.

In subsection (b), the words "In carrying out this chapter" are substituted for "For the purpose of carrying out the provisions pertaining to safety" to eliminate unnecessary words. The words "department . . . or instrumentality" are added for consistency. The word "reimburse" is substituted for "transfer . . . such funds" for consistency. The words "as may be necessary and available to make this provision effective" are omitted as unnecessary because of the restatement.

SECTION 3104

Revised section	United States Code	Statutes at Large
3104(a)	49:304(a)(3) (last sentence) (related to "Sec. 324").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3) (last sentence) (related to "Sec. 224"); added Aug. 9, 1935, ch. 498, 49 Stat. 546.
	49:304(a)(3a) (last sentence) (related to "Sec. 324").	Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3a) (last sentence) (related to "Sec. 224"); added Aug. 3, 1956, ch. 905, § 2, 70 Stat. 958.
	49:1655(e)(6)(D) (related to "Sec. 324").	Oct. 15, 1966, Pub. L. 89-670, § 6(e)(6)(D) (related to "Sec. 224"), 80 Stat. 940.
3104(b)	49:304(a)(3) (last sentence) (related to "Sec. 324"). 49:304(a)(3a) (last sentence) (related to "Sec. 324"). 49:1655(e)(6)(D) (related to "Sec. 324").	

The section is included to reflect the text of former 49:324 (related to motor private carriers and motor carriers of migrant workers) which is incorporated in the revised title by cross-reference.

SECTION 2—TRANSFER OF FUNCTIONS: SECTION 2

Revised section	United States Code	Statutes at Large
2(a)	49:1655(a)(1), (B), (C), (E)-(J), (L), (4), (6)(B).	Oct. 15, 1966, Pub. L. 89-670, § 6(a)(1)(B), (C), (E)-(M), (4), (6)(B), (e)(5), (g)(1)-(4)(B), (E), (5), (6), 80 Stat. 937, 938, 939, 941.
2(b)	49:1655(a)(1)(M)	
2(c)	49:1655(e)(5)	
2(d)	49:1655(a)(1)(K), (g)(1)(A)-(D), (2), (3), (4)(A), (B), (E), (6)(B), (C).	
2(e)	49:1655(g)(5)	
2(f)	49:1655(g)(6)(A)	

Section 2 of the bill executes certain source provisions of 49:1655. The text of 49:1655 transferred the functions, powers, and duties of certain laws to the Secretary of Transportation. This section amends those laws to include the Secretary as the officer responsible for carrying out those laws. The citations in parentheses are included only for information purposes and include amendments to the acts cited. The text of 49:1655(g)(1)(B) and (D) is omitted as executed because the laws referred to in the source provision were repealed by section 8(a) of the Inland Navigational Rules Act of 1980 (Pub. L. 96-591, 94 Stat. 3435).

SECTION 3—CONFORMING EXECUTIVE PAY SCHEDULE PROVISIONS

Section 3 of the bill amends 5:5313-5316 to make changes in the Executive Pay Schedule to conform the Schedule to existing law.

In paragraph (1), a new item is added because of 23:303(a)(2) (1st sentence).

In paragraph (2), the words "Administrator, Federal Highway Administration" are struck out because of paragraph (1) of this section. The words "Administrator of the National Highway Safety Traffic Administration" are substituted because of 23:401 (note) (Pub. L. 89-564, § 201(a) (related to pay of Administrator), 80 Stat. 735).

In paragraph (3), the words "Director of Public Roads" are struck out because the Bureau of Public Roads was eliminated as a primary organizational unit in the Department of Transportation and the duties and functions of the Director were transferred to the Deputy Federal Highway Administrator by 23:303 (note) (Pub. L. 91-605, § 114(c), 84 Stat. 1723). The words "Deputy Federal Highway Administrator" are substituted because of 23:303(a) (2d sentence).

In paragraph (4), the words "Director, National Highway Safety Bureau" are struck out because the Bureau was superseded by the National Highway Safety Traffic Administration and Federal Highway Administration under 23:401 (note) (Pub. L. 89-564, § 201(d), 80 Stat. 735). The words "Assistant Federal Highway Administrator" are substituted because of 23:303(a)(2) (last sentence).

In paragraph (5), the words "Director, National Traffic Safety Bureau" are struck out because the Bureau was superseded by the National Highway Safety Traffic Administration under 23:401 (note) (Pub. L. 89-564, § 201(c), 80 Stat. 735). The words "Deputy Administrator of the National Highway Traffic Safety Administration" are substituted because of 23:401 (note) (Pub. L. 89-564, § 201(a) (related to pay of Deputy Administrator), 80 Stat. 735).

SECTION 4—CONFORMING PROVISIONS: SECTION 4(a)

Revised section	United States Code	Statutes at Large
4(a)	49:1656(a) (next-to-last par.).	Oct. 15, 1966, Pub. L. 89-670, § 7(a) (next-to-last par.), 80 Stat. 942.

Section 4(e) of the bill amends section 103 of the Water Resources Planning Act (42 U.S.C. 1962a-2) by designating the existing text of section 103 as subsection (a) and by adding a new subsection (b). The new subsection restates 49:1656(a) (next-to-last par.) because the provision more appropriately belongs in section 103. Several standard changes are made in the text stylistic consistency.

SECTION 4(b)

In section 4(b) of the bill, clause (1) repeals section 202(f) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210, 90 Stat. 39). This section was restated as 49:10711 by the first section of the Act of October 17, 1978 (Pub. L. 95-473, 92 Stat. 1337), but section 202(f) was inadvertently omitted from the schedule of laws repealed by section 4 of that Act. Clause (2) repeals sections 304(j) and 603 of the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236, 87 Stat. 985). These sections were restated as 49:10504 and 10710 by the first section of the Act of October 17, 1978, but sections 304(j) and 603 were inadvertently omitted from the schedule of laws repealed by section 4 of that Act. Clause (3) corrects a typographical error. Clause (4) restates section 304(j)(1)(B) of the Regional Rail Reorganization Act of 1973, that was added by section 804 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210, 90 Stat. 139). Section 304(j)(1)(B) was mistakenly omitted from the restatement of subtitle IV of title 49, Interstate Commerce. Clause (4) restates section 304(j)(1)(B) as section 10504(c) of title 49. The subsection is effective on the date of enactment of the Act of October 17, 1973.

SECTION 4(c)

Section 4(c) of the bill restates section 303(d) (words after semicolon) of the Federal Aviation Act of 1958 (49 U.S.C. 1344(d) (words after semicolon) as part of section

307(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(b)) for clarity.

SECTION 5—CONFORMING CROSS-REFERENCES

Section 5 of the bill makes conforming amendments to those titles of the United States Code that have been enacted into positive law and to the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.). These amendments are necessary because of the restatement of the source provisions in section 1 of the bill.

SECTION 6—LEGISLATIVE PURPOSE AND CONSTRUCTION

Section 6 of the bill contains a statement of the legislative effect in enacting sections 1-5, savings provisions, and provisions to assist in interpreting and applying the provisions of law enacted by the bill.

SECTION 7—REPEALS

Section 7 of the bill relates to the repeal of those statutes that are codified and reenacted by the bill, and other statutes that are executed, superseded, obsolete, or otherwise of no present legal effect.

Subsection (a) provides that a repeal of a law may not be construed as a legislative inference that the provision was or was not in effect before its repeal.

Subsection (b) contains the schedule of laws to be repealed. It also preserves rights, duties, and penalties incurred, and proceedings begun before the date of enactment of the bill.

MASTER DISPOSITION TABLE

This table shows the disposition of all laws affected by the restatement in section 1 of the bill. The table is in 3 parts. Table A shows the disposition according to United States Code citation. Table B shows the disposition according to Statutes at Large citation. Table C shows the disposition according to Reorganization Plan citation. For each law restated in section 1 of the bill, the citation to the provision of the restatement is shown.

TABLE A—UNITED STATES CODE

United States Code		United States Code Revised	
Title	Section	Title	Section
15	1519a	49	308
23	303(a)(1)	49	104
	303(a)(2)		(See § 3 of bill.)
	303(b), (c)	49	104
45	15	49	501
	792	49	308
	803	49	306
49	26(g)	49	501
	303(a)(22), (23)	49	3101
	304(a)(1)-(2) (related to qualifications, hours of service, and safety), (3) (1st sentence), (3a) (1st sentence).	49	3102
	304(a)(3) (last sentence) (related to "Secs. 304(c), 305, 320, 321, 322(a), (b), (d), (f), (g)").	49	502-507, 522, 523, 525, 526
	304(a)(3) (last sentence) (related to "Sec. 305(d) (related to liability)").	49	525
	304(a)(3) (last sentence) (related to "Sec. 324").	49	3104
	304(a)(3a) (last sentence) (related to "Secs. 304(c), 305, 320, 321, 322(a), (b), (d), (f), (g)").	49	502-507, 522, 523, 525, 526
	304(a)(3a) (last sentence) (related to "Sec. 305(d) (related to liability)").	49	525
	304(a)(3a) (last sentence) (related to "Sec. 324").	49	3104
	304(a)(5)	49	3103
	320(f)	49	504
	325	49	3103
	1341(a), (b)	49	106
	1342	49	106
	1343(a)(1), (2) (related to cooperative agreements).	49	324
	1343(a)(2) (related to Deputy Administrator).	49	106
	1343(b)	49	329
	1343(d), (f), (g) (1st sentence 33d-43d words).	49	323
	1343(g) (less 1st sentence 33d-43d words).	49	325
	1343(i)	49	322
	1344(a)	49	322
	1344(b)	49	331
	1344(c)(1)	49	326
	1344(d) (less words after semicolon).	49	322
	1344(d) (words after semicolon).		(See § 4(c) of bill.)
	1344(e)	49	322
	1352	49	329
	1354(e)	49	308
	1634	49	329
	1651(a), (b)(1)	49	101
	1651(b)(2)	49	303
	1652(a)-(d)	49	102
	1652(e) (related to FAA)	49	106
	1652(e)(1) (related to FHWA).	49	104
	1652(e)(1) (related to FRA)	49	103
	1652(e)(3) (related to USCG)	49	108
	1652(e)(3) (related to FHWA).	49	104
	1652(e)(3) (related to FRA)	49	103
	1652(e)(4) (related to FHWA).	49	104
	1652(e)(4) (related to FRA)	49	103
	1652a	49	103
	1653(a)	49	301
	1653(b)	49	302
	1653(e)	49	307
	1653(f)	49	303
	1653(g)	49	304
	1654(a)-(e)	49	333
	1655(a)(1)(B), (C), (E)-(M), (4), (6)(B).		(See § 2 of bill.)
	1655(a)(2)(A) (related to 49:1634).	49	329
	1655(b)(1), (2)	49	108
	1655(c)(1) (1st sentence proviso, 2d, last sentences).	49	106
	1655(e)(5)		(See § 2 of bill.)
	1655(e)(6)(B)	49	3103
	1655(e)(6)(C)	49	3102, 3103
	1655(e)(6)(D) (related to "Sec. 321(a), (c)").	49	503
	1655(e)(6)(D) (related to "Sec. 324").	49	3104
	1655(f)(2)	49	501, 502, 504-507, 521-526
	1655(f)(3)(A), (C) (related to FRA).	49	103
	1655(f)(3)(B), (C) (related to FHWA).	49	104
	1655(g)(1)-(3), (4)(A), (B), (E), (5), (6).		(See § 2 of bill.)
	1656 (less (a) next-to-last par.).	49	305
	1656(a) (next-to-last par.)		(See § 4(a) of bill.)
	1657(a), (b)	49	323
	1657(c), (d)	49	324
	1657(e)-(g)	49	322
	1657(j)	49	327
	1657(k)	49	102
	1657(l)	49	331
	1657(m)	49	326
	1657(n)	49	329
	1657(o)	49	325
	1657(p)	49	324
	1657(q)(1)-(3)	49	330
	1657(r)	49	328
	1657a	49	332
	1658	49	308
	1660	49	335

TABLE B—STATUTES AT LARGE

Date	Chapter or Public Law	Section	Statutes at Large Volume	Statutes at Large Page	United States Code Title	United States Code Section
1887						
Feb. 4	104	25(g)			49	501
		203(a)(22), (23)			49	3101
		204(a)(1)-(2) (related to qualifications, hours of service, and safety), (3) (1st sentence), (3a) (1st sentence).			49	3102
		204(a) (last sentence of (3), (3a)) (related to "Secs. 204(c), 205, 220, 221, 222(b)")			49	502-507
		204(a)(3) (last sentence) (related to "Sec. 205(d) (related to liability)")			49	525
		204(a)(3) (last sentence) (related to "Sec. 222(a)")			49	526
		204(a)(3) (last sentence) (related to "Sec. 222(d), (f)")			49	523
		204(a)(3) (last sentence) (related to "Sec. 222(g)")			49	522
		204(a)(3) (last sentence) (related to "Sec. 224")			49	3104
		204(a)(3a) (1st sentence)			49	3102
		204(a)(3a) (last sentence) (related to "Sec. 205(d) (related to liability)")			49	525
		204(a)(3a) (last sentence) (related to "Sec. 222(a)")			49	526
		204(a)(3a) (last sentence) (related to "Sec. 222(d), (f)")			49	523
		204(a)(3a) (last sentence) (related to "Sec. 222(g)")			49	522
		204(a)(3a) (last sentence) (related to "Sec. 224")			49	3104
		204(a)(5)			49	3103
		220(f)			49	504
		226			49	3103
1910						
Apr. 14	160	6	36	299	49	501
1935						
Aug. 9	498	"Sec. 204(a)(1)-(2) (related to qualifications, hours of service, and safety), (3) (1st sentence)"	49	546	49	3102
		"Sec. 204(a)(3) (last sentence) (related to 'Secs. 204(d), (e), 205, 220, 221, 222(b)')"	49	546	49	502-507
		"Sec. 204(a)(3) (last sentence) (related to 'Sec. 205(d) (related to liability)')"	49	546	49	525
		"Sec. 204(a)(3) (last sentence) (related to 'Sec. 222(a)')"	49	546	49	526
		"Sec. 204(a)(3) (last sentence) (related to 'Sec. 222(d)(f)')"	49	546	49	523
		"Sec. 204(a)(3) (last sentence) (related to 'Sec. 222(g)')"	49	546	49	522
		"Sec. 204(a)(3) (last sentence) (related to 'Sec. 224')"	49	546	49	3104
		"Sec. 204(a)(5)"	49	546	49	3103
		"Sec. 226"	49	566	49	3103

TABLE B—STATUTES AT LARGE—Continued

Date	Chapter or Public Law	Section	Statutes at Large		United States Code	
			Volume	Page	Title	Section
1937						
Aug. 26	818	"Sec. 26(g)"	50	837	49	501
1940						
Sept. 18	722	14(b) (related to "Sec. 25(g)")	54	919	49	501
		20(b)(4)	54	922	49	506
		24	54	926	49	504
		26(b)	54	929	49	3103
1956						
Aug. 3	905	1	70	958	49	3101
		2 "Sec. 204(a)(3a) (1st sentence)"	70	958	49	3102
		2 "Sec. 204(a)(3a) (last sentence) (related to 'Secs. 204(c), 205, 220, 221, 222(b)')"	70	958	49	502–507
		2 "Sec. 204(a)(3a) (last sentence) (related to 'Sec. 205(d) (related to liability)')"	70	958	49	525
		2 "Sec. 204(a)(3a) (last sentence) (related to 'Sec. 222(a)')"	70	958	49	526
		2 "Sec. 204(a)(3a) (last sentence) (related to 'Sec. 222(d), (f)')"	70	958	49	523
		2 "Sec. 204(a)(3a) (last sentence) (related to 'Sec. 222(g)')"	70	958	49	522
		2 "Sec. 204(a)(3a) (last sentence) (related to 'Sec. 224')"	70	958	49	3104
1958						
Aug. 23	85–726	301(a), (b)	72	744	49	106
		302(a), (b)	72	744	49	106
		302(c)(1), (2) (related to cooperative agreements)	72	745	49	324
		302(c)(2) (related to Deputy Administrator)	72	745	49	106
		302(d)	72	746	49	329
		302(f)	72	746	49	323
		302(h), (i) (1st sentence 31st–41st words)	72	746, 747	49	323
		302(i) (less 1st sentence 31st–41st words)	72	747	49	325
		302(k), 303(a)	72	747	49	322
		303(b)	72	748	49	331
		303(c)(1)	72	748	49	326
		303(d) (less words after semicolon)	72	749	49	322
		303(d) (words after semicolon)	72	749		(See § 4(c) of bill.)
		303(e)			49	322
		311	72	751	49	329
		313(e)	72	753	49	308
1961						
Oct. 4	87–367	205	75	791	49	323
1962						
Oct. 11	87–793	1001(h)	76	864	49	323
1964						
Aug. 14	88–426	305(16)(B), (C)	78	424	49	106
1965						
Sept. 30	89–220	4	79	893	49	329
1966						
Sept. 9	89–564	201(a) (less pay of Administrator and Deputy Administrator)	80	735	49	105
		201(a) (related to pay of Administrator and Deputy Administrator)	80	735		(See § 3 of bill.)
		201(b)(1)	80	735	49	104
		201(b)(2), (c), (d)	80	735	49	105
Oct. 15	89–670	2(a), (b)(1)	80	931	49	101
		2(b)(2)	80	931	49	303
		3(a)–(d)	80	931	49	102
		3(e) (related to FAA)	80	932	49	106
		3(e) (related to FRA) (1), (3), (4)	80	932	49	103
		3(e) (related to FHWA) (1), (3), (4)	80	932	49	104
		3(e)(3) (related to USCG)	80	932	49	108
		4(a)	80	933	49	301
		4(b)	80	933	49	302
		4(e)	80	934	49	307
		4(f)	80	934	49	303
		4(g)	80	934	49	304
		5(a)–(e)			49	333
		6(a)(1) (B), (C), (E)–(M)	80	937		(See § 2 of bill.)
		6(a)(2)(A) (related to § 4 of the Act of Sept. 30, 1965)	80	937	49	329
		6(a)(4), (6)(B)	80	938		(See § 2 of bill.)
		6(b)(1), (2)	80	938	49	108
		6(c)(1) (1st sentence proviso, 2d, last sentences)	80	938	49	106
		6(e)(5)	80	939		(See § 2 of bill.)
		6(e)(6)(B)	80	939	49	3103
		6(e)(6)(C)	80	939	49	3102, 3103
		6(e)(6)(D) (related to "Sec. 221(a), (C)")	80	940	49	503
		6(e)(6)(D) (related to "Sec. 224")	80	940	49	3104
		6(f)(2)	80	940	49	501, 502, 504–507, 521–526
		6(f)(3)(A)	80	940	49	103
		6(f)(3)(B)	80	940	49	104
		6(f)(3)(C) (related to FRA)	80	940	49	103
		6(f)(3)(C) (related to FHWA)	80	940	49	104
		6(g)(1)–(4)(B), (E), (5), (6)	80	941		(See § 2 of bill.)
		7 (less (a) (next-to-last par.))	80	941	49	305
		7(a) (next-to-last par.)	80	942		(See § 4(a) of bill.)
		8(g)(2)	80	943	49	110
		8(h)	80	943	49	104, 105
		9(a), (b)	80	944	49	323
		9(c), (d)	80	944	49	324
		9(e)–(g)	80	944	49	322
		9(j)	80	945	49	327
		9(k)	80	946	49	102
		9(l)	80	946	49	331
		9(m)	80	946	49	326
		9(n)	80	946	49	329
		9(o)	80	947	49	325
		9(p)	80	947	49	324
		9(q)(1)–(3)	80	947	49	330
		9(r)			49	328
		11			49	332
		12	80	949	49	308
		17			49	335
1968						
Aug. 23	90–495	18(b)	82	824	49	303
1970						
May 21	91–258	51(a)(1)	84	234	49	322
Dec. 31	91–605	202(a) "Sec. 201(a) (related to pay of Administrator and Deputy Administrator)"	84	1739		(See § 3 of bill.)
		202(a) "Sec. 201(a) (less pay of Administrator and Deputy Administrator)"	84	1739	49	105
		202(a) "Sec. 201(b)(1)"	84	1740	49	104
		202(a) "Sec. 201(b)(2), (c), (d)"	84	1740	49	105

TABLE B—STATUTES AT LARGE—Continued

Date	Chapter or Public Law	Section	Statutes at Large		United States Code	
			Volume	Page	Title	Section
1972						
Aug. 22	92-401	6	86	617	49	103
1974						
Jan. 2	93-236	602	87	1022	49	308
Oct. 28	93-496	16(a)	88	1533	49	102
		16(b)	88	1533	49	324
1975						
Jan. 3	93-633	113(d)	88	2163	49	106
		113(e)(1)	88	2163	49	103
		113(e)(2)	88	2163	49	104
1976						
Feb. 5	94-210	401	90	61	49	333
		905	90	148	49	306
		906(1)	90	149	49	308
		906(2)	90	149	49	332
July 8	94-348	6	90	820	49	103
July 12	94-353	16	90	882	49	322
1978						
Mar. 27	95-251	2(a)(12) "Sec. 9(a)"	92	183	49	323
Oct. 24	95-504	45(a)	92	1753	49	334
		45(b), (c)			49	334
1980						
Feb. 15	96-192	28	94	48	49	334
May 30	96-254	207	94	413	49	328
Oct. 3	96-371	2	94	1362	49	308
Oct. 19	96-470	112(e)	94	2240	49	322
1981						
Aug. 6	97-31	12(8)	95	154	49	308
Aug. 13	97-35	1194(a), 1197	95	702, 703	49	335

TABLE C—REORGANIZATION PLANS

Year	Plan no.	Section	Statutes at Large		United States Code	
			Volume	Page	Title	Section
1968	2	2	82	1369	49	322
		3	82	1369	49	107

□ 1520

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

Mr. Speaker, I join my colleague in supporting enactment of H.R. 6993, as amended, a bill to revise, codify, and enact without substantive change certain general and permanent laws related to transportation as subtitle I and chapter 31 of subtitle II of title 49, United States Code.

As the distinguished gentleman from New Jersey (Mr. HUGHES) stated, the bill was prepared by the Office of the Law Revision Counsel of the House of Representatives.

I urge my colleagues to support H.R. 6993, as amended.

Mr. Speaker, I have no further requests for time.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. HUGHES) that the House suspend the rules and pass the bill, H.R. 6993, as amended.

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

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HUGHES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 6993, just passed.

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

There was no objection.

CLAYTON ANTITRUST ACT AMENDMENTS

Mr. HUGHES. Mr. Speaker, I move to suspend the rules and discharge the Committee on the Judiciary from further consideration of the Senate bill (S. 816) to amend the Clayton Act to limit the circumstances under which foreign governments may sue for violations of the antitrust laws, and for other purposes, and to pass the bill, S. 816, as amended.

The Clerk read as follows:

S. 816

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the Clayton Act (15 U.S.C. 15) is amended—

(1) by striking out "That" and inserting in lieu thereof "(a) Except as provided in subsection (b)," and

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

"(b)(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

"(2) Paragraph (1) shall not apply to a foreign state if—

"(A) such foreign state would be denied, under section 1605(a)(2) of title 28 of the United States Code, immunity in a case in which the action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;

"(B) such foreign state waives all defenses based upon or arising out of its status as a foreign state, to any claims brought against it in the same action;

"(C) such foreign state engages primarily in commercial activities; and

"(D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

"(c) For purposes of this section—

"(1) the term 'commercial activity' shall have the meaning given it in section 1603(d) of title 28, United States Code; and

"(2) the term 'foreign state' shall have the meaning given it in section 1603(a) of title 28, United States Code.".

The SPEAKER pro tempore. Is a second demanded?

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

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

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey (Mr. HUGHES) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. MCCLORY) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. HUGHES).

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

Mr. Speaker, I am pleased to speak in support of S. 816, a bill, which, if enacted into law, would limit to actual damages a foreign sovereign's recovery under the antitrust laws of the United States. This change will remove an anomaly in our law that permits recovery of treble damages by a foreign sovereign when the United States is limited to actual damages.

In 1978, the Supreme Court, in Pfizer, Inc. against Government of India, concluded that a foreign sovereign was a person who could recover treble damages under section 4 of the Clayton Act. Faced with a choice between denying all redress to a foreign sovereign and granting full treble damages, the Court, relying on the importance of antitrust enforcement, ruled that foreign sovereigns were entitled to full treble damages. In dissent, Chief Justice Burger articulated a telling criticism of the majority holding—that a foreign government would now have greater rights to recover damages than the United States. S. 816 responds to this criticism by limiting a foreign government to single damages, the same base amount available to the United States.

We are offering S. 816 with an amendment in the nature of a substitute. The amendment will make S. 816 identical to H.R. 5106, a bill which passed the House by a unanimous voice vote on April 27 of this year. We are getting a second look at the same language because the Senate passed H.R. 5106 with an ancillary amendment. It is my understanding that the Senate is now likely to accept the language we approved last April. We will be giving the other body that opportunity by passing S. 816 with the amendment substituting the language of H.R. 5106.

I want to stress that this is not a controversial bill. After hearings before the Judiciary Committee, the committee reported this language in a form that is unobjectionable to all parties. It is supported by the National Association of Manufacturers and by a number of companies that, in the recent past, have been involved in antitrust litigation with foreign governments. The Department of Justice has written to Chairman RODINO indicating that they do not oppose the bill in the form we have before us today. The effect of this bill is merely to place the foreign government on the same footing as the government of the United States—both will now be limited to actual damages in suits brought under the antitrust laws.

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

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

Mr. Speaker, the pending motion to suspend the rules raises no issues that the House has not already considered. It has become necessary to pass once again the House language dealing with the Pfizer case because the Senate has added a nongermane amendment providing payments for losses incurred in tris-treated fabrics. This nongermane matter has been considered separately by the House today under its own bill number, S. 823.

It is my understanding that the other body is willing to accept the House language on Pfizer as embodied in H.R. 5106, which passed the House on April 27, 1982. The House language is acceptable to the administration, whereas the Senate language is not. Therefore, it is my hope that the House will once again pass the text contained in the pending motion so that the other body might concur and then forward the legislation to the President for his approval.

I do not intend to recapitulate the debate of last April. But briefly, the bill makes two changes in antitrust treble-damage suits: First, it limits plaintiff foreign governments to single damages rather than treble damages, just as the United States is itself limited. Second, it establishes a test for determining whether a foreign plaintiff is a foreign state, limited to single damages, or a commercial enterprise, eligible for treble damages. If the plaintiff is a governmental procurement entity, or if the plaintiff is not primarily engaged in commercial activities, or if the plaintiff does not waive defenses arising out of its status as a foreign state to any claims against it in the same action, or if the plaintiff is entitled to sovereign immunity under our statutes, then such plaintiff is limited to single damages. Otherwise, the plaintiff may recover treble damages if successful on the merits.

This test is made necessary by the fact that in many parts of the world there is no clear distinction between business and government. The four-part test will enable us to carry out our policy of permitting businesses to recover treble damages while limiting the United States and other national governments to single damages.

I urge adoption of the motion to suspend the rules and pass S. 816, as amended.

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

Mr. McCLORY. I would be happy to yield to my friend, the gentleman from Texas (Mr. KAZEN).

Mr. KAZEN. I thank the gentleman for yielding.

Mr. Speaker, my question of the gentleman is: Will this bill have to go back to the other body for concurrence?

Mr. McCLORY. Yes, it will have to go back to the other body for concurrence, because we are amending the Senate bill by putting in the House-passed bill.

It is my understanding that they will accept the language in the House bill now.

Mr. KAZEN. I thank the gentleman.

Mr. McCLORY. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia (Mr. BUTLER).

Mr. BUTLER. I thank the gentleman for yielding this time to me.

Mr. Speaker, as the sponsor of the original bill introduced in this Congress to limit antitrust recovery by foreign sovereigns, I am doubly gratified by what I anticipate will be the action of the House today—doubly gratified because this is the second time we have enacted this legislation in this session.

When I introduced the original bill on this issue, I intended to remedy what I saw as a fundamental unfairness in our antitrust laws arising in the wake of the Supreme Court's 1978 decision in *Pfizer, Inc.* v. *The Government of India*, 434 U.S. 308 (1978). The majority in that case held that a foreign sovereign was a person who could recover treble damages under section 4 of the Clayton Act. Yet the Court held in a 1941 case, *United States* v. *Cooper Corporation*, 312 U.S. 600 (1941), that the U.S. Government was not a person within the meaning of our antitrust laws and was not, therefore, entitled to monetary damages. It became necessary for Congress to enact section 4A of the Clayton Act to correct this interpretation of congressional intent, but in so doing, Congress limited the United States to recovery of "actual damages by it sustained and the cost of suit" (15 U.S.C. 15(a)). In my original bill, H.R. 2812, which I introduced on March 25, 1981, I sought equality between foreign governments and our own, and that objective has been preserved and fully realized in the measure before us today.

My second original objective was reciprocity, a requirement that the conduct for which redress was sought in our courts be illegal in a foreign sovereign's own country, that such laws be enforced, and that our own Government could recover actual damages under such law if injured by similar conduct. When I put it into my bill, reciprocity seemed an excellent concept, but after receiving testimony from the Department of Justice, the Department of State, and a representative of the American Bar Association, our Monopolies and Commercial Law Subcommittee members, myself among them, became convinced that it would be unworkable in actual practice.

The Assistant Attorney General for Antitrust, Mr. William Baxter, advised us that—

> The administration of the reciprocity features of H.R. 2812 will be quite complex and may, itself, serve on occasion to exacerbate problems with our foreign trading partners.

The legal adviser to the Department of State, Mr. Davis R. Robinson, told us that—

This three-tiered reciprocity test, in our view, would be difficult, if not impossible, for other countries to meet, given variations in concept and approach involved in even the most effective foreign competition laws. We further are concerned that lengthy and expensive litigation might be required to establish whether particular foreign systems of competition regulation satisfy the reciprocity test, with possible embarrassment to our foreign relations as well.

Although suggesting that the three-tiered test might be clarified, the representative of the State Department later acknowledged that he was not sure how that might be accomplished so as to avoid the problems he considered inherent in such tests as set forth in H.R. 2812. On balance, I believe we did the correct thing in eliminating the reciprocity test.

Mr. Speaker, this bill is a fair one and an appropriate amendment to our antitrust laws. I urge my colleagues to support the motion to suspend the rules and pass S. 816 as amended.

● Mr. RODINO. Mr. Speaker, I am pleased to join my colleague from New Jersey in supporting S. 816. This bill will adjust the treble damage remedy under the antitrust laws so that a foreign government, when it sues under the antitrust laws, will be limited to an actual damages recovery, the same limitation that already applies to the U.S. Government.

I want the record to reflect that we are passing a bill which contains the identical language approved by this House on April 27, when we passed H.R. 5106. Because the Senate added an ancillary amendment to H.R. 5106, that bill has not gone forward. By approving S. 816 with an amendment substituting the language of H.R. 5106, we will be affording the Senate a second opportunity to approve this constructive legislation.

The statement that I made in support of H.R. 5106 on April 27 of this year applies fully to the identical language we are addressing today. As I stressed at that time, this is not a controversial bill. We have held hearings before the Subcommittee on Monopolies to work out language that is unobjectionable to everyone. The chairman of the Foreign Affairs Subcommittee, Mr. ZABLOCKI, spoke out for this version of the bill during the debate on April 27. Since that time, the Department of Justice has written to me indicating that they do not object to passage of this form of the bill.

I urge my colleagues to join me in supporting this helpful corrective legislation.●

Mr. HUGHES. Mr. Speaker, before yielding back the balance of my time, I just want to join with my other colleagues in congratulating our distinguished colleague from Illinois. This is about the third time, I know, my colleague has heard these accolades, but he is a great Member and we are going to miss him dearly.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. HUGHES) that the House suspend the rules and pass the Senate bill, S. 816, as amended.

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

The title was amended so as to read: "An act to amend the Clayton Act to modify the amount of damages payable to foreign states and instrumentalities of foreign states which sue for violations of the antitrust laws."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HUGHES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill, S. 816, just passed.

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

There was no objection.

DEEP SEABED HARD MINERALS

Mr. D'AMOURS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6120) to reauthorize the Deep Seabed Hard Mineral Resources Act for fiscal years 1983, 1984, and 1985, as amended.

The Clerk read as follows:

H.R. 6120

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 310 of the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1470) is amended by striking out the period at the end and inserting in lieu thereof a comma and the following: "and $1,469,000 for the fiscal year ending September 30, 1983, and $2,150,000 for the fiscal year ending September 30, 1984.".

The SPEAKER pro tempore. Is a second demanded?

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

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

There was no objection.

The SPEAKER pro tempore. The gentleman from New Hampshire (Mr. D'AMOURS) will be recognized for 20 minutes, and the gentleman from Washington (Mr. PRITCHARD) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Hampshire (Mr. D'AMOURS).

Mr. D'AMOURS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to urge the House to pass H.R. 6120, a bill to reauthorize the Deep Seabed Hard Mineral Resources Act for fiscal years 1983 and 1984. This legislation was enacted by the Congress in 1980 to establish procedures for the orderly development of the hard mineral resources in the deep seabed. Responsibility for implementing the act lies with the National Oceanic and Atmospheric Administration—NOAA—in the Department of Commerce.

The bill was originally scheduled under suspension of the rules on July 6, 1982, but was withdrawn so that the committees of appropriate jurisdiction could continue oversight on urgent matters related to the reauthorization; namely, the administration's decision not to sign the Law of the Sea Treaty.

The bill now incorporates the administration's request for fiscal year 1983 of $1,469,000, and would authorize $2,150,000 for fiscal year 1984. The bill, as reported, contained a 3-year reauthorization. However, it was decided that a 2-year reauthorization would be preferable in order that the Congress can continue oversight on the program.

While the basic legal framework for regulating seabed mining exploration is now in place, several major tasks for developing the program remain.

To date, four mining companies have submitted exploratory license applications to NOAA for 10 mining sites. These applications contain overlapping claims that will be resolved by NOAA's office of ocean minerals and energy, whose continued operations will be insured by the funds authorized in H.R. 6120. These funds will also provide the regulatory support necessary to foster the deep seabed mining industry.

As U.S. industry moves closer to commercial recovery of deep seabed nodules, proper regulatory support for permitting commercial recovery will play a crucial role in insuring U.S. leadership in the development of the deep seabed mining industry. I urge my colleagues to support this important program by passing the bill, H.R. 6110.

□ 1530

Mr. PRITCHARD. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. LAGOMARSINO).

Mr. LAGOMARSINO. Mr. Speaker, I rise in support of H.R. 6120, which authorizes appropriations for an additional 3 years under the Deep Seabed Hard Mineral Resources Act.

That act establishes an interim legal framework for the orderly development of deep seabed mining and requires the National Oceanic and At-

mospheric Administration (NOAA) to develop and administer the regulations for exploration and eventual recovery of deep seabed minerals, although the act provides for orderly progress in research for deep seabed mining, it does not commit the United States to proceed with commercial recovery of seabed minerals before January 1988.

Since it is unclear at the present what future there may be in commercial recovery of seabed minerals, it is appropriate to provide a 3-year authorization to allow development of the procedures so that NOAA will be prepared for whatever decisions are made. NOAA has faithfully fulfilled its requirements under the act thus far, and in recognition of the fine work it has done, we should act promptly to approve its continued operation on the seabed regime framework. I urge my colleagues to support H.R. 6120.

Mr. PRITCHARD. Mr. Speaker, in order for NOAA to conduct the deep seabed mining program, I think that reauthorization levels contained in H.R. 6120 are reasonable, and I support the passage of this legislation and would urge my colleagues to do the same.

● Mr. BROOMFIELD. Mr. Speaker, I rise in support of H.R. 6120, legislation to reauthorize the Deep Seabed Hard Mineral Resources Act for fiscal years 1983, 1984, and 1985.

The Deep Seabed Hard Mineral Resources Act (Public Law 96-283) was enacted June 28, 1980. Under that law, the National Oceanic and Atmospheric Administration (NOAA) has responsibility for establishing and regulating a domestic legal framework governing exploration for and commercial recovery of deep seabed minerals.

Since enactment of Public Law 96-283 in 1980, NOAA has proceeded carefully and conscientiously in fulfilling the requirements of the law, which include the following:

First, development of regulations for the issuance of licenses for exploration of seabed minerals and of permits for commercial recovery of those resources by U.S. citizens;

Second, development of regulations for the protection of the marine environment, conservation of natural resources and safety of life and property at sea as it relates to deep seabed mining;

Third, preparation of a 5-year research plan for conducting an accelerated program of ocean research necessary to determine whether ocean mining will have a significant adverse effect on the marine environment;

Fourth, negotiations with other countries to establish stable reference areas to be set aside for assessing environmental and mineral resource characteristics; and

Fifth, negotiations on a reciprocating States agreement with other nations having domestic legislation on deep seabed mining in order to provide for mutual recognition of rights under those laws, to determine how those laws would relate to international law, and to develop a conflict resolution process.

Approval of a 3-year authorization allows for orderly progress by NOAA in carrying out the long-range activities required by the Deep Seabed Mining Act. It does not, however, commit the United States to proceed with commercial recovery of seabed resources prior to the established date of January 1988. By the time of the expiration of this reauthorization in 1985, we will be in a much better position to determine what the future will be for domestic U.S. commercial recovery of deep seabed mineral resources without handicapping future progress toward deep seabed mining.

I urge my colleagues to support this 3-year authorization measure.●

Mr. D'AMOURS. Mr. Speaker, I yield 5 minutes to the gentleman from Iowa (Mr. BEDELL).

Mr. BEDELL. Mr. Speaker, I rise in opposition to this legislation. As you know, H.R. 6120 reauthorizes the Deep Seabed Hard Mineral Resources Act. Money provided under this particular bill would permit NOAA to issue licenses for exploration of seabed mineral deposits, issue permits for commercial recovery of those resources after January 1, 1983, and third, develop regulations to protect the marine environment, conserve natural resources, insure the safety of life and property, and finally, designate in conjunction with the State Department foreign countries that have laws similar to the Deep Seabed Hard Minerals Resources Act as "reciprocating states."

Since entering office, the Reagan administration has moved expeditiously to remove the United States from participation in the Law of the Seas Conference. Passage of H.R. 6120 today would seemingly complete that process and signal to the rest of the world a United States intent to "go it alone" with respect to deep seabed mining and recovery. In my view, the obvious arrogance of our present position represents a dangerous break from our past commitment, made in 1970, to recognize the resources of the seas as "the common heritage of mankind."

Passage of this bill and support for the President's policies tell the world that we believe high seas policies should be determined by a series of minitreaties between the industrialized nations or, better yet, between the mining consortia themselves and each of the world's coastal nations on a one-by-one basis. Further, passage of this bill and endorsement of its provisions to allow NOAA the regulatory authority to issue licenses and permits, develop regulations and, designate reciprocating states is completely absurd considering the fact that the United States has refused the opportunity to even observe the preparatory commission meetings scheduled for March 1983.

Mr. Speaker, I hope we realize what we are doing here at this time. The United States has been involved, along with a great many other nations, in trying to negotiate a Law of the Sea Treaty. The United States was instrumental in starting those negotiations. When all the negotiators came to New York for what was expected to be the final negotiating session, this administration served notice on all the rest of the countries that we were not even going to participate in those negotiations. They then came back a second time, and again we refused to participate. At this time we have refused to agree to the treaty. We are the only industrial nation that voted against the treaty when it came up, and the reality is the fact that that treaty is going into effect.

I have no great trouble with this bill per se, in which we allocate the money. The problem I have is with the report, the committee report which comes forth with it, which says that even though all the rest of the world is going to set up a treaty that has to do with how we will handle the resources of the world, we are going to go off on our own and try to see if we cannot get some other nations to join us to set up our own little minitreaty.

I do not think that is the way we should operate in this world. I think it is quite clear that the mining companies are not going to be able to get the money they need in order to mine the deep seabed under the restraints we now have, and under those circumstances I certainly believe it is a mistake to pass this bill at this particular time.

Mr. PRITCHARD. Mr. Speaker, I yield 5 minutes to the gentleman from Alaska (Mr. YOUNG).

Mr. YOUNG of Alaska. Mr. Speaker, I rise in strong support of this legislation and think that it is long overdue. The previous speaker in the well took this administration to task concerning the Law of the Sea Treaty. I have opposed that treaty concept from the very inception. I listened to many of our so-called intellectual giants tell us that we must negotiate and watch them give away what is basically the rights of this Nation.

This Nation was created great because of a system of political stability that rewarded those that were willing to take the risk with the profits from that risk. It also rewarded those with the technology we have been able to create, because of our expertise in this field. Yet, the treaty as proposed and

the one that the administration rejects takes away all the benefits, the technology, which companies would derive when they have gone into the field of deep seabed mining.

I would like to remind this body that this is an area that probably, frankly, without this legislation, if we were to sign the treaty it would be the greatest giveaway of all time. Right today, there are possibilities of mining, deep sea mining in the deep caverns of these oceans of ours within 200 miles that would give us the benefit of new minerals being created today; not old minerals, but new minerals within sight of our land. This possibility occurs.

But more than that, as one that represents the largest State in the Union with the greatest fishing potential, the treaty was wrong at the beginning because we keep giving away basically what is our right, the fish that belong to the borders of this great Nation and the State of Alaska. I am confident that the treaty as proposed and not signed by the administration—thank God for that—the fisheries would be in fact in jeopardy which we fought so strong for in this Congress to make sure that they were protected to the 200-mile limit.

I think it is unfortunate that the American people are unaware of just how close we came to disaster in a treaty that was supported by some previous administrations—for what reason I cannot tell. We keep hearing about working with the rest of the world. When I see a land-locked nation dictating to us what should and should not be done, I think that is terribly unjust.

The gentleman who spoke previously said that we are the only nation which voted against the treaty. That is possibly true. There are also 40 nations that did not sign the treaty, and basically for some of the basic reasons that I brought up at this time.

We have to recognize that when we deal with a treaty it is far reaching in more aspects than are just brought up at this time. Some people think it is correct for this Nation. I want to commend President Reagan and this administration for not signing a treaty which is basically a giveaway.

This legislation is long overdue.

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

Mr. YOUNG of Alaska. I yield.

Mr. BEDELL. Mr. Speaker, I understand the gentleman's interests for the mining industry. I would hope that we would all share that interest. Since the treaty has been ratified, does the gentleman believe that without our participation mining companies will be able to go out and mine the deep sea in violation of that treaty?

Mr. YOUNG of Alaska. It is my intelligence, and information I received, and I do serve on that committee that handles the legislation, that if there is no treaty signed, then there would be no treaty which would require them to give the technology and expertise which they developed to countries that have no participation; plus, if there is any interest or profit made from their endeavors, then other countries could profit from it without any input at all.

□ 1540

Mr. BEDELL. Mr. Speaker, will the gentleman yield further?

Mr. YOUNG of Alaska. I am glad to yield to the gentleman from Iowa.

Mr. BEDELL. But, Mr. Speaker, my question was: does the gentleman believe that, under the circumstances that a treaty has been ratified by the nations, mining companies will be able to go out and mine the deep sea in violation of that treaty?

Mr. YOUNG of Alaska. Under this legislation, yes, because reciprocating states will agree and participate with the United States, and the United States itself can deal with the mining off its own shores.

Mr. PRITCHARD. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. GILMAN).

Mr. GILMAN. Mr. Speaker, while I rise in support of the motion to suspend the rules and pass H.R. 6120, the Deep Seabed Hard Mineral Reauthorization Act of 1982, as amended, I do have reservations about its impact on the Law of the Sea Treaty. I recognize the need for those provisions of the bill which reauthorize appropriations to enable the National Oceanic and Atmospheric Administration (NOAA) to process mining explorer licenses, to begin to formulate rules for commercial recovery permits, and to conduct necessary research to assess the impact of such exploration and recovery on the environment.

However, we must recall that the United States is not the only state concerned about mining the seabed. Last week in Jamaica, 117 states and 2 nonself-governing territories signed the convention on the Law of the Sea. While the United States did sign the Final Act, we did not sign the convention. A handful of others did, not including several of our allies. The latter may change their minds and sign the convention in the next few months. More than enough states signed that convention to enable the Preparatory Commission to begin its work on developing the rules and regulations under which seabed mining will take place under the proposed International Seabed Authority when the convention comes into force.

Now it strikes me as very shortsighted of this administration not to participate in the work of the Preparatory Commission. The United States is entitled to do so because our delegation signed the Final Act of the Conference last week. Beyond this, the rulemaking carried out by the United States is likely to have a bearing on the rules and regulations developed by the Preparatory Commission. I am thinking here not only of rules for exploration and commercial recovery, but in particular for environmental requirements which seabed mining companies as well as the Enterprise should be obliged to observe. In short, the United States should contribute to this exercise.

The administration has already opted not to participate in the work of the Preparatory Commission but to devote its energies to negotiating a reciprocal mining regime with other mining states. Such behavoir is not becoming of a world leader. Rather, we should make every effort to keep our hand in the continuing multilateral process and should send an observer to the Preparatory Commission that will be meeting next spring.

Last summer, several of my colleagues and I introduced House Concurrent Resolution 394, legislation expressing the sense of Congress regarding a Law of the Sea Treaty. That resolution calls for continued U.S. participation in the treaty process, by sending an observer to the Preparatory Commission.

Accordingly, I urge my colleagues to consider the importance of such participation and to cosponsor House Concurrent Resolution 394, which I plan to reintroduce in the next Congress.

Mr. D'AMOURS. Mr. Speaker, I yield 4 minutes to the chairman of the Committee on Foreign Affairs, the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Mr. Speaker, H.R. 6120, the Deep Seabed Hard Mineral Resources Act of 1982, as amended, causes me considerable concern, but I am willing to support its passage today. By agreement of the principals, the amended bill reauthorizes appropriations for 2 years, rather than 3 years, as the administration originally requested. The moneys authorized are to be used by the National Oceanic and Atmospheric Agency to: First, process applications for licenses for exploration by seabed miners; second, begin to formulate rules and regulations for commercial recovery of seabed minerals prior to issuing permits on January 1, 1988; third, conduct environmental research necessary to prepare rules and regulations; and fourth, continue ongoing negotiations by the United States with other seabed mining states to develop a reciprocating states regime to mine the seabed.

It is important for enviornmental research to go forward because mining of the seabed will eventually take place and when it does mining compa-

nies should do it in an environmentally sound manner. What disturbs me, however, is that the legislation is being used by the administration as part of its answer to the Convention on the Law of the Sea which it rejected last summer, a decision which I then called premature and self-defeating. The United States did not sign the convention last week at the signing ceremony in Jamaica, along with several of our allies: The United Kingdom, Japan, and the Federal Republic of Germany.

Nevertheless, the overwhelming majority of states—117 to be exact—did sign the convention thus triggering the next step in the treaty process: The creation of the Preparatory Commission that will meet in March 1983 to develop rules and regulations for seabed miners that will mine under the convention. Yet the administration says it will not even send an observer to the Preparatory Commission, but rather neglect that process, accelerate the development of rules for commercial recovery and negotiate a reciprocal states regime. I cannot be enthusiastic about the administration's posture nor for these reasons, this reauthorization.

Mr. Speaker, the work of the U.S. Government on rules and regulations is going to parallel the work of the Preparatory Commission in the next few years. There is no doubt in my mind that the United States has an opportunity to exercise leadership by participating as an observer in the Preparatory Committee meetings; to monitor the debate on rules and regulations and to influence the direction of those rules based on NOAA's research and work on U.S. rules. The United States already has the right to participate as an observer because the U.S. delegation did sign the Final Act of the conference last week, I, therefore, urge the administration to reconsider its decision not to participate in the Preparatory Commission.

The Committee on Foreign Affairs will be monitoring very closely over the next couple of years the manner in which NOAA spends its moneys under this reauthorization as well as developments in the continuing multilateral process resulting from last week's signing ceremony in Jamaica.

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

Mr. Speaker, I would just like to say that I am not fully happy with this legislation, but I think I can assure everyone that it is going to take additional legislation before deep sea mining takes place.

I know that the gentleman from Louisiana (Mr. BREAUX) has some legislation that we will be debating and arguing next year, and just because we pass this bill at this point does not mean that we will be involved in deep sea mining. It is a step forward, and some of us are not totally happy with it. However, I think at this point it is reasonable and sound to go ahead with this authorization.

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

Mr. PRITCHARD. I yield to the gentleman from Iowa.

Mr. BEDELL. Mr. Speaker, in view of the views that have been expressed by the gentleman from Washington (Mr. PRITCHARD) and by the chairman of the Committee on Foreign Affairs, the gentleman from Iowa will not ask for the yeas and nays, as I had planned to previously. I think the gentleman has expressed quite clearly some of the concerns that do exist, and my plea is only that this body would continue to look at those concerns and try to do what is in the best national interest as we move forward in this matter.

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

Mr. D'AMOURS. Mr. Speaker, I yield 2 minutes to the gentleman from Louisiana (Mr. BREAUX).

Mr. BREAUX. Mr. Speaker, I thank the subcommittee chairman for yielding time to me, and I congratulate him and the ranking minority member for bringing this bill to the floor.

I am a little concerned that we got off on discussing the merits and demerits of the Law of the Sea Convention with regard to the deep seabed mining legislation. The two are separate issues, and I appreciate the distinctions that were made between the two.

I would say, however, with regard to the comments that were made in questioning the administration's decision to participate in the current activities at Montego Bay, Jamaica, with regard to the Law of the Sea Treaty, that I do think that the administration is correct. There are a number of nations in the world, including many developed nations, that have seen fit not to sign the treaty. In fact, 22 nations have specifically decided not to sign the treaty, and an additional 24 nations did not even show up, indicating their strong displeasure with the end product.

I would just point out that for the United States to participate in a session following the completion of this Law of the Sea Treaty, which we feel has fundamental defects, and to make the argument that somehow we can change the intent of the treaty, including the rules and regulations, is nonsense. It is like the Congress passing a law saying that the sky is blue and that, hopefully, people in the regulation-rating department can change it and say that the sky is red or some other color.

We cannot change things that are fundamentally clear and very precise in the text of a treaty by subsequent rules and regulations. Therefore, I think it is nonsense for us to spend millions of dollars going to review sessions trying to change the clear intent of a treaty which we find fundamentally flawed.

I think, therefore, Mr. Speaker, we ought to look at that suggestion with a great deal of candor and suspicion because it simply cannot change the intent of a treaty. I do support the legislation, and I thank the gentleman for bringing it to the floor.

Mr. D'AMOURS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, before closing, let me say that I would like to associate myself with the remarks made by the gentleman from Wisconsin (Mr. ZABLOCKI) and also with the remarks of the gentleman from Washington (Mr. PRITCHARD).

Mr. Speaker, I yield 2 minutes to the gentleman from Nevada (Mr. SANTINI).

□ 1550

Mr. SANTINI. Mr. Speaker, I rise in support of H.R. 6120. It is a critical and imperative part of trying to formulate some sort of rational direction with regard to minerals and materials in our Nation's future. It underscores the necessity for each Member of this body to support the earlier legislative initiative by the gentleman from Kansas (Mr. GLICKMAN) and the gentleman from Florida (Mr. FUQUA) and the Science and Technology Committee the "Critical Materials Act of 1982."

We have in our Pacific Ocean mineral resources that could make the United States of America independent of foreign dependency on the strategic minerals of cobalt, manganese, nickel, and copper. With the exception of copper, we are dependent upon foreign sources for cobalt manganese, and nickel.

This dependence demonstrates that we are off on various tangents of issue resolutions each and every time we are addressing questions of minerals and materials. Today as we deliberate on this legislation it is done in an isolated context, not part of a national initiative, not part of a coordinated and cooperative legislative program to put this Nation one day on some kind of rational course and direction with regard to its minerals and materials.

I commend the gentleman from New Hampshire (Mr. D'AMOURS) for continuing the implementation of this noncontroversial legislation and I hope that in the years to come this body will be able to implement this legislation and legislation like it in the context of a policy, a plan, and a program.

I think the Glickman bill, H.R. 4281, earlier debated and discussed would do that, so I urge support of that legisla-

tion as well and thank the gentleman from New Hampshire for giving me two shots on one bill.

In addition, I support H.R. 6120 to reauthorize appropriations to carry out the provisions of the Deep Seabed Hard Mineral Resources Act for the following reasons:

The Seabed Mining Act of June 28, 1980, established an interim legal framework for the orderly development of the manganese nodules of the deep seabed. Under the act, the National Oceanic and Atmospheric Administration was charged with the responsibility to develop and implement the necessary regulatory steps to govern exploration and development of the hard mineral resources. In cooperation with the State Department and other Federal agencies, NOAA is also responsible for designating other nations as reciprocating states. Since passage of the act, NOAA has actively sought to fulfill its mandates as evidenced by the following activities:

Fall 1980: Creation of Office of Ocean Minerals and Energy to implement the Seabed Mining Act;

March 24, 1981: Issuance of proposed regulations and programmatic environmental impact statement for exploration licenses;

June 24, 1981: Submitted brief report to Congress on status of Law of the Sea negotiations related to system for protection of interim investments;

September 15, 1981: Issuance of final regulations and programmatic EIS;

September 1981: Issuance of final technical guidance document to assist those preparing license applications and reports;

December 1981: Submitted first biennial report to Congress on the administration of the act;

January 25, 1982: Commenced accepting applications for exploration from preenactment explorers;

February 1982: General consensus reached on text of a reciprocating states agreement;

March 12, 1982: Closed the period for accepting preenactment explorer licenses;

June 1982: Submitted 5-year plan for carrying out a program of research and assessment of the environmental effects of deep seabed mining exploration and commercial recovery.

Negotiations on the Law of the Sea Treaty were brought to a close on April 30, 1982, with 130 nations, voting to approve the treaty, 4 nations—including the United States—voting against approval, and 17 nations abstaining—including the Soviet Union. The domestic seabed mining program becomes a very significant element in maintaining access for the United States to the strategic and critical minerals on the ocean floor. The United States imports 91 percent of its cobalt consumption, 98 percent of its manganese consumption, and 72 percent of its nickel consumption. Most of these imports come from countries with unstable political bases. These minerals are essential for our economy and national security, and it is important that we pursue every means possible to assure future supplies.

In summary, NOAA has set up the basic framework outlined by the Deep Seabed Hard Mineral Resources Act. In order for NOAA to continue with the program, reauthorization of appropriations will be necessary.

I urge my colleagues to support passage of H.R. 6120.

● Mr. MARRIOTT. Mr. Speaker, I rise in support of this necessary extension of important enabling legislation. In the not too distant future the deep seabed should be an important source of strategic and critical minerals for the United States.

The original Deep Seabed Hard Mineral Resources Act (Public Law 96-283, signed into law in June 1980) established a legal structure to encourage U.S. companies to explore for and commercially recover these minerals. We need to maintain the framework that guarantees the rights of backers of these unusually risky ventures if we are to count on their eventually making ocean resources available to us.

Our hope that an acceptable Law of the Sea Treaty could be worked out with the other nations of the world has not been fulfilled. Thus, ocean mining concerns must continue to rely on a domestic and bilateral legal foundation for their investments. The interim licensing and regulatory regime developed by the National Oceanic and Atmospheric Administration (NOAA) promises this protection as well as the mechanism for minimizing the damage to the ocean environment from such mining operations.

Commercial operations are still several years away, but decisions on financial commitments for such activities as at-sea mining equipment tests will have to be made well in advance by private companies. The procedural stability provided by NOAA's efforts should contribute to the case for going ahead with these trials and, should they succeed, to the incentive of other nations to compromise on their Law of the Sea Treaty demands. The sooner commercial extraction from the seabed is proven to be feasible, the sooner the pressure on others is likely to yield a reasonable treaty for sharing the oceans treasures.

In conclusion, I urge adoption of this reauthorization to expedite both our access to new supplies of minerals like manganese, cobalt, nickel, and copper which are crucial to our national security, and our chances for obtaining a responsible treaty covering use of the world's oceans.●

Mr. D'AMOURS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Hampshire (Mr. D'AMOURS) that the House suspend the rules and pass the bill, H.R. 6120, as amended.

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

The title was amended so as to read: "A bill to reauthorize the Deep Seabed Hard Mineral Resources Act for fiscal years 1983 and 1984."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. D'AMOURS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

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

There was no objection.

OUTER CONTINENTIAL SHELF AMENDMENTS TO TITLE III

Mr. STUDDS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5906) to amend title III of the Outer Continental Shelf Lands Act Amendments of 1978 to clarify provisions relating to claims, financial responsibility, and civil penalties, as amended.

The Clerk read as follows:

H.R. 5906

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 2. (a) Section 301(8) is amended by striking out "to drill for," and inserting in lieu thereof "to explore for oil on the Outer Continental Shelf or to drill for,".

(b) Section 301(19) is amended to read as follows:

"(19) 'owner' means, in the case of a vessel, a pipeline, or a mobile offshore drilling unit, any person holding title to, or in the absence of title, any other indicia of ownership of, the vessel, pipeline, or unit, whether by lease, permit, contract, license, or other form of agreement, except that such term does not include a person who, without participating in the management or operation of a vessel, a pipeline, or a mobile offshore drilling unit, holds indicia of ownership primarily to protect his security interest in the vessel, pipeline, or unt;".

(c) Section 301(20)(B) is amended by striking out "an offshore facility" and inserting in lieu thereof "a pipeline or a mobile offshore drilling unit" and by striking out "facility" and inserting in lieu thereof "pipeline or unit".

(d) Section 301(23) is amended by striking out "the owner or operator" and inserting in lieu thereof "the responsibile party" and by striking out "an owner or operator" and inserting in lieu thereof "a responsible party".

(e) Section 301 is amended by striking out "and" at the end of paragraph (24), by striking out the period at the end of paragraph (25) and inserting in lieu thereof a semicolon, and by adding at the end thereof the following:

"(26) 'lessee' means any person holding an oil and gas lease on submerged lands of the Outer Continental Shelf granted or maintained under the Outer Continental Shelf Lands Act;

"(27) 'permittee' means any person holding a permit for geological exploration under section 11 of the Outer Continental Shelf Lands Act;

"(28) 'responsible party' means—

"(A) with respect to a vessel or pipeline, the owner or operator of such vessel or pipeline;

"(B) with respect to an offshore facility (other than a pipeline and other than a mobile offshore drilling unit in any case in which subparagraph (C) of this paragraph applies), the lessee or permittee of the area in which such facility is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for such offshore facility where such holder is a different party than the lessee or permittee; and

"(C) with respect to a mobile offshore drilling unit which is being used as an offshore facility in any case in which liability is determined under section 304(a)(2), the owner or operator of such unit and the lessee or permittee of the area in which such unit is located, to the extent of their respective liability under section 304(a)(2) of this title; and

"(29) 'mobile offshore drilling unit' means every watercraft or other contrivance capable of use as a means of transportation on water (other than a public vessel of the United States) which is operating in the waters above the Outer Continental Shelf (as the term 'Outer Continental Shelf' is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)), or which is operating in the waters above submerged lands seaward from the coastline of a State (as the term 'submerged lands' is described in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)(2)), and which is capable of drilling for oil on the Outer Continental Shelf.".

SEC. 3. (a) Section 303(b)(1) is amended by striking out "owner or operator of" and inserting in lieu thereof 'responsible party with respect to".

(b) Section 303(b)(1)(B) is amended by striking out "such claims may be asserted only as to the removal costs incurred in excess of that limitation" and inserting in lieu thereof "such claim for removal costs may be asserted only to the extent that the sum of the removal costs incurred by the responsible party plus the amounts paid by the responsible party or by the guarantor on behalf of the responsible party for claims asserted under subsection (a) of this section exceeds (i) in the case of a vessel or in the case of an owner or operator of a mobile offshore drilling unit where liability is determined under section 304(a)(2), an amount equal to $250,000 or $300 per gross ton, whichever is greater, of (ii) in the case of an offshore facility (other than a mobile offshore drilling unit where liability is determined under section 304(a)(2)), an amount equal to $75,000,000, or (iii) in the case of a lessee or permittee of an area in which is located a mobile offshore drilling unit where liability is determined under section 304(a)(2), an amount equal to $75,000,000 reduced by the amount for which the owner and operator of such unit are liable under section 304(a)(2)".

SEC. 4. (a) Section 304(a) is amended to read as follows:

"(a)(1) Subject to the provisions of paragraph (2) of this subsection and of subsections (b) and (c) of this section, the owner and operator of a vessel other than a public vessel, the owner and operator of a pipeline, the lessee or permittee of an area in which is located an offshore facility (other than a pipeline), or the holder of a right of use and easement for an offshore facility, which vessel, pipeline, or facility is the source of oil pollution, or poses a threat of oil pollution in circumstances which justify the incurrence of the type of costs described in section 301(22) of this title, shall be jointly, severally, and stricty liable for all loss for which a claim may be asserted under section 303 of this title.

"(2)(A) In any case in which a mobile offshore drilling unit is being used as an offshore facility and is involved in an incident where oil pollution or the threat of oil pollution originates on or above the surface of the water, the owner and operator of such mobile offshore drilling unit shall be jointly, severally, and strictly liable for all loss for which a claim may be asserted under section 303 of this title, subject to subparagraph (C) and the limit of liability, if any, that would apply under subsection (b)(1) if such unit were a vessel.

"(B) The lessee or permittee of the area, or the holder of a right of use or easement for an area, in which a mobile offshore drilling unit is located shall be jointly, severally, and strictly liable in the case of an incident described in subparagraph (A) for all loss for which a claim may be asserted under section 303 of this title to the extent that such loss exceeds the amount for which the owner and operator of the mobile offshore drilling unit are liable under subparagraph (A), subject to subparagraph (C) and the limit of liability, if any, that would apply under subsection (b)(2) to an offshore facility if such limit were reduced by such amount for which the owner and operator of the mobile offshore drilling unit are liable.

"(C) In the case of any incident described in subparagraph (A) which is caused primarily by willful misconduct or gross negligence within the privity or knowledge of both the owner or operator of the mobile offshore drilling unit and the lessee, permittee, or holder of a right of use or easement of the area in which such unit is located, or is caused primarily by a violation, within the privity or knowledge of both the owner or operator and the lessee or permittee, of applicable safety, construction, or operating standards or regulations of the Federal Government, the owner and operator of the mobile offshore drilling unit and the lessee or permittee of the area in which such unit is located shall be jointly, severally, and strictly liable for all loss for which a claim may be asserted under section 303 of this title.".

(b)(1) Section 304(b) is amended by striking out "owner or operator" each place it appears in the matter preceding paragraph (1) and inserting in lieu thereof "responsible party".

(2) Section 304(b)(1) is amended to read as follows:

"(1) in the case of a vessel, except when the responsible party with respect to the vessel fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, limited to $250,000 or $300 per gross ton, whichever is greater, reduced by the amount of any removal costs incurred by the responsible party with respect to the incidence; or".

(3) Section 304(b)(2) is amended to read as follows:

"(2) in the case of an offshore facility (except as provided in subsection (a)(2) of this section), limited to $75,000,000 reduced by the amount of any removal costs incurred by the responsible party with respect to the incident.".

(c) Section 304(c)(2) is amended by striking out "entity" and inserting in lieu thereof the following: "entity, but not including any third party who is carrying out a contract or other agreement with a lessee, permittee, or holder of a right of use or easement under which such party is exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil".

(d) Section 304(d) is repealed.

(e) Section 304(g)(1) is amended by striking out "owner, operator, or guarantor of" and inserting in lieu thereof "responsible party or guarantor with respect to" and by striking out "owner, operator, or guarantor" the second, third, and fourth places it appears and inserting in lieu thereof "responsible party or guarantor".

(f) Section 304(h) is amended by striking out "an owner or operator" and inserting in lieu thereof "a responsible party".

(g) Section 304 is amended by adding at the end thereof the following new subsections:

"(j) No indemnification, hold harmless, or similar agreement shall be effective to transfer from the responsible party, to any other person, the statutory liability imposed under subsection (a) of this section.

"(k) Nothing in this title shall preclude an agreement whereby any person agrees to indemnify a responsible party for, or hold a responsible party harmless from, the liability or liability in whole or in part, arising from any oil spill pollution.

SEC. 5. (a) The first sentence of section 305(a)(1) is amended to read as follows: "The owner or operator of any vessel (except a non-self-propelled barge that does not carry oil as fuel or cargo) which uses an offshore facility and the owner or operator of a mobile offshore drilling unit shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy an amount of liability under section 304(a) for an incident equal to $250,000 or $300 per gross ton, whichever is greater.". The last sentence of section 305(a)(1) is amended to read as follows: "In any case in which an owner or operator owns, operates, or charters more than one vessel subject to this subsection or more than one mobile offshore drilling unit, evidence of financial responsibility need be established only to meet the amount of liability set forth in the first sentence of this paragraph which is applicable to the largest of such vessels or units.".

(b) Section 305(b) is amended to read as follows:

"(b)(1) The lessee, permittee, or holder of a right of use or easement of an area on which is located at least one offshore facility (other than a pipeline) which (1) is used

for exploring for, drilling for, producing, or processing oil, or (2) has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy an amount of liability equal to $75,000,000 for each incident involving an offshore facility (other than a pipeline) in any area covered by an oil and gas lease or a permit for geological exploration under the Outer Continental Shelf Lands Act which is held by such lessee or permittee.

"(2) The owner or operator of a pipeline which is located on the Outer Continental Shelf and has the capacity to transport more than one thousand barrels of oil at any one time shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy an amount of liability equal to $75,000,000 for each incident involving a pipeline which is located on the Outer Continental Shelf and is owned or operated by such owner or operator.

"(3) In any case in which an easement has been granted for the construction or maintenance of one or more offshore facilities, the holder of such easement shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy an amount of liability equal to $75,000,000 for each incident involving an offshore facility on such easement.".

(c) Section 305(c) is amended be striking out "any owner or operator of an offshore facility or vessel" and inserting in lieu thereof "any responsible party", by striking out "such owner or operator" each place it appears and inserting in lieu thereof "such responsible party", and by adding at the end thereof the following: "Nothing in this title shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds in the aggregate the amount of financial responsibility which that guarantor has provided for each responsible party. Nothing in this subsection shall be construed to limit any other statutory, contractual, or common law liability of a guarantor to any responsible party for whom such guarantor provides evidence of financial responsibility including, but not limited to, the liability of such guarantor for negotiating in bad faith a settlement of any claim.".

SEC. 6. (a) Section 306(b)(1) is amended by striking out "owner and operator of such source" and inserting in lieu thereof "responsible party with respect to such source".

(b) Section 306(b)(2) is amended by striking out "owner, operator," each place it appears and inserting in lieu thereof "responsible party".

(c) Section 306(c)(1) is amended by striking out "owner, operator," and inserting in lieu thereof "responsible parties".

SEC. 7. (a) Section 307(a) is amended by striking out "owner, operator," and inserting in lieu thereof "responsible party".

(b) Section 307(b)(2) is amended by striking out "owner or operator" and inserting in lieu thereof "responsible party".

(c) Section 307(c) is amended by striking out "owner, operator," and inserting in lieu thereof "responsible party".

(d) Section 307(d) is amended by striking out "owner, operator," and inserting in lieu thereof "responsible party".

(e) Section 307(j)(1) is amended by striking out "an owner, operator," and inserting in lieu thereof "a responsible party".

(f) Section 307(j)(3) is amended by striking out "owner, operator," and inserting in lieu thereof "responsible party".

(g) Section 307(k) is amended by striking out "owner, operator," and inserting in lieu thereof "responsible party".

(h) Section 307(1) is amended by striking out "owner, operator," and inserting in lieu thereof "responsible party".

SEC. 8. (a) Section 308(b) is amended by striking out "owner, operator," and inserting in lieu thereof "responsible party".

(b) Section 308(c) is amended by striking out "owner, operator," and inserting in lieu thereof "responsible party".

SEC. 9. Section 310(b) is amended by striking out "owner or operator of" and inserting in lieu thereof "responsible party with respect to".

SEC. 10. Section 312(a)(2) is amended by striking out "section 305(a)(3)" and inserting in lieu thereof "section 305(a)(2), section 305(a)(3),".

SEC. 11. The amendments made by this Act shall take effect one year after the date of enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. STUDDS) will be recognized for 20 minutes, and the gentleman from Alaska (Mr. YOUNG) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. STUDDS).

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

Mr. Speaker, H.R. 5906 contains some highly technical language, but its purpose is simply to amend in noncontroversial but important ways the law establishing liability for oil spills from facilities operating on the Outer Continental Shelf.

Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA) established an offshore oil spill pollution fund financed by a tax on OCS oil, designed to provide a means of compensating those suffering economic loss as the result of an OCS oil spill. Title III also imposed liability upon those operating oil rigs on the OCS for losses due to oil pollution, and required such operators or their guarantors to provide the Coast Guard with evidence of financial responsibility up to the maximum of statutory liability imposed. The goals of H.R. 5906, the bill we have before us today, are threefold: To clarify the liability and penalty provisions in title III; to adjust the liability limit for OCS facilities from $35 million plus cleanup costs to a total of $75 million; and to reapportion the liability among the parties operating on the OCS to reflect more closely the industry practice that prevailed prior to enactment of the OCSLAA.

The amendments clarifying the liability provisions of title III will facilitate the growth of a marine insurance market for OCS-related activities by removing ambiguities in the law which were of legitimate concern to the insurance industry. Other amendments will improve the overall operation of title III by augmenting the civil penalty provisions and by clarifying the manner in which claims for economic loss may be asserted against the offshore oil spill pollution fund.

By raising the limit of liability of offshore facilities to $75,000,000, H.R. 5906 adopts a more realistic and workable standard than that which exists in current law. The inclusion of both cleanup and damage costs within the liability limit will provide industry with a greater degree of certainty about the upper limit of costs which it will be called upon to bear in the event of a major pollution incident. This amendment will also guarantee that oil production facilities are treated in the same manner as vessels carrying OCS oil.

Finally, the reapportionment of liability mandated by H.R. 5906 will allocate the risks associated with OCS development more equitably among the participants in that development. While title III presently imposes liability solely upon the owners and operators of offshore facilities and vessels, H.R. 5906, as amended, will apportion it among the holders of leases, permits and easements issued under the OCSLAA, as well as the owners and operators of vessels, mobile offshore drilling units and pipelines.

I will not attempt today to go into great detail concerning the provisions of the bill simply for the purpose of establishing legislative history. The House committee report, which was filed on September 23, expresses the intent of the committee as a whole in what I believe to be a comprehensive and objective manner.

I do want to emphasize one point, however. H.R. 5906, as originally introduced, was a much shorter and much simpler bill, designed to deal with a few important but easy to correct defects in the law. The legislation grew considerably more complex during committee consideration, and addressses several more significant problems with the current law than did the the original bill.

Despite the relatively ambitious nature of this legislation with respect to pollution from OCS facilities, it does not in any manner reduce or eliminate the urgent need to enact a truly comprehensive oil spill liability bill such as H.R. 85.

It is my intention, and I think I can speak for the full membership of the Merchant Marine and Fisheries Com-

mittee on this point, to push for prompt action in the 98th Congress on a comprehensive oil spill bill.

In closing, let me assure Members that H.R. 5906 is a carefully drafted, necessary, and responsible piece of legislation, and I urge that it be supported.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the amendments contained in H.R. 5906 as reported by the Merchant Marine and Fisheries Committee seek to correct and clarify problem areas which have arisen from title III of the Outer Continental Shelf Lands Act Amendments of 1978 relating to the oil pollution liability fund. Without these changes, the law will prevent rather than promote the purposes of the act. Therefore, I support these amendments which greatly improve the application of this statute.

To highlight the changes in this bill, the amendments would:

Cap the limit of liability for cleanup and damages at $75 million;

Clarify the limit of guarantors' liability and insure compliance with all insurance laws;

Eliminate the "owner or operator" nomenclature and substitute the term "responsible party," whose identity will vary according to the type of facility owned or operated and the type of interest held. This will insure that liability is shared among those actively engaged in this industry;

Permit the responsible party to transfer a portion of liability to his contractors; and

Remove contractors of the responsible party from a category excusing them from liability.

This revision was fully considered and debated in the Merchant Marine and Fisheries Committee. It directly addresses the outstanding issues in the OCS law and seeks to thoroughly address the concerns of oil companies, drilling contractors, insurance underwriters, environmentalists, the Coast Guard, and others who work with this law.

As all of you know, the State of Alaska has a larger Continental Shelf area than all the rest of the United States. Therefore, the relationship of the activities under the OCS Act and all other maritime and resource activities that occur in this area are of great concern to me. As the prospect of all of offshore development looms closer to reality, the need for an adequate and comprehensive oilspill liability law becomes ever important. The industry to date has an excellent record with regard to oilspills on the Outer Continental Shelf. However, I believe we must have a good law in place to handle any situation that may arise in the future and to provide adequate compensation to innocent victims and cleanup of spills.

I urge you all to support this bill which greatly improves the application of this OCS law and hope that by doing so we speed it along its way to enactment during the remaining days of this Congress.

Mr. STUDDS. Mr. Speaker, I yield 1 minute to the gentleman from Louisiana (Mr. BREAUX).

Mr. BREAUX. Mr. Speaker, I rise in support of the bill before the House.

In essence, the bill before us is designed to address current ambiguities in title III of the 1978 OCS Lands Act Amendments with regard to the party ultimately responsible for oilspills emanating from OCS activities. The current statute has resulted in Coast Guard interpretations holding the drilling contractors solely responsible for all oilspills and the major oil company lessees free from liability. I do not believe that Congress would have enacted a joint and several liability statute if the intent had been to single out only one party. Much testimony has been received by the Panama Canal/OCS Subcommittee, as well as the Coast Guard Subcommittee of our Merchant Marine and Fisheries Committee, indicating that real problems exist with the imposition of liability solely on the drilling contractors.

Essentially, the amendment enacts into statute the preferred industry practice for the apportionment of liability. The general rule, therefore, is the imposition of liability on the oil company lessee for any oilspill emanting from their lease and the oil reservoir contained therein. A statutory cap of $75 million is also established by H.R. 5906 for these types of oilspills. The committee intends that the point of origin of an uncontrolled flow of oil determines where an oil pollution incident originates, not where the oil and water first come into contact with one another. For example, the Pemex Bay of Campeche oilspill originated below the surface of the water.

Within this general rule, the amendment would impose liability on the drilling contractor conducting operations on a lease for those oilspills originating on or above the surface of the water. Our intent in dividing liability in this manner is to hold the contractor responsible only for the required petroleum and other oil that is present on the rig in order for it to conduct its operations and which are clearly under the control of the rig owner. The cap on the liability of the drilling contractor would be established in the same manner as the liability of a vessel under the current statute, that is, at $300 a gross ton or $250,000, whichever is greater. Given the current size of equipment operating on the OCS, potential liability for contractors would range from $4.5 to $10.5 million. Should the costs of damages and removal for oilspills, normally the responsibility of the drilling contracts, exceed such contractor's liability limits, the amendment would require the lessee to assume the liability—again up to the statutory $75 million limit for each oilspill.

The same division of liability would apply with respect to drilling contractors and permittees, where prelease drilling operations were being conducted pursuant to a valid permit.

The last major element of the amendment would authorize responsible parties to obtain hold harmless or indemnity agreements from other persons for all, or any portion, of the liability to which such responsible party would otherwise be subject pursuant to this act. This provision does not allow responsible parties to escape liability or avoid the obligation to obtain certificates of financial responsibility. It does allow, however, parties operating on the OCS to decide among themselves the issue of who will ultimately pay cleanup or damage costs in the event a polluting event occurs. Due to a concern over an apparent ambiguity in this provisions as reported by the committee, we have amended the pertinent language on page 10 of the bill before us.

Mr. Speaker, another provision of existing law, pertaining to the method of filing certificates of financial responsibility, should be brought to the Members' attention. Page 21 of the committee report clarifies that an OCS party responsible for filing a certificate as evidence of financial responsibility is required to make only one showing of his maximum responsibility. The entity filing does not have to make multiple filings because one certificate evidencing his financial responsibility may include a listing of his offshore facilities or his mobile offshore drilling units. The responsible party is responsible for each offshore facility or MODU listed on his certificate.

Under existing law, a vessel owner or operator files his certificate evidencing financial responsibility with the Federal Maritime Commission, and an offshore facility owner or operator files his certificate with the Coast Guard.

In a letter to me from the Department of Transportation, the Department stated that it assumes that the Federal Maritime Commission would have to approve the evidence of financial responsibility for MODU's since their limit of liability is the same amount as a vessel. The Department's assumption is not correct, as the committee intends that the owners of MODU's continue to file their certificates of financial responsibility with the Coast Guard, and not with the Federal Maritime Commission. The committee did not grant the FMC the authority to approve the evidence of financial responsibility for MODU's.

Mr. Speaker, I would also like to indicate that a provision adopted by our committee, and contained on pages 12 and 13 of the bill, clarifies our intent as to those situations where liability limits set forth in the statute may be breached. In the bill before the House, we have more clearly indicated our intent to preserve existing statutory, contractual, or common law remedies available to those parties who receive guarantees from another party, such as an insurance company, when their guarantor negotiates in bad faith the settlement of a claim made pursuant to this statute. This provision does not create a Federal cause of action on the bad faith issue. It contemplates, however, that the failure to negotiate a settlement, when one is offered, can constitute bad faith negotiation.

Mr. Speaker, I urge my colleagues to support the timely enactment of this necessary corrective legislation.

Mr. STUDDS. Mr. Speaker, I yield 2 minutes to the gentleman from Kentucky (Mr. HUBBARD).

Mr. HUBBARD. Mr. Speaker, I would like to take this opportunity to speak in support of H.R. 5906, which would amend title III of the Outer Continental Shelf Lands Act of 1978. This bill is similar to title II of H.R. 2792, which was referred to the Subcommittee on Panama Canal/Outer Continental Shelf, a subcommittee that I have the privilege of chairing.

My subcommittee has received testimony from many representatives from the Outer Continental Shelf industry addressing the ambiguities which exist in the present law with respect to liable parties and damages resulting from oil spills. This legislation clearly provides for the equitable distribution of liability to responsible parties. Additionally, this legislation will help foster an insurance market for offshore pollution, which is what Congress attempted to do in 1978.

Therefore, Mr. Speaker, I give my full support for the passage of H.R. 5906.

● Mr. FORSYTHE. Mr. Speaker, on September 17, 1978, the President signed into law the 1978 amendments to the Outer Continental Shelf Lands Act. Those amendments were under consideration for almost 5 years by the Ad Hoc Select Committee on the Outer Continental Shelf and, when the bill was considered on the floor, I was the only member of the select committee to vote against passage.

I did so because I felt the bill was deficient in some areas, ambiguous in others, and would require the drafting of some 30 to 40 new or revised regulations. My worst fears were confirmed after the Select Committee on the Outer Continental Shelf, of which I was the ranking minority member, concluded 22 days of oversight hearings within an 18-month period.

In the final report of the select committee numerous problems were pointed out, one of which pertained to the confusion over statutory liability that resulted from the ambiguous language in title III of the 1978 amendments, the offshore oil pollution compensation fund.

The purpose of title III was to provide a guarantee that no matter what damages or cleanup costs were incurred as a result of an OCS spill, funds to cover this expense would be provided. The passage of title III in 1978 was a milestone; unfortunately, because of ambiguous language and technical problems, the proper application of statutory liability and other provisions is questionable.

I will not go into any great detail explaining the provisions of H.R. 5906, since that has already been done. What is important is that all of the parties involved in offshore oil and gas activities are in agreement that the language in this bill is correct and that it will solve the problems that exist.

Fortunately, there have been no claims against the fund, which speaks well of the overall safety of the U.S. Outer Continental Shelf oil and gas program. However, if there was a spill resulting in damages to commercial property, personal property, or fisheries, and the resultant cleanup cost, it is questionable if the fund would fulfill its purposes as it is now written. The language in H.R. 5906 is needed if the oilspill liability fund is going to operate properly and as intended.

Mr. Speaker, the committee has done a good job in putting this bill together, and I urge my colleagues to give it the support it deserves.●

● Mr. LENT. Mr. Speaker, today we are considering H.R. 5906, a bill amending the offshore oilspill pollution fund, title III of the OCSLAA. The provisions in H.R. 5906 as reported by the Merchant Marine and Fisheries Committee solve problems that have existed since the 1978 OCS Amendments, which created the fund, were signed into law on September 17, 1978.

These problems have been thoroughly investigated for the past 3½ years, first by the Select Committee on the Outer Continental Shelf and then by the Panama Canal/OCS Subcommittee, of which I am the ranking member, and the Coast Guard Subcommittee, both of the House Merchant Marine and Fisheries Committee.

I am pleased that all those holding divergent views on how to solve the various problems have reached agreement on the amendments to the oilspill pollution fund, and I am pleased that the bill is being given judicious consideration.

The corrections to the OCS oilspill pollution fund, made by this bill are important and will insure the ability to pay for any damage, cleanup, or removal that may result from an oilspill caused by OCS oil and gas activities. This is particularly important as we embark on the administration's new and expanded 5-year OCS leasing program.

The passage of the oilspill pollution fund as title III of Public Law 95-372 in 1978 was a milestone and, luckily, to date no claims have been filed against the fund. I hope no reason even arises for any claim to be made.

I look forward to seeing this bill signed into law in the near future and urge its adoption.●

□ 1600

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

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. STUDDS) that the House suspend the rules and pass the bill (H.R. 5906), as amended.

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

A motion to reconsider was laid on the table.

AUTHORIZING REPLACEMENT OF EXISTING PUMP CASINGS IN SOUTHERN NEVADA WATER PROJECT PUMPING PLANTS

Mr. KAZEN. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1621) to authorize the replacement of existing pump casings in southern Nevada water project pumping plants 1A and 2A, and for other purposes, as amended.

The Clerk read as follows:

S. 1621

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 to procure, and provide for the installation of, twelve new stainless steel casings and minor appurtenant parts to replace twelve existing cast steel pump casings in pumping plants 1A and 2A of the southern Nevada water project, first stage.

SEC. 2. The Secretary is hereby authorized to negotiate with the original manufacturer for the procurement of the new stainless steel replacement casings.

SEC. 3. Costs incurred in the procurement of the twelve pump casings and minor appurtenant parts shall be borne by the United States and shall be nonreimbursable and nonreturnable. The State of Nevada shall install the twelve stainless steel casings and minor appurtenant parts at its cost in a manner satisfactory to the Secretary.

SEC. 4. There is hereby authorized to be appropriated beginning October 1, 1983, for procurement of twelve stainless steel pump

casings and minor appurtenant parts for southern Nevada water project pumping plants 1A and 2A the sum of $1,500,000 (July 1980 price levels), plus or minus such amounts, if any, as may be justified by reason of changes in procurement costs as indicated by engineering cost indexes applicable to the type of procurement involved: *Provided*, That, except as otherwise may be required by existing contracts, the United States shall incur no further liability with respect to the twelve pumps in pumping plants 1A and 2A of southern Nevada water project, first stage and no further expenditures or actions by the United States with respect to those pumps are either expressly or impliedly authorized by this Act.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Texas (Mr. KAZEN) will be recognized for 20 minutes, and the gentleman from Nebraska (Mr. BEREUTER) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. KAZEN).

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

Mr. Speaker, the southern Nevada water project was authorized in 1966. The first phase of the project was placed in operation in 1971 and can deliver 132,000 acre-feet of water annually from Lake Meade for municipal and industrial purposes in Las Vegas, North Las Vegas, Henderson, Boulder City, and Nellis Air Force Base. The second stage, which is under construction, will provide for the delivery of an additional 166,800 acre-feet annually.

The operation of the original pumps and motors at pumping plants 1A and 2A has been unsatisfactory and it is evident that the lifespan of the units will be significantly shorter than normal unless modified.

Since the expiration of the 1-year warranty period, the original supplier has expended considerable effort to modify the pumps. Cost expended in an effort to obtain acceptable results from the pumps approximate $1 million by the supplier, $300,000 by the water users, and $150,000 by the Bureau of Reclamation. The original bid for furnishing and installing the pumps was $693,400. Experiments have demonstrated that the replacement of the existing cast steel casings with stainless steel casings will solve the problems at the two pumping plants. The supplier has agreed to install the new pumps casing at cost.

S. 1621, which passed the Senate on May 19, 1982, authorizes the Secretary of the Interior to procure and provide for the installation of 12 new stainless steel casings and appurtenant parts to replace existing pump casings in pumping plants 1A and 2A of the southern Nevada water project.

The Secretary is authorized to negotiate for the procurement of the new casings with the original manufacturer of the original casings.

The costs of procurement of the pump casings will be borne by the United States and will be nonreimbursable and nonreturnable. In approving the bill, the committee took into consideration the fact that the problem with the pump casings was, at least in part, due to faulty design and the responsibility of the Bureau of Reclamation. This in no way intended to be a precedent for not requiring expenditures for municipal and industrial purposes in connection with Federal reclamation projects to be reimbursable in the future, as they have been heretofore. The State of Nevada will install the replacement casings and parts at its cost.

The bill authorizes the appropriation of $1,500,000 (July 1980 price levels) with a provision for cost indexing for the procurement of new casings. It further provides that the United States shall incur no further liability with respect to the pumps.

Mr. Speaker, I urge approval of the bill and reserve the balance of my time.

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

Mr. Speaker, I rise in support of S. 1621, a bill to provide for pump casing replacement for pumping plants 1A and 2A of the southern Nevada water project, first stage.

Mr. Speaker, the Subcommittee on Water and Power Resources of which I am a member, held hearings on this bill and its House equivalent in June of this year. In August it was marked up in both subcommittee and full committee and favorably reported out of full committee. In addition, the administration is on record as supporting this bill in testimony provided to the subcommittee by Commissioner Robert Broadbent of the Bureau of Reclamation during the June hearing.

Due to an apparent design deficiency, the 14 pumps concerned have required excessively high operation and maintenance costs since their installation. The Bureau was involved as contracting officer in this project. All parties involved including the contractor, Hitachi American Ltd., have demonstrated their good faith in spending time and money to correct the deficiencies. Hitachi, for one, has spent close to $1 million on its efforts to solve these problems, well in excess of its original bid of $693,400. The water users have spent approximately $300,000 in this same effort. Two of the fourteen pump casings have now been replaced with redesigned versions in which the problems have been solved.

This bill provides for the procurement of the redesigned casings for the remaining 12 pumps. The Secretary is authorized to negotiate with Hitachi, rather than put the new casings out for bid, to give the Secretary the option of taking advantage of Hitachi's offer to provide the casings at its cost.

The minority members of the Water and Power Subcommittee, like the subcommittee chairman, the distinguished gentleman from Texas, are aware and supportive of the policy that costs of reclamation projects allocated to municipal and industrial uses are 100 percent reimbursable by the water users. We were further aware that this bill does not follow that policy, but felt that the support of the administration as well as our own was appropriate as an admission of Federal responsibility and the Federal role in allowing bids on a bad design for the pumps. The subcommittee members made it clear in their earlier proceedings they did not wish this bill to set a precedent for an exception to the policy for municipal and industrial costs, but felt this bill was appropriate due to the unique circumstances in this instance.

I urge my colleagues to support this bill.

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

□ 1610

Mr. DANNEMEYER. Mr. Speaker, I thank my colleague from Nebraska for yielding.

Mr. Speaker, I rise in opposition to this bill. I understand the rationale that has gone into the compromise which it represents. But one of the reasons that this country is in the trouble that it is, facing a debt of over a trillion dollars, is because all of us when presented with hard cases like this have a tendency to turn Uncle Sam from a benevolent leader in this institution of ours into Uncle Sucker.

The policy of the existing law requires municipal and industrial users to pay 100 percent of the cost of the reimbursement for Federal funds used for development of water projects. I think this is a sound principle. And we should stick to this principle.

Now, in this instance there are some charges that the design on the particular pumps was defective and perhaps the Federal Government was involved in that process. Perhaps it was not. But if this principle is to be given life, then I think it is appropriate for the cost to be coming from the Federal Treasury—I do not quarrel with that. But we should stick to the requirement that the people at the local level who are getting this benefit reimburse the Federal taxpayer for that cost. And it is this feature of the bill that I find objectionable, and I frankly think we should turn it down. It is only $1.8 million, not a lot of money, but it is a significant amount to anybody who has to pay taxes in this country. And I also think if we can

stick to this principle we can avoid similar cases coming up in the future.

Mr. KAZEN. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Nevada (Mr. SANTINI), the author of the companion bill in the House.

Mr. SANTINI. Mr. Speaker, I urge every Member of this body to join in support of S. 1621. It has passed the scrutiny and the unanimous vote of the U.S. Senate. It passed the House Committee on Interior and Insular Affairs without objection on August 11, 1982. It is a legislative proposal that on its face presents irrefutable and compelling logic to support it, because the cost entailed here is related to the Bureau of Reclamation's responsibility in installation and oversight on that pipeline. That responsibility has been generally recognized from the beginning of this legislation. The Members can quarrel about the reimbursement provision as the gentleman from California would urge to do but no one can quarrel about the inherent merits, the compelling merits of the compensation requirement now.

I urge all Members to support this bill.

Mr. KAZEN. Mr. Speaker, I yield 2 minutes to the distinguised gentleman from Iowa (Mr. BEDELL).

Mr. BEDELL. Mr. Speaker, I shared some of the concerns of the gentleman from California and had intended to ask some questions in regard to this matter. But at least in my opinion, the answers that have been given allay many of my concerns.

I do understand, is it not correct, that the committee did hold hearings and did vote and pass this in the House of Representatives?

Mr. KAZEN. If the gentleman will yield, yes, we did. We had very thorough hearings. I think that the full committee understands and are sympathetic with the provisions.

Mr. BEDELL. Do I understand further that the defective parts of this were parts that the Federal Government was responsible for the specifications?

Mr. KAZEN. Yes. The Federal Government was responsible for the specifications on this project.

Mr. BEDELL. And those specifications were the things, as I understand, that have caused this expenditure.

Mr. KAZEN. The gentleman is correct.

Mr. BEDELL. And most importantly of all, I understand very clearly that it is clearly a part of the record that this is not meant to set any precedent as far as reimbursement is concerned. Frankly that was the concern of the gentleman from Iowa. If we are going to waive this and waive that and waive that, pretty soon we do not have reimbursement. And I understand we have the assurance that is not the case.

Mr. KAZEN. The gentleman is correct. We assure the gentleman from Iowa that none of us on the committeee or anyone who had anything to do with this bill intends for this to be a precedent.

Mr. BEDELL. I thank the chairman very much.

Mr. KAZEN. Mr. Speaker, before I yield the balance of my time, this apparently is going to be the last bill that will be authored or sponsored by the distiguished gentleman from Nevada (Mr. SANTINI). He is no longer going to be with us at the next session.

It has been my privilege, Mr. Speaker, to have served with this gentleman for all of the years that he has been in the Congress on the Committee on Interior and Insular Affairs. He has been a member of some of the subcommittees which I have had the privilege of chairing, and I have been a member of the committee that he now chairs.

I can testify, Mr. Speaker, that the State of Nevada, the interests of the State and the interest of this country have been very jealously guarded by the gentleman from Nevada. He has been a very articulate spokesman for the problems of the West, for the problems that are of such strategic importance to the welfare of this country.

Mr. Speaker, all of us are going to miss the gentleman from Nevada. We wish him well and certainly we hope that he will come back and visit with us at any time that he is in the area.

Mr. YOUNG of Alaska. Mr. Speaker, will the gentleman yield?

Mr. KAZEN. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Speaker, this is the second time today I have had the privilege of complimenting the gentleman from Nevada. His predecessor was on our side of the aisle. The gentleman defeated him. I had apprehensions. May I say he far exceeded my grandest hopes of being a gentleman who speaks well for the State of Nevada as well as this Nation.

Mr. SANTINI showed the courtesy to travel to my State and become deeply involved in the problems my State was facing when there was an attempt and actually a successful attempt on this House floor to take away lands that belonged to the State. He worked hard to dilute the bill, to be a little more acceptable, although not acceptable to me, with the understanding that he was able to achieve by traveling in person, showed the character and the caliber of this individual who represented the State of Nevada.

I hope that he sees the wisdom of returning to the legislative process some day. But if he does not, I am confident with his ability he will be able to go forth into the private sector and receive his just due because of the dedication he has shown this body and the State of Nevada.

Mr. KAZEN. Mr. Speaker, I thank the gentleman for joining me in this tribute, a very well deserved tribute, to the gentleman from Nevada.

Mr. SANTINI, we are going to miss you.

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

Mr. BEREUTER. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I do that for two reasons. First of all, I want to join my chairman and the distinguished gentleman from Alaska in the compliments just paid to our colleague from Nevada. In the two terms I have served with him on the Interior Committee this Member certainly found him to be an extremely effective and articulate spokesman on national issues and on issues important to his State, and in addition, a fine person.

Second, with respect to this bill, I would remind my colleagues that the administration does support it. A similar bill was reported from the House Committee on Interior and Insular Affairs, without dissenting vote. We believe it is fair to the Federal Government, to the landowners, and to the firm involved.

I urge support of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. KAZEN) that the House suspend the rules and pass the Senate bill, S. 1621, as amended.

The question was taken.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. KAZEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill, S. 1621.

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

There was no objection.

PROVIDING APPOINTMENT AND AUTHORITY OF SUPREME COURT POLICE

Mr. SAM B. HALL, JR. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 6204), to provide for appointment and authority of the Supreme Court Police, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 3, line 19, after "(c)" insert "The authority created under subsection (a)(2) shall expire three years after the date of enactment of this subsection. During the three-year effective period of subsection (a)(2), the Marshal of the Supreme Court shall report annually to the Congress on March 1 regarding the administrative cost of carrying out his duties under such subsection.".

□ 1620

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

Mr. KINDNESS. Mr. Speaker, reserving the right to object, and I will not object, I take this reservation in order to allow the gentleman from Texas the opportunity to explain the procedure that is going on here and at the same time indicate that the steps taken here by the gentleman from Texas, moving to concur in the Senate amendment, is certainly agreeable, so far as I know, with everyone who has been concerned with this legislation on this side of the aisle.

I yield to the gentleman from Texas.

Mr. SAM B. HALL, JR. Mr. Speaker, today we consider this legislation amending the authorization for the Supreme Court Police in the wake of an attack on the person of Justice Byron White as he addressed a meeting of the Utah Bar Association. Although Justice White quipped that he had been hit harder on the football field in Utah than on this more recent occasion, the threat to public officials, including members of the Supreme Court, in our society today is not a matter to be taken lightly.

This bill, H.R. 6204, was introduced by Mr. RODINO, for himself and Mr. MCCLORY, in an attempt to clarify the authority of the Supreme Court Police to protect Supreme Court personnel both on and off the premises of the Court and to clarify the authority of the Supreme Court Police to use firearms and make arrests in the performance of their protective function. Following a hearing where representatives of the Court testified, the subcommittee worked with representatives of the Court and formulated the amendment in the nature of a substitute which is reprinted before you today.

Currently, security arrangements for the Supreme Court personnel off the premises of the Court are handled through the cooperation of the U.S. marshal's service. Members of the Supreme Court Police force are not authorized to carry firearms off the premises of the Court. Their arrest authority off the premises of the Court is unclear. While many members of the Supreme Court Police force are deputy U.S. marshals and are therefore authorized to carry firearms and make arrests off the Court premises, passage of this bill will clarify their authority in an appropriate fashion, by amendment to the provisions of title 40 which authorize the Supreme Court Police.

As amended by the subcommittee, the bill amends the provisions in title 40 of the United States Code which currently authorize the Supreme Court Police in the following respects:

First, it clarifies the authority of the Supreme Court Police to protect the property of the Supreme Court and persons in the vicinity of the Court property.

Second, it authorizes the Supreme Court Police to protect the Justices, their official guests, and officers or employees of the Court who are engaged in the performance of official duties in any part of the United States.

Third, it clarifies the arrest authority of the Supreme Court Police and limits arrest authority in the performance of their protective function away from the Supreme Court grounds to arrests for violations of Federal laws.

Fourth, it clarifies and makes explicit the authority of the members of the Supreme Court Police Force to carry firearms as may be required for the performance of duties under the act.

Fifth, it repeals the requirement that the Marshal of the Supreme Court shall publish regulations deemed necessary for the protection of the Supreme Court Building and grounds in a local newspaper for 10 days prior to their effective date, and substitutes a requirement that the proposed regulations be posted at the Supreme Court Building and be made reasonably available to the public in writing.

The amendment in the nature of a substitute reported by the subcommittee improves upon H.R. 6204 as introduced on behalf of the Chief Justice by more carefully defining the protective functions of the Police and by specifically relating their arrest authority and their authority to carry firearms to those functions. Moreover, the subcommittee amendment requires that the Justices identify their official guests and provide written authorization for the Supreme Court Police to carry a firearm while protecting such official guests outside of Virginia, Maryland, and the District of Columbia.

The subcommittee recommends that H.R. 6204, as amended, be reported favorably to the House.

Mr. KINDNESS. Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SAM B. HALL, JR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

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

There was no objection.

MODIFICATION OF THE NORTH AMERICAN CONVENTION TAX RULES

Mr. STARK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3191) to amend the Internal Revenue Code of 1954 to exempt conventions, et cetera, held on cruise ships documented under the laws of the United States from certain rules relating to foreign conventions, as amended.

The Clerk read as follows:

H.R. 3191

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraph (2) of section 274(h) of the Internal Revenue Code of 1954 (relating to attendance at conventions, etc.) is amended to read as follows:

"(2) CONVENTIONS ON CRUISE SHIPS.—In the case of any individual who attends a convention, seminar, or other meeting which is held on any cruise ship, no deduction shall be allowed under section 162 or 212 for expenses allocable to such meeting unless—

"(A) the cruise ship is a vessel documented under the laws of the United States,

"(B) all ports of call of the cruise are inside the North American area, and

"(C) the taxpayer establishes (by written statements signed by the taxpayer and by an officer of the sponsoring organization or group, and by such other methods as may be prescribed by regulations) that the meeting is directly related to the active conduct of his trade or business or to an activity described in section 212.

Paragraph (1) shall not apply to any meeting with respect to which the requirements of the preceding sentence are met."

(b) The amendment made by subsection (a) shall apply to conventions, seminars, and meetings beginning after December 31, 1982.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from California (Mr. STARK) will be recognized for 20 minutes, and the gentleman from Tennessee (Mr. DUNCAN) will be recognized for 20 minutes.

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

GENERAL LEAVE

Mr. STARK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 3191, presently under consideration.

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

There was no objection.

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

Mr. Speaker, H.R. 3191 revises the tax treatment of the expenses of attending conventions on U.S. Cruise Ships.

Currently, the Internal Revenue Code flatly disallows all deductions for the expenses of attending conventions, seminars, and similar meetings on cruise ships. This automatic disallowance of deductions has effectively eliminated conventions on cruise ships, even those that fly the U.S. flag. Permitting a deduction for attending conventions on U.S.-flag cruise ships would make them competitive with U.S. hotel facilities and create jobs in the cruise ship industry.

H.R. 3191 allows business deductions for the expenses of attending meetings on U.S.-flag cruise ships, but only if the taxpayer establishes the direct relation between the cruise meeting and the taxpayer's business, and only if all ports of call of the cruise are in the North American area, which includes the United States, our possessions and territories, Canada, and Mexico. The bill includes special reporting requirements for taxpayers seeking to deduct cruise meeting expenses. If the ship calls on a port outside the North American area, no deduction is available. Expenses for meetings on foreign-flag cruise ships remain nondeductible. The bill will have a negligible effect on budget receipts.

I would point out, Mr. Speaker, that H.R. 3191 was the subject of hearings by the Subcommittee on Select Revenue Measures, which I chair, and was unanimously reported by the subcommittee. Therefore, I urge the House to approve H.R. 3191.

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

Mr. Speaker, I rise in support of H.R. 3191, relating to conventions held on ships documented under the laws of the United States.

Currently, a deduction is denied for expenses incurred in attending a convention held on ships, whether or not documented under the laws of the United States.

H.R. 3191 provides a limited exception to the current rules by allowing a tax deduction for expenses incurred in attending a convention held on board a ship documented under the laws of the United States, provided: First, all the ship's ports of call are in North America; and second, taxpayer files statements with the Treasury establishing the convention is directly related to the conduct of his trade or business. This reporting requirement is intended to allow the Treasury to detect any abuses.

I urge the bill's adoption.

Mr. STARK. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. GUARINI).

Mr. GUARINI. Mr. Speaker, I would like to thank you and Chairman ROSTENKOWSKI for your assistance in bringing this bill through the Ways and Means Committee and to the House floor for consideration today.

As you know, during the 96th Congress, a miscellaneous tax measure was enacted establishing safe harbor tax rules for conventions held in the North American area, defined as Mexico, Canada, the United States and its possessions. Through an oversight, this legislation did not include conventions held aboard United States-flag passenger ships, when all ports of call are within these boundaries. H.R. 3191 will remedy this omission.

At the time of the 1980 convention rule changes, the American passenger ship industry had just begun to rebuild. This industry now numbers four ships. The *Oceanic Independence* and the *Constitution* began offering passenger service in the Hawaiian Islands. The *Delta Queen* and the *Mississippi Queen* offer similar service along the Mississippi River. These four American-flag ships employ 1,300 American workers.

H.R. 3191 will correct the inequity now in the Tax Code and enable the American passenger ships to compete on an equal footing with land-based facilities for a share of the multimillion-dollar convention business.

This bill has the support of labor and management.

According to the Joint Tax Committee, this bill will have virtually no impact on Treasury revenues.

Passage of H.R. 3191 will help insure that the American flag passenger ship industry has a chance to rebuild and continues to be a source of employment for American workers.

I respectfully request the support of my colleagues for this measure.

● Mr. HEFTEL. Mr. Speaker, today the House is taking up H.R. 3191, a bill introduced by Mr. GUARINI to correct the tax status of our fledgling domestic cruise ship industry in connection with attending a business convention held on such vessels. This bill would simply give U.S.-flag cruise ships the same treatment now being given to North American hotels by providing that individuals who attend business conventions held on such vessels may deduct the reasonable expenses incurred in connection with their participation at the conventions.

When Congress revised the convention tax rules in 1980, cruise ships, which had historically qualified for tax deduction treatment, were inadvertently excluded. H.R. 3101 merely reinstates the historic tax treatement for cruise ships, but on a very limited basis. Only U.S.-flag ships will qualify for this tax treatment, and they are restricted to North American ports of call. Taxpayers attending a convention must meet strict reporting and other requirements, and the convention itself must be directly related to the active conduct of the taxpayer's trade or business or to an income-producing activity.

There are several important reasons why this bill should be supported. The domestic cruise ship industry now numbers only four ships that are engaged solely in the passenger trade. These include the *Delta Queen* and the *Mississippi Queen*, which ply the Mississippi River, and the *Oceanic Independence* and the *Constitution*, which sail among the Hawaiian Islands. The recent repatriation of the *Independence* and the *Constitution*, in particular, represents a significant challenge to the many foreign-flag vessels that dominate cruise ship trade from U.S. ports. Moreover, these two ships have provided needed jobs for several hundered U.S. workers.

However, this fledgling domestic fleet must compete both with subsidized foreign-flag vessels and with the North American hotel industry. Foreign-flag vessels are heavily subsidized by their governments, in recognition of the need to maintain a passenger vessel fleet for strategic purposes.

The North American hotel industry receives favorable tax treatment under the Internal Revenue Code, as individuals attending conventions at hotels in North America, including Canada and Mexico, are able to fully deduct the expenses of attending such meetings. Furthermore, the administration has by tax treaty extended this tax treatment to conventions conducted in Jamaica, and the Ways and Means Committee just last week adopted a provision in the Caribbean Basin Initiative to extend this tax deduction treatment to the entire region.

Therefore, what we are talking about here today is a question of fairness. H.R. 3191 is a fairness bill. It merely gives conventions held on cruise ships the same tax treatment as conventions held in land-based hotels. Even the handful of opponents who have surfaced against this bill acknowledge that the current situation is inequitable.

This bill is also significant for what it does not do. It does not cost the Treasury any money. Both the Treasury Department and the Joint Tax Committee have determined that H.R. 3191 will not result in any additional revenue loss, as this extension of tax deduction treatment to conventions held on cruise ships will only cause the shifting around of a very small portion of existing convention business.

Mr. Speaker, last year 1.4 million Americans took cruises on foreign vessels. We can be sure that very little of

what they spent on those cruises was repatriated to this country. Moreover, those cruises created few American jobs.

Therefore, Mr. Speaker, we have today an opportunity to correct a very inequitable provision of the Tax Code, secure over 1,000 U.S. jobs, and do it all without any cost. I urge my colleagues to support this bill.●

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

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. STARK) that the House suspend the rules and pass the bill, H.R 3191, as amended.

The question was taken.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

AUTHORIZING INDIAN TRIBES TO BRING ACTIONS WITH RESPECT TO CERTAIN LEGAL CLAIMS

Mr. UDALL. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 553) to authorize Indian tribes to bring certain actions on behalf of their members with respect to certain legal claims, and for other purposes, as amended.

The Clerk read as follows:

H.J. RES. 553

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Claims Act of 1982".

SEC. 2. (a) Subsection (a) of section 2415 of title 28 United States Code, is amended by striking "after December 31, 1982" in the third proviso and inserting in lieu the following: "sixty days after the date of publication of the list required by section 4(c) of the Indian Claims Act of 1982: *Provided,* That, for those claims that are on either of the two lists published pursuant to the Indian Claims Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the date the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim".

(b) Subsection (b) of section 2415 of title 28, United States Code, is amended by striking "December 31, 1982" in the proviso and inserting in lieu the following: "sixty days after the date of the publication of the list required by section 4(c) of the Indian Claims Act of 1982: *Provided,* That, for those claims that are on either of the two lists published pursuant to the Indian Claims Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim".

SEC. 3. (a) Within ninety days after the enactment of this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall publish in the Federal Register a list of all claims accruing to any tribe, band or group of Indians or individual Indian on or before July 18, 1966, which have at any time been identified by or submitted to the Secretary under the "Statute of Limitation Project" undertaken by the Department of the Interior and which, but for the provisions of this Act, would be barred by the provisions of section 2415 of title 28, United States Code: *Provided,* That the Secretary shall have the discretion to exclude from such list any matter which was erroneously identified as a claim and which has no legal merit whatsoever.

(b) Such list shall group the claims on a reservation-by-reservation, tribe-by-tribe, or State-by-State basis, as appropriate, and shall state the nature and geographic location of each claim and only such other additional information as may be needed to identify specifically such claims.

(c) Within thirty days after the publication of this list, the Secretary shall provide a copy of this Act and a copy of the Federal Register containing this list, or such parts as may be pertinent, to each Indian tribe, band or group whose rights or the rights of whose members could be affected by the provisions of section 2415 of title 28, United States Code.

SEC. 4. Any tribe, band or group of Indians or any individual Indian shall have one hundred and eighty days after the date of the publication in the Federal Register of the list provided for in section 3 of this Act to submit to the Secretary any additional specific claim or claims which such tribe, band or group of Indians or individual Indian believes may be affected by section 2415 of title 28, United States Code, and desires to have considered for litigation or legislation by the United States.

(b) Any such claim submitted to the Secretary shall be accompanied by a statement identifying the nature of the claim, the date when the right of action allegedly accrued, the names of the potential plaintiffs and defendants, if known, and such other information needed to identify and evaluate such claim.

(c) Not more than thirty days after the expiration of the one hundred and eighty day period provided for in subsection (a) of this section, the Secretary shall publish in the Federal Register a list containing the additional claims submitted during such period: Provided, That the Secretary shall have the discretion to exclude from such list any matter which has not been sufficiently identified as a claim.

SEC. 5. (a) Any right of action shall be barred sixty days after the date of the publication of the list required by section 4(c) of this Act for those pre-1966 claims which, but for the provisions of this Act, would have been barred by section 2415 of title 28, United States Code, unless such claims are included on either of the lists required by section 3 or 4(c) of this Act.

(b) If the Secretary decides to reject for litigation any of the claims or groups or categories of claims contained on either of the lists required by section 3 or 4(c) of this Act, he shall send a report to the appropriate tribe, band, or group of Indians, whose rights or the rights of whose members could be affected by such rejection, advising them of his decision. The report shall identify the nature and geographic location of each rejected claim and the name of the potential plaintiffs and defendants if they are known or can be reasonably ascertained and shall, briefly, state the reasons why such claim or claims were rejected for litigation. Where the Secretary knows or can reasonably ascertain the identity of any of the potential individual Indian plaintiffs and their present addresses, he shall provide them with written notice of such rejection. Upon the request of any Indian claimant, the Secretary shall, without undue delay, provide to such claimant any nonprivileged research materials or evidence gathered by the United States in the documentation of such claim.

(c) The Secretary, as soon as possible after providing the report required by subsection (b) of this section, shall publish a notice in the Federal Register identifying the claims covered in such report. With respect to any claim covered by such report, any right of action shall be barred unless the complaint is filed within one year after the date of publication in the Federal Register.

SEC. 6. (a) If the Secretary determines that any claim or claims contained in either of the lists as provided in sections 3 or 4(c) of this act is not appropriate for litigation, but determines that such claims may be appropriately resolved by legislation, he shall submit to the Congress legislation to resolve such claims or shall submit to Congress a report setting out options for legislative resolution of such claims.

(b) Any right of action on claims covered by such legislation or report shall be barred unless the complaint is filed within 3 years after the date of submission of such legislation or legislative report to Congress.

The SPEAKER pro tempore. Is a second demanded?

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

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

There was no objection.

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

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

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

Mr. Speaker, before I discuss the bill before us, I want to associate myself with the remarks made about the gentleman from Nevada (Mr. SANTINI) in connection with the previous bill. Unfortunately for us, Mr. SANTINI will be leaving the the Congress at the end of this session and I want to praise him as one of the most productive, tenacious, and brilliant members of the Interior Committee during the period I have had to spend and serve there. JIM SANTINI has been faithful, conscientious, and prompt and he has a brilliant and penetrating mind which

could see through to the essentials of any matters before us. We will miss him around here. I wish him well in whatever he undertakes.

Mr. Speaker, once again I am here to urge the House to pass legislation to extend the statute of limitations imposed by 28 U.S.C. 2415 on certain Indian damage claims. The claims involved are monetary damage claims of Indians and Indian tribes against third parties which the United States, as trustee, has an obligation to pursue on behalf of the Indians.

I will not go into detail on the background of this legislation. That has been set out in full in the committee report. In addition, this matter has been before the House on three separate occasions in the past.

On those occasions, Congress extened the statute with the support and at the urging of the administration. They needed time to review old records and to identify and research these potential claims. They needed time to evaluate the claims and, where appropriate, to prepare them for litigation or legislation.

Ten years have passed since the first extension. We have appropriated over $21 million to the Bureau of Indian Affairs to support their trustee effort to identify and evaluate the claims.

Yet, of the more than 17,000 separate claims identified, fewer than 1,000 have been litigated or identified as appropriate for litigation.

There are three basic reasons I am here urging the House to act favorably on this legislation.

First, I am concerned about the potential monetary liability of the United States to the Indian claimants if the statute is permitted to expire on December 31 of this year without adequate disposition of the claims by the administration. The committee has not made a determination that the United States would be liable.

However, representations have been made to the Congress over the last 10 years by administration and Indians' witnesses alike which have raised this concern. For instance, the Interior Department report on legislation extending the statute in 1980 stated:

> In view, therefore, of our trust responsibility to the Indians on whose behalf the claims involved may be brought, and the potential liability of the United States if we fail to meet that responsibility we recommend that the statute of limitations be extended.

During an oversight hearing of the Senate Select Committee on Indian Affairs in 1979, Senator Cohen, chairman of the committee, asked:

> If the claim by the tribes does not survive the statute of limitations, would there be a suit against the U.S. Government as trustee for failure to carry out a fiduciary obligation, in your judgment.

Hans Walker with the Interior Solicitor's Office replied:

> That is very possible. It would be a breach of the trust obligation to bring an action on their behalf.

Finally, Mr. Speaker, the following statement is made in the report of the Senate Indian Affairs Committee on the 1980 extension legislation:

> A question has also been raised regarding the potential liability of the United States to Indian tribes or individuals for failure to actively pursue claims on their behalf * * *. The Library of Congress opinion * * * addressed this issue * * * is not free from doubt * * *. (L)itigation may be anticipated if the statute * * * is allowed to expire.

Second, Mr. Speaker, I support this legislation because of the inadequate notice given to potential Indian claimants by the administration of their intent to decline litigation of most of the claims and their failure to submit, timely, legislation for resolution of the claims.

On November 17, 1982, the Federal district court here in Washington, in the case of Covelo Indian Community against Watt, held that the administration failed to comply with certain provisions of the last act of Congress extending the statute. Among other things, the court found that the United States had not afforded the Indian plaintiffs procedural due process in giving them adequate notice of the intention to abandon the Indian claims.

In a lengthy quote from a footnote of the court's decision, Judge Cochran stated:

> Defendants contend, as a final argument for dismissal, that plaintiff's action is barred by laches. They claim that plaintiffs had enough knowledge concerning the decisions not to litigate and not to propose legislation, to institute a lawsuit much earlier in time. This argument lacks merit since defendants did not make public many of their final decisions until the congressional oversight hearings held September 16 and 23, 1982. Moreover, the Sampsel report, which defendants contend satisfies their obligation under section 2 of Public Law 96-217, was not submitted until October 21, 1982, making this case truly ripe at that time. If anyone has been guilty of foot-dragging in pursuing this matter, it has been the defendants. Their equitable defense must, therefore, fail.

Mr. Speaker, If a trustee is going to decline to pursue the rights of a beneficiary which are subject to a statute of limitations, it does not comport with the accepted standards of due process to do so 1 month before the statute will run. Yet, that is exactly what the Interior Department has done in this case.

Acting under the goad of the court's order, BIA caused to be published in newspapers in Indian country legal notices affecting literally thousands of claims advising potential Indian claimants of their intent to abandon the claims for litigation or legislative resolution and of the impending expiration of the statute on December of this year. The notice I have here is dated December 2, 1982. It is inconceivable that the Indians could pursue their own resolution in the 1 month the administration has left them.

Finally, Mr. Speaker, I support extension of the statute because of the breach of the duty the administration owed to us here in the Congress. The last time we extended this statute, we required the Secretary of the Interior to submit to Congress legislation on those identified "2415" claims which were deemed not appropriate for litigation. He has to do this by June 31, 1981.

His failure to do so gave rise to the Covelo lawsuit and decision I just mentioned. The court made explicit findings of this breach of duty.

The court said:

> It is clear from the legislative history that Congress wanted assistance from defendants in the form of carefully considered legislative proposals designed to resolve those claims deemed in appropriate for litigation, in order to bring about a swift, yet equitable, conclusion to the 2,415 claims program. It is also clear from the stipulated facts, however, that defendants have not complied with section 2.

In noting the belated efforts of the Department, the court stated:

> Defendants argue that the Sampsel report, submitted October 21, 1982, some 15 months late, satisfies their obligations under section 2. That report, however, contains only one legislative proposal which relates to approximately 50 percent of the total number of one class of claims * * *. If the defendants are permitted to pursue their plan * * * the remainder of nonlitigated claims will be essentially willed out of existence by defendants. In this court's opinion, this is not what Congress intended.

The court then noted:

> The statute imposed a mandatory duty owing to plaintiffs and to Congress. We hold that defendants breached that duty.

Mr. Speaker, I bring this legislation to the floor with some reluctance. As I noted, we have been here three times in the past attempting to insure that our Indian wards are accorded justice while protecting the equitable interests of innocent non-Indian third parties. Yet, I am constrained to do so. We do not expect that the administration is going to make any radical change in the decisions it has made with respect to their treatment of these claims. We do feel, however, that this legislation will result in providing the Indian claimants with adequate notice of their intentions.

I would like to close my remarks with a last quote from the district court decision in the Covelo case:

> We cannot, of course, order a change in attitude but, considering the pressures of time, we do not deem it inappropriate to suggest that, to avoid chaotic conditions at year's end, it might be prudent for all parties to join in an urgent request to Congress to extend the statute of limitations for a reasonable period beyond the date of ulti-

mate decision in this litigation. If the Federal defendants prevail, no prejudice will result to them; if plaintiffs prevail the Federal defendants will have ample time to formulate reasonable, workable proposals, keyed to due process, for the consideration of Congress.

It is my understanding that the parties have done so and that the administration has no objection to the passage of this bill. Mr. Speaker, I urge passage of the bill.

□ 1630

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill presently under consideration.

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

There was no objection.

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

Mr. Speaker, I rise in support of House Joint Resolution 553. This legislation provides for an extension of the time limits contained in section 2415 of title 28 of the United States Code. Under that section, the United States has the right and duty to bring suits for money damages against third parties on behalf of Indian tribes and individuals for claims arising out of contracts or torts. The kinds of claims involved include infringement of Indian water rights, degradation of fishing rights, and a variety of nonpublic trespasses.

The law requires that the United States bring these so-called 2,415 claims by December 31 of this year. House Joint Resolution 553 was introduced in part because of concern that the Departments of Justice and Interior will not have fulfilled their responsibilities with respect to these claims by the time the statute expires.

On September 23 the Interior Committee held a hearing on the resolution and on the Departments' efforts with respect to the claims. I can say that the testimony established a clear need for action to insure that the United States fulfills its legal obligations to Indians and protects the Federal Treasury from unnecessary liability.

The record shows that when Congress in 1966 enacted the 6-year statute of limitations for the United States to bring contract or tort claims against American citizens, it did so without any intent to affect the U.S. obligation to bring such claims on behalf of Indians.

When it became apparent that the United States faced potentially huge liability for breach of trust if it failed to act on the Indian claims, Congress extended the statute to give the Departments of Interior and Justice time to identify, research, evaluate and file any such valid claims.

In the language of the last extension, Congress also included a requirement that the Departments submit by June 1981, legislation to resolve those claims not well suited to resolution by litigation.

Over the past 10 years and at a cost of over $20 million, the Departments have identified over 17,000 legally valid claims. However, the Department of Justice has determined that less than 1,000 of these claims are candidates for litigation, that several thousand should not be litigated, and that several thousand others should be resolved by legislation.

Despite having identified a number of claims as condidates for legislative solution, the Departments did not submit any legislation to Congress until just this past month, much too late for proper consideration and passage. Moreover, the legislation submitted deals only with a fraction of those claims which the Departments indicated would most appropriately be resolved by legislation.

As reported by the Interior Committee, House Joint Resolution 553 would provide a mechanism for resolving these Indian damage claims with finality and in a manner that is fair to the claimants.

In short, the legislation provides that a list of all identifed claims with arguable legal merit be compiled within 360 days. Any and all claims not listed would be forever barred.

The listed claims would be dealt with in the following manner:

For those claims the Departments determine should be resolved by legislation, the statute of limitations would run 3 years from the date legislation is submitted to Congress.

For those claims the Departments determine should be neither legislated nor litigated, the statute would run 1 year from the date that notice is provided to the tribes or individuals advising them of the Departments' decisions and the reasons for them.

The remaining claims would be litigated.

Mr. Speaker, House Joint Resolution 553 should be enacted for a variety of reasons, among them the following:

First, it precludes the need for the filing, before December 31, of hundreds of protective lawsuits. This means that thousands of potential defendants will be spared being joined in litigation which otherwise might be avoided by negotiation or legislation.

Second, House Joint Resolution 553 insures that potential Indian claimants are provided due process. In particular, it would insure that Indians receive more than just a few weeks notice from their trustee of the trustee's decision not to bring litigation on their behalf. After years of consideration of these cases, the Departments have recently been publishing notices of potential actions, in newspapers. This gives the Indians little time to learn more about their potential claims and whether they want to pursue them on their own. Simple fairness mandates an extension in these cases.

Third, House Joint Resolution 553 insures that Congress will have sufficient time to consider legislative solutions to claims which the Departments believe can best be resolved by legislation.

Fourth, and perhaps most important to those of us concerned about Federal deficits, House Joint Resolution 553 reduces the prospect of substantial liability to the U.S. Treasury as a result of successful breach of trust suits brought against the United States for failure to pursue identified claims. Such liability has been repeatedly cited in the past as reason for extending the statute. It is still an excellent reason for doing so.

I am pleased to state that the administration does not oppose enactment of this legislation, that it is considered workable and, all things considered, desirable. For the record, I recognize that some within the administration disagree with language in the committee's report concerning decisions respecting these Indian claims and the bases for them. Nevertheless, we share, I believe, a common concern that the United States acquit its trust responsibilities to Indians honorably and, as noted earlier, with due regard for the interests of the American taxpayer.

Accordingly, I urge the Members of the House to approve House Joint Resolution 553.

Mr. Speaker, I yield 5 minutes to the gentleman from Montana (Mr. MARLENEE).

Mr. MARLENEE. Mr. Speaker, I rise in opposition to the House Joint Resolution 553 which would authorize an additional 3 years onto the statute of limitations.

I find it incredible, absolutely incredible, that once again we find ourselves granting an extension of the statute of limitations for an additional 3 years, to the Indian tribes so they may file claims against the U.S. Government.

We have extended this authority before and it has been extended, as a matter of fact three times previously since 1966. In my opinion, that has been more than adequate for all of the claims that need to be filed, for all of the litigation that needs to be brought against the U.S. Government.

We must end this litigation process, which has our taxpayers over a barrel. We are paying for the litigation; and we are paying for the claims. In shutting this legal door, I think the rights of individuals who have a clear and

just claim can be handled by private relief legislation.

I was told last time when we considered this legislation: "One more extension is all that is needed; that is all we need, one more extension and we can take care of these claims and get this litigation on track and provide the relief we need with one more extension."

Here we are again. I ask my colleagues: How many more times are we going to come to this Congress for an extension so that Indians can litigate their claims against the U.S. taxpayers?

I urge my colleagues to vote against this measure.

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

Mr. BEREUTER. Mr. Speaker, I yield myself 1 additional minute.

Mr. Speaker, I would say to my colleagues on the floor, that I understand the frustrations of the gentleman from Montana about the continued extensions. I must say I share that frustration and concern. Although the responsibility for that certainly must fall on two particular agencies of the Federal Government in part, I think there is a misunderstanding that should be clarified.

The House Republican Conference Digest on this resolution inadvertently did convey some information that is incorrect. The 3-year extension is for claims which would require legislative action by this body. There is a 1-year extension only for claims that the Department of Justice and the Department of the Interior do not intend to pursue. Then that 1-year extension starts from the date of notice given by DOJ and DOI that they do not intend to pursue the matter.

But the 3-year extension itself relates to matters that the administration finds will require legislative remedy rather than litigation.

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

Mr. BEREUTER. I yield to the gentleman from Montana.

Mr. MARLENEE. I thank the gentleman for yielding.

Mr. Speaker, if in fact we grant this extension and all the claims are not settled, is the gentleman going to ask for another extension in 3 years?

Mr. BEREUTER. Well, this gentleman will not be asking for it.

Mr. MARLENEE. Will the gentleman be back to this Congress for another extension?

Mr. BEREUTER. This gentleman will not. That is the only assurance I can give you.

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

Mr. BEREUTER. I yield to the chairman.

Mr. UDALL. I thank the gentleman for yielding.

Mr. Speaker, I cannot make any ultimate or binding pledges, but speaking for myself, I think this ought to be the end of it. I think they would have to make a very strong case to come back 3 years from now.

This is not a question of whacking Indians so much as it is the taxpayers. In order to save money in this situation, we need to have the bill passed, and I hope this is the last extension. I will do my best to see that it is.

Mr. MARLENEE. Mr. Speaker, I thank the chairman, and I thank the gentleman for yielding.

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

Mr. BEREUTER. I will be pleased to yield to the gentleman from Ohio.

Mr. KINDNESS. I thank the gentleman for yelding.

Mr. Speaker, in the past the Committee on the Judiciary has dealt with this and has brought legislation to the floor to extend this statute of limitations expiration date. This comes up rather suddenly, without that committee jurisdiction having been exposed to some consideration of this matter.

I am having difficulty understanding the bill and would ask the gentleman if he could explain the final paragraph of the bill on page 8, other than the amendment to the title. The paragraph reads:

> Any right of action on claims covered by such legislation or report shall be barred unless the complaint is filed within 3 years after the date of submission of such legislation or legislative report to Congress.

That is, I take it, sort of self-defeating; that is, if a legislative solution is sought, obviously the claimant tribe or individual Indian is not likely to file suit while the Congress is still likely to act.

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Is this not another one of these situations where we are kind of holding off the Indian claimants possibly with the prospect of legislative solution to the problem being there, and then we say 3 years expires, no legislative action has occurred, and the individual or tribe is again barred, and we are going to be asked automatically for another extension of time on those matters that have been referred to the Congress for legislation remedy. Am I misconstruing that paragraph?

Mr. BEREUTER. In response to the gentleman, I guess the first thing I should say is that I understand it is expected that a relatively small minority of the 15,000 to 17,000 claims pending would involve litigation. In most instances it is expected to be recommended that there should be no litigation; in other cases, some litigation, but only a relatively small amount, it is my understanding. I have understood that we may be talking about 1,000 out of 17,000 would fall in the category of legislative remedy, and in those cases many of them are expected to fall within a single area of legislative remedy. So, I think the gentleman's characterization of what might happen in those instances is perhaps relevant.

Perhaps the chairman would also like to comment.

Mr. UDALL. Mr. Speaker, the gentleman from Ohio is correct. As introduced, the bill was entirely within the jurisdiction of the Committee on Interior and Insular Affairs. When it was amended to deal with imminent limitation problems, statute of limitation problems, the client was in a situation where, had it been an original bill, the Judiciary Committee would have requested a referral and we would have had to agree to that. No request for referral was made, and we are in the situation, because of the amendment added by the committee—and I will tell the gentleman that I hope we will be a little more careful and that he will be a little more observant and blow the whistle on us when we get into Judiciary Committee jurisdiction.

Mr. KINDNESS. If the gentleman will yield further, I just want to be sure I understand another aspect of this. If we construe together sections 2, 3, and 4, it would appear that there will be 270 days following the passage of this act before the 3 years would start to run in the case of those situations in which the 3-year period would be applicable, so you would have three-quarters of a year pass before the 3 years starts to run. Then, the 3 years would begin running, because—it is a procedure that is a little tricky to follow here.

I was commenting to the gentleman from Texas (Mr. SAM B. HALL, JR.) a little while ago that you have to learn to do a highland fling before you can work your way through this, and his comment was to the effect that that was not enough. But, I think it is 270 days before the 3 years start to run. Is that a correct interpretation?

Mr. BEREUTER. I believe the gentleman's understanding is correct. That length of period is due to the process of adding the 90-day publication period and the 180-day period in which the tribe submits information to the Secretary. So, it could be a maximum of 270 days before the 3 years begins to run in those cases that relate to legislative remedies.

Mr. KINDNESS. Therefore, we could have a total period of something pretty close to 4 years before we are dealing with the matter finally.

I appreciate the effort that is undertaken here. I just have a little difficulty in understanding it. I fail to see why it has to be absolutely dealt with before this Congress adjourns, because the date could be extended with somewhat adequate consideration of these problems even though it is after the

first of the year and the period of the limitation has expired. It can be opened up again as it has been in the past, but the risk of filing quite a number of lawsuits, I guess, is what makes us concerned.

Mr. BEREUTER. And the cost to the Treasury of that involvement through breach of faith lawsuits against the Federal Government in its trust responsibilities.

Mr. KINDNESS. I thank the gentleman for yielding.

I appreciate his responses to these questions.

Mr. MARLENEE. Mr. Speaker, will the gentleman yield again?

Mr. BEREUTER. I yield to the gentleman.

Mr. MARLENEE. Mr. Speaker, the last time we extended—does the gentleman have any information on the number of claims that were pending at that time?

Mr. BEREUTER. I had the information, but I have just been advised that on the occasions that we extended it we were dealing with approximately 11,000 to 12,000 claims at that time.

Mr. MARLENEE. The last time we extended we were dealing with 11,000 claims. Now, we are dealing with something like 17,000.

Mr. BEREUTER. Fifteen thousand, maybe as many as 17,000. Probably closer to 15,000.

Mr. MARLENEE. I think it is a good indication of exactly what can happen with this kind of legislation to leave it open. The longer we leave it open, the more claims we can find, the more work for the attorneys, and the further this thing will go.

I thank the gentleman for yielding.

Mr. BEREUTER. I take note of the gentleman's comments, and I will look for some positive solutions from the gentleman in the future.

● Mr. LEE. Mr. Speaker, I rise in strong opposition to the enactment of House Joint Resolution 553, an extension of the statute of limitations deadline before which Indian tribes may seek damages in contract and tort claims. Congress has already provided more than enough time for such actions.

The fact many of these actions have been allowed to exist in the first place is a matter I have long questioned. It has appeared foolish to me that our Government would allow in some instances alleged Indian tribes to bring massive lawsuits against hundreds of thousands of innocent property owners for ejectment and repossession of their homes, for millions of acres of land and for multimillion-dollar awards, often based on alleged procedural violations which may or may have not occurred centuries ago. But that, Mr. Speaker, is the sad tale of what is behind the legislation we consider today.

Before us is another extension of time for Indian tribes to bring their lawsuits. Another extension will not serve to resolve the problems these lawsuits create for innocent taxpaying property owners. What this extension does represent is this Congress failure to resolve the growing problem of Indian land claims in a just permanent fashion. What is most unfortunate is that this failure is costly, and does real harm to people totally innocent of any wrongdoing.

As has been discussed today, prior to 1966 no statute was in existence. Congress established the limitation specifically in order to put a final end to the anguish of countless thousands of residents of land which was once in Indian possession. Congress acted to decide these matters once and for all. Yet, over these past 16 years and again today, we find serious consideration for legislation that would prolong the indecision. I oppose this strongly.

The Department of the Interior and its Bureau of Indian Affairs has continually indicated that they needed "just a little more time" to extinguish the claims in processing. Yet with the approach of every deadline, the Department's logs bloat with more claims. Rather than reduce their number, the unhandled case count is today still in the thousands.

What this Congress must realize is that these numbers reflect communities, families and individual homeowners whose properties are placed in jeopardy, whose titles to the land they paid for are suddenly no longer sacrosanct, whose abilities to sell their land for a fair price are vanished under the cloud of Indian claims.

Mr. Speaker, on March 18, 1980, I stood in this great Chamber and participated in the very same debate. Many of my colleagues at that time deeply opposed any further extension of the statute of limitations. Those opponents referred to the records made on this issue of extending the statute of limitations in 1977. Then, in 1977, the House indicated that extension would be the final extension. I quote from the 1977 conference report:

I think it ought to be very clear that this House has indicated on the record that this is the final extension, and that we are sending a message to the Department of the Interior and to the Justice Department that they had better get busy in processing whatever claims they have because this House will not extend the statute in the future . . .

Even some of my colleagues who favored the extension back in 1980, and who could overlook the sense of the House made in that 1977 quote, said they would note vote for another extension.

Mr. Speaker, is it not time that Congress realize that it must finally resolve these claims? The Congress has delayed time and time again, until today estimates of the American land under threat of Indian claim is as high as a phenomenal 80 percent. Every parcel, every tract and every claim represents property that American families have purchased and built their lives around. The cloud of potential claims must be dissipated. Congress today has the opportunity to start that process by making the existing deadline final. Let us begin there, and continue with a sensible, just and permanent resolution of these claims once and for all.●

● Mr. DASCHLE. Mr. Speaker, I rise in support of House Joint Resolution 553 which extends the deadline for filing legal action on thousands of pre-1966 Indian claims. The Federal Government, in its legal role as trustee, has been negligent in pursuing resolution of these claims. While thousands of claims have been identified, few have been litigated. In addition, there are more claims yet to be filed. The administration would have allowed the statute of limitations to expire December 31, 1982, leaving thousands of Indian people without the necessary financial resources or evidentiary material necessary to pursue these claims.

House Joint Resolution 553 requires that within 90 days all Indian claims currently identified be published in the Federal Register. Within 180 days, the Secretary of Interior must publish additional claims submitted, after which time no additional claims would be considered. The statute of limitations on published claims would be extended until the United States has filed litigation, the Secretary of Interior has reported his decisions to reject claims to the affected Indian people, or the Secretary submits legislation to Congress dealing with these claims. In the latter case, the statute of limitations would expire 3 years after the legislation takes place.

A lawsuit filed by the Native American Rights Fund resulted in a recent decision by a Federal judge that the Government has failed to properly represent Indians, and ordered the Government to file lawsuits for them by December 31, or to submit legislation by December 15 to resolve claims the Government will not pursue through the courts. In addition, the judge ordered the Government to notify Indian people of the status of their claims.

I understand that the administration has now tempered its opposition to this legislation in light of the recent court decision. The administration's past vigorous opposition, however, shows once again its lack of concern that people—poor people in particular—be able to pursue their legal rights. It also shows an alarming disregard for the Federal Government's trustee role in the matter of these claims.

I urge my colleagues to support House Joint Resolution 553 which

allows these damage claims to be settled in a reasonable manner.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the joint resolution, House Joint Resolution 553, as amended.

The question was taken.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

APPOINTMENT OF CONFEREES ON H.R. 6056, TECHNICAL CORRECTIONS ACT OF 1982

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 6056) to make technical corrections related to the Economic Recovery Tax Act of 1981, the Crude Oil Windfall Profit Tax Act of 1980, and the Installment Sales Revision Act of 1980, with the Senate amendments thereto, and—

First, concur in the Senate amendments numbered 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 19, 20, 21, 22, 23, 25, 28, 29, 32, and 35.

Second, disagree with the Senate amendments numbered 9, 15, 18, 24, and 27, and

Third, concur in the Senate amendments numbered 1, 10, 14, 16, 17, 26, 30, 31, 33, 34, 36, and 37, with amendments; insist on the House amendments, and request a conference with the Senate.

The Clerk read the title of the bill.

The Clerk read the House amendments to the Senate amendments as follows:

The amendments to the Senate amendment numbered 1 are as follows:

On the first page of the Senate amendments, line 4, insert ", as amended by section 206(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982," after "1981)".

On page 4 of the House engrossed bill, after line 14, insert the following:

(aa) AMENDMENT RELATED TO SECTION 102.—Clause (ii) of section 102(b)(1)(B) of the Economic Recovery Tax Act of 1981 is amended by striking out "qualified net capital gain" and inserting in lieu thereof "qualified net capital gain (or, if lesser, the alterative minimum taxable income within the meaning of section 55(b)(1) of such Code)".

On page 8 of the House engrossed bill, line 12, strike out "(12)" and insert in lieu thereof "(13)".

On page 11 of the House engrossed bill, after line 7, insert the following:

(aa) AMENDMENT RELATED TO SECTION 202.—Subsection (d) of section 179 (relating to election to expense certain business assets) is amended by adding at the end thereof the following new paragraph:

"(10) RECAPTURE IN CERTAIN CASES.—The Secretary shall, by regulations, provide for recapturing the benefit under any deduction allowable under subsection (a) with respect to any property which is not used predominantly in a trade or business at any time before the close of the second taxable year following the taxable year in which it is placed in service by the taxpayer."

On page 19 of the House engrossed bill, in the material following line 18, strike out "section 1371(g)" and insert in lieu thereof "section 1361(d)".

On page 40 of the House engrossed bill, strike out line 23 and all that follows down through line 4 on page 41 and insert the following:

(8) TREATMENT OF ANNUITIES.—Clause (ii) of section 2056(b)(7)(B) is amended by adding at the end thereof the following new sentence: "To the extent provided in regulations, an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified)."

The amendment to the Senate amendment numbered 10 is as follows:

On page 5 of the Senate amendments, strike out lines 19 and 20 and insert the following: "such determination occurs or the month in which the hiring date occurs".

The amendment to the Senate amendment numbered 14 is as follows:

In lieu of striking out the matter proposed to be stricken by the Senate amendment numbered 14, strike out line 1 on page 53 of the House engrossed bill and all that follows down through line 2 on page 54, and in lieu of inserting the matter proposed to be inserted by the Senate amendment numbered 14, insert the following:

(A) CASH SETTLEMENT CONTRACTS.—Subsection (b) of section 1256 (defining regulated futures contract) is amended by striking out paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(B) FOREIGN CURRENCY CONTRACTS.—Subsection (b) of section 1256 (as amended by subparagraph (A)) is amended by adding at the end thereof the following new sentence:

"Such term includes any foreign currency contract."

(C) FOREIGN CURRENCY CONTRACT DEFINED.—Section 1256 is amended by adding at the end thereof the following new subsection:

"(g) FOREIGN CURRENCY CONTRACT DEFINED.—

"(1) FOREIGN CURRENCY CONTRACT.—For purposes of this section, the term 'foreign currency contract' means a contract—

"(A) which requires delivery of a foreign currency which is a currency in which positions are also traded through regulated futures contracts,

"(B) which is traded in the interbank market, and

"(C) which is entered into at arm's length at a price determined by reference to the price in the interbank market.

"(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of paragraph (1), including regulations excluding from the application of paragraph (1) any contract (or type of contract) if its application thereto would be inconsistent with such purposes."

The amendment to the Senate amendment numbered 16 is as follows:

On page 8 of the Senate amendments, strike out lines 14 through 23 and insert the following:

(iii) ELECTION BY TAXPAYER WITH RESPECT TO POSITIONS HELD DURING TAXABLE YEARS ENDING AFTER MAY 11, 1982.—In lieu of the election under clause (ii), a taxpayer may elect to have the amendments made by subparagraphs (B) and (C) applied to all positions held in taxable years ending after May 11, 1982, except that the provisions of section 509(a) (3) and (4) of the Economic Recovery Tax Act of 1981 shall not apply.

The amendment to the Senate amendment numbered 17 is as follows:

Insert the matter proposed to be inserted by the Senate amendment numbered 17 and at the end of such matter insert the following:

(e) AMENDMENT RELATED TO SECTION 507.—Section 1234A (relating to gains or losses from certain terminations) is amended to read as follows:

"SEC. 1234A. GAINS OR LOSSES FROM CERTAIN TERMINATIONS.

"Gain or loss attributable to the cancellation, lapse, expiration, or other termination of—

"(1) a right or obligation with respect to personal property (as defined in section 1092(d)(1)) which is (or on acquisition would be) a capital asset in the hands of the taxpayer, or

"(2) a regulated futures contract (as defined in section 1256) not described in paragraph (1) which is a capital asset in the hands of the taxpayer,

shall be treated as gain or loss from the sale of a capital asset.".

The amendment to the Senate amendment numbered 26 is as follows:

In lieu of the matter proposed to be inserted by the Senate amendment numbered 26, insert the following:

(f) CERTAIN LONG-TERM PROJECTS.—Subclause (I) of section 46(a)(2)(C)(iii) is amended to read as follows:

"(I) before January 1, 1983, all engineering studies in connection with the commencement of the construction of the project have been completed and all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project have been applied for, and".

The amendment to the Senate amendment numbered 30 is as follows:

Insert the matter proposed to be inserted by the Senate amendment numbered 30, and on page 73 of the House engrossed bill, after the matter following line 3, insert the following:

(c) AMENDMENT RELATED TO SECTION 421 OF THE REVENUE ACT OF 1978.—The last sentence of section 55(b)(1), as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982, is amended by striking out "subparagraph (A)" and inserting in lieu thereof "subparagraph (A) (and in determining the sum of itemized deductions for purposes of subparagraph (C)(i))".

(d) AMENDMENTS RELATED TO SUBCHAPTER S REVISION ACT OF 1982.—

(1)(A) Section 6 of the Subchapter S Revision Act of 1982 is amended by adding at the end thereof the following new subsection:

"(f) TAXABLE YEAR OF S CORPORATIONS.—Section 1378 of the Internal Revenue Code of 1954 (as added by this Act) shall take effect on the day after the date of the enactment of this Act. For purposes of applying such section, the reference in subsection (a)(2) of such section to an election under section 1362(a) shall include a reference to an election under section 1372(a) of such

Code as in effect on the day before the date of the enactment of this Act.".

(B) If—

(i) after October 19, 1982, and on or before the date of the enactment of this Act, stock or securities were transferred to a small business corporation (as defined in section 1361(b) of the Internal Revenue Code of 1954 as amended by the Subchapter S Revision Act of 1982) in a transaction to which section 351 of such Code applies, and

(ii) such corporation is liquidated under section 333 of such Code before March 1, 1983,

then such stock or securities shall not be taken into account under section 333(e)(2) of such Code.

(2) Subsection (e) of section 1368 (relating to distributions) is amended by adding at the end thereof the following new paragraph:

"(3) ELECTION TO DISTRIBUTE EARNINGS FIRST.—

"(A) IN GENERAL.—An S corporation may, with the consent of all of its affected shareholders, elect to have paragraph (1) of subsection (c) not apply to all distributions made during the taxable year for which the election is made.

"(B) AFFECTED SHAREHOLDER.—For purposes of subparagraph (A), the term 'affected shareholder' means any shareholder to whom a distribution is made by the S corporation during the taxable year."

(3) Subsection (d) of section 1374 (relating to determination of taxable income) is amended by striking out "subsections (a)(2) and (b)(2)" and inserting in lieu thereof "this section".

(4) Subparagraph (B) of section 221(b)(1) is amended by striking out "(9),".

(5) The last sentence of section 4975(d) is amended by striking out "section 1379" and inserting in lieu thereof "section 1379, as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982".

(e) AMENDMENT RELATED TO MISCELLANEOUS REVENUE ACT OF 1982.—Subsection (c) of section 105 of the Miscellaneous Revenue Act of 1982 is amended by striking out "the amendment made by subsection (a)" and inserting in lieu thereof "the amendment made by subsection (b)".

The amendments to the Senate amendment numbered 31 are as follows:

In lieu of the matter proposed to be inserted by the Senate amendment numbered 31, insert the following:

SEC. 306. TECHNICAL AMENDMENTS TO THE REVENUE PROVISIONS OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982.

(a) AMENDMENT RELATED TO TITLE II.—

(1) AMENDMENTS RELATED TO SECTION 201.—

(A) Section 201 of the Tax Equity and Fiscal Responsibility Act of 1982 is amended—

(i) by redesignating the second subsection (c) as subsection (d), and

(ii) by striking out "subsection (c)(1)" in subsection (e)(2) and inserting in lieu thereof "subsection (d)(1)".

(B) Clause (ii) of section 55(e)(5)(B) (defining qualified investment income) is amended by striking out "net capital gain" and inserting in lieu thereof "capital gain net income".

(C) Subparagraph (E) of section 55(d)(2) (relating to adjustments to net operating loss computation) is amended by striking out "subparagraph (A)" and inserting in lieu thereof "paragraph (1)".

(2) AMENDMENT RELATED TO SECTION 204.—Paragraph (1) of section 291(a) (relating to 15-percent reduction for certain preference items) is amended by adding at the end thereof the following new sentence: "Under regulations prescribed by the Secretary, the provisions of this paragraph shall not apply to the disposition of any property to the extent section 1250(a) does not apply to such disposition by reason of section 1250(d)."

(3) AMENDMENT RELATED TO SECTION 205.—Paragraph (3) of section 48(q) (relating to basis adjustment to section 38 property) is amended by striking out "paragraphs (1) and (2)" and inserting in lieu thereof "paragraphs (1) and (2) of this subsection and paragraph (5) of subsection (d)".

(4) AMENDMENTS RELATED TO SECTION 208.—

(A) Subsection (d) of section 208 of such Act is amended—

(i) by striking out "described in section 1381(a)" in paragraph (3)(E)(i) and inserting in lieu thereof "engaged in the furnishing of electric energy to persons in rural areas", and

(ii) by inserting ", or section 168(f)(8)(J) of such Code, as added by subsection (b)(4)" after "as added by subsection (a)(1)" in paragraph (5) thereof.

(B) Subsection (d) of section 208 of such Act (relating to effective dates) is amended by adding at the end thereof the following new paragraph:

"(7) COORDINATION WITH AT RISK RULES.—Subparagraph (J) of section 168(f)(8) of the Internal Revenue Code of 1954 (as added by subsection (b)(4)) shall take effect as provided in such subparagraph (J)."

(C) Subparagraph (C) of section 208(d)(3) of such Act (defining transitional safe harbor lease property) is amended to read as follows:

"(C) PROPERTY USED IN MANUFACTURE OF AUTOMOBILES.—

"(i) IN GENERAL.—Property is described in this subparagraph if—

"(I) such property is used by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacture of automobiles or trucks,

"(II) 50 percent or more of the motor vehicles produced by the taxpayer during calendar year 1981 are passenger automobiles and light-duty trucks,

"(III) such property is automobile manufacturing property, and

"(IV) such property would be described in subparagraph (A) if 'October 1' were substituted for 'January 1'.

"(ii) AUTOMOBILE MANUFACTURING PROPERTY.—For purposes of this subparagraph, the term 'automobile manufacturing property' means machinery, equipment, and special tools of the type included in the former asset depreciation range guideline classes 37.11 and 37.12.

"(iii) TREATMENT OF CERTAIN VENDORS.—For purposes of this subparagraph, any special tools owned by a taxpayer described in subclauses (I) and (II) of clause (i) which are used by a vendor for the production of component parts for sale to the taxpayer shall be treated as automobile manufacturing property used by such taxpayer.".

(5) AMENDMENT RELATED TO SECTION 211.—Paragraph (2) of section 211(e) of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to effective date for foreign tax credit for taxes on oil and gas income) is amended to read as follows:

"(2) RETENTION OF OLD SECTIONS 907(b) AND 904(f)(4) WHERE TAXPAYER HAD SEPARATE BASKET FOREIGN LOSS.—

"(A) IN GENERAL.—If, after applying old sections 907(b) and 904(f)(4) to a taxable year beginning before January 1, 1983, the taxpayer had a separate basket foreign loss, such loss shall not be recaptured from income of a kind not taken into account in computing the amount of such separate basket foreign loss more rapidly than ratable over the 8-year period beginning with the first taxable year beginning after December 31, 1982.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) The term 'separate basket foreign loss' means any foreign loss attributable to activities taken into account (or not taken into account) in determining foreign oil related income (as defined in old section 907(c)(2)).

(ii) An 'old' section is such section as in effect on the day before the date of the enactment of this Act.".

(6) AMENDMENTS RELATED TO SECTION 222.—

(A) The last sentence of paragraph (2) of section 222(f) of such Act is amended by inserting ", except that in applying such section both direct and indirect ownership of stock shall be taken into account" before the period at the end thereof.

(B)(i) Paragraph (3) of section 312(j) (relating to earnings and profits of foreign investment companies) is amended by striking out "in partial liquidation or".

(ii) The heading for paragraph (3) of section 312(j) is amended to read as follows:

"(3) REDEMPTIONS.—".

(7) AMENDMENT RELATED TO SECTION 223.—Subparagraph (b) of section 223(b)(2) of such Act (relating to effective date for changes in tax treatment of distributions of appreciated property in redemption of stock) is amended to read as follows:

"(B) either before October 21, 1982, or within 90 days after the date of such ruling.".

(8) AMENDMENTS RELATED TO SECTION 224.—

(A)(i) Subsection (h) of section 338 (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(8) SALE TREATED SEPARATELY FOR CONSOLIDATED RETURN PURPOSES.—Except to the extent otherwise provided in regulations, the target corporation shall not be treated as a member of an affiliated group with respect to the sale described in subsection (a)(1).".

(ii) If—

(I) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982, and on or before the date of the enactment of this Act, and

(II) the purchasing corporation establishes to the satisfaction of the Secretary of the Treasury or his delegate that such contract was negotiated on the contemplation that, with respect to the deemed sale under section 338 of the Internal Revenue Code of 1954, the target corporation would be treated as a member of the affiliated group which includes the selling corporation,

then the amendment made by clause (i) shall not apply to such qualified stock purchase.

(B)(i) Subsection (d) of section 224 of such Act is amended by adding at the end thereof the following new paragraphs:

"(4) EXTENSION OF TIME FOR MAKING ELECTIONS; REVOCATION OF ELECTIONS.—

"(A) EXTENSION.—The time for making an election under section 338 of such Code shall not expire before the close of February 28, 1983.

"(B) REVOCATION.—Any election made under section 338 of such Code may be revoked by the purchasing corporation if revoked before March 1, 1983.

"(5) RULES FOR ACQUISITIONS DESCRIBED IN PARAGRAPH (2).—

"(A) IN GENERAL.—For purposes of applying section 338 of such Code with respect to any acquisition described in paragraph (2)—

"(i) the date selected under subparagraph (B) of this paragraph shall be treated as the acquisition date,

"(ii) a rule similar to the last sentence of section 334(b)(2) of such Code (as in effect on August 31, 1982) shall apply, and

"(iii) subsections (e), (f), and (i) of such section 338, and paragraphs (4), (5), (6), and (8) of subsection (h) of such section 338, shall not apply.

"(B) SELECTION OF ACQUISITION DATE BY PURCHASING CORPORATION.—The purchasing corporation may select any date for purposes of subparagraph (A)(i) if such date—

"(i) is after the later of June 30, 1982, or the acquisition date (within the meaning of section 338 of such Code without regard to this paragraph), and

"(ii) is on or before the date on which the election described in paragraph (2)(C) is made.".

(ii) Subparagraph (A) of section 224(d)(2) of such Act is amended by striking out "under paragraph (1)" and inserting in lieu thereof "(within the meaning of section 338 of such Code without regard to paragraph (5) of this subsection)".

(9) AMENDMENTS RELATED TO SECTION 231.—

(A) Clause (ii) of section 263(g)(2)(B) (defining interest and carrying charges) is amended by striking out "section 1232(a)(4)(A)" and inserting in lieu thereof "section 1232(a)(3)(A)".

(B) Section 1232 (relating to bonds and other evidences of indebtedness) is amended by redesignating subsection (d) as subsection (c).

(C)(i) The next to the last sentence of section 1232(b)(2) (defining issue price) is amended by striking out "(other than a bond or other evidence of indebtedness or an investment unit issued pursuant to a plan of reorganization within the meaning of section 368(a)(1) or an insolvency reorganization within the meaning of section 371 or 374)".

(ii) Subsection (b) of section 1232 is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULE FOR EXCHANGE OF BONDS IN REORGANIZATIONS.—

"(A) IN GENERAL.—If—

"(i) any bond is issued pursuant to a plan of reorganization within the meaning of section 368(a)(1) for another bond (hereinafter in this paragraph referred to as the 'old bond'), and

"(ii) the fair market value of the old bond is less than its adjusted issue price,

then, for purposes of the next to the last sentence of paragraph (2), the fair market value of the old bond shall be treated as equal to its adjusted issue price.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) BOND.—The term 'bond' includes any other evidence of indebtedness and an investment unit.

"(ii) ADJUSTED ISSUE PRICE.—The adjusted issue price of the old bond is its issue price, increased by any original issue discount previously allowed as a deduction.".

(iii) For purposes of paragraph (4) of section 1232(b) of the Internal Revenue Code of 1954 (as added by clause (ii)), any insolvency reorganization within the meaning of section 371 or 374 of such Code shall be treated as a reorganization within the meaning of section 368(a)(1) of such Code.

(iv) The amendments made by this subparagraph shall apply to evidences of indebtedness issued after December 13, 1982; except that such amendments shall not apply to any evidence of indebtedness issued after such date pursuant to a written commitment which was binding on such date and at all times thereafter.

(10) AMENDMENT RELATED TO SECTION 235.—Section 235(g)(5) of such Act is amended by striking out "section 253" and inserting in lieu thereof "section 242".

(11) AMENDMENT RELATED TO SECTION 236.—Subsection (c) of section 236 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to effective date) is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT OF CERTAIN RENEGOTIATIONS.—If—

"(A) the taxpayer after August 13, 1982, and before January 1, 1983, borrows money from a government plan (as defined in section 219(e)(4) of the Internal Revenue Code of 1954),

"(B) under the applicable State law, such loan requires to renegotiation of all outstanding prior loans made to the taxpayer under such plan, and

"(C) the renegotiation described in subparagraph (B) does not extend the duration of or change the interest rate on any such outstanding prior loan,

then the renegotiation described in subparagraph (B) shall not be treated as a renegotiation, extension, renewal or revision for purposes of paragraph (1)."

(12) AMENDMENT RELATED TO SECTION 237.—Paragraph (2) of section 401(d) (as redesignated by section 237 of the Tax Equity and Fiscal Responsibility Act of 1982) is amended by striking out "paragraph (9)(B)" and inserting in lieu thereof "paragraph (1)(B)".

(13) AMENDMENT RELATED TO SECTION 266.—Section 266(c)(3) of such Act is amended by striking out "section 103(f)(2)(C)" and inserting in lieu thereof "section 101(f)(2)(C)".

(14) AMENDMENT RELATED TO SECTION 283.—Section 283(b)(2)(B) of such Act (relating to liability for tax and method of payment) is amended by striking out "January 18" and inserting in lieu thereof "February 17".

(b) AMENDMENTS RELATED TO TITLE III.—

(1) AMENDMENTS RELATED TO SECTION 302.—

(A) Subsection (d) of section 31 (relating to year for which credit allowed) is amended to read as follows:

"(d) YEAR FOR WHICH CREDIT ALLOWED.—

"(1) WAGES.—Any credit allowed—

"(A) by subsection (a) shall be allowed for the taxable year beginning in the calendar year in which the amount is withheld, or

"(B) by subsection (c) shall be allowed for the taxable year beginning in the calendar year in which the wages are received.

For purposes of this paragraph, if more than 1 taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

"(2) INTEREST, DIVIDENDS, AND PATRONAGE DIVIDENDS.—Any credit allowed by subsection (b) shall be allowed for the taxable year of the recipient of the income in which the amount is received.".

(B) Paragraph (4) of section 3(i) of the Subchapter S Revision Act of 1982 is hereby repealed.

(2) AMENDMENT RELATED TO SECTION 310.—Subsection (d) of section 310 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to effective date for requirement that obligations be registered) is amended by adding at the end thereof the following new paragraph:

"(4) EFFECTIVE DATE FOR TAX-EXEMPT OBLIGATIONS.—In the case of obligations the interest on which is exempt from tax (determined without regard to the amendments made by this section)—

"(A) under section 103 of the Internal Revenue Code of 1954, or

"(B) under any other provision of law (without regard to the identity of the holder),

the amendments made by this section shall apply only to obligations issued after December 31, 1983.".

(3) AMENDMENT RELATED TO SECTION 336.—Section 7701(a) (relating to definitions) is amended by redesignating paragraph (38) (as added by section 336(a) of the Tax Equity and Fiscal Responsibility Act of 1982) as paragraph (39).

(4) AMENDMENT RELATED TO SECTION 339.—Subparagraph (B) of section 6038A(c)(2) (defining controlled group) is amended by inserting ", (b)(2)(C)," after "(a)(4)".

(5) AMENDMENT RELATED TO SECTION 354.—Paragraph (23) of section 501(c) (relating to exempt organizations) is amended by striking out "25 percent" and inserting in lieu thereof "75 percent".

(c) AMENDMENTS RELATED TO TITLE IV.—

(1) AMENDMENTS RELATED TO SECTION 402.—

(A) The second sentence of section 6226(g) (relating to determination of court reviewable) is amended by striking out "Only" and inserting in lieu thereof "With respect to the partnership, only".

(B) The second sentence of section 6228(a)(6) (relating to determination of court reviewable) is amended by striking out "Only" and inserting in lieu thereof "With respect to the partnership, only".

(2) AMENDMENTS RELATED TO SECTION 405.—

(A) Subsection (b) of section 405 of the Tax Equity and Fiscal Responsibility Act of 1982 is amended to read as follows:

"(b) PENALTY.—Subsection (a) of section 6679 (relating to failure to file returns as to organization or reorganization of foreign corporations and acquisition of their stock), as amended by section 340(b)(1), is amended by striking out 'section 6035 or 6046' and inserting in lieu thereof 'section 6035, 6046, or 6046A'.".

(B) Paragraphs (2) and (3) of section 405(c) of such Act are amended to read as follows:

"(2) The section heading of section 6679, as amended by section 340(b)(2), is amended to read as follows:

"'SEC. 6679. FAILURE TO FILE RETURNS, ETC., WITH RESPECT TO FOREIGN CORPORATIONS OR FOREIGN PARTNERSHIPS.'

"(3) The table of sections for subchapter B of chapter 68 is amended by striking out the item relating to section 6679 and inserting in lieu thereof the following:

"'Sec. 6679. Failure to file returns, etc., with respect to foreign corporations or foreign partnerships.'"

On page 26 of the House engrossed bill, line 5, strike out "170(b)" and insert in lieu thereof "165(c)(3), 170(b)".

On page 41 of the House engrossed bill, after line 8, insert the following:

(10) CLARIFICATION OF EFFECTIVE DATE.—Paragraph (2) of section 403(e) of the Economic Recovery Tax Act of 1981 is amended by striking out "and paragraphs (2) and (3)(B) of subsection (d)" and inserting in

lieu thereof "paragraphs (2) and (3)(B) of subsection (d), and paragraph (4)(A) of subsection (d) (to the extent related to the tax imposed by chapter 12 of the Internal Revenue Code of 1954)".

The amendment to the Senate amendment numbered 33 is as follows:

On page 28 of the Senate amendments, beginning in line 17, strike out "of the Internal Revenue Code of 1954".

The amendment to the Senate amendment numbered 34 is as follows:

On page 31 of the Senate amendments, after line 15, insert the following:

(11) SECTION 278(D) OF SUCH ACT IS AMENDED—

(A) by amending paragraph (1) to read as follows:

"(1) IN GENERAL.—For purposes of sections 226, 226A, and 1811 of the Social Security Act, in the case of any individual who performs service both during January 1983, and before January 1, 1983, which constitutes medicare qualified Federal employment (as defined in section 210(p) of such Act), the individual's medicare qualified Federal employment (as so defined) performed before January 1, 1983, for which remuneration was paid before such date, shall be considered to be "employment" (as defined for purposes of title II of such Act), but only for the purpose of providing the individual (or another person) with entitlement to hospital insurance benefits under part A of title XVIII of such Act.";

(B) by striking out paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2) and striking out "or (2)" in subparagraph (A) thereof.

The amendment to the Senate amendment numbered 36 is as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:"311".

The amendments to the Senate amendment numbered 37 are as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

(3) the amendment made by subsection (C) of section 305 shall take effect as if included in the amendments made by section 421 of the Revenue Act of 1978.

(4) the amendments made by subsection (d) of section 305 shall take effect on the date of the enactment of the Subchapter S Revision Act of 1982.

(5) The amendment made by subsection (e) of section 305 shall take effect on the date on the enactment of the Miscellaneous Revenue Act of 1982.

(d) FOR SECTION 306.—The amendments made by section 306 shall take effect as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 to which such amendments relate.

Amend the title so as to read: "A bill to make technical corrections in the Economic Recovery Tax Act of 1981 and certain other recent tax legislative."

Mr. ROSTENKOWSKI (during the reading). Mr. Speaker, I ask unanimous consent that the House amendments to the Senate amendments be considered as read.

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

There was no objection.

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

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Mr. CONABLE. Reserving the right to object at this point, Mr. Speaker, I would like to ask the gentleman from Illinois (Mr. ROSTENKOWSKI) if he will further explain what is to be acccomplished by this procedure, which I acknowledge is somewhat complicated in that there are a number of amendments involved.

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

Mr. CONABLE. I yield to the gentleman from Illinois.

Mr. ROSTENKOWSKI. Mr. Speaker, H.R. 6056, the Technical Corrections Act of 1982, as it passed the House on September 14, 1982, contained technical, clerical, conforming, and clarifying amendments to provisions enacted in the Economic Recovery Tax Act of 1981, the Crude Oil Windfall Profit Tax Act of 1980, the Installment Sales Revision Act of 1980, the Bankruptcy Tax Act of 1980, and certain other tax legislation enacted in 1980.

The Senate has returned the bill to the House with amendments approved by the Senate Finance Committee and with additional floor amendments. For the most part, these amendments make only technical and clarifying changes to these prior acts, in the spirit of the original bill. Several technical corrections to the Tax Equity and Fiscal Responsibility Act of 1982 are also included. These corrections amend a number of tax provisions as well as provisions of the 1982 act relating to hospice care, the PSRO program and the Federal supplemental compensation program. In addition, a correction to the Omnibus Reconciliation Act of 1981 relating to the medicaid program is included and the expiration date for the special tax rules relating to servicemen missing in action is extended.

However, several of the Senate amendments are of concern to Members of the House. I believe the House should disagree to those objectionable amendments. These include a provision to permit a bankrupt airline to sell abroad its airplanes leased under the safe-harbor leasing transition rules of the 1982 act without recapture of past leasing tax benefits; a provision allowing certain trust beneficiaries to receive a refund for a portion of the windfall profit tax; a provision grandfathering certain rehabilitations under the 10-percent rehabilitation tax credit of prior law; and a provision allowing certain bulk sales of petroleum products to the Defense Department not to disqualify the seller from independent producer status.

In addition, the House amendment includes several new provisions which were not in the original House bill or Senate amendments. Generally, these provisions have been brought to the attention of the Congress since Senate action on the bill and require expeditious treatment.

For example, under the Tax Equity and Fiscal Responsibility Act of 1982, a provision requiring bond registration was made applicable to certain bonds issued after 1982. The Treasury Department has requested a delay of this effective date for State and local bonds. The amendment delays that provision for tax-exempt State and local bonds, for 1 year, through 1983. Many Members of the House have expressed support for such a delay.

The amendment also addressed a serious problem that has developed in the original issue discount bond rules enacted in TEFRA last summer. The amendment subjects bonds issued pursuant to a plan of corporate reorganization to the new original issue discount rules. In order not to harm taxpayers relying on present law, the amendment applies only to bonds issued after today with the exception of bonds issued pursuant to a binding written contract in effect today. This amendment is included at the specific request and with the strong support of the administration. No inference is intended by this amendment as to the state of present law.

Under TEFRA, new rules were established relating to certain corporate acquisitions. The amendment provides that corporations selling the stock of a subsidiary would not be required to take any recapture income in its consolidated return. This clarifies the uncertainty regarding the original legislation. Certain additional transitional relief is provided.

An amendment is made to the recently enacted Subchapter S legislation, as requested by the Treasury Department in its press release on November 26, 1982. That legislation requires subchapter S corporations to adopt a calendar year unless the taxpayer establishes to the satisfaction of the Secretary a business purpose for some other accounting method. Many taxpayers apparently have been attempting to make elections before the new provision is effective in order to be grandfathered under prior law, thus obtaining a year's tax deferral on up to 11 months of income. The amendment makes the new calendar year rules applicable to elections made after October 19, 1982, the date of enactment of that bill. Relief is provided to make whole certain taxpayers who had transferred stock and securities to a corporation which had planned to elect a fiscal year.

A provision is included in the amendment to assist certain employees in government retirement plans where under State Law, new Loans made after the new TEFRA loan distribution rules became effective, caused all outstanding balances to be treated as new loans resulting in taxable distri-

butions. Under the amendment, the outstanding balances are not treated as new loans under the TEFRA provision, to the extent that the repayment period and interest rates were not changed. As a result, only the additional loan amount will be considered a taxable distribution. This relief is for a transitional period.

The amendment also clarifies the application of certain safe-harbor leasing transitional rules applicable to automobile manufactures and provides for recapture of certain amounts expensed when the property is subsequently converted to personnal use, Finally, the amendment makes a number of other noncontroversial, clerical, and conforming amendments.

I urge the House to concur in this unanimous-consent request.

Mr. CONABLE. Mr. Speaker, further reserving the right to object, I quite agree that the amendments accepted here are for the most part technical in nature and not the subject of any substantial dispute. The amendments that the committee chairman has recommended be subject to disagreement and with the request that we go to conference I also believe should be explored further. Some of them are substantial amendments, amendments of some substance, despite the fact that they are part of a Technical Corrections Act. Then the last item, the item wherein the committee chairman suggests that we accept the amendments of the Senate with some exception, subject to an amendment, involves the extension of the time within which municipalities have to register the issuance of tax-exempt bonds.

Now, this is an interesting subject, Mr. Speaker, and it seems to me that we probably are likely to compromise it eventually. The chairman of the committee feels that that provision should be postponed for 1 year, primarily because small issuers, that is, school boards and small municipalities, are going to have to go through substantially greater redtape in the issuance of tax-exempt bonds than they have previously. The bankers and brokers do not object to this registration proposal, but the small municipalities or public bodies do have a problem with it. I quite agree with the chairman of the committee that there should be some postponement of the effective date. The Treasury has suggested 6 months, and the chairman is suggesting 1 year. We do not know what the Senate's attitude may be, and, of course, they may very well disagree with what we have done and confer about this matter also.

In any event, some delay is clearly appropriate, and for that reason I appreciate the way the chairman of the committee has handled it.

It seems to me, therefore, Mr. Speaker, that the course the gentleman has suggested is entirely appropriate, both as to the matters we accept and as to the matters on which we go to conference, as well as the matters for which we are seeking approval as a matter of first instance as an amendment to the proposal sent us by the Senate.

Therefore, Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Illinois? The Chair hears none and, without objection, appoints the following conferees: Messrs. ROSTENKOWSKI, GIBBONS, PICKLE, RANGEL, STARK, CONABLE, DUNCAN, and ARCHER.

There was no obligation.

PERIODIC PAYMENT SETTLEMENT ACT OF 1982

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5470) to amend the Internal Revenue Code of 1954 with respect to the tax treatment of periodic payments for damages received on account of personal injury or sickness, with Senate amendments thereto, and concur in the Senate amendment to the title of the bill and concur in the Senate amendment to the text of the bill with an amendment.

The Clerk read the title of the bill.

The Clerk read the House amendment to the Senate amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. AMENDMENT OF 1954 CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

TITLE I—INCOME TAX PROVISIONS

SEC. 101. TREATMENT OF RECIPIENT OF SETTLEMENT PERIODIC PAYMENTS.

(a) TREATMENT OF RECIPIENT.—Paragraph (2) of section 104(a) (relating to compensation for injuries or sickness) is amended by striking out "whether by suit or agreement" and inserting in lieu thereof "whether by suit or agreement and whether as lump sums or as periodic payments".

(b) TREATMENT OF ASSIGNEE-PAYOR.—

(1) IN GENERAL.—Part III subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 130 as section 131 and by inserting after section 129 the following new section:

SEC. 130. CERTAIN PERSONAL INJURY LIABILITY ASSIGNMENTS.

"(a) IN GENERAL.—Any amount received for agreeing to a qualified assignment shall not be included in gross income to the extent that such amount does not exceed the aggregate cost of any qualified funding assets.

"(b) TREATMENT OF QUALIFIED FUNDING ASSET.—In the case of any qualified funding asset—

"(1) the basis of such asset shall be reduced by the amount excluded from gross income under subsection (a) by reason of the purchase of such asset, and

"(2) any gain recognized on a disposition of such asset shall be treated as ordinary income.

"(c) QUALIFIED ASSIGNMENT.—For purposes of this section, the term 'qualified assignment' means any assignment of a liability to make periodic payments as damages (whether by suit or agreement) on account of personal injury or sickness—

"(1) if the assignee assumes such liability from a person who is a party to the suit or agreement, and

"(2) if—

"(A) such periodic payments are fixed and determinable as to amount and time of payment,

"(B) such periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of such payments,

"(C) the assignee does not provide to the recipient of such payments rights against the assignee which are greater than those of a general creditor,

"(D) the assignee's obligation on account of the personal injuries or sickness is no greater than the obligation of the person who assigned the liability, and

"(E) such periodic payments are excludable from the gross income of the recipient under section 104(a)(2).

"(d) QUALIFIED FUNDING ASSET.—For purposes of this section, the term 'qualified funding asset' means any annuity contract issued by a company licensed to do business as an insurance company under the laws of any State, or any obligation of the United States, if—

"(1) such annuity contract or obligation is used by the assignee to fund periodic payments under any qualified assignment,

"(2) the periods of the payments under the annuity contract or obligation are reasonably related to the periodic payments under the qualified assignment and the amount of any such payment under the contract or obligation does not exceed the periodic payment to which it relates,

"(3) such annuity contract or obligation is designated by the taxpayer (in such manner as the Secretary shall by regulations prescribe) as being taken into account under this section with respect to such qualified assignment, and

"(4) such annuity contract or obligation is purchased by the taxpayer not more than 60 days before the date of the qualified assignment and not later than 60 days after the date of such assignment.".

(2) CONFORMING AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 130 and inserting in lieu thereof the following new items:

"Sec. 130. Certain personal injury liability assignments.

"Sec. 131. Cross references to other Acts.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1982.

SEC. 102. EXCLUSION FROM GROSS INCOME FOR CERTAIN FOSTER CARE PAYMENTS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income), as amended by section 101(b), is amended by redesignating section 131 as section 132 and by inserting after section 130 the following new section:

"SEC. 131. CERTAIN FOSTER CARE PAYMENTS.

"(a) GENERAL RULE.—Gross income shall not include amounts received by a foster parent during the taxable year as qualified foster care payments.

"(b) QUALIFIED FOSTER CARE PAYMENT DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified foster care payment' means any amount—

"(A) which is paid by a State or political subdivision thereof or by a child-placing agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and

"(B) which is—

"(i) paid to reimburse the foster parent for the expenses of caring for a qualified foster child in the foster parent's home, or

"(ii) a difficulty of care payment.

"(2) QUALIFIED FOSTER CHILD.—The term 'qualified foster child' means any individual who—

"(A) has not attained age 19, and

"(B) is living in a foster family home in which such individual was placed by—

"(i) an agency of a State or political subdivision thereof, or

"(ii) an organization which is licensed by a State (or political subdivision thereof) as a child-placing agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).

"(c) DIFFICULTY OF CARE PAYMENTS.—For purposes of this section—

"(1) DIFFICULTY OF CARE PAYMENTS.—The term 'difficulty of care payments' means payments to individuals which are not described in subsection (b)(1)(B)(i), and which—

"(A) are compensation for providing the additional care of a qualified foster child which is—

"(i) required by reason of a physical, mental, or emotional handicap with respect to which the State has determined that there is a need for additional compensation, and

"(ii) provided in the home of the foster parent, and

"(B) are designated by the payor as compensation described in subparagraph (A).

"(2) LIMITATION BASED ON NUMBER OF CHILDREN.—In the case of any foster home, difficulty of care payments for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than 10 qualified foster children.".

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 131 and by inserting in lieu thereof the following items:

"Sec. 131. Certain foster care payments.
"Sec. 132. Cross references to other Acts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1978.

TITLE II—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SEC. 201. TREATMENT OF HAWAII PREPAID HEALTH CARE ACT UNDER EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) EXEMPTION FROM PREEMPTION.—Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended by adding at the end thereof the following new paragraph:

"(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393-1 through 393-51).

"(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a)—

"(i) any State tax law relating to employee benefit plans, or

"(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

"(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after the date of the enactment of this paragraph), but the Secretary may enter into cooperative arrangements under this paragraph and section 506 with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts.".

(b) TREATMENT OF OTHER STATE LAWS.—The amendment made by this section shall not be considered a precedent with respect to extending such amendment to any other State law.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 202. TREATMENT OF MULTIPLE EMPLOYER WELFARE ARRANGEMENTS UNDER EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) DEFINITION OF MULTIPLE EMPLOYER WELFARE ARRANGEMENT.—Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002), relating to definitions, is amended by adding at the end thereof the following new paragraph:

"(40)(A) The term 'multiple employer welfare arrangement' means an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained—

"(i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements, or

"(ii) by a rural electric cooperative.

"(B) For purposes of this paragraph—

"(i) two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group,

"(ii) the term 'control group' means a group of trades or businesses under common control,

"(iii) the determination of whether a trade or business is under 'common control' with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b), except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent, and

"(iv) the term 'rural electric cooperative' means—

"(I) any organization which is exempt from tax under section 501(a) of the Internal Revenue Code of 1954 and which is engaged primarily in providing electric service on a mutual or cooperative basis, and

"(II) any organization described in paragraph (4) or (6) of section 501(c) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code and at least 80 percent of the members of which are organizations described in subclause (I).".

(b) LIMITATION ON PREEMPTION OF STATE LAW WITH REGARD TO WELFARE PLANS WHICH ARE MULTIPLE EMPLOYER WELFARE ARRANGEMENTS.—Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)), as amended by section 201 of this Act, is further amended by adding at the end thereof the following new paragraph:

"(6)(A) Notwithstanding any other provision of this section—

"(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides—

"(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

"(II) provisions to enforce such standards, and

"(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.

"(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 3(1) and section 4 necessary to be considered an employee welfare benefit plan to which this title applies.

"(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this title apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

"(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Mr. ROSTENKOWSKI (during the reading). Mr. Speaker, I ask unanimous consent that the House amendment to the Senate amendments be

considered as read and printed in the RECORD.

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

There was no objection.

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

Mr. CONABLE. Mr. Speaker, reserving the right to object, I will ask the chairman of the committee if he can give us an explanation of this amendment.

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

Mr. CONABLE. I yield to the gentleman from Illinois.

Mr. ROSTENKOWSKI. Mr. Speaker, the House passed H.R. 5470 under suspension of the rules on September 20, 1982. As passed by the House, H.R. 5470 would clarify the tax treatment of periodic payments of certain types of compensation for personal injuries excludable from gross income under section 104 of the Internal Revenue Code. As passed by the House, the bill had a negligible revenue impact and was supported by the administration.

The Senate passed H.R. 5470 on October 1, 1982, by voice vote. As passed by the Senate, the bill included minor amendments to the periodic payment provision and five other nongermane amendments. The Senate amendments deal with the tax treatment of foster care payments, the treatment of Indian tribal governments similar to States in determining their eligibility to issue tax-exempt bonds, a provision waiving the ERISA preemption rule in the case of the Hawaii Prepaid Health Care Act, a provision extending the highway trust fund and taxes through September 30, 1985, and, finally, a provision relating to withholding by the Virgin Islands on certain passive investment income of U.S. individuals or corporations.

Mr. Speaker, under the request I am making today, the House would take the following action with respect to the Senate amendments:

A. PERIODIC PAYMENTS

The Senate amendment defines a qualified funding asset as a U.S. obligation or an annuity contract issued by a State licensed life insurance company. Under the request I am making today, the House would permit an annuity contract issued by any insurance company licensed to do business under the laws of any State to qualify as a funding asset.

B. FOSTER CARE

Under my request, the House would agree to the Senate amendment which exempts certain foster care payments from tax, with an amendment.

The Senate amendment excludes from income payments received by foster parents as "difficulty of care" payments for a foster child having physical, mental or emotional handicaps. The House amendment makes technical and clarifying changes to this provision and also codifies present practice by excluding from gross income basic foster care payments made to reimburse foster parents for the expenses of caring for foster children.

Thus, foster parents would generally be relieved of recordkeeping burdens on basic care payments, as well as payments designated for the special needs of certain types of foster children.

C. HIGHWAY TRUST FUND AND VIRGIN ISLANDS WITHHOLDING

The Senate amendment proposed to extend highway excise taxes and the highway trust fund for 1 year and permitted expenditures out of the trust fund for a specific period of time.

In view of House passage of H.R. 6211, the Surface Transportation Assistance Act of 1982, the House would drop this 1-year extension from this bill. In addition, under my request, the House would drop the Senate amendment relating to Indian tribal governments.

Further, under my request, the House would drop the Senate amendment with respect to Virgin Islands withholding. I want to emphasize that the Senate amendment has previously passed the House as separate legislation, H.R. 7093, and will be subject to a separate unanimous-consent request which I plan to make later today.

D. HAWAIIAN PREPAID HEALTH CARE LAW PREEMPTION

My request also provides that the House would agree to the Senate amendment which excepts the Hawaii Prepaid Health Care Act from the 1974 Employee Retirement Income Security Act (ERISA) preemption standard, with amendments. This amendment is within the jurisdiction of the Committee on Education and Labor and enjoys the bipartisan support of the leadership of that committee.

Under the House amendment, the exception for the Hawaiian Act from preemption under section 514 or ERISA would apply to the State statute as in effect on or before September 2, 1974 (except for administrative amendments to the act). The House amendment also includes language to the effect that the exception made by this legislation is not to be considered as a precedent for extending the exception to other State laws. The provision would be effective on date of enactment.

E. MULTIEMPLOYER HEALTH TRUSTS

The Senate ERISA preemption amendment is limited to Hawaii prepaid health care law. Under my request, the House amendment incorporates the principle provisions of H.R. 6462, dealing with certain preemption issues arising under Federal and State law. The provision clarifies Federal and State responsibilities involved in the regulation of multiple employer health trusts. Again, Mr. Speaker, as with the Hawaiian preemption provision, this amendment is within the jurisdiction of the Committee on Education and Labor and enjoys the bipartisan support of the leadership of that committee.

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Mr. CONABLE. Mr. Speaker, further reserving the right to object, I do rise in support of this bill and the manner in which the chairman has suggested handling it at this stage in the procedure.

I am particularly interested in the portion of the bill which relates to the Federal income tax levied on foster care payments. The bill now before us builds on the substantial improvement added by an amendment by Mr. DURENBURGER in the other body. As others have explained, the House amendment in effect codifies existing law with regard to "regular" or "basic" foster care payments and makes clear that so-called "difficulty of care" payments in the case of children with physical, mental, or emotional handicaps will not be excluded from gross income.

Basic foster care payments are set by the States. Generally they are quite low relative to the actual cost of raising a child. A revenue ruling in 1977 made it clear that so long as the foster care payment did not exceed the actual cost of providing foster care, the payment was excludable from gross income. In addition, the excess cost of providing foster care could be taken as a charitable deduction. On its face, this appears to be a sensible policy which recognizes that foster care payments do not usually constitute income to foster parents and one which does nothing to discourage families from accepting foster children.

Last summer, I was concerned therefore to learn that in upstate New York, and particularly in Monroe County, many foster parents were very confused and worried about IRS policy with regard to the treatment of foster care payments. This concern stemmed from two factors.

First, there was the issue of whether foster payments exceeded actual costs of providing foster care. The only way to determine this was to go on a case-by-case basis and look at records kept by each foster family on the food, clothing, shelter, utilities, educational, and other expenses. Unless the foster parents could demonstrate that the foster care payment did not meet these costs, the foster care payment could be considered to be taxable income. Unfortunately, many foster families are not as good at keeping records as they are at providing foster care, expense they incur on behalf of their foster children. The provision before us, while codifing the current

practice of excluding from gross income amounts received as reimbursement for the expenses of caring for a foster child, does nothing to resolve the recordkeeping problem. I would hope that the Treasury Department, when it drafts regulations pertaining to this new provision would consider establishing some sort of benchmark dollar amount as a level below which foster care payments would be excluded from gross income. One possible benchmark, which is updated annually, is the "U.S. Department of Agriculture Estimates of the Cost of Raising a Child." This guide sets out economy, low and moderate levels for urban and rural nonfarm child costs. Since in most instances State foster care payments are substantially below levels, it might be possible to exclude them from gross income without requiring any recordkeeping by foster parents.

The other problem has to do with whether or not the State and county child-placing agencies are required to send 1099 forms to foster parents. Under the revenue ruling, it appears that when foster care payments are intended to reimburse the expenses of caring for the foster child, rather than constituting a payment for services rendered by the foster parents, such forms are unnecessary. I would urge the IRS to take into account the provisions in this bill specifically excluding such payments from gross income when it requires agencies to file such returns. Last summer, for example, both foster parents and the county foster care agency went through needless confusion and alarm when the IRS threatened to assess a $5 fine against Monroe County, N.Y., for each of the four quarterly 1099 forms which it had not sent out to its 1,300 foster parents. Although this particular situation was eventually resolved, foster care agencies and parents remain concerned as to what will be required of them in the future.

The legislation before us today helps clarify some of these issues.

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

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

Mr. PHILLIP BURTON. Mr. Speaker, section 201 of the amendment to which the distinguished chairman of the Ways and Means Committee has referred relates to matters under the Employee Retirement Income Security Act of 1974 (ERISA) which are wholly within the jurisdiction of the Committee on Education and Labor.

The provision in H.R. 5470 preserving from ERISA preemption the Hawaii Prepaid Health Care Act was added in the Senate Finance Committee and but for minor technical cleanup of that language, that provision is unchanged under this amendment. This amendment is now acceptable to the Committee on Education and Labor and its language has been prepared with the full cooperation of our ranking minority member, the distinguished gentleman from Illinois (Mr. ERLENBORN).

To exempt from ERISA's preemption the Hawaii Prepaid Health Care Act as it existed on the day ERISA was enacted is purely a matter of equity. The Subcommittee on Labor-Management Relations held a hearing on this proposal last January and the statement presented by Senator MATSUNAGA at that time puts the problem in its proper perspective. I include Senator MATSUNAGA's statement in full in the RECORD at this point:

TESTIMONY GIVEN AT A HEARING BEFORE THE SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS OF THE COMMITTEE ON EDUCATION AND LABOR, 97TH CONGRESS, 2D SESSION, IN HONOLULU, HAWAII, ON JANUARY 7 AND 8, 1982

(Prepared statement of Hon. Spark M. Matsunaga, a U.S. Senator from the State of Hawaii)

Mr. Chairman and members of the Subcommittee, thank you for this opportunity to discuss the Hawaii Prepaid Health Care Act and its preemption by the Federal Employee Retirement Income Security Act of 1974 (ERISA).

ERISA's preemption of state laws governing employee benefits, particularly the Hawaii state law in question, has been raised several times in congress. The House Education and Labor Subcommittee on Labor Standards received testimony on this matter on June 1, 1978. The Senate Labor and Human Resources Committee heard witnesses on this issue during the Committee hearings on ERISA improvement in August of 1978 and February of 1979. On December 4, 1979, the Senate Finance Subcommittee on Private Pension Plans and Employee Benefits heard testimony on this issue also. At one point during recent congressional consideration of the Multiemployer Plan Amendments Act, the United States Chamber of Commerce and the National Association of Manufacturers opposed passage of the Multiemployer Bill because of an amendment to preserve the Hawaii health care act.

In discussing this issue, I would like to review briefly the Hawaii Prepaid Health Insurance Act, relate the development of the present issue, examine the arguments made against Hawaii's mandated health insurance plan, and analyze the reasoning behind these arguments.

First, let me explain the law's provisions. The Hawaii Prepaid Health Insurance Act requires all employers in the State of Hawaii to provide their workers with prepaid medical health insurance. This coverage is comparable to the medical insurance provided by the federal government to its civil service employees. Under the Hawaii statute, employers in the State must secure health insurance for their workers. This required insurance coverage provides comprehensive care, not limited to work related injuries. The coverage must be comparable to the community standard. In effect, the community standard is the level of benefits provided by the commercial prepaid health plan having the largest number of subscribers. Current benefits include:

1. 120 days of hospital benefits plus outpatient service.
2. Surgical benefits.
3. Medical services, including home, office, hospital visits and intensive medical care.
4. Laboratory, X-ray, and radiotherapy services.
5. Maternity benefits for workers who have participated in a plan nine or more months before childbirth.
6. Drug and alcohol abuse treatment.

Unlike the federal program where each worker selects his own health insurance program, under the Hawaii law, the employer selects one program for all its employees. The employer may either secure commercial coverage or it may undertake a self-insurance program. Under a self-insurance program, the employer must prove to the State Department of Labor that the employer has adequate resources to pay for the requisite health benefits. If the employer wishes to select commercial coverage, it is free to choose a commercial carrier based on the carrier's services and premiums. While the Hawaii State Insurance Commissioner has licensed over 200 carriers to provide such prepaid health insurance, all but 1,000 of the State's 18,500 employers subscribe to one of the State's two major commercial insurers—Kaiser Permanente Health Plan or the Hawaii Medical Services Association.

The Hawaii statute requires an employer to pay half the premiums for this insurance coverage. Many employers voluntarily pay for their worker's full premium cost. Where a worker contributes to his or her own coverage, the State law restricts this contribution to no more than 1.5 percent of the worker's annual wages. For financially pressed businesses that have difficulty covering the premium cost the State provides premium supplements out of its reserve funds. Between 1974 and 1977, the State expended about $30,000 to supplement employer's premium payments.

Excluded from the statute's mandatory coverage are:

1. Government employees.
2. Agricultural seasonal workers.
3. Employees working less than 20 hours a week or at wages less than 86.67 percent of the prevailing State minimum hourly wage.
4. Workers covered by a Federal program or receiving public assistance.
5. Religious objectors.
6. Individuals working in family employment.
7. Commissioned insurance and real estates salesmen.

Despite these exceptions, 98 percent of the State of Hawaii's population has some form of comprehensive or catastrophic medical coverage through the State mandated program for workers or through the Federal civil service, medicare, and medicaid program.

Furthermore, the comprehensive health care benefit programs available for employers in Hawaii, are generally better and cheaper than comparable programs in other states. It is important to stress that reliance on private medical treatment and commercial carriers in Hawaii, has led to effective utilization and cost control programs. Inpatient hospital care has been reduced in Hawaii to half the national average. In addition, monthly premiums for medical insurance in Hawaii compare very favorably with the premiums required by plans nationwide under the Federal civil service health insurance program.

Second, let me relate the background of the present controversy. The Hawaii Prepaid Health Care Law was enacted on June 2, 1974. On November 21, 1977, the Federal

district court for the Northern District of California held that ERISA preempted the Hawaii statute. In other words, the ERISA rendered the state's prepaid health insurance act invalid.

This litigation arose out of a 1976 amendment to the Hawaii Act adding drug and alcohol abuse treatment. Standard Oil Company of California up to this point had complied with Hawaii requirements. Some of the company's workers in Hawaii had elected to participate in Standard Oil's Self-funded Health Care Program which provides 80 percent reimbursement. This self-funded program did not provide drug and alcohol treatment, and Standard Oil sought to enjoin the State of Hawaii from enforcing this new requirement.

Reviewing ERISA, the district court stated that:

"The legislative history discloses no explicit Congressional decision that State health insurance laws should be preempted. Neither the parties nor the Court in its independent research found any specific discussion in Congress about the pros and cons of that course."

The Court's statement was later supported by Senator Lloyd Bentsen, the chief drafter of ERISA in the Senate Finance Committee. At a public hearing on August 15, 1978, on this issue, Senator Bentsen stated that the Finance Committee did not deal with the question of preempting health insurance. Nevertheless, the Court ruled that the broad language of ERISA preempted all state laws relating to private employee benefit plans including Hawaii's Prepaid Health Insurance Act, and relief, if any, must come from Congress. Both the Ninth Circuit Court of Appeals and the U.S. Supreme Court affirmed this decision.

Shortly after the lower court's decision, the State of Hawaii sought remedial legislation to save the Hawaii statute from ERISA preemption.

In 1977, with Senator Dan Inouye as cosponsor, I introduced S. 1383 to exempt from ERISA preemption, state health insurance laws. At our urging, Senator Harrison Williams, then Chairman of the Senate committee on Labor and Human Resources, included as part of his ERISA Improvements Act of 1979, a provision exempting from ERISA preemption, the Hawaii prepaid Health care law, as well as any other State law determined to be substantially identical to the Hawaii statute and requiring benefits substantially identical to those required under the Hawaii law. Under the Williams bill, state health insurance requirements for reporting, disclosure, fiduciary responsibility, and enforcement, would be preempted if they were similar to ERISA provisions. In the version of S. 209, the ERISA Improvements Act, reported favorably by the Senate Committee on Labor and Human Resources, this provision was expanded to exempt from preemption all State health insurance laws.

Because of strong opposition from the U.S. Chamber of Commerce and the National Association of Manufacturers to the expanded Williams exemption proposal, I subsequently offered an amendment to the Multiemployer Pension Plan Amendments Act to exempt only the Hawaii statute. This approach was taken in bills which were later introduced by Senator Inouye and myself, S. 3151 in the 96th Congress and S. 1232 in the present Congress. These bills exempt only the Hawaii Prepaid Health Care Law, while retaining ERISA reporting, disclosure, fiduciary, and enforcement requirements for the Hawaii Health Insurance Program.

During the lengthy congressional consideration of this issue, national business organizations opposed any legislation to preserve the Hawaii statute. It was argued that the Hawaii statute would detract from the coverage already provided by multistate employers to their workers. It was further argued that the Hawaii statute, if preserved and especially if followed by other states, would prevent multistate employers from providing a uniform compensation package for their workers nationwide. Behind these arguments, was the general apprehension that the Hawaii statute might be used as the basis for a national health insurance program. I would like to discuss these points as the third part of my testimony:

In a statement presented at the 1978 Oversight Hearings on ERISA, Robert S. Stone, Senior counsel of IBM, argued that the Hawaii statute could detract from higher health insurance coverage provided by multistate employers. It was argued that the Hawaii statute could override the compensation package reached in collective bargaining agreements.

This argument obviously stems from a misunderstanding of the Hawaii state law. The Hawaii statute merely sets a minimum standard for health insurance coverage required of employers. Benefits in excess of those required by the Hawaii statute, are not affected by the law. Indeed, a prepaid health care plan included in collective bargaining is presumed to meet the requirement of the statute. The Hawaii law does not override health benefits obtained in collective bargaining.

Furthermore, the minimum standards established for a comprehensive health care program by the Hawaii statute should not pose additional burdens on multistate employers, for the Hawaii state requirements are generally lower than the benefits already extended to workers by multistate employers. Boris Auerbach, Secretary of Federated Department Stores and Vice President of the ERISA Industry Committee or ERIC, noted during the hearings on S. 209 in February of 1979, that the Federal Health Maintenance Organization Act of 1973 which governs federally-qualified health maintenance organizations, is more extensive than that required under the Hawaii law. Moreover, he stated that employers in his association already provide adequate and in most cases more generous plans than those required by the State of Hawaii. Thus, Hawaii's statute would add no financial cost to multistate employers' current health programs.

The chief argument against exempting Hawaii's prepaid health insurance program from preemption by ERISA, has focused on the potential obstacles posed against an employer intent on establishing a uniform benefit package for its workers nationwide. Mr. Stone in the 1978 hearings stated that if other states followed Hawaii's example, the multiplicity of state requirements would prevent multistate employers from providing uniform benefits to its workers. George J. Pantos, Counsel to ERIC, stated that ERISA's preemption provision reflected an overriding concern for interstate employers who must develop a uniform benefit system, since these interstate employers with 10 percent of all plans cover 85 percent of all pension plan participants. At the same hearings, Peter Nash, also a Counsel to ERIC added that the state-mandated health premiums could reduce the compensation available to workers in that state, because to meet state-mandated health coverage, and employer would reduced compensation in another area, thereby creating nonuniformity for workers in different states. The administrative cost and difficulty in meeting different state health insurance requirements were again raised by Mr. Auerbach during hearings in February of 1979.

All of these arguments fail to recognize the long-established fact that the several states have different requirements for group life insurance, health insurance, workmen's compensation, unemployment compensation, and disability insurance. For social as well as economic reasons, multistate employers have met these requrements which differ from state to state.

To determine the administrative cost and complexity for meeting different state health insurance requirements, I talked with a consultant at a major accounting firm and with the Financial Management Office of the Federal Office of Personnel Management, I was informed that any employer using an automated payroll would not encounter any difficulty or extraordinary cost in meeting different state health care requirements for the following reasons: First, medical benefits are fairly uniform nationwide. Second, payroll offices using automated systems can easily cope with any variations as they do with existing differences in pay packages for workers in different states—differences in such matters as local tax withholdings, fringe benefits negotiated by local unions such as pregnancy coverage, holidays, vacation schedules, and reimbursement for protective clothing and work tools. If all 50 states developed varying health insurance programs, these experts were fairly confident that a computer program could deal with varying benefit packages.

In addition, the expert at the Federal Office of Personnel Management noted that the existing federal health insurance program although immense, is neither costly nor complicated to administer. The federal employees health benefits program covers four basic categories of health insurance—government wide plans, employee organization plans, individual practice plans, and local group practice plans. Each federal workers must make his own election as to the plan he or she wishes to join. The biggest task for the Office of Personnel Management is to educate the workers on the various alternative plans available and to process the employee's selection. This election process is opened at the time the worker joins the federal work force and each November for the entire federal work force. Besides the educational task and the task of processing elections, the Office of Personnel Management has not encountered significant problems in making the appropriate payroll deduction, collecting the withheld funds, and transmitting the collected funds to the appropriate carrier selected by the individual worker. For the total 3,491,091 individuals enrolled in the federal employees health benefit program in 1979, the program received a total of $3.3 billion in income. Expenses incurred by the Office of Personnel Management for 1979, amounted to $6.8 million. In other words, the administrative cost for the program in 1979 amounted to only 0.2 percent, or one-fifth of 1 percent of the total income.

The federal employees health benefits program annually copes with the extreme difficulty posed by individual employee selection from over 100 plans which differ from state to state. Yet, the administrative cost for this program is practically insignifi-

cant. In comparison, the greater simplicity of private employer's plans should require even less administrative cost.

The two arguments of administrative complexity and nonuniformity have been repeated almost as if they were articles of faith. The real reason behind these arguments may well be rooted in an apprehension of national health insurance. Taking the administrative complexity argument at face value, some members of the Senate Committee on Labor and Human Resources expanded the initial Hawaii exemption in S. 209 to permit dissimilar state health insurance programs. This was undertaken in the hope that the burden of meeting different state requirements would lead multistate employers to support national health legislation.

In truth, some representatives of the business community view the Hawaii statute as an undesirable experiment in national health insurance. It is feared that the Hawaii experience would familiarize Americans with the benefits of such a program and establish a favorable environment for expanding the program to other states.

The controversy over national health insurance leads me to the fourth and final portion of my presentation, regarding the implications raised by the business community. It should be here noted that during the three years that the Hawaii Prepaid Health Insurance Program was being considered, the State legislature questioned the need for such legislation. State action was deemed unnecessary in view of "imminent national health legislation". However, after three years wait, the State legislature in 1974 decided to enact Hawaii's own Prepaid Health Insurance Act.

The enactment of a National Health Insurance Program appears as unlikely today as it appeared in 1974, 1978 or 1979. Yet, during the debate on the Matsunaga amendment to the Multiemployer Pension Plans Amendment Act, the National Association of Manufacturers and United States Chamber of Commerce argued that the amendment was inappropriate and non-germane to the legislation under consideration. They argued that the Hawaii exemption provision should be considered only in the context of national health legislation; and, although the Ninth Circuit Court of Appeals has upheld the invalidation of the Hawaii Prepaid Health Act, the State of Hawaii should postpone seeking remedial legislation until the Congress considers national health legislation. The effect of such a delay would be to strip health insurance coverage from thousands of workers in Hawaii.

Ironically, the handful of multistate employers who oppose Hawaii's program and who operate in Hawaii will not terminate their own health insurance programs; nor will local, established employers. As employers have conceded, and as the Health Education and Welfare Department has confirmed, the Hawaii state minimum standards are exceeded by many industries. The Hawaii legislative bureau report estimated in 1971 that only 11.7 percent of the state's work force did not have hospital coverage, 13.5 percent lacked surgical coverage, and 17.2 percent did not have regular medical insurance. Consequently, for the majority of employers and workers, the mandated state requirements of 1974 imposed no additional burden.

According to an HEW issued in 1977, 46,000 workers, chiefly in small, new or marginal businesses, benefitted from the state-mandated health insurance coverage. The 46,000 who are affected, are chiefly minium wage workers, mostly women who must support their families. These are workers in garment, hotel or restaurant industries.

In summary let me note that the Hawaii Prepaid Health Care Act has been in effect since 1974. It has guaranteed continued health insurance coverage in pre-existing programs and it has expanded coverage to 46,000 workers in the State who previously did not enjoy health insurance benefits. It has imposed minimal financial burdens on established employers, especially multistate employers. By mandating near-universal coverage, and relying on competition among commercial carriers and private doctors, the statute has kept premium costs sufficiently low to be borne by new, small, or marginal businesses with minimal adverse effect.

The alleged administrative complexity for multistate employers has not been substantiated, and, in fact, only a handful of multistate employers operate in Hawaii. Those that do operate in the State, easily meet the State requirement with the company's voluntary or collective-bargained plan. Hawaii's Health Insurance Plan is unique and limited to a single State. However, even if other States were to enact similar legislation, automated payroll systems which already cope with numerous compensation differences from State to State, could readily cope with variations in health insurance plans at minimal cost.

Fear of the favorable precedent the Hawaii statute might create for national legislation has motivated opponents of the Hawaii Health Care Act. They have argued for broad ERISA preemption of the Hawaii act and all State health insurance laws, and they have counseled against such State action except in the context of national health proposals. In view of the unlikely prospect for national health legislation, ERISA preemption would preclude State initiative in this area. In the meantime, 46,000 workers in Hawaii would be deprived of their health insurance coverage guaranteed under the State's preempted law.

Mr. Chairman, for the foregoing reasons, I strongly urge that your Subcommittee take expeditious action to exempt Hawaii's Prepaid Health Insurance Act from the preemption provisions of ERISA.

Section 202 of the amendment concerns a related matter wholly within the jurisdiction of the Education and Labor Committee as well. Many of you are well aware of the serious problems caused by the failure of certain health insurance trusts (also called multiple employer insurance trusts or MET's) to pay beneficiaries claims.

Although the Employee Retirement Income Security Act of 1974 (ERISA) was enacted to protect workers, some individuals have used ERISA as a smokescreen to conceal fraudulent activities.

These individuals approach employers, particularly small businesses, offering a cheaper alternative to traditional group health insurance coverage.

They set up trusts which they administer themselves to provide health coverage. But unlike licensed insurance carriers, they often fail to comply with the basic solvency controls which each State establishes to protect health care consumers.

When the State tries to enforce these controls, the trusts claim to be beyond the reach of State law because they are "employee benefit plans" covered by Federal law.

But by the time the U.S. Department of Labor decides if Federal law applies, the individuals who established the bogus insurance ventures have long since departed with the money and workers are left without any means of covering their unpaid medical bills.

Section 202 clarifies and strengthens the ability of the States to protect their citizens from such unscrupulous individuals by giving the State clear authority to establish and enforce standards for MET's.

Health insurance is of critical importance to workers and their families. The average worker is clearly unable to meet spiraling medical costs without that protection.

Both of the premium payers (employers, as well as employees) are entitled to rely on the fact that the health insurance which they have purchased will be there when it is needed.

If problems in delivery of health insurance arise, the States must be able to step in immediately to protect consumers.

Our ranking minority member, Mr. ERLENBORN, will discuss the particulars of this amendment in more detail. Section 202 closes a loophole in ERISA in urgent need of attention. Both the National Association of Insurance Commissioners and the administration have urged us to move expeditiously on this noncontroversial but essential amendment to ERISA.

Finally, neither sections 201 or 202 of this amendment are intended in any way either to overturn or endorse the decision of the U.S. First Circuit Court of Appeals in *Wadworth, et al.* v. *Whaland* (562 F. 2d 70 1st Cir. 1977, cert. denied, 435 U.S. 980 (1978)), which held that a New Hampshire insurance law regulating the content of group insurance policies sold to ERISA covered welfare plans was not preempted under section 514 of ERISA. Resolution of that issue should be dealt with in separate legislation after a full opportunity for both sides to present their views.

Mr. CONABLE. I thank the gentleman for his contribution.

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

Mr. CONABLE. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Speaker, I have no objection to the request of the distinguished chairman (Mr. ROSTENKOWSKI). H.R. 5470 belongs in conference where the bill's managers from both bodies can work out an agreement on its important features.

One significant feature is the Durenberger amendment which exempts cer-

tain foster care payments from Federal income tax treatment. I strongly endorse the amendment, and I believe the modest restrictive amendments to it, made by the House, will not alter the purpose of the original Senate amendment.

Foster parents in my State, who had for years assumed their payments from the State for caring for special children in their homes were tax exempt, have been, in the past year and a half, subjected to IRS audits in which such income has been claimed to be taxable. Large tax claims have been made against parents who believed they had no liability.

In most cases, perhaps all, the foster parents had incurred expenses equal to, or greater than, the income they received from the State. Because they thought the income was exempt, they kept no records.

This amendment liberates such payments from Federal income tax. It recognizes the special services of the foster parents. It helps the States save the money and emotional heartbreak which institutionalization would cause. It also saves a good deal of record keeping which would benefit no one.

The cost of the amendment is minimal. The Treasury says it will cost less than $5 million. At that price, the amendment is a bargain. I am pleased that the House has accepted the spirit of the Durenberger amendment.

● Mr. ERLENBORN. Mr. Speaker, the amendments being offered to the legislation we are now considering (H.R. 5470) are severalfold. The provisions relating to the Internal Revenue Code have been considered by the committee having jurisdiction over those matters, the Committee on Ways and Means. The provisions relating to the amendment to ERISA, the Employee Retirement Income Security Act of 1974 (Public Law 93-406) which was added in the other body are solely within the jurisdiction of the Committee on Education and Labor and have been the subject of hearings held this year by the Subcommittee on Labor-Management Relations.

The agreed amendments to ERISA are corrective in nature. These amendments to ERISA section 514 serve to reaffirm the broad Federal preemption of State laws as they relate to employee benefit plans as was the original intent of ERISA.

The first amendment which adds a new paragraph (5) to ERISA section 514(b) will enable the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. 393-1 through 51) to be administered in a limited fashion after the date of enactment of H.R. 5470. Last year the Supreme Court let stand the decision of the Ninth Circuit Court of Appeals in Standard Oil Company of California against Agsalud that the broad preemptive framework relating to both pension and welfare (for example, health) plans agreed to by the ERISA conferees does in fact supersede the Hawaii statute. The agreement to amend ERISA to permit the future application of the Hawaii law was reached solely on the basis and with the understanding that the Hawaii law is an unusual special case, inasmuch as the law was enacted just prior to the signing of ERISA on September 2, 1974, and that the law will be permitted to operate only as a narrow exception which is not expected to do violence to the strong Federal preemption scheme. In agreeing to the Hawaii exception this body will be reaffirming the broad scope of ERISA preemption and the validity of the interpretation of the Federal courts in connection with the Hawaii statute. To help allay the fears of those who might otherwise view this action as the beginning of a weakening of Federal preemption under ERISA, the amendment contains an explicit statement that this limited exception shall not be considered a precedent with respect to extending similar treatment to any other State law.

It should be noted that the provision of the Hawaii law which triggered the Standard Oil challenge remains preempted under the new exception. In fact any amendment to the Hawaii Prepaid Health Care Act enacted after September 2, 1974, is preempted except to the extent such amendment provides only for the effective administration of the law effective as of such date.

STOP METS ABUSE

The other issue addressed by the ERISA amendments are also the subject of H.R. 6462, a bill which the chairman of the Subcommittee on Labor-Management Relations, PHILLIP BURTON, and I introduced on May 21 to put a stop to what the attorney general in my State, Illinois, has characterized as an increasing problem having the potential to become the "most sophisticated and profitable white-collar crime in America." In a growing number of States across the Nation, operators of bogus insurance trusts are bleeding the trusts of funds and claiming bankruptcy, thus leaving thousands of people holding the bag for millions of dollars in unpaid hospital and medical bills. The ensuing tragedies of the victims, personal bankruptcies, and damaged personal credit ratings, serve notice to this Congress of the urgent need to enact the proposed legislation this year.

On March 5, the subcommittee held hearings in Chicago, Ill., to investigate the problems caused by these so-called multiple employer health trusts—or MET's. Our proposed legislative solution is an outgrowth of the consensus which emerged at the hearing among the interested parties—State and Federal regulators, the insurance industry, the actuarial profession, and legitimate health plan sponsors. The language in the amendment is a modification of that found in H.R. 6462 and reflects suggestions made by the Department of Labor.

Generally, the abuses connected with MET's can be and, in some cases, have been dealt with under appropriate State laws. Unfortunately, the MET operators have been successful in thwarting timely investigations and other enforcement activities of State agencies by asserting that such entities are ERISA plans for which all State regulation is preempted pursuant to section 514 of the Employee Retirement Income Security Act of 1974 (ERISA). In all too many cases, the result has been that State remedial actions have come too late to head off insolvency and benefit losses stemming from the mismanagement and misdeeds of the MET operators. This has proved to be the general rule in spite of the steps taken by the Department of Labor to clarify the jurisdictional role of the States in regulating MET's. In fact the ERISA Administrator in the Department of Labor has testified that in virtually all of the cases in which the Department has issued an opinion as to the coverage of a MET entity under ERISA, the entity in question has been found not to qualify as an employee welfare benefit plan with respect to which the ERISA preemption provision applies. The proposed legislation closes off all avenues of opportunity that might currently exist for MET operators to avoid such regulation at the Federal and State level, as may be applicable in each particular circumstance.

EXPLANATION OF MULTIPLE EMPLOYER WELFARE ARRANGEMENT PROVISIONS

OVERVIEW

The amendment defines the term "multiple employer welfare arrangement" to include all forms of what have come to be known in the insurance trade as multiple employer trusts or MET's. These arrangements may provide benefits—typically hospital and medical benefits—on a fully insured basis or on a basis that does not involve the full guarantee of benefit payments by a licensed insurance company. Some of the arrangements may meet the definition of "employee welfare benefit plan" under ERISA, and, thus, are currently regulated at the Federal level as ERISA plans; others do not meet the ERISA plan definition, and, thus, are subject to whatever existing regulation may apply to such entities at the State level. Under the proposed amendment to ERISA's preemption provisions, the scope of State regulation is clarified with respect to all such arrangements whether or not they are fully insured or meet ERISA definition of "plan."

The amendment reaffirms the original intent of Congress in enacting the Employee Retirement Income Security Act of 1974 (ERISA) that if a multiple employer welfare arrangement does not meet the definition of an employee welfare benefit plan under the act, then such an entity is not exempted—under the preemption provisions set forth in section 514 of ERISA—from the application of State insurance and other laws regulating such entities. With respect to arrangements which meet the definition of ERISA plans, the amendment specifically permits State regulation in varying degrees depending on the type of arrangement and whether or not the arrangement is determined by the Department of Labor to be an ERISA covered welfare benefit plan. Thus, the amendment removes any potential obstacle that might exist under current law which could hinder the ability of the States to regulate multiple employer welfare arrangements to assure the financial soundness and timely payment of benefits under such arrangements.

DEFINITION

A new paragraph (40) is added to section 3 of ERISA which defines the term "multiple employer welfare arrangement." This term includes employee welfare benefit plans now covered under ERISA as well as other arrangements (so-called MET's) which are not covered under ERISA as plan entities. Any such arrangement which is established or maintained under or pursuant to one or more collective bargaining agreements is excluded from the scope of the term. Also excluded are plans or other arrangements maintained by a single employer. "Single employer" is defined to include two or more trades or businesses within the same control group.

The provisions of the amendment are consistent with the original intent of Congress in excluding those multiple employer welfare arrangements which do not meet the "employee welfare benefit plan" definition from the scope of the coverage and preemption provisions of ERISA. In this regard, the position of the Committee on Education and Labor was clearly stated in the Activity Report of the Pension Task Force (94th Cong., 2d sess., 1977):

It has come to our attention, through the good offices of the National Association of State Insurance Commissioners, that certain entrepreneurs have undertaken to market insurance products to employers and employees at large, claiming these products to be ERISA covered plans. For instance, persons whose primary interest is in the profiting from the provision of administrative services are establishing insurance companies and related enterprises. The entrepreneur will then argue that his enterprise is an ERISA benefit plan which is protected under ERISA's preemption provision from state regulation.

We are concerned with this type of development, but on the basis of the facts provided us, we are of the opinion that these programs are not "employee benefit plans" as defined in Section 3(3). As described to us, these plans are established and maintained by entrepreneurs for the purpose of marketing insurance products or services to others. They are not established or maintained by the appropriate parties to confer ERISA jurisdiction, nor is the purpose for their establishment or maintenance appropriate to meet the jurisdictional prerequisites of the Act. They are no more ERISA plan than is any other insurance policy sold to an employee benefit plan.

LIMITATION ON PREEMPTION OF STATE LAW

Section 514 of ERISA is amended to make clear the extent to which State law is preempted with respect to employee welfare benefit plans which also meet the new multiple employer welfare arrangement definition.

Multiple employer welfare arrangements that do not meet the ERISA welfare plan definition are unconditionally subject to the State law. Such arrangements (i.e. MET's) are not regulated as plan entities under ERISA. This policy was reinforced in Wayne Chemical Inc. against Columbus Agency Service Corp., in which the Court of Appeals for the Seventh Circuit stated:

Congress would have had no reason to exempt from state regulation insurance programs that are established and maintained by entrepreneurs for their own profits.

With respect to multiple employer welfare arrangements which do meet the definition of welfare plan, the amendment amends the ERISA preemption provision to permit limited State regulation of such plans while retaining the full scope of the Federal regulation which is presently applicable. The amendment to the preemption provision is necessary since State regulation is fully preempted under present law.

The amendment identifies two different categories of plan arrangements which may be subject to State regulation. In the first category are welfare plans which first are either fully insured or second, are not fully insured but have obtained an exemption from the Department of Labor that they meet the ERISA "employee welfare benefit plan" definition. States may regulate such plans under their insurance laws, but such regulation is restricted to standards requiring the maintenance of contribution and reserve levels considered necessary for such plans to pay promised benefits in full when due.

In the second category are all other welfare plans which first, meet the definition of multiple employer welfare arrangement, second, are not fully insured, and third, have not obtained the above mentioned exemption from the Department of Labor. These plans are subject to ERISA and whatever State law may apply to them (except to the extent that the State law may be inconsistent with the Federal law under title I of ERISA).

Another provision (new ERISA section 514(b)(6)(C)) clarifies present law and deals with a question which has arisen as to whether ERISA applies to any aspect of a multiple employer welfare arrangement which does not meet the ERISA welfare plan definition (hereinafter referred to as a MET).

Since employers frequently subscribe to these MET arrangements to provide employees with welfare benefits, there is a strong presumption that ERISA applies. The Department of Labor, which has taken the position that the MET itself does not constitute a single umbrella-like employee benefit plan, has consistently maintained that each employer or union which subscribes to the MET has established its own employee benefit plan. Under this analysis, the MET is not a single large plan, but rather a funding vehicle for a number of small individual employee benefit plans.

This analysis does not jeopardize the application of State law to the MET because it is clear even under present law that State law may apply to funding vehicles for plans; for example, State insurance laws obviously apply to licensed insurance companies which underwrite benefits in a number of individual employer or union established employee benefit plans. It also fills a gap in State law by subjecting the operators of the MET to the reporting, disclosure, and fiduciary standards of ERISA to the extent they are administrators and fiduciaries to these subscribing welfare plans.

The Department of Labor's analysis is entirely consistent with the congressional intent under ERISA. Nevertheless, the Court of Appeals for the Fifth Circuit, in *Taggart Corp.* v. *Life & Health Benefits Administration*, 617 F.2d 1208 (5th Cir. 1980), has held that ERISA does not apply to the plans which subscribe to the MET. Even more disturbing is the reasoning of this decision which holds that employers which purchase insurance to underwrite benefits and/or which hire third parties to administer the plans do not establish welfare plans covered by ERISA. This reasoning is wholly inconsistent with the language of ERISA, its legislative history, the case law and the shared understanding of the employee benefit plan community. It is also a critical issue because it affects the jurisdictional scope of ERISA.

While there is every reason to believe that the courts will readily see the error of the Taggart decision (e.g., the Court of Appeals for the 11th Circuit has in an en banc hearing ruled that ERISA applies to the "plans" that subscribe to a MET) to reconsider the Taggart decision, section 514(b)(6)(C) makes it clear that welfare plans which subscribe to or use MET's as a funding vehicle are subject

(as ERISA plans) to the applicable provisions of title I, including the preemption provisions (which preempt State law in connection with such plans).

EXEMPTION FOR CERTAIN PLANS

A new section 514(b)(6)(B) is added to ERISA which allows multiple employer welfare arrangements which are not fully insured to apply to the Secretary of Labor for an exemption from section 514(b)(6)(A)(ii) if they meet the requirements under sections 3(1) and 4 necessary to be considered employee welfare benefit plans to which title I applies.

Legitimate ERISA plans which obtain such an exemption will, as a result, be subject only to those standards of State law specified in section 514(b)(6)(A)(i). The Secretary of Labor would not have to consider any application for an exemption unless the Secretary determines that an exemption process pursuant to regulations is necessary.

In summary, the amendment would allow added protections of State law to apply to multiple employer welfare arrangements by: First, clarifying that non-ERISA plan MET's are fully subject to State law; second, allowing State insurance law which does not conflict with ERISA to apply to nonfully insured, noncertified ERISA plan arrangements; and third, allowing State financial solvency requirements to apply to fully insured, and certified ERISA plan arrangements. It is not intended that fully insured ERISA plans will be subject to increased regulation at the State level. In fact, the National Association of Insurance Commissioners has provided written assurance that it is not the intent of any State insurance commissioner to regulate these fully insured plans or the underlying insured in a manner different from that which occurs at present. It is expected that the Department of Labor will provide applicable State insurance commissioners with immediate notice of any application for exemption under section 514(b)(6)(B).●

● Mr. VENTO. Mr. Speaker, I rise in support of H.R. 5470 and in particular the provision in this bill which provides for the tax treatment of foster care payments for children.

Mr. Speaker, the passage of legislation to make difficulty-of-care payments and basic payments as nontaxable income is desperately needed.

"Difficulty of care" payments are the additional payments that foster parents receive for the care of physically, mentally, and emotionally handicapped children. These payments, which are provided by nearly every State, are not significant. They do not enrich foster parents. Indeed, they barely cover the unique costs that these children present.

While these payments are not a gold mine to foster parents, they do, however, represent a significant cost savings to the State. Rather than funding the full costs for the institutionalization of a child, the State, under the difficulty of care payment is payable to pay a smaller portion.

Obviously, this approach has several positive features. The child is removed from the institutional background and is placed in a home environment; the State's financial burden is significantly reduced; and foster parents are provided with a small modicum of financial assistance for the burden that they have assumed.

Unfortunately the Internal Revenue Service has chosen to ignore these substantial benefits. Instead, the IRS has initiated a review of foster parents in my district and other areas of Minnesota and in California. The intent of this interview is to charge back taxes for difficulty of care and other foster parent payments. Rather than recognizing the costs associated with the care of foster children and the nature of foster care payments, the IRS is treating such payments as taxable income.

That, Mr. Speaker, is simply not the case. Individuals acting as foster parents do not assume such awesome responsibilities for financial gain. The penalties now being imposed by the IRS will have a negative impact on our Nation's foster care programs. While there is talk of a need for increased voluntarism, the IRS is panelizing such commitments.

Mr. Speaker, the bill before the House does not address all the problems facing foster parents but it is an important start. By passing H.R. 5470, Congress is showing clear support for the cause of foster parents. I urge my colleagues to support this important legislation.●

Mr. CONABLE. Mr. Speaker, I have no further reason to reserve my right to object, and I withdraw my reservation of objection.

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

There was no objection.

A motion to reconsider was laid on the table.

INDIANA WILDERNESS

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2710) to establish the Charles C. Deam Wilderness in the Hoosier National Forest, Ind.

The Clerk read as follows:

S. 2710

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in furtherance of the purposes of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131), certain lands within the Hoosier National Forest, Indiana, which comprise approximately twelve thousand nine hundred and fifty-three acres as generally depicted on a map entitled "Charles C. Deam Wilderness—Proposed", dated April 30, 1982, are hereby designated as wilderness, and therefore as a component of the national wilderness system, and shall be known as the Charles C. Deam Wilderness.

SEC. 2. Subject to valid existing rights, the Charles C. Deam Wilderness as designated by the Act shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by the Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be reference to the effective date of this Act.

SEC. 3. Nothing in this Act shall affect the right of public access to cemeteries located within the Charles C. Deam Wilderness, including the Terril Cemetery. The right of access to privately-owned land completely surrounded by national forest lands within the area, designated by this Act as wilderness and to valid occupancies wholly within the area designated by this Act as wilderness shall be protected in accordance with the provisions of section 5 of the Wilderness Act.

SEC. 4. (a) The Congress finds that—

(1) the Department of Agriculture has completed the second roadless area review and evaluation program (RARE II); and

(2) the Congress has made its own review and examination of national forest roadless areas in Indiana and the environmental impacts associated with alternative allocations of such areas.

(b) On the basis of such review, the Congress hereby determines and directs that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to national forest lands in States other than Indiana, such statement shall not be subject to judicial review with respect to national forest system lands in the State of Indiana;

(2) with respect to the national forest lands in the State of Indiana which were reviewed by the Department of Agriculture in the second roadless area review and evaluation (RARE II), that review and evaluation shall be deemed for the purposes of the initial land management plans required for such lands by the Forest and Rangeland Renewal Resources Planning Act of 1974 as amended by the National Forest Managemnt Act of 1976 (Public Law 94-588) to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revision of the initial plans and in no case prior to the date established by law for completion of the initial planning cycle;

(3) areas in the State of Indiana reviewed in such final environmental statement and not designated as wilderness by this Act shall be managed for multiple use pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976; and

(4) unless expressly authorized by Congress the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of national forest system lands in the State of Indiana for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

SEC. 5. As soon as practiable after enactment of this Act, maps and legal descrip-

tions of the Wilderness Area shall be filed with the Committees on Agriculture and Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, and such maps and legal descriptions shall have the same force and effect as if included in this Act: *Provided, however,* That corrections of clerical and typographical errors in such legal descriptions and maps may be made.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Ohio (Mr. SEIBERLING) will be recognized for 20 minutes, and the gentleman from Alaska (Mr. YOUNG) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio (Mr. SEIBERLING).

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

Mr. Speaker, I rise in strong support of S. 2710. This bill would resolve a longstanding controversy over the issue of wilderness in the Hoosier National Forest in Indiana by designating a 12,953-acre Charles C. Deam Wilderness. Concurrently, the bill confirms the Forest Service's April 16, 1979, release of certain other roadless lands in the forest and continues their availability for nonwilderness types of multiple use as may be deemed appropriate through the national forest land management planning process.

Mr. Speaker, I am especially gratified that we are able to recommend approval of this consensus bill today, as S. 2710 will complete action on a series of Forest Service and citizen group wilderness proposals in the Hoosier National Forest which date back to 1973. Over the years, the initial 16,727 acre Forest Service proposal was modified nearly a dozen times by various groups, but no bill has ever passed Congress. In 1974 a 30,750 wilderness bill (S. 3433) passed the Senate, but the House took no action. Subsequent compromise efforts failed to achieve total consensus until 1978 when the so-called 16,850 Salt Creek compromise was reached. I was fortunate to be able to inspect the lands involved in the Salt Creek compromise in June 1980, and it was my opinion that the compromise represented a reasonable proposal which would protect a solid core of lands possessing excellent opportunities for primitive recreation and management in their natural state. However, opposition to this compromise surfaced from the State department of natural resources, which did not want some 3,200 acres of lands leased from the U.S. Army Corps of Engineers land included in the wilderness. After more than a year of discussion, Indiana Governor Orr offered an alternative 12,953-acre proposal, and that is the proposal before us today in S. 2710.

Mr. Speaker, the need for designation of some wilderness in Indiana should be apparent. Although the State is in excess of 20 million acres in size, not a single acre is currently designated as wilderness. Most Indiana residents must now drive over 1 day just to reach small designated wilderness areas in southern Kentucky or southern Illinois. Given these facts it is no wonder that many Indiana residents have worked so long and hard to see a wilderness established in the Hoosier National Forest. Not only will wilderness designation provide opportunities for primitive recreation, but it will insure that at least one area in the State of significant size will be protected from development and allowed to return eventually to a near virgin forest condition. This will be a boon to scientific research and provide an outdoor classroom for various groups and institutions, including Indiana University, which is located less than 15 miles from the proposed wilderness.

It will also provide habitat protection for the numerous wildlife species which have been shown to thrive in an unmanaged and undeveloped forest environment. Further, wilderness designation does not preclude sport hunting or nonconsumptive use of wildlife when such activities are conducted in a manner which preserve the untrammeled condition of the wilderness environment.

Mr. Speaker, before concluding, I should mention several features of S. 2710 which deserve special comment because they relate to overall wilderness policy. These issues are as follows:

Name of wilderness: S. 2710 departs from the general policy followed by the Committee on Interior and Insular Affairs that wilderness areas not be named after individuals, except for nationally recognized historical persons such as John Muir, Jim Bridger, and Bob Marshall. In the case of S. 2710, however, we are willing to make an exception in deference to the unanimous wishes of the Indiana delegation to have the wilderness named after Charles C. Deam. Mr. Deam was Indiana's first State forester, the author of several books on the trees and shrubs of Indiana, and is known throughout the State for his conservation efforts.

Release language: As I mentioned earlier, S. 2710 not only designates the Charles C. Deam Wilderness, but also confirms the April 1979 release of another roadless area in the Hoosier National Forest—the 7,000 acre Mogan Ridge area, RARE II No. 09342—and continues its availability—since 1979—for such nonwilderness types of multiple use as may be deemed appropriate through the national forest land management planning process. The release formula found in section 4 of S. 2710 is virtually identical to the formula that has already become law for national forest lands in Alaska, Colorado, and New Mexico and has the same legal effect. Under this formula, released lands may be managed for uses deemed appropriate in accordance with the land management plans prepared for such areas pursuant to the National Forest Management Act [NFMA]. Further wilderness review of such released lands will not occur until the initial land management plans prepared pursuant to NFMA are revised some 10 to 15 years after their implementation, at which time NFMA specifically requires a review and consideration of all multiple uses, including wilderness.

Of course, such released lands will only be reviewed for wilderness potential if they still possess wilderness characteristics at such time as NFMA plans are revised each 10 to 15 years.

Two-unit wilderness: The proposed wilderness is actually designated in two units separated by the Tower Ridge Road. This road will remain open to the public with the wilderness units on either side. In order to allow for maintenance of the road the official wilderness boundary will be set back 100 feet north and south of the centerline of the Tower Ridge Road.

Private inholdings: The proposed wilderness contains some small private inholdings. Pursuant to section 5(c) of the Wilderness Act, these inholdings may be acquired by the Government only if the landowner concurs in the acquisition. In short, wilderness designation specifically prohibits any forced acquisition of inholdings by condemnation. Further, S. 2710 provides for adequate access to such inholdings in accordance with the provisions of section 5 of the Wilderness Act.

In conclusion, Mr. Speaker, I strongly support S. 2710 and note that the bill is endorsed by the entire Indiana delegation, Governor Orr, the Reagan administration and the environmental and other interest groups affected. I think I have explained the bill's provisions, but those wishing further details should consult the House and Senate committee reports on S. 2710. Finally, I would like to particularly commend my friend and colleague LEE HAMILTON for the diligent efforts he has put into resolving this controversial matter. Without his and the rest of the delegation's consistent hard work and efforts to reach a compromise, we would not be where we are today in recommending this bill for the President's signature.

Mr. Speaker, I now yield such time as he may consume to the gentleman from Indiana (Mr. HAMILTON)

Mr. HAMILTON. Mr. Speaker, I wish to express my appreciation to the gentleman from Ohio and the ranking minority Member for the excellent co-

operation we have had throughout consideration of this bill.

Mr. Speaker, I appreciate the opportunity to support S. 2710, a bill to establish the Charles C. Deam Wilderness Area in the Hoosier National Forest in Indiana.

As you know, S. 2710 would set-aside a 12,900-acre tract in south-central Indiana as a national wilderness area. Much of this area, which contains very impressive hardwood and wildlife populations, is found in my congressional district. The bill provides that all remaining RARE II lands in the Hoosier National Forest will be released for multiple-use management by the U.S. Forest Service. Any further statewide review for wilderness designation would require an act of Congress.

Mr. Speaker, the controversy over a wilderness designation in Indiana has been a long and difficult one. However, this bill, based upon the recommendations of Indiana Governor Orr, is a good compromise enjoying widespread, bipartisan support. It was jointly introduced in the Senate by Senators QUAYLE and LUGAR; and the House version Representative DECKARD and I introduced has been cosponsored by the entire Indiana delegation. I have added to the subcommittee record statements by Governor Orr, Jeffrey Stant of the Salt Creek Wilderness Coalition, Eugene Hazel of the Citizens Concerned about Nebo Ridge, James Mason of the Indiana Audubon Society, and Tim Mahoney on behalf of the Indiana Sierra Club—all endorsing S. 2710.

On August 12, the Senate Committee on Energy and Natural Resources held hearings on S. 2710, and I testified at that time. The bill was endorsed by all witnesses, including administration spokesmen. S. 2710 was approved with technical amendments by a unanimous committee vote of 17 to 0. On October 1 it passed the Senate by voice vote.

Mr. Speaker, I hope that the House will move as quickly, and that we will be able to pass this compromise during the remaining few days of this session. I have greatly appreciated the fine work and cooperation I have received from the gentleman from Ohio (Mr. SEIBERLING) and his subcommittee staff on this matter over the years, as well as his present willingness to act expeditiously on S. 2710.

Mr. YOUNG of Alaska. Mr. Speaker, I yield such time as he may consume to the gentleman from Indiana (Mr. DECKARD).

Mr. DECKARD. Mr. Speaker, I rise in support of S. 2710, which would establish the Charles Deam Wilderness Area in southern Indiana. This will be the only wilderness area in the State of Indiana and is the result of more than a decade of negotiation and compromise by interested parties in and out of government. Designation of the area is supported by Indiana's Gov. Robert Orr, by environmental and business groups, and by the entire Indiana congressional delegation.

A small portion of the proposed area is located within my district, and the full 13,000-acre site is itself a small part of the Hoosier National Forest, therefore it will easily be consistent with the multiple-use aspects of the forest. Passage of this bill will not, in any way, affect the broader resource management goals of the Hoosier National Forest.

Mr. Speaker, I would only reemphasize that this is a bipartisan, consensus bill, cosponsored by every member of the Indiana House and Senate delegation, and I urge its passage.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. SEIBERLING) that the House suspend the rules and pass the Senate bill, S. 2710.

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

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill, S. 2710, just passed.

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

There was no objection.

PARLIAMENTARY INQUIRY

Mr. SEIBERLING. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. SEIBERLING. Is it correct that the majority leader does not wish to take up the remaining bills on the Suspension Calendar at this time?

The CHAIRMAN. The Chair will ask the majority leader to make a statement.

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

Mr. SEIBERLING. I am happy to yield.

Mr. WRIGHT. The gentleman is correct. We have discussed the bills that otherwise would be eligible for immediate consideration, and there are Members on the minority side who have objections to some of them and particular objections lie at this moment.

Beyond that, the weather is said to be bad and inclement conditions in the streets reportedly getting worse. Members of the House have been invited to the White House tonight and their families are expecting to go. We think the sooner we get out of here the better off we will be tonight.

There will be opportunities, we hope, in the remainder of the week for the consideration of additional bills on the Suspension Calendar.

Mr. SEIBERLING. I wonder if I could inquire of the gentleman, we have one other bill which I think is relatively noncontroversial, but I would like to ask the ranking minority member on the subcommittee if we could expeditiously dispose of S. 1965, the Paddy Creek Wilderness bill.

Mr. YOUNG of Alaska. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. I believe the majority leader has placed it very clearly. I do not object to the bill. It is my bill.

But there was a tentative agreement that if the Indian wilderness bill was taken up and passage would take place that we would vote.

We have about 40 or 45 minutes of voting here and, in all due respect, I think it would be the correct way to accomplish this and get the vote out of the way.

Mr. SEIBERLING. I do not wish to delay matters and I thank the majority leader and yield back.

AUTHORIZING SALE OF DEFENSE MATERIALS TO U.S. COMPANIES FOR SALE TO FRIENDLY FOREIGN COUNTRIES

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 6758) to authorize the sale of defense articles, defense services, and unclassified defense service publications to U.S. companies for incorporation into end items to be sold to friendly foreign countries, with Senate amendments thereto, and concur in the Senate amendment.

□ 1710

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert:

That the Arms Export Control Act is amended by inserting after chapter 2A the following new chapter:

"Chapter 2B.—SALES TO UNITED STATES COMPANIES FOR INCORPORATION INTO END ITEMS

"SEC. 30. GENERAL AUTHORITY.—(a) Subject to the conditions specified in subsection (b) of this section, the President may, on a negotiated contract basis, under cash terms (1) sell defense articles at not less than their estimated replacement cost (or actual cost in the case of services), or (2) procure or

manufacture and sell defense articles at not less than their contract or manufacturing cost to the United States Government, to any United States company for incorporation into end items (and for concurrent or follow-on support) to be sold by such a company on a direct commercial basis to a friendly foreign country or international organization pursuant to an export license or approval under section 38 of this Act. The President may also sell defense services in support of such sales of defense articles, subject to the requirements of this chapter: *Provided, however,* That such services may be performed only in the United States. The amount of reimbursement received from such sales shall be credited to the current applicable appropriation, fund, or account of the selling agency of the United States Government.

"(b) Defense articles and defense services may be sold, procured and sold, or manufactured and sold, pursuant to subsection (a) of this section only if (1) the end item to which the articles apply is to be procured for the armed forces of a friendly country or international organization, (2) the articles would be supplied to the prime contractor as government-furnished equipment or materials if the end item were being procured for the use of the United States Armed Forces, and (3) the articles and services are available only from United States Government sources or are not available to the prime contractor directly from United States commercial sources at such times as may be required to meet the prime contractor's delivery schedule.

"(c) For the purpose of this section, the terms 'defense articles' and 'defense services' mean defense article and defense services as defined in sections 47(3) and 47(4) of this Act.".

SEC. 2. Sections 42(d) and 42(e) of the Arms Export Control Act are amended by striking out "and 29" wherever it appears and inserting in lieu thereof "29 and 30".

SEC. 3. Section 21(i)(1) of the Arms Export Control Act is amended by deleting the comma following "under this section" and inserting in lieu thereof "or under authority of chapter 2B,".

Amend the title so as to read: "An Act to authorize the sale of defense articles to United States companies for incorporation into end items to be sold to friendly foreign countries.".

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

Mr. GOODLING. Mr. Speaker, reserving the right to object—and I will not object—I just merely want to say that this is a bill that we passed unanimously here before we went home for the election. Unfortunately, the other body messed it up, and they had to come back and redo it. I strongly support the bill, and I thank the chairman for bringing it forth.

Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

Debate has been concluded on all motions to suspend the rules.

Pursuant to the provision of clause 5, rule I, the Chair will now put the question on each motion on which further proceedings were postponed in the order in which that motion was entertained.

Votes will be taken in the following order: S. 2355, House Joint Resolution 429, H.R. 4281, H.R. 7044, S. 2C59, S. 1621, H.R. 3191, and House Joint Resolution 553, all by the yeas and nays.

The Chair will reduce to 5 minutes the time for any electronic votes after the first such vote in this series.

TELECOMMUNICATIONS FOR THE DISABLED ACT OF 1982

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the Senate bill, S. 2355, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Colorado (Mr. WIRTH) that the House suspend the rules and pass the Senate bill, S. 2355, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 365, nays 14, not voting 54, as follows:

[Roll No. 435]

YEAS—365

Addabbo	Campbell	Early
Akaka	Carman	Eckart
Alexander	Cheney	Edgar
Anderson	Clausen	Edwards (AL)
Andrews	Clay	Edwards (CA)
Annunzio	Clinger	Edwards (OK)
Anthony	Coats	Emerson
Applegate	Coelho	English
Archer	Coleman	Erdahl
Ashbrook	Collins (IL)	Erlenborn
AuCoin	Conable	Evans (IA)
Bafalis	Conte	Evans (IN)
Bailey (MO)	Corcoran	Fary
Bailey (PA)	Coughlin	Fazio
Barnard	Courter	Fenwick
Barnes	Coyne, James	Ferraro
Beard	Coyne, William	Fiedler
Bedell	Craig	Fields
Benedict	Crane, Daniel	Findley
Bennett	D'Amours	Fish
Bereuter	Daniel, R. W.	Fithian
Bethune	Daschle	Flippo
Bevill	Daub	Florio
Biaggi	Davis	Foglietta
Bingham	de la Garza	Foley
Boggs	Deckard	Ford (MI)
Boland	Dellums	Ford (TN)
Boner	DeNardis	Forsythe
Bonior	Derrick	Fountain
Bonker	Derwinski	Frank
Bouquard	Dicks	Frenzel
Bowen	Dingell	Fuqua
Breaux	Dixon	Garcia
Brinkley	Donnelly	Gaydos
Brodhead	Dorgan	Gejdenson
Broomfield	Dornan	Gejdenson
Brown (CA)	Dowdy	Gephardt
Brown (CO)	Downey	Gibbons
Brown (OH)	Dreier	Gilman
Broyhill	Duncan	Gingrich
Burgener	Dunn	Ginn
Burton, John	Dwyer	Glickman
Burton, Phillip	Dymally	Gonzalez
Byron	Dyson	Goodling
Gore	Martin (NY)	Santini
Gradison	Matsui	Sawyer
Gramm	Mattox	Scheuer
Gray	Mazzoli	Schneider
Gregg	McClory	Schroeder
Grisham	McCloskey	Schulze
Guarini	McCollum	Schumer
Gunderson	McCurdy	Seiberling
Hagedorn	McDade	Sensenbrenner
Hall (IN)	McEwen	Shamansky
Hall (OH)	McGrath	Shannon
Hall, Sam	McHugh	Sharp
Hamilton	McKinney	Shaw
Hammerschmidt	Mica	Shelby
Hance	Michel	Siljander
Hansen (ID)	Mikulski	Simon
Hansen (UT)	Miller (CA)	Skeen
Harkin	Miller (OH)	Skelton
Hawkins	Mineta	Smith (AL)
Heckler	Minish	Smith (IA)
Hefner	Mitchell (MD)	Smith (NE)
Heftel	Molinari	Smith (NJ)
Hendon	Mollohan	Smith (OR)
Hertel	Montgomery	Snowe
Hightower	Moore	Snyder
Hiler	Morrison	Solarz
Hillis	Mottl	Solomon
Hollenbeck	Murphy	Spence
Holt	Murtha	St Germain
Hopkins	Myers	Stangeland
Horton	Napier	Stark
Howard	Natcher	Staton
Hoyer	Nelligan	Stenholm
Hubbard	Nelson	Stokes
Huckaby	Nichols	Stratton
Hughes	Nowak	Studds
Hunter	O'Brien	Swift
Hutto	Oakar	Synar
Hyde	Oberstar	Tauke
Jacobs	Obey	Tauzin
Jeffords	Ottinger	Taylor
Jeffries	Oxley	Traxler
Jones (NC)	Panetta	Trible
Jones (OK)	Parris	Udall
Jones (TN)	Pashayan	Vander Jagt
Kastenmeier	Patman	Vento
Kazen	Patterson	Volkmer
Kemp	Pease	Walgren
Kennelly	Pepper	Walker
Kildee	Perkins	Wampler
Kindness	Petri	Watkins
Kogovsek	Peyser	Waxman
Kramer	Pickle	Weaver
LaFalce	Porter	Weber (MN)
Lagomarsino	Price	Weber (OH)
Lantos	Pritchard	Weiss
Latta	Quillen	White
Leach	Rahall	Whitehurst
Leath	Rangel	Whitley
LeBoutillier	Ratchford	Whittaker
Lee	Regula	Whitten
Leland	Reuss	Williams (MT)
Levitas	Rinaldo	Williams (OH)
Lewis	Ritter	Winn
Livingston	Roberts (KS)	Wirth
Loeffler	Roberts (SD)	Wolf
Long (LA)	Rodino	Wolpe
Long (MD)	Roe	Wortley
Lott	Roemer	Wright
Lowry (WA)	Rogers	Wyden
Lujan	Rose	Wylie
Luken	Rostenkowski	Yates
Lundine	Roth	Yatron
Madigan	Roukema	Young (AK)
Markey	Rousselot	Young (FL)
Marks	Roybal	Young (MO)
Marlenee	Russo	Zablocki
Martin (IL)	Sabo	Zeferetti

NAYS—14

Badham	Dannemeyer	Robinson
Butler	Hall, Ralph	Rudd
Collins (TX)	Johnston	Shumway
Crane, Philip	McDonald	Stump
Daniel, Dan	Paul	

NOT VOTING—54

Albosta	Carney	Emery
Aspin	Chappell	Ertel
Atkinson	Chappie	Evans (DE)
Beilenson	Chisholm	Evans (GA)
Blanchard	Conyers	Fascell
Bliley	Crockett	Fowler
Bolling	Dickinson	Frost
Brooks	Dougherty	Goldwater

Green	Marriott	Railsback
Hartnett	Martin (NC)	Rhodes
Hatcher	Martinez	Rosenthal
Holland	Mavroules	Savage
Ireland	Mitchell (NY)	Shuster
Jenkins	Moakley	Smith (PA)
Lehman	Moffett	Stanton
Lent	Moorhead	Thomas
Lowery (CA)	Neal	Washington
Lungren	Pursell	Wilson

Mr. BUTLER and Mr. PHILIP M. CRANE changed their votes from "yea" to "nay."

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

The result of the vote was announced as above recorded.

The title was amended so as to read: "A bill to amend the Communications Act of 1934 to provide reasonable access to telephone service for persons with impaired hearing and to enable telephone companies to accommodate persons with other physical disabilities."

A motion to reconsider was laid on the table.

□ 1730

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on all the additional motions to suspend the rules on which the Chair has postponed further proceedings.

STATE COMMISSIONS ON TEACHER EXCELLENCE

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the joint resolution, House Joint Resolution 429, as amended.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. SIMON) that the House suspend the rules and pass the joint resolution, House Joint Resolution 429, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 225, nays 153, not voting 55, as follows:

[Roll No. 436]

YEAS—225

Addabbo	Bennett	Brodhead
Akaka	Bevill	Brown (CA)
Alexander	Biaggi	Burton, John
Anderson	Bingham	Burton, Phillip
Andrews	Boggs	Byron
Annunzio	Boland	Clay
Anthony	Boner	Clinger
AuCoin	Bonior	Coelho
Bailey (PA)	Bonker	Collins (IL)
Barnard	Bouquard	Conte
Barnes	Bowen	Coyne, William
Bedell	Brinkley	D'Amours
Daschle	Hughes	Price
Davis	Hutto	Pritchard
de la Garza	Hyde	Rahall
Deckard	Jacobs	Rangel
Dellums	Jeffords	Ratchford
DeNardis	Jones (NC)	Reuss
Derrick	Jones (OK)	Rinaldo
Dicks	Jones (TN)	Rodino
Dingell	Kastenmeier	Roe
Dixon	Kazen	Roemer
Donnelly	Kennelly	Rose
Dorgan	Kildee	Rostenkowski
Dowdy	Kogovsek	Roybal
Downey	LaFalce	Russo
Dwyer	Lantos	Sabo
Dymally	Leach	Santini
Dyson	Leland	Scheuer
Early	Levitas	Schneider
Eckart	Long (LA)	Schroeder
Edgar	Long (MD)	Schumer
Edwards (CA)	Lowry (WA)	Seiberling
English	Luken	Shamansky
Erdahl	Lundine	Shannon
Evans (IN)	Madigan	Sharp
Fary	Markey	Shelby
Fazio	Matsui	Simon
Ferraro	Mattox	Skeen
Findley	Mazzoli	Skelton
Fithian	McCloskey	Smith (IA)
Flippo	McCurdy	Smith (NJ)
Florio	McHugh	Snowe
Foglietta	McKinney	Snyder
Foley	Mica	Solarz
Ford (MI)	Mikulski	St Germain
Ford (TN)	Miller (CA)	Stark
Frank	Mineta	Stokes
Fuqua	Minish	Studds
Garcia	Mitchell (MD)	Swift
Gaydos	Mollohan	Synar
Gejdenson	Montgomery	Tauke
Gephardt	Mottl	Tauzin
Gibbons	Murphy	Traxler
Gilman	Murtha	Udall
Ginn	Natcher	Vento
Glickman	Nelligan	Volkmer
Gonzalez	Nelson	Walgren
Gore	Nichols	Watkins
Gray	Nowak	Waxman
Guarini	O'Brien	Weaver
Hall (IN)	Oakar	Weiss
Hall (OH)	Oberstar	White
Hamilton	Obey	Whitley
Hance	Ottinger	Williams (MT)
Hawkins	Panetta	Williams (OH)
Hefner	Patman	Wirth
Heftel	Patterson	Wolpe
Hertel	Pease	Wright
Hollenbeck	Pepper	Wyden
Horton	Perkins	Yates
Howard	Petri	Yatron
Hoyer	Peyser	Young (MO)
Hubbard	Pickle	Zablocki
Huckaby	Porter	Zeferetti

NAYS—153

Applegate	Crane, Daniel	Hagedorn
Archer	Crane, Philip	Hall, Ralph
Ashbrook	Daniel, Dan	Hall, Sam
Badham	Daniel, R. W.	Hammerschmidt
Bafalis	Dannemeyer	Hansen (ID)
Bailey (MO)	Daub	Hansen (UT)
Beard	Derwinski	Heckler
Benedict	Dornan	Hendon
Bereuter	Dreier	Hightower
Bethune	Duncan	Hiler
Breaux	Dunn	Hillis
Broomfield	Edwards (AL)	Holt
Brown (CO)	Edwards (OK)	Hopkins
Brown (OH)	Emerson	Hunter
Broyhill	Erlenborn	Jeffries
Burgener	Evans (IA)	Johnston
Butler	Fenwick	Kemp
Campbell	Fiedler	Kindness
Carman	Fields	Kramer
Cheney	Fish	Lagomarsino
Clausen	Forsythe	Latta
Coats	Fountain	Leath
Coleman	Frenzel	LeBoutillier
Collins (TX)	Gingrich	Lee
Conable	Goodling	Lewis
Corcoran	Gradison	Livingston
Coughlin	Gramm	Loeffler
Courter	Gregg	Lott
Coyne, James	Grisham	Lowery (CA)
Craig	Gunderson	Lujan
Marks	Regula	Stangeland
Marlenee	Ritter	Staton
Martin (IL)	Roberts (KS)	Stenholm
Martin (NY)	Roberts (SD)	Stratton
McClory	Robinson	Stump
McCollum	Rogers	Taylor
McDade	Roth	Trible
McDonald	Roukema	Vander Jagt
McEwen	Rousselot	Walker
McGrath	Rudd	Wampler
Michel	Sawyer	Weber (MN)
Miller (OH)	Schulze	Weber (OH)
Molinari	Sensenbrenner	Whitehurst
Moore	Shaw	Whittaker
Morrison	Shumway	Whitten
Myers	Siljander	Winn
Napier	Smith (AL)	Wolf
Parris	Smith (NE)	Wortley
Pashayan	Smith (OR)	Wylie
Paul	Solomon	Young (AK)
Quillen	Spence	Young (FL)

NOT VOTING—55

Albosta	Evans (GA)	Mitchell (NY)
Aspin	Fascell	Moakley
Atkinson	Fowler	Moffett
Beilenson	Frost	Moorhead
Blanchard	Goldwater	Neal
Bliley	Green	Oxley
Bolling	Harkin	Pursell
Brooks	Hartnett	Railsback
Carney	Hatcher	Rhodes
Chappell	Holland	Rosenthal
Chappie	Ireland	Savage
Chisholm	Jenkins	Shuster
Conyers	Lehman	Smith (PA)
Crockett	Lent	Stanton
Dickinson	Lungren	Thomas
Dougherty	Marriott	Washington
Emery	Martin (NC)	Wilson
Ertel	Martinez	
Evans (DE)	Mavroules	

Mr. DUNCAN changed his vote from "yea" to "nay."

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

CRITICAL MATERIALS ACT OF 1982

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 4281, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kansas (Mr. GLICKMAN) that the House suspend the rules and pass the bill, H.R. 4281, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 215, nays 164, not voting 54, as follows:

[Roll No. 437]

YEAS—215

Addabbo	Bevill	Coelho
Akaka	Biaggi	Coleman
Alexander	Bingham	Collins (IL)
Anderson	Boland	Conte
Andrews	Boner	Coyne, William
Annunzio	Bonior	Craig
Anthony	Bonker	D'Amours
Applegate	Bouquard	Daschle
AuCoin	Brinkley	Davis
Bafalis	Brodhead	de la Garza
Bailey (PA)	Brown (CA)	Deckard
Barnard	Burton, John	Dellums
Barnes	Burton, Phillip	DeNardis
Bedell	Clausen	Derrick
Bennett	Clay	Dicks
Bereuter	Clinger	Dingell

Dixon
Donnelly
Dorgan
Dowdy
Downey
Duncan
Dunn
Dwyer
Dymally
Dyson
Early
Eckart
Edgar
Evans (IA)
Fary
Fazio
Ferraro
Fiedler
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Fuqua
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Ginn
Glickman
Gonzalez
Goodling
Gore
Gray
Hall (IN)
Hall (OH)
Hall, Ralph
Hance
Hansen (ID)
Harkin
Hawkins
Hefner
Heftel
Hertel
Hollenbeck
Howard
Hoyer
Hughes
Hutto
Hyde
Jones (NC)
Jones (TN)
Kastenmeier
Kazen
Kennelly
Kildee
Kogovsek
LaFalce
Lantos
Leach
Leland
Levitas
Long (LA)
Long (MD)
Lowry (WA)
Lujan
Luken
Lundine
Markey
Marlenee
Marriott
Matsui
Mattox
McCurdy
McDade
McEwen
McHugh
McKinney
Mica
Mikulski
Mineta
Minish
Mitchell (MD)
Mollohan
Mottl
Murphy
Murtha
Natcher
Nelson
Nowak
Oberstar
Obey
Ottinger
Panetta
Patman
Patterson
Pease
Pepper
Perkins
Pickle
Price
Rahall
Rangel
Ratchford
Reuss
Rinaldo
Ritter
Rodino
Roe
Rose
Rostenkowski
Roukema
Rousselot
Roybal
Rudd
Russo
Sabo
Santini
Scheuer
Schneider
Schroeder
Schumer
Seiberling
Shamansky
Shannon
Shelby
Simon
Skeen
Skelton
Smith (IA)
Snowe
Solarz
St Germain
Stark
Staton
Stokes
Swift
Synar
Tauke
Traxler
Udall
Vento
Volkmer
Walgren
Waxman
Weaver
Weiss
White
Williams (MT)
Williams (OH)
Wilson
Wirth
Wolf
Wolpe
Wright
Wyden
Yates
Yatron
Young (AK)
Young (MO)
Zablocki
Zeferetti

NAYS—164

Archer
Ashbrook
Badham
Bailey (MO)
Beard
Benedict
Bethune
Bowen
Breaux
Broomfield
Brown (CO)
Brown (OH)
Broyhill
Burgener
Butler
Byron
Campbell
Carman
Cheney
Coats
Collins (TX)
Conable
Corcoran
Coughlin
Courter
Coyne, James
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Dannemeyer
Daub
Derwinski
Dornan
Dreier
Edwards (AL)
Edwards (CA)
Edwards (OK)
Emerson
English
Erdahl
Erlenborn
Evans (IN)
Fenwick
Fields
Findley
Fithian
Forsythe
Fountain
Frenzel
Gingrich
Gradison
Gramm
Gregg
Grisham
Gunderson
Hagedorn
Hall, Sam
Hamilton
Hammerschmidt
Hansen (UT)
Hendon
Hightower
Hiler
Hillis
Holt
Hopkins
Horton
Hubbard
Huckaby
Hunter
Jacobs
Jeffords
Jeffries
Johnston
Jones (OK)
Kemp
Kindness
Kramer
Lagomarsino
Latta
Leath
LeBoutillier
Lee
Lewis
Livingston
Loeffler
Lott
Lowery (CA)
Madigan
Marks
Martin (IL)
Martin (NY)
Mazzoli
McClory
McCloskey
McCollum
McDonald
McGrath
Michel
Miller (CA)
Miller (OH)
Molinari
Montgomery
Moore
Morrison
Myers
Napier
Nelligan
Nichols
O'Brien
Oakar
Oxley
Parris
Pashayan
Paul
Petri
Peyser
Porter
Pritchard
Quillen
Regula
Roberts (KS)
Roberts (SD)
Robinson
Roemer
Rogers
Roth
Sawyer
Schulze
Sensenbrenner
Sharp
Shaw
Shumway
Siljander
Smith (AL)
Smith (NE)
Smith (NJ)
Smith (OR)
Snyder
Solomon
Spence
Stangeland
Stenholm
Stratton
Studds
Stump
Tauzin
Taylor
Trible
Vander Jagt
Walker
Wampler
Watkins
Weber (MN)
Weber (OH)
Whitehurst
Whitley
Whittaker
Whitten
Winn
Wortley
Wylie
Young (FL)

NOT VOTING—54

Albosta
Aspin
Atkinson
Beilenson
Blanchard
Bliley
Boggs
Bolling
Brooks
Carney
Chappell
Chappie
Chisholm
Conyers
Crockett
Dickinson
Dougherty
Emery
Ertel
Evans (DE)
Evans (GA)
Fascell
Fowler
Frost
Goldwater
Green
Guarini
Hartnett
Hatcher
Heckler
Holland
Ireland
Jenkins
Lehman
Lent
Lungren
Martin (NC)
Martinez
Mavroules
Mitchell (NY)
Moakley
Moffett
Moorhead
Neal
Pursell
Railsback
Rhodes
Rosenthal
Savage
Shuster
Smith (PA)
Stanton
Thomas
Washington

□ 1740

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

MAIL ORDER CONSUMER PROTECTION AMENDMENTS OF 1982

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 7044, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. FORD) that the House suspend the rules and pass the bill, H.R. 7044, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 320, nays 61, answered "present" 1, not voting 51, as follows:

[Roll No. 438]

YEAS—320

Addabbo
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
AuCoin
Bafalis
Bailey (PA)
Barnes
Bedell
Benedict
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Boggs
Boland
Boner
Bonior
Bonker
Bouquard
Bowen
Breaux
Brinkley
Brodhead
Broomfield
Brown (CA)
Brown (CO)
Brown (OH)
Broyhill
Burgener
Burton, John
Burton, Phillip
Byron
Campbell
Cheney
Clausen
Clay
Clinger
Coelho
Coleman
Collins (IL)
Conable
Conte
Corcoran
Coughlin
Courter
Coyne, James
Coyne, William
D'Amours
Daniel, Dan
Daniel, R. W.
Daschle
Daub
Davis
de la Garza
Deckard
Dellums
DeNardis
Derrick
Derwinski
Dicks
Dingell
Dixon
Donnelly
Dorgan
Dowdy
Downey
Duncan
Dunn
Dwyer
Dymally
Dyson
Early
Eckart
Edgar
Edwards (AL)
Edwards (CA)
Edwards (OK)
Emerson
English
Erdahl
Erlenborn
Evans (IA)
Evans (IN)
Fary
Fazio
Fenwick
Ferraro
Fiedler
Findley
Fish
Fithian
Flippo
Foglietta
Foley
Ford (MI)
Ford (TN)
Forsythe
Fountain
Frank
Frenzel
Fuqua
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Ginn
Goodling
Gradison
Gray
Grisham
Guarini
Gunderson
Hagedorn
Hall (IN)
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hammerschmidt
Harkin
Hawkins
Hefner
Heftel
Hendon
Hertel
Hightower
Hillis
Hollenbeck
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Jacobs
Jeffords
Jones (NC)
Jones (OK)
Jones (TN)
Kastenmeier
Kazen
Kennelly
Kildee
Kogovsek
LaFalce
Lantos
Latta
Leach
Lee
Leland
Levitas
Lewis
Livingston
Long (LA)
Long (MD)
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Madigan
Markey
Marks
Marriott
Martin (IL)
Martin (NY)
Matsui
Mattox
Mazzoli
McCloskey
McCollum
McCurdy
McDade
McGrath
McHugh
McKinney
Mica
Michel
Mikulski
Miller (CA)
Mineta
Minish
Mitchell (MD)
Molinari
Mollohan
Montgomery
Moore
Morrison
Mottl
Murphy
Murtha
Myers
Napier
Natcher
Nelligan
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Panetta
Parris
Pashayan
Patman
Patterson
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Price
Pritchard
Rahall
Rangel
Ratchford
Regula
Reuss
Rinaldo
Ritter
Roberts (KS)
Roberts (SD)
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rousselot
Roybal
Rudd
Russo
Sabo
Santini
Sawyer
Scheuer
Schneider
Schroeder
Schulze
Schumer
Sensenbrenner
Shamansky
Sharp
Shaw
Shelby
Simon
Skeen
Skelton
Smith (IA)
Smith (NE)
Smith (NJ)
Snowe
Snyder
Solarz
Solomon
Spence
St Germain
Stangeland
Stark
Stenholm
Stokes
Studds
Synar
Tauke
Tauzin
Taylor
Traxler
Trible
Udall
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weber (OH)
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams (MT)
Williams (OH)
Wilson
Winn
Wirth
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yatron
Young (AK)
Young (FL)
Young (MO)
Zablocki
Zeferetti

NAYS—61

Archer
Ashbrook
Badham
Bailey (MO)
Barnard
Beard
Butler
Carman
Coats
Collins (TX)
Craig
Crane, Daniel

Crane, Philip	Johnston	Quillen
Dannemeyer	Kemp	Roemer
Dornan	Kindness	Seiberling
Dreier	Kramer	Shannon
Evans (GA)	Lagomarsino	Shumway
Fields	Leath	Siljander
Florio	LeBoutillier	Smith (AL)
Gingrich	Loeffler	Smith (OR)
Glickman	Marlenee	Staton
Gore	McClory	Stratton
Gramm	McDonald	Stump
Gregg	McEwen	Swift
Hance	Miller (OH)	Vander Jagt
Hansen (ID)	Ottinger	Weber (MN)
Hansen (UT)	Oxley	Yates
Hiler	Paul	
Jeffries	Porter	

ANSWERED "PRESENT"—1

Gonzalez

NOT VOTING—51

Albosta	Ertel	Martinez
Aspin	Evans (DE)	Mavroules
Atkinson	Fascell	Mitchell (NY)
Beilenson	Fowler	Moakley
Blanchard	Frost	Moffett
Bliley	Goldwater	Moorhead
Bolling	Green	Neal
Brooks	Hartnett	Pursell
Carney	Hatcher	Railsback
Chappell	Heckler	Rhodes
Chappie	Holland	Rosenthal
Chisholm	Ireland	Savage
Conyers	Jenkins	Shuster
Crockett	Lehman	Smith (PA)
Dickinson	Lent	Stanton
Dougherty	Lungren	Thomas
Emery	Martin (NC)	Washington

□ 1750

Mr. PORTER and Mr. CRAIG changed their votes from "yea" to "nay".

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, was amended, was passed.

The result of the vote as announced was above recorded.

The title was amended so as to read: "A bill to amend title 39, United States Code, to strengthen the investigatory and enforcement powers of the Postal Service by authorizing certain investigatory authority and by providing for civil penalties for violations of orders under section 3005 of such title (pertaining to schemes for obtaining money by false representations or lotteries), and for other purposes."

A motion to reconsider was laid on the table.

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate bill (S. 1407) to amend title 39, United States Code, by strengthening the investigatory and enforcement powers of the Postal Service by authorizing inspection authority and by providing for civil penalties for violations of orders under section 3005 of such title (pertaining to schemes for obtaining money by false representations or lotteries), and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

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

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1407

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 "Mail Order Consumer Protection Amendments of 1982".

INSPECTION AUTHORITY

SEC. 2. (a) Chapter 4 of title 39, United States Code, is amended by adding at the end thereof the following new section:

"§ 413. Inspection authority

"(a) The Postal Service may require, pursuant to a written demand made under this section, that any officer or employee designated by the Postal Service be given access at reasonable times to inspect or copy any books, records, documents, or other objects that the Postal Service has reason to believe relate to any matter (except a matter pertaining to chapter 6 of this title or to the provisions of title 18 concerning the carriage of letters by private express) under investigation by the Postal Service pursuant to its authority under section 404(a)(7) of this title. Any written demand under this section shall describe with reasonable particularity the items sought to be examined, and shall specify a reasonable time and place for making the inspection. No written demand issued under this section may impose an unreasonable burden upon the party to whom the demand is issued. The Postal Service shall, after reasonable notice and opportunity for interested parties to comment, issue regulations providing procedures and conditions for exercising its inspection authority under this section.

"(b) If a person issued a written demand under subsection (a) refuses to obey such demand, any district court of the United States within the judicial district within which such person is found, resides, receives mail, or otherwise transacts business, may (upon application by the Postal Service) order such person to comply with the written demand issued under subsection (a). Any failure to obey such order of the court may be punished by the court as a contempt thereof.".

(b) The table of sections of chapter 4 of title 39, United States Code, is amended by inserting after the item relating to section 412 the following new item:

"413. Inspection authority.".

AMENDMENT TO SECTION 3005

SEC. 3. Section 3005 of title 39, United States Code, is amended to read as follows:

"§ 3005. False representations; lotteries

"(a)(1) The Postal Service may issue an order described under paragraph (1) or (2) of subsection (b), or both such orders, upon determining on the basis of evidence satisfactory to the Postal Service that any person—

"(A) is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations, including the mailing of matter which is nonmailable under section 3001(d) of this title; or

"(B) is engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind.

The mailing by any person of matter which is nonmailable under section 3001(d) shall constitute prima facie evidence that such person is engaged in conducting a scheme or device described by subparagraph (A).

"(2) Nothing contained in this subsection shall prohibit the mailing of—

"(A) a newspaper of general circulation containing advertisements, lists of prizes, or information concerning a lottery conducted by a State acting under authority of State law, published in that State, or in an adjacent State which conducts such a lottery; or

"(B) tickets or other materials concerning such a lottery within that State to addresses within that State.

As used in this paragraph, the term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(b) When permitted under subsection (a), the Postal Service may issue—

"(1) an order which—

"(A) directs the postmaster of the post office at which mail arrives, addressed to any person engaged in an activity described by subsection (a)(1) (or to any representative of such person), to return such mail to the sender appropriately marked as in violation of this section if such person or representative is first notified and given reasonable opportunity to be present at the receiving post office to survey the mail before the postmaster returns the mail to the sender; and

"(B) forbids the payment by a postmaster to such person or representative of any money order drawn to the order of either, and provides for the return to the remitter of the sum named in the money order; or

"(2) an order which requires any person (or representative of such person) engaged in an activity described by subsection (a)(1) to cease and desist from such activity.

"(c)(1) The public advertisement by a person engaged in activities described by subsection (a)(1) that remittances may be made by mail to a person named in the advertisement is prima facie evidence that the latter is the agent or representative of the advertiser for the receipt of remittances on behalf of the advertiser. The Postal Service may ascertain the existence of the agency relationship in any other legal way satisfactory to it.

"(2) As used in this section and in section 3006 of this title, the term 'representative' includes an agent, or representative acting as an individual or as a firm, bank, corporation, or association of any kind.

"(d)(1) In conducting investigations to determine whether any person is engaged in activities described by subsection (a)(1), the Postal Service (or any duly authorized agent of the Postal Service) may tender at any reasonable time, and by any reasonable means, the price of any article or service that such person has offered for sale by mail. If the United States district court determines that there has been an unreasonable failure by any such person to provide the article or service to the Postal Service or its agent upon the tender of the advertised price of the article or service, such failure shall, for purposes of section 3007 of this title, constitute probable cause to believe that such person is engaged in activities described by subsection (a)(1).

"(2) If the Postal Service issues to any person a written demand, under section 413 of this title, to inspect documents or other items in the course of investigations to determine whether such person is engaged in activities described by subsection (a)(1), and if the United States district court deter-

mines that there has been an unreasonable refusal, such refusal by such person to comply with such demand shall, for purposes of section 3007 of this title, constitute probable cause to believe that such person is engaged in activities described by such subsection.

"(3) The Postal Service shall, after reasonable notice and opportunity for interested parties to comment, issue regulations regarding reasonable conditions for compliance with written demands to inspect documents or other items under paragraph (2), and reasonable conditions for providing the article or service involved upon tender of the advertised price under paragraph (1).".

CIVIL PENALTIES

SEC. 4. (a) Chapter 30 of title 39 of the United States Code is amended by adding after section 3011 the following new section:

"§ 3012. Civil penalties

"(a) Any person—

"(1) who evades or attempts to evade the effect of an order issued under section 3005(b)(1);

"(2) who fails to comply with any order issued under section 3005(b)(2); or

"(3) who (other than a publisher described by section 3007(b)) has actual knowledge of any such order, is in privity with any person described by paragraph (1) or (2), and engages in conduct which assists any such person to evade, attempt to evade, or fail to comply with any such order (as the case may be);

shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each day that such person engages in conduct described by paragraph (1), (2), or (3). If orders are issued under both paragraphs (1) and (2) of section 3005(b) with respect to any activity described under section 3005(a), separate penalties may be assessed under this subsection for conduct described by paragraphs (1) and (2) of this subsection. The resumption through use of any instrumentality of interstate commerce of any activity with respect to which a cease and desist order has been issued under section 3005(b)(2) of this title shall, for purposes of this subsection, be considered to be a failure to comply with such order.

"(b)(1) Whenever, on the basis of any information available to it, the Postal Service finds that any person is engaging in conduct described by paragraph (1), (2), or (3) of subsection (a), the Postal Service may commence a civil action to enforce the civil penalties established under such subsection. Any such action shall be brought in the district court of the United States for the district in which such conduct occurred or in which the defendant resides, transacts business, or receives mail.

"(2) In determining the amount of any civil penalty, the court shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to conduct lawful business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.".

(b) The amendment made by subsection (a) shall apply with respect to conduct which occurs on or after the date of the enactment of this Act.

(c) The table of sections of chapter 30 of title 39, United States Code, is amended by inserting after the item relating to section 3011 the following new item:

"3012. Civil penalties.".

ANNUAL STATEMENTS

SEC. 5. Section 2401(g) of title 39, United States Code, is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) investigative activities of the Postal Service, including a statistical summary of matters referred for prosecution and the results thereof, the number of investigative demands issued pursuant to section 413 of this title, and a statistical summary of administrative and civil actions initiated pursuant to sections 3005 and 3007 of this title;".

MOTION OFFERED BY MR. FORD OF MICHIGAN

Mr. FORD of Michigan. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. FORD of Michigan moves to strike out all after the enacting clause of the Senate bill, S. 1407, and insert in lieu thereof the provisions of the bill, H.R. 7044, as passed by the House.

PARLIAMENTARY INQUIRY

Mr. DANNEMEYER. Mr. Speaker, a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. DANNEMEYER. What is the parliamentary situation with respect to the bringing to the attention of the House this Senate bill relating to the subject matter at this time?

The SPEAKER pro tempore. By unanimous consent it is brought before the body.

Mr. FORD of Michigan. If the gentleman will yield to me, I will try to tell him what we are doing.

Mr. DANNEMEYER. May I inquire, Is this being done on the basis of a unanimous-consent request?

The SPEAKER pro tempore. Yes, it is.

Mr. DANNEMEYER. Mr. Speaker, I object.

The SPEAKER pro tempore. The gentleman is tardy on his objection on that.

Mr. FORD of Michigan. Mr. Speaker, what I am trying to do now is substitute the language of the House bill as we amended it to take out the section the gentleman wanted taken out, for the language of the Senate bill so that we can send it back without any of the offending language. What we have now is a motion to adopt as a substitute for all the language of the Senate bill the House bill as the gentleman and I have amended it.

Mr. DANNEMEYER. On the basis of that explanation, I withdraw my objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. FORD).

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to amend title 39, United States Code, to strengthen the investigatory and enforcement powers of the Postal Service by authorizing certain investigatory authority and by providing for civil penalties for violations of orders under section 3005 of such title (pertaining to schemes for obtaining money by false representations or lotteries), and for other purposes.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 7044) was laid on the table.

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, there were 300 cosponsors of the bill, and therefore I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

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

There was no objection.

ETHICS IN GOVERNMENT ACT AMENDMENTS OF 1982

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the Senate bill, S. 2059, as amended.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SAM B. HALL, JR.) to suspend the rules and pass the Senate bill, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 347, nays 37, not voting 49, as follows:

[Roll No. 439]

YEAS—347

Addabbo	Broomfield	Dellums
Akaka	Brown (CA)	DeNardis
Alexander	Broyhill	Derrick
Anderson	Burgener	Dickinson
Andrews	Burton, John	Dicks
Annunzio	Burton, Phillip	Dingell
Anthony	Byron	Dixon
Applegate	Campbell	Donnelly
Archer	Carman	Dorgan
AuCoin	Clausen	Dornan
Bafalis	Clay	Dowdy
Bailey (PA)	Clinger	Downey
Barnard	Coats	Duncan
Barnes	Coelho	Dunn
Beard	Coleman	Dwyer
Bedell	Collins (IL)	Dymally
Bennett	Conable	Dyson
Bereuter	Conte	Early
Bethune	Corcoran	Eckart
Bevill	Coughlin	Edgar
Biaggi	Courter	Edwards (AL)
Bingham	Coyne, James	Edwards (CA)
Boggs	Coyne, William	Edwards (OK)
Boland	D'Amours	Emerson
Boner	Daniel, Dan	English
Bonior	Daniel, R. W.	Erdahl
Bonker	Dannemeyer	Erlenborn
Bouquard	Daschle	Evans (GA)
Bowen	Daub	Evans (IA)
Breaux	Davis	Evans (IN)
Brinkley	de la Garza	Fary
Brodhead	Deckard	Fazio

Fenwick
Ferraro
Fiedler
Fields
Findley
Fish
Fithian
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Fountain
Frank
Frenzel
Fuqua
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Ginn
Glickman
Gonzalez
Goodling
Gore
Gradison
Gramm
Gray
Gregg
Grisham
Guarini
Gunderson
Hagedorn
Hall (IN)
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hammerschmidt
Hance
Hansen (UT)
Harkin
Hawkins
Hefner
Heftel
Hendon
Hertel
Hightower
Hiler
Hollenbeck
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Jacobs
Jeffords
Jones (NC)
Jones (OK)
Jones (TN)
Kastenmeier
Kazen
Kemp
Kennelly
Kildee
Kogovsek
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach
Leath
LeBoutillier
Lee
Leland
Levitas
Lewis
Loeffler
Long (LA)
Long (MD)
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Madigan
Markey
Marks
Marlenee
Marriott
Martin (IL)
Martin (NY)
Matsui
Mattox
Mazzoli
McClory
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McKinney
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Mineta
Minish
Mitchell (MD)
Molinari
Mollohan
Montgomery
Moore
Morrison
Mottl
Murtha
Napier
Natcher
Nelligan
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Ottinger
Panetta
Parris
Pashayan
Patman
Patterson
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Price
Pritchard
Quillen
Rahall
Rangel
Ratchford
Regula
Reuss
Rinaldo
Ritter
Roberts (KS)
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Roybal
Rudd
Russo
Sabo
Santini
Sawyer
Scheuer
Schneider
Schroeder
Schulze
Schumer
Seiberling
Sensenbrenner
Shamansky
Shannon
Sharp
Shaw
Shelby
Siljander
Simon
Skeen
Skelton
Smith (AL)
Smith (IA)
Smith (NE)
Smith (NJ)
Snowe
Snyder
Solarz
Solomon
Spence
St Germain
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Swift
Synar
Tauke
Tauzin
Taylor
Traxler
Trible
Udall
Vander Jagt
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
Weaver
Weber (MN)
Weber (OH)
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams (MT)
Williams (OH)
Winn
Wirth
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (FL)
Young (MO)
Zablocki
Zeferetti

NAYS—37

Ashbrook
Badham
Bailey (MO)
Benedict
Brown (CO)
Brown (OH)
Butler
Cheney
Collins (TX)
Craig
Crane, Daniel
Crane, Philip
Derwinski
Dreier
Forsythe
Gingrich
Hansen (ID)
Hillis
Jeffries
Johnston
Kindness
Livingston
Lott
McDonald
Murphy
Myers
O'Brien
Oxley
Paul
Pursell
Roberts (SD)
Rousselot
Shumway
Smith (OR)
Staton
Wilson
Young (AK)

NOT VOTING—49

Albosta
Aspin
Atkinson
Beilenson
Blanchard
Bliley
Bolling
Brooks
Carney
Chappell
Chappie
Chisholm
Conyers
Crockett
Dougherty
Emery
Ertel
Evans (DE)
Fascell
Fowler
Frost
Goldwater
Green
Hartnett
Hatcher
Heckler
Holland
Ireland
Jenkins
Lehman
Lent
Lungren
Martin (NC)
Martinez
Mavroules
Mitchell (NY)
Moakley
Moffett
Moorhead
Neal
Railsback
Rhodes
Rosenthal
Savage
Shuster
Smith (PA)
Stanton
Thomas
Washington

□ 1800

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING REPLACEMENT OF EXISTING PUMP CASINGS IN SOUTHERN NEVADA WATER PROJECT PUMPING PLANTS

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the Senate bill, S. 1621, as amended.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. KAZEN) that the House suspend the rules and pass the Senate bill, S. 1621, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were yeas 67, nays 315, not voting 51, as follows:

[Roll No. 440]

YEAS—67

Anderson
Applegate
AuCoin
Badham
Bailey (PA)
Bedell
Bereuter
Bingham
Boner
Bonker
Bouquard
Breaux
Brown (CA)
Burton, Phillip
Daschle
Davis
de la Garza
Dingell
Donnelly
Dyson
Evans (GA)
Flippo
Foley
Ford (MI)
Ford (TN)
Gejdenson
Gibbons
Ginn
Gonzalez
Hagedorn
Hall, Sam
Hansen (UT)
Hightower
Huckaby
Jones (NC)
Jones (TN)
Kastenmeier
Kazen
Kogovsek
Leland
Lewis
Lujan
Marks
Marlenee
Murphy
O'Brien
Obey
Pashayan
Rahall
Roe
Rostenkowski
Rousselot
Rudd
Santini
Seiberling
Simon
Skelton
Smith (NE)
Stump
Udall
Waxman
Weaver
White
Williams (MT)
Wirth
Wright
Young (AK)

NAYS—315

Addabbo
Akaka
Alexander
Andrews
Annunzio
Anthony
Archer
Ashbrook
Bafalis
Bailey (MO)
Barnard
Barnes
Beard
Benedict
Bennett
Bethune
Bevill
Biaggi
Boggs
Boland
Bonior
Bowen
Brinkley
Brodhead
Broomfield
Brown (CO)
Brown (OH)
Broyhill
Burgener
Burton, John
Butler
Byron
Campbell
Carman
Cheney
Clausen
Clay
Clinger
Coats
Coelho
Coleman
Collins (IL)
Collins (TX)
Conable
Conte
Corcoran
Coughlin
Courter
Coyne, James
Coyne, William
Craig
Crane, Daniel
Crane, Philip
D'Amours
Daniel, Dan
Daniel, R. W.
Dannemeyer
Daub
Deckard
Dellums
DeNardis
Derrick
Derwinski
Dickinson
Dicks
Dixon
Dorgan
Dornan
Dowdy
Downey
Dreier
Duncan
Dunn
Dwyer
Dymally
Early
Eckart
Edgar
Edwards (AL)
Edwards (CA)
Edwards (OK)
Emerson
English
Erdahl
Erlenborn
Evans (IA)
Fary
Fazio
Fenwick
Ferraro
Fiedler
Fields
Fish
Fithian
Florio
Foglietta
Forsythe
Fountain
Frank
Frenzel
Fuqua
Garcia
Gaydos
Gephardt
Gilman
Gingrich
Glickman
Goodling
Gore
Gradison
Gramm
Gray
Gregg
Grisham
Guarini
Gunderson
Hall (IN)
Hall (OH)
Hall, Ralph
Hamilton
Hammerschmidt
Hance
Hansen (ID)
Harkin
Hawkins
Heckler
Hefner
Heftel
Hendon
Hertel
Hiler
Hillis
Hollenbeck
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Hughes
Hunter
Hutto
Hyde
Jacobs
Jeffords
Jeffries
Johnston
Jones (OK)
Kemp
Kennelly
Kildee
Kindness
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach
Leath
LeBoutillier
Lee
Levitas
Livingston
Loeffler
Long (LA)
Long (MD)
Lott
Lowery (CA)
Lowry (WA)
Luken
Lundine
Madigan
Markey
Marriott
Martin (IL)
Martin (NY)
Matsui
Mattox
Mazzoli
McClory
McCloskey
McCollum
McCurdy
McDade
McDonald
McEwen
McGrath
McHugh
McKinney
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Mineta
Minish
Mitchell (MD)
Molinari
Mollohan
Montgomery
Moore
Morrison
Mottl
Murtha
Myers
Napier
Natcher
Nelligan
Nelson
Nichols
Nowak
Oakar
Oberstar
Ottinger
Oxley
Panetta
Parris
Patman
Patterson
Paul
Pease
Pepper
Perkins
Petri
Peyser
Pickle
Porter
Price
Pritchard
Pursell
Quillen
Rangel
Ratchford
Regula
Reuss
Rinaldo
Ritter
Roberts (KS)
Roberts (SD)
Robinson
Rodino
Roemer
Rogers
Rose
Roth
Roukema
Roybal
Russo
Sabo
Sawyer
Scheuer
Schneider
Schroeder
Schulze
Schumer
Sensenbrenner
Shamansky
Shannon
Sharp
Shaw
Shelby
Shumway
Siljander
Skeen
Smith (AL)
Smith (IA)
Smith (NJ)
Smith (OR)
Snowe
Snyder
Solarz
Solomon
Spence
Stangeland
Stark
Staton
Stenholm
Stokes
Stratton
Studds
Swift
Synar
Tauke
Tauzin
Taylor
Traxler
Trible
Vander Jagt
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Weber (MN)
Weber (OH)
Weiss

Whitehurst	Winn	Yates
Whitley	Wolf	Yatron
Whittaker	Wolpe	Young (FL)
Whitten	Wortley	Young (MO)
Williams (OH)	Wyden	Zablocki
Wilson	Wylie	Zeferetti

NOT VOTING—51

Albosta	Evans (DE)	Martinez
Aspin	Evans (IN)	Mavroules
Atkinson	Fascell	Mitchell (NY)
Beilenson	Findley	Moakley
Blanchard	Fowler	Moffett
Bliley	Frost	Moorhead
Bolling	Goldwater	Neal
Brooks	Green	Railsback
Carney	Hartnett	Rhodes
Chappell	Hatcher	Rosenthal
Chappie	Holland	Savage
Chisholm	Ireland	Shuster
Conyers	Jenkins	Smith (PA)
Crockett	Lehman	St Germain
Dougherty	Lent	Stanton
Emery	Lungren	Thomas
Ertel	Martin (NC)	Washington

Mr. KILDEE changed his vote from "yea" to "nay."

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

□ 1810

MODIFICATION OF NORTH AMERICAN CONVENTION TAX RULES

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 3191, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. STARK) that the House suspend the rules and pass the bill, H.R. 3191, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 219, nays 164, not voting 50, as follows:

[Roll No. 441]

YEAS—219

Addabbo	Burton, Phillip	Edwards (AL)
Akaka	Cheney	Edwards (CA)
Alexander	Clausen	Erlenborn
Anderson	Clay	Evans (GA)
Andrews	Coelho	Evans (IN)
Annunzio	Collins (IL)	Fary
Anthony	Conte	Fazio
Applegate	Coyne, William	Fenwick
Archer	Crane, Daniel	Ferraro
Ashbrook	Crane, Philip	Fields
AuCoin	Daniel, Dan	Fish
Badham	Daniel, R. W.	Fithian
Bafalis	Daschle	Flippo
Bailey (PA)	Davis	Florio
Barnes	de la Garza	Foglietta
Beard	Dellums	Foley
Bennett	DeNardis	Ford (MI)
Bevill	Dickinson	Ford (TN)
Biaggi	Dicks	Fountain
Bingham	Dingell	Frank
Boggs	Dixon	Fuqua
Boland	Donnelly	Garcia
Boner	Dowdy	Gaydos
Bonior	Downey	Gejdenson
Bonker	Dreier	Gephardt
Breaux	Duncan	Gibbons
Brinkley	Dwyer	Gilman
Brown (CA)	Dymally	Gonzalez
Brown (OH)	Dyson	Gray
Burton, John	Early	Guarini
Hagedorn	Mikulski	Russo
Hall (IN)	Miller (CA)	Sawyer
Hall (OH)	Mineta	Scheuer
Hance	Minish	Schneider
Hawkins	Mitchell (MD)	Schroeder
Heckler	Mollohan	Schulze
Hefner	Moore	Schumer
Heftel	Morrison	Seiberling
Hertel	Murphy	Shamansky
Hillis	Murtha	Siljander
Hollenbeck	Napier	Simon
Holt	Natcher	Smith (NJ)
Howard	Nelligan	Snyder
Hoyer	Nelson	Solarz
Hubbard	Nichols	Spence
Hutto	Nowak	Stangeland
Hyde	Oakar	Stark
Jeffries	Oberstar	Stokes
Johnston	Panetta	Studds
Jones (NC)	Parris	Swift
Jones (OK)	Pashayan	Synar
Kazen	Patman	Tauzin
Kemp	Paul	Traxler
Kennelly	Pepper	Trible
Kogovsek	Perkins	Udall
LaFalce	Peyser	Vander Jagt
Lantos	Pickle	Vento
Leland	Price	Wampler
Livingston	Pritchard	White
Long (LA)	Quillen	Whitehurst
Long (MD)	Rahall	Whitley
Lott	Rangel	Whitten
Lowry (WA)	Ratchford	Williams (MT)
Luken	Rinaldo	Williams (OH)
Lundine	Roberts (SD)	Wilson
Markey	Robinson	Wolf
Marks	Rodino	Wortley
Marlenee	Roe	Wright
Matsui	Rose	Yatron
Mattox	Rostenkowski	Young (AK)
McCloskey	Roth	Young (MO)
McDonald	Rousselot	Zablocki
Mica	Roybal	Zeferetti

NAYS—164

Bailey (MO)	Gore	McHugh
Barnard	Gradison	McKinney
Bedell	Gramm	Michel
Benedict	Gregg	Miller (OH)
Bereuter	Grisham	Molinari
Bethune	Gunderson	Montgomery
Bouquard	Hall, Ralph	Mottl
Bowen	Hall, Sam	Myers
Brodhead	Hamilton	O'Brien
Broomfield	Hammerschmidt	Obey
Brown (CO)	Hansen (ID)	Ottinger
Broyhill	Hansen (UT)	Oxley
Burgener	Harkin	Patterson
Butler	Hendon	Pease
Byron	Hightower	Petri
Campbell	Hiler	Porter
Carman	Hopkins	Regula
Clinger	Horton	Reuss
Coats	Huckaby	Ritter
Coleman	Hughes	Roberts (KS)
Collins (TX)	Hunter	Roemer
Conable	Jacobs	Rogers
Corcoran	Jeffords	Roukema
Coughlin	Jones (TN)	Rudd
Courter	Kastenmeier	Sabo
Coyne, James	Kildee	Santini
Craig	Kindness	Sensenbrenner
D'Amours	Kramer	Shannon
Dannemeyer	Lagomarsino	Sharp
Daub	Latta	Shaw
Deckard	Leach	Shelby
Derrick	Leath	Shumway
Dorgan	LeBoutillier	Skeen
Dornan	Lee	Skelton
Dunn	Levitas	Smith (AL)
Eckart	Lewis	Smith (IA)
Edgar	Loeffler	Smith (NE)
Edwards (OK)	Lowery (CA)	Smith (OR)
Emerson	Lujan	Snowe
English	Madigan	Solomon
Erdahl	Marriott	St Germain
Evans (IA)	Martin (IL)	Staton
Fiedler	Martin (NY)	Stenholm
Findley	Mazzoli	Stratton
Forsythe	McClory	Stump
Frenzel	McCollum	Tauke
Gingrich	McCurdy	Taylor
Ginn	McDade	Volkmer
Glickman	McEwen	Walgren
Goodling	McGrath	Walker
Watkins	Weiss	Wyden
Waxman	Whittaker	Wylie
Weaver	Winn	Yates
Weber (MN)	Wirth	Young (FL)
Weber (OH)	Wolpe	

NOT VOTING—50

Albosta	Ertel	Mavroules
Aspin	Evans (DE)	Mitchell (NY)
Atkinson	Fascell	Moakley
Beilenson	Fowler	Moffett
Blanchard	Frost	Moorhead
Bliley	Goldwater	Neal
Bolling	Green	Pursell
Brooks	Hartnett	Railsback
Carney	Hatcher	Rhodes
Chappell	Holland	Rosenthal
Chappie	Ireland	Savage
Chisholm	Jenkins	Shuster
Conyers	Lehman	Smith (PA)
Crockett	Lent	Stanton
Derwinski	Lungren	Thomas
Dougherty	Martin (NC)	Washington
Emery	Martinez	

Mr. GEJDENSON changed his vote from "nay" to "yea."

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

AUTHORIZING INDIAN TRIBES TO BRING ACTIONS WITH RESPECT TO CERTAIN LEGAL CLAIMS

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the joint resolution, House Joint Resolution 553, as amended.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the joint resolution, House Joint Resolution House 553, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 228, nays 153, not voting 52, as follows:

[Roll No. 442]

YEAS—228

Addabbo	Burgener	Early
Akaka	Burton, John	Eckart
Alexander	Burton, Phillip	Edgar
Anderson	Clausen	Edwards (AL)
Andrews	Clay	Edwards (CA)
Annunzio	Coats	Edwards (OK)
Applegate	Coelho	English
AuCoin	Coleman	Erdahl
Bafalis	Collins (IL)	Evans (IA)
Bailey (PA)	Conable	Evans (IN)
Barnes	Coyne, James	Fary
Bedell	Coyne, William	Fazio
Bennett	D'Amours	Ferraro
Bereuter	Daschle	Fiedler
Bevill	Davis	Fish
Biaggi	de la Garza	Flippo
Bingham	Deckard	Florio
Boggs	Dellums	Foglietta
Boland	DeNardis	Ford (MI)
Boner	Derrick	Ford (TN)
Bonior	Dixon	Fountain
Bonker	Donnelly	Frank
Bouquard	Dorgan	Garcia
Bowen	Dowdy	Gaydos
Breaux	Downey	Gejdenson
Brinkley	Dwyer	Gephardt
Brodhead	Dymally	Gibbons
Brown (CA)	Dyson	Gilman

Ginn	McClory	Roybal
Glickman	McCloskey	Russo
Gonzalez	McCurdy	Sabo
Gore	McHugh	Santini
Gray	McKinney	Scheuer
Gregg	Mica	Schneider
Hall (IN)	Mikulski	Schroeder
Hall (OH)	Miller (CA)	Schumer
Hall, Ralph	Mineta	Seiberling
Hall, Sam	Minish	Shamansky
Hamilton	Mitchell (MD)	Shannon
Hance	Molinari	Sharp
Harkin	Mollohan	Siljander
Hawkins	Murphy	Simon
Heckler	Myers	Skeen
Hefner	Natcher	Smith (IA)
Hightower	Nelligan	Smith (NJ)
Hiler	Nelson	Solarz
Howard	Nichols	St Germain
Hoyer	Nowak	Stokes
Hughes	O'Brien	Studds
Jacobs	Oakar	Synar
Jones (OK)	Oberstar	Tauzin
Jones (TN)	Obey	Traxler
Kastenmeier	Ottinger	Udall
Kazen	Oxley	Vento
Kemp	Panetta	Volkmer
Kennelly	Pashayan	Walgren
Kildee	Patterson	Watkins
Kogovsek	Pease	Waxman
Kramer	Pepper	Weaver
LaFalce	Perkins	Weber (MN)
Lagomarsino	Peyser	Weiss
Lantos	Pickle	White
Leach	Price	Whitten
Leland	Pritchard	Williams (MT)
Levitas	Pursell	Williams (OH)
Lewis	Rahall	Wilson
Long (LA)	Rangel	Wirth
Long (MD)	Ratchford	Wolpe
Lowry (WA)	Reuss	Wright
Lujan	Rinaldo	Wyden
Luken	Rodino	Yates
Lundine	Roe	Yatron
Markey	Roemer	Young (AK)
Matsui	Rose	Young (MO)
Mattox	Rostenkowski	Zablocki
Mazzoli	Roth	Zeferetti

NAYS—153

Anthony	Foley	McCollum
Archer	Forsythe	McDade
Ashbrook	Frenzel	McDonald
Badham	Fuqua	McEwen
Bailey (MO)	Gingrich	McGrath
Barnard	Goodling	Michel
Beard	Gradison	Miller (OH)
Benedict	Gramm	Montgomery
Bethune	Grisham	Moore
Broomfield	Guarini	Morrison
Brown (CO)	Gunderson	Mottl
Brown (OH)	Hagedorn	Napier
Broyhill	Hammerschmidt	Parris
Butler	Hansen (ID)	Patman
Byron	Hansen (UT)	Paul
Campbell	Heftel	Petri
Carman	Hendon	Porter
Cheney	Hillis	Quillen
Clinger	Hollenbeck	Regula
Collins (TX)	Holt	Ritter
Conte	Hopkins	Roberts (KS)
Corcoran	Horton	Roberts (SD)
Coughlin	Hubbard	Robinson
Courter	Huckaby	Rogers
Craig	Hunter	Roukema
Crane, Daniel	Hutto	Rousselot
Crane, Philip	Hyde	Rudd
Daniel, Dan	Jeffords	Sawyer
Daniel, R. W.	Jeffries	Schulze
Dannemeyer	Johnston	Sensenbrenner
Daub	Jones (NC)	Shaw
Dickinson	Kindness	Shelby
Dicks	Latta	Shumway
Dingell	Leath	Skelton
Dornan	LeBoutillier	Smith (AL)
Dreier	Lee	Smith (NE)
Duncan	Livingston	Smith (OR)
Dunn	Loeffler	Snowe
Emerson	Lott	Snyder
Erlenborn	Lowery (CA)	Solomon
Evans (GA)	Marks	Spence
Fenwick	Marlenee	Stangeland
Fields	Marriott	Stark
Findley	Martin (IL)	Staton
Fithian	Martin (NY)	Stenholm
Stratton	Vander Jagt	Whittaker
Stump	Walker	Winn
Swift	Wampler	Wolf
Tauke	Weber (OH)	Wortley
Taylor	Whitehurst	Wylie
Trible	Whitley	Young (FL)

NOT VOTING—52

Albosta	Evans (DE)	Mavroules
Aspin	Fascell	Mitchell (NY)
Atkinson	Fowler	Moakley
Beilenson	Frost	Moffett
Blanchard	Goldwater	Moorhead
Bliley	Green	Murtha
Bolling	Hartnett	Neal
Brooks	Hatcher	Railsback
Carney	Hertel	Rhodes
Chappell	Holland	Rosenthal
Chappie	Ireland	Savage
Chisholm	Jenkins	Shuster
Conyers	Lehman	Smith (PA)
Crockett	Lent	Stanton
Derwinski	Lungren	Thomas
Dougherty	Madigan	Washington
Emery	Martin (NC)	
Ertel	Martinez	

□ 1820

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

HOUR OF MEETING TOMORROW

Mr. WRIGHT. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourns to meet at 11 a.m. tomorrow.

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

There was no objection.

NOTICE OF REPLAY OF "AGRONSKY AND COMPANY" IN SUPPORT OF CONGRESSIONAL PAY RAISE

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

Mr. DINGELL. Mr. Speaker, I would like to announce to the House that tomorrow on the internal communication channel on television, channel 6, there will be four replays of "Agronsky and Company" over the weekend, at 9:30 am., 11:30 a.m., 12:30 p.m., and 2:30 p.m. The period of time taken for each of these will be exactly 5 minutes.

As my colleagues know this is the program in which a panel of nationally known commentators, experts, and writers endorsed a pay raise for the House of Representatives. I hope my colleagues will watch the program.

APPOINTMENT OF CONFEREES ON H.R. 7144, DISTRICT OF COLUMBIA APPROPRIATION, 1983

Mr. DIXON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 7144) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1983, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The Speaker pro tempore. Is there objection to the request of the gentleman from California? The Chair hears none and, without objection, appoints the following conferees: Messrs. DIXON, NATCHER, STOKES, WILSON, LEHMAN, WHITTEN, COUGHLIN, GREEN, PORTER, and CONTE.

There was no objection.

PERMISSION TO HAVE UNTIL MIDNIGHT, WEDNESDAY, DECEMBER 15, 1982, TO FILE CONFERENCE REPORT ON H.R. 7144, DISTRICT OF COLUMBIA APPROPRIATION, 1983

Mr. DIXON. Mr. Speaker, I ask unanimous consent that the managers may have until midnight Wednesday, December 15, 1982, to file a conference report on the bill (H.R. 7144) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1983, and for other purposes.

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

There was no objection.

MAKING IN ORDER ON OR AFTER THURSDAY, DECEMBER 16, 1982, CONSIDERATION OF CONFERENCE REPORT AND ANY AMENDMENTS IN DISAGREEMENT ON H.R. 7144, DISTRICT OF COLUMBIA APPROPRIATION, 1983

Mr. DIXON. Mr. Speaker, I ask unanimous consent that it be in order at any time on Thursday, December 16, 1982, or any day thereafter, to consider the conference report and any amendments in disagreement on the bill (H.R. 7144) making appropriations for the government of the District of Columbia for the fiscal year ending September 30, 1983.

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

Mr. WALKER. Reserving the right to object, Mr. Speaker, has that time schedule been cleared with the minority?

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

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

Mr. DIXON. Yes, it has.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

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

Mr. ROUSSELOT. Reserving the right to objection, Mr. Speaker, can the gentleman restate what the legislation is.

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

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

Mr. DIXON. Mr. Speaker, I was asking unanimous consent that the conference report on this bill, H.R. 7144, be considered any time after the report has been returned. In other words, waiving the 3-day rule. I was asked if the minority had been consulted. The answer was yes.

Mr. ROUSSELOT. And this is the District of Columbia appropriations?

Mr. DIXON. Yes, it is.

Mr. ROUSSELOT. For 1983?

Mr. DIXON. Yes.

Mr. ROUSSELOT. And how much does it cost?

Mr. DIXON. I do not know until it comes back from conference. I can tell the gentleman what was in the House bill.

Mr. ROUSSELOT. Roughly what is it? Give us a rough figure.

Mr. DIXON. Well, it involves $366 million in Federal payments, about $1.2 billion I believe in D.C. revenues.

Mr. ROUSSELOT. Is that below or above last year?

Mr. DIXON. The authorization of Federal payment is above last year's.

Mr. ROUSSELOT. I thank the gentleman for giving us a clear amendment.

Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

□ 1830

FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT OF 1982

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5121) to improve the collection of Federal royalties and lease payments derived from certain natural resources under the jurisdiction of the Secretary of the Interior, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments with an amendment.

The Clerk read the title of the bill.

The Clerk read the House amendment to the Senate amendments, as follows:

In lieu of the Senate amendments insert:

Strike out all after the enacting clause and insert:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Federal Oil and Gas Royalty Management Act of 1982".

TABLE OF CONTENTS

FINDINGS AND PURPOSES

SEC. 2. (a) Congress finds that—

(1) the Secretary of the Interior should enforce effectively and uniformly existing regulations under the mineral leasing laws providing for the inspection of production activities on lease sites on Federal and Indian lands;

(2) the system of accounting with respect to royalties and other payments due and owing on oil and gas produced from such lease sites is archaic and inadequate;

(3) it is essential that the Secretary initiate procedures to improve methods of accounting for such royalties and payments and to provide for routine inspection of activities related to the production of oil and gas on such lease sites; and

(4) the Secretary should aggressively carry out his trust responsibility in the administration of Indian oil and gas.

(b) It is the purpose of this Act—

(1) to clarify, reaffirm, expand, and define the responsibilities and obligations of lessees, operators, and other persons involved in transportation or sale of oil and gas from the Federal and Indian lands and the Outer Continental Shelf;

(2) to clarify, reaffirm, expand and define the authorities and responsibilities of the Secretary of the Interior to implement and maintain a royalty management system for oil and gas leases on Federal lands, Indian lands, and the Outer Continental Shelf;

(3) to require the development of enforcement practices that ensure the prompt and proper collection and disbursement of oil and gas revenues owed to the United States and Indian lessors and those inuring to the benefit of States;

(4) to fulfill the trust responsibility of the United States for the administration of Indian oil and gas resources; and

(5) to effectively utilize the capabilities of the States and Indian tribes in developing and maintaining an efficient and effective Federal royalty management system.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(1) "Federal land" means all land and interests in land owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate;

(2) "Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation;

(3) "Indian lands" means any lands or interest in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to Federal restriction against alienation, including mineral resources and mineral estates reserved to an Indian tribe or an Indian allottee in the conveyance of a surface or nonmineral estate, except that such term does not include any lands subject to the provisions of section 3 of the Act of June 28, 1906 (34 Stat. 539);

(4) "Indian tribe" means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of Annette Island Reserve, for which any land or interest in land is held by the United States in trust or which is subject to Federal restriction against alienation;

(5) "lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas;

(6) "lease site" means any lands or submerged lands, including the surface of a severed mineral estate, on which exploration for, or extraction or removal of, oil or gas is authorized pursuant to a lease;

(7) "lessee" means any person to whom the United States, an Indian tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease;

(8) "mineral leasing law" means any Federal law administered by the Secretary authorizing the disposition under lease of oil or gas;

(9) "oil or gas" means any oil or gas originating from, or allocated to, the Outer Continental Shelf, Federal, or Indian lands;

(10) "Outer Continental Shelf" has the same meaning as provided in the Outer Continental Shelf Lands Act (Public Law 95-372);

(11) "operator" means any person, including a lessee, who has control of, or who manages operations on, an oil and gas lease site on Federal or Indian lands or on the Outer Continental Shelf;

(12) "person" means any individual, firm, corporation, association, partnership, consortium, or joint venture;

(13) "production" means those activities which take place for the removal of oil or gas, including such removal, field operations, transfer of oil or gas off the lease site, operation monitoring, maintenance, and workover drilling;

(14) "royalty" means any payment based on the value or volume of production which is due to the United States or an Indian tribe or an Indian allottee on production of oil or gas from the Outer Continental Shelf, Federal, or Indian lands, or any minimum royalty owed to the United States or an Indian tribe or an Indian allottee under any provision of a lease;

(15) "Secretary" means the Secretary of the Interior or his designee; and

(16) "State" means the several States of the Union, the District of Columbia, Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

TITLE I—FEDERAL ROYALTY MANAGEMENT AND ENFORCEMENT

DUTIES OF THE SECRETARY

SEC. 101. (a) The Secretary shall establish a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and to collect and account for such amounts in a timely manner.

(b) The Secretary shall—

(1) establish procedures to ensure that authorized and properly identified representatives of the Secretary will inspect at least once annually each lease site producing or expected to produce significant quantities of oil or gas in any year or which has a history of noncompliance with applicable provisions of law or regulations; and

(2) establish and maintain adequate programs providing for the training of all such authorized representatives in methods and techniques of inspection and accounting that will be used in the implementation of this Act.

(c)(1) The Secretary shall audit and reconcile, to the extent practicable, all current and past lease accounts for leases of oil or gas and take appropriate actions to make additional collections or refunds as warranted. The Secretary shall conduct audits and reconciliations of lease accounts in conformity with the business practices and recordkeeping systems which were required of the lessee by the Secretary for the period covered by the audit. The Secretary shall give priority to auditing those lease accounts identified by a State or Indian tribe as having significant potential for underpayment. The Secretary may also audit accounts and records of selected lessees and operators.

(2) The Secretary may enter into contracts or other appropriate arrangements with independent certified public accountants to undertake audits of accounts and records of any lessee or operator relating to the lease of oil or gas. Selection of such independent certified public accountants shall be by competitive bidding in accordance with the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252), except that the Secretary may not enter into a contract or other arrangement with any independent certified public accountant to audit any lessee or operator where such lessee or operator is a primary audit client of such certified public accountant.

(3) All books, accounts, financial records, reports, files, and other papers of the Secretary, or used by the Secretary, which are reasonably necessary to facilitate the audits required under this section shall be made available to any person or governmental entity conducting audits under this Act.

DUTIES OF LESSEES, OPERATORS, AND MOTOR VEHICLE TRANSPORTERS

SEC. 102. (a) A lessee—

(1) who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary; and

(2) shall notify the Secretary, in the time and manner as may be specified by the Secretary, of any assignment the lessee may have made of the obligation to make any royalty or other payment under a lease or under the mineral leasing laws.

(b) An operator shall—

(1) develop and comply with a site security plan designed to protect the oil or gas produced or stored on an onshore lease site from theft, which plan shall conform with such minimum standards as the Secretary may prescribe by rule, taking into account the variety of circumstances at lease sites;

(2) develop and comply with such minimum site security measures as the Secretary deems appropriate to protect oil or gas produced or stored on a lease site or on the Outer Continental Shelf from theft; and

(3) not later than the 5th business day after any well begins production anywhere on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off of production for more than 90 days, notify the Secretary, in the manner prescribed by the Secretary, of the date on which such production has begun or resumed.

(c)(1) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, shall carry, on his person, in his vehicle, or in his immediate control, documentation showing, at a minimum, the amount, origin, and intended first destination of the oil.

(2) Any person engaged in transporting any oil or gas by pipeline from any lease site, or allocated to any lease site, on Federal or Indian lands shall maintain documentation showing, at a minimum, amount, origin, and intended first destination of such oil or gas.

REQUIRED RECORDKEEPING

SEC. 103. (a) A lessee, operator, or other person directly involved in developing, producing, transporting, purchasing, or selling oil or gas subject to this Act through the point of first sale or the point of royalty computation, whichever is later, shall establish and maintain any records, make any reports, and provide any information that the Secretary may, by rule, reasonably require for the purposes of implementing this Act or determining compliance with rules or orders under this Act. Upon the request of any officer or employee duly designated by the Secretary or any State or Indian tribe conducting an audit or investigation pursuant to this Act, the appropriate records, reports, or information which may be required by this section shall be made available for inspection and duplication by such officer or employee, State, or Indian tribe.

(b) Records required by the Secretary with respect to oil and gas leases from Federal or Indian lands or the Outer Continental Shelf shall be maintained for 6 years after the records are generated unless the Secretary notifies the record holder that he has initiated an audit or investigation involving such records and that such records must be maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the record holder of the obligation to maintain such records.

PROMPT DISBURSEMENT OF ROYALTIES

SEC. 104. (a) Section 35 of the Mineral Lands Leasing Act of 1920 (approved February 25, 1920; 41 Stat. 437; 30 U.S.C. 191) is amended by deleting "as soon as practicable after March 31 and September 30 of each year" and by adding at the end thereof "Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.".

(b) Deposits of any royalty funds derived from the production of oil or gas from, or allocated to, Indian lands shall be made by the Secretary to the appropriate Indian account at the earliest practicable date after such funds are received by the Secretary but in no case later than the last business day of the month in which such funds are received.

(c) The provisions of this section shall apply with respect to payments received by the Secretary after October 1, 1983, unless the Secretary, by rule, prescribes an earlier effective date.

EXPLANATION OF PAYMENTS

SEC. 105. (a) When any payment (including amounts due from receipt of any royalty, bonus, interest charge, fine, or rental) is made by the United States to a State with respect to any oil or gas lease on Federal lands or is deposited in the appropriate Indian account on behalf of an Indian tribe or Indian allottee with respect to any oil and gas lease on Indian lands, there shall be provided, together with such payment, a description of the type of payment being made, the period covered by such payment, the source of such payment, production amounts, the royalty rate, unit value and such other information as may be agreed upon by the Secretary and the recipient State, Indian tribe, or Indian allottee.

(b) This section shall take effect with respect to payments made after October 1, 1983, unless the Secretary, by rule, prescribes an earlier effective date.

LIABILITIES AND BONDING

SEC. 106. A person (including any agent or employee of the United States and any independent contractor) authorized to collect, receive, account for, or otherwise handle any moneys payable to, or received by, the Department of the Interior which are derived from the sale, lease, or other disposal of any oil or gas shall be—

(1) liable to the United States for any losses caused by any intentional or reckless

action or inaction of such individual with respect to such moneys; and

(2) in the case of an independent contractor, required as the Secretary deems necessary to maintain a bond commensurate with the amount of money for which such individual could be liable to the United States.

HEARINGS AND INVESTIGATIONS

SEC. 107. (a) In carrying out his duties under this Act the Secretary may conduct any investigation or other inquiry necessary and appropriate and may conduct, after notice, any hearing or audit, necessary and appropriate to carrying out his duties under this Act. In connection with such hearings, inquiry, investigation, or audit, the Secretary is also authorized where reasonably necessary—

(1) to require by special or general order, any person to submit in writing such affidavits and answers to questions as the Secretary may reasonably prescribe, which submission shall be made within such reasonable period and under oath or otherwise, as may be necessary;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all books, papers, production and financial records, documents, matter, and materials, as the Secretary may request;

(4) to order testimony to be taken by deposition before any person who is designated by the Secretary and who has the power to administer oaths, and to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection; and

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States.

(b) In case of refusal to obey a subpena served upon any person under this section, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General at the request of the Secretary and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary. Any failure to obey such order of the court may be punished by such court as contempt thereof and subject to a penalty of up to $10,000 a day.

INSPECTIONS

SEC. 108. (a)(1) On any lease site on Federal or Indian lands, any authorized and properly identified representative of the Secretary may stop and inspect any motor vehicle that he has probable cause to believe is carrying oil from a lease site on Federal or Indian lands or allocated to such a lease site, for the purpose of determining whether the driver of such vehicle has documentation related to such oil as required by law.

(2) Any authorized and properly identified representative of the Secretary, accompanied by any appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he has probable cause to believe the vehicle is carrying oil from a lease site on Federal or Indian lands or allocated to such a lease site. Such inspection shall be for the purpose of determining whether the driver of such vehicle has the documentation required by law.

(b) Authorized and properly identified representatives of the Secretary may without advance notice, enter upon, travel across and inspect lease sites on Federal or Indian lands and may obtain from the operator immediate access to secured facilities on such lease sites, for the purpose of making any inspection or investigation for determining whether there is compliance with the requirements of the mineral leasing laws and this Act. The Secretary shall develop guidelines setting forth the coverage and the frequency of such inspections.

(c) For the purpose of making any inspection or investigation under this Act, the Secretary shall have the same right to enter upon or travel across any lease site as the lessee or operator has acquired by purchase, condemnation, or otherwise.

CIVIL PENALTIES

SEC. 109. (a) Any person who—

(1) after due notice of violation or after such violation has been reported under subparagraph (A), fails or refuses to comply with any requirements of this Act or any mineral leasing law, any rule or regulation thereunder, or the terms of any lease or permit issued thereunder; or

(2) fails to permit inspection authorized in section 108 or fails to notify the Secretary of any assignment under section 102(a)(2)

shall be liable for a penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report. A penalty under this subsection may not be applied to any person who is otherwise liable for a violation of paragraph (1) if:

(A) the violation was discovered and reported to the Secretary or his authorized representative by the liable person and corrected within 20 days after such report or such longer time as the Secretary may agree to; or

(B) after the due notice of violation required in subparagraph (a)(1) has been given to such person by the Secretary or his authorized representative, such person has corrected the violation within 20 days of such notification or such longer time as the Secretary may agree to.

(b) If corrective action in not taken within 40 days or a longer period as the Secretary may agree to, after due notice or the report referred to in subsection (a)(1), such person shall be liable for a civil penalty of not more than $5,000 per violation for each day such violation continues, dating from the date of such notice or report.

(c) Any person who—

(1) knowingly or willfully fails to make any royalty payment by the date as specified by statute, regulation, order or terms of the lease;

(2) fails or refuses to permit lawful entry, inspection, or audit; or

(3) knowingly or willfully fails or refuses to comply with subsection 102(b)(3),

shall be liable for a penalty of up to $10,000 per violation for each day such violation continues.

(d) Any person who—

(1) knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information;

(2) knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any lease site without having valid legal authority to do so; or

(3) purchases, accepts, sells, transports, or conveys to another, any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted,

shall be liable for a penalty of up to $25,000 per violation for each day such violation continues.

(e) No penalty under this section shall be assessed until the person charged with a violation has been given the opportunity for a hearing on the record.

(f) The amount of any penalty under this section, as finally determined may be deducted from any sums owing by the United States to the person charged.

(g) On a case-by-case basis the Secretary may compromise or reduce civil penalties under this section.

(h) Notice under this subsection (a) shall be by personal service by an authorized representative of the Secretary or by registered mail. Any person may, in the manner prescribed by the Secretary, designate a representative to receive any notice under this subsection.

(i) In determining the amount of such penalty, or whether it should be remitted or reduced, and in what amount, the Secretary shall state on the record the reasons for his determinations.

(j) Any person who has requested a hearing in accordance with subsection (e) within the time the Secretary has prescribed for such a hearing and who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States district court for the judicial district in which the violation allegedly took place. Review by the district court shall be only on the administrative record and not de novo. Such an action shall be barred unless filed within 90 days after the Secretary's final order.

(k) If any person fails to pay an assessment of a civil penalty under this Act—

(1) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with subsection (j), or

(2) after a court in an action brought under subsection (j) has entered a final judgment in favor of the Secretary,

the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period referred to in subsection (j). Judgment by the court shall include an order to pay.

(l) No person shall be liable for a civil penalty under subsection (a) or (b) for failure to pay any rental for any lease automatically terminated pursuant to section 31 of the Mineral Leasing Act of 1920.

CRIMINAL PENALTIES

SEC. 110. Any person who commits an act for which a civil penalty is provided in section 109(d) shall, upon conviction, be punished by a fine of not more than $50,000, or by imprisonment for not more than 2 years, or both.

ROYALTY INTEREST, PENALTIES AND PAYMENTS

SEC. 111. (a) In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments at the rate applicable under section 6621 of the Internal Revenue Code of 1954. In the case of an underpayment or partial payment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount due.

(b) Any payment made by the Secretary to a State under section 35 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 191)

and any other payment made by the Secretary to a State from any oil or gas royalty received by the Secretary which is not paid on the date required under section 35 shall include an interest charge computed at the rate applicable under section 6621 of the Internal Revenue Code of 1954.

(c) All interest charges collected under this Act or other applicable laws because of nonpayment, late payment or underpayment of royalties due and owing an Indian tribe or an Indian allottee deposited to the same amount as the royalty with respect to which such interest is paid.

(d) Any deposit of royalty funds made by the Secretary to an Indian account which is not made by the date required under subsection 104(b) shall include an interest charge computed at the rate applicable under section 6621 of the Internal Revenue Code of 1954.

(e) Notwithstanding any other provision of law, no State will be assessed for any interest or penalties found to be due against the Secretary for failure to comply with the Emergency Petroleum Allocation Act of 1973 or regulation of the Secretary of Energy thereunder concerning crude oil certification or pricing with respect to crude oil taken by the Secretary in kind as royalty. Any State share of an overcharge, resulting from such failure to comply, shall be assessed against moneys found to be due and owing to such State as a result of audits of royalty accounts for transactions which took place prior to the date of the enactment of this Act except that if after the completion of such audits, sufficient moneys have not been found due and owing to any State, the State shall be assessed the balance of that State's share of the overcharge.

(f) Interest shall be charged under this section only for the number of days a payment is late.

(g) The first sentence of section 35 of the Act of February 25, 1920 is amended by inserting "including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982" between "royalties" and "and".

INJUNCTION AND SPECIFIC ENFORCEMENT AUTHORITY

SEC. 112. (a) In addition to any other remedy under this Act or any mineral leasing law, the Attorney General of the United States or his designee may bring a civil action in a district court of the United States, which shall have jurisdiction over such actions—

(1) to restrain any violation of this Act; or

(2) to compel the taking of any action required by or under this Act or any mineral leasing law of the United States.

(b) A civil action described in subsection (a) may be brought only in the United States district court for the judicial district wherein the act, omission, or transaction constituting a violation under this Act or any other mineral leasing law occurred, or wherein the defendant is found or transacts business.

REWARDS

SEC. 113. Where amounts representing royalty or other payments owed to the United States with respect to any oil and gas lease on Federal lands or the Outer Continental Shelf are recovered pursuant to any action taken by the Secretary under this Act as a result of information provided to the Secretary by any person, the Secretary is authorized to pay to such person an amount equal to not more than 10 percent of such recovered amounts. The preceding sentence shall not apply to information provided by an officer or employee of the United States, an officer or employee of a State or Indian tribe acting pursuant to a cooperative agreement or delegation under this Act, or any person acting pursuant to a contract authorized by this Act.

NONCOMPETITIVE OIL AND GAS LEASE ROYALTY RATES

SEC. 114. (a) Subsection 17(c) of the Mineral Leasing Act of 1920 (30 U.S.C. 226(c)) is amended by inserting the words "not less than" after the words "payment by the lessee of a royalty of" and by inserting the words "nor more than 16⅔ per centum" after the word "per centum.".

(b) Subsection 17(c) of the Mineral Leasing Act of 1920 (30 U.S.C. 226(c)) is amended by changing the period to a colon and adding the following: *"Provided,* That the royalty rate shall be not more than 12½ per centum unless the Secretary finds that an increase in the royalty rate will not adversely affect the exploration, development or production of oil or gas or the overall revenue to the Federal Government generated by such activity.".

(c) The amendments made by subsections (a) and (b) shall take effect on the date six months after completion and submission to Congress by the Secretary of a thorough study of the effects of a change in the royalty rate under section 17(c) of the Mineral Leasing Act of 1920 (1) on the exploration, development, or production of oil or gas and (2) on the overall revenues generated by such change. Such study shall be completed and submitted to Congress on the date one year after the date of enactment of this Act.

TITLE II—STATES AND INDIAN TRIBES

APPLICATION OF TITLE

SEC. 201. This title shall apply only with respect to oil and gas leases on Federal lands or Indian lands. Nothing in this title shall be construed to apply to any lease on the Outer Continental Shelf.

COOPERATIVE AGREEMENTS

SEC. 202. (a) The Secretary is authorized to enter into a cooperative agreement or agreements with any State or Indian tribe to share oil or gas royalty management information, to carry out inspection, auditing, investigation or enforcement (not including the collection of royalties, civil or criminal penalties or other payments) activities under this Act in cooperation with the Secretary, and to carry out any other activity described in section 108 of this Act. The Secretary shall not enter into any such cooperative agreement with a State with respect to any such activities on Indian lands, except with the permission of the Indian tribe involved.

(b) Except as provided in section 203, and pursuant to a cooperative agreement—

(1) each State shall, upon request, have access to all royalty accounting information in the possession of the Secretary respecting the production, removal, or sale of oil or gas from leases on Federal lands within the State; and

(2) each Indian tribe shall, upon request, have access to all royalty accounting information in the possession of the Secretary respecting the production, removal, or sale of oil or gas from leases on Indian lands under the jurisdiction of such tribe.

Information shall be made available under paragraphs (1) and (2) as soon as practicable after it comes into the possession of the Secretary. Effective October 1, 1983, such information shall be made available under paragraphs (1) and (2) not later than 30 days after such information comes into the possession of the Secretary.

(c) Any cooperative agreement entered into pursuant to this section shall be in accordance with the provisions of the Federal Grant and Cooperative Agreement Act of 1977, and shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this Act, including, but not limited to, a limitation on the use of Federal assistance to those costs which are directly required to carry out the agreed upon activities.

INFORMATION

SEC. 203. (a) Trade secrets, proprietary and other confidential information shall be made available by the Secretary, pursuant to a cooperative agreement, to a State or Indian tribe upon request only if—

(1) such State or Indian tribe consents in writing to restrict the dissemination of the information to those who are directly involved in an audit or investigation under this Act and who have a need to know;

(2) such State or tribe accepts liability for wrongful disclosure;

(3) in the case of a State, such State demonstrates that such information is essential to the conduct of an audit or investigation or to litigation under section 204; and

(4) in the case of an Indian tribe, such tribe demonstrates that such information is essential to the conduct of an audit or investigation and waives sovereign immunity by express consent for wrongful disclosure by such tribe.

(b) The United States shall not be liable for the wrongful disclosure by any individual, State, or Indian tribe of any information provided to such individual, State, or Indian tribe pursuant to any cooperative agreement or a delegation, authorized by this Act.

(c) Whenever any individual, State, or Indian tribe has obtained possession of information pursuant to a cooperative agreement authorized by this section, or any individual or State has obtained possession of information pursuant to a delegation under section 205, the individual shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer or employee of the United States or of any department or agency thereof and the State or Indian tribe shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information, or other confidential information under this Act may be required to disclose such information under State law.

STATE SUITS UNDER FEDERAL LAW

SEC. 204. (a)(1) A State may commence a civil action under this section against any person to recover any royalty, interest, or civil penalty which the State believes is due, based upon credible evidence, with respect to any oil and gas lease on Federal lands located within the State.

(2)(A) No action may be commenced under paragraph (1) prior to 90 days after the State has given notice in writing to the Secretary of the payment required. Such 90-day limitation may be waived by the Secretary on a case-by-case basis.

(B) If, within the 90-day period specified in subparagraph (A), the Secretary issues a demand for the payment concerned, no

action may be commenced under paragraph (1) with respect to such payment during a 45-day period after issuance of such demand. If, during such 45-day period, the Secretary receives payment in full, no action may be commenced under paragraph (1).

(C) If the Secretary refers the case to the Attorney General of the United States within the 45-day period referred to in subparagraph (B) or within 10 business days after the expiration of such 45-day period, no action may be commenced under paragraph (1) if the Attorney General, within 45 days after the date of such referral, commences, and thereafter diligently prosecutes, a civil action in a court of the United States with respect to the payment concerned.

(3) The State shall notify the Secretary and the Attorney General of the United States of any suit filed by the State under this section.

(4) A court in issuing any final order in any action brought under paragraph (1) may award costs of litigation including reasonable attorney and expert witness fees, to any party in such action if the court determines such an award is appropriate.

(b) An action brought under subsection (a) of this section may be brought only in a United States district court for the judicial district in which the lease site or the leasing activity complained of is located. Such district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to require compliance or order payment in any such action.

(c)(1) Notwithstanding any other provision of law, any civil penalty recovered by a State under subsection (a) shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate.

(2) Any rent, royalty, or interest recovered by a State under subsection (a) shall be deposited in the Treasury of the United States in the same manner, and subject to the same requirements, as are applicable in the case of any rent, royalty, or interest collected by an officer or employee of the United States, except that such amounts shall be deposited in the Treasury not later than 10 days after receipt by the State.

DELEGATION TO STATES

SEC. 205. (a) Upon written request of any State, the Secretary is authorized to delegate, in accordance with the provisions of this section, all or part of the authorities and responsibilities of the Secretary under this Act to conduct inspections, audits, and investigations to any State with respect to all Federal lands or Indian lands within the State; except that the Secretary may not undertake such a delegation with respect to any Indian lands, except with the permission of the Indian tribe allottee involved.

(b) After notice and opportunity for a hearing, the Secretary is authorized to delegate such authorities and responsibilities granted under this section as the State has requested, if the Secretary finds that—

(1) it is likely that the State will provide adequate resources to achieve the purposes of this Act;

(2) the State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary under this Act in accordance with the requirements of subsections (c) and (d) of this section; and

(3) such delegation will not create an unreasonable burden on any lessee, with respect to the Federal lands and Indian lands within the State.

(c) The Secretary shall promulgate regulations which define those functions, if any, which must be carried out jointly in order to avoid duplication of effort, and any delegation to any State must be made in accordance with those requirements.

(d) The Secretary shall by rule promulgate standards and regulations, pertaining to the authorities and responsibilities under subsection (a), including standards and regulations pertaining to:

(1) audits performed;

(2) records and accounts to be maintained; and

(3) reporting procedures to be required by States under this section.

Such standards and regulations shall be designed to provide reasonable assurance that a uniform and effective royalty management system will prevail among the States. The records and accounts under paragraph (2) shall be sufficient to allow the Secretary to monitor the performance of any State under this section.

(e) If, after notice and opportunity for a hearing, the Secretary finds that any State to which any authority or responsibility of the Secretary has been delegated under this section is in violation of any requirement of this section or any rule thereunder, or that an affirmative finding by the Secretary under subsection (b) can no longer be made, the Secretary may revoke such delegation.

(f) The Secretary shall compensate any State for those costs which may be necessary to carry out the delegated activities under this section. Payment shall be made no less than every quarter during the fiscal year.

SHARED CIVIL PENALTIES

SEC. 206. An amount equal to 50 per centum of any civil penalty collected by the Federal Government under this Act resulting from activities conducted by a State or Indian tribe pursuant to a cooperative agreement under section 202 or a State under a delegation under section 205, shall be payable to such State or tribe. Such amount shall be deducted from any compensation due such State or Indian tribe under section 202 or such State under section 205.

TITLE III—GENERAL PROVISIONS

SECRETARIAL AUTHORITY

SEC. 301. (a) The Secretary shall prescribe such rules and regulations as he deems reasonably necessary to carry out this Act.

(b) Rules and regulations issued to implement this Act shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding section 553(a)(2) of that title.

(c) In addition to entering into cooperative agreements or delegation of authority authorized under this Act, the Secretary may contract with such non-Federal Government inspectors, auditors, and other persons as he deems necessary to aid in carrying out his functions under this Act and its implementation. With respect to his auditing and enforcement functions under this Act, the Secretary shall coordinate such functions so as to avoid to the maximum extent practicable, subjecting lessees, operators, or other persons to audits or investigations of the same subject matter by more than one auditing or investigating entity at the same time.

REPORTS

SEC. 302. (a) The Secretary shall submit to the Congress an annual report on the implementation of this Act. The information to be included in the report and the format of the report shall be developed by the Secretary after consulting with the Committees on Interior and Insular Affairs of the House of Representatives and on Energy and Natural Resources of the Senate. The Secretary shall also report on the progress of the Department in reconciling account balances.

(b) Commencing with fiscal year 1984, the Inspector General of the Department of the Interior shall conduct a biennial audit of the Federal royalty management system. The Inspector General shall submit the results of such audit to the Secretary and to the Congress.

STUDY OF OTHER MINERALS

SEC. 303. (a) The Secretary shall study the question of the adequacy of royalty management for coal, uranium and other energy and nonenergy minerals on Federal and Indian lands. The study shall include proposed legislation if the Secretary determines that such legislation is necessary to ensure prompt and proper collection of revenues owed to the United States, the States and Indian tribes or Indian allottees from the sale, lease or other disposal of such minerals.

(b) The study required by subsection (a) of this section shall be submitted to Congress not later than one year from the date of the enactment of this Act.

RELATION TO OTHER LAWS

SEC. 304. (a) The penalties and authorities provided in this Act are supplemental to, and not in derogation of, any penalties or authorities contained in any other provision of law.

(b) Nothing in this Act shall be construed to reduce the responsibilities of the Secretary to ensure prompt and proper collection of revenues from coal, uranium and other energy and nonenergy minerals on Federal and Indian lands, or to restrain the Secretary from entering into cooperative agreements or other appropriate arrangements with States and Indian tribes to share royalty management responsibilities and activities for such minerals under existing authorities.

(c) Except as expressly provided in subsection 302(b), nothing in this Act shall be construed to enlarge, diminish, or otherwise affect the authority or responsibility of the Inspector General of the Department of the Interior or of the Comptroller General of the United States.

(d) No provision of this Act impairs or affects lands and interests in land entrusted to the Tennessee Valley Authority.

EFFECTIVE DATE

SEC. 305. The provisions of this Act shall apply to oil and gas leases issued before, on, or after the date of the enactment of this Act, except that in the case of a lease issued before such date, no provision of this Act or any rule or regulation prescribed under this Act shall alter the express and specific provisions of such a lease.

FUNDING

SEC. 306. Effective October 1, 1983, there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including such sums as may be necessary for the cooperative agreements, contracts, and delegations authorized by this Act: *Provided*, That nothing in this Act shall be construed to affect or impair any authority to enter into contracts or make payments under any other provision of law.

STATUTE OF LIMITATIONS

SEC. 307. Except in the case of fraud, any action to recover penalties under this Act shall be barred unless the action is commenced within 6 years after the date of the act or omission which is the basis for the action.

EXPANDED ROYALTY OBLIGATIONS

SEC. 308. Any lessee is liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, order or citation issued under this Act or any mineral leasing law.

SEVERABILITY

SEC. 309. If any provision of this Act or the applicability thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

TITLE IV—REINSTATEMENT OF LEASES AND CONVERSION OF UNPATENTED OIL PLACER CLAIMS

AMENDMENT OF MINERAL LANDS LEASING ACT OF 1920

SEC. 401. Section 31 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188) is amended by redesignating subsection (d) as subsection (j) and by inserting after subsection (c) the following new subsections:

"(d)(1) Where any oil and gas lease issued pursuant to section 17(b) or section 17(c) of this Act or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) has been, or is hereafter, terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, and such rental is not paid or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was justifiable or not due to lack of reasonable diligence on the part of the lessee, or, no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary that such failure was inadvertent, the Secretary may reinstate the lease as of the date of termination for the unexpired portion of the primary term of the original lease or any extension thereof remaining at the date of termination, and so long thereafter as oil or gas is produced in paying quantities. In any case where a lease is reinstated under this subsection and the Secretary finds that the reinstatement of such lease (A) occurs after the expiration of the primary term or any extension thereof, or (B) will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable, but in no event for more than two years from the date the Secretary authorizes the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

"(2) No lease shall be reinstated under paragraph (1) of this subsection unless—

"(A) with respect to any lease that terminated under subsection (b) of this section prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982:

"(i) the lessee tendered rental prior to enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

"(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

"(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of—

"(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

"(ii) fifteen months after termination of the lease.

"(e) Any reinstatement under subsection (d) of this section shall be made only if these conditions are met:

"(1) no valid lease, whether still in existence or not, shall have been issued affecting any of the lands covered by the terminated lease prior to the filing of such petition: *Provided, however,* That after receipt of a petition for reinstatement, the Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him;

"(2) payment of back rentals and either the inclusion in a reinstated lease issued pursuant to the provisions of section 17(b) of this Act of a requirement for future rentals at a rate of not less than $10 per acre per year, or the inclusion in a reinstated lease issued pursuant to the provisions of section 17(c) of this Act of a requirement that future rentals shall be at a rate not less than $5 per acre per year, all as determined by the Secretary;

"(3)(A) payment of back royalties and the inclusion in a reinstated lease issued pursuant to the provisions of section 17(b) of this Act of a requirement for future royalties at a rate of not less than 16⅔ percent computed on a sliding scale based upon the average production per well per day, at a rate which shall be not less than 4 percentage points greater than the competitive royalty schedule then in force and used for royalty determination for competitive leases issued pursuant to such section as determined by the Secretary: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the termination of the original lease;

"(B) payment of back royalties and inclusion in a reinstated lease issued pursuant to the provisions of section 17(c) of this Act of a requirement for future royalties at a rate not less than 16⅔ percent: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the cancellation or termination of the original lease; and

"(4) notice of the proposed reinstatement of a terminated lease, including the terms and conditions of reinstatement, shall be published in the Federal Register at least thirty days in advance of the reinstatement. A copy of said notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the Secretary deemed significant in making this determination to reinstate, shall be furnished to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate at least thirty days in advance of the reinstatement. The lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed $500. In addition the lessee shall reimburse the Secretary for the cost of publication in the Federal Register of the notice of proposed reinstatement.

"(f) Where an unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744), and it is shown to the satisfaction of the Secretary that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner, the Secretary may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease, consistent with the provisions of section 17(e) of this Act, to be effective from the statutory date the claim was deemed conclusively abandoned. Issuance of such a lease shall be conditioned upon:

"(1) a petition for issuance of a noncompetitive oil and gas lease, together with the required rental and royalty, including back rental and royalty accruing from the statutory date of abandonment of the oil placer mining claim, being filed with the Secretary—

"(A) with respect to any claim deemed conclusively abandoned on or before the date of enactment of the Federal Oil and Gas Royalty Management Act of 1982, on or before the one hundred and twentieth day after such date of enactment, or

"(B) with respect to any claim deemed conclusively abandoned after such date of enactment, on or before the one hundred and twentieth day after final notification by the Secretary or a court of competent jurisdiction of the determination of the abandonment of the oil placer mining claim;

"(2) a valid lease not having been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of such petition: *Provided, however,* That after the filing of a petition for issuance of a lease under this subsection, the Secretary shall not issue any new lease affecting any of the lands covered by such abandoned oil placer mining claim for a reasonable period, as determined in accordance with regulations issued by him;

"(3) a requirement in the lease for payment of rental, including back rentals accruing from the statutory date of abandonment of the oil placer mining claim, of not less than $5 per acre per year;

"(4) a requirement in the lease for payment of royalty on production removed or sold from the oil placer mining claim, including all royalty on production made subsequent to the statutory date the claim was deemed conclusively abandoned, of not less than 12½ percent; and

"(5) compliance with the notice and reimbursement of costs provisions of paragraph (4) of subsection (e) but addressed to the petition covering the conversion of an abandoned unpatented oil placer mining claim to a noncompetitive oil and gas lease.

"(g)(1) Except as otherwise provided in this section, a reinstated lease shall be treated as a competitive or a noncompetitive oil and gas lease in the same manner as the original lease issued pursuant to section 17(b) or 17(c) of this Act.

"(2) Except as otherwise provided in this section, the issuance of a lease in lieu of an abandoned patented oil placer mining claim shall be treated as a noncompetitive oil and gas lease issued pursuant to section 17(c) of this Act.

"(h) The minimum royalty provisions of section 17(d) and the provisions of section 39 of this Act shall be applicable to leases issued pursuant to subsections (d) and (f) of this section.

"(i)(1) In acting on a petition to issue a noncompetitive oil and gas lease, under subsection (f) of this section or in response to a request filed after issuance of such a lease, or both, the Secretary is authorized to reduce the royalty on such lease if in his judgment it is equitable to do so or the circumstances warrant such relief due to uneconomic or other circumstances which could cause undue hardship or premature termination of production.

"(2) In acting on a petition for reinstatement pursuant to subsection (d) of this section or in response to a request filed after reinstatement, or both, the Secretary is authorized to reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes if, in his judgment, there are uneconomic or other circumstances which could cause undue hardship or premature termination of production; or because of any written action of the United States, its agents or employees, which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the property under the lease after the rent had become due and had not been paid; or if in the judgment of the Secretary it is equitable to do so for any reason.".

Mr. UDALL (during the reading). Mr. Speaker, I ask unanimous consent that the House amendment to the Senate amendments be considered as read and printed in the RECORD.

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

Mr. MILLER of California. Reserving the right to object, Mr. Speaker, I reserve the right to object to ask the gentleman from Arizona if he could tell me what happened to the House provision dealing with the discretionary increase of royalties by the Secretary of the Interior.

Mr. UDALL. Mr. Speaker, if the gentleman will yield, the provision in the bill which is now being offered has not been changed. It has the Miller amendment with the 1½ years from now effective date.

Mr. MILLER of California. So the amendment would become effective 18 months from the day of enactment?

Mr. UDALL. That is exactly right.

Mr. MILLER of California. And not 2 years, with the study as the Senate had it?

Mr. UDALL. Exactly. There is no study and the effective date is 18 months.

I am informed that the study is still in there, but the 18 month figure is also there which the gentleman desires.

Mr. MILLER of California. If the effective date is 18 months, I would withdraw my objection.

I am sorry to see we are doing a study. We have studied it 19 times now.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona that the House amendment to the Senate amendments be considered as read and printed in the RECORD?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Arizona (Mr. UDALL)?

Mr. MARRIOTT. Mr. Speaker, reserving the right to object, I would just like to ask the chairman if this bill now contains the language that we wrote, the amendments that we wrote in the committee dealing with the royalty payment increases?

Mr. UDALL. Mr. Speaker, if the gentleman will yield, it does, indeed.

The bill that is before us today, H.R. 5121, is the product of extensive efforts to blend the provisions of the House-passed royalty management legislation and similar Senate Energy Committee legislation.

This compromise bill is the result of efforts that began several weeks back. At that time, Chairman MCCLURE of the Senate Energy and Natural Resources Committee and I attempted to draft a compromise bill that would incorporate the best provisions of both the House passed bill and the Senate Energy Committee bill. That process was almost complete when Chairman MCCLURE took an opportunity to take the bill to the floor and obtain Senate approval.

Since that time we have continued to discuss the legislation. The bill we bring to the floor today represents a fair compromise between the Senate and the House version of the bill. This bill would go a long way toward improving the problems which have plagued the Federal oil and gas royalty management system in the past. Among other things the bill:

Requires the development of a comprehensive inspection, collection, auditing, and accounting system capable of determining the royalty and other payments owed to the United States and the Indian tribes;

Establishes strict civil penalties and criminal penalties for violations of the act;

Speeds up payments to the States of their share under the Mineral Leasing Act of 1920 of oil and gas royalty receipts from once every 6 months to once a month;

Requires an explanation of what such payments were based upon so that the State or Indian tribes can cross check such explanation with their own records to see if the royalty management system is properly accounting for all oil and gas produced for Federal or Indian lands;

Provides the States with the authority to sue under Federal law in Federal court to recover royalties, interest, or civil penalties with respect to oil and gas leases on Federal lands located within States under certain conditions;

Requires that site security plans be developed for all onshore oil and gas lease sites to help protect against oil and gas theft;

Requires notice of the start of oil or gas production not later than the fifth business day after such production began;

Requires that lessees and operators maintain records to properly account for the production of oil and gas from the Federal lands, Indian lands, and the Outer Continental Shelf;

Provides authority to pay rewards to informants who provide information to the Government which leads to the recovery of oil or gas or royalties;

Provides authority to the Secretary of the Interior to enter into cooperative agreements and contracts with States and Indian tribes to carry out inspection, auditing and certain enforcement activities under the act;

Requires more frequent inspections of lease sites by experienced personnel to determine whether oil or gas has been diverted or stolen;

Provides the Secretary with the authority to delegate his authority to conduct inspections, audits, and investigations to any State with respect to Federal or Indian lands within that State, and

Authorizes the Secretary of the Interior to reinstate terminated oil and gas leases at a higher royalty and rental rate.

The bill at the desk contains a provision, from the House passed bill, deleted by the Senate, which permits the Secretary of the Interior the discretionary authority on noncompetitive oil and gas leases to charge a royalty rate of between 12½ and 16⅔ percent. The present rate is 12½ percent. Additionally this provision from the House bill requires that in order for the Secretary to increase the royalty rate above 12½ percent, he would have to make a finding that such increase would not adversely affect exploration development or production or overall reserves to the United States. The bill adds further language which would: First, implement this section of the bill 18 months after the date of enactment of the bill; and second, require a thorough study to be submitted to Congress of the effects of a royalty rate change on oil and gas production and on overall revenues to the United States.

Mr. Speaker, this is a bill that enjoys strong bipartisan support from our committee. It is a good Government bill. It will assist in correcting abuses

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of the past, with particular respect to oil and gas royalty management. I urge my colleagues to support the bill's passage.

Mr. MARRIOTT. Mr. Speaker, the substitute to H.R. 5121, which we have before us today, retains in substance all the main points of H.R. 5121, the Federal Oil and Gas Royalty Management Act of 1982, which the House passed in September. The substitute is a synthesis of the House and Senate bills, which were different but not far apart. Under direction of their respective committee chairmen, the staff members of both Houses have produced a bill which preserves the essential elements of both bills and is far more precise in its language than any of its predecessors.

The new H.R. 5121 clarifies, reaffirms and expands the previously existing authority of the Secretary of the Interior to collect and account for royalties due on Federal oil and gas lease production.

This legislation is the result of the admirable initiative and perseverence of Secretary of the Interior James Watt in moving to correct the royalty management problems which have led to a grievous loss of revenue to the States, the Indian tribes, the reclamation fund and the Federal Treasury in recent years.

Once again, I wish to commend my colleagues, Mr. UDALL, Mr. SANTINI, and Mr. MARKEY for their leadership in pursuing legislation to enhance the Secretary's ability to gain control of an unwieldy situation. H.R. 5121 will restore to the American people revenues rightfully theirs as well as insure that royalty revenues due in the future will be collected in a timely and efficient manner and distributed to the proper recipients as rapidly and efficiently as possible.

As I have said before, I think the States have much to gain by this legislation for it provides for a nationally uniform system of accounting which does not burden the States detailed royalty accounting functions.

At the same time, it does enable States to monitor and assist Federal royalty management by entering into cooperative agreements to conduct inspections, audits or investigations to carry out enforcement authority of the Secretary. This will insure that the proper amount of royalty will be collected in the future and that the States will receive their fair share.

Further, this legislation will permit States to sue under Federal law to collect royalties, interests or civil penalties in cases where the Federal Government fails to take action in a timely manner. To strenghten this enforcement tool, States will be authorized to have access to production data as well as confidential data for use in State audits, investigations and litigation under the bill. Compensation will be provided to the States for their participation pursuant to cooperative agreements or litigation.

States will further benefit from the requirements for prompt distribution of royalty revenues to the States. Whereas existing law provides for distribution every 6 months, this bill will provide for monthly distribution with a full accounting for the revenue's origin, thereby enabling the States to monitor and better employ all the income to which they are entitled.

I think this is a sound piece of legislation and I urge my colleagues to give it their full support.

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

Mr. MARRIOTT. I yield to the gentleman from Wyoming.

Mr. CHENEY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, this is an important piece of legislation. We are eager to get it back to the Senate in the hopes that we can get it passed. I certainly hope that the House will approve the recommendation of the chairman of the Interior Committee.

Mr. Speaker, as the chairman has stated, this substitute for H.R. 5121, as the House passed it in September, leaves substantively intact the most important elements of that bill. Specifically it—

First, clarifies and expands the existing authority of the Secretary of the Interior to establish a royalty collection and accounting system for the moneys due on Federal oil and gas leases;

Second, enables States to monitor and share in the royalty collection efforts of the Secretary of the Interior;

Third, provides for much more prompt distribution of royalty revenues to States and Indians; and

Fourth, establishes an administrative procedure to relieve the Congress from the burden of dealing with a series of individual private relief bills which have been routinely used to reinstate oil and gas leases.

The States in which oil and gas production occurs on Federal lands, such as my own State of Wyoming, strongly support this legislation because it promises not only prompt distribution of royalty revenues but also more accurate accounting and complete collection of the amounts due.

Not only these States, but the public at large have much to gain by rectifying, through the efforts of Secretary Watt and this legislation, a long-standing problem which has grown to immense proportions in the last several years.

I know that this legislation would not have come about without the leadership of Secretary Watt and the cooperation and perseverence of Messrs. UDALL, SANTINI, MARKEY, and MARRIOTT for which I commend them all.

This is a bipartisan bill, badly needed and carefully drawn, and I urge my colleagues to support it.

Mr. MARRIOTT. Mr. Speaker, I would just like to conclude by again thanking the chairman and the Member from California. I think this is a good compromise. It does the things we want to do, and this side agrees with the bill and has no objection.

Mr. UDALL. Mr. Speaker, I thank the gentleman from Utah and I thank the gentleman from Wyoming (Mr. CHENEY) and the other minority people who worked so diligently in getting this legislation before us.

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

Mr. MARRIOTT. I yield to the gentleman from Nevada.

Mr. SANTINI. Mr. Speaker, I, too, want to join with the gentleman from Utah and the gentleman from California in the enthusiastic endorsement of this long overdue reform of the way in which we collect royalty payments for the lease of Federal lands. It has been a long time in coming.

I am happy we are able to see this initiative move as far as it has.

The gentleman from Arizona again is championing farsighted legislation that is about 20 years overdue. I appreciate that very much. Had it not been for the leadership of the gentleman, his initiative and his push, we would not be here tonight.

I hope the Senate will join with that same inspiration and action.

Mr. Speaker, I want to compliment Chairman UDALL, Congressman MARKEY, and Congressman MARRIOTT and the committee staff for the work they have done on H.R. 5121, the Federal Oil and Gas Royalty Management Act of 1982.

Through many long hours of subcommittee hearings, we identified the gross mismanagement of the royalty collection program by the Interior Department, and the bureaucratic inertia that allowed this mismanagement to continue unabated for over 20 years. Secretary Watt, in a bold and decisive move, ordered a study of the problem by the Linowes Commission. That study confirmed the findings of the subcommittee, numerous GAO reports, and various others studies. The time has come to overcome the paralysis that has gripped the Interior Department for over 20 years. This legislation is needed now.

That the royalty management program has been one of the worst managed programs in the Federal Government there can be no doubt. Manpower has been severely lacking. A shortage of inspectors in the field has left site security lacking. Theft has been rampant, and inspections have been few and far between. Earth scientists have been performing the tasks of ac-

countants, with the result that entire accounts have been lost; and unpaid balances, when finally detected, go uncollected. We have allowed oil producers to operate on an honor system long enough. Our obligation to fiscal responsibility requires that we pass this bill posthaste.

The substitute bill before the House today has been only slightly modified from the earlier bill which passed with this Chamber's unanimous support on September 29. It establishes strict penalties, both civil and criminal, for oil producers that do not play by the rules. It formalizes the cooperative agreements program that the Secretary has been conducting on his own initiative, while at the same time it guarantees the rights of the States to receive their share of royalty payments in a timely manner and with assurance that each State's share of royalty payments has been properly accounted for. In short, this bill puts integrity back into the royalty management program.

I urge my colleagues to rise in favor of this legislation so long overdue.

Mr. MARRIOTT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Arizona (Mr. UDALL)?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

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

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

There was no objection.

SKYROCKETING PRICE OF NATURAL GAS

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

Mr. COLEMAN. Mr. Speaker, today I am introducing legislation to address the most pressing concern in the Sixth District of Missouri and throughout much of the Nation: The skyrocketing price of natural gas.

The legislation I am introducing addresses the natural gas problem in two ways: First, my bill rolls the prices back to their October 1, 1982, levels and freezes them there for 2 years; second, it establishes a volume adjustment option in natural gas contracts to override the take or pay clauses which have pushed gas prices to artificially high levels. This legislation will enable and require gas pipeline companies to provide consumers the lowest priced gas they have on contract and should lead to lower gas prices.

Mr. Speaker, the need for such reform is clear. The people of Missouri are reeling from dramatic increases in the price of natural gas to heat their homes. Prices have risen 91 percent since January 1981 and 36 percent in the past year alone. Natural gas prices continue to climb. The elderly are especially being hit hard. Squeezed between fixed incomes and rapidly rising gas prices, some Missourians are facing a choice between heating and eating.

While their friends and neighbors have pitched in admirably to help them pay their bills and turn the heat back on, charity cannot begin to deal with the magnitude of this problem, particularly when the middle-income families themselves are being adversely affected by the continuing rapid rise in natural gas prices.

Citizens cannot understand why they should have to pay for high priced gas from deep wells or foreign nations when relatively cheap gas in the Hugoton fields of Kansas goes begging for buyers. The market cannot justify these high prices; demand is down and there is a supply surplus, yet prices continue to rise dramatically.

One major problem is that pipeline companies are automatically passing cost increases through to distributors and ultimately to consumers. In order to avoid a rerun of the natural gas shortages of previous years, many pipeline companies were so eager to insure future supplies that they signed long-term contracts with "take or pay" clauses. Under these contracts, pipelines must pay for the gas even if they don't need it. Since most contracts for the relatively cheap "old" gas don not have these take or pay clauses, the pipelines are forced to take this expensive gas first even though sometimes it costs 10 times as much. And consumers are being told that they must foot the bill.

My legislation amends the Natural Gas Policy Act of 1978 to fix these problems and turn this disastrous situation around. It would require all natural gas contracts to include a volume adjustment option, which would override take or pay clauses. Pipelines would have to take the lowest cost gas they have on contract first. The savings would be passed directly on to consumers.

The affect of this change is that producers who have been selling gas at very high prices because of these take or pay clauses will not be able to sell their gas unless they lower their prices. This creates a very powerful market incentive for producers and pipelines to renegotiate their contracts. In addition, by freezing maximum prices on natural gas for 2 years, my bill insures that producers can not force pipelines to pay higher and higher prices in order to get gas supplies they may need.

Mr. Speaker, the situation is grave. Nearly 6,000 homes in the Kansas City area alone have had their gas supplies shut off because the residents are unable to pay their bills. I urge all of my colleagues to join with me in pushing for prompt action on this vital legislation.

CHILD PORNOGRAPHY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. DORNAN) is recognized for 60 minutes.

Mr. DORNAN of California. Mr. Speaker, I took out this special order tonight because there is a general epidemic across the country, it has been such for about 14 years now, of venereal disease. Two new types of epidemics, both incurable, have been added to the social diseases of America just in the last year or so; one is Herpes II, and there is a rather dark sick joke on it going around that the difference between true love and Herpes is that Herpes II is forever.

The other epidemic is more insidious even than the Herpes, which is incurable. It is called AIDS, acquired immune deficiency syndrome. Twenty-five percent of the people that get this are dying and because it is retained in the blood, little children who have had birth defects and have needed blood transfusions are now coming up with this. Our older people in hospitals who have merely been seeking blood transfusions found themselves carriers of this horrendous new disease, AIDS.

It is particularly prevalent in the homosexual community. Nobody seems to be willing to state on the networks why. It is probably because in discussions of it they talk about homosexuals in our country that have had up to 1,000 to 1,500 sexual contacts in a given year. That is a lot of activity.

Mr. Speaker, I would like to give a tragic example of how pornography is influencing the venereal disease epidemics, how it is influencing rape and how I believe the facts can no longer be dismissed, that it is influencing the whole motion picture industry.

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We tend to be very cynical in the Congress with "Gee Whiz" figures, but just listen to this: I did a documentary when I was hosting a television show 14 years ago, pointing out pornography had become a $5 million industry. That, I guess, could fairly be called a cottage industry. It is certainly an industry now, somewhere between $4 and $6 billion.

There is a rape every 12 minutes in the United States. Half of those rapes

are young women under age. One quarter of the rapes are children under the age of 12 years. One quarter of all the rapes in the United States are under 12.

If anybody is going to tell me this has not had an effect, that pornography has not had an effect on rape, I will tell them that they are crazy.

Certain segments of the feminist movement are now very aggressively and with a great deal of intellectual facts to back them up, coming out hard against the effect pornography has had in demeaning women in the United States of America. When we say "women," that means our grandmothers, our mothers, our wives, our daughters, our sisters.

Something simply is going to have to be done in this body in the 98th Congress. We have done nothing in the last 6 years except unanimously pass one bill or resolution about 6 years ago that took out distributors. When you take out distributors, which we would never do with illegal gun running or with narcotics, then it makes it almost impossible for the law authorities to get a handle on this.

One thought before I put into the RECORD the dimensions of this nightmarish problem, and that is its effect on the motion picture industry.

Last month, as I started to say, I went to see a film on computers out at the Disney studio because I was told that not only was it entertaining but it had something to say about the incredible growth of computer technology in our society and its acceptance by young people, down to gradeschool children, if their families are lucky enough to have a small personal computer.

The Disney film was called "Tron." Playing with it was a film called "Fast Times at Ridgemont High." I missed the opening titles of the film "Fast Times at Ridgemont High," but I was curious because the film was based on the book written about a high school in my congressional district, Redondo Beach High School, along the beautiful California coastline.

The film was so crass, so vile in its presentation to basically what is called in the trade a teenybopper audience, that I was stunned. I could not believe as I looked around and saw 10-, 12-, and 13-year-olds in the audience that I was seeing this film with kids in attendance. I could not enjoy the Disney film because it was doublebilled with this.

I walked outside and talked to some of the people on what they call this quad theater, some decent young usherettes, a cashier. The projectionist had been in the business since 1942, a year when a great classic film like "Casablanca" won an academy award. He said the decay in the business had been absolutely beyond description.

When I looked at what they called the sheet in front of the theater on this film, "Fast Times at Ridgemont High," and saw that it had been directed by a woman named Amy Heckerling, who made her reputation in some of the horror films where they stick needles in eyeballs and disembowel people regularly for almost 2 hours, I could not believe that a woman who lends herself to the degradation in this film where they established a 15-year-old girl, an actress whose father was an actor of some fame killed in a recent horrible helicopter accident. I understand that he had cut her off in his will, ironically, 2 weeks before he died because of this film. This girl may have been 18, 19, 20, 21, but she looked 15.

This Congress, could not tolerate a verbatim discussion of the dialog in this film. I will give just a sampling of two scenes using highly inaccurate euphemisms.

The girl is sitting in a cafeteria with a 16-year-old girl, asking about a particularly sleazy filmed seduction scene in the dugout of the high school baseball stadium the night before, and the other said she was not aware of all the variables in sex, and the 16-year-old gives her a lecture on how to engage in oral sex, and then takes carrots out of her lunch box and proceeds to demonstrate. The other girl tries to master this form of sexual activity, and all the boys are sitting at a table adjoining them.

This was all filmed at the Van Nuys High School. In discussing this with my staff, they pulled a letter out in which parents of the Van Nuys High School complained that the kids brought home this nightmarish story.

In the film all the boys are sitting at a table watching this laughing. Later on as the girl describes the pain in losing her virginity, her 16-year-old friend tells a 15-year-old "If you do it a lot, I assure you it is going to get great."

Then she asks, "At the moment of sexual climax, how much seed or semen," or some other crass word in place of the euphemism, "comes out of the man? and the 16-year-old kid says, "A quart," and it goes downhill from there.

This is a film with the words "high school" in the title, which means a few college kids, freshmen and sophomores, who are not serious about what they are going to do in life, might find time to go, but a serious junior, senior, man or woman, looking for a career, they do not have time and the 30-year-old audience is not going to go.

Here is a film by a studio directed at a teenage and subteen audience. I saw the subteens in the theater with my own eyes.

Just within the hour I talked with the marketing manager of this studio. I pointed out to him, since this studio, the biggest now in the world, Universal Pictures, is going to make a third of a billion dollars alone off one excellent family film, "E.T.," that I was appalled that they would put out this type of junk, loathesome product, to help "corrupt the morals of the youth of America." That is my quote, and that is exactly what this film, "Fast Times At Ridgemont High," is doing. It is corrupting the morality of young Americans.

Now, when this is going on in the regular motion picture business, which by the way combined with the entire music industry, is not making as much as the porno industry, you see who is winning in the United States of America as far as what we culturally dish up to our children.

In 1981, I repeat, the porno industry was between $4 and $6 million. Of the 10 major magazines sold in America, 6 are slick, soft-core or hardcore girlie magazines—that is a trade name—girlie porno magazines.

Penthouse and Playboy, the two hedonist champion girlie magazines, together sell more than Time and Newsweek together. They are, using the so-called term adult bookstores in the United States, now a number surpassing 15,000. That is more than all of the McDonald's Restaurants, with about half of the second chain thrown in.

According to industry estimates, there are 400 of these porno or skin magazines on the market, and perhaps as many as 20 million men and women buy them regularly. You are almost offended using the word "women" in that context. Women are becoming a marketplace for these magazines which demean and degrade them.

Two to 3 million Americans view pornographic movies each week. Videotapes of films represent about 50 percent of the home-movie market.

There is a special article in Parade magazine, I think one of the titles or subtitles was "Smut Sultans," about the hardcore pornography industry in this country. The FBI and Department of Justice contributed to this.

The amount of statistics would just rock you, boggle your mind. I have 12 pages of them. The subject is so disgusting in what it portends for the future of the country that even though this Chamber is still televised, there are people across the country listening to this, I am not going to offend them.

So I am going to put these 12 pages of statistical garbage, all of it unfortunately factual and true, in the RECORD:

Mr. Speaker, In 1981, the porno industry was estimated to have taken in between $4 and $6 billion, now, 1982 it is making as much money as the conventional movie and record industries combined.

So-called adult bookshops in the United States now number more than 15,000. That is three times the number of McDonald restaurants.

According to industry estimates, there are more than 400 "porno" or "skin" magazines on the market and perhaps as many as 20 million men and women buy them regularly. A decent person resents saying "women" in that context.

About 2 to 3 million Americans view pornographic movies each week; videotapes of such films represent about 50 percent of the home-movie market.

It is estimated that there are at least 250 "kiddie porn" magazines on the market.

As pornography has become more popular, its content has changed considerably. Much of it now portrays violence, degradation, and humiliation rather than just seduction, lust, adultery. Common themes include sadism, incest, child molestation, multiple rape, and even murder, that is, snuff films—either simulated or real (rare but horribly factual).

The surest sign of how bullish the 1970's were for the porn industry is that the Mafia has moved in—just as it pushed into gambling and drugs in earlier decades.

A Parade magazine investigation of the Nation's hardcore pornography—titled "Smut Sultans" aided by access to confidential reports from the FBI, Justice Department, and other agencies—reveals an upper eschelon of five men who control a major portion of the industry. Below this group is a second level of two dozen major porn merchants who also produce, import, and distribute a veritable "pornocopia" of 8-millimeter stag films, full-length 16- and 35-millimeter X-rated motion pictures, books, magazines, weird rubber and plastic paraphernalia, and video tapes.

Top moneymaker in the pornography industry is the automatic peep show, a small private booth—often called masturbation booths—in which a quarter is dropped which brings 2 minutes of filmed hardcore pornography. According to the Adult Business Report, the pornography industry trade paper, approximately 75 percent of the adult bookstores have peep shows.

X-rated books and magazines that cost 50 cents to produce retail for between $5 and $10. The 15-minute, 8-millimeter movies wholesale for $3 and retail in this country for $20. Full-length 35-millimeter motion picutres may cost up to $150,000 to produce and will generally return two or three times that amount.

The fastest growing pornography product is video cassettes. More than 1 million U.S. homes are already equipped with video recorders, and dealers report that an increasing number of people buy X-rated films at prices ranging from $80 to $150, double the charge for regular movies.

What is called cableporn is another hot item. At the current rate of growth, nearly 50 percent of the U.S. households with televisions will be wired for cable by 1989. X-rated and R-rated cassettes currently account for between 50 and 60 percent of all prerecorded tape sales.

Hugh Hefner and Bob Guccione, the high priests of hedonism, have entered the cableporn market and are transforming their magazines, Playboy and Penthouse, into video ventures. Penthouse Entertainment Television Network is being developed for a satellite-fed audience projected at 5 million by Guccione. Hefner plans to rename the existing Escapade Cable Service—the pornography channel which now has well in excess of 170,000 viewers nationally—the Playboy channel,

And on TV, another rival operating as a pay service through the ultra-high-frequency broadcast spectrum, has more than 570,000 viewers. Fancy hotels now routinely contract to show their guests films like "Virgin Prize" along with the more conventional fare, which includes a lot of R-rated crap.

At least 60 million dollars' worth of X-rated video cassette tapes are expected to be sold this year.

Feminists have begun to organize against pornography. Organizations with names like "Women Against Pornography" and "Women Against Violence Against Women" have been formed and led by feminist theorists such as Andrea Dworkin and Susan Brownmiller. The feminists believe that pornography is intrinsically sexist. Of course they are correct. As a depiction of predatory and sadistic male sexuality, porn, they say, makes violence against women not only acceptable but exciting to men. "Pornography is the theory; rape is the practice" has become the rallying cry of women who fear that porn's glorification of sadism condones—and even encourages—violence against females. Citing the work of the Marquis de Sade, Andrea Dworkin describes the pornographic mentality as one in which "rape is foreplay, preparation for the main event, which is maiming to death."

Today, a rape occurs every 12 minutes in the United States; half of the victims are under the age of 18 and a quarter are under the age of 12.

One of the biggest lies about pornography is that "pornography is not a victimless crime." At least four groups are victimized by pornography:

First, women—they are looked upon merely as sex objects and much of contemporary pornography highlights the joys of sado-masochistic sex.

Second, adolescents—there is no way that pornography can freely circulate without falling into the hands of millions of teenagers. In addition to portraying a demeaning picture of women, pornography tells adolescents—and others—that sexual activity need not be related to love, morality, commitment, or responsibility. Pornography tells adolescents that aberrational sex is the most exciting and appealing form of sex. Hustler magazine, for example, has presented beastiality as an unrivaled form of sexual gratification—the supreme sexual experience.

Pornography encourages implusive sex, careless sex, daring sex, irresponsible sex, and it implies there are no adverse consequences. You would never guess from viewing pornography that irresponsible sex leads to teenage pregnancies, premature marriages, abortions, illegitimate children, venereal disease, or psychic traumas. Nor would you suspect that extramarital sex had any unhappy consequences. The truth is exactly the opposite.

Third, children—youngsters who pose for pornographers are obvious victims the pornographers make obscene profits peddling such wares to the sick sick souls who feast on them.

Fourth, society in general and the family in particular—pornography is a direct challenge to the family because it encourages attitudes that are destructive of it. Family stability lies at the heart of a stable society and a healthly attitude toward sexuality is central to a sound moral code. The French nobility, before the terror of the French Revolution, used to amuse themselves by watching people have sexual intercourse. The implications and parallels are worth reflecting upon.

Is pornography a form of expression that is protected by the first amendment? Absolutely not. The Founding Fathers had in mind freedom of religious and political speech when they drafted the first amendment. Pornography would not have been considered a form of speech by the Founding Fathers, but, rather, a corruption of speech.

A series of decisions by the U.S. Supreme Court opened the doors to the current flood of pornography. The present definition of obscenity as enunciated by the Court on June 21, 1973, in Miller against California is that it is material "that the average person, applying community standards, would find * * * as a whole, appeals to the prurient interest," material that "depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable State law," and material that "taken as a whole, lacks serious artistic, political or scientific value."

If local communities were free to control or ban pornography instead of being constantly overruled by court decisions, real progress could be made in the war against pornography.

Just listen to a few excerpts from testimony by Joseph B. Haggerty, detective, Metropolitan Police, obscenity unit, before the U.S. Senate last Friday, December 10, 1982:

Missing children, throwaways, abandoned or neglected children are all victims of the vultures of the street—pimps, pornographers and, many times, other victims like themselves.

Life no longer recognizes them as human beings.

The only jobs available are in massage parlors, escort services, performing in sex films or photographs.

New laws govern their existence: Right is doing something and getting away with it and wrong is getting caught.

The only way to arrest a pimp for pandering or procuring is through his prostitutes. These prostitutes must testify at both the Grand Jury and at the trial. Even if the prostitute is a juvenile, both appearances are still necessary.

Pertaining to child pornography, a child is described as anyone under the age of 16 years. Because most pornographers are well aware of these laws, they try to use models 16 years old or older to avoid prosecution.

Currently, pornographic films, magazines, photographs and videotapes released in this country are under no restrictions except the relatively vague obscenity laws—censorship of this material is nearly impossible.

Here are some factual excerpts from the testimony presented by John Dillingham of the Washington School of Psychiatry at the same U.S. Senate hearing on Friday on a particularly shocking study on child pornography.

Funding for the study was provided by the National Center on Child Abuse and Neglect.

Close to 750 individuals were interviewed—namely children at risk, child prostitutes and child pornography victims, parents, pimps and customers in Washington, D.C., New York and Baltimore.

The youngest child interviewed was six years old. This child had already experienced oral sex and masturbation.

People in their very late teens and middle twenties were interviewed to get a picture at a later date of the lives of people who had started as child prostitutes and pornography participants.

Child prostitution turns out to be a very large industry in the United States.

Child pornography is a "cottage industry". Children acknowledge that they are invariably asked to pose for personal pornographic photos by customers on the street and in bars and restaurants and hotels. They acknowledge observing the Exchange of pornographic snapshots in which their peers are exhibited. Most children are unwilling to admit that they actively engage is such activities, although they universally point the finger at each other. Customers apparently do exchange these photos much like trading baseball cards. There is also a significant amount of home movies and home videos which are also exchanged.

The largest group of children have been pushed out of their homes. they are not runaways. They have been told directly, or by family behavior, that there is no more room for them in their homes—either for economic reasons, or for reasons of age, specific family dynamics, or because of resistance to intra-family sexual exploitation, or because of severe family trauma.

More than 75 percent report sexual abuse within the family.

An overwhelming percentage report a feeling of alienation from family lifestyle, and family disciplinary culture, from a very early age.

More then 60 percent report previous contact with mental health, social services, or other institutional helping professions. These have been perceived as actively hostile to the child, as instruments of increasing the alienation from family, and of intensifying a punitive familial attitude or policy toward the child.

The incidence of serious and chronic mental illness among the children and young people who engage both in prostitution and in pornography is very, very high. It is also evident that a significant number of young people have had situational mental health crisis due to severely traumatic family catastrophies—catastrophic deaths, suicides, murders, for which they have received no emergency or crisis intervention support.

These children appear to share more direct characteristics with the adult homeless population. These children who are more pushed out than runaway, appear to be the "undocumented aliens" of the general population—and will be the homeless adults of the future.

At the same U.S. Senate hearing 3 days ago I was impressed as a parent and grandparent by the testimony of Mr. Robert Pitler, bureau chief, Appeals Bureau, District Attorney's Office for New York County (Manhattan).

Here are Mr. Pitler's thoughts on proposed changes in the Sexual Exploitation of Children Act of 1977 (18 U.S.C. 2251-53):

First, the act recognized the grave harm to children who are made to engage in sexual activity for the purpose of visually reproducing that conduct.

Second, the act prohibits the knowing interstate transportation and shipment or mailing *only* of obscene materials depicting the sexually explicit conduct of a child under sixteen years of age.

Third, in requiring proof of obscenity, the Congress was concerned with the constitutionality of any statute which did not require proof of obscenity.

Fourth, many people expressed the view that all hardcore material depicting the sexual conduct of children was by its very nature obscene—thus, it was thought that even by requiring proof of obscenity the statute would still be an effective deterrent.

Fifth, the Supreme Court in *Ferber* v. *New York* has held that, given the compelling interest in protecting children, proof of obscenity is not required to validate legislation which prohibits the dissemination of child pornography.

Sixth, accordingly, the obscenity requirement should be eliminated from the statute.

Seventh, the belief that a ban on the distribution of obscene materials alone would discourage distributors from dealing in child pornography ignores the reality that the obscenity laws have failed to discourage the distribution of obscenity.

Eighth, the deterrent value of a statutory ban on obscenity is effectively undercut by the difficulties in prosecuting obscenity cases successfully—concept of obscenity is complex, and its application to particular cases is a matter of considerable delicacy, resting on often highly elusive criteria. For example, defense counsels have argued successfully that, even though the materials at issue in a particular case are disgusting, they simply do not appeal to the prurient interest in sex of either heterosexuals or any definable sexually deviant group, or they argue that materials are not patently offensive by community standards.

Ninth, the deterrent effect of the ban on obscenity is also undermined by the requirement that the work in question must be examined as a whole—this does not protect the child who is abused sexually in the production of that work.

Tenth, the New York Legislature chose to prohibit the dissemination of both non-obscene and obscene materials depicting children engaged in sexual conduct.—"It is irrelevant to the child whether or not the material is obscene or has a literary, artistic, political or social value."

Eleventh, the statute has no application when actors or actresses or models over 16 years of age are used to portray children of lesser years—a twenty-four year old actress was used to portray a fourteen year old in *Lolita* although they interviewed over 700 children for the lead roll.

Twelfth, the desire of those who insist that they want the "real thing" must be subordinated to the compelling interest in protecting children.

My colleagues, since most if not all child pornography crosses State lines, we need Federal action to eradicate this loathsome problem. We must see tough new laws coming from this Congress. Let us get about it. How much longer can we mock God by our vile abuse of children and women in the United States?

I admonish all Members to reread Matthew 18: 6: "Whosoever shall harm one of these little ones who believes in Me, it were better for him that a millstone were hung around his neck, and that he were drowned in the depth of the sea."

I say I have accepted the offer of the marketing manager of the great television studio Universal to go out there and have lunch with him for about 2 hours he asked for, and discuss "Fast Times at Ridgemont High." He said he is the father of teenagers.

I pointed out that I came to the Congress with five teenagers and 6 years later they are all in their twenties, two of my daughters are married, the other daughter is close to it. I have become a grandfather twice in the last year, and once again next May.

We have a very sick, very sick problem with American cultural life. I have been to the Soviet Union five times, and let me tell my colleagues that the Russians look at this child pornography problem in the United States along with our narcotics problems, and they do not have any fear that any of the defense systems that we are building would ever be used against them or that they are every going to have to use any of their defense systems against us.

They really do take seriously the most arrogant boast of their god-head

whose picture is on every outhouse and administrative wall in all of the Soviet Union, their god-head Vladimir Ilich Ulyanov Lenin, who said there will never be a conflict with these capitalists because they will just be picked off the vine like rotting fruit.

□ 1850

If ever there was anything rotten in the state of the United States—not Denmark—it is this pornography problem. It is working in concert with the narcotics problem, although the narcotics industry is $80 billion and this is $4 to $6 billion. The Mafia has moved in heavily. Five families around Miami, the Mafiosi Cosa Nostra families, control 80 percent of this garbage, and they murder people to get the rights in the small towns to see "Deep Throat," which was made with crime money down in Miami.

I do not know what the Congress of the United States is going to do in the next 2 years with all the pressing problems, but I hope that somewhere, somehow, some subcommittee on justice in this House or in the other body will address itself to this problem and try to do something in the United States of America—under all the protections of our first amendment and greatest amendment, the first amendment of our Bill of Rights, to not let people wrap themselves in the flag, wrap themselves in congressional protection, wrap themselves in freedom of speech so that they can continue to aggravate this Nation with their incurable social diseases and a rape rate that is not only the disgrace of the world, but never in all of recorded history, from the Huns sweeping across Europe back to the world primeval, where man's inhumanity to man was taken out on women and young girls; never anywhere in history has a nation, let alone a nation of culture and intellect, in its third century, tolerated the rape rate that we see in the United States of America today.

I submit the rest for the RECORD, and hope something happens in the 98th Congress, because we did not do anything on this issue for the 6 years this Member was here.

REFLECTIONS OF A MEMBER OF CONGRESS—1971 TO 1982

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. PEYSER) is recognized for 60 minutes.

Mr. PEYSER. Mr. Speaker, since I first was elected to Congress in 1971, I believe that this is about my fourth general order in that period of time. For those who are still waiting in the House, I promise to try to keep my remarks direct, but I did want to make a special reference to some of the things that I saw and was involved in during this period of time that I think are worthwhile putting in the RECORD. I tried to do it in a way that will be quite concise, and set forth the points that I have in mind.

So, I sort of broke this apart, and I said from 1971 to 1982, what were the biggest problems and perhaps the tragedies that I witnessed in this country and in this Congress in that period of time?

I think the first on the list would have to be the war in Vietnam and the tragedy that resulted to hundreds of thousands of Americans—really to millions of Americans, because the tragedy struck all of us, and of course particularly to those many thousands who lost their lives in Vietnam. This was a tragedy that happened because of a number of circumstances: The executive branch involvement at that time and the Congress willingness to go along with the executive without questioning. I think that we learned a great lesson from that tragedy, and I am hopeful and believe that that type of thing will never happen again.

The second problem and tragedy would have to be Watergate, because Watergate put this country through probably one of the most traumatic experiences that it has ever been through. It dragged out, as it had to in order to go through the process, to a point that it was the main conversation, the only thing that was in peoples' minds in this country. The real question was whether this democracy could survive a Watergate. The only good part of that whole problem was, it could survive. It showed that this democratic process was strong enough to take one of the toughest blows that had ever been administered to it and come up stronger than ever. So, while it was a tragedy, it also showed a great strength.

The third greatest problem is the one that is facing us today, and that is the problem of 12 million Americans unemployed, with an unfortunate indication that the numbers in the next months are even going to go higher. This is a tragedy that I hope that we still in this Congress, in the 97th Congress, and particularly I hope in the 98th Congress, are going to take direct action on. This is not a "sit and let's wait and see what it going to happen" problem. It is a problem that calls for us in the Congress to do something about it.

I believe that when we look back on this period of time, this unemployment problem will be equal in its tragedy to the other two problems that I have just mentioned.

Now, I also have been in the unusual situation, as have many of my colleagues in this period of time, to have served under four Presidents. It is a very unique period because of the resignation of one of our Presidents that we have had that number in a very short period of time. I have made sort of a one liner on how my feelings are concerning the jobs that those four Presidents have done and are doing. So, this does not pretend to be a complete analysis at all, but just a very quick sort of shot of where I feel they are.

The first President I served under was President Nixon, and I would have to say about President Nixon that he was probably one of the most competent Presidents, but the other side of the coin was that he was basically dishonest. This Government cannot survive a Chief Executive in office that has demonstrated the trait of dishonesty that was illustrated by the years of President Nixon. I was very criticized during that period of time for not immediately jumping into the forefront, as many of my colleagues did, in calling for the impeachment of the President. I did not call for the impeachment because I felt that I was like a member of a grand jury, sitting here in this House waiting for the evidence. Well, when the tapes became available and the Judiciary Committee said that Members of the Congress could listen to those tapes, I went and I spent 6 hours in a room listening to those tapes of the President.

When I came out there were a group of reporters from the AP and the UP and many of the newspapers, because they knew of my past reluctance to act on this. They said, "Congressman, what would you do now?"

I said, "I would vote to impeach the President," because in those 6 hours I heard our President say the kind of things that I just felt were so terrible and so much against what this country stood for, and particularly what the President stood for, that I felt he would have to leave.

President Ford: Very briefly, I equate President Ford, and say, here was a very decent and a very honest man, and he was good for us in the period of time that he served. He was a response that the Congress really gave the country to what had happened with President Nixon.

On President Carter, I felt that President Carter was and is an extremely intelligent, decent individual. I felt that the big failing of President Carter was that he never understood how to work with the Congress, and he never understood the relationship that the Executive held with the total Government. Because of that lack of understanding, he lost his election.

On President Reagan, who is just at the midterm of his Presidency, I have simply said I believe the President is so rigid in his beliefs and so unbending until he has lost the fight that this is serving him very poorly and serving the country very poorly. Also, I feel that he lacks in a very basic understanding of the peoples' problems. I do not really believe that he understands

the suffering and the agony that some of the legislative measures that this Congress passed a year ago have created for a great many people.

□ 1900

It is certainly my hope that in the last 2 years that realization and also the willingness to be more flexible and more yielding will show themselves and this country will profit by it, and I am sure the Congress will be glad to work with the President.

What were the biggest successes? Well, I think one of the great successes in the Congress was the enactment of the War Powers Act, because that War Powers Act finally put the Congress in a situation that said that when young Americans are going to be committed in a war in a foreign country, this Congress is going to have a voice and say something as to what happens. I think that was a great success, and it was very important for the American people.

Another success was the gains made in that period, from 1971 to 1982, in education and the arts, along with the recognition on the part of the Federal Government that we have a real responsibility, that an educated young American is undoubtedly the greatest strength we have, and that the development of the arts is something that is of the utmost importance for this country and for our civilization.

A third point is that during that period of time we really recognized the needs of the elderly and made gains for the elderly through the Older Americans Act programs that responded to the needs of this large segment of the American public that has so long gone neglected.

Another issue is the congressional awareness—and I do not mean this in a controversial sense—of the agriculture programs of this country because I do not think it either served agriculture well or the Congress or the people well to have a Congress that traditionally, until this period of time, basically accepted the programs for agriculture without questioning them and without finding out what the implications were to the consumers of the country as well as to the farmers. I think that the agriculture community and the consumers, the total country, will profit because of the recognition Congress now has on these programs.

One last area is that in this period of time we saw the beginning really of community development programs, urban programs, and mass transit programs where the Federal Government recognized the need for their assistance in helping these areas and in helping the people of the country specifically in rebuilding and keeping their cities vital.

I have talked of the biggest successes. Briefly, let met talk of what I see as the biggest failures. One of the biggest failure over this period of time has been the inability of the Congress and the White House to work together for any period of time as a team, as though we were all working for the same good. The fact is that that really has not happened.

Another failure is the refusal of the Congress to put a limit on campaign spending in congressional races and its refusal to let public financing of congressional races take place, because I think, more than any one factor, we are going to find the continuing influence of substantial money controlling many elections. I just am not convinced that that is in the best interests of this country.

Another area of failure has been the inability of the Congress to change its rules to halt procedures that slow down or stop legislation from being acted on, either to defeat legislation or to pass legislation. One of the biggest wastes of time we go through in this Congress everyday is that we generally vote for the approval of the Journal. We have a lot of demands on our time and we have a lot of things to do, and yet we go through that charade everyday. There are many, many other examples of absolute waste of time in this House and also in the Senate. But I am not going to speak to the Senate, because the Senate's waste of time would far exceed anything we can come up with. Nevertheless, I think we in the House have not really addressed the problem effectively.

I also believe that the Congress has not developed an overall solution of the energy problem that we have in this country or the problem of our sources of energy in the years to come. It is certainly something to which we have to direct ourselves. Everytime we start getting to it the price of oil begins to drop a little and we shelve whatever those programs are.

Another vitally important thing is the inability on the part of the Congress or the Executive to develop a national trade program. What are we going to do to compete with foreign trade? What is our program? We have never had in the years that I have been here any consistent program that would let our manufacturers and our producers compete favorably with foreign producers and manufacturers. Any program that says this is the course of action we are going to take on trade is completely nonexistent, and we desperately need it.

I guess I would have to list as the last failure the fact that the Congress, while it made many gains in education and in the arts, unfortunately, during this past session, turned around and cut back on many of those gains and cut back on many of those programs. That ultimately will hurt us, and I am convinced that ultimately we will reverse that action.

Finally, let me give my personal overall reaction to having served in this Congress. Many people have said to me, as I am sure they have said to Members all throughout the history of Congress and for many, many years, "it must be awfully frustrating down there."

Well, let me point out that there is no job that is not frustrating. We have our frustrations, but I do not know of any job in this country that has the rewards that this job has, nor do I know of any job that can give one the kind of satisfaction that this job has given me. So from my point of view this has undoubtedly during this period of time been the greatest period in my life and one that has given me more feeling of accomplishment than, I think, anything I could have done. And to the Members of the House who are continuing to serve and to the Congresses that will follow, let me say that I hope you share that feeling, because it is going to be important not to look on this as a job, but to look on this as an opportunity to serve this great country of ours and the great people that you represent.

So, Mr. Speaker, I leave the Congress at this time, but I leave it with a great feeling that it has been a great experience and one that I would urge my colleagues to stay with. And to those of you who are not yet in the Congress, let me say that I hope you look to the future someday and plan on making the race to serve with these great men and women in the Congress.

A TRIBUTE TO THE HONORABLE BILLY LEE EVANS OF GEORGIA ON HIS DEPARTURE FROM CONGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. BRINKLEY) is recognized for 60 minutes.

Mr. BRINKLEY. Mr. Speaker, our friend and Georgia delegation member BILLY EVANS completes this chapter of his public service at the end of the 97th Congress. Uncommon bonds develop between Members of the House and it is not easy to say goodby to any Member, but it is especially difficult to say goodby to a Member of your own State's delegation whose district is adjacent to your own and with whom you have worked on so many important issues, such as Warner Robins Air Force Base. BILLY is generous in victory and gracious in adversity, and it is especially appropriate for us to get together today to thank him for his service, to wish him well, and to say so long to a really terrific guy.

BILLY came to the Congress well prepared to assume the responsibilities of serving the people who elected him. A graduate of the University of Georgia School of Law, BILLY earned a distin-

guished record as a member of the Georgia House of Representatives from 1969-76. Deeply committed to his fellowman, BILLY has taken an active role in programs which respond directly to the needs of others, including the Elks and the Scottish Rite Masons.

Elected to the 95th Congress in 1976, BILLY has achieved an impressive record of leadership on issues ranging from transportation to the Federal judicial system. His heavy committee assignments include the Public Works and Transportation, Judiciary, and Small Business Committees. His influence in each of these sectors has been great, but is was his expertise and splendid counsel as chairman of the 1980 House Select Committee on Narcotics Abuse and Control field hearings in Macon and Brunswick, Ga., that resulted in his finest hour. His was a compelling case for stricter enforcement of our drug laws, and his voice of passionate concern moved many to action.

He has been a champion of agriculture, knowing full well that wherever the farmer was, the consumer was close behind him. Their lot was closely intertwined.

BILLY EVANS' hard-working dedication to the people of his district has won the respect of each and every one of us who now gathers to pay him tribute. In spite of his enviable achievements, BILLY has never lost the common touch. He is an easy man to be with, whose infectious humor and easy smile are always at the ready. I value his friendship and wish him Godspeed in the years ahead.

Mr. Speaker, at this point I wish to include for the RECORD, a résumé on the congressional service of this remarkable man, and I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks under this special order.

BILLY EVANS

1. *Economic policy.*—Congressman Evans supported the Reagan Administration's budget and tax proposals for Fiscal Year 1982. Passage of the Budget Reconciliation Act reduced government spending from an annual growth rate of 14 percent to 5.5 percent. The Congressman does not agree with the Fiscal Year 1983 Reagan budget proposal with projected budget deficits of $95 to $150 billion. He is committed to and will support responsible legislation to reduce government spending and the national debt.

2. *Judiciary.*—On October 20, 1981, Congressman Evans introduced legislation aimed at preventing the discharge under Chapter 7 bankruptcy of affordable debt, creating standards for repayment under Chapter 13 of the Bankruptcy Code and removing inefficiency in bankruptcy proceedings. The bill has 278 co-sponsors and two days of hearings have been held with additional hearings expected to be held in April or May.

Rep. Evans serves on the Judiciary Committee with two subcommittee assignments—(1) Monopolies and (2) Commerical Law and Administrative Law. This committee is responsible for such controversial issues as abortion, ERA, school prayer, busing, the revision of the U.S. criminal code, bankruptcy reform laws and antitrust matters.

Rep. Evans co-sponsored and supported the Regulatory Reform bill, restricting authority of federal agencies to issue regulations that have the force of law for businesses and institutions. The House Judiciary Committee favorably reported the bill out of committee on December 8, 1981.

3. *Public Works and Transportation.*—Congressman Evans is a member of the Public Works and Transportation Committee where he serves on two subcommittees—(1) Surface Transportation and (2) Water Resources. The Committee has jurisdiction over highway and air transportation, federal and congressional buildings and grounds, oil and other pollution of navigable waters, public works for benefit of navigation, including bridges and dams, water power, water transportation and roads and their safety.

4. *Small Business.*—Congressman Evans serves on the Small Business Committee where his active role to provide a strong, free enterprise system has won him the respect and gratitude of small businessmen everywhere. He has been awarded the "Guardian of Small Business" award for his outstanding support of legislation affecting small businesses and small businessmen.

Representative Evans co-sponsored and supported the Prompt Payment Act, which encourages the federal government to pay its bills to businesses in a timely manner by requiring the government to pay an interest penalty on overdue accounts. The measure is a positive step indicating to the small business community a determination to put the U.S. government on a businesslike basis. The bill was passed by the full House of Representatives on March 24, 1982.

5. *Narcotics.*—Representative Evans has distinguished himself as a leader in the fight against narcotics abuse since serving on the Select committee on Narcotics Abuse and Control. He has chaired vital hearings and investigations on such subjects as marijuana, the sale of drug paraphernalia, and the activities of law enforcement in Georgia.

Representative Evans introduced legislation allowing the military to share information, equipment (already paid for by taxpayers) and intelligence with law enforcement officials about drug trafficking. The bill was included in the Department of Defense Authorization Act signed into law December 1, 1981.

Representative Evans introduced legislation to repeal the prohibition against the use of certain herbicides (paraquat) to eradicate marijuana by countries receiving assistance under the Foreign Assistance Act of 1961 for international narcotics control. The bill was included in the International Security and Development Cooperation Act of 1981 (Public Law 97-113, signed into law 12/29/81).

6. *Agriculture.*—Representative Evans has consistently supported legislation and actively worked to preserve programs affecting the American farmer, which he considers the backbone of the U.S. and directly responsible for maintaining a balance of payments.

MAJOR ACCOMPLISHMENTS

1977—Introduced amendment to extend for one year the use of Mirex, an insecticide used to kill fire ants . . . as a result of his amendment, the EPA was forced to actively seek an alternative to the highly controversial use of Mirex. Within a few months we received word that Ferriamicide had been developed at the University of Mississippi and would be approved for limited applications.

Feb. 18, 1977—Evans co-sponsored H.R. 904, the Veterans Benefits Pass-Through bill. This measure would make certain that people receiving veteran's pension benefits and social security will not have their increases in social security offset by decreases in their veteran's benefits. Passed by House.

Feb. 25, 1977—Evans worked deligently on the Public Works Jobs Bill which passed the House. This bill, H.R. 11 directly affected the Eighth District because approximately $13 million worth of applications were submitted to implement local public works projects such as water and sewer systems, health, school police and fire protection facilities.

May 12, 1977—Evans co-sponsored the bill which called for compensating innocent victims of violent crime. We have provisions for the criminal but not for the victim.

May 23, 1977—Held hearings and co-sponsored bill to outlaw sexual abuse and exploitation of children. Passed House unanimously.

June 28, 1977—Evans signs letter to President calling to block the sale of a powerful computer to Soviet Union. Sale of "Cyber 76" was blocked.

Aug. 4, 1977—House and Senate Conferees agreed on amendment co-offered by Evans to Agriculture Act of 1977. The amendment authorized the Secretary of Agriculture to pay 80 percent of target price for disaster relief for a 50 percent or greater loss on the 1977 crop for total planted acres of corn and feed grain.

Nov. 29, 1977—Introduced legislation to provide for a fair return on a farmer's cost of production, 100 percent parity.

Feb. 24, 1978—Co-sponsored a bill, Social Security Refinancing Act, which would substantially ease the burden of Social Security taxes on middle-income taxpayers.

July 15, 1978—Evans sponsored a bill to require all non-resident aliens who hold, acquire or transfer interest in American farmlands to file reports with Sec. of Agriculture. (This was to find out exactly how much of Georgia farmland was being purchased by foreign interests.)

Sept. 14, 1978—Evans awarded "Guardian of Small Business" award by National Federation of Independent Businesses (NFIB) for voting in favor of small business 83 percent of the time during the 95th and 96th Congresses.

Oct. 6, 1978—Evans commended by Chairman of Public Works and Transportation Committee, Congressman Harold T. Johnson, for his work on "Surface Transportation Act of 1978". This was a four year authorization of federal grants for highways, etc.

Oct. 13, 1978—House passed bill co-sponsored by Evans to protect privacy of rape victims. It prevents cross-examination into their prior sexual conduct.

Dec. 7, 1978—Evans appointed by Speaker to represent U.S. at a high-level international meeting in Geneva, Switzerland on Indochinese refugees.

April 25, 1979—Evans introduced H.R. 3721, a bill which calls for a ten year mandatory minimum penalty for smuggling 100 or more pounds of marijuana. Current law for trafficking in marijuana carries a five year maximum penalty. Though this bill has not been approved, Evans fought for the Infant Formula Bill two weeks ago

which was approved overwhelmingly. This bill increased the penalty for trafficking in 1000 or more pounds to 15 years and/or $125,000. This penalty is subject to being doubled if the defendent has a previous felony drug conviction. Evans first bill stimu-lated the argument for increases.

Oct. 16, 1979—Evans introduced H.R. 5540, the Patient Package Inserts bill. This bill would require FDA to issue a priority group of dangerous drugs that needed to include inserts explaining the proper administration of the drug, storage and any significant side effects or adverse reactions to the drug.

Dec. 11, 1979—Evans held press conference with Peter Bensinger, Administrator of a division of the Justice Dept., the Drug Enforcement Agency (DEA). They jointly announced an increase in the number of Drug Enforcement Agents in Georgia as a direct result of Congressman Evans efforts.

Dec. 11, 1979—Evans chaired hearings on Drug Paraphernalia, hearings that have been termed the most significant of the Narcotics Committee. He heard testimony from "head shop owners", "High times Magazine", "High Life Magazine", etc. As a direct result of Evans efforts and emphasis on the paraphernalia industry, the Justice Department produced a "Model Anti-Paraphernalia Bill" which has been circulated across the country to every Governor and State Legislature to help in the fight against this blatant industry which capitalizes on the drug using adolescent.

Feb. 14, 1980—Evans awarded "Humanitarian of the Year Award" by Chinese-American Lions Club for "humanistic concern and deeds on behalf of the displaced people of Asia."

Feb. 29, 1980—Requested and chaired hearings in Georgia on Drug Trafficking, both in Macon and Brunswick. Heard testimony from GBI, DEA, sheriffs, local police and other law enforcement people, parents, teachers, etc.

April 23, 1980—Worked to get approval of new kidney dialysis facility in Eastman. This was approved and will serve about five counties in the Middle Georgia area.

April 25, 1980—Actively worked to obtain air service for Waycross.

May 28, 1980—House Small Business Committee approved a bill which Evans co-sponsored and chaired hearings on—the "Equal Access to Justice Act". H.R. 6429 would enable a person to recover attorney fees and other costs if he prevails in a civil action or agency proceeding brought by the federal government. Costs would come from the budget of the offending agency.

June 6, 1980—Voted to override Carter's veto on 10 cent per gallon tax.

June 12, 1980—Introduced a bill to encourage medium size businesses to begin exporting their goods and services to foreign markets. "Trade Simplification Act" would remove some of the unnecessary, governmentally created obstacles to exporting and would encourage trade activity therefore, improving our economic balance of trade.

Representative Evans was instrumental in obtaining federal funds from the Economic Development Adminstration, U.S. Department of Agriculture and Department of Housing and Urban development for construction of a fuel alcohol production plant in Douglas, Ga.

Representative Evans introduced legislation allowing the military to share information, equipment (already paid for by taxpayers) and intelligence with law enforcement officials about drug trafficking. The bill was included in the Department of Defense Authorization Act signed into law December 1, 1981.

Evans introduced legislation to repeal the prohibition against the use of certain herbicides (paraquat) to eradicate marijuana by countries receiving assistance under the Foreign Assistance Act of 1961 for international narcotics control. The bill was included in the International Security and Development Cooperation Act of 1981 (Public Law 97-113, signed into law 12/29/81).

Congressman Evans introduced on October 20, 1981, legislation aimed at preventing the discharge under Chapter 7 bankruptcy of affordable debt, creating standards for repayment under Chapter 13 of the Bankruptcy Code and removing inefficiency in bankruptcy proceedings. The bill has 202 cosponsors and hearings on the measure are expected to be held by the Judiciary Committee in early spring.

Representative Evans has consistently supported legislation and actively worked to preserve programs affecting the American farmer, which he considers the backbone of the U.S. and directly responsible for maintaining a balance of payments.

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GENERAL LEAVE

Mr. BRINKLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of this special order.

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

There was no objection.

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

Mr. BRINKLEY. I yield to the gentleman from the First District of Georgia (Mr. GINN).

Mr. GINN. Mr. Speaker, it is an honor to join with the friends of my distinguished colleague, the Honorable BILLY LEE EVANS, for the special order on the occasion of his retirement from the Congress.

BILLY LEE and I have been both friends and congressional neighbors during his 6 years of distinguished service. We are neighbors because our districts are adjacent to each other, and we have worked together on many mutual problems.

In those experiences and in others, I have always known him to be a man of great determination and ability. He has been a fighter for the interests of his constitutents, and he has carried out his duties with determination.

In the area of agriculture, he has combined his knowledge of both urban and rural areas to help forge new alliances directed at helping our family farmers and small communities. He has been an articulate spokesman for the small farmer, and he has won many new friends for the farmer here in the Congress.

He has had the vision to see that the propriety of rural and urban areas are closely linked. He has had the ability to translate that relationship into policy decision in our Government.

In the area of combating drug abuse, BILLY LEE has been a dynamic leader in both recognizing the seriousness of the problem and in devising solutions to the problem. He has been one of the most active members of the Select Committee on Narcotics Abuse and Control.

In this arena, he has brought national attention to the fact that our State of Georgia has become a prime target for drug smugglers who would bring illegal narcotics into the United States.

The intense buildup of law enforcement programs in Florida has forced many smugglers farther up the coast to Georgia, and into my own congressional district.

BILLY LEE took note of this problem, and has conducted hearings on the issue in my district which illuminated the danger that is developing. As a result, we have a new beginning in bringing additional Federal narcotics officers into the area to fight the new threat.

These deeds and many more mark the distinguished official record of my colleague from the Eighth District.

In addition, BILLY LEE is a man who has refused to become overly impressed with the power of his office. He has resisted "Potomac Fever." He has never tried to cloak himself in pretension. He has taken his job seriously, but he has always kept his wit carefully sharpened to focus on the Congress whenever he saw we were becoming a little too big for our britches.

I am also leaving the Congress this year, and I sincerely hope that my new role outside this body will allow me to call on BILLY LEE often for his help and fellowship. I know that he will find many new challenges and attain many new accomplishments in the years ahead. I wish him and his lovely wife, Debbie, Godspeed in the future.

Mr. BRINKLEY. I thank the gentleman for his remarks and wish to note at this point that BILLY LEE EVANS was one of the chief architects in the change of the posse comitatus law which enables now greater cooperation with military authorities in cracking down on those who violate the drug and narcotics laws.

At this point I yield to the gentleman from Georgia (Mr. MCDONALD).

Mr. MCDONALD. I thank the gentleman from Georgia's Third Congressional District, the dean of the delegation, JACK BRINKLEY, for taking out this special order for honoring our colleague.

It is a pleasure to join in this tribute and salutation to our colleague from Georgia's Eight Congressional District, BILLY LEE EVANS.

He was elected to Congress in November 1976 and has served in the 95th, the 96th, and the 97th Congresses. BILLY LEE has served his district,

State, and Nation well. He has been a valued member of the Georgia delegation and has exhibited a detailed understanding of the agricultural problems of Georgia farmers and the Nation.

Congressman EVANS has been a hard worker. He has been a person with an open mind to all questions with a diligent style in his pursuit to the solution of the Nation's problems as he saw them.

One of Congressman EVANS' traits that caused him to be admired by this Member has been his resistance to the temptation of demogoguery. This virtue of demogoguery is perhaps pandemic in these environs and philosophically speaking a strong case could be made that one's strongest assets may lead to one's end. It may be that Congressman EVANS' lack of demogogic style has limited his tenure in this House.

To Congressman BILLY LEE EVANS, to Georgia's Eighth District and his lovely wife I join my colleagues in wishing him and his family Godspeed.

Mr. BRINKLEY. I thank the gentleman.

I now yield to another gentleman from Georgia (Mr. BARNARD).

Mr. BARNARD. Mr. Speaker, the House of Representatives is losing one of its most likable and effective Members in the retirement of my friend and colleague from Georgia, BILLY LEE EVANS.

BILLY LEE was elected to the U.S. House of Representatives after a distinguished career in the Georgia General Assembly, representing one of Georgia's finest communities, Bibb County.

In Washington, BILLY LEE's energies as a legislator continued with his usual vigor. As a member of the influential Judiciary Committee, he early on recognized how vast the illegal drug problem is, and how entrenched its tentacles have become. He spent much time in researching this problem, and in bringing it to the attention of the public.

As a member of the Judiciary Committee, he also spearheaded efforts to bring into balance the bankruptcy laws of our country. We now have pending a bill with more than 250 cosponsors, which is indicative of the support he has garnered for this legislation.

Our districts adjoin each other in the middle of the Georgia's farm belt, and we have worked together in agricultural development, insuring the marketplace for agricultural products, and ridding rural communities of insect infestations.

BILLY LEE has been forthright in representing his district, expressing strong political and economic convictions. But amid all his concerns, he has maintained his cheerful and optimistic demeanor, and his genuine concern for the welfare of his colleagues.

Mr. BRINKLEY. I thank the gentleman.

I now yield to the gentleman from North Carolina (Mr. WHITLEY) and thank him for his patience.

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Mr. WHITLEY. I thank the gentleman for yielding.

As previous speakers have done, I want to associate myself with their remarks on behalf of our colleague, BILLY LEE EVANS.

The previous speaker and I, the gentleman from Georgia (Mr. BARNARD) and I were elected to Congress at the same time as BILLY LEE EVANS. Therefore, and for a number of reasons, we have been very close to him over the years of his service. I have had occasion as a member of the Committee on Agriculture, and the Subcommittee on Tobacco and Peanuts, to visit in his district and the adjoining district in Georgia. And his district and mine share a large number of common characteristics. I have a coastal area, as he does. We have the same kind of problems with an increasing amount of drug smuggling into our shallow ocean inlets. We have the same crops, the same type of soil. So he and I have shared a number of common experiences.

Through it all, as a member of the House Committee on Agriculture, the Subcommittee on Tobacco and Peanuts, I have found that BILLY LEE EVANS unfailingly and unflagingly was a supporter of agriculture, and that is agricultural commodities which are primary interests and concern in his district.

He has done a job that he can be proud of, that his family can be proud of, and that all the people in his district can be proud of, as I am sure they are. I want to commend him for it. This House is the better for his having served in it. It will be the poorer for his departure.

Like others who have spoken before me, I wish him Godspeed in his future undertakings and want to assure him we will miss him around here.

Mr. BRINKLEY. I thank the gentleman.

I want to say the gentleman from North Carolina is a real champion of agriculture. I know from personal experience how hard he has worked in the commodity fields of peanuts and tobacco and other matters like that. I thank him especially for his remarks today.

Mr. WHITLEY. If the gentleman will yield for one further comment, I would like to add the gentleman in the well, the gentleman from Georgia (Mr. BRINKLEY), as well as our colleague, the gentleman from Georgia (Mr. GINN) who spoke earlier, likewise are departing at the end of this session of Congress. Everything I said about Mr. EVANS applies equally to them.

I say to my colleague in the well that I have been associated with him in so many ways, fellow members of the Committee on Armed Services, fellow officers in the House Prayer Breakfast Group and many other activities we have shared together. Certainly things are going to be different around here with the three departing Members of the Georgia delegation.

And all of us, and I am sure that all of my colleagues, would join me in expressing the hope that you three departing gentlemen will visit frequently and we will have an opportunity to be with you often in the future.

Mr. BRINKLEY. The reports of the gentleman are the envy of the entire House of Representatives. Not only does he provide the program in a refined fashion for the balance of the Thursdays and Fridays, but the finest explanation of the following week's program that I have seen.

I compliment the gentleman for that.

Mr. WHITLEY. I thank the gentleman for his comments.

Mr. BRINKLEY. In conclusion, Mr. Speaker, earlier on the floor Mr. HUCKABY was here. He was called I think to the Christmas party. Congressmen MONTGOMERY, LEVITAS, and FOWLER also have given me their remarks to insert in the RECORD providing plaudits and accolades of this fine man.

BILLY, we have some tough competition in the Christmas party down at the White House. But in spite of it all, I think you will see from tomorrow's RECORD the esteem and high regard in which you are held.

You are an excellent lawyer and we will be looking at your star to continue to rise in the future. We wish you all the best.

Thank you very much for your service and for your example to all of us who serve in this body.

● Mr. LEVITAS. Mr. Speaker, I am pleased to join in this special order to pay tribute to the distinguished service of our friend and colleague, BILLY LEE EVANS.

BILLY LEE is a native Georgian, born on November 10, 1941, in Tifton. His hometown, Macon, is the heart of Georgia's Eighth Congressional District. BILLY LEE is a graduate of the University of Georgia, where he received his B.A. in 1963 and his L.L.B. in 1965. BILLY LEE always took pride in his representation of Georgia's heartland.

Before coming to Washington, I had the opportunity of serving with BILLY LEE during much of his 8-year tenure in the Georgia General Assembly. Since BILLY LEE was elected to the U.S. House of Representatives in 1976, I have again had the pleasure of serv-

ing with him in this distinguished body.

During his 6 years of service in the U.S. House of Representatives, BILLY LEE has done an admirable job of representing Georgia's Eighth District. BILLY LEE's representation of his district has been especially laudable as well as difficult since the Eighth is the largest district in land area east of the Mississippi River.

BILLY LEE and I served together on the Public Works and Transportation Committee, and he worked hard for Georgia and the Nation. I am aware of his responsible record on the Small Business and Judiciary Committees. He was not afraid to take on difficult issues.

In addition to these regular committee assignments, BILLY LEE has also distinguished himself as a member of the Select Committee on Narcotics Abuse and Control. This committee, of course, has been working to find solutions to our Nation's terrible drug abuse problem, and BILLY LEE has been at the forefront of these efforts. Literally thousands of people will be spared the ravages of drug abuse because of his work.

I am proud to have had the honor of working with BILLY LEE EVANS. He has truly served his district, his State, and his Nation well. I wish him well in his future endeavors.●

● Mr. FOWLER. Mr. Speaker, BILLY LEE EVANS and I have served together since our freshman days in the 95th Congress, and in those 6 years, Congressman EVANS has demonstrated his concern, not only for the people of the Eighth District, but also for all Georgians and all Americans.

As a member of both the Small Business Committee and the Judiciary Committee, he has worked diligently to protect the interests of our Nation's small businessmen and women. These efforts have become increasingly important as our Nation's economic situation—and the outlook for entrepreneurs—has worsened in recent years. Independent businessmen in Georgia and across the Nation owe a great deal of appreciation to Congressman EVANS for all his work on their behalf.

The dedication which he has shown to small business was matched by his excellent service on the Public Works and Transportation Committee. As a member of the Surface Transportation Subcommittee, Congressman EVANS has done a superb job of improving our Nation's roads and transportation networks which are so vital to the continued growth of our Nation's economy.

As the Representative from a district which is predominantly rural but also includes one of Georgia's major cities, Congressman EVANS has demonstrated a fine ability to represent diverse interests and compromise on issues without compromising his principles.

I look back upon my 6 years of service alongside BILLY LEE EVANS with great pride and pleasure, and I know you join me in saying that he will be missed.●

● Mr. MONTGOMERY. Mr. Speaker, I am honored to take part today in this special tribute to a good friend and an outstanding Congressman from the State of Georgia, BILLY LEE EVANS. He will not be among us in the next Congress and we will indeed miss his strong voice and leadership.

Since he came to Congress in 1977, BILLY EVANS has been a hard worker for his Eighth District of Georgia. In addition, he has done yeoman's work on a number of committees.

He has made a great contribution to the vital Judiciary Committee, as well as the Public Works and Transportation Committee. Also, he has been active on the Small Business Committee and he also found time in a busy schedule to serve on the Select Committee on Narcotics Abuse and Control.

As you can see, and as anyone knows who is familiar with BILLY EVANS, He has been a hard working and dedicated Members of this Chamber. He is a man of high integrity and I know he has gained the respect of Members on both sides of the aisle.

BILLY EVANS has been a great friend to me and I will miss his leadership and his counsel when the new Congress convenes in January.

He can truly be proud of his accomplishments in this Chamber. He has made a very positive contribution to the governmental process, as well as serving his State of Georgia with distinction.

BILLY has gained a great amount of legislative experience in his years in the Georgia Assembly and in this Chamber. I am sure he will combine this expertise with his leadership abilities and put them to work in a very positive manner in the years ahead.

He is a very capable man and an outstanding American. It has been an honor to serve with him in this Chamber.●

● Mr. SKELTON. Mr. Speaker, it is highly appropriate that we pause at this time in our deliberations to pay tribute to a friend and colleague who will be leaving us at the end of this session, BILLY LEE EVANS of Georgia.

In his 6 years in Congress, BILLY LEE EVANS has achieved a record that few have equaled in such a short time. His service has been characterized by integrity, devotion to duty, and an adherence to principle. He is a dedicated and conscientious legislator who has served the people of his district, the State of Georgia, and our Nation with honor and distinction. In his work on the House floor, and on two important committees—Judiciary and Public Works and Transportation—BILLY LEE has always put those interests first, and his own personal interests second.

Mr. Speaker, BILLY LEE EVANS has earned the respect of his colleagues here in the House for his effectiveness and skill as legislator. But this body will miss more than his talents. We will miss his warm and friendly manner, his support, and his friendship. I know I speak for all Members when I wish BILLY LEE EVANS well in all of his future endeavors. Let me also say, in closing, that our office doors will always be open to BILLY LEE, and I hope we will see him often in the days and months ahead.●

● Mr. RAHALL. Mr. Speaker, I would first of all like to thank my colleague from Georgia, Mr. BRINKLEY, for taking this time today so that we can thank a friend of all of our's for his services in this House—BILLY LEE EVANS.

I had the opportunity to come to Congress in the same class as BILLY LEE, and because of this, we developed a warm and special friendship. Also, as members of the Public Works and Transportation Committee, we worked on many important pieces of legislation together.

In his short tenure here, BILLY LEE EVANS has taken the lead on some very important issues. In 1980, he traveled to Southeast Asia and called for normal relations between the United States and Vietnam as the only way of preserving American influence in the region. He also looked into Asian issues as a member of the Select Committee on Narcotics Abuse and Control, to which he devoted a considerable amount of time. From that position, BILLY LEE pushed for a bill providing stiffer penalties for trafficking in marihuana.

BILLY LEE EVANS has made a lasting contribution to the Congress, and his time here will not be forgotten. I join my colleagues, in wishing him the very best, and hope that his interest in public service will remain strong and know that our friendship shall always remain.●

● Mr. RUSSO. Mr. Speaker, it is hard to take a full measure of the works of a Member and when we go to say "good-bye" we can at best sometimes simply say, "Congratulations on a job well done." That is what I say to BILLY LEE EVANS today, a man who brought with him to the Congress the experience of his days in Georgia government as well as the fine qualities one may ascribe to a southern gentleman.

BILLY LEE has been above all independent. He has worked hard. I am particularly appreciative of his support for the Select Committee on Sports. Who knows, maybe one of these days we can share the field again on this one.

BILLY, you will be missed here and I join with your other friends in wishing you success.●

● Mr. SAM B. HALL, JR. Mr. Speaker, BILLY LEE EVANS has done an outstanding job of representing the Eight Congressional District of Georgia, and I am going to miss him. Unfortunately, the great State of Georgia is losing one-third of its House delegation this year with the departure of BILLY LEE and my other friends, Bo GINN and JACK BRINKLEY.

I have served with BILLY LEE on the Judiciary Committee where more often than not we have found ourselves in agreement on the complex issues faced by the committee. He was a strong proponent of the intrabrand franchise legislation which sought to protect small business. In fact, his record throughout shows strong support for America's small business community. In addition, he has taken the lead to bring about much-needed changes in the Bankuptcy Reform Act—an act which unfortunately has resulted in far too many people declaring bankruptcy in order to avoid paying their bills.

BILLY LEE has been very effective as a member of the Select Committee on Narcotics and Control. He is recognized throughout the law enforcement community as a no-nonsense legislator who fights for stiffer penalties against the vermin who deal in dangerous drugs. Every parent in America owes him a debt of gratitude for his unceasing work to get the drug pushers off the street and away from our children.

On the Public Works and Transportation Committee, BILLY LEE EVANS has been a friend of those of us in the Southwest and West who are dependent on adequate sources of water for agricultural, industrial, and municipal uses. As a committee member, he warned of the inherent fallacies in the Airline Deregulation Act, and what he had to say has been borne out by an economic crisis in this vital industry, much of which has been caused by the deregulation legislation.

BILLY LEE EVANS is an energetic, perceptive, and outgoing personality. He is well liked and regardless of his future plans, I know that he will succeed. He has certainly been a friend of mine, and I look forward to our contined association in the years ahead.●

● Mr. FUQUA. Mr. Speaker, one of our valued colleagues, the Honorable BILLY LEE EVANS, will be retiring from Congress at the end of the 97th Congress and I would like to take the opportunity to join other Members of the House in wishing him the greatest success in his future endeavors.

During the 6 years that BILLY LEE EVANS has served among us, he has distinguished himself as a thoughtful and effective legislator whose careful representation of his constituents was equaled only by his concern for the general welfare of the Nation.

Serving a rural southern district much like my own, BILLY LEE EVANS proved to share many of the concerns which dominate my service; particularly the desparate straits of the American farmer in this day of soaring farm costs and dwindling farm profits.

Along with others serving in this House, I will miss BILLY LEE EVANS' strong voice and wise counsel.●

● Mr. MAZZOLI. Mr. Speaker, I would like to add my tribute to an old friend and colleague, BILLY EVANS, of the Eighth District of Georgia. I have served with BILLY many years on the Judiciary Committee. We have always had a friendly rivalry going whenever my Fighting Irish of Notre Dame played against his Bulldogs of Georgia. BILLY has been a hard-working Representative for his constituents, I have enjoyed working with him, and I wish him well as he leaves the House.●

● Mr. SENSENBRENNER. Mr. Speaker, as the close of the 97th session of Congress draws near, I am glad to have the opportunity to join with my fellow colleagues in extending my thanks and appreciation to Congressman BILLY LEE EVANS for his service and dedication in the House of Representatives.

Having the privilege to work with Mr. EVANS on the House Judiciary Committee, I have had the opportunity to see his dedication and persistent drive in addressing the issues. Recognized as a leading congressional expert on bankruptcy law, I have worked with him in trying to reform current bankruptcy legislation. As a member of the House Subcommittee on Monopolies and Commercial Law, he has sponsored H.R. 4786, the Bankruptcy Improvements Act of 1981, a piece of legislation that is supported by myself and over half the Members of the House of Representatives. In addition to his duties on the Judiciary Committee, he has devoted much of his time and energies to his post on the Select Committee on Narcotics Abuse and Control, as chairman of the Drug Prevention Task Force. Although the funding for this grave problem are low, his efforts have paid off as great strides have been made in stopping this epidemic that is crippling our society.

At this time, I would like to join with my fellow colleagues in honoring the distinguished service and dedication of Congressman BILLY LEE EVANS to the Eighth Congressional District of Georgia and to the United States of America.●

● Mr. HEFNER. Mr. Speaker, I rise today to join in paying tribute to one of our departing Members, BILLY LEE EVANS of Georgia.

When BILLY LEE came to Washington in 1976, he brought with him a sense of dedication and hard work which he maintains today. He has served tirelessly on many of our committees and has worked hard for his district and his State in the area of public works, judiciary matters, and has become a recognized spokesman against the growing drug-related crime problems we face in this country.

Throughout it all, BILLY LEE has maintained his sense of humor, a rare and valuable commodity in the Halls of Congress. He has pursued his goals without rancor or ill-temper, gracious in victory and willing to come back and fight another day when defeated. He has been a good friend to many of us, and we will miss him.

I join with my colleagues in wishing BILLY LEE well in the future. Whatever career goals he now sets for himself, I know he will do well. I hope he will not be a stranger, but that although we may no longer enjoy his active participation in our debates, he will still share with us his advice and friendship. Good men like BILLY LEE EVANS are hard to find, and I am pleased that I had the privilege of serving with him during his tenure in Congress.●

BANKRUPTCY LEGISLATION: THE NEED FOR A CONSTITUTIONAL BANKRUPTCY COURT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. RODINO) is recognized for 30 minutes.

● Mr. RODINO. Mr. Speaker, the Supreme Court has set a deadline of December 24, 1982, for the Congress to act to create a constitutional Bankruptcy Court. In the absence of congressional action or a further extension of the stay of the Supreme Court's Northern Pipeline decision, the bankruptcy courts will lose all judicial power after December 24. The Judicial Conference, in an attempt to bridge the gap in the event of nonaction, has proposed an interim rule. The problem is that the rule proposed is itself both invalid and unworkable and has all of the constitutional infirmities of the present court system. In addition, what a majority of the Supreme Court left to Congress to do cannot be done by a dissenting opinion, the Administrative Office of the U.S. Courts, the Judicial Conference, or a district court rule.

The report of the National Bankruptcy Conference, which follows, points out that the Judicial Conference's suggested interim rule would be unworkable and subject to legal challenge:

STATEMENT OF NATIONAL BANKRUPTCY CONFERENCE IN OPPOSITION TO PROPOSED JUDICIAL CONFERENCE RULE

On September 28, 1982, the Judicial Conference of the United States submitted to each federal circuit a rule proposed for adoption by the federal district courts,

prompted by the decision of the Supreme Court in *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 102 Sup.Ct. 2858 (1982), that, effective October 4, 1982 [later extended to December 24, 1982 (103 Sup.Ct. 199 (1982))], the bankruptcy courts would lose all jurisdiction in bankruptcy cases. The rule was proposed for adoption "in the absence of Congressional action or extension of the stay" to "permit the bankruptcy system to continue without disruption in reliance upon jurisdictional grants remaining in the law as limited by" *Marathon*. Since this proposed rule is regarded in some quarters as a complete, or at least a workable, solution to the chaos that would otherwise result if Congress fails to act before the bankruptcy courts lose all jurisdiction, the National Bankruptcy Conference considers it imperative that it record its views that the proposed rule (1) is invalid, or of such dubious validity that the additional litigation it will provoke will bring about the same chaos it is supposed to avoid, and (2) in any event is wholly unworkable.

THE PROBLEM

Under the old Bankruptcy Act, "courts of bankruptcy," consisting of the federal district courts and the referees appointed by them for six-year terms with salaries subject to diminution (by Bankruptcy Rule 901(7), effective in 1973, the referees were redesignated "bankruptcy judges"), were given "original jurisdiction" over the bankruptcy case proper, including such matters as rulings on petitions, allowance of claims, rulings on discharge, and confirmation of plans. (Bankruptcy Act, §§ 1(1) and (26), 2a, 34, 38, and 40.) Their jurisdiction in this area was exclusive. 1 Collier, *Bankruptcy*, ¶2.06 (14th ed., 1968). This was recognized by § 23, par. 19, and § 256, par. 6, of the Judicial Code of 1911 (36 Stat. 1087), later codified in a single section but unchanged as to substance in the Judicial Code of 1948 as 28 U.S.C. § 1334: "The district courts shall have original jurisdiction, exclusive of the courts of the States, of all matters and proceedings in bankruptcy."

Under § 23 of the old Bankruptcy Act, the courts of bankruptcy also had jurisdiction over "controversies" arising in the bankruptcy case about property in the custody of the court (defined as property that was, on the filing of the petition, in the custody or control of the debtor, or of one not holding under an adverse claim of right, or of one holding under an adverse claim that was "merely colorable"). In addition, their jurisdiction extended to other "controversies" with the consent of the defendant. This jurisdiction was not exclusive, but concurrent with that of any other court which would have had jurisdiction of the controversy in the absence of bankruptcy. Collier, supra. In addition, special provisions in old §§ 60b, 67e, and 70e(3) provided that, quite apart from custody of property or the consent of the defendant, the courts of bankruptcy and "any State court which would have had jurisdiction if bankruptcy had not intervened" should have concurrent jurisdiction of controversies under those sections.

This bifurcated jurisdiction in the second class of matters, i.e., over "controversies," turning largely on questions of the "colorability" of adverse claims or the "consent" of the defendant, tended to produce more litigation about jurisdiction than about the merits of the controversies and meant, if the trustee or debtor in possession lost the jurisdictional dispute, that he must go and litigate the merits in courts that might be quite distant from the court entertaining the bankruptcy case, at great loss of time and expense. Frequently, it seemed the better part of wisdom either to bring the action in such other court originally, or to abandon it.

This feature of the old Bankruptcy Act was widely recognized as one of its most serious defects, and the Commission on Bankruptcy Laws of the United States (which included representatives of the Judicial Conference), the American Bankers' Association, the National Commercial Finance Conference, the National Bankruptcy Conference, the Commercial Law League of America, the Department of Justice, and the Judicial Conference, all recommended a unified bankruptcy court jurisdiction.

Perhaps the greatest advance in the expeditious and economical administration of bankruptcy cases was new 28 U.S.C. § 1471 which, in its first three lettered subsections:

(a) Gave the federal district courts "original and exclusive jurisdiction over all cases under title 11."

(b) Gave the district courts "original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11"—without regard to custody of property or consent of the defendant.

(c) Provided that the newly constituted bankruptcy courts "shall exercise all of the jurisdiction conferred by this section on the district courts."

As the new Bankruptcy Code originally passed the House, the newly-constituted bankruptcy courts were to be staffed by Article III judges. Due largely to the efforts of the Judicial Conference, that proposal was defeated in the Senate. Under new 28 U.S.C. §§ 151-154 as enacted, the new "bankruptcy courts" are created as "adjuncts" to the district courts, to be staffed by bankruptcy judges, to be appointed after April 1, 1984, who are to be Article I judges appointed for 14-year terms, and whose salary is subject to diminution. Until these judges are appointed, § 404(a) of Public Law 95-598 provides that "courts of bankruptcy," as defined in § 1(10) of the old Act and created by § 2a of the old Act, shall continue to function. And § 405 (a) and (b) of P.L. 95-598 provide that they shall exercise the jurisdiction conferred by § 241 of P.L. 95-598, which enacts new 28 U.S.C. § 1471.

The *Marathon* decision of last June, which invalidated the jurisdictional grant of § 1471, was a case involving a breach of contract action, governed entirely by state law, brought by a Chapter 11 debtor in possession against a third party in the bankruptcy court pursuant to 28 U.S.C. § 1471 (b) and (c). A majority of the Supreme Court, made up of a plurality of four Justices and a concurrence of two more, held the jurisdictional grant to bankruptcy courts under 28 U.S.C. § 1471 to be in part unconstitutional, because the bankruptcy judges were not Article III judges, and further held that the balance of the jurisdictional grant to these courts was nonseverable and invalid for that reason, but stayed its judgment until October 4, 1982. On October 4, it further stayed its judgment to and including December 24, 1982.

Just how much of the jurisdictional grant of 28 U.S.C. § 1471 is unconstitutional is unclear. Arguably, § 1471(a), giving the federal district courts original and exclusive jurisdiction of the bankruptcy case proper, and so much of § 1471(c) as directs the bankruptcy courts to exercise that original and exclusive jurisdiction, was not involved in the constitutional ruling. And the two concurring justices, one of whose votes was necessary for a majority, would have confined the constitutional ruling to the case before it, which implicated only so much of § 1471(b) as gave the district courts original but not exclusive jurisdiction of the debtor in possession's action to enforce the state law cause of action as one "related to" the Chapter 11 case, and so much of § 1471(c) as directed the Chapter 11 courts to exercise that jurisdiction (192 Sup. Ct. at 2882). But the plurality opinion, while stating that "at the least, the new bankruptcy judges cannot constitutionally be vested with jurisdiction to decide this state-law contract claim" (102 Sup.Ct. at 2880, fn. 40), goes on to indicate that the constitutional objection extends to efforts to authorize Article I courts to decide disputes over "private rights" (102 Sup. Ct. at 2870-2871) or "rights created by state law" (102 Sup. Ct. at 2878) (which raises some doubt about even the constitutional authority of the bankruptcy courts to allow claims based on state law, as most claims are, under § 1471 (a) and (c)). The plurality also indicates that constitutional objections may not extend to efforts to authorize Article I courts to enforce "Congressionally created rights" or "public rights" (102 Sup. Ct. at 2869-2870), at least where the final determination is left to an Article III reviewing judge (102 Sup.Ct. at 2875-2879) (which raises some doubt about the constitutional validity of § 1471 (b) and (c) insofar as they would authorize bankruptcy courts to resolve disputes which do involve an interpretation of substantive provisions of the Bankruptcy Code such as the avoidance of preferences under § 547 or the denial of discharges under § 727, even though the plurality also suggests (102 Sup.Ct. at 2871) that "the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power," may involve "public" rather than "private" rights).

In any event, since six justices are agreed (102 Sup.Ct. at 2880, fn. 40, and 2882) that what is not unconstitutional in § 1471's grant of jurisdiction to bankruptcy courts is nonseverable and invalid for that reason, it is clear that the bankruptcy courts will lose all jurisdiction after December 24, 1982, unless Congress acts or the Court again extends the stay of its judgment. The proposed Judicial Conference rule is supposed to bridge the gap in the event that neither the Court nor the Congress acts by that time. For the reasons indicated below, the National Bankruptcy Conference is of the view that the proposed rule is both invalid and unworkable.

INVALIDITY

1. *The assumption that the bankruptcy jurisdiction which the bankruptcy courts lose will vest in the district courts.* This assumption underlies the entire proposed rule and a September 27, 1982, memorandum of the Administrative Office of the United States Courts that accompanies the submission of the proposed rule states:

"*Marathon* does not cause a jurisdictional lapse. The Administrative Office concludes that *Marathon* did not invalidate 11 [sic] U.S.C. sections 1471 (a), (b). In addition, sections 404 and 405 of the 1978 Act also vest bankruptcy powers in the district courts as 'courts of bankruptcy' until 1984."

A. 28 U.S.C. § 1471

Presumably, the Administrative Office memo is intended to say that *Marathon* invalidated only § 1471(c), directing the bank-

ruptcy courts to exercise all of the jurisdiction conferred by § 1471 (a) and (b). But § 1471(c) is merely another way of saying two things: (1) the bankruptcy courts shall exercise all of the jurisdiction and (2) the district courts shall exercise none of it. A decision that the jurisdictional grant to the bankruptcy courts is invalid is not a decision that the prohibition of the exercise of any of that jurisdiction by the district courts is likewise invalid. Indeed, footnote 40 of the plurality opinion (102 Sup.Ct. at 2880), with which the concurring opinion agreed (102 Sup.Ct. at 2882), in explaining its nonseverability ruling expressly declined to go that far:

". . . Nor can we assume, as The Chief Justice suggests [dissenting opinion, 102 Sup.Ct. at 2882], that Congress' choice would be to have this case 'routed to the United States district court of which the bankruptcy court is an adjunct.' We think that it is for Congress to determine the proper manner of restructuring the Bankruptcy Act of 1978 to conform to the requirements of Art. III, in the way that will best effectuate the legislative purpose."

What a majority of the Supreme Court left to Congress to do cannot be done by a dissenting opinion, the Administrative Office, the Judicial Conference, or a district court rule.

B. Sections 404 and 405 of P.L. 95-598

The alternative assertion in the Administrative Office memorandum, that §§ 404 and 405 of P.L. 95-598 "vest bankruptcy powers in the district courts as 'courts of bankruptcy' until 1984" perpetuates a view expressed in a July 22, 1982, memorandum of the Administrative Office's General Counsel which is printed in House Report No. 97-807 at p. 30. As has been amply demonstrated (see House Report No. 97-807 at pp. 32-49), that memorandum misconstrues §§ 404 and 405 of P.L. 95-598 as "incorporating and preserving" the jurisdiction conferred on the old courts of bankruptcy by § 2a of the old Act. But all these sections really do is to direct that the courts of bankruptcy as defined in old § 1(1) and created by old § 2a shall exercise the new jurisdiction (now known to be invalid) defined in 28 U.S.C. § 1471 as enacted by § 241 of P.L. 95-598. That memorandum also ignores § 401(a) of P.L. 95-598, which repeals the old Act in its entirety, including the jurisdictional grant in old § 2a, effective October 1, 1979.

The National Bankruptcy Conference believes that the memorandum's reading of P.L. 95-598, which would revert to the bifurcated jurisdictional grants of the now-repealed old Bankruptcy Act, is clearly wrong, and thus provides no support for the Judicial Conference's rule. But, even if it were correct on this point, it would invoke jurisdictional grants which, as footnote 31, to the plurality opinion in *Marathon* reminds us (102 Sup. Ct. at 2876), have never been "explicitly endorsed" by the Supreme Court but which seem in considerable jeopardy also in view of the *Marathon* ruling.

C. 28 U.S.C. § 1334

The Judicial Conference apparently does not invoke, although others have invoked, as a basis for finding bankruptcy jurisdiction in the district courts, old 28 U.S.C. § 1334, giving the district courts original jurisdiction, exclusive of the courts of the States, of "all matters and proceedings in bankruptcy." While that section is to be replaced by a new 28 U.S.C. § 1334 dealing solely with the appellate jurisdiction of district courts over bankruptcy courts, the replacement under § 402(b) of P.L. 95-598 is not to take effect until April 1, 1984. The failure to repeal old § 1334 sooner is quite probably an inadvertence since it adds nothing to new § 1471(a). In any event, if old § 1334 is given continuing effect, it arguably gives the district courts only a limited original and exclusive jurisdiction over the bankruptcy case proper and not the pervasive, concurrent jurisdiction that the Judicial Conference's proposed rule assumes the district courts have over controversies arising under or related to cases under title 11.

D. 28 U.S.C. § 1331

Some have also argued, although the Judicial Conference apparently does not so assume, that district courts have bankruptcy jurisdiction as part of their federal question jurisdiction, which is defined today in 28 U.S.C. § 1331 to include all civil actions "arising under the . . . laws . . . of the United States." It has been defined in the same way since 1875 (18 Stat. 470), save that there was originaly a requirement that the amount in controversy exceed $500, a requirement that was increased over the years until in reached $10,000 in 1958 (72 Stat. 415) but was eliminated entirely in 1980 (94 Stat. 2369). Passing the points that the federal question jurisdiction has never been viewed as including bankruptcy jurisdiction, that it would have been inadequate to do so at any time until elimination of the amount in controversy requirement in 1980, and that, since 1841, every time Congress has enacted a bankruptcy law it has not relied on the federal question jurisdiction but has enacted a separate provision conferring the bankruptcy jurisdiction on the bankruptcy courts (5 Stat. 446; 14 Stat. 517; 30 Stat. 545, 552; 92 Stat. 2668), it is obvious that the federal question jurisdiction is not adequate to enable the district courts to deal with bankruptcy cases. The proposed Judicial Conference rule assumes that all matters "related to cases under title 11," although they involve no federal question whatsoever, are now within the jurisdiction of the district court. *Williams* v. *Austrian*, 311 U.S. 642 (1947), holds that the jurisdictional grant in § 2a of the former Bankruptcy Act to district courts to cause the estates of bankrupts to be collected gave them pendent jurisdiction, regardless of diversity of citizenship of the presence of a federal question, to entertain a Chapter X trustee's action against officers and directors of a corporate debtor for misappropriation of corporate assets. But the federal question jurisdiction carries pendent jurisdiction over nonfederal claims only if there is a federal claim with "substance sufficient to confer subject matter jurisdiction on the court." *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 725 (1966). There can be no pendent jurisdiction where there is no federal claim whatsoever.

In short, before a federal court other than the Supreme Court can exercise any jurisdiction (1) Congress must have conferred that jurisdiction (2) on a court qualified under the Constitution to exercise it. The Supreme Court having decided in *Marathon* that the Article I bankruptcy courts are not qualified under the Constitution to exercise the jurisdiction Congress attempted to confer upon them by 28 U.S.C. § 1471, the effort of the Judicial Conference, and of others whose arguments we have addressed here, is to demonstrate that Congress also conferred that same jurisdiction on the Article III district courts. But all of these efforts involve tortured and unacceptable interpretations of other federal statutes which were enacted before the problem created by *Marathon* arose, and which were in no way designed to deal with that problem. Hence it was that a majority of the Supreme Court concluded that it would take further action by Congress after the *Marathon* decision "to determine the proper manner of restructuring the Bankruptcy Act of 1978 to conform to the requirements of Art. III, in the way that will best effectuate the legislative purpose" (102 Sup. Ct. at 2880, fn. 40).

Even if this were not so evidently the case, and one or more of the various theories for finding bankruptcy jurisdiction in the district courts without further Congressional action were eventually to prevail, a failure of Congress to act or of the Court again to extend its stay by December 24, 1982, will still produce complete chaos in the administration of bankruptcy cases. Each of the various theories supporting district court jurisdiction is so tenuous that it is certain to be contested in the courts and another two years of litigation over jurisdiction will be necessary before the Supreme Court can resolve the matter.

2. *The assumption that the federal district courts have authority to promulgate the proposed Judical Conference rule.*

The proposed rule itself invokes, as authority for its adoption by district courts, Bankruptcy Code § 105, §§ 404 and 405 of P.L. 95-598, FRCP Rules 53 and 83, and Bankruptcy Rules 513 and 927.

A. Bankruptcy Code § 105(a)

Bankruptcy Code § 105(a) provides that: "The *bankruptcy court* may issue any order, process, or judgment that is necessary or proper to carry out the provisions of this title" (*emphasis added*). As a matter of statutory construction, this provision does not reach the interim "courts of bankruptcy" created by § 404(a) of P.L. 95-598 to serve until new 28 U.S.C. § 151 tales effect on April 1, 1984, to create the new "bankruptcy courts," since § 405(b) of P.L. 95-598, while it gives the interim courts some of the new jurisdiction, does not give them that conferred by § 105. As a matter of statutory construction, also, a grant of jurisdiction under § 105(a) to "issue any order, process or judgment" is not a grant of jurisdiction to promulgate rules.

Section 105(a) is a near copy of now repealed § 2a(15) of the old Bankruptcy Act, which was also confined to orders, process, and judgments, and was never thought to authorize the promulgation of rules. (But the Administrative Office, which regards old § 2a(15) as "incorporated and preserved" by § 404(a) of P.L. 95-598, should be invoking old § 2a(15), which was at least addressed to "courts of bankruptcy," rather than new § 105(a), which applies to "bankruptcy courts.")

B. Sections 404 and 405 of P.L. 95-598

The proposed rule's invocation of §§ 404 and 405 of P.L. 95-598 as a source of district court rule-making authority is apparently again based on a misreading of those sections to vest bankruptcy jurisdiction in the district courts. See p. 8, supra.

C. FRCP 53 and 83

FRCP 53, governing the appointment of standing and special masters by district courts, can hardly be stretched to authorize the district courts to promulgate the Judicial Conference's proposed rule, which would refer to the bankruptcy judges some or all cases within the jurisdiction defined by 28 U.S.C. § 1471 (a) and (b) and which, (like 28 U.S.C. § 1471(c), would authorize

them to exercise jurisdiction in all such cases (with a single limitation not already imposed by new 28 U.S.C. § 1481 and § 405(a) of P.L. 95-598 forbidding the bankruptcy judges to conduct jury trials).

Subdivision (b) of FRCP 53 provides: "A reference to a master shall be the exception and not the rule . . . . [I]n actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it."

This provision obviously contemplates that references, even to a standing master, shall be reserved for exceptional cases and shall be done only on an individualized, case-by-case basis. Its requirements are not satisfied by a recital in the proposed rule that "exceptional circumstances exist" calling for a blanket reference to the bankruptcy judges of all cases under title 11 as well as all or most civil proceedings arising in or related to cases under title 11. As the Supreme Court said, in interpreting Rule 53(b) in *LaBrey* v. *Howes Leather Co.*, 352 U.S. 249, 256, 259 (1957), and disapproving of a reference to a master of all issues of liability and damages in two antitrust cases of "unusual complexity of issues of both fact and law" by a district court whose calendar was badly congested and who had referred eleven cases to masters in the past six years: "The use of masters is 'to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause,' *Ex parte Peterson*, 253 U.S. 300, 312 (1920), and not to displace the court." From this decision others have concluded that, "with a few minor exceptions, references in nonjury cases run counter to the spirit and purpose of judicial administration in the federal courts," Kaufman, *Masters in the Federal Courts: Rule 53*, 58 Column.L.Rev. 452, 459 (1958), and that, beyond the use of masters on matters of account and damages and to supervise discovery, "it is difficult to conceive of a reference of a nonjury case that will meet the rigid standards of the La Buy decision." 9 C. Wright and A. Miller, *Federal Practice and Procedure* 791 (1971).

The rule proposed by the Judicial Conference for adoption by the district courts is so at war with the letter and the spirit of FRCP 53 that FRCP 83, authorizing each district court to make rules "governing its practice not inconsistent with these rules," merely serves, not as authority for the proposed rule, but to accentuate its invalidity.

D. Bankruptcy rules 513 and 927

This leaves, as possible sources of rulemaking authority, only Bankruptcy Rules 513 and 927. Rule 513 provides only that, if a reference is made by a judge in a bankruptcy case (and the Advisory Committee's Note indicates that only a district judge is contemplated) to a special master, the Federal Rules of Civil Procedure shall apply. As indicated by the Advisory Committee's Note, only FRCP 52(a) and 53 refer to masters. Rule 52(a) provides only that: "The findings of a master, to the extent that the courts adopts them, shall be considered as the findings of the court." And FRCP 53, as we have seen (pp. 13-14) contains no authority for the adoption of the Judicial Conference's proposed rule. Moreover, § 405(d) of P.L. 95-598 provides that the existing Bankruptcy Rules are to apply only "to the extent not inconsistent with the amendments made by" P.L. 95-598 so that, if new 28 U.S.C. § 1471(c) forbids the district courts to exercise bankruptcy jurisdiction as we have argued (p. 7) Rule 513 is no longer applicable.

That leaves only Bankruptcy Rule 927, authorizing district courts to "make and amend rules governing practice and procedure under the Act not inconsistent with these rules." Fortunately, it is not necessary to determine the full extent to which the existing Bankruptcy Rules are consistent with P.L. 95-598 and then to test the proposed Judicial Conference rule for consistency with the surviving Bankruptcy Rules. The proposed rule is inconsistent with FRCP 53 as incorporated by Rule 513 if the latter rule is not inconsistent with P.L. 95-598. If Rule 513 is inconsistent with new 28 U.S.C. § 1471(c) because § 1471(c) continues to forbid district courts to exercise bankruptcy jurisdiction, then so in Rule 927 for the same reason.

In sum, the theories invoked to find jurisdiction in the district courts to promulgate the proposed rule are as tenuous as the theories invoked to find other bankruptcy jurisdiction in those courts. And they are at least as provocative of litigation that will magnify the chaos in bankruptcy administration that will ensue if neither the Congress nor the Supreme Court acts by December 24, 1982.

UNWORKABILITY

Passing all questions as to the validity of the proposed rule and the litigation questioning its validity that it will provoke, the rule is on its own terms unworkable and provocative of additional litigation.

(1) Subsection (b)(1) refers to the bankruptcy judges "all cases under Title 11 and all civil proceedings arising in or related to cases under Title 11." The Administrative Office memorandum of September 27 accompanying the proposed rule states (p. 2) that "all bankruptcy matters are intially referred to a bankruptcy judge" by this subsection. But the subsection, while it tracks the language of new 28 U.S.C. § 1471(a) in referring to "all cases under Title 11," omits the language of § 1471(b) covering "all civil proceedings arising unde title 11." The omission invites litigation as to whether such matters as actions to recover preferences under § 547 or fraudulent conveyances as defined in § 548 and objections to discharge under § 727(a) are intended not to be referrred to bankruptcy judges.

(2) This confusion is compounded by the provision in subsection (c)(3) that the judgments of bankruptcy judges "in civil proceedings related to cases under Title 11 but not arising in or under Title 11," that would be appealable if rendered by a district judge and that do not result from stipulation, shall not be affective and shall not be entered until signed by a district judge, with the bankruptcy judge to submnit findings, conclusions, and a proposed judgment to the district judge.

Does this provision contemplate that civil proceedings "arising under title 11" are not referred to bankruptcy judges, as subsection (b)(1) seems to imply? If so, what are the orders and judgments of bankruptcy judges under subsection (c)(2) (referred to in the Administrative Office memorandum (p. 3) as "not involving a final judgment in a Marathon claim") that are effective upon entry unless stayed by the bankruptcy judge or the district court?

Or does subsection (c)(3) contemplate that such matters are referred to the bankruptcy judges despite the omission in subsection (b)(1) and that their orders and judgments in such matters are under subsection (c)(2) effective on entry unless stayed?

In any event, what are the judgments "not arising under Title 11" which require the signature of a district judge? For example:

(a) Under § 502(b)(1) claims are not allowable if unenforceable against the debtor or his property under applicable law outside of title 11, usually state law. Does every ruling on an objection to a claim under § 502(b)(1) require the signature of a district judge?

(b) Under § 522(b), a debtor may elect the exemptions provided by the law of the state of his domicile, or the law of that state may confine him to such state law exemptions. Does every judgment on an objection to a state law exemption require the signature of a district judge?

(c) Under § 541(a)(1), property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." Nothing in title 11 provides a rule for determining when or to what extent a debtor has a legal or equitable interest in property. That will be determined under nonbankruptcy law, usually state law. Do all judgments on such determinations require the signature of the district judge?

(d) Section 544(a) gives the trustee the hypothetical status of a judgment lien creditor and a bona fide purchaser of real estate. But this will enable him to avoid unperfected prepetition transfers by the debtor only if he can locate some law, usually state law, outside of title 11, rendering such unperfected transfers voidable by judgment lien creditors or bona fide purchasers of realty. Does every judgment in a trustee's action under § 544(a) require the signature of a district judge?

(e) Under § 544(b), the trustee may avoid prepetition transfers of property that any creditor with an allowable unsecured claim could have avoided under applicable law, usually state law, outside of title 11. Does every judgment in a trustee's action under § 544(b) require the signature of a district judge?

(3) Subsection (c)(3) also requires the signature of the district judge on every judgment "wherever otherwise constitutionally required." While this provision adds nothing to what the Constitution would otherwise require, it provides no guidance to judges or practitioners operating under the proposed rule as to what is constitutionally required.

(4) Although subsection (c)(4) requires objections to be filed to orders, judgments, or proposed judgments of bankruptcy judges within 10 days after entry unless the time is shortened for cause by the bankruptcy judge or the district court, such objections are not necessary under subsection (c)(5) in order to insure district court review in any type of case:

(a) For whatever is covered by subsection (c)(2), although no objection is filed to the bankruptcy judge's order or judgment, and although the matter was not controverted before the bankruptcy judge, the district court is required by subsection (c)(5)(A)(ii) to review it if the bankruptcy judge "certifies that the circumstances require" such review. Thus are the bankruptcy courts empowered, under no discernible standard, to refer cases for review to the district courts, who apparently must review and decide them although no party has objected or is interested in appearing to defend or challenge the bankruptcy court's ruling!

(b) For cases "not arising in or under Title 11, or wherever otherwise constitutionally required," within the meaning of subsection

(c)(3), the district court is required by subsection (c)(5)(A)(iii) to review the bankruptcy judge's proposed judgment before signing it, again although no party has objected or is interested in appearing to defend or challenge the bankruptcy judge's proposed judgment, although the parties can avoid this review if the bankruptcy judge has entered a judgment in what would otherwise be a subsection (c)(3) case that "result[s] from a stipulation among the parties."

(5) In conducting either of the above sorts of review, or in reviewing a subsection (c)(2) case on objection of a party, although one of the "exceptional circumstances" supposed to justify the proposed rule is "the specialized expertise necessary to the determination of bankruptcy matters," the district court under subsection (c)(5)(B) may take additional evidence and "need give no deference to the findings of the bankruptcy judge." (Although the Administrative Office memorandum states (p. 3) that, if the bankruptcy judge has certified under subsection (c)(5)(A)(ii) that circumstances require review, the order or judgment of the bankruptcy judge is to be "confirmed.") Thus far we have come from FRCP 53, authorizing the district courts in exceptional circumstances to invoke the expertise of masters whose findings of fact in nonjury cases are to be accepted by the court "unless clearly erroneous." Although the expertise is invoked in the proposed rule, it need be given "no deference."

(6) Finally, whenever under subsection (c)(6) the bankruptcy judge certifies, in any case subject to review by a district court, that "the circumstances require immediate review," the district court is to accomplish that review "as soon as possible."

Thus the proposed rule, because of its ambiguities in the employment and omission of categories employed in 28 U.S.C. § 1471 contains the seeds of multitudinous litigation. And, for the cases where no litigation results, it imposes on the district courts the burden of unaided review in which they need give "no deference" to bankruptcy judge save for the bankruptcy judge's certification that the review must be expedited. The proposed rule does not chart a course for "the orderly course of . . . business" (subsection (a)). It charts no intelligible course and creates only confusion.

Plainly, under the proposed rule, the district courts will have a heavy involvement in judgments and orders in bankruptcy cases because the uncertainties of the rule compel this involvement. Indeed, assuming this rule is understood to attempt to delegate dispositive power to the bankruptcy court over a given proceeding, it seems no overstatement to assert that any prudent party will decline to rely on a bankruptcy court's order respecting important matters even if they are undisputed, e.g., orders authorizing a negotiated extension of credit under § 364. Instead, he will want the assurance of a district court order. The district court judges for the most part simply have no time to respond to this increased workload. The inability to obtain prompt orders will make it impossible for bankruptcy administration to proceed efficiently.●

CONFERENCE REPORT ON S. 2336, AUTHORIZATION FOR APPROPRIATIONS OF MARITIME PROGRAMS FOR FISCAL YEAR 1983

Mr. JONES of North Carolina submitted the following conference report and statement on the Senate bill (S. 2336) to authorize appropriations for fiscal year 1983 for certain maritime programs of the Department of Transportation, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 97-961)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2336) to authorize appropriations for certain maritime programs of the Department of Transportation for fiscal year 1983, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That funds are authorized to be appropriated without fiscal year limitation as the appropriation Act may provide for the use of the Department of Transportation for fiscal year 1983, as follows:

(1) for payment of obligations incurred for operating differential subsidy, $454,010,000; (2) for research and development, $15,300,000; (3) for operations and training, $78,113,000 including—

(A) $5,516,000 for reserve fleet expenses;

(B) $36,707,000 for maritime education and training expenses, including $17,251,000 for maritime training at the Merchant Marine Academy at Kings Point, New York, $17,768,000 for financial assistance to State maritime academies, and $1,688,000 for expenses necessary for additional training; and

(C) $34,890,000 for other operating and training expenses; and

(4) for the acquisition of three C-6 type vessels for the National Defense Reserve Fleet pursuant to section 510 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1160), from operators replacing such vessels in their services with vessels to be delivered by United States shipyards during 1982, not more than $25,000,000.

SEC. 2. There are authorized to be appropriated for the fiscal year 1983, in addition to the amounts authorized by section 1 of this Act, such supplemental amounts for the activities for which appropriations are authorized under section 1 of this Act, as may be necessary for increases in salary, pay, retirement, or other employee benefits authorized by law.

SEC. 3. Section 615 of the Merchant Marine Act, 1936 (46 U.S.C. 1185), is amended to read as follows:

"SEC. 615. Notwithstanding any other provision in this Act, until October 1, 1983, an operator receiving or applying for operating differential subsidy under this title may construct, reconstruct, or acquire its vessels of over five thousand deadweight tons outside the United States. Any vessel constructed, reconstructed, or acquired in accordance with this section or section 1610 of P.L. 97-35 and any vessel of over five thousand deadweight tons otherwise constructed, reconstructed, or acquired outside of the United States before October 1, 1983, and documented under the laws of the United States, shall be deemed to have been United States built for the purposes of this title, section 901(b) of this Act, and section 5(7) of the Port and Tanker Safety Act of 1978 (46 U.S.C. 391(a)(7)). Section 607 of this Act does not apply to any vessel constructed, reconstructed, or acquired under this section. No liquid and/or dry bulk vessel, constructed, reconstructed, or acquired under this section, other than section 1610 of P.L. 97-35, may, during the first three years of its documentation under the laws of the United States, carry any portion of the preference cargoes reserved for carriage by United States-flag commercial vessels, unless the vessel is less than three years of age at the time of acquisition under this section and no bulk vessel built in the United States, foreign built bulk vessel that has been documented under the laws of the United States for at least three years, or bulk vessel constructed, reconstructed, or acquired in accordance with section 1610 of P.L. 97-35 is available at fair and reasonable rates for United States-flag commercial vessels. No vessel constructed, reconstructed, or acquired under this section may be transferred or placed under the registry or flag of a foreign nation during its useful economic life, unless approved by the Secretary of Transportation under section 9 of the Shipping Act, 1916 (46 U.S.C. 808).".

SEC. 4. Section 1103(f) of the Merchant Marine Act, 1936 (46 U.S.C., 1273(f), is amended by adding at the end thereof the following new sentence: "No additional limitations may be imposed on new commitments to guarantee loans for any fiscal year, except in such amounts as established in advance in annual authorization Acts. No vessels eligible for guarantees under this Title shall be denied eligibility because of its vessel type.".

SEC. 5. The Secretary of Transportation shall not enter into new commitments to guarantee loans under section 1103 of the Merchant Marine Act, 1936 (46 U.S.C. 1273) in an amount greater than $950,000,000 during fiscal year 1983.

SEC. 6. (a) Section 1104(a)(3) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1274)(a)(3)), is amended by inserting after the word "Fund" the words ", or for which related obligations were accelerated and paid by the Secretary,".

(b) Section 1104(h) of such Act (46 U.S.C. 1274(h)) is amended by inserting after the word "acceleration" the word ", assumption,".

(c) The first sentence of section 1105(a) of such Act (46 U.S.C. 1275(a)) is amended by inserting after the word "demand" the following: "(unless the Secretary shall, upon such terms as may in his discretion be provided in the obligations or agreements relating thereto, prior to such demand, in his discretion, have assumed the obligor's rights and duties under said obligations and agreements and shall have made any payments in default)".

(d) Section 1105(b) of such Act (46 U.S.C. 1275(b)) is amended to read as follows:

"(b) In the event of a default under a mortgage, loan agreement, or other security agreement between the obligor and the Secretary, the Secretary may (upon such terms as may in his discretion be provided in the obligations or agreements relating thereto), at his option and discretion—

"(1) notify the obligee or his agent of such default and the assumption by the Secretary of the obligor's rights and duties under said obligation and agreements relating thereto and make any payment in default; or

"(2) notify the obligee or his agent of such default and the obligee or his agent shall have the right to demand at or before the expiration of such period as may be specified in the guarantee or related agreements, but

not later than 60 days from the date of such notice, payment by the Secretary of the unpaid principal amount of said obligation and the unpaid interest thereon. Within such period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of such demand, the Secretary shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment. The validity of the guarantee of any obligation made by the Secretary under this title shall be unaffected and such guarantee shall remain in full force and effect notwithstanding any assumption of such obligation by the Secretary pursuant to subsections (a) and (b) of this section.".

(e) The first sentence of section 1105(c) of such Act (46 U.S.C. 1275(c)) is amended by inserting after the word "payment" the words "or assumption" and by inserting after "Secretary", the first time it appears, the words ", in his discretion,".

SEC. 7. Section 362(b) of title 11, United States Code is amended:

(a) at the end of paragraph (7), by striking "or";

(b) at the end of paragraph (8), by striking the period and substituting "; or"; and

(c) by adding at the end thereof the following new paragraph:

"(9) under subsection (a) of this section, of the commencement or continuation to final decree and execution of the foreclosure by the Secretary of Transportation or the Secretary of Commerce of a mortgage on a vessel or vessels pursuant to the Ship Mortgage Act, 1920, as amended, held by said Secretary under the provisions of sections 1101-1110 or section 207 of the Merchant Marine Act, 1936, as amended.".

SEC. 8. After September 30, 1983, no funds may be appropriated to or for the use of the Federal Maritime Commission unless the appropriation of those funds has been authorized by legislation enacted after December 31, 1982.

SEC. 9. The Merchant Marine Act, 1920 (41 Stat. 988), as amended (46 U.S.C. 861 et seq.), is amended by adding at the end of section 27: "For the purposes of this section, after December 31, 1983, or after such time as an appropriate vessel has been constructed and documented as a vessel of the United States, the transportation of hazardous waste, as defined in section 1004(5) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C, 6903(5)), from a point in the United States for the purpose of the incineration at sea of that waste shall be deemed to be transportation by water of merchandise between points in the United States; Provided, however, that the provisions of this sentence shall not apply to this transportation when performed by a foreign-flag ocean incineration vessel, owned by or under construction on May 1, 1982 for a corporation wholly owned by a citizen of the United States; the term "citizen of the United States," as used in this proviso, means a corporation as defined in section 2(a) and 2(b) of the Shipping Act, 1916 (46 U.S.C. 802 (a) and (b)). The incineration equipment on these vessels shall meet all current United States Coast Guard and Environmental Protection Agency standards. These vessels shall, in addition to any other inspections by the flag state, be inspected by the United States Coast Guard, including drydock inspections and internal examinations of tanks and void spaces, as would be required of a vessel of the United States. Satisfactory inspection shall be certified in writing by the Secretary of Transportation. Such inspections may occur concurrently with any inspections required by the flag state or subsequent to but no more than one year after the initial issuance or the next scheduled issuance of the Safety of Life at Sea Safety Construction Certificate. In making such inspections, the Coast Guard shall refer to the conditions established by the initial flag state certification as the basis for evaluating the current condition of the hull and superstructure. The Coast Guard shall allow the substitution of an equivalent fitting, material, appliance, apparatus, or equipment other than that required for vessels of the United States if the Coast Guard has been satisfied that fitting, material, appliance, apparatus, or equipment is at least as effective as that required for vessels of the United States.".

SEC. 10. That, notwithstanding the failure of the vessel named below to meet the requirements contained in sections 111 and 112 of the Vessel Documentation Act, as amended (46 U.S.C. 65 (i) and (j)), and section 27 of the Merchant Marine Act, 1920, as amended (46 U.S.C. 883), on the date of this Act, the Secretary of the Department in which the Coast Guard is operating shall cause the vessel Centurion (officially numbered 236815), owned by Joseph B. Simoncelli, of Scranton, Pennsylvania, to be documented as a vessel of the United States upon compliance with all other requirements of law, with the privilege of engaging in the coastwise trade.

And the House agree to the same.

WALTER B. JONES,
MARIO BIAGGI,
JOHN B. BREAUX,
BRIAN J. DONNELLY,
GENE SNYDER,
PAUL N. MCCLOSKEY, Jr.,
DON YOUNG,
Managers on the Part of the House.

BOB PACKWOOD,
SLADE GORTON,
TED STEVENS,
DANIEL K. INOUYE,
RUSSELL B. LONG,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill, S. 2336, to authorize appropriations for certain maritime programs of the Department of Transportation for fiscal year 1983, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

SECTION 1

The House authorized a total of $572.423 million which is the same amount that is expected to be appropriated. This is $30.6 million above the President's request. The largest increase is $25 million for the acquisition of three vessels for the National Defense Reserve Fleet. Financial assistance to State maritime academies has also been increased, while research and development funding has been decreased.

The Senate authorized a total of $541.823 or $30.6 million less than the House. The Senate did not authorize $25 million for the aquisition of trade-in vessels and provided less for aid to State maritime academies while providing $1.5 million more for research and development.

The Conference substitute adopts the House figures for research and development at $15.3 million, for operations and training at $78.113 million, and for the acquisition of trade-in vessels at $25 million so that the total amount being authorized is $572.423 million.

SECTION 2

The Conference substitute adopts section 2 of the House amendment that provides authority for supplemental amounts that may be necessary for increases in salary, pay, retirement, or other employee benefits authorized by law. The Senate has no comparable provision.

SECTION 3

The Senate amended section 615 of the Merchant Marine Act of 1936 so as to extend for a two-year period the temporary authority provided by section 1610 of the Omnibus Reconciliation Act of 1981, permitting U.S.-flag operators receiving or applying for operating differential subsidies to construct, reconstruct, or acquire vessels outside the United States. It permits the use of capital construction funds in conjunction with this temporary authority and the prior year's temporary authority. The Senate bill permits these vessels to be considered U.S.-built vessels for the purposes of carrying preference cargoes without the statutory three-year waiting period and for making conversions required by the Port and Tanker Safety Act. The House has no comparable provision.

The Conference substitute adopts the Senate provision permitting these U.S.-flag operators to construct, reconstruct, or acquire vessels outside the United States, but limits it to October 1, 1983. However, it does not permit the use of capital construction funds. It provides that these vessels and those vessels constructed, reconstructed, or acquired under section 1610 of Public Law 97-35 shall be deemed to have been U.S.-built vessels for the purpose of eligibility for receiving operating differential subsidies, the carriage of preference cargo without a three-year waiting period, and for making conversions required by the Port and Tanker Safety Act. It also provides for a number of additional conditions. No liquid-bulk and/or dry-bulk carrier constructed, reconstructed, or acquired under this section—other than section 1610 of Public Law 97-35—may, during the first three years as a documented U.S.-flag vessel, carry any preference caroes unless (1) the vessel is less than three years of age and (2) no U.S.-built bulk vessel, foreign-built bulk vessel that has been documented for at least three years, or bulk vessel constructed, reconstructed, or acquired in accordance with section 1610 is available at fair and reasonable rates for U.S.-flag commercial vessels. In addition, none of these vessels may be transferred or placed under the registry or flag of a foreign nation during its useful economic life unless approved by the Secretary of Transportation.

SECTION 4

The House authorized an increase in the legislative ceiling of the Title XI Federal Ship Financing Fund from the present $12 billion to $15 billion to provide sufficient loan guarantee authorizations to meet existing requests. It also limited the Administration's authority to deny or defer requests for loan guarantees that meet the legislated standards and criteria of existing law.

The Senate amended Title XI by limiting new vessel construction loan guarantee com-

mitments to amounts that are established in advance in the annual authorization acts. It does not provide for limiting Administration discretion.

The Conference substitute adopts the Senate's annual authorization requirements and the House's limitation on the Administration's discretion in denying or deferring requests for loan guarantees solely because of a vessel's type.

SECTION 5

The Senate limited new Title XI guarantee commitments to $2.25 billion for merchant vessel construction during fiscal years 1983, 1984, and 1985—provided that no more than $850 million be committed in any one of these years. The House has no comparable provision.

The Conference substitute limits new commitments to $950 million for fiscal year 1983. This should provide the Secretary adequate leeway to consider and meet any national security requirements that may arise during the next fiscal year.

SECTION 6

The Senate amended the default provisions of Title XI so as to permit greater flexibility in the handling of defaults by the Secretary of Transportation. The House has no comparable provision. The Conference substitute adopts the Senate provisions without modification.

SECTION 7

The Senate amended section 362(b)(7) of Title II, U.S. Code pertaining to defaults by a shipowner in bankruptcy. It exempts the Secretary of Transportation, as a Title XI mortgage, from the automatic stay provisions of the bankruptcy code and the prohibition from taking unrelated foreclosure action on a Title XI mortgage. The House has no comparable provision. The Managers adopt a technical substitute for the Senate provision that includes exemption authority for the Secretary of Commerce, and that clarifies the Secretary's ability to carry the foreclosure to a conclusion.

SECTION 8

The Senate bill would subject the Federal Maritime Commission to an annual authorization procedure and authorize $11.65 million for fiscal year 1983. The House has no comparable provision. The Conference substitute does not adopt a specific authorization amount for fiscal year 1983 but does adopt the concept of annual authorization for appropriations commencing with fiscal year 1984.

SECTION 9

The House provided for the exclusion of foreign-flag vessels from the transportation of hazardous wastes for incineration at sea. It also permitted foreign-flag vessels to operate in this trade until December 31, 1983 or until an appropriate U.S.-flag vessel is available, subject to certain inspection requirements.

The Senate provided a similar exclusion but permitted those foreign-flag vessels owned by or under construction for a citizen of the United States on May 1, 1982 to operate in this newly protected domestic trade.

The Conference substitute adopts the House provision.

SECTION 10

The House provided for the documentation of the vessel *Centurion* as a vessel of the United States with the privilege of engaging in the coastwise trade. The Senate has no comparable provision. The Conference substitute adopts the House provision.

And the House agree to the same.

WALTER B. JONES,
MARIO BIAGGI,
JOHN B. BREAUX,
BRIAN J. DONNELLY,
GENE SNYDER,
PAUL N. MCCLOSKEY, JR.,
DON YOUNG,
Managers on the Part of the House.

BOB PACKWOOD,
SLADE GORTON,
TED STEVENS,
DANIEL K. INOUYE,
RUSSELL B. LONG,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 5447

Mr. DE LA GARZA submitted the following conference report and statement on the bill (H.R. 5447) to extend the Commodity Exchange Act, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 97-964)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5447) to extend the Commodity Exchange Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Futures Trading Act of 1982".

TITLE I—JURISDICTION

OPTIONS; FUTURES CONTRACTS

SEC. 101. (a) Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2) is amended by—

(1) redesignating paragraph (1) as paragraph (1)(A);

(2) inserting in the third sentence of paragraph (1)(A), as so redesignated ", except to the extent otherwise provided in subparagraph (B) of this paragraph," after "exclusive jurisdiction";

(3) adding a new subparagraph (B) to read as follows:

"(B) Notwithstanding any other provision of law—

"(i) this Act shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities (as defined in section 2(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), including any group or index of such securities, or any interest therein or based on the value thereof.

"(ii) This Act shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty') and transactions involving, and may designate a board of trade as a contract market in, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof): Provided, however, That no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery unless the board of trade making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets the following minimum requirements:

"(I) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982);

"(II) Trading in such contract (or option on such contract) shall not be readily susceptible to manipulation of the price of such contract (or option on such contract), nor to causing or being used in the manipulation of the price of any underlying security, option on such security or option on a group or index including such securities; and

"(III) Such group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of, and shall reflect, the market for all publicly traded equity or debt securities or a substantial segment thereof, or shall be comparable to such measure.

"(iii) Upon application by a board of trade for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery involving a group or index of securities, the Commission shall provide an opportunity for public comment on whether such contracts (or options on such contracts) meet the minimum requirements set forth in clause (ii) of this subparagraph).

"(iv)(I) The Commission shall consult with the Securities and Exchange Commission with respect to any application which is submitted by a board of trade before December 9, 1982, for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities. If, no later than fifteen days following the close of the public comment period, the Securities and Exchange Commission shall object to the designation of a board of trade as a contract market in such contract (or option on such contract) on the ground that any minimum requirement of clause (ii) of this subparagraph is not met, the Commission shall afford the Securities and Exchange Commission an opportunity for an oral hearing, to be transcribed, before the Commission, and shall give appropriate weight to the views of the Securities and Exchange Commission. Such oral hearing shall be held after the public comment period, prior to Commission action upon such designation, and not less than thirty nor more than forty-five days after the close of the public comment period, unless both the Commission and the Securities Exchange Commission otherwise agree. If such an oral hearing is held, the Securities and Exchange Commission fails to withdraw its objections, and the Commis-

sion issues an order designating a board of trade as a contract market with respect to any such contract (or option on such contract), the Securities and Exchange Commission shall have the right of judicial review of such order in accordance with the standards of section 6(b) of this Act. If, pursuant to section 6 of this Act, there is a hearing on the record with respect to such application for designation, the Securities and Exchange Commission shall have the right to participate in that hearing as an interested party.

"(II) Effective for any application submitted by a board of trade on or after December 9, 1982, for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery of a group or index of securities, the Commission shall transmit a copy of such application to the Securities and Exchange Commission for review. The Commission shall not approve any such application if the Securities and Exchange Commission determines that such contract (or option on such contract) fails to meet the minimum requirements set forth in clause (ii) of this subparagraph. Such determination shall be made by order no later than forty-five days after the close of the public comment period under clause (iii) of this subparagraph. In the event of such determination, the board of trade shall be afforded an opportunity for a hearing on the record before the Securities and Exchange Commission. If a board of trade requests a hearing on the record, the hearing shall commence no later than thirty days following the receipt of the request, and a final determination shall be made no later than thirty days after the close of the hearing. A person aggrieved by any such order of the Securities and Exchange Commission may obtain judicial review thereof in the same manner and under such terms and conditions as are provided in section 6(a) of this Act.

"(v) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), or except as provided in clause (ii) of this subparagraph, any group or index of such securities or any interest therein or based on the value thereof.".

OPTIONS ON FOREIGN CURRENCIES

SEC. 102. Section 4c of the Commodity Exchange Act (7 U.S.C. 6c) is amended by adding at the end thereof the following new subsection:

"(f) Nothing in this Act shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.".

COMMODITY POOLS

SEC. 103. Section 4m of the Commodity Exchange Act (7 U.S.C. 6m) is amended by—

(1) inserting "(1)" immediately following the section designation; and

(2) adding at the end thereof the following new subsection:

"(2) Nothing in this Act shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 or the Securities Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool.".

SHARING INFORMATION WITH CONTRACT MARKETS AND OTHER SELF-REGULATORY ORGANIZATIONS

SEC. 104. Section 8a(6) of the Commodity Exchange Act (7 U.S.C. 12a) is amended by—

(1) inserting "registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934," before "notwithstanding"; and

(2) striking out "and consumers" and inserting in lieu thereof a comma and immediately thereafter "consumers, or investors, or which is necessary or appropriate to effectuate the purposes of this Act: Provided, That any information furnished by the Commission under this paragraph shall not be disclosed by such contract market, registered futures association, or self-regulatory organization except in any self-regulatory action or proceeding".

TITLE II—MISCELLANEOUS AMENDMENTS TO THE COMMODITY EXCHANGE ACT

DEFINITIONS

SEC. 201. Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2) is amended by—

(1) inserting in paragraph (1)(A), as redesignated by section 101 of this Act, immediately after the sentence defining the term "futures commission merchant" a new sentence to read as follows: "The term 'introducing broker' shall mean any person, except an individual who elects to be and is registered as an associated person of a futures commission merchant, engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom."; and

(2) amending the sentence defining the term "commodity trading advisor" in paragraph (1)(A), as so redesignated, to read as follows: "The term 'commodity trading advisor' shall mean any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market, any commodity option authorized under section 4c, or any leverage transaction authorized under section 19, or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing; but such term does not include (i) any bank or trust company or any person acting as an employee thereof, (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, (v) the fiduciary of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act or 1974, (vi) any contract market, and (vii) such other persons not within the intent of this definition as the Commission may specify by rule, regulation, or order: Provided, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession: Provided further, That the Commission, by rule or regulation, may include within this definition, any person advising as to the value of commodities or issuing reports or analyses concerning commodities, if the Commission determines that such rule or regulation will effectuate the purposes of this provision.".

PERSONNEL RESTRICTIONS

SEC. 202. Section 2(a)(7) of the Commodity Exchange Act (7 U.S.C. 4a(f)) is amended by—

(1) striking out "(A)" after the paragrpah designation; and

(2) striking out subparagraph (B).

LEGISLATIVE FINDINGS

SEC. 203. Section 3 of the Commodity Exchange Act (7 U.S.C. 5) is amended to read as follows:

"SEC. 3. Transactions in commodities involving the sale thereof for future delivery as commonly conducted on boards of trade and known as 'futures' are affected with a national public interest. Such futures transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling commodities and the products and byproducts thereof in interstate commerce. The prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of commodities and the products and byproducts thereof and to facilitate the movements thereof in interstate commerce. Such transactions are utilized by shippers, dealers, millers, and others engaged in handling commodities and the products and byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price. The transactions and prices of commodities on such boards of trade are susceptible to excessive speculation and can be manipulated, controlled, cornered or squeezed, to the detriment of the producer or the consumer and the persons handling commodities and the products and byproducts thereof in interstate commerce, rendering regulation imperative for the protection of such commerce and the national public interest therein. Furthermore, transactions which are of the character of, or are commonly known to the trade as, 'options' are or may be utilized by commercial and other entities for risk shifting and other purposes. Options transactions are in interstate commerce or affect such commerce and the national economy, rendering regulation of such transactions imperative for the protection of such commerce and the national public interest."

UNLAWFUL FUTURES TRADING; FOREIGN FUTURES

SEC. 204. Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended to read as follows:

"SEC. 4. (a) It shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the

rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless—

"(1) such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity;

"(2) such contract is executed or consummated by or through a member of such contract market; and

"(3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: Provided, That each contract market member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commission or the Department of Justice.

"(b) The Commission may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of reports, the keeping of books and records, the safeguarding of customers' funds, and registration with the Commission by any person located in the United States, its territories or possessions, who engages in the offer or sale of any contract of sale of a commodity for future delivery that is made or to be made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions. Such rules and regulations may impose different requirements for such persons depending upon the particular foreign board of trade, exchange, or market involved. No rule or regulation may be adopted by the Commission under this subsection that (1) requires Commission approval of any contract, rule, regulation, or action of any foreign board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, or (2) governs in any way any rule or contract term or action of any foreign board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market.".

SPECULATIVE LIMITS

SEC. 205. Section 4a of the Commodity Exchange Act (7 U.S.C. 6a) is amended by—

(1) inserting "rule, regulation, or" before "order" wherever it occurs in subsections (1) and (2);

(2) inserting in the fourth sentence of subsection (1) after "delivery months," the words "or for different number of days remaining until the last day of trading in a contract,";

(3) striking out in subsection (2) "order's promulgation" and inserting in lieu thereof "promulgation of the rule, regulation, or order";

(4) amending subsection (3) to read as follows:

"(3) No rule, regulation, or order issued under subsection (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission by rule, regulation, or order consistent with the purposes of this Act. Such terms may be defined to permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange. To determine the adequacy of this Act and the powers of the Commission acting thereunder to prevent unwarranted price pressures by large hedgers, the Commission shall monitor and analyze the trading activities of the largest hedgers, as determined by the Commission, operating in the cattle, hog, or pork belly markets and shall report its findings and recommendations to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture in its annual reports for at least two years following the date of enactment of the Futures Trading Act of 1982.";

(5) inserting in the first sentence of subsection (4) ", an introducing broker," after "futures commission merchant", and striking out "as floor broker" and inserting in lieu thereof "a floor broker"; and

(6) adding at the end thereof the following new subsection:

"(5) Nothing in this section shall prohibit or impair the adoption by any contract market or by any other board of trade licensed or designated by the Commission of any bylaw, rule, regulation, or resolution fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of such contract market, or under options on such contracts or commodities traded on or subject to the rules of such contract market or such board of trade: Provided, That if the Commission shall have fixed limits under this section for any contract or under section 4c of this Act for any commodity option, then the limits fixed by the bylaws, rules, regulations, and resolutions adopted by such contract market or such board of trade shall not be higher than the limits fixed by the Commission. It shall be a violation of this Act for any person to violate any bylaw, rule, regulation, or resolution of any contract market or other board of trade licensed or designated by the Commission fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation, or resolution has been approved by the Commission: Provided, That the provisions of section 9(c) of this Act shall apply only to those who knowingly violate such limits.".

AGRICULTURAL OPTIONS

SEC. 206. Section 4c of the Commodity Exchange Act (7 U.S.C. 6c) is amended by—

(1) amending subsection (a) by—

(A) inserting "or" at the end of clause (A);

(B) striking out clause (B); and

(C) redesignating clause (C) as clause (B);

(2) amending subsection (b) to read as follows:

"(b) No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an option, privilege, indemnity, bid, offer, put, call, advance guaranty, or decline guaranty, contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. Any such order, rule, or regulation may be made only after notice and opportunity for hearing, and the Commission may set different terms and conditions for different markets.";

(3) in subsection (c), inserting immediately after the first sentence the following: "With respect to any commodity regulated under this Act and specifically set forth in section 2(a) of this Act prior to the date of enactment of the Commodity Futures Trading Commission Act of 1974, the Commission may, pursuant to the procedures set forth in this subsection, establish a pilot program for a period not to exceed three years to permit such commodity option transactions. The Commission may authorize commodity option transactions during the pilot program in as many commodities as will provide an adequate test of the trading of such option transactions. After completion of the pilot program, the Commission may authorize commodity option transactions without regard to the restrictions in the pilot program after the Commission transmits to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry the documentation required under clause (1) of the first sentence of this subsection and the expiration of thirty calendar days of continuous session of Congress after the date of such transmittal."; and

(4) amending subsection (d) by—

(A) in clause (1), inserting ", other than a commodity specifically set forth in section 2(a) of this Act prior to enactment of the Commodity Futures Trading Commission Act of 1974," immediately after "physical commodity";

(B) in clause (2), inserting ", other than a commodity specifically set forth in section 2(a) of this Act prior to enactment of the Commodity Futures Trading Commission Act of 1974," immediately after "subsection (b) of this section"; and

(C) inserting ", other than options on a commodity specifically set forth in section (2)(a) of this Act prior to enactment of the Commodity Futures Trading Commission Act of 1974," immediately after "The Commission may permit persons not domiciled in the United States to grant options under this subsection".

INTRODUCING BROKER; REGISTRATION REQUIREMENT

SEC. 207. Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—

(1) inserting in the introductory clause "or introducing broker" after "futures commission merchant";

(2) inserting in paragraph (1) "or introducing broker" after "futures commission merchant"; and

(3) inserting in paragraph (2) "if a futures commission merchant," after "such person shall,".

REGISTRATION PROCEDURE; TECHNICAL AMENDMENTS

SEC. 208. Section 4f of the Commodity Exchange Act (7 U.S.C. 6f) is amended by—

(1) amending subsection (1) to read as follows:

"(1) Any person desiring to register as a futures commission merchant, introducing broker, or floor broker hereunder shall be registered upon application to the Commission. The application shall be made in such form and manner as prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the buisness in which the applicant is or will be engaged, including in the case of an application of a futures commission merchant or an introducing broker, the names and addresses of the managers of all branch offices, and the names of such officers and partners, if a partnership, and of such officers, directors, and stockbrokers, if a corporation, as the Commission may direct. Such person, when registered hereun-

der, shall likewise continue to report and furnish to the Commission the above-mentioned information and such other information pertaining to such person's business as the Commission may require. Each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor unless the registration has been suspended (and the period of such suspension has not expired) or revoked pursuant to the provisions of this Act."; and

(2) inserting in subsection (2) "or as introducing broker" after "futures commission merchant".

INTRODUCING BROKERS—REPORTS, BOOKS, AND RECORDS

SEC. 209. Section 4g of the Commodity Exchange Act (7 U.S.C. 6g) is amended by—

(1) inserting in subsection (1) ", introducing broker," after "futures commission merchant"; and

(2) inserting in subsection (3) ", introducing brokers," after "Floor brokers".

MISREPRESENTATION OF STATUS; TECHNICAL AMENDMENTS

SEC. 210. Section 4h of the Commodity Exchange Act (7 U.S.C. 6h) is amended to read as follows:

"SEC. 4h. It shall be unlawful for any person falsely to represent such person to be a member of a contract market or the representative or agent of such member, or to be a registrant under this Act or the representative or agent of any registrant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, of falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through a memoer of, any contract market.".

RECORDKEEPING CONFORMED TO CURRENT SYSTEM; LARGE TRADER REPORTS

SEC. 211. Section 4i of the Commodity Exchange Act (7 U.S.C. 6i) is amended to read as follows:

"SEC. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market—

"(1) if such person shall directly or indirectly make such contracts with respect to any commodity or any future of such commodity during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission, and

"(2) if such person shall directly or indirectly have or obtain a long or short position in any commodity or any future of such commodity equal to or in excess of such amount as shall be fixed from time to time by the Commission,

unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in clauses (1) and (2) hereof as the Commission may by rule or regulation require and unless, in accordance with rules and regulations of the Commission, such person shall keep books and records of all such transactions and positions and transactions and positions in any such commodity traded on or subject to the rules of any other board of trade, and of cash or spot transactions in, and inventories and purchase and sale commitments of such commodity. Such books and records shall show complete details concerning all such transactions, positions, inventories, and commitments, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the Commission or the Department of Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.".

REGISTRATION; ASSOCIATED PERSON STATUS

SEC. 212. Section 4k of the Commodity Exchange Act (7 U.S.C. 6k) is amended to read as follows:

"SEC. 4k. (1) It shall be unlawful for any person to be associated with a futures commission merchant as a partner, officer, or employee, or to be associated with an introducing broker as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation or acceptance of customers' orders (others than in a clerical capacity or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such futures commission merchant or of such introducing broker and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a futures commission merchant or introducing broker to permit such a person to become or remain associated with the futures commission merchant or introducing broker in any such capacity if such futures commission merchant or introducing broker knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, or introducing broker (and such registration is not suspended or revoked) need not also register under this subsection.

"(2) It shall be unlawful for any person to be associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such commodity pool operator and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity pool operator to permit such a person to become or remain associated with the commodity pool operator in any such capacity if the commodity pool operator knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity pool operator, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this subsection. The Commission may exempt any person or class of persons from having to register under this subsection by rule, regulation, or order.

"(3) It shall be unlawful for any person to be associated with a commodity trading advisor as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such commodity trading advisor and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity trading advisor to permit such a person to become or remain associated with the commodity trading advisor in any such capacity if the commodity trading advisor knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity trading advisor, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this subsection. The Commission may exempt any person or class of persons from having to register under this subsection by rule, regulation, or order.

"(4) Any person desiring to be registered as an associated person of a futures commission merchant, of an introducing broker, of a commodity pool operator, or of a commodity trading advisor shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire at such time as the Commission may by rule, regulation, or order prescribe.

"(5) It shall be unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known of facts regarding such associated person that are set forth as statutory disqualifications in section 8a(2) of this Act, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed.".

CONFORMING AMENDMENT

SEC. 213. Section 4n of the Commodity Exchange Act (7 U.S.C. 6n) is amended by striking out subsections (5) and (6).

EXTENSION OF ANTIFRAUD PROVISION

SEC. 214. Section 4o of the Commodity Exchange Act (7 U.S.C. 6o) is amended to read as follows:

"SEC. 4o. (1) It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

"(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

"(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

"(2) It shall be unlawful for any commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator registered under this Act to reprsent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the United States or any agency or officer thereof. This section shall not be construed to prohibit a statement that a person is registered under this Act as a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, if such statement is true in fact and if the effect of such registration is not misrepresented.".

EXTENSION OF AUTHORITY REGARDING PROFICIENCY EXAMINATIONS

SEC. 215. Section 4p of the Commodity Exchange Act (7 U.S.C. 6p) is amended by—

(1) striking out in the first sentence "futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers" and inserting in lieu thereof "persons required to be registered with the Commission";

(2) striking out in the second and third sentences "as futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers,"; and

(3) striking out in the last sentence "the customers of futures commission merchants and floor brokers" and inserting in lieu thereof "customers, clients, pool participants, or other members of the public with whom such individuals deal".

CONTRACT MARKET RULES

SEC. 216. Section 5a of the Commodity Exchange Act (7 U.S.C. 7a) is amended by—

(1) amending paragraph (8) to read as follows:

"(8) enforce all bylaws, rules, regulations, and resolutions, made or issued by it or by the governing board thereof or any committee, that (i) have been approved by the Commission pursuant to paragraph (12) of this section, (ii) have become effective under such paragraph, or (iii) must be enforced pursuant to any Commission rule, regulation, or order; and revoke and not enforce any bylaw, rule, regulation, or resolution, made, issued, or proposed by it or by the governing board thereof or any committee, that has been disapproved by the Commission;";

(2) amending paragraph (12) to read as follows:

"(12) except as otherwise provided in this paragraph, submit to the Commission for its prior approval all bylaws, rules, regulations, and resolutions ('rules') made or issued by such contract market, or by the governing board thereof or any committee thereof, that relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market, as such terms and conditions are defined by the Commission by rule or regulation, except those rules relating to the setting of levels of margin. Each contract market shall submit to the Commission all other rules (except those relating to the setting of levels of margin and except those that the Commission may specify by regulation) and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the contract market requests review and approval thereof by the Commission or the Commission notifies such contract market in writing of its determination to review such rules for approval. The determination to review such rules for approval shall not be delegable to any employee of the Commission. At least thirty days before approving any rules of major economic significance, as determined by the Commission, the Commission shall publish a notice of such rules in the Federal Register. The Commission shall give interested persons an opportunity to particpate in the approval process through the submission of written data, views, or arguments. The determination by the Commission whether any such rules are of major economic significance shall be final and not subject to judicial review. The Commission shall approve such rules if such rules are determined by the Commission not to be in violation of this Act or the regulations of the Commission and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be in violation of the provisions of this Act or the regulations of the Commission. If the Commission institutes proceedings to determine whether a rule should be disapproved pursuant to this paragraph, it shall provide the contract market with written notice of the proposed grounds for disapproval, including the specific sections of this Act or the Commission's regulations which would be violated. At the conclusion of such proceedings, the Commission shall approve or disapprove such rule. Any disapproval shall specify the sections of this Act or the Commission's regulations which the Commission determines such rule has violated or, if effective, would violate. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period as the contract market may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the contract market may agree to, such rule may be made effective by the contract market until such time as the Commission disapproves such rule in accordance with this paragraph. The Commission shall specify the terms and conditions under which a contract market may, in an emergency as defined by the Commission, make a rule effective on a temporary basis without prior Commission approval, or without compliance with the ten-day notice requirement under this paragraph, or during any period of review by the Commission. In the event of such an emergency, as defined by the Commission, requiring immediate action, the contract market by a two-thirds vote of its governing board may immediately make effective a temporary rule dealing with such emergency if the contract market notifies the Commission of such action with a complete explanation of the emergency involved.".

ARBITRATION

SEC. 217. (a) Section 5a(11) of the Commodity Exchange Act (7 U.S.C. 7a(11)) is amended to read as follows:

"(11) provide a fair and equitable procedure through arbitration or otherwise (such as by delegation to a registered futures association having rules providing for such procedures) for the settlement of customers' claims and grievances against any member or employee thereof: Provided, That (i) the use of such procedure by a customer shall be voluntary and (ii) the term 'customer' as used in this paragraph shall not include another member of the contract market; and".

(b) Section 17(b)(10) of the Commodity Exchange Act (7 U.S.C. 21(b)(10) is amended to read as follows:

"(10) the rules of the association provide a fair, equitable, and expeditious procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee thereof: Provided, That (i) the use of such procedure by a customer shall be voluntary and (ii) the term 'customer' as used in this paragraph shall not include another member of the association.".

CONTRACT MARKET DESIGNATION PROCEDURES

SEC. 218. Section 6 of the Commodity Exchange Act (7 U.S.C. 8) is amended by inserting immediately after the first sentence the following: The Commission shall approve or deny an application for designation as a contract market within one year of the filing of the application. If the Commission notifies the board of trade that its application is materially incomplete and specifies the deficiencies in the application, the running of the one-year period shall be stayed from the time of such notification until the application is resubmitted to completed form: Provided, That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial.".

APPEALS; CONFORMING AMENDMENT

SEC. 219. Section 6(b) of the Commodity Exchange Act (7 U.S.C. 9) is amended by—

(1) striking out in the first and ninth sentences "as futures commission merchant or any person associated therewith as described in section 4k of this Act, commodity trading advisor, commodity pool operator, or as floor broker hereunder" and inserting in lieu thereof "with the Commission in any capacity"; and

(2) inserting in the eleventh sentence after "doing business" the words ", or in the case of an order denying registration, the circuit in which the petitioner's principal place of business listed on petitioner's application for registration is located,".

RESTRAINING ORDERS

SEC. 220. Section 6c of the Commodity Exchange Act (7 U.S.C. 13a-1) is amended by inserting in the proviso contained in the first sentence after "no restraining order" the following: "(other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property)".

STATE ANTIFRAUD JURISDICTION

SEC. 221. Section 6d of the Commodity Exchange Act (7 U.S.C. 13a-2) is amended by adding at the end thereof the following new subsection:

"(8)(A) Nothing in this Act shall prohibit an authorized State official from proceeding in a State court against any person registered under this Act (other than a floor broker or registered futures association) for an alleged violation of any antifraud provi-

sion of this Act or any antifraud rule, regulation, or order issued pursuant to the Act.

"(B) The State shall give the Commission prior written notice of its intent to proceed before instituting a proceeding in State court as described in this subsection and shall furnish the Commission with a copy of its complaint immediately upon instituting any such proceeding. The Commission shall have the right to (i) intervene in the proceeding and, upon doing so, shall be heard on all matters arising therein, and (ii) file a petition for appeal. The Commission or the defendant may remove such proceeding to the district court of the United States for the proper district by following the procedure for removal otherwise provided by law, except that the petition for removal shall be filed within sixty days after service of the summons and complaint upon the defendant. The Commission shall have the right to appear as amicus curiae in any such proceeding.".

CONFIDENTIALITY PROVISIONS; DISCLOSURE

SEC. 222. Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by—

(1) inserting immediately before the period at the end of subsection (a) the following: ": Provided further, That the Commission may withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person";

(2) amending subsection (b) by—

(A) striking out "or" before "in an administrative or judicial proceeding"; and

(B) inserting immediately before the period at the end thereof ", in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under this Act, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under title 11 of the United States Code";

(3) amending subsection (e) by—

(A) striking out "of the Executive Branch";

(B) adding at the end thereof the following: "Upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction, or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this Act. Any information furnished to any department or agency of any State or political subdivision thereof shall not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under this Act or the laws of such State or political subdivision to which such State or political subdivision or any department or agency thereof is a party. The Commission shall not furnish any information to a department or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof is a party.";

(4) redesignating subsections (f) and (g) as subsections (h) and (i), respectively; and

(5) adding new subsections (f) and (g) to read as follows:

"(f) The Commission shall disclose information in its possession pursuant to a subpena or summons only if—

"(1) a copy of the subpena or summons has been mailed to the last known home or business address of the person who submitted the information that is the subject of the subpena or summons, if the address is known to the Commission, or, if such mailing would be unduly burdensome, the Commission provides other appropriate notice of the subpena or summons to such person, and

"(2) at least fourteen days have expired from the date of such mailing of the supena or summons, or such other notice.

This subsection shall not apply to congressional subpenas or congressional requests for information.

"(g) The Commission shall provide any registration information maintained by the Commission on any registrant upon reasonable request made by any department or agency of any State or any political subdivision thereof. Whenever the Commission determines that such information may be appropriate for use by any department or agency of a State or political subdivision thereof, the Commission shall provide such information without request.".

REGISTRATION AUTHORITY; TEMPORARY LICENSE

SEC. 223. Section 8a(1) of the Commodity Exchange Act (7 U.S.C. 12a(1)) is amended to read as follows:

"(1) to register futures commission merchants, associated persons of futures commission merchants, introducing brokers, associated persons of introducing brokers, commodity trading advisors, associated persons of commodity trading advisors, commodity pool operators, associated persons of commodity pool operators, and floor brokers upon application in accordance with rules and regulations and in the form and manner to be prescribed by the Commission, which may require the applicant, and such persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing, and in connection therewith to fix and establish from time to time reasonable fees and charge for registrations and renewals thereof: Provided, That notwithstanding any provision of this Act, the Commission may grant a temporary license to any applicant for registration with the Commission pursuant to such rules, regulations, or orders as the Commission may adopt, except that the term of any such temporary license shall not exceed six months from the date of its issuance;".

STATUTORY DISQUALIFICATION FROM REGISTRATION; DELEGATION OF REGISTRATION FUNCTIONS

SEC. 224. Section 8a of the Commodity Exchange Act (7 U.S.C. 12a) is amended by—

(1) amending paragraph (2) to read as follows:

"(2) upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of, any person and with such a hearing as may be appropriate to revoke the registration of any person—

"(A) if a prior registration of such person in any capacity has been suspended (and the period of such suspension has not expired) or has been revoked;

"(B) if registration of such person in any capacity has been refused under the provisions of paragraph (3) of this section within five years preceding the filing of the application for registration or at any time thereafter;

"(C) if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction (except that registration may not be revoked solely on the basis of such temporary order, judgment, or decree), including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to commission regulation under section 4c or 19 of this Act, or concerning securities;

"(D) if such person has been convicted within ten years preceding the filing of the application for registration or at any time thereafter of any felony that (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery, or any activity subject to Commission regulation under section 4c or 19 of this Act, or concerning a security, (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, of (iv) involves the violation of section 152, 1341, 1342, or 1343, or chapter 25, 47, 95, or 96 of title 18, United States Code;

"(E) if such person, within ten years preceding the filing of the application or at any time thereafter, has been found by any court of competent jurisdiction, by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (ii) to have willfully aided, abetted, counseled, commanded, in-

duced, or procured such violation by any other person;

"(F) if such person is subject to an outstanding order of the Commission denying trading privileges on any contract market to such person, denying, suspending, or revoking such person's membership in any contract market or registered futures association, or barring or suspending such person from being associated with a registrant under this Act or with a member of a contract market or with a member of a registered futures association;

"(G) if, as to any of the matters set forth in subparagraphs (A) through (F) of this paragraph, such person willfully made any material false or misleading statement or omitted to state any material fact in such person's application; or

"(H) if refusal, suspension, or revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph: Provided, That such person may appeal from a decision to refuse registration, condition registration, suspend, revoke or to place restrictions upon registration made pursuant to the provisions of this paragraph in the manner provided in section 6(b) of this Act; and Provided, further, That for the purposes of paragraphs (2) and (3) of this section, 'principal' shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director, or beneficial owner of at least 10 per centum of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission;";

(2) striking out paragraph (4) and redesignating paragraph (3) as paragraph (4);

(3) inserting a new paragraph (3) to read as follows:

"(3) to refuse to register or to register conditionally any person, if it is found, after opportunity for hearing, that—

"(A) such person has been found by the Commission or by any court of competent jurisdiction to have violated, or has consented to findings of a violation of, any provision of this Act, or any rule, regulation, or order thereunder (other than a violation set forth in paragraph (2) of this section), or to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any such provision;

"(B) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

"(C) such person failed reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this Act, or of any of the statutes set forth in subparagraph (B) of this paragraph, or of any of the rules, regulations, or orders thereunder, and the person subject to supervision committed such a violation: Provided, That no person shall be deemed to have failed reasonably to supervise another person, within the meaning of this subparagraph if (i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person and (ii) such person has reasonably discharged the duties and obligations incumbent upon that person, as supervisor, by reason of such procedures and system, without reasonable cause to believe that such procedures and system were not being complied with;

"(D) such person was convicted of a felony other than a felony of the type specified in paragraph (2)(D) of this section within ten years preceding the filing of the application or at any time thereafter, or was convicted of a felony, including a felony of the type specified in paragraph (2)(D) of this section, more than ten years preceding the filing of the application;

"(E) such person was convicted within ten years preceding the filing of the application for registration or at any time thereafter of any misdemeanor which (i) involves any transaction or advice concerning any contract of sale of a commodity for future delivery or any activity subject to Commission regulation under section 4c or 19 of this Act or concerning a security, (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, (iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25, 47, 95, or 96 of title 18, United States Code;

"(F) such person was debarred by any agency of the United States from contracting with the United States;

"(G) such person willfully made any material false or misleading statement or willfully omitted to state any material fact in such person's application, in any report required to be filed with the Commission by this Act or the regulations thereunder, or in any proceeding before the Commission;

"(H) such person has pleaded nolo contendere to criminal charges of felonious conduct, or has been convicted in a State court or in a foreign court of conduct which would constitute a felony under Federal law if the offense had been committed under Federal jurisdiction;

"(I) in the case of an applicant for registration in any capacity for which there are minimum financial requirements prescribed under this Act or under the rules or regulations of the Commission, such person has not established that such person meets such minimum financial requirements;

"(J) such person is subject to an outstanding order denying, suspending, or expelling such person from membership in a contract market, a registered futures association, or any other self-regulatory organization, or barring or suspending such person from being associated with any member or members of such contract market, association, or self-regulatory organization;

"(K) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any statute or any rule, regulation, or order thereunder which involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person;

"(L) such person has associated with such person any other person and knows, or in the exercise of reasonable care should know, of facts regarding such other person that are set forth as statutory disqualification in paragraph (2) of this section, unless such person has notified the Commission of such facts and the Commission has determined that such other person should be registered or temporarily licensed;

"(M) there is other good cause; or

"(N) any principal, as defined in paragraph (2) of this section, of such person has been or could be refused registration:

Provided, That pending final determination under this paragraph, registration shall not be granted: Provided further, That such person may appeal from a decision to refuse registration or to condition registration made pursuant to this paragraph in the manner provided in section 6(b) of this Act;";

(4) amending paragraph (4), as redesignated, to read as follows:

"(4) in accordance with the procedure provided for in section 6(b) of this Act, to suspend, revoke, or place restrictions upon the registration of any person registered under this Act if cause exists under paragraph (3) of this section which would warrant a refusal of registration of such person, and to suspend or revoke the registration of any futures commission merchant or introducing broker who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market from any person if such person has been denied trading privileges on any contract market by order of the Commission under section 6(b) of this Act and the period of denial specified in such order shall not have expired: Provided, That such person may appeal from a decision to suspend, revoke, or place restrictions upon registration made pursuant to this paragraph in the manner provided in section 6(b) of this Act;";

(5) striking out "and" at the end of each of paragraphs (6), (7), and (8); and

(6) adding a new paragraph (10) to read as follows:

"(10) to authorize any person to perform any portion of the registration functions under this Act, in accordance with rules, notwithstanding any other provision of law, adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to section 17(j) of this Act, and subject to the provisions of this Act applicable to registrations granted by the Commission.".

EMERGENCY POWERS; JUDICIAL REVIEW

SEC. 225. Section 8a(9) of the Commodity Exchange Act (7 U.S.C. 12a(9)) is amended to read as follows:

"(9) to direct the contract market, whenever it has reason to believe that an emergency exists, to take such action as in the Commission's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract, including, but not limited to, the setting of temporary emergency margin levels on any futures contract, and the fixing of limits that may apply to a market position acquired in good faith prior to the effective date of the Commission's action. The term 'emergency' as used herein shall mean, in addition to threatened or actual market manipulations and corners, any act to the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity. Any action taken by the Commission under this paragraph shall be subject to review only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. Such review shall by based upon an examination of all the information before the Commission at the time the determination was made. The court reviewing the Commission's action shall not enter a stay or order of mandamus unless it has determined, after notice and hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Nothing herein shall be deemed to limit the meaning or interpretation given by a contract market to the terms 'market emergency', 'emergency', or equivalent language in its own bylaws, rules, regulations, or resolutions; and".

EXPORT SALES REPORTING

SEC. 226. The Commodity Exchange Act is amended by adding immediately after section 8c (7 U.S.C. 12c) the following new section:

"SEC. 8d. The Commission may, in accordance with the procedures provided for in this Act, refuse to register, register conditionally, or suspend, place restrictions upon, or revoke the registration of, any person, and may bar for any period as it deems appropriate any person from using or participating in any manner in any market regulated by the Commission, if such person is subject to a final decision or order of any court of competent jurisdiction or agency of the United States finding such person to have knowingly violated any provision of the export sales reporting requirements of section 812 of the Agricultural Act of 1970 (7 U.S.C. § 612c-3), or of any regulation issued thereunder.".

CERTAIN PROHIBITED TRANSACTIONS

SEC. 227. Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended by—

(1) amending subsection (a) to read as follows:

"(a) It shall be a felony punishable by a fine of not more than $500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any person registered or required to be registered under this Act, or any employee or agent thereof, to embezzle, steal, purloin, or with criminal intent convert to his own use or the use of another, any money, securities, or property having a value in excess of $100, which was received by such person or any employee or agent thereof to margin, guarantee, or secure the trades or contracts of any customer or accruing to such customer as a result of such trades or contracts or which otherwide was received from any customer, client, or pool participant in connection with the business of such person. Notwithstanding the foregoing, in the case of any violation described in the foregoing sentence by a person who is an individual, the fine shall not be more than $100,000, together with the costs of prosecution. The word 'value' as used in this subsection means face, par, or market value, or cost price, either wholesale or retail, whichever is greater. A person convicted of a felony under this subsection shall be suspended from registration under this Act and shall be denied registration or reregistration for five years or such longer period as the Commission shall determine, unless the Commission determines that the imposition of such suspension or denial of registration or reregistration is not required to protect the public interest. The Commission may upon petition later review such disqualification and for good cause shown reduce the period thereof.";

(2) amending subsection (b) by adding at the end thereof the following: "A person convicted of a felony under this subsection shall be suspended from any registration under this Act, denied registration or reregistration for five years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for five years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof.";

(3) amending subsection (c) by adding at the end thereof the following: "A person convicted under this subsection of knowingly violating the provisions of section 4a shall be suspended from any registration under this Act, denied registration or reregistration for a period of two years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for two years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof.";

(4) amending subsection (d) to read as follows:

"(d) It shall be a felony punishable by a fine of not more than $100,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any Commissioner of the Commission or any employee or agent thereof, to participate, directly or indirectly, in any transaction in commodity futures or any transaction of the character of or which is commonly known to the trade as an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guarantee', or 'decline guaranty', or any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, or for any such person to participate, directly or indirectly, in any investment transaction in an actual commodity. Such prohibition against any investment transaction in an actual commodity shall not apply to (1) a transaction in which such person buys an agricultural commodity or livestock for use in such person's own farming or ranching operations or sells an agricultural commodity which such person has produced in connection with such person's own farming or ranching operations nor to any transaction in which such person sells livestock owned by such person for at least three months, (2) a transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person, or (3) a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit, or a similar financial instrument if no nonpublic information is used by such person in such transaction. With respect to such excepted transactions, the Commission shall require any Commissioner of the Commission or any employee or agent thereof who participates in any such transaction to notify the Commission thereof in accordance with such regulations as the Commission shall prescribe and the Commission shall make such information available to the public."; and

(5) inserting after the words "'decline guaranty'" each place they appear in subsection (e) the following: ", or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract".

REAUTHORIZATION

SEC. 228. Section 12(d) of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended to read as follows:

"(d) There are hereby authorized to be appropriated to carry out the provisions of this Act such sums as may be required for each of the fiscal years during the period beginning October 1, 1982, and ending September 30, 1986.".

OFF-EXCHANGE JURISDICTION; ROLE OF STATES

SEC. 229. Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by adding at the end thereof the following new subsection:

"(e) Nothing in this Act shall supersede or preempt—

"(1) criminal prosecution under any Federal criminal statute;

"(2) the application of any Federal or State statute, including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, services, or interest (A) that is not conducted on or subject to the rules of a contract market, or (B) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, its territories or possessions, or (C) that is not subject to regulation by the Commission under section 4c or 19 of this Act; or

"(3) the application of any Federal or State statute, including any rule or regulation thereunder, to any person required to be registered or designated under this Act who shall fail or refuse to obtain such registration or designation. The Commission may refer any transaction or matter subject to such other Federal or State statutes to any department or agency administering such statutes for such investigation, action, or proceedings as that department or agency shall deem appropriate.".

AIDING AND ABETTING; CONTROLLING PERSON

SEC. 230. Section 13 of the Commodity Exchange Act (7 U.S.C. 13c) is amended by—

(1) striking out "in administrative proceedings under this Act" in subsection (a);

(2) redesignating subsection (b) as subsection (c); and

(3) inserting a new subsection (b) to read as follows:

"(b) Any person who, directly or indirectly, controls any person who has violated any provision of this Act or any of the rules, regulations, or orders issued pursuant to this Act may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. In such action, the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.".

REPARATIONS PROCEDURE

SEC. 231. Section 14 of the Commodity Exchange Act (7 U.S.C. 18) is amended by—

(1) amending subsection (a) to read as follows:

"(a) Any person complaining of any violation of any provision of this Act, or any rule, regulation, or order issued pursuant to this Act, by any person who is registered under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding actual damages proximately caused by such violation.";

(2) amending subsection (b) to read as follows:

"(b) The Commission may promulgate such rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section. Notwithstanding any other provision of law, such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing, and service of pleadings or orders, the nature and scope of discovery, counterclaims, motion practice (including the grounds for dismissal of any claim or counterclaim), hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.";

(3) striking out subsections (c) and (e);

(4) redesignating subsections (d), (f), (g), (h), and (i) as (c), (d), (e), (f), and (g), respectively;

(5) striking out "subsection (g)" in subsection (d), as so redesignated, and inserting in lieu thereof "subsection (e)"; and

(6) amending subsection (f), as so redesignated, to read as follows:

"(f) Unless the party against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that either an appeal as herein authorized has been taken or payment of the full amount of the order (or any agreed settlement thereof) has been made, such party shall be prohibited automatically from trading on all contract markets and, if the party is registered with the Commission, such registration shall be suspended automatically at the expiration of such fifteen-day period until such party shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made: Provided, That if on appeal the appellee prevails or if the appeal is dismissed, the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction, the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.".

TECHNICAL AMENDMENT

SEC. 232. Section 16(d) of the Commodity Exchange Act (7 U.S.C. 20(d)) is amended by inserting "or market positions" after "transactions".

REGISTERED FUTURES ASSOCIATIONS

SEC. 233. Section 17 of the Commodity Exchange Act (7 U.S.C. 21) is amended by—

(1) amending subsection (b)(4)(E) by inserting before the period at the end thereof the following: ", which may require the applicant to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing. Notwithstanding any other provision of law, such an association may receive from the Attorney General all the results of such identification and processing";

(2) striking out "section 8a(4)" in subsection (d) and inserting in lieu thereof "section 8a(1)";

(3) striking out "subsection (k)" in subsection (h) and inserting in lieu thereof "subsection (i)";

(4) striking out the last sentence in subsection (j) and inserting in lieu thereof the following: "A registered futures association shall submit to the Commission any change in or addition to its rules and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the registered futures association requests review and approval thereof by the Commission or the Commission notifies such registered futures association in writing of its determination to review such rules for approval. The Commission shall approve such rules within thirty days of their receipt if Commission approval is requested under this subsection or within thirty days after the Commission determines to review for approval any other rules unless the Commission notifies the registered futures association of its inability to complete such approval or review within such period of time. The Commission shall approve such rules if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this Act or the regulations issued pursuant to this Act, and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of this Act or the regulations issued pursuant to this Act. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period of time as the registered futures association may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the registered futures association may agree to, such rule may be made effective by the registered futures association until such time as the Commission disapproves such rule in accordance with this subsection.";

(5) adding at the end thereof the following new subsections:

"(o)(1) The Commission may require any futures association registered pursuant to this section to perform any portion of the registration functions under this Act with respect to each member of the association other than a contract market and with respect to each associated person of such member, in accordance with rules, notwithstanding any other provision of law, adopted by such futures association and submitted to the Commission pursuant to section 17(j) of this Act, and subject to the provisions of this Act applicable to registrations granted by the Commission.

"(2) In performing any Commission registration function authorized by the Commission under section 8a(10), this section, or any other applicable provisions of this Act, a futures association may issue orders (A) to refuse to register any person, (B) to register conditionally any person, (C) to suspend the registration of any person, (D) to place restrictions on the registration of any person, or (E) to revoke the registration of any person. If such an order is the final decision of the futures association, any person against whom the order has been issued may petition the Commission to review the decision. The Commission may on its own initiative or upon petition decline review or grant review and affirm, set aside, or modify such an order of the futures association; and the findings of the futures association as to the facts, if supported by the weight of the evidence, shall be conclusive. Unless the Commission grants review under this section of an order concerning registration issued by a futures association, the order of the futures association shall be considered to be an order issued by the Commission.

"(3) Nothing in this section shall affect the Commission's authority to review the granting of a registration application by a registered futures association that is performing any Commission registration function authorized by the Commission under section 8a(10), this section, or any other applicable provision of this Act.

"(4) If a person against whom a futures association has issued a registration order under this subsection petitions the Commission to review that order and the Commission declines to take review, such person may file a petition for review with a United States court of appeals, in accordance with section 6(b) of this Act.

"(p) Notwithstanding any other provision of this section, each futures association reg-

istered under this section on the date of enactment of the Futures Trading Act of 1982, shall adopt and submit for Commission approval not later than ninety days after such date of enactment, and each futures association that applies for registration after such date shall adopt and include with its application for registration, rules of the association that require the association to—

"(1) establish training standards and proficiency testing for persons involved in the solicitation of transactions subject to the provisions of this Act, supervisors of such persons, and all persons for which it has registration responsibilities, and a program to audit and enforce compliance with such standards;

"(2) establish minimum capital, segregation, and other financial requirements applicable to its members for which such requirements are imposed by the Commission and implement a program to audit and enforce compliance with such requirements, except that such requirements may not be less stringent than those imposed on such firms by this Act or by Commission regulation; and

"(3) establish minimum standards governing the sales practices of its members and persons associated therewith for transactions subject to the provisions of this Act.

"(q) Each futures association registered under this section shall develop a comprehensive program that fully implements the rules approved by the Commission under this section as soon as practicable but not later than September 30, 1985, in the case of any futures association registered on the date of enactment of the Futures Trading Act of 1982, and not later than two and one-half years after the date of registration in the case of any other futures association registered under this section.".

LEVERAGE TRANSACTIONS

SEC. 234. Section 19 of the Commodity Exchange Act (7 U.S.C. 23) is amended by—

(1) amending subsection (c) to read as follows:

"(c) The Commission shall regulate any transactions under a standardized contract described in subsection (a) of this section involving commodities described in subsection (b) of this section or any other commodities (except those commodities described in subsection (a) of this section) under such terms and conditions as the Commission shall prescribe by rule, regulation, or order made only after notice and opportunity for a hearing. The Commission may set different terms and conditions for such transactions involving different commodities. Notwithstanding any other provision of this section, the Commission may prohibit any transaction for the delivery of any commodity under a standardized contract described in subsection (a) of this section that is not permitted by the rules, regulations and orders of the Commission in effect on December 9, 1982, if the Commission determines that any such transactions would be contrary to the public interest."; and

(2) striking out subsection (d).

PRIVATE RIGHTS OF ACTION

SEC. 235. The Commodity Exchange Act is amended by adding at the end thereof the following new section:

SEC. 22. (a)(1) Any person (other than a contract market, clearing organization of a contract market, licensed board of trade, or registered futures association) who violates this Act or who willfully aids, abets, counsels, induces, or procures the commission of a violation of this Act shall be liable for actual damages resulting from one or more of the transactions referred to in clauses (A) through (D) of this paragraph and caused by such violation to any other person—

"(A) who received trading advice from such person for a fee;

"(B) who made through such person any contract of sale of any commodity for future delivery (or option on such contract or any commodity); or who deposited with or paid to such person money, securities, or property (or incurred debt in lieu thereof) in connection with any order to make such contract;

"(C) who purchased from or sold to such person or placed through such person an order for the purchase or sale of—

"(i) an option subject to section 4c of this Act (other than an option purchased or sold on a contract market or other board of trade);

"(ii) a contract subject to section 19 of this Act; or

"(iii) an interest or participation in a commodity pool; or

"(D) who purchased or sold a contract referred to in clause (B) hereof if the violation constitutes a manipulation of the price of any such contract or the price of the commodity underlying such contract.

"(2) Except as provided in subsection (b), the rights of action authorized by this subsection and by sections 5a(11), 14, and 17b(10) of this Act shall be the exclusive remedies under this Act available to any person who sustains loss as a result of any alleged violation of this Act. Nothing in this subsection shall limit or abridge the rights of the parties to agree in advance of a dispute upon any forum for resolving claims under this section, including arbitration.

"(b)(1)(A) A contract market or clearing organization of a contract market that fails to enforce any bylaw, rule regulation, or resolution that it is required to enforce by section 5a(8) and section 5a(9) of this Act, (B) a licensed board of trade that fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce by the Commission, or (C) any contract market, clearing organization of a contract market, or licensed board of trade that in enforcing any such bylaw, rule, regulation, or resolution violates this Act or any Commission rule, regulation, or order, shall be liable for actual damages sustained by a person who engaged in any transaction on or subject to the rules of such contract market or licensed board of trade to the extent of such person's actual losses that resulted from such transaction and were caused by such failure to enforce or enforcement of such bylaws, rules, regulations, or resolutions.

"(2) A registered futures association that fails to enforce any bylaw or rule that is required under section 17 of this Act or in enforcing any such bylaw or rule violates this Act or any Commission rule, regulation, or order shall be liable for actual damages sustained by a person that engaged in any transaction specified in subsection (a) of this section to the extent of such person's actual losses that resulted from such transaction and were caused by such failure to enforce or enforcement of such bylaw or rule.

"(3) Any individual who, in the capacity as an officer, director, governor, committee member, or employee of a contract market, clearing organization, licensed board of trade, or a registered futures association willfully aids, abets, counsels, induces, or procures any failure by any such entity to enforce (or any violation of the Act in enforcing) any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, shall be liable for actual damages sustained by a person who engaged in any transaction specified in subsection (a) of this section on, or subject to the rules of, such contract market, licensed board of trade or, in the case of an officer, director, governor, committee member, or employee of a registered futures association, any transaction specified in subsection (a) of this section, in either case to the extent of such person's actual losses that resulted from such transaction and were caused by such failure or violation.

"(4) A person seeking to enforce liability under this section must establish that the contract market, licensed board of trade, clearing organization, registered futures association, officer, director, governor, committee member, or employee acted in bad faith in failing to take action or in taking such action as was taken, and that such failure or action caused the loss.

"(5) The rights of action authorized by this subsection shall be the exclusive remedy under this Act available to any person who sustains a loss as a result of (A) the alleged failure by a contract market, licensed board of trade, clearing organization, or registered futures association or by any officer, director, governor, committee member, or employee to enforce any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, or (B) the taking of action in enforcing any bylaw, rule, regulation, or resolution referred to in this subsection that is alleged to have violated this Act, or any Commission rule, regulation, or order.

"(c) The United States district courts shall have exclusive jurisdiction of actions brought under this section. Any such action must be brought within two years after the date the cause of action accrued.

"(d) The provisions of this section shall become effective with respect to causes of action accruing on or after the date of enactment of the Futures Trading Act of 1982: Provided, That the enactment of the Futures Trading Act of 1982 shall not affect any right of any parties which may exist with respect to causes of action accruing prior to such date.".

SPECIAL STUDY OF FUTURES AND RELATED MARKETS

SEC. 236. The Commodity Exchange Act is amended by adding at the end thereof the following new section:

"SEC. 23. (a)(1) The Board of Governors of the Federal Reserve System, the Commission, and the Securities and Exchange Commission, with assistance from the Secretary of the Treasury, shall conduct a study of the effects on the economy of trading in contracts of sale of commodities for future delivery and in options (including options on commodities, options on contracts of sale of commodities for future delivery, options on foreign currencies, and options on securities, including exempted securities or on any group or index of securities). The agencies participating in the study may select representative futures contracts and options contracts and representative periods of time for detailed study.

"(2) The Board of Governors of the Federal Reserve System shall organize the study and shall do so in such manner that the total cost to all participating agencies of conducting the study is not more than $3,000,000. To the extent possible, such agen-

cies shall use data which are readily available to them.

"(3) among the areas to be studies are—

"(A) the effects, if any, that trading in such instruments has on the formation of real capital in the economy (particularly that of a long-tern nature) and the structure of liquidity in credit markets;

"(B) the economic purposes, if any, served by the trading of such instruments;

"(C) the sufficiency of the public policy tools available to regulate such trading activity to avoid harmful economic effects in the markets for such instruments, the underlying cash markets, and related financial markets;

"(D) the adequacy of investor protections afforded to participants in the markets for such instruments; and

"(E) the extent to which such instruments may be utilized to manipulate, or profit from the manipulation of, the markets for evidences of indebtedness, foreign currency, and securities.

"(4) The Commission shall have primary responsibility for selecting and studying the instruments under its jurisdiction, and the Securities and Exchange Commission shall have primary responsibility for selecting and studying the instruments under its jurisdiction.

"(5) The Board of Governors of the Federal Reserve System shall review, and may supplement with its own analyses, the studies conducted under this subsection by the Commission and the Securities and Exchange Commission. The Board of Governors, after consultation with the Commission and the Securities and Exchange Commission, shall, not later than September 30, 1984, submit to Congress a report comprised of such studies, together with any supplementation and recommendations for legislative or regulatory action proposed by the participants.

"(b)(1) The Commission shall conduct at a cost of not more than $200,000 a study of (A) the nature, extent, and effects of trading in representative futures markets by persons possessing material information not generally available to the public regarding present or anticipated cash or futures transactions (to which such persons are not parties) in any commodity, and (B) the adequacy of the Commission's authority to prevent market and customer abuses resulting from the possession of such nonpublic information.

"(2) To the extent possible, the Commission shall use data which are readily available to it in conducting the study. The Commission shall, not later than September 30, 1984, transmit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the study and including any recommendations for legislative action.".

NATIONAL FUTURES ASSOCIATION STUDY AND SERVICE FEES

SEC. 237. Section 26 of the Futures Trading Act of 1978 (92 Stat. 877) is amended by—

(1) inserting "(a)" immediately following the section designation; and

(2) adding at the end thereof the following new subsections:

"(b) The Commodity Futures Trading Commission shall submit to Congress a report containing the results of a study of the regulatory experience of the National Futures Association for the period beginning January 1, 1983 and ending September 30, 1985. The report shall be submitted not later than January 1, 1986. The report shall include (but not to be limited to) the following—

"(1) the extent to which the National Futures Association has fully implemented the program provided in the rules approved by the Commission under section 17(p) and (q) of the Commodity Exchange Act and the effectiveness of the operation of such program;

"(2) the actual and projected cost savings to the Federal Government, if any, resulting from operations of the National Futures Association;

"(3) the actual and projected costs which the Commission and the public would have incurred if the Association had not undertaken self-regulatory responsibility for certain areas under the Commission's jurisdiction;

"(4) problem areas, if any, encountered by the Association;

"(5) the nature of the working relationship between the Association and the Commission;

"(6) an assessment of the actual and projected efficiencies the Commission has achieved or expects to be achieved as a result of the continuing regulatory activities of the Association; and

"(7) the immediate and projected capabilities of the Commission at the time of submission of the study to turn its attention to more immediate problems of regulation, as a result of the activities of the Association.

"(c) Nothing in this section shall limit the authority of the Commission to promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act: Provided, That the fees for any specified service or activity or function shall not exceed the actual cost thereof to the Commission.".

AGRICULTURAL EXPORTS

SEC. 238. Section 812 of the Agricultural Act of 1970 (7 U.S.C. 612c-3) is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of law, the President shall not prohibit or curtail the export of any agricultural commodity or the products thereof under an export sales contract (1) entered into before the President announces an action that would otherwise prohibit or curtail the export of the commodity or products thereof, (2) the terms of which require delivery of the commodity or products thereof within two hundred and seventy days after the date the suspension of trade is imposed, except that the President may prohibit or curtail the export of any commodity or the products thereof during a period for which the President has declared a national emergency or for which Congress has declared war.".

EFFECTIVE DATE

SEC. 239. This Act shall be effective upon the date of enactment of this Act, except that sections 9, 14, and 28 of this Act shall be effective one hundred and twenty days after the date of enactement of this Act, or such earlier date as the Commodity Futures Trading Commission shall prescribe by regulation.

And the Senate agree to the same.

E DE LA GARZA,
ED JONES,
BERKLEY BEDELL,
DAN GLICKMAN,
THOMAS DASCHLE,
BRYON L. DORGAN,
TOM HARKIN,
GLENN ENGLISH,
LEON E. PANETTA,
BILL WAMPLER,
JAMES M. JEFFORDS,
E. THOMAS COLEMAN,
PAT ROBERTS,
JOE SKEEN,
STEVE GUNDERSON,
COOPER EVANS,

For consideration of title I and section 237:

JOHN D. DINGELL,
TIMOTHY E. WIRTH,
JAMES T. BROYHILL,
Managers on the Part of the House.

JESSE HELMS,
BOB DOLE,
S. I. HAYAKAWA,
RICHARD G. LUGAR,
THAD COCHRAN,
WALTER D. HUDDLESTON,
DAVID PRYOR,
DAVID BOREN,
HOWELL HEFLIN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5447) to extend the Commodity Exchange Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The *Senate* amendment struck out all of the *House* bill after the enacting clause and inserted a substitute text.

The *House* recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the *House* bill and the *Senate* amendment. The differences between the *House* bill, the *Senate* amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

(1) JURISDICTION (SEC. 101) [1]

The *House* bill provides that the Commodity Futures Trading Commission shall not designate a contract market for trading in any contract of sale (or option on such contract) for future delivery of a group or index of securities if the Securities and Exchange Commission determines that such contract (or option on such contract) fails to meet the minimum requirements of this provision. Any such determination must be made by rule or order within 45 days after the close of the comment period on the application. This period may be extended to not more than 90 days by the Securities and Exchange Commission, with the consent of the board of trade involved and on the basis of a published statement of the reasons therefor. A person aggrieved by any such rule or order of the Securities and Exchange Commission may obtain judicial review in the same manner as is provided in section 25 of the Securities Exchange Act of 1934. (Sec. 101(3))

[1] The section references after (i) each numbered item, (ii) the description of the *House* bill, and (iii) the description of the *Senate* amendment are references to the *Conference* substitute, H.R. 5447 as passed by the *House*, and the *Senate* amendment thereto, respectively.

The *Senate* amendment provides for consultation by the Commission with the Securities and Exchange Commission with respect to the designation of a board of trade as a contract market in any such contract (or option on such contract). If, within 15 days following the close of the comment period on the application, the Securities and Exchange Commission objects to the designation on the ground that any minimum requirement of the provision is not met, the Commission must afford the Securities and Exchange Commission an opportunity for an oral hearing before the Commission, and give appropriate weight to the views of the Securities and Exchange Commission. The oral hearing must be held not less than 30 nor more than 45 days after the close of the comment period, unless both the Commission and the Securities and Exchange Commission otherwise agree. If an oral hearing is held and the Securities and Exchange Commission fails to withdraw its objections, and the Commission issues an order making such a designation, the Securities and Exchange Commission has the right of judicial review of the order in accordance with the standards of section 6(b) of the Commodity Exchange Act. (Sec. 3(b))

The *Conference* substitute provides that the terms of the *Senate* amendment will govern applications filed with the Commission prior to December 9, 1982. For all applications filed on or after December 9, 1982, the Commodity Futures Trading Commission shall not designate a contract market for trading in any contract of sale (or option on such contract) for future delivery of a group or index of securities if the Securities and Exchange Commission determines that such contract (or option on such contract) fails to meet the minimum requirements of this provision. Any such determination must be made by order within 45 days after the close of the comment period on the application. In the event of such determination, the board of trade is afforded an opportunity for a hearing on the record before the Securities and Exchange Commission. If a board of trade requests a hearing on the record, the hearing must commence no later than 30 days following receipt of the request, and a final determination must be made within 30 days after the close of the hearing. A person aggrieved by any such order of the Securities and Exchange Commission may obtain judicial review in the same manner and under such terms and conditions as is provided in section 6(a) of the Commodity Exchange Act.

It is the intent of the conferees that the *Conference* substitute gives the Securities and Exchange Commission certain authority only as to the approval of a futures contract on a group or index of securities (or option on such contract) prior to the trading of the contract. Moreover, the authority of the Securities and Exchange Commission contained in the *Conference* substitute is limited to making a finding that such a futures or option contract meets the criteria set forth in the *Conference* substitute. The Commodity Futures Trading Commission retains exclusive authority to regulate all aspects of trading in such contracts after such contracts are approved.

(2) COMMODITY TRADING ADVISOR (SEC. 201(2))

The *House* bill excludes from the definition of "commodity trading advisor" persons acting as employees of banks and trust companies if their furnishing of advice with regard to futures trading is solely incidental to the conduct of their business. (Sec. 210(2))

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision.

(3) SPECULATIVE LIMITS (SEC. 205)

(a) The *House* bill authorizes the Commission to set different trading or position limits for different numbers of days remaining until the last day of trading in a contract. (Sec. 204(1))

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision.

(b) The *House* bill provides that the terms bona fide hedging transactions or positions, which are to be defined by the Commission, shall permit producers, purchasers, sellers, middlemen, and users of a commodity or product derived therefrom to hedge their legitimate anticipated business needs for that period of time for which a futures contract is open and available. The *House* bill also requires the Commission to monitor the trading activities of selected large hedgers to determine the adequacy of the Commission's powers to diminish, eliminate, or prevent unwarranted price pressures caused by large hedgers. The Commission is to report findings and recommendations on this subject in its annual report to the Senate and House agriculture committees in each of the 4 years following enactment of the bill. (Sec. 204(4))

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision with an amendment to give the Commission discretion to define the terms bona fide hedging transactions or positions to permit producers, purchasers, sellers, middlemen, and users of a commodity to hedge their legitimate anticipated business needs for the period of time for which an appropriate futures contract is open and available. The amendment also provides that the Commission shall monitor and analyze the trading activities of the largest hedgers, as determined by the Commission, operating in the cattle, hog, or pork belly markets and report its findings and recommendations to the House and Senate agriculture committees in its annual reports for at least 2 years following the date of enactment of the bill.

(c) The *House* bill provides that contract markets or licensed boards of trade may not fix limits on the amount of trading performed or positions held which are higher than the limits, if any, fixed by the Commission. (Sec. 204(6))

The *Senate* amendment contains the same provision except that it would permit the Commission to waive its limits and approve the higher limits set by a contract market or board of trade. (Sec. 7(6))

The *Conference* substitute adopts the *House* provision.

(d) The *House* bill provides that the criminal misdemeanor penalties applicable to violations of the speculative limits provisions shall apply only to those who knowingly violate these provisions. (Sec. 204(6))

The *Senate* amendment provides that the Act's criminal misdemeanor penalties applicable to violations of the speculative limits provisions shall not apply unless the violation is in furtherance of an attempt to manipulate, corner, or squeeze a market. (Sec. 7(6))

The *Conference* substitute adopts the *House* provision.

(4) AGRICULTURAL OPTIONS (SEC. 206)

The *House* bill removes the statutory ban on the trading of options on agricultural commodities and gives the Commission discretion to authorize, pursuant to current procedures applicable to options transactions, a pilot program, not to exceed 3 years, under which each contract market could be designated for trading in one agricultural option contract. Three years after the beginning of the pilot program, the Commission could authorize the trading of options on agricultural commodities without regard to the restrictions of the pilot program. The Commission would be required to transmit to the House and Senate agriculture committees documentation of its ability to regulate these transactions successfully, including a copy of the implementation regulations, and *60 days* of continuous session of Congress must expire after the date of such transmittal before trading may be authorized. (Sec. 205)

The *Senate* amendment removes the statutory ban on the trading of options on agricultural commodities and retains current law under which the Commission would be required to transmit to the House and Senate agriculture committees documentation of its ability to regulate these transactions successfully, including a copy of the implementing regulations, and *30 days* of continuous session of Congress must expire after the date of such transmittal before trading may be authorized. (Sec. 8)

The *Conference* substitute adopts the *House* provision with an amendment to permit the Commission to authorize commodity option transactions during a pilot program in as many agricultural commodities as will provide an adequate test of these options. The *Conference* substitute also provides that, after completion of the pilot program, the Commission may authorize the trading of options on agricultural commodities without regard to the restrictions of the pilot program. Before such transactions may be authorized, the Commission must transmit to the House and Senate agriculture committees documentation of its ability to regulate these transactions successfully, including a copy of the implementing regulations, and 30 calendar days of continuous session of Congress must expire after the date of such transmittal.

The conferees intend that the pilot program should, whenever possible, be "folded into" existing options pilot programs, using the same kind of regulatory scheme already in place for these other options pilot programs.

(5) REGISTRATION OF AGENTS (SEC. 212)

The *House* bill requires any partner, officer, or employee of a futures commission merchant or introducing broker who solicits or accepts customers' orders (in a non-clerical capacity), or who supervises such activity, to register as an associated person of the futures commission merchant or introducing broker for whom the action is performed. (Sec. 211)

The *Senate* amendment is the same, except that it also applies to agents of futures commission merchants and introducing brokers. (Sec. 14)

The *Conference* substitute adopts the *House* provision with an amendment to require that agents of introducing brokers register with the Commission as associated persons of the introducing brokers.

Section 4(k)(1) of the Act, as amended by the *Conference* substitute, requires that introducing brokers be registered with the

Commission. This new class of registrant is defined in an amendment to section 2(a)(1) of the Act to include persons who solicit funds but who do not elect to be registered as associated persons of a futures commission merchant. Section 4(k)(1) is thus intended to require that all individuals who meet the statutory definition of "introducing broker" but who are not exempt or have not elected to become registered as associated persons of futures commission merchants be registered with the Commission as introducing brokers. Thus, the Commission will have authority to require registration as introducing brokers of all persons who solicit public funds and who are not otherwise registered. Because many introducing brokers will be small businesses or individuals, as contemplated by the definition of this class of registrant, the conferees contemplate that the Commission will establish financial requirements which will enable this new class of registrant to remain economically viable, although it is intended that fitness tests comparable to those required of associated persons will also be employed. The intent of the conferees is to require Commission registration of all persons dealing with the public, but to provide the registrants with substantial flexibility as to the manner and classification of registration.

(6) APPROVAL OF FUTURES CONTRACTS—PUBLIC INTEREST TEST

The *House* bill provides that, in determining whether to approve a new futures contract for trading, the Commission must consider, among other things, the extent to which trading of the new contract is likely to divert investment capital from capital formation and to cause price manipulation and destabilization in the commodity forming the basis for the new contract. (Sec. 216)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute deletes the *House* provision. The conferees intend, however, that the Commission consider the matters specified in the *House* provision in determining whether designation of a board of trade as a contract market for any financial futures contracts would be contrary to the public interest.

(7) ARBITRATION PROCEDURES—FUTURES ASSOCIATION (SEC. 217)

The *House* bill provides that a futures association shall not be registered unless the association's rules provide a fair and equitable *expeditious* procedure for the settlement of customers' claims and grievances. (Sec. 219)

The *Senate* amendment provides that a futures association shall not be registered unless the association's rules provide a fair and equitable procedure for the settlement of customers' claims and grievances. (Sec. 30(2))

The *Conference* substitute adopts the *House* provision.

(8) CONTRACT MARKET DESIGNATION PROCEDURES (SEC. 218)

The *House* bill provides that the Commission shall have not less than 60 days in which to approve or deny a resubmitted application for designation as a contract market, the 60-day period to run from the time the application is resubmitted in completed form. (Sec. 220)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision.

(9) STATE ANTIFRAUD JURISDICTION (SEC. 221)

The *Senate* amendment provides that, except as specified in the provision, nothing in the Act shall prohibit an authorized State official from instituting a state court action or administrative proceeding against any registrant (except floor brokers) for an alleged violation of certain State securities or commodities antifraud statutes.

Under the *Senate* amendment no State could initiate any action or proceeding against any registrant for alleged violation of any State licensing, registration, or qualification requirement provided for under any State securities or commodities statute or of any rule, regulation, or statement of general policy issued under any State securities or commodities statute.

No State antifraud action or proceeding could be instituted under this provision unless:

(a) the State provides the Commission with prior written notice of its intention to proceed and with a copy of the proposed complaint and supporting evidence;

(b) the Commission, based on a review of the complaint and evidence, is able to determine and, in fact, determines that the State action or proceeding would not be inconsistent with the Act or any rule or policy of the Commission; and

(c) the Commission notifies the States, in writing, of its determinations.

The Commission shall make its determinations and notify the State within 30 days of the receipt of the State's proposed complaint and supporting evidence, unless the Commission and the State agree to another period. The State may not act if the Commission determines that the State's activity would be inconsistent with the Act or any rule or policy of the Commission. If the Commission fails to make either of the determinations and to notify the State within the prescribed period, the State may initiate an action or proceeding based on the complaint submitted to the Commission. The authority to make the determinations under this provision may not be delegated to any employee of the Commission. A determination by the Commission that a proposed State action is not inconsistent with the Act or any rule or policy of the Commission is final and not subject to judicial review. (Sec. 22)

The *House* bill contains no comparable provision.

The *Conference* substitute provides that nothing in the Commodity Exchange Act shall prohibit an authorized State official from proceeding in a State court against any person registered under the Act (other than a floor broker or registered futures association) for an alleged violation of any antifraud provision of the Act or any antifraud rule, regulation, or order issued pursuant to the Act. Any State instituting a proceeding under this provision shall give the Commission prior written notice of its intent to proceed and shall furnish the Commission with a copy of its complaint or other moving paper immediately upon instituting any such proceeding. The Commission shall have the right to intervene in any such proceeding and to file an appeal. The Commission or the defendant may remove such proceeding to the district court of the United States for the proper district by following the procedure for removal otherwise provided by law, except that the petition for removal shall be filed within sixty days after service of the summons and complaint upon the defendant. The Commission shall have the right to appear as *amicus curiae* in any such proceeding.

The conferees intend that nothing contained in this provision will permit any State to impose, or to initiate any suit, action, or proceeding for an alleged violation of, any State licensing, registration, or qualification requirement provided for under any State securities or commodities statute. Similarly, nothing in this provision permits any State to initiate any suit, action, or proceeding against a person registered under the Act for an alleged violation of any rule, regulation, guideline, or statement of general policy issued under any State securities or commodities statute.

The authority contained in the *Conference* substitute extends only to enforcement of the antifraud provisions of the Act and the antifraud rules, regulations, or orders of the Commission and not to other provisions that may appear in the same section in conjuction with these antifraud provisions.

(10) CONFIDENTIALITY PROVISIONS—DISCLOSURE (SEC. 222)

(a) The *House* bill requires the Commission to establish procedures under which persons who have submitted information to the Commission will be advised within 5 days after receipt of a request for release of this information under the Freedom of Information Act that such a request has been made. The procedures would have to provide both the submitter and the requester an opportunity to submit written arguments regarding the request. The Commission would not have to notify the information submitter of a request for information if the Commission has determined to deny the request, the Commission has no discretion to withhold release, or the information has already been made public. (Sec. 223)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute deletes the *House* provision.

(b) The *Senate* amendment provides that the Commission may not, unless specifically authorized in the Act, disclose any records containing or based on confidential information or proprietary information that is not customarily disclosed to the public by the person submitting the information, except that confidential or proprietary information may be disclosed when necessary to obtain public comment. (Sec. 22(1))

The *House* bill contains no comparable provision.

The *Conference* substitute deletes the *Senate* provision.

(c) The *Senate* amendment provides that the Commission may not disclose data or information obtained in connection with the investigation of any person except that such data or information may be disclosed in a congressional proceeding or certain administrative or judicial proceedings. (Sec. 22 (1) and (2))

The *House* bill contains no comparable provision.

The *Conference* substitute provides that the Commission may withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person.

The *Conference* substitute thus places information concerning or obtained in connection with any pending Commission investigation of any person in the same category under the Act as, for example, trade secrets or names of customers. This category of information is protected from public disclosure under the provision of the Freedom of Information Act (5 U.S.C. 552(b)(3)) applicable to information exempted from disclo-

sure by a statute that specifically refers to particular types of matters to be withheld. However, this protection for investigatory information shall not apply once the Commission investigation has been closed.

(d) The *Senate* amendment exempts congressional subpenas and requests for information from the requirement that a copy of any subpena or summons issued to the Commission be mailed to the information submitter and 14 days from the date of such mailing have expired before releasing the information. (Sec. 22(5))

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision with a clarification that the Commission may utilize other notification procedures in lieu of mailing the subpena or summons to submitters of information and that the Commission is to provide information pursuant to the subpena or summons only if at least 14 days have expired from the date of mailing or other form of notification. The conferees recognize that a subpena may ask for data or information that is a compilation of material obtained from many different sources. Under such circumstances, it may be extremely costly and burdensome for the Commissioin to mail a copy of the subpena to each submitter of information. The *Conference* substitute will permit the Commission in such cases to use alternate procedures to notify submitters of information of the existence of the subpena, such as by publication in the Federal Register. Of course, the conferees do not intend by the adoption of this provision that the Commission use alternative notification procedures when mailing a copy of the subpena to each person would pose no significant resource or administrative problems.

(11) EMERGENCY POWERS (SEC. 225)

The *House* bill amends the Act to specifically provide that the Commission shall have the power, in a market emergency, to fix position limits that may apply to a position acquired in good faith prior to the effective date of the Commission's action. (Sec. 226)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision.

(12) EXPORT SALES REPORTING (SEC. 226)

The *House* bill provides that any person who, directly or indirectly, sells for export or agrees to sell for export any quantities, as described in the next paragraph of this item, of wheat, corn, soybeans, and any component or commodity related to those commodities must report to the Commission within 48 hours (a) the date of sale, (b) the identity of the commodity, (c) the quantity sold, (d) the country or countries to which the commodity is to be shipped and the ultimate destination if known, and (e) such other information as the Commission may by regulation require. The Commission must make each report available to the public on the first working day following its receipt by the Commission.

The *House* bill applies the disclosure requirements to those persons whose total export sales and cancellations of wheat, corn, and soybeans exceed 100,000 metric tons daily or 200,000 metric tons within 7 calendar days, unless changed by rule or regulation issued by the Commission. The Commission must promulgate rules and regulations implementing the disclosure provisions within 90 days of the effective date of the bill.

The *House* bill also requires the Commission to revoke the registration of any futures commission merchant, associate of any futures commission merchant, commodity pool operator, or floor broker who accepts any order for a futures contract from, or places such an order with, any person who has been found in violation of the foregoing disclosure provisions or who, himself, is a person who has been found in violation of such provisions. Any such person is not eligible to reapply for registration until 12 months after the date of revocation. (Sec. 226A)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute provides that the Commission may, in accordance with the procedures provided for in the Act, (a) refuse to register, register conditionally, or suspend, place restrictions upon, or revoke the registration of, any person, and (b) bar for any period as it deems appropriate any person from using or participating in any manner in any market regulated by the Commission, if such person is subject to a final decision or order of any court of competent jurisdiction or agency of the United States finding such person to have knowingly violated any provision of the export sales reporting requirements of section 812 of the Agricultural Act of 1970 (7 U.S.C. § 612c-3), or of any regulation issued thereunder.

The conferees fully expect the Commission to recommence publishing the commitments of large traders and to make them routinely available to vendors and interested government agencies. These reports provide quantitative data on how the largest traders are positioning themselves in the futures markets and are factored into the personal trading strategy of many traders.

(13) INSIDER TRADING (SEC. 236)

The *House* bill provides that no insider may own, control, have a beneficial interest in, or enter into any cash contract or contract for future delivery in any commodity on any contract market. The term "insider" is defined as any individual who has access to information, not generally available to the public, about present or anticipated cash or futures trading or present or anticipated cash or futures positions, to which such individual is not a party, in any commodity of any other person where the trading or positions are in amounts at or above Commission designated reporting levels as specified under section 4i of the Act. (Sec. 226B)

The *Senate* amendment requires the Commission to conduct a study to determine (a) the extent of insider trading of futures contracts on contract markets subject to regulation under the Act and (b) whether such trading is, or can reasonably be anticipated to be, connected with excessive speculation or manipulation or improper control of the futures markets, or improper activities with respect to the establishment of cash prices for the commodities involved. The Commission must complete the study and report its findings to the Committee on Agriculture of the House and the Committee on Agriculture, Nutrition, and Forestry of the Senate within 6 months after the date of enactment of the bill. The *Senate* amendment defines trading by an insider in the same manner as the *House* bill, except that the information to which the insider has access must be "material". (Sec. 33)

The *Conference* substitute provides that the Commission shall, at a cost of not more than $200,000, undertake a study of the nature, extent, and effects of trading in representative futures markets by persons possessing material information regarding cash or futures transactions that is not generally known to the public and the adequacy of the Commission's authority to prevent market and customer abuses resulting from the possession of such nonpublic information. To the extent possible the Commission shall use data which are readily available. Not later than September 30, 1984, the Commission shall transmit to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture a report describing the results of these studies and including any recommendations for legislative action. If the Commission should find that there is a problem with respect to insider trading, the conferees intend that the Commission immediately take appropriate action to deal with the situation under its current authority.

(14) DISQUALIFICATION (SEC. 227)

(a) The *House* bill provides that any person convicted of a felony under section 9(a) of the Act must be suspended from any registration under the Act and denied reregistration for 5 years or such longer period as the Commission shall determine, unless the Commission determines that the imposition of such a penalty is not required to protect the public interest. Section 9(a) under the bill makes it a felony for any person registered or required to be registered or any employee or agent to steal or with criminal intent convert to his own use or the use of another, any money, securities, or property having a value in excess of $100 which was received from any customer, client or pool participant in connection with the business of such person. (Sec. 227(1))

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision with an amendment that in the event of any disqualification under the provision the Commission may upon petition later review the disqualification and for good cause shown reduce the period thereof.

(b) The *House* bill provides that any person convicted of a felony under section 9(b) of the Act must be suspended from any registration under the Act, denied registration or reregistration for 5 years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for 5 years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension or denial of registration or reregistration is not required to protect the public interest. Section 9(b), among other things, makes it a felony for a person to attempt to manipulate the price of a commodity or a futures contract, attempt to corner any such commodity or transmit false or misleading market information or false or misleading statements of a material fact in any registration application or report filed with the Commission. (Sec. 227(2))

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision with an amendment that in the event of any disqualification or market bar under the provision the Commission may upon petition later review the sanction and for good cause shown reduce the period thereof.

(b) The *House* bill provides that any person convicted of knowingly violating the

provisions of section 4a of the Act (relating to position limits fixed by the Commission or by a contract market or other board of trade licensed or designated by the Commission) must be suspended from any registration under the Act, denied registration or reregistration for 2 years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for 2 years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension or denial of registration or reregistration is not required to protect the public interest. (Sec. 227(3))

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision with an amendment that in the event of any disqualification or market bar under the provision the Commission may upon petition later review the sanction and for good cause shown reduce the period thereof.

(15) REAUTHORIZATION (SEC. 228)

The *House* bill extends the authorization for appropriations under the Commodity Exchange Act for 4 years through September 30, 1986. (Sec. 228)

The *Senate* amendment extends the authorization for appropriations for 2 years through September 30, 1984. (Sec. 26(1))

The *Conference* substitute adopts the *House* provision.

(16) CONTROLLING PERSON (SEC. 230)

(b) The *House* bill provides that any person who, directly or indirectly, controls any person who has violated any provision of the Act or any of the rules, regulations, or orders issued pursuant thereto may be held liable for such violation in any action brought by the Commission to the same extent as the controlled person. Under the *House* bill the Commission has the burden of proving either that the controlling person did not act in good faith *or* directly or indirectly induced the act or acts constituting the violation. (Sec. 230)

The *Senate* amendment contains a comparable provision but provides that in proving any such violation, the Commission shall bear the burden of showing both that the controlling person did not act in good faith *and* directly or indirectly induced the act or acts constituting the violation. (Sec. 27)

The *Conference* substitute adopts the *House* provision with an amendment to provide that the Commission has the burden of proving that the controlling person did not act in good faith or *knowingly induced*, directly or indirectly, the act or acts constituting the violations.

Section 2(a)(1) of the current law contains a provision that the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person. This section has been included in the Act for many years and in essence provides *respondeat superior* and general principal-agent standards for imposing liability on employers and principals for the acts of their employees or agents. The conferees intend that this section not be used as a basis for imputing liability to a controlling person of a firm for acts of an employee or agent of the firm since it does not include the protections that have carefully been articulated in the *Conference* substitute and would make a nullity of that provision.

(17) REGISTERED FUTURES ASSOCIATIONS (SEC. 233)

(a) The *House* bill provides that if a futures association grants a registration application in performing any Commission registration function that it is authorized to perform, the registration shall be conditional until the expiration of 15 days after notification of the registration is received by the Commission. Within that period the Commission may direct the futures association to vacate the grant of registration and to take further action on the application. (Sec. 233(4))

The *Senate* amendment provides that nothing in the Act shall affect the Commission's authority to review the granting of a registration application by a registered futures association that is performing any Commission registration function authorized under the Act. (Sec. 30(5))

The *Conference* substitute adopts the *Senate* provision. The conferees note that if the Commission determines to review a registration decision and order of a registered futures association and issues a final registration decision as a result of this review, the party or parties adversely affected by the Commission's action may appeal the decision in the manner provided in section 6(b) of the Commodity Exchange Act. In this circumstance, the Commission itself would be issuing a final registration decision, and the conferees, therefore, intend that an appeal from that decision would be governed by the provisions of sections 6(b), 8a(2), 8a(3) and 8a(4) of the Commodity Exchange Act concerning the availability of and procedures for appellate review.

The conferees contemplate that in the near future the Commission and the National Futures Association will be discussing the assumption by NFA of a portion, if not all, of the Commission's registration functions. The conferees adopted the *Senate* provision in order to provide both parties with sufficient flexibility to work out the most appropriate procedures for Commission review, if determined to be necessary, of the granting of registrations by NFA. The conferees understand that these procedures could ultimately include the type of conditional registration provided in the *House* provision.

(b) The *House* bill requires each futures association registered on the date of enactment of the bill to adopt and submit for Commission approval not later than 90 days after such date of enactment, and each futures association that applies thereafter for registration to include with its application for registration, rules that require the association to—

(1) establish training standards and proficiency testing for personnel of members involved in the solication of transactions subject to the provisions of the Act, supervisory officials of such personnel, and all individuals for which it has registration responsibilities, and a program to audit and enforce such standards;

(2) establish minimum capital, segregation, and other financial requirements applicable to its members for which such requirements are imposed by the Commission and implement a program to audit and enforce such requirements. Such requirements may not be less stringent than those imposed on such firms by the Act or by Commission regulation; and

(3) establish minimum standards governing the sales practices of its members and persons associated therewith as to transactions subject to the provisions of the Act. (Sec. 233(4))

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision.

The *House* bill requires each registered futures association to develop a comprehensive program that fully implements the rules approved by the Commission under section 17 of the Act not later than 2 years after the date of enactment of the bill in the case of any futures association registered on such date, and not later than 2 years after the date of registration in the case of any other registered futures association. (Sec. 233(4))

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provisions with an amendment requiring the National Futures Association to develop its comprehensive program by September 30, 1985, and in the case of any futures association not registered on the date of enactment of the bill, not later than 2½ years after the date of registration.

The conferees recognize that adoption of new section 17(q) establishes an ambitious goal for the National Futures Association in that the new section requires the futures association's self-regulatory program be fully implemented by September 30, 1985. The conferees are also aware that unless all persons covered by the regulatory program of a futures association join an association, the self-regulatory purposes of section 17 of the Commodity Exchange Act will not be fulfilled and, in particular, the goal of new section 17(q) may be impossible to achieve. To this end, the National Futures Association has petitioned the Commission to adopt a rule that would, in effect, require all persons (except floor brokers) that are required to be registered with the Commission to be members of a registered futures association. The conferees recognize that, under the Act, the Commission has authority to adopt such a rule. The conferees understand that the Act gives the Commission authority to adopt rules relating to membership in a registered futures association in order to effectuate fully the specific policies underlying section 17(m) of the Act. The conferees expect that the Commission will exercise this authority and adopt such rules or take such other action as it deems to be necessary or appropriate to insure that persons eligible for membership in a registered futures association become and remain members of at least one such association. The conferees also are of the view that the adoption of such rules would be consistent with the Commission's duty under section 15 of the Act to weigh the purposes and policies of the Act to be served by the rule as well as the interests reflected in the antitrust laws and to endeavor to take the least anticompetitive means of achieving the Act's objectives.

(18) LEVERAGE TRANSACTIONS (SEC. 234)

(a) The *House* bill amends the provisons relating to leverage transactions to specifically require the Commission to regulate any leverage transactions involving commodities (other than agricultural commodities) under terms and conditions as the Commission shall prescribe by January 31, 1983. The *House* bill would delete the provision in current law under which the Com-

mission may prohibit or regulate any leverage transaction involving commodities other than agricultural commodities and other than gold and silver bullion and bulk coins under terms and conditions as the Commission shall initially prescribe by October 1, 1979. (Sec. 234(1))

The *Senate* amendment contains no comparable provision. It retains current provisions of law relating to leverage transactions.

The *Conference* substitute adopts the *House* provision with amendments that would (1) delete the specific date (January 31, 1983) by which the Commission would be required to issue regulations governing leverage transactions; and (2) add a sentence to section 19(c), as revised by the *House* provision, that would authorize the Commission to prohibit leverage transactions in any commodity not being lawfully offered and sold on December 9, 1982, if the Commission finds that leverage transactions in any such commodity would be contrary to the public interest. The conferees intend that the Commission issue comprehensive regulations governing leverage transactions as expeditiously as possible.

The conferees recognize the increasing demands upon the Commission's resources and accordingly do not object to the current regulatory moratoria maintaining the status quo in the industry until such time as a comprehensive regulatory system is in place and the Commission is capable of regulating an expanded leverage industry. The moratoria are not ratified and extended in the bill itself, however, since they are inherently anticompetitive and thus contrary to the fundamental objectives of economic competition and the free marketplace. The conferees intend for the Commission to terminate these moratoria as quickly as the Commission determines it is prudent to do so.

(b) The *House* bill also strikes out section 19(d) of the Act which provides that if the Commission determines that any leverage transaction is a contract for future delivery within the meaning of the Act, such transaction shall be regulated as a futures contract in accordance with the applicable provisions of the Act. (Sec. 234(2))

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision. The *Conference* substitute, in repealing section 19(d), is in no way to be construed as limiting or circumscribing the Commission's authority to take appropriate action under any other provision of the Commodity Exchange Act against transactions masquerading as "leverage" contracts. Likewise, the conferees do not intend that the repeal of section 19(d) have any effect on any lawsuit or administrative proceeding now pending between the Commission and any leverage transaction merchant. Nor does the action of the committee of conference affect in any way the Commission's authority under existing law to define the terms "margin account", "margin contract", "leverage account", "leverage contract", "leverage transaction", or "leverage" or to otherwise regulate such accounts, contracts, or transactions.

(19) PRIVATE RIGHTS OF ACTION (SEC. 235)

The *House* bill adds a provision to the Act to explicitly authorize private rights of action and to set forth the conditions under which they would be allowed and damages would be recoverable. The *House* bill provides that—

(a)(1) Any person (other than a contract market, clearing organization of a contract market, licensed board of trade, or registered futures association) who violates the Act or who willfully aids in the violation of the Act shall be liable for actual damages resulting from any of the following transactions caused by such violation to any other person who—

(A) received trading advice from such person for a fee;

(B) made through such person any futures contract or option contract subject to the Act on or subject to the rules of any contract market or other board of trade, or made a deposit with such person in connection with any order to make such contract;

(C) entered into a transaction with or placed through such person an order for the purchase or sale of:

(i) an option subject to section 4c of the Act (other than an option purchased or sold on a contract market or other board of trade;

(ii) a leverage contract subject to the Act; (iii) an interest or participation in a commodity pool; or

(D) purchased or sold a futures or options contract if the violation constitutes a manipulation of the price of any such contract or the price of the commodity underlying such contract.

(2) The rights of action authorized by this provision and the arbitration and reparations provisions of the Act are the exclusive remedies under the Act available to any such person that sustains loss as a result of any alleged violation of the Act. This provision does not limit the rights of the parties to agree in advance of a dispute upon any forum for resolving claims under this section, including arbitration.

(b)(1)(A) A contract market or clearing organization of a contract market that fails to enforce any bylaw, rule, regulation or resolution that it is required to enforce by section 5a(8) and section 5a(9) of the Act, (B) a licensed board of trade that fails to enforce any bylaw, rule, regulation or resolution that it is required to enforce by the Commission, or (C) any contract market, clearing organization of a contract market or licensed board of trade that in enforcing any such bylaw, rule, regulation or resolution violates the Act or any Commission rule, regulation or order, shall be liable for actual damages sustained by a person that engaged in transactions on or subject to the rules of such contract market or licensed board of trade to the extent of such person's actual losses that resulted from such transactions and were caused by such failure to enforce such bylaws, rules, regulations, or resolutions.

(2) A registered futures association that fails to enforce any bylaw or rule that is required under section 17 of the Act or in enforcing any such bylaw or rule violates the Act or any Commission rule, regulation, or order shall be liable for actual damages sustained by a person that engaged in transactions specified in paragraph (a) of this provision to the extent of such person's actual losses resulting from such transactions and caused by such failure to enforce such bylaw or rule.

(3) Any officer, director, governor, committee member or employee of a contract market, licensed board of trade, or a registered futures association who willfully aids any failure by such organization to enforce any bylaw, rule, regulation or resolution referred to in subparagraph (1) or (2), shall be liable for actual damages sustained by a person that engaged in transactions specified in paragraph (a) of this provision on or subject to the rules of such contract market, licensed board of trade or, in the case of an officer, director, governor, committee member or employee of a registered futures association, transactions specified in paragraph (a) of this provision.

(4) A person seeking to enforce liability under this provision must establish that the contract market, licensed board of trade, clearing organization, registered futures association, officer, director, governor, committee member, or employee acted in bad faith and that such action caused the loss.

(5) The rights of action authorized by this provision shall be the exclusive remedy under the Act available to any person that sustains a loss as a result of (A) the alleged failure by a contract market, licensed board of trade, clearing organization, or registered futures association or by any officer, director, governor, committee member or employee to enforce any bylaw, rule, regulation or resolution referred to in subparagraph (1) or (2), or (B) the taking of action that is alleged to have violated the Act, or any Commission rule, regulation or order.

(c) The United States district courts shall have exclusive jurisdiction of actions brought under this provision. Any such action must be brought within two years after the date the cause of action accrued.

(d) These provisions become effective with respect to causes of action accruing on or after the date of enactment of the bill. Enactment of the bill does not affect any right of any party that may exist with respect to causes of action accruing prior to such date. (Sec. 236)

The *Senate* amendment contains no comparable provision.

(NOTE.—In *Merrill Lynch, Pierce, Fenner & Smith* v. *Curran*, 50 U.S.L.W. 4457 (May 3, 1982), the Supreme Court decided that implied private rights of action exist under the Commodity Exchange Act in cases brought by an investor against his futures commission merchant for violation of an antifraud provision of the Commodity Exchange Act, and by speculators in futures contracts against a contract market and its officials and against futures commission merchants of other market participants claiming damages resulting from unlawful price manipulation that allegedly could have been prevented by the Exchange's enforcement of its own rules. The court did not decide, however, the elements of liability, causation, and damages, and expressed no opinion about any such question.)

The *Conference* substitute adopts the *House* provision with an amendment to make the provisions of paragraph (a)(1)(B) described above applicable to any futures or option contract subject to the Act, including off-exchange transactions, as well as those that are made on or subject to the rules of any contract market or other board of trade.

(20) STUDY OF THE COMMODITY FUTURES INDUSTRY (SEC. 236)

The *House* bill requires the Board of Governors of the Federal Reserve to organize and conduct, with the assistance of the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Secretary of the Treasury, a study and investigation of the structure, participation, uses, and effects on the economy of trading in contracts of sale of commodities for future delivery and in related instruments, such as options on commodities, options on contracts of commodities for future delivery, and options on securites, including

options on exempted securities or on any group or index of securities. Among those areas to be studied are—

(a) the number, types, and characteristics of investors, speculators, arbitrageurs, and hedgers engaged in such trading, the purposes for which such persons utilize such trading, and the financial resources devoted to each of these trading activities;

(b) the impact of speculation in such trading on cash and contract prices, and the conditions under which such speculation may have adverse effects on these objectives;

(c) the consequences, if any, of trading in such contracts and related instruments on formation of real capital in the economy (particularly that of a long-term nature), the structure of liquidity in credit markets, interest rates, and inflation;

(d) the sufficiency of the public policy tools available to the Commission or other agencies to limit or curtail any such trading activity found likely to have a harmful effect on national economic goals;

(e) the economic purposes, if any, served by such trading;

(f) the adequacy of investor protections afforded to participants in designated markets for such trading;

(g) the impact, if any, of such contracts and related instruments on the markets for evidences of indebtedness, foreign currency, and securities;

(h) the extent to which such contracts and related instruments may be utilized to manipulate markets for evidences of indebtedness, foreign currency, and securities;

(i) the nature and consequences, if any, of perceived disparities between the regulation of such contracts and related instruments traded in contract markets regulated by the Commission and the regulation of functionally equivalent instruments traded in markets regulated by the Securities and Exchange Commission; and

(j) the operations of the pilot program relating to trading in stock index futures.

Not later than September 30, 1984, the Board of Governors must submit to Congress a report describing the results of the study and include in the report an assessment of the impacts of the activities studied and recommendations for any legislation and regulatory action. (Sec. 237)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute adopts the *House* provision with an amendment in the nature of a substitute.

The first subsection of the *Conference* substitute requires a study of the effects on the economy of trading in futures contracts and options. The study would be carried out by the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, and the Securities and Exchange Commission, with the assistance of the Secretary of the Treasury. The Board of Governors, however, would have responsibility for organizing and administering the study, total cost of which may not exceed $3,000,000. Among the areas to be studied are—

(a) the effects of trading in such instruments on the formation of real capital in the economy and on the structure of liquidity in credit markets;

(b) the economic purposes, if any, served by the trading of such instruments;

(c) the sufficiency of the public policy tools available to regulate such trading activity to avoid harmful economic effects in the markets for such instruments, the underlying cash markets, and related financial markets;

(d) the adequacy of investor protections afforded to participants in the markets for such instruments; and

(e) the extent to which such instruments may be utilized to manipulate, or profit from the manipulaton of, the markets for evidences of indebtedness, foreign currency, and securities.

The participating agencies are authorized to select representative instruments and representative periods of time for detailed study, and are directed, to the extent possible, to utilize data readily available to them.

The conferees intend that the areas of study enumerated in clauses (a) and (b) above include contracts of sale for the future delivery of commodities involving any group or index of securities (and options thereon), and options on any group or index of securities. The conferees also understand that the enumeration of areas to be studied is not exclusive, and may include other areas of study such as those set forth in the *House* bill.

The *Conference* substitute gives the Commodity Futures Trading Commission and the Securities and Exchange Commission the primary responsibility for selecting and studying the instruments under their respective jurisdictions. The Board of Governors is required to review, any may supplement with its own analysis, studies conducted by the other agencies and shall submit a report of the study to Congress by September 30, 1984.

The second subsection of the *Conference* substitute requires the Commodity Futures Trading Commission to undertake a study of insider trading which is discussed under item (13), "Insider trading", of this statement.

(21) PILOT PROGRAM FOR TRADING IN STOCK INDEX FUTURES CONTRACTS

The *House* bill provides that for the period beginning on the date of the enactment of the bill and ending September 30, 1984, all boards of trade designated as contract markets for trading in stock index futures contracts shall be subject to a pilot program to be established by the Commission by rule, regulation, or order. Under the pilot program, the Commission must closely monitor such trading and make an assessment of the impact, if any, of such trading on the markets in the underlying securities and on the process of forming real capital.

The *House* bill provides that the Board of Governors of the Federal Reserve shall include in the study described in the preceding item a study of the operation of the pilot program for trading in stock index futures contracts.

Not later than March 31, 1984, the Board of Governors must submit to Congress and the Commission a preliminary report describing the results of that part of its study relating to trading in stock index futures including—

(a) findings with respect to the economic benefits, if any, that have resulted from such trading;

(b) a description of any adverse effect on the underlying markets in securities, on the formation of real capital, and on investor protection, that may have resulted from such trading; and

(c) recommendations as to whether such trading should be permitted to continue after the termination of the pilot program and, if continuation of such trading is recommended, whether any legislation or regulatory action applicable to such trading is necessary.

The *House* bill provides that if the Board of Governors of the Federal Reserve recommends in its preliminary report that trading in stock index futures contracts be terminated or that other regulatory or legislative action be taken, then the Commission must submit a report to Congress, not later than September 30, 1984, containing a plan to implement the recommendations of the Board of Governors or a statement of reasons in support of the Commission's opinion that such recommendations should not be implemented. (Sec. 237)

The *Senate* amendment contains no comparable provision.

The *Conference* substitute deletes the *House* provision in view of the inclusion in the *Conference* substitute of the study of the commodity futures industry, including trading in stock index futures contracts, as described in item (20) above.

(22) STUDY OF NATIONAL FUTURES ASSOCIATION AND SERVICE FEES (SEC. 237)

The *House* bill requires the Commission to submit a report to Congress not later than March 1, 1985, on the results of a study on the experience of the National Futures Association (NFA) for the period January 1, 1983, through December 31, 1984. The report is to include, but not be limited to, the following:

(a) the extent to which the NFA has implemented its program and the effectiveness of that program;

(b) the actual and projected cost savings to the Government resulting from NFA operations;

(c) an estimate of the costs the Commission and the public would have incurred had the NFA not undertaken its activity;

(d) the problem areas encountered by the NFA;

(e) the nature of the working relationship between the NFA and the Commission;

(f) an estimate of the efficiencies the Commission has or will achieve as a result of the continuing regulatory activities of the NFA; and

(g) the immediate and projected capabilities of the Commission to deal with other regulatory problems as a result of NFA activities.

The *House* bill also bars the imposition of any new user or transaction fee or tax under existing authority in the Commodity Exchange Act, or any other statute, or the recommendation to Congress of any such fee or tax under section 26 of the Futures Trading Act of 1978, until after the conclusion of the legislative session in which the Commission's study of the NFA is submitted to Congress. Any subsequent proposal to institute a user or transaction fee or tax must be accompanied by data and studies measuring (i) the relative benefit to commodity professionals and to the general public flowing from the functions of the Nation's commodity markets and from Federal commodity regulation and (ii) the effect of the proposed fee or tax on liquidity in U.S. contract markets. (Sec. 238)

The *Senate* amendment requires the Commission to conduct a study of the probable effect of imposing fees on the purchase and sale of futures and options contracts and leverage transactions under the Commission's jurisdiction. The study report is to be submitted to the House and Senate agriculture committees not later than January 1, 1984. The study shall include, but not be limited to, consideration of the effect of a transaction fee on market liquidity, a determination of the portions of the Commission's

budget benefiting the public and the commodity market participants, and consideration of the incidence of such fees, including their impact on producers, processors, manufacturers, and other hedgers. (Sec. 31)

The *Conference* substitute adopts the *House* provision with regard to a study of the regulatory experience of the National Futures Association with an amendment providing that the report shall be submitted not later than January 1, 1986, and changing the period to be studied to January 1, 1983, through September 30, 1985.

The *Conference* substitute deletes both the *House* and *Senate* provisions relating to user fees or transaction fees and provides that nothing in section 26 of the Futures Trading Act of 1978 shall limit the authority of the Commission to promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act, except that the fees for any specified service or activity or function shall not exceed the actual cost thereof to the Commission.

Authority is provided in the Commodity Exchange Act and in other laws for the Commission to charge reasonable fees for certain activities in conjunction with administration and enforcement of the Commodity Exchange Act. For example, the Independent Offices Appropriation Act of 1952 authorizes the Commission to charge fees for certain of its activities. Section 8a of the Commodity Exchange Act authorizes the Commission to charge fees for registration and renewal thereof. Under this and other authority, the *Conference* substitute recognizes that the Commission may promulgate, after notice and opportunity for hearing, a schedule of equitable fees to be imposed for certain specific activities.

The conferees intend that the fee schedule addressed by the *Conference* substitute is to be strictly limited to Commission activities directly related to: (1) Commission audits of firms which are not members of contract markets or of a registered futures association; (2) contract market and registered futures association rule enforcement reviews and financial reviews; (3) initial and renewal registration of futures commission merchants, commodity trading advisors, commodity pool operators, associated persons, floor brokers, and introducing brokers (including agents of introducing brokers), but only until such time as the registration functions are assumed by a registered futures association; (4) contract market designation; (5) reparations unit fees; (6) publications of the Commission; (7) Freedom of Information Act services; and (8) providing transcripts of Commission meetings.

The *Conference* substitute does not contain authority for the Commission to impose fees in addition to those fees specified pursuant to the Commodity Exchange Act or any other Act, nor does the *Conference* substitute authorize the Commission to impose any other "user" fee, or a "user" tax, transaction fee, or transaction tax. The conferees intend to closely monitor development of the Commission's fee structure, and expect the Commission to provide the House Committee on Agriculture, and the Senate Committee on Agriculture, Nutrition, and Forestry adequate time to review the regulations and schedule adopted by the Commission, before such schedule and regulations are made effective.

(23) AGRICULTURAL EXPORTS (SEC. 238)

The *Senate* amendment prohibits the President, except in periods of declared war or national emergency, from prohibiting or curtailing the export of any agricultural commodity, or the products thereof, covered by an export sales contract when (a) the export sales contract was made prior to the announcement of action prohibiting or curtailing these exports and (b) the contract requires delivery within 270 days after the trade suspension is imposed. (Sec. 32)

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision.

(24) EFFECTIVE DATE (SEC. 239)

The *Senate* amendment provides that the provisions of the bill shall be effective upon the date of enactment, except that sections 9, 14, and 28 dealing with (a) the registration of introducing brokers and their associated persons, (b) the registration of associated persons of commodity pool operators and commodity trading advisors, (c) the prohibitions on the employment of an unregistered associated person, and (d) the creation of a new system for handling reparations cases would be effective 120 days later, unless the Commission made these sections effective earlier through the issuance of regulations. (Sec. 34)

The *House* bill contains no comparable provision.

The *Conference* substitute adopts the *Senate* provision. The conferees note that the *Conference* substitute authorizes the Commission to grant a temporary 6-month license to any registration applicant who appears to be qualified while a complete fitness check is being conducted on the applicant. These temporary licenses will be granted pursuant to such rules, regulations, or orders as the Commission may adopt.

In order to meet the objectives of the temporary licensing provision prior to the effective date of the rules, regulations, or orders implementing this provision, the conferees encourage the Commission to take appropriate interim steps as soon as possible, including but not limited to the use of "no action positions", to accelerate the opportunity for apparently qualified individuals who submit complete applications to the Commission to begin work while a fitness check is being conducted. The conferees assume, of course, that any such interim steps would also include measures designed to provide adequate protection for the public.

E DE LA GARZA,
ED JONES,
BERKLEY BEDELL,
DAN GLICKMAN,
THOMAS DASCHLE,
BYRON L. DORGAN,
TOM HARKIN,
GLENN ENGLISH,
LEON E. PANETTA,
BILL WAMPLER,
JAMES M. JEFFORDS,
E. THOMAS COLEMAN,
PAT ROBERTS,
JOE SKEEN,
STEVE GUNDERSON,
COOPER EVANS,

For consideration of title I and section 237:

JOHN D. DINGELL,
TIMOTHY E. WIRTH,
JAMES T. BROYHILL,
Managers on the Part of the House.

JESSE HELMS,
BOB DOLE,
S. I. HAYAKAWA,
RICHARD G. LUGAR,
THAD COCHRAN,
WALTER D. HUDDLESTON,
DAVID PRYOR,
DAVID BOREN,
HOWELL HEFLIN,
Managers on the Part of the Senate.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. BLILEY (at the request of Mr. MICHEL), for today, on account of hospitalization for a broken arm.

Mr. SHUSTER (at the request of Mr. MICHEL) for today, and the balance of the week on account to recuperation necessitated by several major surgeries due to an auto accident in the Ninth District on October 11, 1982.

Mr. LEHMAN (at the request of Mr. WRIGHT), for this week, on account of medical reasons.

Mr. MAVROULES (at the request of Mr. WRIGHT), for today, on account of a death in the family.

SPECIAL ORDERS GRANTED

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

(The following Member (at the request of Mr. BEREUTER) to revise and extend his remarks and include extraneous material:)

Mr. CONTE, for 60 minutes on December 16.

Mr. CONTE, for 60 minutes, on December 20.

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

Mr. GONZALEZ, for 30 minutes, today.

Mr. RODINO, for 30 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. EVANS of Indiana, for 5 minutes, today.

Mr. LAFALCE, for 15 minutes, on December 14.

Mr. ALEXANDER, for 60 minutes, on December 15.

Mr. PHILLIP BURTON, for 60 minutes, on December 15.

Mr. WRIGHT, for 60 minutes, on December 16.

Mr. FOLEY, for 60 minutes, on December 16.

Mr. ALEXANDER, for 60 minutes, on December 16.

Mr. ALEXANDER, for 60 minutes, on December 17.

EXTENSION OF REMARKS

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

Mr. ERLENBORN, to revise and extend his remarks prior to passage of H.R. 5470.

Mr. DORNAN of California, and to include extraneous material notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $5,434.

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

Mr. YOUNG of Alaska.
Mr. DANNEMEYER in two instances.
Mr. RITTER.
Mr. KRAMER.
Mr. EVANS of Delaware.
Mr. CARMAN.
Mr. DERWINSKI.
Mr. O'BRIEN in three instances.
Mr. MCCLOSKEY in two instances.
Mr. GILMAN.
Mr. COLLINS of Texas in two instances.
Mr. PAUL.
Mr. SMITH of New Jersey.
Mr. FIELDS in three instances.
Mr. CORCORAN.

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

Mr. EDWARDS of California.
Mr. MINETA.
Mr. STARK.
Mr. SAM B. HALL, JR.
Mr. CONYERS.
Mr. MCDONALD.
Mr. ANDERSON in 10 instances.
Mr. GONZALEZ in 10 instances.
Mr. BROWN of California in 10 instances.
Mr. JONES of Tennessee in 10 instances.
Mr. BONER of Tennessee in five instances.
Mr. HALL of Ohio.
Ms. OAKAR.
Mr. RODINO in four instances.
Mr. BLANCHARD.
Mr. EDGAR.
Mr. MOTTL in two instances.
Mr. AKAKA.
Mr. FLORIO.
Mr. LAFALCE.
Mr. MURPHY.
Mr. DOWNEY.
Mr. HOYER.
Ms. FERRARO in two instances.
Mr. ROYBAL.
Mr. CLAY in two instances.
Mrs. CHISHOLM.
Mr. MARKEY.

SENATE BILLS AND JOINT RESOLUTIONS REFERRED

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

S. 1562. An act to provide comprehensive national policy dealing with national needs and objectives in the Arctic; to the Committee on Science and Technology.

S. 3081. An act to modify the judicial districts of West Virginia, and for other purposes; to the Committee on the Judiciary.

S.J. Res. 254. Joint resolution designating September 22, 1983, as "American Business Women's Day"; to the Committee on Post Office and Civil Service.

S.J. Res. 263. Joint resolution to authorize the President to issue a proclamation designating the week beginning on March 13, 1983, as "National Surveyors Week"; to the Committee on Post Office and Civil Service.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 2177. An act to amend title III of the Colorado River Basin Project Act, Public Law 90-537 (82 Stat. 885), as amended by Public Law 95-578 (92 Stat. 2471), and Public Law 96-375 (94 Stat. 1505).

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

Mr. HAWKINS, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and a joint resolution of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 2329. An act conferring jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma;

H.R. 4364. An act to declare that the United States holds in trust for the Pascua Yaqui Tribe of Arizona certain land in Pima Country, Ariz.;

H.R. 5553. An act to provide for the use and disposition of Miami Indians judgment funds in dockets 124-B and 254 before the U.S. Court of Claims, and for other purposes;

H.R. 5795. An act to provide for the use and distribution of the funds awarded to the Shawnee Tribe of Indians in dockets 64, 335, and 338 by the Indian Claims Commission and docket 64-A by the U.S. Court of Claims, and for other purposes;

H.R. 6005. An act to discontinue or amend certain requirements for agency reports to Congress;

H.R. 6403. An act to provide for the use and distribution of funds to the Wyandot Tribe of Indians in docket 139 before the Indian Claims Commission and docket 141 before the U.S. Court of Claims, and for other purposes;

H.R. 6417. An act to amend Public Law 96-432 relating to the U.S. Capitol Grounds; and

H.J. Res. 595. Joint resolution designating December 11, 1982, as "Fiorello H. La Guardia Memorial Day."

ADJOURNMENT

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

The motion was agreed to; accordingly (at 7 o'clock and 25 minutes p.m.) under its previous order, the House adjourned until Tuesday, December 14, 1982, at 11 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

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

5277. A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting a cumulative report on rescissions and deferrals of budget authority as of December 1, 1982, pursuant to section 1014(e) of Public Law 93-344 (H. Doc. No. 97-267); to the Committee on Appropriations and ordered to be printed.

5278. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 4-219, "Police Officer and Firefighter Cadet Programs Funding Authorization and Human Rights Act of 1977 Amendment Act of 1982," pursuant to section 602(c) of Public Law 93-198; to the Committee on the District of Columbia.

5279. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 4-256, "District of Columbia Protection of Minors Act of 1982," pursuant to section 602(c) of Public Law 93-198; to the Committee on the District of Columbia.

5280. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 4-257, "Eviction Limitation, Fire and Casualty Amendment Act, and Anti-Drunk Driving Clarifying Amendments Act of 1982," pursuant to section 602(c) of Public Law 93-198; to the Committee on the District of Columbia.

5281. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 4-258, "Anna J. Cooper Circle Designation Act of 1982," pursuant to section 602(c) of Public Law 93-198; to the Committee on the District of Columbia.

5282. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 4-259, "Closing of a Portion of Porter Street, Northeast, Act of 1982," pursuant to section 602(c) of Public Law 93-198; to the Committee on the District of Columbia.

5283. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 4-260, "Closing of a Public Alley in Square 140 Act of 1982," pursuant to section 602(c) of Public Law 93-198; to the Committee on the District of Columbia.

5284. A letter from the Chairman, Council of the District of Columbia, transmitting D.C. Act 4-261, "Closing of a Portion of a Public Alley in Square 5129 Act of 1982," pursuant to section 602(c) of Public Law 93-198; to the Committee on the District of Columbia.

5285. A letter from the District of Columbia Auditor, transmitting a report entitled: "Follow-up to the Water Bill Policies and Procedures," pursuant to section 455(d) of Public Law 93-198; to the Committee on the District of Columbia.

5286. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of the Department's intention to consent to a request by the Government of Egypt to transfer certain defense items to the Government of Turkey, pursuant to section 620c(d) of the Foreign Assistance Act of 1961, as amended; to the Committee on Foreign Affairs.

5287. A letter from the Assistant Secretary, Department of Interior, transmitting a draft of proposed legislation to vest the Secretary of the Interior with jurisdiction over certain statute of limitations claims, and for other purposes; to the Committee on Interior and Insular Affairs.

5288. A letter from the Director, Mineral Management Service, Department of the Interior, transmitting notice of the proposed

refund of $15,682.52 to Tenneco Oil Exploration & Production, Marathon Oil Co., Mitchell Energy Corp., ARCO Oil & Gas Co., and General American Oil Co. of Texas, for excess royalty payment, pursuant to section 10(b) of the Outer Continental Shelf Lands Act of 1953; to the Committee on Interior and Insular 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:

Mr. LEHMAN: Committee of conference. Conference report on H.R. 7019. (Rept. No. 97-960). And ordered to be printed.

Mr. JONES of North Carolina: Committee of conference. Conference report on S. 2336. (Rept. No. 97-961). And ordered to be printed.

Mr. BONIOR of Michigan: Committee on Rules. House Resolution 626. A resolution providing for the consideration of House Joint Resolution 631, joint resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes. (Rept. No. 97-963). Referred to the House Calendar.

Mr. DE LA GARZA: Committee of conference. Conference report on H.R. 5447 (Rept. No. 97-964). And ordered to be printed.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. UDALL: Committee on Interior and Insular Affairs. S. 1964. An act to designate certain lands in the Mark Twain National Forest, Mo., which comprise about 17,562 acres, and known as the Irish Wilderness, as a component of the National Wilderness Preservation System; referred to the Committee on Agriculture for a period ending not later than December 14, 1982, for consideration of such portions of the bill as fall within that committee's jurisdiction pursuant to clause 1(a), rule X (Rept. No. 97-962, Pt. I). And ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. GARCIA (for himself, Mr. COURTER, Mr. CLAY, Mr. CORCORAN, Mr. DANIEL B. CRANE, Mr. DERWINSKI, Ms. FERRARO, Mr. GILMAN, Mr. LELAND, Ms. OAKAR, and Mr. TAYLOR):

H.R. 7410. A bill to amend title 13, United States Code, to transfer responsibility for the quarterly financial report from the Federal Trade Commission to the Secretary of Commerce, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. AKAKA (for himself, Mr. FUQUA, Mr. FLIPPO, Mr. HOLLENBECK, Mr. LOWERY of California, Mr. MCGRATH, Mr. LONG of Maryland, Mr. WALKER, Mr. SKEEN, Mr. SCHEUER, Mr. ALEXANDER, Mrs. BOGGS, Mr. MARKEY, Mrs. SCHNEIDER, Mr. MATSUI, Mr. MAVROULES, Mr. HOYER, Mr. LANTOS, Ms. OAKAR, Mr. WHITEHURST, Mr. MATTOX, Mr. ERDAHL, Mr. GINGRICH, Mr. GRISHAM, Mr. KRAMER, Mr. CLAUSEN, Mrs. CHISHOLM, Mr. JOHN L. BURTON, Mr. JEFFRIES, Mr. HANSEN of Idaho, Mrs. HECKLER, Mr. BROWN of California, Mr. YOUNG of Missouri, Ms. FIEDLER, Mr. UDALL, Mr. LUJAN, Mr. HEFTEL, Mr. SANTINI, Mr. WON PAT, Mr. BADHAM, and Mr. FORSYTHE):

H.R. 7411. A bill to provide encouragement and necessary regulation for the commercial development of space; to the Committee on Science and Technology.

By Mr. COLEMAN:

H.R. 7412. A bill to amend the Natural Gas Policy Act of 1978 to freeze natural gas prices at their October 1, 1982, levels, override take or pay clauses, and create market incentives in the natural gas industry; to the Committee on Energy and Commerce.

By Mr. DIXON:

H.J. Res. 632. Joint resolution requiring the Federal Energy Regulatory Commission to commence a rulemaking relating to natural gas pipeline rate designs, and to report its findings, conclusions, and recommendations; to the Committee on Energy and Commerce.

By Mr. SYNAR:

H.J. Res. 633. Joint resolution designating the week of January 16 through January 22, 1983, as "National Jaycee Week"; to the Committee on Post Office and Civil Service.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. GOODLING introduced a bill (H.R. 7413) for the relief of Katsuhito Nakaji, which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

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

H.R. 748: Mr. GILMAN.

H.R. 7162: Mr. HOWARD.

H.R. 7302: Mr. WEISS.

H.R. 7362: Mr. DAUB, Mr. CAMPBELL, Mr. BUTLER, Mr. RAILSBACK, Mr. MORRISON, Mr. MOAKLEY, Mr. MOTTL, Mr. SAM B. HALL, JR., Mr. SMITH of Oregon, Mr. OTTINGER, Mr. COUGHLIN, Mr. EVANS of Georgia, Mr. OXLEY, Mr. CONYERS, Mr. ROUSSELOT, and Mr. DUNCAN.

H.R. 7373: Mr. GAYDOS and Mr. FORD of Michigan.

H.R. 7406: Mr. SIMON, Mr. MADIGAN, Mr. RUSSO, Mr. O'BRIEN, Mr. CORCORAN, Mrs. MARTIN of Illinois, Mr. DERWINSKI, Mr. PHILIP M. CRANE, Mr. DANIEL B. CRANE, Mr. MCCLORY, Mr. RAILSBACK, and Mr. HYDE.

H.J. Res. 591: Mr. APPLEGATE, Mr. BONER of Tennessee, Mr. DAN DANIEL, Mr. GOLDWATER, Mr. HOYER, Mr. LANTOS, Mr. LATTA, Mr. LEWIS, Mr. MCDONALD, Mr. MOORHEAD, Mr. NATCHER, Mr. PATTERSON, Mr. OXLEY, Mr. ROUSSELOT, Mr. WEAVER, and Mr. DAVIS.

H. Con. Res. 275: Mr. HILER.

AMENDMENTS

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

H.J. Res. 631

By Mr. BONIOR of Michigan:

—Page 10, line 3, insert ": *Provided further,* That none of the funds appropriated by this joint resolution or by any other Act, shall be available for any activity relative to the construction of the O'Neill Irrigation Unit in the State of Nebraska" before the period.

By Mr. CONTE:

—On page 10, in line 3, after "1982" insert ": *Provided further,* That no appropriation, fund or authority made available by this joint resolution or any other Act shall be used for construction of the Garrison Diversion Unit in North Dakota".

By Mr. COUGHLIN:

—On page 10, line 3, before the period insert ": *Provided further,* That no funds be made available by this joint resolution shall be obligated or expended for research and development, design, or construction of the Clinch River Breeder Reactor project: *Provided further,* That appropriations made available in this joint resolution for the Clinch River Breeder Reactor project shall be available for the termination of contractual instruments for that project previously entered into pursuant to section 106 of Public Law 91-273 as amended".

By Mr. CRAIG:

—On page 27, after line 9, add the following new section:

SEC. 128. Section 101(e) of Public Law 97-276 is amended by striking out "December 17, 1982," and inserting in lieu thereof "March 15, 1983,".

By Mr. EDGAR:

—Page 10, line 3, before the period insert ": *Provided further,* That not to exceed $86,000,000 shall be available for construction of the Tennessee-Tombigbee Waterway during the fiscal year ending September 30, 1983.".

By Mr. EDWARDS of California:

—Page 27, immediately after line 9, insert the following new section:

"SEC. 128. Notwithstanding any other provision of this joint resolution, for an additional amount for the Peace Corps, $25,000,000, which shall remain available to be expended as follows: 50 percent during fiscal year 1983, 30 percent during fiscal year 1984, and 20 percent during fiscal year 1985.".

By Mr. FAZIO:

—On page 27, after line 9, insert the following:

SEC. . (a) Section 101(e) of Public Law 97-276 is amended by striking out "December 17, 1982," and inserting "September 30, 1983,".

(b) In lieu of payment of salary increases of up to 27.2 percent as authorized by law for senior executive, judicial, and legislative positions (including Members of Congress), it is the purpose of this section to limit such increases to 15 percent. Notwithstanding the provisions of section 306 of S. 2939 made applicable by subsection (a) of this section, nothing in subsection (a) shall (or shall be construed to) require that the rate of salary or pay payable to any individual for or on account of services performed after December 17, 1982, be limited to an amount less than the rate (or maximum rate, if higher) of salary or pay payable as of such date for the position involved increased by 15 percent and rounded in accordance with 5 U.S.C. 5318.

(c) Nothing in this section shall be construed as specifically authorizing the obligation or expenditure of funds for salary in-

creases for positions subject to section 140 of Public Law 97-92.

By Mr. SIMON:

—Page 4, line 15, immediately after "(b)" insert "(1)"; and on page 6, immediately after line 5, insert the following new paragraph:

(2) Notwithstanding section 102 of this joint resolution, chapter 1 of part I of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new section:

"SEC. 128. TARGETING ASSISTANCE FOR THOSE LIVING IN ABSOLUTE POVERTY.—In carrying out this chapter, the President—

"(1) in fiscal year 1983, shall attempt to use not less than 40 percent of the funds made available to carry out this chapter, and

"(2) in fiscal year 1984 and each fiscal year thereafter, shall use not less than 50 percent of the funds made available to carry out this chapter,

to finance productive facilities, goods, and services which will expeditiously and directly benefit those living in absolute poverty (as determined under the standards for absolute poverty adopted by the International Bank for Reconstruction and Development and the International Development Association). Such facilities, goods, and services may include, for example, irrigation facilities, extension services, credit for small farmers, roads, safe drinking water supplies, and health services. Such facilities, goods, and services may not include studies, reports technical advice, consulting services, or any other items unless (A) they are used primarily by those living in absolute poverty themselves, or (B) they constitute research which produces or aims to produce techniques, seeds, or other items to be primarily used by those living in absolute poverty. Research shall not constitute the major part of such facilities, goods, and services.".

By Mr. TAUZIN:

—At the end of title I, add the following new section:

SEC. . No funds provided under this joint resolution shall be used to deny or reduce SSI benefits because of assistance provided by a private nonprofit organization, or any entity whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental body, if the appropriate State agency has certified that such assistance was based on need as determined by such organization or entity.

By Mr. TRAXLER:

—On page 27, after line 9, strike out the section added to the resolution by the amendment offered by Mr. FAZIO, and insert in lieu thereof the following:

SEC. . Section 101(e) of Public Law 97-276 is amended by striking out "December 17, 1982," and inserting in lieu thereof "March 15, 1983,".

Or, if the amendment offered by Mr. FAZIO is not adopted,

On page 27, after line 9, insert the following:

SEC. . Section 101(e) of Public Law 97-276 is amended by striking out "December 17, 1982," and inserting in lieu thereof "March 15, 1983,".

H.R. 6296

By Mr. RINALDO:

(To the amendment in the nature of a substitute offered by Mr. Gonzalez of Texas.)

—Page 57, after line 8, insert the following new section (and conform the table of contents on page 2 accordingly):

AMENDMENT TO SECTION 232 OF THE NATIONAL HOUSING ACT

SEC. 523. Section 232 of the National Housing Act is amended—

(1) by inserting the following after "intermediate care facilities" in subsection (a)(2): "and board and care homes";

(2) by striking out the period at the end of subsection (b)(3) and inserting in lieu thereof "; and", and by adding the following new paragraph at the end of subsection (b):

"(4) the term 'board and care home' means any residential facility providing room, board, and continuous protective oversight that is regulated by a state pursuant to the provisions of section 1616(e) of the Social Security Act, so long as the home is located in a State which, at the time of an application is made for insurance under this section, has demonstrated to the Secretary that it is in compliance with the provisions of such section 1616(e).";

(3) by inserting the following after "intermediate care facility" the second time it appears in subsection (d): "or a board and care home";

(4) by striking out "The" in the first sentence of subsection (d)(4) and inserting in lieu thereof "(A) With respect to nursing homes and intermediate care facilities and combined nursing home and intermediate care facilities, the";

(5) by striking out "(A)" and "(B)" in the first sentence of subsection (d)(4) and inserting in lieu thereof "(i)" and "(ii)", respectively;

(6) by adding the following new subparagraph at the end of paragraph (4) of subsection (d):

"(B) With respect to board and care homes, the Secretary shall not insure any mortgage under this section unless he has received from the appropriate State licensing agency a statement verifying that the State in which the home is or is to be located is in compliance with the provisions of section 1616(e) of the Social Security Act.";

(7) by inserting the following after "intermediate care facilities" in subsection (i)(1): "or to board and care homes";

(8) by inserting "or 1973" after "1967" in subsection (i)(1);

(9) by inserting the following before the period at the end of subsection (i)(1): "or as mandated by a State under the provisions of section 1616(e) of such Act"; and

(10) by striking out "and" at the end of subsection (i)(2)(D), by striking out the period at the end of subsection (i)(2)(E) and inserting in lieu thereof "; and", and by adding the following new subparagraph at the end of subsection (i)(2):

"(F) in the case of board and care homes, be made with respect to such a home located in a State with respect to which the Secretary has received from the appropriate State licensing agency a statement verifying that the State in which the home is or is to be located is in compliance with the provisions of section 1616(e) of the Social Security Act.".

H.R. 7145

By Mr. BEREUTER:

—On page 14, line 12, strike the period and substitute "; and $2,400,000, to remain available until expended, for contracting and land acquisition activities along the Missouri River in accordance with Section 107 of Public Law 95-625.".