HOUSE OF REPRESENTATIVES—*Monday, June 25, 1984*

The House met at 12 o'clock noon.

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

We recognize, O bountiful God, the people about us who care for us and give us strength. May we be ever grateful for those whose love has been our support, and whose friendship has been our joy. Even as we admit our own weaknesses, we give thanks for family and friends whose devotion nurtures us every day of our lives. In Your name, we pray. Amen.

THE JOURNAL

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

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

MESSAGE FROM THE SENATE

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

H.R. 2878. An act to amend and extend the Library Services and Construction Act;

H.R. 4585. An act to authorize appropriations for the Office of Environmental Quality and the Council on Environmental Quality for fiscal years 1985, 1986, 1987, and for other purposes; and

H.R. 5154. An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 5154) entitled "An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control, and data communications, construction of facilities, and research and program management, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. PACKWOOD, Mr. GORTON, Mr. GOLDWATER, Mr. LAUTENBERG, and Mr. HEFLIN to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the amendments of the House with amendments to a bill of the Senate of the following title:

S. 373. An act to provide comprehensive national policy dealing with national needs and objectives in the Arctic.

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

S. 296. An act for the relief of Ramzi Sallomy and Marie Sallomy;

S. 384. An act to aid State and local governments in strengthening and improving their judicial systems through the creation of a State Justice Institute;

S. 516. An act for the relief of Barbara Crisp, Sean Anthony Crisp, and Andrea Leech;

S. 796. An act for the relief of Bassam S. Belmany;

S. 905. An act to establish the National Archives and Records Administration as an independent agency;

S. 1140. An act for the relief of Patrick, P.W. Tso, Ph.D.;

S. 1414. An act for the relief of Rebecca Lynn Higgins;

S. 2375. An act to amend the Small Business Act to improve the operation of the secondary market for loans guaranteed by the Small Business Administration;

S. 2459. An act to authorize appropriations for the Department of Energy for national security programs for fiscal year 1985, and for other purposes;

S. 2463. An act to authorize appropriations of funds for certain fisheries programs, and for other purposes;

S. 2547. An act authorizing appropriations to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts, and for other purposes;

S. 2688. An act to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1985 and 1986, and for other purposes; and

S. 2729. An act for the relief of Jean Willhelm Willrich.

THE CROSS FLORIDA BARGE CANAL

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

Mr. MACK. Mr. Speaker, this week, the House is scheduled to consider the omnibus water projects bill, H.R. 3678.

While the bill deauthorizes more than 300 projects, conspicuously absent are provisions to deauthorize the unwanted, unneeded, expensive, and environmentally hazardous Cross Florida Barge Canal.

Construction was halted on this project by President Nixon in 1971 in response to anticipated environmental damage.

The uncompleted portion of the canal would threaten the supply of drinking water for central and south Florida, and would convert the beautiful Oklawaha River into a concrete ditch.

In 1977, the Army Corps of Engineers found that the project was not worth the Federal investment, and recommended termination of the canal and the half billion dollars it would cost to complete.

The canal is unanimously opposed by the Governor of Florida, the Florida Cabinet, and both houses of the legislature.

Every administration since President Nixon has opposed completion, and the other body has voted twice to deauthorize the canal.

This project is nothing more than a waste of a half billion Federal dollars on a unusable, environmentally hazardous, pork-barrel project. It is time for the House to end this waste once and for all.

I urge my colleagues to vote for the MacKay amendment to the water projects bill. Deauthorize the barge canal.

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 on Tuesday, June 26, 1984.

PIPELINE SAFETY ACT AUTHORIZATIONS, 1985

Mr. SLATTERY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5313) to authorize appropriations for fiscal year 1985 to carry out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes, as amended.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 17 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1684) is amended—

(1) in subsection (a) by striking out "there are authorized" and all that follows through the period and inserting in lieu thereof "there is authorized to be appropriated $3,600,000 for the fiscal year ending September 30, 1985."; and

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

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

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(2) in subsection (b) by striking out "there are authorized" and all that follows through the period and inserting in lieu thereof "there is authorized to be appropriated $3,500,000 for the fiscal year ending September 30, 1985."; and

(b) Section 214 of the Hazardous Liquid Pipeline Saftey Act of 1979 (49 U.S.C. 2013) is amended—

(1) in subsection (a) by striking out "there are authorized" and all that follows through the period and inserting in lieu thereof "there is authorized to be appropriated $900,000 for the fiscal year ending September 30, 1985."; and

(2) in subsection (b) by striking out "there are authorized" and all that follows through the period and inserting in lieu thereof "there is authorized to be appropriated $500,000 for the fiscal year ending September 30, 1985."; and

SEC. 2. (a) The Secretary of Transportation shall study issues relating to the transportation of methanol through the interstate liquid pipeline system in the United States and shall make recommendations for the safe and efficient transportation of methanol through such pipeline system.

(b) Such study shall include an examination of —

(1) the feasibility of such transportation,

(2) the economics and engineering of such transportation, and

(3) any environmental, health, and safety problems associated with such transportation.

(c) The Secretary of Transportation shall submit a report detailing the results of such study and setting forth his or her recommendations to the Congress no later than one hundred and eighty days after the date of enactment of this Act.

SEC. 3. Section 210 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2009) is amended by adding at the end a new subsection as follows:

"(c)(1) The Secretary shall study the feasibility of and costs connected with requiring various methods of testing and inspecting hazardous liquid pipeline facilities subject to the provisions of this title. In carrying out such study the Secretary shall evaluate any new technologies available for monitoring, from the outside or the inside, the condition of such facilities.

"(2) The Secretary shall make recommendations, based on the study undertaken under this subsection and on consultations between the Secretary and the Technical Hazardous Liquid Pipeline Safety Standards Committee established under section 204 of this title, as to the frequency and type of testing and inspection of pipeline facilities which should be required, taking into account the following:

"(A) The location of the pipeline facilities.

"(B) The type, age, manufacturer, method of construction, and condition of the pipeline facilities.

"(C) The nature of the materials transported through the pipeline facilities, the sequence in which such materials are transported, and the pressure at which they are transported.

"(D) The climatic, geologic, and seismic characteristics of, and conditions (including soil characteristics) associated with the areas in which the pipeline facilities are located, and the existing and projected population and demographic characteristics associated with such areas.

"(E) The frequency of leaks, if any.

"(F) The costs of the various available methods.

"(G) Any other factors the Secretary determines to be relevant to the safety of the pipeline facilities.

"(3) The Secretary shall submit a report detailing the results of the study undertaken under this subsection and setting forth the recommendations made under paragraph (2) to the Congress no later than one year after the date of enactment of this subsection.".

SEC. 4. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.) is amended by adding at the end a new section as follows:

"SURVEY OF PIPELINE FACILITIES

"SEC. 20. (a) Any person owning or operating interstate transmission facilities shall, within 180 days after the date of enactment of this section, submit a report to the Secretary which—

"(1) identifies the location and condition of all such pipeline facilities whose construction was completed before January 1, 1938; and

"(2) includes the most recent leak survey information compiled by such owner or operator with respect to such pipeline facilities.

"(b) The Secretary shall, within 90 days after receiving any report under subsection (a)—

"(1) inspect the pipeline facilities described in subsection (a)(1), except when the Secretary, based on reports submitted under subsection (a), determines that a pipeline facility is in safe condition; and

"(2) identify, on the basis of the information contained in such report and the information obtained by the Secretary through such inspections, any pipeline facilities which might pose a danger to the public health and safety.

"(c) There are authorized to be appropriated to the Secretary for the purpose of carrying out this section, not to exceed $200,000 for the fiscal year ending September 30, 1985.".

The SPEAKER pro tempore [Mr. ROSE]. Is a second demanded?

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

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Kansas [Mr. SLATTERY] will be recognized for 20 minutes and the gentleman from Illinois [Mr. CORCORAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kansas [Mr. SLATTERY].

GENERAL LEAVE

Mr. SLATTERY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on H.R. 5313.

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

There was no objection.

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

Mr. Speaker, the bill before us today is H.R. 5313 the authorization for pipeline safety programs in the Department of Transportation. The total authorization is $8.7 million: $3.8 million is for salaries and natural gas pipeline safety; $3.5 million is for State grants-in-aid for gas pipeline safety; $900,000 is for hazardous liquid pipeline safety, and $500,000 is for State grants-in-aid for liquid pipeline safety.

This bill was reported unanimously by the Energy and Commerce Committee. Our colleagues on the Committee on Public Works and Transportation also agree with the provisions of this bill but introduced a minor change in language in the Oxley amendment to H.R. 5313 which I find acceptable. This amendment provides for the authorization of $200,000 to the Secretary of Transportation to inspect those pipelines built before January 1, 1938, which are deemed unsafe. The owners or operators of those pipelines must submit reports on which the Secretary makes a judgment whether or not to conduct an inspection.

The authorization is only for 1 year rather than the 2 years requested by the administration to because of the problems the GAO uncovered during its 18-month investigation. GAO testified before the subcommittee that the pipeline safety program suffers from weak mangement as well as mismanagement of the program's limited and insufficient resources. During the next year our subcommittee intends to conduct regular oversight to monitor the program and its response to the management suggestions made by GAO and others.

The total authorization is $8.7 million for fiscal year 1985. That is a relatively small amount to ensure that consumers who live, work, or travel near natural gas and hazardous liquids pipelines are protected. An explosion involving a gas line destroyed a major part of downtown Richmond, IN, and took several lives not too many years ago in the district of our subcommittee chairman. The Federal Pipeline Safety Program was created in the aftermath of tragedies like that one. I believe it is important that we ensure the program's effectiveness in order to prevent future accidents, and I recommend approval of this bill.

Mr. Speaker, one of the amendments included in H.R. 5313, the pipeline safety reauthorization bill, addresses pipelines completed prior to January 1, 1938. This amendment was included in both the Energy and Commerce Committee bill and the Public Works Committee bill. My colleague, the gentleman from Ohio [Mr. OXLEY], offered the amendment adopted by the Energy and Commere Committee. It requires interstate transmission pipelines to submit a report to the Secretary of Transportation indicating the

location and condition of pre-1938 pipelines. The report would also include any recent leak survey information regarding the pipeline. Based on this report, the Secretary of Transportation is directed to identify any pipeline which might pose a danger to the public health and safety. In addition, the Secretary is required to inspect pipelines except when he determines, based on reports submitted, that a pipeline is in a safe condition.

□ 1210

Mr. Speaker, there has been some misunderstanding about this amendment. One of the primary questions centers on the requirement that the Secretary of Transportation inspect facilities. I am told by the amendment's sponsor, the gentleman from Ohio, that inspect does not require excavation of pipelines. Is this correct?

I yield to the gentleman from Ohio [Mr. McEwen] to respond to this question.

Mr. McEWEN. I thank the gentleman for yielding.

Yes; the gentleman is correct. The amendment by our friend and colleague from Ohio [Mr. Oxley] does require inspections in some cases, but inspection means using applicable state-of-the-art techniques. Inspection techniques include reviewing leak survey data, pipeline patrolling with leak detectors, aerial, surveys, and excavation in cases where earlier inspection indicates a need to do so.

Mr. SLATTERY. Mr. Speaker, I thank my colleague for that clarification.

Mr. Speaker, I yield 10 minutes to the gentleman from Arizona [Mr. McNulty].

Mr. McNULTY. Mr. Speaker, it is my understanding that the Public Works and Transportation Committee has cojurisdiction of this matter and that under the rules the gentleman from California, Chairman Anderson, for whom I am substituting this morning, is entitled as a matter of right on behalf of that committee, as one of the committees of original jurisdiction, to a portion of time not to exceed 10 minutes, not all of which I intend to use.

Mr. Speaker, on behalf of the Committee on Public Works and Transportation, I rise in support of H.R. 5313, to authorize appropriations for fiscal year 1985 to carry out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes.

Those acts provide an overall scheme for the regulation of pipeline transportation of gas and hazardous liquid and they establish minimum Federal safety standards for these lines. That Federal safety regulation effort of the combined system of some 1.7 million miles is overseen by the Materials Transportation Bureau of the Department of Transportation, and this bill authorizes $4.5 million for the Department to carry out that mission.

The Natural Gas Pipeline Safety Act of 1968 also established a pipeline safety program designed to assist States in protecting their citizens against the perils of unsafe natural gas pipeline systems which were intrastate systems. States that participate in the program conduct inspection of the pipelines and facilities and, where appropriate, see that corrective measures are taken.

The natural gas pipeline safety grants-in-aid program has proved to be a model of Federal-State cooperation. This bill authorizes $3.5 million to carry out that mission.

A similar mechanism was established for State programs for transportation of hazardous liquids in the Hazardous Liquid Pipeline Safety Act of 1979. The difference, incidentally, between the two is that the Natural Gas Pipeline Safety Act is concerned almost exclusively with natural gas. Hazardous liquids, for the most part, are liquid petroleum products and anhydrous ammonia. But this latter program, the Hazardous Liquid Pipeline Safety Act, has not begun because the States needed time to get their own statutes in order to create State jurisdiction and to take other such statutory procedures necessary to bring them under the act. To this moment, 16 States have done what they had to do to get proper jurisdiction to become eligible for the program, and those 16 States embrace between 70 and 80 percent of all pipeline miles which this measure would address.

The committee thinks this program has been delayed long enough and, therefore, there is a half million dollars in the bill to carry it out in fiscal year 1985; $200,000 is for continuing the Department of Transportation's current level of financial support for the training activities now provided at the Oklahoma City training center.

The bill says that all owners and operators of gas interstate transmission facilities have got to provide the Secretary of Transportation a report identifying the location and condition of all pipeline facilities that were constructed before January 1, 1938, and that report ought to include the most recent leak survey completed on those facilities. The Secretary is then required to inspect those facilities unless the Secretary determines that the facilities are safe. Additionally, the Secretary has got to identify any pipelines that pose a danger to health or safety.

The bill does make two other amendments to the Hazardous Liquid Pipeline Safety Act. One directs the Secretary of Transportation to study the issues relating to transporting methanol through existing interstate liquid pipeline systems and submit the results of that study to Congress within 6 months after date of enactment. The other directs the Secretary to study the feasibility and costs of requiring various methods of testing and inspecting hazardous liquid pipeline facilities and to include an evaluation of any new technologies that are available and make recommendations as to the frequency and type of testing which should be required. The evaluation results and the recommendations have got to be submitted to Congress within a year after enactment.

So I urge the House to adopt H.R. 5313.

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

The SPEAKER pro tempore (Mr. Boucher). The gentleman from Kansas [Mr. Slattery] has 5 minutes remaining.

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

Mr. Speaker, the Energy and Commerce Committee, like the Public Works and Transportation Committee, has held hearings on the pipeline safety programs authorized by the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979. In this legislation, H.R. 5313, we reauthorize those programs for 1 year.

Mr. Speaker, the gentleman from Kansas and the gentleman from Arizona have already discussed in detail the provisions and the somewhat minor changes that are contained in the program before us. I am not going to belabor the consideration of the House with further discussion.

I just would like to say that there is some concern, I think, both on the part of the majority and the minority of both committees of the House that the Department of Transportation has not moved as aggressively as we would like in the regulation of these pipeline safety programs, particularly with respect to involving in a meaningful way the various States. I would hope that with the addition of the half million dollars and the prod that is contained in the Oxley-McEwen amendment that the Department would be more responsive not only to the Congress, but also to the findings in the oversight consideration by our committees and the General Accounting Office.

Mr. Speaker, I would urge my colleagues to pass this legislation. It is needed. It is useful. I recommend it to the House.

□ 1220

Mr. Speaker, I yield 6 minutes to the gentleman from Ohio [Mr. McEwen] a distinguished member of the Committee on Public Works and Transportation.

Mr. McEWEN. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of the motion to suspend the rules and pass H.R. 5313, authorizing funds for natural gas and hazardous liquid pipeline safety for fiscal year 1985.

The authorizations in this bill are modest and in my opinion thoroughly justified: A total of $7.1 million for carrying out the Natural Gas Pipleine Safety Act of 1968, and $1.4 million for carrying out the Hazardous Liquid Pipeline Safety Act of 1979.

These levels are generally in accord with current levels of funding and the request of the administration. There are, however, certain exceptions which deserve mention.

The hazardous liquid pipeline safety authorization contains the sum of $500,000 in startup funds for the first year of a grant-in-aid program for State enforcement of Federal standards applicable to intrastate pipelines. The administration opposes this item chiefly on budgetary grounds.

The Committee on Public Works and Transportation has concluded, rightly in my judgment, that this is a worthwhile expenditure. This represents no departure from congressional policy. This program is based on experience under a similar and highly successful State enforcement program in the Natural Gas Safety Act, which accounts for $3.5 million of the $7.1 million authorized in this bill for natural gas pipeline safety.

During a hearing on March 21 of this year, funding for the program was strongly supported by the witness for the National Association of Regulatory Utility Commissioners. And, in response to questioning, the Deputy Administrator of the Department of Transportation's Research and Special Programs Administration acknowledged that the grant-in-aid program in the natural gas area had made an enormous contribution to safety; he said that a similar program would do likewise in the area of hazardous liquid pipelines.

The authorization level of $500,000 is the same as that provided for fiscal year 1980 in the 1979 act; no funds have been requested or appropriated for the program.

The bill also provides for carrying out training under the Natural Gas Pipeline Safety Act, so as to maintain support for such training activities as DOT's Oklahoma City Training Center.

This legislation mandates a survey of the location and condition of all natural gas pipelines completed before January 1, 1938, together with the most recent leak survey information concerning such facilities. These are to be submitted to the Secretary of Transportation, who is required to conduct inspections of those facilities which are not determined, on the basis of the information submitted to be in safe condition.

The Secretary also is required to identify any pipeline which might pose a danger to public health and safety, on the basis of information received and inspections conducted. The sum of $200,000 is authorized for this purpose.

The bill before the House has two amendments dealing with this provision, one increasing to 180 days from 120 days the period of time provided industry to make the initial survey, and the other making clear that only interstate pipelines are involved.

Regarding this particular provision, incorporated in the bill as a result of an amendment which I offered, some question has arisen as to whether the safe condition referred to is meant at least to be defined in connection with already existing standards in the Natural Gas Pipeline Safety Act.

The answer is that this is the correct interpretation. In determining whether a pipeline is in a safe condition, the Secretary will consider a number of factors including whether the pipeline operator has complied with the provisions of the Natural Gas Pipeline Safety Act. Mr. Speaker, there are regulations which are promulgated pursuant to the act and are contained in title 49, part 192 of the Code of Federal Regulations which require pipelines to do extensive testing, surveying, and reporting to assure that natural gas pipelines do not pose a hazard to life and property. In determining whether a pipeline is in a safe condition, the Secretary should consider whether the pipeline operator has complied with these existing safety requirements.

The bill also calls for a study of the feasibility and costs of methods of testing and inspections of hazardous liquid pipelines, and development of recommendations as to the appropriate frequency and type of testing and inspection of such facilities on the basis of characteristics of the pipelines, the materials transported, and the areas through which the pipelines pass.

A final study called for in the bill is to inquire into the feasibility of transporting methanol through liquid pipelines, including economics and engineering considerations and any problems affecting the environment, health, or safety.

Mr. Speaker, this is indeed a modest bill but an important one in terms of the functions authorized. The studies authorized could well make a contribution to further refinements in the two acts involved in future years. I urge its enactment.

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

Mr. McEWEN. I yield to the gentleman.

Mr. WOLF. I thank the gentleman for yielding to me.

Mr. Speaker, on behalf of myself and my colleague from Maryland, Mr. HOYER, I would like to clarify the intent of section 4 of the bill. That is the language offered in the Energy and Commerce Committee by the gentleman from Ohio [Mr. OXLEY] and in the Public Works and Transportation Committee by the gentleman from Ohio [Mr. McEWEN] relating to older natural gas pipelines.

It has been brought to my attention that there are a small number of gas distribution companies who, because they transport gas across State lines incident to their distribution function, are defined as natural gas companies under the Natural Gas Act and therefore are considered interstate pipelines. These companies has been granted a section 7(f) exemption under the National Gas Act precisely because their true primary function is natural gas distribution subject to State public service commission regulation and not the transport of gas for purposes of resale.

It was my understanding that the gentleman from Ohio did not intend to have section 4 apply to these natural gas companies but only to those transmission facilities that transport or sell gas in interstate commerce for ultimate resale. Would the gentleman from Ohio [Mr. McEWEN] comment on this provision?

Mr. McEWEN. The gentleman from Virginia is absolutely correct in his understanding of my intent with respect to section 4 of this bill. The section would apply only to those facilities that transport or sell gas in interstate commerce for ultimate resale. Section 4 would no apply to interstate transmission facilities that are exempt from Federal Energy Regulatory Commission jurisdiction by section 7(f) of the Natural Gas Act of 1938.

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

Mr. McEWEN. I thank the gentleman and Mr. Speaker, I yield back the balance of my time.

Mr. CORCORAN. Mr. Speaker, I have no additional requests for time, and I reserve the balance of my time.

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

● Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 5313, a bill to authorize appropriations for fiscal year 1985 to carry out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 and for making minor changes in both acts.

The bill authorizes $4.5 million for Federal enforcement of both of these acts. It authorizes $4 million to carry out the State program in each act. Both committees included $200,000 for the continuation of the Department of Transportation's financial support for

the training activities it now provides at its Oklahoma City training center under the Natural Gas Pipeline Safety Act.

In addition the bill requires all owners and operators of gas interstate transmission facilities to provide a report to the Secretary identifying the location and condition of all pipeline facilities constructed prior to 1938. The report must include the most recent leak survey. The Secretary may then be required to inspect these facilities and identify those that might pose a threat to the public health and safety.

The bill makes two amendments to the Hazardous Liquid Pipeline Act, both of which require the Secretary to conduct studies and report back to the Congress. One study is on issues relating to the transportation of methanol through the existing interstate liquid pipeline system. The other study is on the feasibility and costs connected with requiring various methods of testing and inspecting hazardous liquid pipeline facilities.

I urge the House to adopt H.R. 5313.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kansas [Mr. SLATTERY] that the House suspend the rules and pass the bill, H.R. 5313, 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. SLATTERY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2688) to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1985 and 1986, 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 Kansas?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2688

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 17(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1684(a)) is amended by—

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

(2) striking the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end thereof the following new paragraphs:

"(3) $3,472,000, for the fiscal year ending September 30, 1985; and

"(4) $3,698,000, for the fiscal year ending September 30, 1986.".

(b) Section 17(b) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1684(b)) is amended by—

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

(2) striking "and" at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end therof the following new paragraphs:

"(3) $3,728,000, for the fiscal year ending September 30, 1985; and

"(4) $3,970,000, for the fiscal year ending September 30, 1986.".

SEC. 2. (a) Section 214(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2013(a)) is amended by—

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

(2) striking "and" at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end therof the following new paragraphs:

"(3) $900,000, for the fiscal year ending September 30, 1985; and

"(4) $958,500, for the fiscal year ending September 30, 1986.".

(b) Section 214(b) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2013(b)) is amended by—

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

(2) striking out period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) adding at the end thereof the following new paragraphs:

"(3) $500,000, for the fiscal year ending September 30, 1985; and

"(4) $585,000, for the fiscal year ending September 30, 1986.".

SEC. 3. (a) Section 16(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1683(a))—is amended by—

(1) striking "to the President for transmittal"; and

(2) striking "June 15" and inserting in lieu thereof "April 15".

(b) Section 213(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2012(a)) is amended by—

(1) striking "to the President for transmittal"; and

(2) striking "June 15" and inserting in lieu thereof "April 15".

MOTION OFFERED BY MR. SLATTERY

Mr. SLATTERY. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. SLATTERY moves to strike out all after the enacting clause of the Senate bill, S. 2688, and to insert in lieu thereof the provisions contained in H.R. 5313, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to authorize appropriations for fiscal year 1985 to carry out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 5313) was laid on the table.

SMALL BUSINESS SECONDARY MARKET IMPROVEMENTS ACT OF 1984

Mr. NOWAK. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2375) to amend the Small Business Act to improve the operation of the secondary market for loans guaranteed by the Small Business Administration.

The Clerk read as follows:

S. 2375

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

SECTION 1. This Act may be cited as the "Small Business Secondary Market Improvements Act of 1984".

SEC. 2. Section 5 of the Small Business Act is amended by adding at the end thereof the following new subsections:

"(f)(1) The guaranteed portion of any loan made pursuant to this Act may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Administration shall establish, subject to the following limitations:

"(A) prior to the Administration's approval of the sale, or upon any subsequent resale, of any loan guaranteed by the Administration, if the lender certifies that such loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the regulations of the Administration, the Administration shall review and approve only materials not previously approved;

"(B) all fees due the Administration on a guranteed loan shall have been paid in full prior to any sale; and

"(C) each loan shall have been fully disbursed to the borrowed prior to any sale.

"(2) After a loan is sold in the secondary market, the lender shall remain obligated under its guarantee agreement with the Administration, and shall continue to service the loan in a manner consistent with the terms and conditions of such agreement.

"(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations.

"(4) Nothing in this subsection or subsection (g) of this section shall be interpreted to impede or extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to section 7(a) of this Act, the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to sections 5(e), 7(a)(6), or 7(a)(8).

"(g)(1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this Act, except those under section 7(a)(13): *Provided,* That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

"(2) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust or pool. In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool. Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

"(3) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this subsection.

"(4) The Administration shall not collect any fee for any guarantee under this subsection: *Provided,* That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2).

"(5)(A) In the event the Administration pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

"(B) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the portions of loans constituting the trust or pool against which the trust certificates are issued.

"(h) Upon the adoption of final rules and regulations, the Administration shall—

"(1) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section. Such central registration shall include, with respect to each sale, an identification of each lender who has sold the loan; the interest rate paid by the borrower to the lender; the lender's servicing fee; whether the loan is for a fixed rate or variable rate; an identification of each purchaser of the loan or trust certificate; the price paid by the purchaser for the loan or trust certificate; the interest rate paid on the loan or trust certificate; the fees of an agent for carrying out the functions described in paragraph (2) below; and such other information as the Administration deems appropriate;

"(2) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate pooling. Such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interest of the Government;

"(3) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this Act and to the purchaser of a trust certificate issued pursuant to subsection (g), information on the terms, conditions, and yield of such investment. As used in this paragraph, if the instrument being sold is a loan, the term 'seller' does not include (A) an entity which made the loan or (B) any individual or entity which sells three or fewer guaranteed loans per year; and

"(4) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsections (f) and (g) of this section.".

SEC 3. (a) Within ninety days after the date of enactment of this Act, the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 5(h)(1) of the Small Business Act, and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 5(h)(2) of such Act.

(b) Within nine months after the date of enactment of this Act, the Small Business Administration shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement this Act other than as provided for in subsection (a).

(c) The Small Business Administration shall not implement any of the provisions under section 5(g) of the Small Business Act, as amended, until final rules and regulations become effective.

SEC. 4. Section 10 of the Small Business Act is amended by adding at the end thereof the following new subsection:

"(h) The Administration shall transmit, not later than March 31 of each year, to the Committees on Small Business of the Senate and House of Representatives a report on the secondary market operations during the preceding calendar year. This report shall include, but not be limited to, (1) the number and the total dollar amount of loans sold into the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the rate is fixed or variable, and premium paid; (2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums, (3) the number and total dollar amount of pools formed; (4) the number and total dollar amount of loans in each pool; (5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable; (6) the number, face value, interest rate, and terms of the trust certificates issued for each pool; (7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and (8) an analysis of the information reported in (1) through (7) to assess small businesses' access to capital at reasonable rates and terms as a result of secondary market operations.".

SEC. 5. Section 4(c)(1)(B) and section 4(c)(2)(B) of the Small Business Act are each amended by inserting "5(g)," immediately after the word "sections".

SEC. 6. This act does not authorize the appropriation of any funds.

The SPEAKER pro tempore. Is a second demanded?

Mr. SMITH of New Jersey. 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 York [Mr. NOWAK] will be recognized for 20 minutes and the gentleman from New Jersey [Mr. SMITH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. NOWAK].

GENERAL LEAVE

Mr. NOWAK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on the Senate bill, S. 2375.

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

There was no objection.

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

□ 1230

Mr. Speaker, S. 2375 is designed to improve the secondary market for guaranteed loans of the Small Business Administration. This proposal, which was passed by the Senate on June 21, 1984, is virtually identical to H.R. 4773. The House Committee on Small Business unanimously approved H.R. 4773 on June 19, 1984.

As chairman of the Small Business Subcommittee on Tax, Access to Equity Capital and Business Opportunities for the past 5 years, I have consistently attempted to promote measures which will enhance the capital formation position of small business. In this capacity, I have become increasingly aware of the critical role of small business in the economic vitality of this country. There is no lack of statistics which indicate that small business is the Nation's greatest source of net new jobs and unquestionably the leader in innovation. In particular, statistics in recent years establish that small business creates about 80 percent of all the net new jobs in the U.S. economy.

Legislation to improve the SBA secondary market is especially important in a period of financial structural change. The primary objective of deregulation is to open competition in the financial service industry, while at the same time maintaining the soundness and integrity of the country's financial institutions. As these trends develop, it is essential that we closely monitor these changes by concentrating on achieving a balanced plan of financial deregulation to insure that small business continues to receive adequate capital at affordable prices.

At a time when small business continues to experience difficulty in obtaining needed capital, we cannot turn our backs on any vehicle which will ease the cash flow burden of small firms. The effects of the deregulation scenario is especially critical to small firms since small business has tradi-

tionally been denied access to commercial paper and bond markets, and has consistently relied on commercial bank lending as a primary source of credit.

In view of these occurrences in the financial services industry and the historical difficulties which small firms have experienced in capital information, I believe that this proposal to improve the secondary market for 7(a) guaranteed loans will help provide small business with a vital source of capital at reasonable rates.

Authorized by section 7(a) of the Small Business Act of 1953, the guaranteed loan program enables lenders to make long-term loans, to smaller firms which, in many cases, would be otherwise unavailable. The secondary market is an integral component of SBA's 7(a) Guaranteed Loan Program. Operating since 1972, the secondary market brings private and public sector interests together, by enabling lenders to sell the guaranteed portions of the SBA loan to an investor. This process provides lenders with an increase in liquidity and thereby encourages them to make larger loans for longer term periods. For example, a recent GAO survey of bankers indicated that SBA guaranteed loans tend to be larger, $118,000 on an average, as compared to an average for nonguaranteed loans of approximately $60,000. In addition, according to the GAO survey, most bank loans without SBA guarantees matured in less than 1 year, while 74 percent of SBA guaranteed loans matured in 6 years or more. Although the underlying concept behind the secondary market for these loans has been viewed by many as SBA's greatest contribution to small business capital formation, the secondary market is not greatly utilized, nor has it reached its potential. For example, one estimate indicates that less than 25 percent of 7(a) loans are presently sold through the operations of the secondary market.

Mr. Speaker, this legislation does not create a new program but rather implements a more effective utilization of an existing program by allowing the guaranteed portion of the 7(a) loan to be "pooled." The pooling concept, analogous to the operations of the secondary market for mortgages, will render these instruments more attractive to a broader range of institutional investors.

The implementation of a mechanism to improve the secondary market for guaranteed loans will ultimately result in an increase of bank participation in the Guaranteed Loan Program. This is true because banks would be provided with greater liquidity through the sale of loans in the secondary market.

In addition to giving the banks the opportunity to offer longer term loans for larger amounts, a more active secondary market will encourage lenders to make fixed rate loans, which are becoming increasingly unavailable to smaller firms.

Further, the argument that the increased utilization of the Guaranteed Loan Program will result in a significant budgetary outlay has absolutely no merit. The available funding for SBA guaranteed loans, as established by the congressional appropriations process, has not been totally expended in the last 3 years. For example, in 1982, the Congress appropriated $2.6 billion for guaranteed loans and the SBA utilized only $1.5 billion, while in 1983, the appropriations level as set by Congress was $2.5 billion and the SBA's annual guarantee utilization for that year was only $2 billion.

In summary, therefore, the bill provides the SBA with statutory authority to operate a secondary market. Further, this proposal would permit the SBA Administrator to authorize pooling of 7(a) guaranteed loans into large homogeneous trust certifcates. The legislation would facilitate a more effective oversight of the SBA secondary market operations through the requirement of central registration of the loans and trust certificates and by enhancing the disclosure process to potential investors. Finally, the proposal requires SBA to submit to Congress a detailed annual report on the operations of the secondary market.

Mr. Speaker, in conclusion, I would like to point out that this proposal had great bipartisan support. Mr. WILLIAMS of Ohio, who unfortunately was unable to be here today due to illness the distinguished ranking minority member of the subcommittee, is an original cosponsor and was instrumental in formulating this legislation. He has been a great help to the leadership of the committee, and I sincerely appreciate his cooperation. I am grateful to all the members of the subcommittee, who have worked very hard on this bill. Mr. ROEMER, Mr. VANDERGRIFF, Mr. BRITT, Mr. ECKART, Mr. OLIN, Mr. SMITH of New Jersey, and Mr. DREIER all have put in an awful lot of time trying to bring this bill to the floor.

Also, of course, any subcommittee has to have the cooperation of its full committee chairman, and Mr. MITCHELL certainly has provided that guidance in order to bring this measure here today. He has participated and brought to our attention the importance and the impact that this bill could have out in the small business community. The gentleman from Pennsylvania [Mr. MCDADE], the ranking minority member of the committee, of course, has been extremely cooperative in moving this legislative initiative. I would also like to thank the other cosponsors of this legislation: Mr. BEDELL, Mr. DAUB, Mr. SIMON, Mr. D'AMOURS, Mr. SMITH of Florida, Mr. HUGHES, Mr. WYDEN, Mr. SAVAGE, Mr. TRAXLER, Mr. GLICKMAN, Mr. MCNULTY, Mr. TAUKE, Mr. BOEHLERT, Mr. ROTH, Mr. MCKERNAN, Mr. FRANK, Mr. DAVIS, Mr. MORRISON, Mr. WOLPE, Mr. VANDER JAGT, Mr. EVANS of Illinois, Ms. KAPTUR, Mr. WORTLEY, Mr. GORE, and Mr. BILIRAKIS.

Mr. Speaker, I would also like to cite the following organizations who have expressed support for this proposal: the American Association of MESBICS, the National Association of Small Business Investment Companies, the National Small Business Association, the Smaller Business Association of New England, the Small Business Council of the U.S. Chamber of Commerce, the Small Business Legislative Council, the Small Business United, and the Small Business Development Center of the University of Massachusetts.

I strongly urge support for this important small business legislation.

The SPEAKER pro tempore (Mr. BOUCHER). The gentleman from New York [Mr. NOWAK] has consumed 9 minutes, and he has 11 minutes remaining.

Mr. SMITH of New Jersey. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of S. 2375, the Small Business Secondary Market Improvements Act of 1984.

Mr. Speaker, I would like to commend the distinguished subcommittee chairman, the gentleman from New York [Mr. NOWAK], for his leadership on this bill, as well as the distinguished gentleman from Maryland [Mr. MITCHELL], and note that the gentleman from Ohio, Mr. LYLE WILLIAMS, who could not be here today because of a broken leg, would have been and he strongly supports the bill. The gentleman from Pennsylvania, JOE MCDADE, the ranking member, also took a good leadership position on the passage of this bill during the committee process.

Mr. Speaker, S. 2375, the bill that has been substituted for the House bill, is virtually identical to H.R. 4773. It is a measure that I was an original cosponsor of and it passed out of our subcommittee unanimously and out of the full Small Business Committee without dissent. The major provisions contained in the bill, namely the secondary market and the pooling of guaranteed loans, are ideas that have been around for some time but were given a real shot in the arm by the recent report of Administrator Sanders' committee on capital access. That report, Mr. Speaker, stressed the need that both of these ideas be implemented by appropriate legislation to assist the small businesses of this Nation.

As a small businessman myself, Mr. Speaker, I wholly concur with the conclusions of the Small Business Capital Access Committee. This bill, I believe,

will be instrumental in lowering interest rates for many of our small businesses.

There are three principal advantages to this legislation, any one of which would, in and of itself, justify passage of this important measure.

First of all, this bill will provide for an increase, from the private sector, of funds available to small business. We anticipate that the private sector will respond favorably to the trust certificates and, as a result, moneys from major institutional investors will flow to small business.

Second, the strengthening of the secondary market and the availability of pooling will stabilize interest rates for small business. It is my belief that with a strong and viable secondary market, the local lending institutions will have a greater incentive to loan money to small businesses at fixed rates and for a longer period of time. This view, I would suggest, is supported by the recent GAO report entitled, "SBA's 7(a) Loan Guarantee Program: An Assessment of Its Role in the Financial Market," released last April.

Finally, Mr. Speaker, I believe that as the trust certificates gain greater acceptability and as the banks and other lending institutions become familiar with, and comfortable with, the operations of the second market, the interest rates that small businesses are currently forced to pay will be lowered. The interest rates will be lowered, of course, because of the greater availability of funds.

I would like to point out to my colleagues that this legislation does not authorize the appropriation of any new moneys. The administration has informed staff that this bill will have a minimal budget impact, and that is backed up by the report of the Congressional Budget Office.

Mr. Speaker, I am pleased to note that this legislation enjoys strong bipartisan support and has been endorsed by several leading small business organizations including:

Small Business Council of the U.S. Chamber of Commerce;

National Small Business Administration;

American Association of Mesbics;

National Association of Small Business Investment Companies;

Small Business Legislative Council; and

Small Business United.

I urge my colleagues to support S. 2375 and I reserve the balance of my time.

□ 1230

Mr. NOWAK. Mr. Speaker, I yield 3 minutes to the chairman of our full committee, the gentleman from Maryland [Mr. MITCHELL], who, as I stated before, has put in a great deal of time and provided countless hours of guidance on this matter.

Mr. MITCHELL. Mr. Speaker, I rise in support of the bill S. 2375, a bill to amend the Small Business Act to improve the operation of the secondary market for loans guaranteed by the Small Business Administration. At the outset I want to note that this bill is virtually identical to a House bill, 4773, which the House Small Business Committee considered and unanimously approved last week. There is a report available on the House measure.

As most of the Members are aware, there exists a secondary market for the sale of housing mortgages. By promoting and facilitating the sale of pools of housing loans to investors, the originating lender is then able to take the sales proceeds and use them over and over to make additional loans for homes.

Very simply, this small business bill is designed to do the same thing for small business. It permits brokers and others to buy that portion of small business loans which have an SBA guarantee, put them together in packages or pools, and then sell all or fractional parts of the pool to investors.

For the past decade SBA has been using a much less sophisticated system under which only the individual loans are sold to investors. This year we expect approximately $600 million to be sold to investors out of the more than $2 billion in SBA guarantees; with the new pooling concept, however, the amount which can be sold should increase substantially as the uncertainty as to the time of loan repayment—due to default or prepayment—is considerably reduced if the investor owns a share of a pool of a number of loans rather than all of one loan.

The only difference between the House bill and the Senate bill is a phrase inserted to prevent any possible misinterpretation of a borrower's rights. The House bill expressly provides that nothing in the bill may be interpreted to extinguish the borrower's right to prepay the loan or obtain a temporary suspension of repayments even if the loan is sold (1) to an investor or (2) to a broker who includes it in a pool. The Senate bill could be interpreted as preventing a misinterpretation only in the second instance. Clearly this is not the intent of either the House or Senate Small Business Committee and the Senate report so states, but inadvertantly the Senate did not change their bill before passage last Thursday. Rather than amend the Senate bill and necessitate further Senate action, we will accept the Senate language as I believe it really says the same thing as the House bill.

I want to congratulate and commend my colleagues and fellow committee members who worked so long and hard on this legislation, paticularly the subcommittee chairman, HENRY NOWAK, and the ranking minority member, LYLE WILLIAMS. Not only have they produced a bill deserving all of our support, but they have already worked out the language with the Senate so that we have virtually identical bills. We can accept the Senate measure, with its one technical difference, and thus this measure can be sent directly to the White House.

● Mr. DREIER of California. Mr. Speaker, I rise in support of S. 2375 and urge my colleagues to suspend the rules and pass this legislation creating a secondary market for SBA-guaranteed loans.

In the last few months, I have had the opportunity to review the President's State of Small Business Report for 1984. The one point that comes through very clearly is that the resiliency of small business has helped lead this Nation into our current economic recovery. There are currently 14 million small businesses in this country—2 million of them in my home State of California. Given the role that small business has played, I believe that it is incumbent upon us to see that this sector of our economy has the tools it needs to continue its strong performance. This legislation is just such a tool.

Both the Small Business Committee and the Subcommittee on Tax, Access to Equity Capital, and Business Opportunities have held extensive hearings on our companion bill, H.R. 4773. Testimony given by representatives of major banks across the country and various small business associations attest to the need and desirability of creating a secondary market for SBA-guaranteed loans. As currently organized, the secondary market for SBA-guaranteed loans is not widely utilized nor has it reached its potential. S. 2375 is drafted to build on the inherent strengths of the Guaranteed Loan Program by pooling smaller loans into homogeneous certificates. These pools can then be offered to institutional investors. This frees up capital allowing banks to lend and invest more. The result is increased activity by small business and an expanding economy for the Nation.

The Small Business Administration is given the authority to conduct a market for their guaranteed loans. Following normal procedures for this kind of activity, the lender remains obligated under its guarantee agreement with the administration to continue to service the loan consistent with prior terms and conditions. The SBA Administrator will guarantee the timely payment of principal and interest on loans contained in trust certificates for pools. An important part of this bill provides that there be no prepayment penalty on the loans. Both the House and Senate committees added

provisions that require an initial 2-year limit on contracts between the SBA and its agency selling the secondary loans. The agent must also provide a fidelity bond or other form of insurance to protect the SBA. And finally, with regard to disclosure there is an exemption for small banks that market three or less packages a year.

This is a sound piece of legislation that will assist small business in its efforts to continue our economic upturn. Both our committee and the Senate committee passed it unanimously. I hope the House will follow suit so we can send the bill on to the White House.

Thank you.●

● Mr. WILLIAMS of Ohio. Mr. Speaker, I want to take this opportunity first of all to acknowledge and thank our subcommittee chairman, Mr. NOWAK, for his fine and outstanding leadership on this bill. Second, I want to thank our chairman, Mr MITCHELL, and our ranking minority member, Mr. MCDADE, for their help and assistance with this legislation. Next I want to acknowledge the fine help and hard work that was put into this bill by the other members of the subcommittee: Mr. SMITH of New Jersey, Mr. DREIER, Mr. VANDERGRIFF, Mr. BRITT, Mr. ECKART, AND Mr. OLIN.

Mr. Speaker, I strongly support S. 2375 which is before us today. As has already been noted the bill is virtually identical to H.R. 4773 which was passed by the subcommittee and the full committee without opposition and it is a bill which enjoys strong bipartisan support.

This legislation will accomplish three things which are vitally important to small business in the United States. No. 1, it will increase the availability of funds from the private sector to small business, second, it will greatly encourage lenders to provide fixed-rate loans for a longer period of time to small businesses. And last, but certainly not least, it should lower interest rates to the small business person as the program gains greater acceptability in the marketplace.

For these reasons I believe that we should pass the bill before us today.●

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

Mr. NOWAK. 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 York [Mr. NOWAK] that the House suspend the rules and pass the Senate bill, S. 2375.

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.

H.R. 4773 was laid on the table.

IMPROVING THE PRESERVATION AND MANAGEMENT OF PRESIDENTIAL RECORDS

Mr. ENGLISH. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5584) to improve the preservation and management of Presidential records, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5584

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

SECTION 1. (a) Subsection (a) of section 2108 of title 44, United States Code, is amended—

(1) by inserting "(1)" after "(a)" in the first paragraph of such subsection;

(2) by inserting "(A)" after "public interest he may" in such paragraph;

(3) by inserting "(B)" after "archives system; and" in such paragraph;

(4) by designating the second paragraph of such subsection as paragraph (2) and by designating the five indented clauses in such paragraph as clauses (A) through (E), respectively;

(5) by striking out "and" at the end of the clause so designated as clause (D), by striking out the period at the end of the clause so designated as clause (E) and inserting in lieu thereof "; and", and by inserting after such clause (E) the following:

(F) a certification that such building and equipment (whether offered as a gift or made available without transfer of title) comply with minimum standards prescribed by the Archivist relating to suitability for use for archival purposes."; and

(6) by designating the third paragraph of such subsection as paragraph (3).

(b) Subsection (g) of section 2108 of title 44, United States Code, is amended—

(1) by inserting "(1)" after "(g)";

(2) by striking out "accept gifts of bequests of money or other property" and inserting in lieu thereof "solicit and accept gifts or bequests of money or other property";

(3) by inserting "an account in" before "the National Archives Trust Fund";

(4) by striking out "including administrative and custodial expenses as the Administrator determines" and inserting in lieu therof "for the same purposes and objects, including custodial and administrative services for which appropriations for the maintaining, operating, protecting, or improving Presidential archival depositories might be expended"; and

(5) by adding at the end thereof the following new paragraphs:

"(2) The Administrator shall provide for the establishment in such Trust Fund of separate endowments for the maintenance of the land, buildings, and equipment of each Presidential archival depository, to which shall be credited any gifts or bequests received under paragraph (1) that are offered for that purpose. Income to each such endowment shall be available to cover the cost of building operations, but shall not be available for the performance of archival functions under this title.

"(3) The Administrator shall not accept or take title to any land, building, or equipment under subsection (a)(1)(A), or make any agreement to use any land, building, or equipment under subsection (a)(1)(B), for the purpose of creating a Presidential archival depository unless the Administrator determines that there is available, by gift or bequest for deposit under paragraph (2) in an endowment with respect to that depository, an amount for the purpose of maintaining such land, buildings, and equipment equal to at least 20 percent of the sum of—

"(A) the total cost of acquiring or constructing such buildings and of acquiring and installing such equipment; and

"(B)(i) if title to the land is to be vested in the United States, the cost of acquiring the land upon which such buildings are situated, or such other measure of the value of such land as is mutually agreed upon by the Administrator and the donor; or

"(ii) if title to the land is not to be vested in the United States, the cost to the donor of any improvements (other than such buildings and equipment) to the land upon which such buildings are situated.".

(c) Paragraph (3) of section 2108(g) of title 44, United States Code, as added by subsection (b)(5) of this section, shall apply with respect to any Presidential archival depository created as a depository for the papers, documents, and other historical materials and Federal records pertaining to any President who takes the oath of office as President for the first time on or after May 9, 1984.

SEC. 2. Section 2305 of title 44, United States Code, is amended by inserting "solicit," before "accept, receive, hold, and administer".

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

The gentleman from Oklahoma [Mr. ENGLISH] 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 Oklahoma [Mr. ENGLISH].

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

The cost of keeping our former Presidents has received a great deal of attention in recent years. The cost has risen from approximately $65,000 in 1955 to an estimated $28 million this year. One element of that cost, and the focus of H.R. 5584, is the operation of the Presidential library system.

Mr. Speaker, I would note at this point that Presidential libraries are not really perks in the same sense as office space and staff allowances. These libraries are a valuable link in the chain of our Nation's documentary heritage—a heritage we share and in which we all take pride. Nevertheless, the libraries do cost money to operate—some $13 million last year.

It behooves us, therefore, to do what we can to limit the burden on the taxpayer of operating future and, to the extent possible, current, Presidential libraries.

Under existing law, facilities to be used as Presidential libraries are built with private funds and are then donated to the Federal Government. The entire cost of operating such facilities is then covered by an annual appropriation. After only 29 years since enactment of the Presidential Libraries

Act, there are already seven libraries and the system is likely to expand in the near future. Moreover, actual costs of the Presidential library system during this period have far outstripped the original cost estimate of $150,000 per library. As I mentioned previously, we're up to $13 million and counting for the current system.

The bill before you would shift the burden of ongoing building operations costs for future libraries from the taxpayer to endowment funds required to be provided by the same private parties who build and donate the library buildings.

H.R. 5584 requires that the gift of a Presidential library be accompanied by an endowment equal to at least 20 percent of the cost of constructing and equipping that facility. The earnings from the endowment would then be used to offset building-related operations costs. The proposal would be effective for any President taking the oath of office for the first time on or after May 9, 1984.

The bill also authorizes the establishment of endowments for existing libraries, and it clarifies the authority of the Archives Trust Fund to solicit, as well as accept, gifts and bequests.

Based on a lengthy, indepth examination of the Presidential library system by my Government Information, Justice, and Agriculture Subcommittee, I think this approach to funding future Presidential libraries represents the best opportunity to limit the burden to the taxpayer.

□ 1250

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. BROOKS], chairman of the Committee on Government Operations.

Mr. BROOKS. Mr. Speaker, let me first congratulate the gentleman on the leadership he has shown in introducing this legislation in which I have joined and congratulate the gentleman from Oklahoma on the way he has handled it and processed it and hopefully we will pass it today.

Mr. Speaker, I rise in support of H.R. 5584, to improve the preservation and management of Presidential records. H.R. 5584 would establish new guidelines for funding the operations costs of future Presidential libraries. Since their establishment on a statutory basis through the Presidential Libraries Act of 1955, the Presidential library system has made a valuable contribution to our Nation by providing a focal point for the documentary heritage of our Chief Executives. The 1955 act provided a structure for insuring that the papers of the Presidents can be organized and maintained so that they will be available for generations to come.

One unintended consequence of the establishment of a Presidential library system as part of our Nation's archives, however, has been tremendous growth in the cost of maintaining this system. Although it was estimated 20 years ago that the cost of the system would be approximately $150,000 per library per year, those costs reached an average of nearly $2 million per library in fiscal year 1983.

Nobody wants to shortchange history by putting undue restrictions on our Presidential libraries, but, at the same time, it is clear that we must get the costs of those libraries under control. H.R. 5584 serves that purpose in several ways.

It requires the establishment of an endowment equal to at least 20 percent of the cost of the library for Presidents taking office for the first time on or after May 9 of this year, and it requires the establishment of endowments within the National Archives Trust Fund for other Presidential libraries. The income from these endowments is to be applied to the building operations costs of that Presidential library.

In addition to the endowment provisions, H.R. 5584 requires the establishment of minimum standards to ensure that the building and equipment of future Presidential libraries are suitable for use for archival purposes. In addition, the bill clarifies the authority of the National Archives Trust Fund Board to solicit, as well as accept, gifts.

Mr. Speaker, H.R. 5584 is a sensible and workable bill which will help control mushrooming costs of our Presidential library system in the future.

I urge a positive vote on this measure.

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

Mr. Speaker, I rise, too, in support of H.R. 5584.

Mr. Speaker, almost 30 years have passed since the Congress enacted the Presidential Libraries Act authorizing the Administrator of General Services to accept the donation of land, buildings, and equipment for use for Presidential libraries or to enter into agreements with States or other institutions which would make facilities available for use as Presidential libraries.

At that time, the condition of the law was that the papers of a President were presumed to be his own personal property. Through the Presidential Libraries Act of 1955, a mechanism is provided to encourage former Presidents to donate their papers to the Federal Government for preservation in facilities located around the country. Those facilities would be provided through private donation, but the cost of their subsequent operation and maintenance would be provided through regular annual appropriations by the United States.

Well, that all seemed pretty good in 1955. This has been a beneficial arrangement for our former Presidents as well as for the citizens of the United States. The Presidents' papers are preserved in a facility dedicated to his public career, and citizens around the country have access to these facilities which gives them an opportunity to see firsthand the documents and the artifacts of those periods of our Nation's history about which they know only through news media accounts or what they have studied in recent history books; and, of course, these libraries have facilitated the research and writing of books and articles which help to more thoroughly understand the events which occurred during those Presidencies.

In 1978 then, Congress enacted the Presidential Records Act, which declared that the United States shall preserve and retain complete ownership, possession, and control of Presidential records beginning with the term of the current administration. Thus, with the advent of this administration, the U.S. Government acquired all the responsibilities of ownership of the Presidential records of this and future administrations. Those responsibilities include requiring the Archivist to the United States, upon the completion of the Presidential term, to assume responsibility for the custody, control, and preservation of and access to Presidential records of that President. The act requires the Archivist to deposit those Presidential records in a Presidential archival depository or other archival facility operated by the United States; that is what the Presidential Records Act requires. We are seeking to modify that here today.

Finally, the act imposes upon the Archivist the affirmative duty to make such records available to the public as rapidly and as completely as possible, consistent with the provisions of that act.

Accordingly, I felt that as we considered legislation to amend the Presidential Libraries Act, we had to keep in mind that the Government of the United States had assumed full responsibility for the records of the current President and all future Presidents. We also had to keep in mind that no President has ever been obliged to provide a repository for his papers, either before or since the passage of the Presidential Records Act.

We were very cognizant of the criticism that was rising and has been rising over the growth in the cost of the Presidential Library Program, as well as other costs of supporting former Presidents. But here we were dealing with something that was already established in statutory law as a responsiblity of the United States. Accordingly, we looked very carefully at the actual costs of operating and

maintaining these libraries, and in a committee report 2 years ago suggested several ways of cutting the growth in the cost of these facilities.

Now, H.R. 5584 is the product of a great deal of refinement in the almost 2 years since the issuance of that committee report. H.R. 5584 would amend the Presidential Libraries Act of 1955 in essentially three substantive ways that have been described by the gentleman from Oklahoma, the chairman of the subcommittee.

First, all future Presidential libraries would have to comply with minimum standards prescribed by the Archivist of the United States relating to suitability for use for archival purposes.

Second, the Archivist would be required to establish separate endowments in the National Archives Trust Fund for each Presidential library, in which gifts and bequests and the proceeds from admission fees and sales would be deposited, and requiring that the income of the endowment would be applied to building operations costs of the respective Presidential libraries.

And third, with respect to Presidential libraries of Presidents taking office for the first time on or after May 9, 1984, an amount equal to at least 20 percent of the acquisition cost of the Presidential library would have to be donated for deposit in the endowment in the National Archives Trust Fund for the purpose of providing for basic operating costs for that library.

H.R. 5584 also amends two provisions of title 44 of the United States Code to clarify the authority of the Administrator of General Services and the National Archives Trust Fund to solicit, as well as to receive, gifts or bequests. That has been cloudy in the past.

H.R. 5584 is supported by the administration. It does not go as far as some Members, including this one, would like to have gone; but it is a pragmatic and a proper approach to the concerns that have been raised and growing, and I believe it will be successful in limiting the growth in the cost of the Presidential libraries and the Presidential Libraries System.

Before yielding back, I would like to particularly express my commendations and thanks to our subcommittee chairman, the gentleman from Oklahoma [Mr. ENGLISH] for the thoughtful, pragmatic, and cooperative approach that he and his staff have taken on this issue, which has brought us to this point here today.

I would urge prompt passage of H.R. 5584.

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

Mr. ENGLISH. Mr. Speaker, I yield whatever time he may consume to the gentleman from Nevada [Mr. REID].

Mr. REID. Mr. Speaker, I rise in support of H.R. 5584, which requires, as we have learned, donors of Presidential libraries to also provide for an endowment equal to at least 20 percent of the amount spent for acquiring the land, building, and equipment for the library. These endowments would be held in trust by the Federal Government, and income from the endowments would be used to help pay for the costs of operating the library buildings. This requirement would apply to libraries of all Presidents taking office for the first time after May 9, 1984.

The need for this legislation, Mr. Speaker, is clear. Presidential libraries may present the visible, lasting expense of former Presidents, creating the impression of an imperial ex-Presidency. Over half the total amount we spend on former Presidents is associated with the operation and maintenance of Presidential libraries. Although $13 million is a relatively small amount in the world of multibillion-dollar appropriations, the costs will surely escalate out of control, if in fact they have not already. What began in 1955, as the gentleman from Oklahoma [Mr. ENGLISH] indicated as a $64,000 appropriation, has grown near 220 times that size in less than 28 years.

On February 23 of this year, the House Committee on Government Information, Justice, and Agriculture of the Government Operations Committee, chaired by my distinguished colleague, the gentleman from Oklahoma [Mr. ENGLISH], held a hearing on various proposals aimed at limiting the rising costs of the Presidential library system, including a bill I introduced to terminate the authority of the Administrator of General Services to accept land, buildings, and equipment as a gift to the United States for the purpose of creating a Presidential archival depository.

□ 1300

The subcommittee reported after hearings on all of these bills H.R. 5584 to address this area of excessive Federal spending and still allow the maintenance of these historical documents.

I would congratulate Chairman ENGLISH on the manner in which these hearings were conducted. All bills were exhaustively reviewed. I agree with Chairman ENGLISH that this vehicle now before this body is the appropriate vehicle to use to get at some of these costs.

I would mention that there are other measures that are now pending and will be pending. There is a matter that will appear in a general appropriation bill that the gentleman from Indiana [Mr. JACOBS] will offer an amendment next week that will again cut these costs considerably.

I think of all of the mail that I have received in this congressional session I have had no more fervent response than the response to the bill that I introduced, which is the matter that is now before us, in fact, as a result of the hearings that the gentleman from Oklahoma [Mr. ENGLISH] held. These bills that were introduced that have terminated in this bill I think arrive at a root problem that is facing this country today, and that is the rising costs and the excessive costs of our ex-Presidents which is certainly something that has drawn the response of those people that sought to write to me.

I would also mention, Mr. Speaker, that I believe we have reached a point where we recognize the need for a change in policy and I have joined as a cosponsor of the bill introduced by the gentleman from Oklahoma [Mr. ENGLISH]. The legislation before us today, H.R. 5584, will produce significant savings in future facilities and is one step toward curbing the skyrocketing costs associated with maintaining former Presidents.

Again I commend the committee through its chairman, the gentleman from Texas [Mr. BROOKS], and the subcommittee chairman, the gentleman from Oklahoma [Mr. ENGLISH]. I think this proposal deserves the support of all of our colleagues.

Mr. KINDNESS. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. MCEWEN].

Mr. MCEWEN. Mr. Speaker, I would like to make a couple of comments before this legislation is approved.

During the most recent presentation and discussion the point was made that the costs of our ex-Presidents are growing and I think it is appropriate at this juncture, as I look into the press gallery and see no one present that it be noted that when we are speaking about libraries we are not talking about the costs of former Presidents. It has been pointed out by the gentleman from Ohio that these records were formerly personal and private property but in the interests of history they have now been made public.

It is true that libraries are expensive, but I would submit that ignorance is expensive as well. If one goes to the Presidential libraries they will observe that all of the discussions that took place at the peace conferences, at Yalta, or discussions on the SALT-I Treaty or the SALT-II negotiations, as much as they can be declassified, the correspondence and communications between not only just the President but the entire administration and heads of government are available to the American people.

I tend to be somewhat offended by periodic news reports that appear in

the news media in which they somehow intimate that making this information available and public to the citizens of this country, making this information available for research and for the benefit of history is somehow or another a cost which this Nation cannot bear. Anyone who has visited a library lately and goes from shelf to shelf and from room to room observes that there is a great deal of variety that is maintained in the public domain in our various libraries. I submit that keeping the information that is in these libraries available to the people is an appropriate expenditure of the Federal Government. It should not be ridiculed and should not be demeaned, and it is an asset that this country can well afford and should maintain.

I thank the gentleman from Ohio for yielding.

Mr. ENGLISH. Will the gentleman yield?

Mr. McEWEN. I will be glad to yield.

Mr. ENGLISH. I think the gentleman makes an excellent point.

There is one further point I would like to make with regard to Presidential libraries, and I think this may be what has disturbed many of our citizens in the past. As pointed out, the cost of maintaining our former Presidents, roughly half of it is operating costs on the Presidential libraries. Certainly we all recognize and understand the importance not just to our scholars and to historians, but to all of us to understand the importance of those papers and what they mean to us.

But the real question I think that we come down to is how will those papers be stored. Will they be stored in a warehouse as one former President presently has his papers stored or will they be in the palaces that are far more than libraries for researchers, but are really displays of momentoes and other items that certainly attract and have the interest of many of our people.

So I think that between the two extremes it comes down to the question, and I think this Nation has wisely required in the past that such libraries be built by private funds. Certainly we have our citizens that are willing to contribute to that. But I think by the same token, as these libraries expand the costs also have expanded, so I think this is a good balanced approach to the point, and I think the gentleman is making an excellent point about the importance of this material to our Nation. There is no question about it.

Mr. McEWEN. I thank the gentleman for his comments and could not agree more. I think he has struck a very excellent compromise in recognition of the service that is performed by these libraries, and an understanding that it be maintained in a manner in which it is commensurate with the financial resources of this Nation.

I strongly support the bill and commend both the ranking member and the chairman for his fine legislation.

Mr. ENGLISH. Mr. Speaker, I would want to commend the gentleman from Ohio [Mr. KINDNESS] for the tremendous support and cooperation and the fine job he did on this legislation. Certainly he helped us overcome many very large hurdles and we deeply appreciate that.

● Mr. HORTON. Mr. Speaker, I rise in support of H.R. 5584 and ask unanimous consent to revise and extend my remarks.

Mr. Speaker, the National Archives and Record Service currently operates seven Presidential libraries, located in the communities which each of those Presidents called home at one time or another in their lives. They are vital repositories for the preservation of the documentary history of the periods in which they served their country. Not only historians but persons from all walks of life visit these libraries to see firsthand the documents and artifacts that they otherwise know about only secondhand through news media accounts and what they have learned at school.

These libraries are built entirely with privately donated funds. Once they have been built and turned over to the National Archives, regular annual appropriations pay for their operation and maintenance. It now costs the U.S. Government $13 million annually to operate these Presidential libraries and care for the papers of the Presidents for whom there is no library yet—specifically, Presidents Nixon, Carter, and Reagan.

Some concern has been raised in recent years over the growth in the cost of these libraries. Certainly there are more libraries than was estimated when the Presidential Libraries Act of 1955 was passed. But an assassination, a resignation, and a decision not to seek a second term all resulted in more Presidents during that span of time than this Nation had previously experienced. And each of these men had long careers of public service leading up to their service as President of the United States.

The Government Operations Committee has long been concerned with the preservation of the papers of our Presidents. The original Presidential Libraries Act of 1955 was proposed to this House by the Committee on Government Operations and, in the 1970's, it recommended legislation which was enacted which provided for the preservation of the papers of the Nixon administration and for the permanent U.S. Government responsibility for Presidential records, beginning with the current administration, by way of the Presidential Records Act of 1978.

As part of its regular responsibility for oversight of the National Archives and Records Service, the Subcommittee on Government Information, Justice, and Agriculture thoroughly examined the operations of the Presidential Libraries and, in 1982, prepared a report issued by the Committee on Government Operations which made several recommendations of administrative actions which might be taken with respect to the costs of operating the libraries.

One of those recommendations was that the donation of future Presidential libraries be accompanied by the donation of a sum of money, an endowment, the income to which would cover the cost of operation and maintenance of that Presidential library. While the Administrator of General Services responded that the proposal was feasible and within his authority to require, he felt the wiser course was for Congress to amend the Presidential Libraries Act to provide such a requirement.

That is what your Committee on Government Operations has recommended in this legislation. H.R. 5584 amends the Presidential Libraries Act of 1955 to require that: First, all future Presidential libraries comply with minimum standards prescribed by the Archivist of the United States relating to suitability for use for archival purposes; second, separate endowments be established in the National Archives Trust Fund for each Presidential library in which gifts and bequests and the proceeds from admission fees and sales shall be deposited and the income to which applied to the building operations costs of the Presidential libraries; and third, with respect to the Presidential libraries of Presidents taking office for the first time on or after May 9, 1984, an amount equal to at least 20 percent of the acquisition cost of the Presidential library shall be donated for deposit in the endowment in the National Archives Trust Fund for that library.

H.R. 5584 also amends two provisions of title 44 of the United States Code to clarify the authority of the Administrator of General Services and the National Archives Trust Fund to solicit, as well as receive, gifts or bequests. Based on a legal opinion rendered to former GSA Administrator Gerald Carmen, Mr. Carmen was reluctant to engage in fundraising campaigns on behalf of the National Archives and the Presidential libraries without congressional clarification of his authority to do so.

H.R. 5584 is supported by the administration. It is, so far as I know, the first and only piece of legislation pertaining to former Presidents which the administration has supported. The broad bipartisan support for this legislation within the Committee on Gov-

ernment Operations is a direct result of the very thorough, thoughtful, and cooperative effort put behind this bill by the members and staff of the Committee. I would especially like to commend the Subcommittee on Government Information, Justice, and Agriculture, its chairman, GLENN ENGLISH, and its ranking minority member, TOM KINDNESS, for the very thorough way in which, over the past several years, they have reviewed the Presidential libraries program and the concerns that have been raised regarding its cost, and then come up with practical and effective recommendations on how to reduce the growth in the cost of the Presidential libraries system of the National Archives.

I commend this measure to my colleagues and urge its passage.●

GENERAL LEAVE

Mr. ENGLISH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5584, the bill under consideration.

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

There was no objection.

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

Mr. ENGLISH. 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 Oklahoma [Mr. ENGLISH] that the House suspend the rules and pass the bill, H.R. 5584, 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.

CONVEYANCE OF CERTAIN NATIONAL FOREST SYSTEM LANDS TO CRAIG COUNTY, VA

Mr. DE LA GARZA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5183) to direct the Secretary of Agriculture to convey certain National Forest System lands to Craig County, VA, as amended.

The clerk read as follows:

H.R. 5183

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of Agriculture shall, upon receipt by the Secretary of an amount equal to the fair market value of the real property described in subsection (b), convey by quitclaim deed to Craig County, Virginia, all right, title, and interest of the United States in such described real property.

(b) The National Forest System land referred to in subsection (a) is located in Craig County, Virginia, and is described as:

Tract J-26A, containing 52.00 acres, acquired from G. W. Layman and F. H. Dame by deed dated February 17, 1936, recorded in Book 2, page 35, Craig County, Virginia, the recordation date being March 9, 1936.

The SPEAKER pro tempore [Mr. KILDEE]. Is a second demanded?

Mr. COLEMAN of Missouri. 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. DE LA GARZA] will be recognized for 20 minutes and the gentleman from Missouri [Mr. COLEMAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. DE LA GARZA].

Mr. DE LA GARZA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5183. The bill directs the Secretary of Agriculture to convey a 52-acre parcel of national forest land to Craig County, VA. The conveyance would be made when Craig County pays the United States the fair market value of the land.

The purpose of the bill can be very concisely stated. The county needs the land for governmental purposes. The Forest Service does not need the land. In fact, it has found the tract to be difficult to manage and uneconomical for national forest purposes. Thus, sale of the land to the county accommodates the needs of both the Forest Service and Craig County, VA.

The land that would be conveyed under the bill is part of the Jefferson National Forest and was acquired by purchase from private parties in 1936. The county has held a special-use permit from the Forest Service since 1973 to use 10.5 acres of the tract as a sanitary landfill. There has been no charge for this use. The county seeks to acquire the 52 acres to expand the sanitary landfill for possible use as a disposal site for sludge from a sewage treatment plant the county plans to construct with a grant from the Environmental Protection Agency.

This tract is isolated from other National Forest System lands. It is surrounded on all sides by private land. Because of these factors and its relatively small size, the tract is not a manageable unit for the U.S. Forest Service. Further, the Department of Agriculture has reported that this property contains no deposits of valuable minerals. There has been an application for an oil and gas lease on the tract. The application is being held without action pending completion of the proposed sale. Such leases are common in the area, but are ordinarily for speculation only because the potential for oil and gas development is low. There are no coal deposits on the property.

Craig County has been using a portion of this parcel for landfill purposes under a permit from the U.S. Forest Service. The county desires to expand the landfill. Alternative sites in the area are difficult to locate, at least in part because most of the land in the county is owned by the United States. The county has easements that provide access to this site so long as it is used for landfill purposes.

H.R. 5183, as amended by the committee, would provide that once Craig County pays fair market value and the tract is conveyed to it, the county will retain all right, title, and interest in the property that was previously held by the United States. The committee concluded, as recommended by the Department of Agriculture, that no public purpose reverter clause should be included in the sale. Customarily, reverters are retained by the United States when conveyances of Federal real property are made to State or local governments. They usually become effective if the property is put to other than public use. However, in this case, the parcel is relatively small in size and has very little mineral potential. Further, the United States will receive fair market value for the land that will take account of whatever mineral potential it has. The committee believes that in these circumstances, protection of the public interest does not require the reversion provision. The committee's action in this matter does not signal any abandonment of the general policy that public purpose reverter provisions should be included when conveyances of federally owned real property are made to State or local government units.

Mr. Speaker, I ask the Members to join in support of this modest bill that serves the purposes of units of both the Federal and State governments.

Mr. Speaker, I yield such time as he may consume to the gentleman who represents the area in question, the gentleman from Virginia [Mr. BOUCHER].

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Mr. BOUCHER. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of H.R. 5183, legislation I introduced to authorize the Forest Service to convey 52 acres of Federal land to Craig County, VA.

I want to thank the gentleman from North Carolina [Mr. WHITLEY], for his expeditious handling of the bill in subcommittee and the gentleman from Texas [Mr. DE LA GARZA], for promoting passage of the bill in the full committee and for yielding this time to me today.

The parcel in question is currently being utilized by Craig County as a

solid waste landfill under a special use permit from the Forest Service, Passage of H.R. 5183 will ensure that the county can continue this use of the tract and that the county can manage the land as its interests require.

Totally surrounded by private land, this parcel is not useful to the Forest Service's programs or objectives. The property has been designated as excess property by the Department of Agriculture.

The continued operation of this site by the county as a sanitary landfill is vital to the interests of the county's residents. The Forest Service owns fully 55 percent of the land area in Craig County, and this fact severely limits the county's options for locating public facilities. Clearly, it is in the county's interest to acquire title to this tract so that its continued operation as a landfill can be assured.

The bill provides that fee simple title will be conveyed to the county upon the payment by the county of fair market value for the tract. The county has budgeted a sufficient sum for purchase of the tract and is prepared to pay fair market value.

In view of the fact that the parcel is not useful to the accomplishment of the Forest Service's objectives, and in view of the clear need of the county to acquire the land, I commend this measure to my colleagues and urge its approval.

In conclusion, I again want to thank the gentlemen from Texas and North Carolina for their help with H.R. 5183. I also want to acknowledge the outstanding efforts of Mr. Zane Jones, chairman of the Craig County Board of Supervisors, and Mr. Jeffery Johnson, Craig County administrator, in developing this legislation and in testifying in support of its passage.

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

Mr. DE LA GARZA. Mr. Speaker, I reserve the balance of my time.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5183, as reported by the Committee on Agriculture, by a voice vote in the presence of a quorum on June 22, 1984, would direct the Secretary of Agriculture to convey certain National Forest System lands—approximately 52 acres—to Craig County, VA, upon receipt by the Secretary of payment of the fair market value of such land.

The land to be conveyed is part of the Jefferson National Forest and was acquired from private parties in 1936. It is surrounded on all sides by privately held land and is isolated from other forest system lands. Craig County has held a special-use permit, at no charge, from the Forest Service since 1973 to use 10.5 acres of the tract for a sanitary landfill. The county seeks the 52 acres to expand the landfill.

The reverter clause provision normally attached to such land sale bills, if the property is put to other than public use by State or local governments, was deleted in this bill at the recommendation of the Department of Agriculture because it was stated that "no public interest" would be served by such reverter clause. The deletion of that clause from the sale documents in this instance is not to be taken as any indication of an abandonment of the general policy that public purpose reverter provisions should be included when conveyance of federally owned real property are made to State or local governments.

There being no objection to the form or content of this legislation, testimony in favor of the sale, as contained in this bill, by the Department of Agriculture, no further use of the land proposed by the U.S. Forest Service, and receipt of the fair market value for the land by the United States, it is recommended to the Members that this bill do pass as reported by the committee.

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

Mr. DE LA GARZA. 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. DE LA GARZA], that the House suspend the rules and pass the bill, H.R. 5183, as amended.

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

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that all Members may have 5 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 Texas?

There was no objection.

VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT

Mr. SWIFT. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1250) to provide that registration and polling places for Federal elections be accessible to handicapped and elderly persons, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1250

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 "Voting Accessibility for the Elderly and Handicapped Act".

PURPOSE

SEC. 2. It is the intention of Congress in enacting this Act to promote the fundamental right to vote by improving access for handicapped and elderly individuals to registration and polling facilites for Federal elections.

SELECTION OF POLLING FACILITIES

SEC. 3. (a) Within each State, except as provided in subsection (b), each political subdivision responsible for conducting elections shall assure that all polling facilities for Federal elections are accessible to handicapped and elderly voters.

(b) Subsection (a) shall not apply to a facility—

(1) in the case of an emergency, as determined by the chief election officer of the State; or

(2) if the chief election officer of the State—

(A) determines that all potential polling facilities have been surveyed and no accessible facility is available, nor is the political subdivision able to make one temporarily accessible, in the area involved; and

(B) assures that any handicapped or elderly voter assigned to an inaccessible facility will be assigned, upon advance request of such voter (pursuant to procedures established by the chief election officer of the State), to the nearest accessible facility.

(c)(1) Not later than December 31 of each even-numbered year, the chief election officer of each State shall report to the Federal Election Commission, in a manner to be determined by the Commission, the number of accessible and inaccessible polling facilities in such State on the date of the preceding general Federal election, and the reasons for any instance of inaccessibility.

(2) Not later than April 30 of each odd-numbered year, the Federal Election Commission shall compile the information reported under paragraph (1) and shall transmit that information to the Congress.

SELECTION OF REGISTRATION FACILITIES

SEC. 4. (a) Each State or political subdivision responsible for registration for Federal elections shall provide a reasonable number of accessible permanent registration facilities.

(b) Subsection (a) does not apply to any State that has in effect a system that provides an opportunity for each potential voter to register by mail or at the residence of such voter.

REGISTRATION AND VOTING AIDS

SEC. 5. (a) Each State shall make available registration and voting aids for Federal elections for handicapped and elderly individuals, including—

(1) instructions, printed in large type, conspicuously displayed at each permanent registration facility and each polling facility; and

(2) information by telecommunications devices for the deaf.

(b) No notarization or medical certification shall be required of a handicapped voter with respect to an absentee ballot or an application for such ballot, except that medical certification may be required when the certification establishes eligibility, under State law—

(1) to automatically receive an application or a ballot on a continuing basis; or

(2) to apply for an absentee ballot after the deadline has passed.

(c) The chief election officer of each State shall provide public notice, calculated to reach elderly and handicapped voters, of the availability of aids under this section, assistance under section 208 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-6), and the procedures for voting by absentee ballot, not later than general public notice of registration and voting is provided.

ENFORCEMENT

SEC. 6. (a) If a State or political subdivision does not comply with this Act, the United States Attorney General or a person who is personally aggrieved by the noncompliance may bring an action for declaratory or injunctive relief in the appropriate district court.

(b) An action may be brought under this section only if the plaintiff notifies the chief election officer of the State of the noncompliance and a period of 45 days has elapsed since the date of notification.

(c) Notwithstanding any other provision of law, no award of attorney fees may be made with respect to an action under this section, except in any action brought to enforce the original judgment of the court.

RELATIONSHIP TO VOTING RIGHTS ACT OF 1965

SEC. 7. This Act shall not be construed to impair any right guaranteed by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

DEFINITIONS

SEC. 8. As used in this Act, the term—

(1) "accessible" means accessible to handicapped and elderly individuals for the purpose of voting or registration, as determined under guidelines established by the chief election officer of the State involved;

(2) "elderly" means 65 years of age or older;

(3) "Federal election" means a general, special, primary, or runoff election for the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commisioner to, the Congress;

(4) "handicapped" means having a temporary or permanent physical disability; and

(5) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

EFFECTIVE DATE

SEC. 9. This Act shall apply with respect to elections taking place after December 31, 1985.

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

The gentleman from Washington [Mr. SWIFT] will be recognized for 20 minutes and the gentleman from Kansas [Mr. ROBERTS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Washington [Mr. SWIFT].

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

Mr. Speaker, H.R. 1250 is a bill to improve access to registration and polling facilities for elderly and disabled voters.

For the last several years, a coalition of more than 50 groups, known as the Coalition for Voter Accessibility, has been working toward passage of this legislation. Members of the coalition range from the Paralyzed Veterans of America to the Leadership Conference on Civil Rights, and from the American Association of Retired Persons to the American Council of the Blind.

They argue, correctly, that the right to vote is among the most fundamental rights of citizens in this country, and that we should seek to eliminate all barriers—whether they be procedural or physical—that limit people's ability to exericise that right.

The Task Force on Elections and the Committee on House Administration have worked hard, Mr. Speaker, to reduce some of those barriers. At the same time, we have consulted extensively with State and local election officials to minimize any administrative or financial burdens that might be imposed on them by this legislation.

We believe that we developed a good, solid compromise that will accomplish both of those worthy goals. The compromise now in H.R. 1250 consists of several major parts.

First, it addresses polling places. It requires that, as of December 31, 1985, polling places used in Federal elections should generally be accessible. Many, if not most, of them can be made accessible simply by moving to accessible parts of inaccessible buildings, or by moving from inaccessible buildings to accessible ones.

For example, the chairman of the board of election commissioners in Cook County, IL, estimated recently that the county can improve its record from one-third accessibility to two-thirds, simply by relocating to existing handicapped accessible sites.

If an accessible site is not readily available, it may be possible—and it is quite acceptable under this bill—to make one temporarily accessible. Often barrier-free design features, such as ramps, can be provided relatively inexpensively.

One committee witness, Mr. Joe Johnston from Thurston County, WA, testified that:

> By getting the service clubs, the veterans organizations, [and] various [other] groups involved, we actually converted all 162 polling places in [the] county for less than $2,000, of which * * * $100 or less * * * was the only cost to the county.

The committee expects, Mr. Speaker, that the situation will be similar in other parts of the country—that it will be possible in most cases to provide polling sites that are accessible to disabled voters.

There will be those instances, however, in which that will not be possible. The committee recognizes that some local election jurisdictions will encounter serious difficulty trying to provide accessible polling sites.

In those cases, Mr. Speaker, this bill does provide for exemptions to be granted. The chief election officer of a State may grant an exemption to the accessibility requirement:

If local election officials have surveyed all potential polling facilities and are unable either to find an accessible facility that is available, or to make one temporarily accessible;

And any elderly or handicapped voter assigned to an inaccessible facility will be assigned, upon request, to the nearest accessible facility.

This very reasonable approach ensures, Mr. Speaker, that all elderly and handicapped voters who want to vote at the polls on election day will be able to. But it does so without requiring State and local election officials to make every single polling place accessible.

Second, this bill addresses registration sites. It requires a reasonable number of accessible registration facilities within each jurisdiction responsible for registration. Exempted from this requirement are those States that have either mail registration or registration in people's homes, since in those States voters need not go in person to register.

The third major portion of this bill provides registration and voting aids for elderly and handicapped voters. The aids include instructions printed in large type at each registration and polling facility, and information available by telecommunications devices for the deaf. These aids will enable particularly those who are hearing impaired to obtain registration and voting assistance.

Finally, the committee proposes to eliminate the requirement for notarization on absentee ballots for handicapped people, and for most medical certifications as well.

If a State or local election jurisdiction fails to meet its responsibilities under this legislation, enforcement is through court action. However, before a suit may be filed, a period of 45 days must have elapsed since the plaintiff notified the chief election officer of the State of the intention to file suit. The committee hopes that in that 45-day period an accommodation short of court action can be reached.

And, if it is necessary to go to court, judgments are limited to declaratory or injunctive relief. They may not include monetary damages or attorney's fees. Our primary goal in this section is to ensure compliance, not to punish or impoverish local election jurisdictions.

Two other points I should touch on just briefly, Mr. Speaker, before I finish. First, in one of many efforts to include the maximum amount of flexibility in this legislation, the definition of what constitutes accessibility, is left to the chief election officer of each State.

This is to ensure that the guidelines will not be in conflict with other accessibility guidelines in use in that particular State.

Second, the bill requires that after each general election, each chief election officer should report to the Federal Election Commission the number of accessible and inaccessible polling sites in the State. The FEC will, in turn, report the information to Congress.

This survey will indicate how much progress is being made in improving accessibility at polling places. The information will be useful, both to the States—many of which are already taking steps to improve the electoral procedures available to elderly and handicapped voters—and to the Congress.

Mr. Speaker, I would like to close by saying that I think we have a very workable piece of legislation here that will significantly improve voting accessibility for elderly and handicapped voters, but that will be possible for State and local election officials to implement smoothly.

We heard testimony and had meetings with officials from States as diverse as South Carolina, Minnesota, Utah, and Washington; from States as big as California and New York; and from States as small as Rhode Island.

We have taken their testimony and incorporated the vast majority of their suggestions.

Finally, I would like to commend the original sponsors of this bill, particularly the gentleman from New York [Mr. FISH] and the gentlemen from Pennsylvania [Mr. COYNE and Mr. WALGREN]. They have been most cooperative and helpful throughout our work on this bill, which we greatly appreciate.

This is a good bill, Mr. Speaker, and I urge all my colleagues to support it.

Mr. Speaker, during committee consideration of H.R. 1250, the text of the bill, H.R. 5762, was substituted for the original text of H.R. 1250. There were a number of cosponsors on both H.R. 1250 and H.R. 5762, but only the cosponsors of H.R. 1250 are listed on the reported bill.

As a result, I would like to note for the record that additional Members who cosponsored H.R. 5762, which is now the text of H.R. 1250, include in addition to myself, Mr. HAWKINS, Mr. FRENZEL, Mr. THOMAS of California, Mrs. VUCANOVICH, Mr. LAFALCE, Mr. SMITH of Florida, Mr. MCHUGH, Mrs. JOHNSON, Mrs. HOLT, Mr. MCGRATH, Mr. BADHAM, Mr. STUDDS, Mr. REID, Mr. FLORIO, and Mr. DURBIN.

THE ASSOCIATION OF ELECTION COMMISSION OFFICIALS OF ILLINOIS,
June 22, 1984.

Re handicapped voter accessibility, H.R. 5762.

Hon. AL SWIFT,
U.S. House of Representatives, Washington, DC.

DEAR CONGRESSMAN SWIFT: On behalf of the Association of Election Commission Officials of Illinois and the Chicago Board of Election Commissioners, I want to congratulate you and your committee on the proposed substitute for H.R. 1250 (H.R. 5762) to provide equal access to voting rights. I have heard many favorable comments on these proposals from other election authorities.

This proposal represents a realistic and effective approach to guaranteeing that our handicapped and elderly citizens be brought into the mainstream of the electoral process and that no person be denied the right to vote because of their age or disability.

I assure you that we are anxious and ready to lend any assistance that we can to assure passage of this legislation in its proposed form. If there is anything I personally or the Association can do, please do not hesitate to ask.

I also would like to thank your staff for their fine work and research involved in this legislation and the problem of providing equal voting opportunities for the elderly and handicapped. I especially want to single out Kathy Jarvis, who was so helpful and cooperative.

Certainly, all persons who are concerned about equal access to voting rights should be pleased and satisfied with the work of your committee, and you are to be commended.

The Chicago Board of Election Commissioners feels that it is a very workable bill, and we forsee minimal problems in its implementation.

Thank you for your many considerations and cooperation.

Very truly yours,
MICHAEL E. LAVELLE,
President.

□ 1320

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

Mr. Speaker, I rise in support of H.R. 1250, as amended. This compromise is the result of three hearings and several meetings with representatives of the handicapped coalition and State and local election officials. The bill was unanimously reported from our committee.

There are several important changes from the original bill. The chief State election officials shall proscribe guidelines for accessibility rather than the U.S. Attorney General. Additionally, there are two provisions that permit an exemption to the accessibility requirement. The first is an emergency exemption. The committee heard testimony from Chicago election officials relating their experience during a major snow storm that required them to relocate 200 precincts at the last moment. The second exemption can be granted by the chief election official if all potential polling places are surveyed and they are unable to meet the accessibility requirement and if they allow any elderly or handicapped voter, upon advance request, to be reassigned to another polling place.

The committee also removed the requirement that paper ballots be provided in each polling place as many jurisdictions use punch cards as absentee ballots. The bill permits the voter to obtain assistance from an individual of their choice so long as the person is not either a representative of the voter's union or the voters employer. Additionally, the bill provides that there should be at least one place in the State that individuals who are hearing impaired can call for information on registration and voting.

The original bill required that all registration sites be accessible. This provision was changed to exempt those States with mail registration and to only require States to make a reasonable number of registration places accessible.

Mr. Speaker, the minority believes this is a fair compromise and should go far to improve access to registration and polling places. The bill passed unanimously in committee and I know of no objection to it. I would urge its adoption.

Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. TAUKE].

Mr. TAUKE. Mr. Speaker, I thank the gentleman for giving me an opportunity to raise some questions relating to the legislation.

If I could have the attention of the gentleman from Washington. Perhaps he would be able to assist me in understanding this bill.

First of all, let me just say that in my own State of Iowa we have been quite concerned about this issue and have attempted to establish some methods to deal with the problems of accessibility to voting. On the registration side we have postcard registration, which I understand is something encouraged by this legislation.

When it comes to voting day, we have two kinds of provisions. The first, of course, in addition to the access to polling places, the first is that we have curbside voting for those who might not be able to get into the polling place. For example, an individual can drive up to the polling place and two election officials can come out from the polling place to the curbside to help that voter. We also have, in order to help voters who may, for example, have difficulty seeing the ballot, allow them to take someone into the voting booth with them.

My concerns are whether these standards that we have in Iowa are sufficient in order to meet the requirements of this act.

I wonder if the gentleman from Washington can tell me if, for example, cubside voting is sufficient in order to make a precinct qualify as accessible under this bill.

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

Mr. TAUKE. I yield to the gentleman from Washington.

Mr. SWIFT. I thank the gentleman for yielding.

There is nothing that would preclude that to be used, but it would be up to the voter. Curbside voting by

itself would not be adequate. The chief elections officer of the State would have to be persuaded that that polling place could in no other place be made accessible and then the voter would have the option of being, if it could not be made accessible in any way either because of cost or some other factor, then the voter would have to have the option of being reassigned to a polling place that was physically accessible.

Mr. TAUKE. Now, how do you deal with the State constitutions that require that voters vote in the precinct in which they reside?

Mr. SWIFT. If the gentleman would yield further, that is one of the reasons for the delay in the effective date. This does not go into effect until December 1985. We give 2 years for States to make those adjustments.

Mr. TAUKE. In my own State we cannot change the State constitution without having an amendment passed by two successive general assemblys and then put on the ballot. So it is impossible to amend the State constitution within 2 years.

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

Mr. TAUKE. I yield to the gentleman from New York.

Mr. FISH. I thank the gentleman for yielding.

This problem that some State constitutions, as opposed to State laws, require that a voter vote in no place other than that to which he has been assigned came to our attention just late last week. Obviously we do not want a situation where a voter goes to an accessible polling place in a Federal election and then in the years in which there is no Federal election, but a local election, have to return to an inaccessible polling place. This issue is being dealt with in the Senate. We expect it to be taken care of in the Senate bill in an amendment. I am very sure that the House will accept the Senate amendment.

Mr. TAUKE. I thank the gentleman for his comments.

My concern generally is and I guess it is one that we ran into in the State of Iowa when we looked at this issue is that you have a balance. In a rural area you can on the one hand encourage more voting places so that people have something close to their home. So they are driving 5 miles instead of 50 miles in order to vote.

Or, if you make the restrictions on polling places severe, you will have fewer polling places and you will have them accessible to all the voters if they can drive 10 or 20 or the 30 miles in order to get there.

I just hope that in this act as it moves forward that there will be every effort made to insure that the current State laws which have been made in an effort to deal with this problem have an opportunity to be examined and will, in as many instances as possible, permit the State to comply with this act.

□ 1330

Let me ask a couple other questions, if the gentleman from Washington will give me his attention.

On page 5—and this may be clarified in the committee report which I have not had time to digest—there is a section which suggests that each State shall make available registration and voting aids for Federal elections for handicapped and elderly individuals, including information by telecommunication devices for the deaf.

Could the gentleman explain to me what that means and how many of these devices must be available?

Mr. SWIFT. If the gentleman will yield, yes, the devices are called TDD devices, and the use of an 800 number in a State, the purpose of this law would be complied with by having one.

Mr. TAUKE. So if a State then has one of these devices, they will be OK?

Mr. SWIFT. I did indicate that if you had an 800 number; in other words, it has to be accessible. But if someone clear across the State could call toll-free that single place, that would be sufficient to comply with this provision of the law.

Mr. TAUKE. What kinds of information must be on that? Do they have to have, for example, all of the local candidates listed on that information, or on that device, or is this more information about how you register, how you go about voting?

Mr. SWIFT. If the gentleman will yield, it is the latter type of information that we are most concerned with—how can you register, where can you register, where is my precinct, those kinds of questions.

Mr. TAUKE. Finally, could the gentleman tell me if in any instance the State official responsible for handling voting related issues can assign any of the requirements that are contained in this act to local officials? For example, in my own State, county auditors are the local election officials, and they have the responsibility for conditions in each county. Can the State chief election official or chief election officer ask the county officials to assure, for example, that handicapped or elderly voters are assigned to an accessible facility, receive that information from the local officials and have that constitute adequate information for the chief election official of the State to certify that to the Federal officials?

Mr. SWIFT. If the gentleman will yield, the answer is yes.

Mr. TAUKE. I thank the gentleman for his answers. I think that they do allay some of my concerns. I congratulate the author of the bill and the members of the committee for their effort to deal with the issue. I do hope that as this moves forward that the State constitution problem will be addressed and that an effort will be made to look more carefully at some of the State laws that have been designed to meet these needs, particularly in the rural areas, to see if the act can be structured in a way which allows those State laws to meet the requirements of the act.

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

Mr. SWIFT. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. COYNE].

Mr. COYNE. Mr. Speaker, the right to vote is guaranteed by the Constitution. However, the right to vote and the ability to vote are not necessarily the same. For approximately 35 million elderly and handicapped Americans, this right has been dependent on their ability to navigate physical barriers. I am proud to have been an original cosponsor of H.R. 1250, the Voting Accessibility for the Elderly and Handicapped Act, a measure which is intended to correct this situation.

To understand the importance of this legislation, imagine that you are confined to a wheelchair and arrive at your polling place on election day, only to discover that it is located on the third floor of the building and no elevator is available. In varying degrees, this scenario is repeated many, many times each election day. The ability to cast a vote should not be stymied by a flight of stairs.

H.R. 1250 is aimed at improving the accessibility to registration and polling facilities for Federal elections to handicapped and elderly individuals. This legislation provides that each State political subdivision responsible for conducting elections shall assure that all polling facilities for Federal elections are accessible to handicapped and elderly voters. If all potential polling facilities have been surveyed, and no available site is accessible, or can be made temporarily accessible, handicapped and elderly voters assigned to an inaccessible facility will be assigned, upon request, to the nearest accessible facility. Supplemental voting and registration aids, such as large-type instructions and information by telecommunication devices for the deaf, will be made available. Notarization and medical certification for absentee ballots will, in general, no longer be required of handicapped voters.

As Judge Leonard Staisey from Pittsburgh, who is himself handicapped, said when he appeared before the Task Force on Elections to testify concerning voting accessibility legislation then before the committee:

It affords to those of us who are handicapped a real opportunity to participate in elections and to come in from the edge of

our society into the mainstream of American political life. I have no doubt that the handicapped and elderly will actively participate in this new dimension in living * * *.

The right to vote should not be contingent upon two strong legs, perfect vision, or hearing. We all lose when access to the polls is denied to any eligible voter. I urge my colleagues to vote in favor of H.R. 1250.

Mr. SWIFT. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. WALGREN], a cosponsor of the legislation.

Mr. WALGREN. I thank the gentleman for yielding.

Mr. Speaker, I want to add my support to this bill and urge my colleagues to be supportive of it. I am particularly pleased that the House of Representatives is considering H.R. 1250, known as the Voting Accessibility for the Elderly and Handicapped Act, and I think we ought to stop and pause, to think in our own body how this House would not be considering this bill if it were not for the special efforts of the chairman of the committee of jurisdiction, Mr. SWIFT, and the particular interest that the gentleman from New York [Mr. FISH] has brought to this legislation. Oftentimes nothing happens in the Congress of the United States, and these gentlemen are responsible for something very good happening in this area today.

It should go without saying that the right to participate in government is fundamental to a democracy. But we have found that there are subtle and not so subtle barriers that have too often discouraged many handicapped and elderly citizens from going through the process of registering and the process of voting. The bill today would require that essentially all polling places in Federal elections be accessible and in States without mail or door-to-door registration that a reasonable number of registration facilities be provided, along with the notice and the information that will be necessary to access them.

We need this bill really because it is fair. Justice in the old Indian sense of the word has something to do with asking us to walk a mile in the moccasins of another to understand their view of the world. And I think we should all remember that we are temporarily able bodied. Those of us who are temporarily able bodied are often insensitive to the obstacles faced by people with particular handicaps. We often do not stop to think how much energy, pure energy, it takes for some people with special disabilities to get out and about and how a small barrier is really an effective barrier blocking them from participating in something such as elections in our country.

Sometimes polling places are located on third and fourth floors, inaccessible to wheelchairs. The levels of information on the voting machine may be simply too high for somebody who keeps his seat in a wheelchair to read. These are things that we often do not think about because in many ways we have always done it that way in the past. And particularly the location of voting places has always historically been that way, but certainly we ought to rethink those kinds of obstacles that we are presenting to people with special handicaps.

I think, too, this is an important bill because it goes to the very heart of the standing of citizens in our society. Since coming to the Congress, I do not think I have been impressed by anything more than the fact that in many ways it is not so much who is elected to Congress but what the quality of the citizen relationship with that person, whoever it may be, is.

I remember the poem by Robert Frost, around the time of the Kennedy inauguration, had something to do with we were a nation realizing our potential, but in a sense we as citizens were withholding ourselves from our future as a nation.

In many ways the problems of this country are largely those that our public officials are not driven by our citizens in a proper way, and we do not want to put any barriers in front of our citizens that would block them from realizing the potential that citizens have on an individual basis in this democracy.

So the bill goes to the very standing of a citizen in the process, the act of voting which ties that citizen together by human nature with those who happen to be elected, and this bill takes very important steps in making that be as full as it possibly can.

The disabled and the elderly do not want to be relegated to freight elevators of disenfranchised by structures and processes that are designed only for the able bodied, and our form of government literally will be the poorer if we do not enhance the participation of everyone, and especially those who face special barriers in the day-to-day activities of life as we know it.

We should be encouraging participation and not discouraging it, and this bill goes a long way to realizing that participation by many individuals in our society. I rise in strong support of the bill, and compliment those who have been so important in enabling it to happen, and I urge my colleagues to support it.

Mr. ROBERTS. Mr. Speaker, I yield 5 minutes to the author of the bill, my friend and colleague, the gentleman from New York [Mr. FISH].

Mr. FISH. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in strong support of H.R. 1250. In my years in Congress, I have worked closely with civil rights organizations on major legislative initiatives seeking to expand and protect individual rights. In my view, the most important right anyone can express is the right to vote. The Congress has long recognized voting as one of the fundamental privileges of all Americans, and throughout our history this right has been expanded. During the debate on the Voting Rights Act extension in 1982, which continued and strengthened the guarantees of equal opportunity to vote for minority citizens, we recognized another significant segment of our population, the handicapped, had not been able to fully participate in the electoral process. We are talking about 35 million elderly and handicapped. An amendment to the Voting Rights Act permits the blind and disabled to receive assistance in voting in Federal elections. This provision was helpful, but not enough to overcome the barriers to registration and voting for the handicapped and elderly—specifically how to get to and enter polling places in order to receive the assistance permitted by the Voting Rights Act.

In 1982, I introduced the first version of the legislation we are discussing today. The Voting Accessibility Coalition and congressional supporters were able to get hearings on the version introduced in the 98th Congress, H.R. 1250, last July. Now, almost 1 year later, we are on the verge of approving this legislation. As with all civil rights bills, this is a bipartisan effort and contains compromises on all sides—from the handicapped and elderly organizations and from State and local election officials. I am particularly grateful to the Task Force on Elections, its members and staff, for working out this agreement and for keeping in mind the primary purpose of voting accessibility legislation—that all Americans have an equal chance to vote.

Chairman SWIFT of the Task Force on Elections deserves particular credit for his determination to see this legislation to fruition. Without his leadership, his skill, and patience, we would not be here today. The Voting Accessibility Coalition is likewise to be commended for their understanding of problems and costs involved in mandatory 100 percent compliance and their willingness to accommodate the concerns of State election officials.

Mr. Speaker, the need for this legislation is clear. Handicapped and elderly voters face impediments in the form of physical barriers that make it difficult and sometimes impossible for them to vote in Federal elections. Impediments as simple as a hill leading to the polling place or steps into a building often prevent people in wheelchairs from reaching the voting booth. Pathways which are poorly lit or a long distance from the street create problems for those elderly and handicapped who have difficulty walk-

ing. Oral or large-type instructions for the blind and visually impaired and written instructions for the deaf are provided in only a few jurisdictions in the United States.

Some may cite the fact that absentee ballots are available everywhere, and this provides ample opportunity for those unable to reach the polls to participate in the voting process. Voting absentee is not the answer. The elderly and handicapped want to participate fully with other citizens in casting their ballots. Absentee ballots render them invisible. They must vote before election day, without the benefit of last-minute information that may determine their choice. The application process is often complicated and time consuming. Although this process is streamlined by H.R. 1250, the testimony before the Task Force on Elections made it clear that full participation at the polls was by far preferred over the use of absentee ballots.

H.R. 1250 requires that each political subdivision within each State assure that polling places be accessible for Federal elections. The accessibility requirements do not apply under specific circumstances: In the case of an emergency, as determined by the chief election officer of the State, or for areas where all polling facilities have been surveyed, and no accessible facility is available, and any elderly or handicapped voter will be reassigned, upon the voter's request, to the nearest accessible facility. It is intended that these exceptions be a last resort.

At the end of each even-numbered year, the chief election officer of each State shall report to the Federal Election Commission the number of accessible and inaccessible polling facilities in such State. This information, when compiled, shall be transmitted to the Congress.

H.R. 1250 also permits States to establish guidelines for accessibility. The committee report notes that each State should examine its current handicapped regulations and modify them where necessary to insure compliance with the requirement of accessibility "for the purpose of voting or registration."

Since voters can register anywhere, as opposed to being assigned to a specific site to vote, States are required to provide a reasonable number of accessible registration sites. Private homes are exempted from this requirement, as are States which rely solely on mail registration.

To assist voters at registration and polling sites, supplemental aids, including large-print instructions and information by telecommunications devices for the deaf are required. Notice calculated to reach elderly and handicapped voters notifying them of these voting aids, the availability of voter assistance under the Voting Rights Act, and procedures for voting by absentee ballot are required by H.R. 1250.

The hearing record demonstrated a great deal of differences among the States regarding medical certification and notarization for absentee ballots. H.R. 1250 eliminates the need for notarization. States may still help out handicapped voters by requiring initial medical certification in order to obtain an automatic absentee ballot in future years. Medical certification may also be required when the deadline for applying for an absentee ballot has passed, as in the case of a medical emergency.

Enforcement of the Voting Accessibility for the Elderly and Handicapped Act is achieved by either the Attorney General or an individual aggrieved by noncompliance bringing a suit in Federal court for declaratory or injunctive relief. In order to permit an opportunity for compliance and to avoid unnecessary court action, plaintiffs may file suit only 45 days after notifying the chief election officer of the State of the complaint.

Finally, this bill would take effect at the end of 1985, permitting States to modify their election laws in time for the 1986 Federal election.

Mr. Speaker, H.R. 1250 does not supersede other laws—it supplements them. If other Federal laws already require a particular building or program to be accessible, the narrow scope of this legislation does nothing to diminish the existing obligation.

This measure also represents a beginning in the effort to facilitate full access to the democratic process for millions of disabled and elderly voters. It constitutes a floor, not a ceiling, on the voting rights of disabled and elderly Americans. The States can and should enact even stronger legislation that is aimed at eliminating all of the barriers which discourage and even prevent physically impaired individuals from voting.

Essentially, Congress is establishing a principle of mandatory accessibility which is to be carried out by the States. The chief election officer of each State will be responsible for establishing guidelines for accessibility, conducting the survey of polling places, and consulting with local election officials on how to implement this act. A great deal of flexibility has been built into H.R. 1250.

Mr. Speaker, I know of no opposition to this legislation. I urge my colleagues to support H.R. 1250.

□ 1340

Mr. ROBERTS. Mr. Speaker, I thank the gentleman for his contribution.

● Mr. BIAGGI. Mr. Speaker, one of the most unacceptable forms of discrimination, which continues to exist in this Nation, is the disenfranchisement of millions of elderly and handicapped citizens who are unable to vote because of inaccessibility to voting facilities.

The House has before it today an important bill, one I am proud to cosponsor, which will take some important steps in eliminating this discrimination. H.R. 1250, the Voting Accessibility for the Elderly and Handicapped Act, establishes a number of requirements designed to improve access to both registration and polling facilities for the actual process of voting.

Specifically, the bill requires all polling places for Federal elections be made accessible to handicapped and elderly voters. The only exception to this would be in those cases where all potential polling places have been surveyed and no accessible facility can be made available. However, any elderly or handicapped voter who requests can be reassigned to the nearest accessible polling place.

The measure also requires that a reasonable number of permanent registration facilities accessible to the elderly and handicapped be made available within each local jurisdiction responsible for voter registration.

Another important dimension of this bill is its requirement that special voting aids be made available for handicapped and elderly individuals, including instructions printed in large type at registration facilities and availability of information on voting and registration through telecommunication devices for the deaf. In addition, public notice about the availability of these aids must be published before election.

As a means to help ensure that these provisions are in fact enforced, the bill does allow an aggrieved party, or the Justice Department on behalf of such a party, to file a suit to obtain a court order to remedy violations or to force compliance.

The Congress has a long and proud history of enacting laws aimed at opening up the voting process for those of our citizenry who were denied on the basis of race, sex, or age. Women were afforded full voting rights through constitutional amendment. The Voting Rights Act of 1965 and its amendments have opened up new opportunities for blacks to vote. Finally, the voting age was lowered to 18 to afford these people this important right. In each case, a remedy was developed to combat a form of discrimination. So, too, do we approach our consideration of H.R. 1250 which also seeks to combat discrimination—this one caused by inaccessibility to the voting place.

H.R. 1250 should be viewed from another context as well. Just as in the case of another bill we are considering today, House Concurrent Resolution 321—dealing with early projections of elections—our purpose must continue

to be to find ways to stimulate increased voter participation. I have spent a great deal of time in recent years trying to advance several proposals, all with the expressed purpose of increasing voter participation. In our last Presidential election, we saw a paltry 53.9 percent of the eligible voters actually participating—a dangerously low figure. Surveys point to a variety of reasons for those who choose not to participate, but normally one of the main ones is inaccessibility, either of a physical variety, such as what we seek to remedy today, or inaccessibility related to convenience of voting times and/or location.

I urge passage of this bill and would like to see it serve as a catalyst for additional action on other bills which would improve upon our record in this important area.●

● Mr. FORD of Michigan. Mr. Speaker, I rise today in favor of H.R. 1250, which will guarantee that the 40 million disabled and handicapped Americans will be able to exercise their constitutional rights to vote in Federal elections. For far too long these citizens have faced hardships and barriers at the polling place. They have been denied one of their most fundamental rights and responsibilities because of physical, legal, and social barriers. H.R. 1250 will ensure that these practices no longer continue.

This bill does not require any expenditure of Federal dollars and allows State and local governments broad flexibility in determining how to meet the voting needs of the handicapped and elderly. At the same time if provides maximum protection of disabled Americans who want to participate in the democratic process. Under the provisions of H.R. 1250:

All polling places in Federal elections must be accessible, unless no accessible facility is available and no available site can be made temporarily accessible;

In States without mail or door-to-door registration, a reasonable number of accessible permanent registration facilities must be provided;

The number of inaccessible polling facilities and the reasons therefor must be reported to Congress;

States must take available and give public notice about registration and voting aids, such as large print instructions and access to voting information by telecommunications devices for the deaf [TDD's]; and

Handicapped voters no longer need to obtain notarization in order to vote by absentee ballot, and there is no medical certification of such ballots under most circumstances. The bill also allows for legal action against election officials if its provisions are not followed.

I urge my colleagues to join me in supporting this long overdue legislation which extends to all elderly and disabled citizens what should be the right of every American.●

● Mr. FAUNTROY. Mr. Speaker, I rise in support of H.R. 1250, the Voting Accessibility for the Elderly and Handicapped Act. This legislation mandates that by December 31, 1985, registration and polling places for Federal elections be accessible to handicapped and elderly persons. This requirement could be waived in cases where all potential polling places have been surveyed and no accessible facility can be made available, provided that any elderly or handicapped voters who so request are reassigned to the nearest accessible polling place.

The bill also provides that absentee ballots be made available for handicapped voters with no requirement for notarization or medical certification. Medical certification may be required, however, to receive absentee ballots on a continuing basis or after an application deadline has passed.

H.R. 1250 specifies that its requirements would be enforceable through lawsuits, brought either by the aggrieved party or by the U.S. Department of Justice, provided that the plaintiff first notifies the States' chief election officer and that a period of 45 days has elapsed since the notification. The bill stipulates, however, that lawsuits may be brought only to seek a court order remedying the violations, and not to seek monetary damages or attorney's fees.

Mr. Speaker, I strongly urge my colleagues to support this important legislation which would further extend the right to vote to all citizens.●

● Mr. MURPHY. Mr. Speaker, I rise in support of H.R. 1250. This piece of legislation addresses a problem basic to the vitality of any democracy; namely maximizing the voter participation of its citizenry. Our country's track record in terms of voter turnout is disturbing. This point has been well documented in recent years and countless research papers have explored the reasons behind low voter turnout. Troubling as this phenomenon of low voter turnout may be, there is a portion of that lack of turnout which is truly tragic and that is the fact that there are elderly and handicapped persons out there who don't vote, not because they don't want to, but because for one reason or another, they are physically unable to vote. H.R. 1250 addresses this problem in a reasonable and responsible way.

Voting is the one visible act by which the individual chooses one's leadership, endows it with power, expresses one's own views on the conduct of Government, and holds those in public office accountable to the will of the populace. Voting not only links the elected official to the governed, it also serves as a gatekeeper to any number of rights that the individual may have attained. Because the right to vote in a free and unimpaired manner preserves other basic civil and political rights, it is imperative that elderly and handicapped persons who want to vote are not penalized by the physical inaccessibility of the polling place. In recent years we have gained a great deal of knowledge in the area of accessibility. Through the use of inexpensive temporary ramps and the simple common sense of locating polling places in buildings that are by necessity accessible, for example auto show rooms, H.R. 1250 can be implemented successfully and without major financial expenditures.

A measure which improves voter participation improves the quality of Government. Elderly and handicapped persons who want to vote, should be able to vote alongside their able-bodied peers. H.R. 1250 accomplishes this objective and I am proud to stand in support of it today.●

● Mr. GILMAN. Mr. Speaker, I rise in support of the measure now before us, H.R. 1250, introduced by my friend and colleague, the gentleman from New York [Mr. FISH]. I was pleased to cosponsor this bill which has been endorsed by over 55 national organizations, every one of which I am certain will continue to support the rights and privileges of all handicapped and aging Americans.

This pending legislation requires that all polling and registration facilities be accessible to handicapped and elderly voters, with certain exceptions. Furthermore, each State is required to make available registration and voting aids for these individuals and establish judicial relief for noncompliance.

Voting has heretofore been a difficult and sometimes impossible task for many elderly and handicapped citizens nationwide. Architectural barriers, such as steps or inadequate doorways, often prevent those in wheelchairs from reaching designated voting booths. Only a few jurisdictions provide oral instructions for the blind and written instructions for the deaf. Even as all States allow the physically handicapped to vote by absentee ballot, critics liken the inconvenience and expense in casting ballots to a poll tax, requiring doctor's statements, ballot notarization, and early ballot submission to verify actual handicap.

Moreover, State laws vary substantially in their respective requirements for structural accessibility. Close to 30 States do not provide special consideration and revision by the House Administration Committee and its Task Force on Elections. The compromise provisions contained in the current version of the bill will require no expenditures of Federal funds, will be workable for State and local election officials, and will meet most of the needs of physically impaired voters. Applying to Federal elections taking

place after December 31, 1985, this revised compromise bill has been cosponsored by every member of the Task Force on Elections.

Essentially, it is the intent of Congress to facilitate, through this legislation, the inherent right to vote granted to all citizens. By improving access for handicapped and elderly individuals to registration and polling facilities for Federal elections, we can help in assuring this most basic of constitutional freedoms.

Accordingly, I urge my colleagues' strong support for this measure, as millions of disabled and elderly voters depend upon our actions in ensuring their unimpeded participation in the democratic process of our Nation.●

● Mrs. SCHNEIDER. Mr. Speaker, I rise today to express my strong support for H.R. 1250, legislation which will provide that registration and polling facilities for Federal elections be accessible to handicapped and elderly voters. As an original cosponsor of this bill, I believe that senior citizens and disabled individuals must be encouraged to participate in the democratic process. Clearly, without the benefit of wheelchair ramps, large type voting instructions, and readily available absentee ballots, many of these individuals are unable to exercise their right to vote. I feel strongly that we must pass H.R. 1250, and make an important step toward the voting rights for all Americans of legal age.

I am happy to say that in my own State of Rhode Island, current law already sets minimum standards for handicapped accessibility to polling places. The bill before us today will further benefit disabled and elderly Rhode Islanders by:

Requiring States to provide large type voting instructions as well as information available by telecommunications for the deaf.

Eliminating the requirement for notarization on absentee ballots for handicapped citizens, and for most medical certifications as well.

Providing for enforcement through court action.

Mr. Speaker, the need for this legislation is clear. I urge my colleagues to join me in voting for its passage.●

● Mr. LAFALCE. Mr. Speaker, on December 3, 1982, the United Nations General Assembly unanimously approved a resolution adopting a "World Program of Action for Disabled Persons." This World Program of Action calls upon governments, international and national organizations, and people everywhere to increase participation of disabled persons in national and community life.

In 1984, Congress has the opportunity to increase the participation of the handicapped as well as the elderly in a most treasured right in our national life—the right to vote—by approving the Voting Accessibility for the Elderly and Handicapped Act. Indeed, voting is a fundamental right constitutionally guaranteed to all American citizens.

However, because of inaccessible registration and polling places, many of the 35 million disabled and elderly Americans are precluded from exercising that right. They face innumerable barriers when attempting to register or vote. Granted, all States permit physically handicapped voters to vote by absentee ballot, but the inconveniences and expenses associated with casting absentee ballots often discourage the most patriotic citizens. For example, some States require the submission of doctor's statements with absentee ballots; others mandate that the ballots be notarized; still others require that the ballots be cast so early that voters are deprived of the right to make decisions based on last minute information and impressions. Often the handicapped voter is unaware that the polling place is inaccessible until Election Day, when it is too late to obtain an absentee ballot.

The Voting Rights for the Handicapped and the Elderly Act has the support of all concerned, including disability rights, senior citizen and civil rights organizations as well as State and local election officials. The legislation requires each political subdivision in the States responsible for conducting elections to provide an accessible polling and registration facility for every handicapped or elderly voter. If the registration or polling place in the handicapped or elderly voter's immediate facility is inaccessible that voter, upon request, will be assigned to the nearest accessible facility. This provision assures that the handicapped or elderly voter is accommodated without undue expense for the political subdivision.

Supplemental voting and registration aids such as instructions printed in large type, conspicuously displayed at each permanent registration and polling facility and information by telecommunications devices for the deaf, will be made available. Notarization and medical certification for absentee ballots will, with some exceptions, no longer be required of handicapped voters.

Our Nation's commitment to assist the handicapped and elderly has been one of our greatest social accomlishments—one which every American can look upon with great pride. Included in that list of accomplishments is the continual progress made in extending voting rights to all of its citizens. It is imperative that we ensure all handicapped citizens the opportunity to effectively participate in the democratic process.

As a cosponsor of H.R. 5762, the Voting Accessibility for the Elderly and Handicapped Act, I urge my colleagues to approve this important legislation.●

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

Mr. SWIFT. 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 Washington [Mr. SWIFT] that the House suspend the rules and pass the bill, H.R. 1250, 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 of the bill was amended so as to read: "A bill to improve access for handicapped and elderly individuals to registration and polling facilities for Federal elections.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SWIFT. 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 Washington?

There was no objection.

VETERANS' ADMINISTRATION PHYSICIANS' MILITARY RETIREMENT PAY WAIVER

Mr. EDGAR. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4694) to amend title 38, United States Code, to authorize the Administrator of Veterans' Affairs to waive mandatory reductions in military retirement pay of certain retired military officers recruited for employment by the Department of Medicine and Surgery.

The Clerk read as follows:

H.R. 4694

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4107, title 38, United States Code, is amended by adding at the end the following new subsection:

"(i) The Administrator may authorize an exception to the restrictions in subsections (a), (b), and (c) of section 5532 of title 5 if necessary to recruit a well qualified doctor of medicine or osteopathy for a position in the Department of Medicine and Surgery which otherwise cannot readily be filled.".

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

The gentleman from Pennsylvania [Mr. EDGAR] will be recognized for 20 minutes and the gentleman from Arkansas [Mr. HAMMERSCHMIDT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. EDGAR].

GENERAL LEAVE

Mr. EDGAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4694.

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

There was no objection.

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

Mr. Speaker, H.R. 4694 is legislation which would authorize the Administrator of Veterans' Affairs to waive mandatory reductions in military retirement pay of certain retired military officers recruited for employment by the Veterans' Administration's Department of Medicine and Surgery.

Prior to January 11, 1984, the Civil Service Reform Act of 1978 authorized the Office of Personnel Management to delegate to the Veterans' Administration the authority to grant exceptions to retired or retainer pay reductions when necessary to meet special or emergency employment needs which result from a severe shortage of well qualified candidates in positions of medical officers which otherwise cannot be readily met. This authority expired on January 11, 1984.

Between July 1980 and January 1984, the VA exercised its authority prudently and approved exceptions for only 26 appointments. This number is low because exceptions were only approved when the retired military physician was in a scarce medical specialty, was being considered for a senior management position, or when there was a severe recruitment/retention problem in filling a particular position. By reinstating the authority to waive the retired or retainer pay reductions in specific cases, we would restore the VA's ability to compete with non-Federal employers for these experienced physicians. The Veterans' Administration has assured the Committee on Veterans' Affairs that it would continue to exercise this authority prudently.

I urge my colleagues to support this legislation.

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

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

Mr. Speaker, I rise in support of suspending the rules and passing H.R. 4694. This bill restores the authority of the Veterans' Administration to recruit retired military medical officers without forcing them to take a reduction in their military retirement pay. Previous authority expired in January of this year.

The VA has had this authority for a number of years. It was used sparingly and judiciously, and only in those instances where outstanding doctors could otherwise not have been recruited. I am confident that, if H.R. 4694 is passed, the VA would exercise that same caution and care in the future.

Mr. Speaker, the Congressional Budget Office and the Veterans' Administration report that this bill has no significant costs. It was unanimously reported by the House Veterans' Affairs Committee and I urge its passage.

I congratulate the gentleman from Pennsylvania, Mr. EDGAR, the chairman of the Subcommittee on Hospitals and Health Care, for his leadership on this bill. I also commend our chairman, SONNY MONTGOMERY, for his continuing efforts to improve the health-care delivery system of the Veterans' Administration.

● Mr. MONTGOMERY. Mr. Speaker, I rise in strong support of H.R. 4694. I want to thank the chairman of our Subcommittee on Hospitals and Health Care, the distinguished gentleman from Pennsylvania [Mr. EDGAR], and the very able ranking minority member of the committee, the gentleman from Arkansas [Mr. HAMMERSCHMIDT], for focusing attention on an issue that is of concern to the members of the Veterans' Affairs Committee and the Veterans' Administration.

Mr. Speaker, this bill is not costly. The few positions that would be affected in the Department of Medicine, however, are key positions and it is important that we pass the bill. As the gentleman from Pennsylvania has stated, the bill would extend authority to allow VA to bring in well qualified individuals to fill several important positions that otherwise might not be filled.

Mr. Speaker, I also want to thank my distinguished friend and colleague from Michigan Mr. [FORD], chairman of the Post Office and Civil Service Committee, for his cooperation in this matter. Although all positions covered in the bill are in the Veterans' Administration, realizing the subject matter contained in the bill could be of concern to Mr. FORD's committee, we discussed the bill with him so that should his committee desire to expand the measure to include other departments and agencies, his committee would have an opportunity to do so. I want to thank Mr. FORD and the ranking minority member of the committee, Mr. TAYLOR, and all members of the Post Office and Civil Service Committee for their cooperation.

Mr. Speaker, I urge my colleagues to support the bill.●

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

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

Mr. Speaker, I, too, would like to commend the chairman of our full committee, the gentleman from Mississippi, Mr. SONNY MONTGOMERY, who has helped to bring this bill to the floor, and also the ranking Republican member, the gentleman Arkansas, Mr. JOHN PAUL HAMMERSCHMIDT, who is both ranking on the full committee and on our subcommittee dealing with hospitals and health care.

It is a good bill; it passed our committee unanimously. I urge my colleagues to support it.

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 Pennsylvania [Mr. EDGAR] that the House suspend the rules and pass the bill, H.R. 4694.

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.

□ 1350

PANAMA CANAL ACT OF 1979—AMENDMENTS RE INTEREST PAYMENT

Mr. JONES of North Carolina. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5655) to amend the Panana Canal Act of 1979 with respect to the payment of interest on the investment of the United States, as amended.

The Clerk read as follows:

H.R. 5655

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1302(b) of the Panama Canal Act of 1979 (22 U.S.C. 3712(b)) is amended by inserting immediately before the period at the end thereof the following: "; except that the part of the tolls and other receipts that covers interest on the investment of the United States in the Panama Canal pursuant to section 1602 and 1603 of this Act shall be deposited into the Treasury as miscellaneous receipts".

(b) Section 1603(b)(2)(A) of the Panama Canal Act of 1979 (22 U.S.C. 3793(b)(2)(A)) is amended by striking out "Treasury" and inserting in lieu thereof "Panama Canal Commission Fund".

SEC. 2. The amendments made by this Act shall apply only to tolls and other receipts of the Commission deposited in the Treasury on or after the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. FIELDS. 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 North Carolina [Mr. JONES] will be recognized for 20 minutes and the gentleman from Texas [Mr. FIELDS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. JONES].

Mr. JONES of North Carolina. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first I would like to say this measure comes from the Subcommittee on Panama Canal and Outer Continental Shelf chaired by the gentleman from Kentucky, Mr. CARROLL HUBBARD. He spent a great deal of time perfecting this legislation and I will now attempt to explain what it is.

Mr. Speaker, H.R. 5655 makes two small changes in the Panama Canal Act of 1979, both related to interest on the U.S. investment in the canal. The effect of these two changes is to stop the erosion of the U.S. investment base that has been occurring for the last 5 years, and to make the interest money collected after the date of enactment available to the U.S. taxpayers by depositing it with the General Treasury.

Under current law, interest on the U.S. investment in the canal has, since 1979, been deposited into the Panama Canal Commission Fund, a separate account in the Treasury, rather than into the General Treasury's miscellaneous receipts account. Money in the PCC Fund is earmarked for the Panama Canal Commission and cannot be spent for other purposes. In addition, because the act requires the U.S. investment to be reduced by the amount of tolls and other revenues taken in by the canal, the interest deposits have served to reduce the U.S. investment base. As a practical matter, the result has been that interest payments have decreased the principal. I think everyone would agree that this is an undesirable situation.

H.R. 5655 is designed to cure these defects in the current law. It does so by mandating that the part of the canal revenues attributable to interest on the U.S. investment be deposited into the General Treasury. A corresponding second amendment is necessary to make it clear that the interest so deposited into the General Treasury does not reduce the investment base, because it will no longer be counted in adjusting that base under section 1603 of the act.

Mr. Speaker, in closing let me compliment the gentleman from Texas [Mr. FIELDS] who is the new ranking minority member of our Panama Canal/Outer Continental Shelf Subcommittee, and who is the original sponsor of this legislation. He has done a good job on this bill, and I look forward to working with him in the future not only on this but on other matters. I commend H.R. 5655 to the Members of the House, and urge its adoption.

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

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

Mr. Speaker, as has been pointed out by the chairman, this legislation was reported by the House Merchant Marine and Fisheries Committee, as well as by the Panama Canal/OCS Subcommittee, without a dissenting voice.

The legislation corrects a problem that has existed since the Panama Canal Act of 1979 was signed into law.

The authors of that act intended that an interest payment on the level of the U.S. investment in the canal be paid to the general fund of the Treasury, and that the rate of interest was to be established annually by the Department of the Treasury. It was intended that these funds be utilized by the general fund of the Treasury, unencumbered by any needs of the Panama Canal Commission. However, because of the final wording of the Panama Canal Act in section 1302(b), the interest on the U.S. investment has indeed been collected by the Panama Canal Commission, but has been deposited in the Panama Canal Commission fund rather than into the general fund of the Treasury. This had not only prevented the unencumbered use of these funds by the Federal Government, which totals approximately $46 million to date, but has also acted to decrease the level of the U.S. investment by that $46 million. This means, that if the annual interest on the investment continues to be deposited in the Panama Canal Commission fund instead of into the general fund of the Treasury as miscellaneous receipts, our interests payments on the investment will be decreased annually because of the continued decrease in the level of the investment. My amendment eliminates these problems.

The bill directs that the interest payment on the U.S. investment be automatically deposited into the general fund of the Treasury as miscellaneous receipts on a monthly basis. It also ensures that the automatic deposit of the interest payments into the general fund does not have any impact whatsoever on the level of the U.S. investment, ensuring that the interest payments will not further erode the level upon which the interest payment is calculated.

The broader issues concerning the interest on the U.S. investment are: First, what should be done with the $46 million in interest that is currently deposited in the Panama Canal commission fund; and second, how do we recoup the lost revenues that have resulted from the decrease in the level of the U.S. investment? These are not dealt with in H.R. 5655 because these issues are much more involved and are a part of a much broader problem.

For the past 2 fiscal years, the committee has attempted to solve problems involved in the cash flow needs of the Panama Canal Commission. Because the Commission is not allowed to borrow money, nor make a profit, they face the problem of meeting their monthly expenditures from monthly tolls and other receipts, particularly at the beginning of the fiscal year. This they have not been able to do, and have demonstrated to OMB and to the committee that not only do they need the $46 million to assist in solving their cash flow needs, but the unreimbursed balance of the amount appropriated by Congress for their expenses by Public Law 96-131.

The administration's solution to this cash flow problems was to propose legislation altering the funding process for the Panama Canal Commission and have them funded from the general fund of the Treasury. The Merchant Marine and Fisheries Committee was not able to resolve the issues involved in effecting this transition, but we do plan to reconsider the issue next year.

I would also like to point out to my colleagues that the committee intends that the passage of H.R. 5655 will have no impact whatsoever in the calculation of the so-called profit payment to Panama required under paragraph 4(c), article XIII of the Panama Canal Treaty. That profit payment can be as high as $10 million annually if the canal operating revenues exceed their operating costs.

Mr. Speaker, in considering this amendment to the Panama Canal Act, one of the key factors was would we or would we not make this interest payment subject to the authorization and appropriation process. I believe that the procedure set out in H.R. 5655 is a simple process. By eliminating the interest payment from the annual authorization and appropriation process, we ensure that the entire amount of interest that is due will be paid to the benefit of the taxpayer, and not subject to the potential whims of this process.

Mr. Speaker, while the money currently deposited in the Panama Canal Commission fund is indeed available for use by the Treasury, similar to the way the money that is in our checking accounts is available to the banks, it is on demand to the Panama Canal Commission for their use. By having the annual interest payment deposited directly into the general fund of the Treasury, it is available for expenditure by the general fund unencumbered by any other demands.

As I stated, Mr. Speaker, this bill was approved overwhelmingly in the subcommittee and the full committee without a dissenting voice, and I hope my colleagues join me in voting for its passage.

Mr. HUBBARD. Mr. Speaker, H.R. 5655, was introduced by my distinguished friend and colleague, the Honorable JACK FIELDS, ranking minority

member of the Subcommittee on Panama Canal/Outer Continental Shelf. I, as chairman of the subcommittee, cosponsored this bill along with the chairman of the full Merchant Marine and Fisheries Committee, the Honorable WALTER JONES of North Carolina, the Honorable DON YOUNG of Alaska, the Honorable ROBERT DAVIS of Michigan, and the Honorable BILLY TAUZIN of Louisiana. H.R. 5655 would amend the Panama Canal Act of 1979—Public Law 96-70 with respect to the payment of interest on the investment of the United States in the Panama Canal.

On May 16, 1984, the Subcommittee on Panama Canal/Outer Continental Shelf conducted a hearing on the issue of calculation of interest on the investment of the United States in the Panama Canal. The General Accounting Office testified that the Panana Canal Commission should pay or transfer its interest collections from the Panama Canal Commission Fund into the General Treasury as miscellaneous receipts. The General Accounting Office believes that the legislative history of the Panama Canal Act of 1979 indicates that Congress intended that the interest collections be transferred into the Treasury for the taxpayer's benefit.

The Commission, also citing the act's legislative history, deposits the interest collections into the Panama Canal Commission Fund as it believes the act requires. The Commission does not believe that it has the authority to make transfers from the fund on its own volition. Nor does it have the authority to make deposits in any other fund other than the Panama Canal Commission Fund. The Commission indicates that congressional action is necessary to clearly state that the Commission has authority to deposit its collections of interest in the General Treasury as miscellaneous receipts.

In response to the concerns of the General Accounting Office and the uncertainty of the act's requirements, H.R. 5655 was introduced. The purpose of this bill is to ensure that, from the date of enactment, money owned by the Panama Canal Commission as interest on the U.S. investment in the Panama Canal will be deposited into the Treasury as miscellaneous receipts. This will stop the erosion of the U.S. investment in the Panama Canal that has been taking place since 1979 because of a lack of a clear directive in the act as to how the interest was to be handled.

Mr. Speaker, on June 12 of this year, the subcommittee reported this bill to the full committee incorporating one amendment which clarified an accounting procedure. On June 19, the full Merchant Marine and Fisheries Committee ordered H.R. 5655 reported to the House by a unanimous voice vote. This bill is necessary to correct an ambiguity in the Panama Canal Act of 1979 and has bipartisan support. I sincerely hope that such unity will prevail in consideration of this bill by my distinguished colleagues. I request that the House suspend the rules and pass H.R. 5655.

● Mr. CARNEY. Mr. Speaker, I rise in support of H.R. 5655 and urge my colleagues to vote for its passage. This bill was introduced by my good friend and colleague, the Honorable JACK FIELDS, and others, in order to stop the erosion of the U.S. investment in the Panama Canal, and assure that the U.S. taxpayers benefit from interest paid on that investment by requiring it to be deposited into the Treasury as miscellaneous receipts.

In 1982, during consideration of proposed amendments to the Panama Canal Act, the Panama Canal/OCS Subcommittee approved my amendment to assure that: First, the United States would receive a return on its total investment in the canal enterprise; and Second, the return would be paid into miscellaneous receipts of the Treasury for the benefit of the U.S. taxpayer.

In a report prepared at my request (GAO/ID-83-36, Mar. 22, 1983), GAO concluded that amendments to the Panama Canal Act of 1979 are needed to ensure that: First, interest is computed on the total amount of the U.S. investment in the canal; Second, interest is paid to the benefit of the United States; Third, amounts calculated as interest no longer erode the principal; and fourth, amounts calculated as interest since October 1, 1979, are recovered into the general fund of the Treasury for taxpayer use.

Although all tolls and Panama Canal Commission receipts are deposited in the Treasury and they belong to the U.S. Government, it is obvious from GAO's report and subsequent testimony before our subcommittee that amounts paid into the Panama Canal Commission Fund in the Treasury do not directly benefit the U.S. taxpayer. Further, GAO testified that if amounts in the Panama Canal Commission Fund, such as the $47.6 million already calculated as interest on the U.S. investment, were returned to the general fund as miscellaneous receipts, those amounts would: First, offset the Government's requirement for borrowing with the result being a saving in interest payments by the U.S. Government; and second, help reduce the Federal deficit.

I feel strongly that the U.S. taxpayer should receive a return on the U.S. investment in the Panama Canal, and H.R. 5655 provides for such return beginning on the date of enactment. However, further amounts in the Panama Canal Commission Fund could be accruing to the direct benefit of the U.S. taxpayer and help reduce the Federal deficit which is approaching $200 billion. I hope we can find a way to accomplish this. However, I urge my colleagues to support this important first step to halt the unintended erosion of the U.S. investment in Panama, and provide for a return to the taxpayers on that investment.●

● Mr. SHUMWAY. Mr. Speaker, H.R. 5655, introduced by my good friend Mr. FIELDS, amends the Panama Canal Act of 1979 to mandate that the interest on the U.S. investment in the Panama Canal be deposited by the Panama Canal Commission directly into the general fund of the Treasury as miscellaneous receipts.

This legislation clearly restores the intent of the authors of the Panama Canal Act of 1979; however, because of the wording of the act, the interest on the U.S. investment has been deposited by the Panama Canal Commission into the Panama Canal Commission Fund as if it were part of their canal receipts. This erroneous deposit has not only prevented the use of these funds by the Federal Government as we see fit, but has been applied against the original U.S. investment thereby artificially decreasing that investment by $46 million—the amount of interest that has been collected to date. This means that if the annual interest on the investment continues to be deposited into the Panama Canal Commission Fund, instead of the general fund of the Treasury as called for under this legislation, our own interest, which should be paid to us, will essentially be used by the Panama Canal Commission to help pay back our own initial investment.

Mr. Speaker, H.R. 5655 not only directs that the interest payment on the investment be automatically deposited into the general fund of the Treasury as miscellaneous receipts, but it also insures that these payments do not have any impact whatsoever on the level of the U.S. investment, nor will the interest payment be counted as income to the Panama Canal Commission since it is not deposited into the Panama Canal Commission Fund.

It has been made clear by the sponsors of H.R. 5655 that the legislation is not intended to deal with the $46 million in interest payments currently deposited into the Panama Canal Commission Fund. This is because it has been clearly demonstrated by the administration and the Commission in testimony that this money is needed to assist the Commission in its cash flow requirements.

In closing, Mr. Speaker, this bill will result in the deposit of over $9.6 million of interest payments into the general fund of the Treasury next year alone. I urge my colleagues to join me in supporting this legislation.●

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

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

The SPEAKER pro tempore [Mr. EDGAR]. The question is on the motion offered by the gentleman from North Carolina [Mr. JONES] that the House suspend the rules and pass the bill, H.R. 5655, as amended.

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

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONES of North Carolina. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5655, the bill just passed.

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

There was no objection.

FEDERAL PAY EQUITY AND MANAGEMENT IMPROVEMENT ACT OF 1984

The SPEAKER pro tempore. Pursuant to House Resolution 526 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5680.

□ 1358

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5680) to promote pay equity and to eliminate certain discriminatory wage-setting practices within the Federal civil service; to establish a performance management and recognition system; to improve the senior executive service; and for other purposes, with Mr. KILDEE in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentlewoman from Ohio [Ms. OAKAR] will be recognized for 30 minutes and the gentleman from California [Mr. DANNEMEYER] will be recognized for 30 minutes.

The Chair now recognizes the gentlewoman from Ohio [Ms. OAKAR].

□ 1400

Ms. OAKAR. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today we are debating a bill which will improve the lives and morale of thousands of Federal Employees. H.R. 5680, the Federal Pay Equity and Management Improvement Act of 1984, contains three equally important titles covering: pay equity in the Federal Government; the merit pay program for Federal managers and supervisors; and the senior executive service. The bill is not a radical departure from past policies. It merely sets in motion an attempt to refine and improve the Federal personnel system and eliminate certain glaring inequities in the current program.

Fifty years ago, when the Federal classification system was developed, its framers never imagined that some day 40 percent of the Federal work force would be comprised of women. Similarly, our predecessors could not predict that the skills, effort, and responsibilities involved in performing various tasks would change so dramatically, Not only have we entered the "technical age," but our society is vastly more complex than it was in 1923.

Since that time the role of women in our society have dramatically changed; 15½ percent of all U.S. households are headed by women; 52 percent of all women ages 20 and older work; which means that nearly one-half the work force is composed of women. Statistics also show that U.S. citizens are marrying at older ages, women are widowed earlier, and that divorce is at an all time high.

The one statistic which has remained relatively stable is the average earnings for women. Despite the passage in 1963 of the Equal Pay Act—which prohibits an employer from paying a woman less than a man if they perform the same job—and title VII of the Civil Rights Act of 1964—which prohibits an employer from paying a woman lower wages than a man even when job content differs—women lag behind men in earnings. In 1950, women earned approximately 62 percent of what men earned. After dipping to an all time low in 1974 of 59 percent, women are now averaging about 63 percent.

A study conducted by the National Academy of Sciences in 1981 found several reasons for the persistency of the male/female wage gap. The most striking finding concluded that the more an occupation is dominated by women, the less it pays. Secretaries, 90 percent of whom are women, earn approximately $4,000 less a year than truckdrivers. Private household workers, 95 percent of whom are women, earn less than one-half of what janitors are paid. The fact that women are more likely than men to be employed in low-paying firms exacerbates the problem of occupational segregation.

I was very fortunate to cochair, with Congresswoman GERALDINE FERRARO and Congresswoman PATRICIA SCHROEDER, the first congressional hearings on the issue of job segregation and pay equity. The September 1982 hearings were extensive, covering private and public sector pay practices. These hearings were important in bringing to the forefront areas of the pay equity problem that needed further attention. The movement of women into nontraditional occupations, while significant, would not, in and of itself, solve the wage gap problem. Female dominated occupations serve vital functions in our society and need to be reevaluated for their worth. The Federal Government—as the largest employer in the Nation and the one charged with enforcing the body of civil rights laws—has to act responsibly, ensuring that sex bias is not a factor in determining wages. Equally important, private employers need to be educated on the sex-based wage discrimination issue.

Nearly 2 years have passed since I participated in the Post Office and Civil Service Committee oversight hearings. On April 3 and 4 of this year, my Subcommittee on Compensation and Employee Benefits conducted hearings on pending pay equity legislation, H.R. 4599 and H.R. 5092. The subcommittee's April hearings showed us that significant progress has been made in some areas but not in others. In those 20 months, over 20 States have taken the initiative to examine their own civilian work forces for sex-based wage discrimination. Private employers are also reexamining the manner in which their pay structures have been determined to identify any sex discrimination practices.

In observing the activity which has been taking place in State governments and the private sector, I have noticed a willingness to address this a critical civil rights and economic issue. I have also been struck by the lack of initiative—a void if you will—on the part of the Federal Government. I believe, as do many of my colleagues, that the Federal Government, the largest employer in the Nation, with approximately 2.8 million workers, can no longer stand mute. It must begin the process of determining whether its pay and classification systems are marred by sex-based wage discrimination.

Testimony presented by representatives of Federal employee unions and other organizations at the April 3 and 4 hearings indicated that the Federal workforce is similar to the rest of the Nation in that job segregation is pronounced. The majority of female employees are clustered in the lower paying jobs, grades 1-7. They earn an average yearly salary of $17,000. Federally employed men are found in the midlevel and upper grades and earn an average of $28,000 a year. Only 12 percent of the women employed by the Federal Government are in managerial positions.

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On its face, the data seems to suggest that women are paid less than men because the Federal classification and pay systems are biased against women. But, at this point in time, no one can conclude with any certainty why these factors exist.

Based on the information at hand, however, we can conclude that an analysis of the systems is long overdue. First, the classification system has not been reviewed since its inception in 1923. Second, the rise in the number of female employees in the work force has changed the fabric of Federal employment. Similarly, job content and responsibility has developed and changed as dramatically as the labor force over the last 50 years.

The study set forth in title I of H.R. 5680 is designed to provide Congress and the administration with necessary information about the Federal labor force by identifying any sex-based wage discrimination practices in white- and blue-collar jobs through an analysis of the content of jobs held predominately by women and by men. It will determine whether gender is a factor in determining clasification and pay in the Federal Government.

The study is also designed to incorporate labor unions and women's organizations, representing substantial numbers of federally employed women, in the study in an advisory capacity. I believe that the involvement of these organizations is essential to ensuring an objective and impartial study.

With regard to the study, I have announced my intention at an appropriate time, to introduce an amendment that would require an outside consultant rather than OPM, to perform the study. I decided to introduce my amendment after much thought and many hours of discussion with representatives of Federal employees, women's organizations, and other groups that would be affected by the results of the study. Considering the underhanded activities of the OPM concerning the pay equity provisions of the bill, it has become clear that this agency cannot be trusted to undertake a fair and objective analysis of the current classification and pay systems.

On May 14, 1984, Mr. James L. Byrnes, a senior official in the OPM who is paid twice that of the average male Federal worker, and three times that of the average female employee, wrote a memorandum to Dr. Donald J. Devine, director of the OPM, stating:

By doing job evaluation across clerical and blue collar occupations, a comparable worth study would immediately divide the white collar and blue collar unions. The blue collar craft unions would be especially concerned, since they would be the inevitable losers in such a comparable worth adjustment process. Moreover, the unions would be pitted against the radical feminist groups and would further divide this constituency of the left. Rather than allowing Oakar to manipulate the administration on the gender issue, we could create disorder within the Democratic house pitting union against union and both against radical feminist groups.

Through their actions over the past few weeks, it has become obvious that the Reagan administration opposes a pay equity study. It has become equally clear that there are some within the administration who would seek to undermine such a study by playing politics with the entire Federal work force. Unfortunately, these are the same individuals who would be responsible for conducting the study under the current provisions of H.R. 5680.

I had hoped, that in a matter as serious as sex-based wage discrimination, we could rely upon the administration to provide an objective and comprensive analysis of an issue that affects women throughout the work force. Sad as it is to say, this is not the case.

Finally, Mr. Chairman, the intent of examining the problem of sex-based wage discrimination—either by studying a pay system or enforcing the law—is in no way an attempt to undermine the labor force or the free market as suggested in several recent articles on the subject. Reevaluating the worth of traditionally female dominated occupations does not mean that blue-collar jobs will have their pay reduced or become less important. In fact, the language contained in H.R. 5680 specifically states that no one's pay can be reduced as a consequence of findings or recommendations resulting from the study. Neither I, nor any other advocate of fair pay practices, wish to create a confrontation between workers. We are concerned with proper implementation of laws prohibiting discrimination. I believe the fact that more than 12 private- and public-sector labor unions endorse H.R. 5680 strengthens my point.

The free market is not in jeopardy either. Quite simply, people determine the worth of jobs and objects, an invisible hand does not. If employers choose to devalue work traditionally performed by women, then that work will not yield high wages in the market. If, on the other hand, employers choose to determine the worth of jobs irrespective of gender, the market will yield quite different results. The market must be free of manipulation and free of bias.

Mr. Chairman, title II of the bill addresses the myriad of problems with the current merit pay system for midlevel managers and supervisors which was enacted as part of the Civil Service Reform Act of 1978. The merit pay system covers approximately 110,000 employees in grades 13 through 15.

It has become evident that the present merit pay system does not work and is plagued by an overwhelming host of problems. Members of both sides of the aisles, as well as the administration, recognize that the system is not functioning as intended.

In a recent report conducted at my request, the General Accounting Office found a great deal of employee dissatisfaction with the current merit pay program. The GAO report reviewed the merit pay system of affected employees at the Departments of Agriculture, Housing and Urban Development, and Navy during 1981 and 1982. After the GAO study was completed, it found that half the merit pay employees surveyed wanted to return to the general schedule for their annual within-grade pay increases.

Virtually every phase of the current merit pay program was criticized. GAO's review showed that non-performance factors have influenced the size of merit increases, that management used preestablished quotas to determine rating distributions for merit pay pools, that higher graded employees tended to receive the highest ratings, and that, in at least one department, non-career appointees were more likely to receive larger average merit pay increases than career civil servants. In sum, the GAO found that approximately 80 percent of all employees believed that the merit pay system did not increase their motivation or performance.

Furthermore, I am extremely disturbed by the failure of the Federal Government to promote women into supervisory and managerial positions. While men comprise 54.4 percent of the white-collar work force, they hold 91.5 percent of the managerial slots and 76.5 percent of the supervisory positions. In addition, at grade 13 roughly 10 percent of the positions are held by women. This decreases to approximately 7.9 percent at grade 14 and to 6 percent at grade 15.

Mr. Chairman, together these factors portent a bleak future for our Government unless some action is taken to remedy the many inequities in the program. I believe that the extensive revisions of the current merit pay program as proposed in title II of H.R. 5680 would result in a fair and workable pay-for-performance system for midlevel managers in the Federal Government.

Briefly, title II abolishes the merit pay system and creates instead a performance management and recognition system. The most significant feature of this system is the establishment of a five level appraisal system under which employees would be paid on the basis of their performance. An outstanding employee, for example, would receive a full comparability pay increase, a merit increase, and performance award between 2 percent and 10 percent, while someone who is

rated unsuccessful would receive no increase whatsoever. In addition, an employee rated less than successful would be allowed to appeal this determination first within the agency and then to the merit systems protection board. Furthermore, each agency would be required to establish a performance standard review board to assess the appropriateness of agency performance standards.

Also, title II provides a minimum level of .75 percent of covered payroll and a maximum limit of 1.5 percent of covered payroll for agency award programs. The minimum increases to 1.5 percent by the 5th year of the program.

Finally, in order to allow the Congress the opportunity to thoroughly review and evaluate the system after a reasonable period of time during which the system can operate as intended, the provisions of title II will terminate at the end of 5 years unless specifically reauthorized by the Congress. This period of time should provide us with sufficient data to determine the effectiveness of merit pay.

Last, title III of the bill places Congress on record in favor of the continuation of the senior executive service and makes certain adjustments in the provisions governing the SES.

Mr. Chairman, the development of this legislation required the resolution of numerous difficult and, in some instances, controversial issues. Many hours of hearings and negotiations with officials of the executive branch and concerned Members of the House were necessary to shape the final product.

Mr. Chairman, in conclusion, I am hopeful that the House will act favorably on H.R. 5680. The "Federal Pay Equity and Management Improvement Act of 1984" is a bill based on equity—equity for women and men who have devoted their careers to the Federal Government. It is also a bill that should improve governmental efficiency and employee morale, thus leading to better Government service for the citizens of our great Nation.

□ 1410

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

Mr. Chairman, I thank the gentlewoman from Ohio, the distinguished chair of the Compensation Subcommittee, for her comments.

H.R. 5680 is really three bills in one. The gentlelady from Ohio is to be especially commended for moving title II of this bill. Title II makes urgent and needed changes in the merit pay program for 115,000 midlevel Federal managers. The gentlelady from Ohio and her staff have worked diligently to move this legislation.

This legislation started several years ago as the work product of the gentleman from Virginia [Mr. WOLF], a member of the committee. He and his staff have worked tirelessly to achieve a consensus among Federal managers, the administration, and our committee on merit pay reform. The gentleman from Virginia deserves the highest recognition for this achievement. Recognition should also be given to the earnest efforts of the gentleman from Maryland [Mr. HOYER] and his staff for their cooperation and creativity in promoting this legislation.

At this point, Mr. Chairman, I yield, for purposes of debate only, to the gentleman from Virginia for any statement he wishes to make.

Mr. WOLF. Mr. Chairman, I am pleased that the House is acting on this much-needed merit pay and SES reform legislation. I believe we have an opportunity to do something positive for Federal workers today. Since the signing of the Civil Service Reform Act, the morale of Federal employees has plummetted. This decline in employee work attitude has only been intensified for managers and executives because of the inequities inherent in the current merit pay system and the unfortunate tampering with the Senior Executive Service early on in its implementation. We can make a difference for Federal employees at the highest levels, today, and I appreciate the House Post Office and Civil Service Committee's Chairman WILLIAM FORD and Subcommittee Chairwoman MARY ROSE OAKAR's persistence and mutually shared commitment to moving these reform initiatives.

Most of the provisions of this legislation were derived from my merit pay bill and Senator TRIBLE's efforts in the other body (S. 958/H.R. 5066). My colleague from Maryland, Mr. HOYER, should also be recognized for his contribution to this legislation. The merit pay provisions are supported by the employee groups covered. I have worked for over 3 years to change the merit pay system and believe that in H.R. 5680 we now have an effective vehicle for accomplishing positive reform. Because the Nation's managers and executives have patiently waited for these changes, I believe we must act quickly to ensure that these reforms are implemented before the next merit payout scheduled for October 1.

I would like to note that the Department of Defense, which has nearly half of the entire merit pay population, is scheduled to rate its employees on June 30. It is imperative that congressional action is completed soon and I urge the House to adopt these provisions to facilitate the urgency with which these changes must be made.

I believe bipartisanship is the most essential element in successfully moving this package through to final passage. Like many of my colleagues, I have reservations about certain portions of the bill, but believe the positive reforms incorporated in this legislation outweigh the negatives. Although I am disappointed with the manner in which the SES portions of H.R. 5680 were developed and am not pleased with the final provisions under title III of this legislation, I have received assurances from the chairman that these problems can be resolved in conference. With these commitments I urge my colleagues support for adoption of these vital management and pay for performance reforms.

In conclusion, I believe we have an opportunity today to approve positive legislation for the often maligned Federal work force. It is my hope that agreement on these issues of mutual concern can be reached.

Again, my sincere appreciation to the Speaker for his quick action on this legislation and my appreciation to the gentlewoman from Ohio [Ms. OAKAR], and the gentleman from Michigan [Mr. FORD] for the important role they have played in facilitating this process.

In closing, Mr. Chairman, I would like to personally recognize the tremendous effort that my staff, Sara Boney, has done on this legislation. She has worked on it for better than 2 years, and without her day-in-day-out work we would not be here today.

Mr. Chairman, I thank the gentleman for yielding.

Ms. OAKAR. Mr. Chairman, I yield 5 minutes to my friend, the gentlewoman from Colorado [Mrs. SCHROEDER] who has done an awful lot of important work on this bill.

Mrs. SCHROEDER. Mr. Chairman, I clearly rise in strong support of H.R. 5680. As chairwoman of the Subcommittee on Civil Service, I sat through hours of oversight hearings on the Senior Executive Service. Out of those hearings emerged the Senior Executive Service provisions contained in title III of this bill. Also, as Civil Service Subcommittee chairwoman, I claim some maternity to title I of this bill because, back in the fall of 1982, the Civil Service Subcommittee, together with MARY ROSE OAKAR's Compensation Subcommittee and GERALDINE FERRARO's Human Resources Subcommittee, held the most extensive and comprehensive hearings on pay equity which have ever been held. Title I of this legislation is a direct descendant of those hearings.

PAY EQUITY

Title I is a first step toward eliminating pay discrimination against women in the Federal Government. It is incontrovertible that workers in female-dominated occupations get paid far less than workers in male-dominated occupations both in the private sector and in the Government. This large

wage gap cannot be explained by such factors as skill, experience, seniority, working conditions, education, or effort. A large part of the wage gap is due to discrimination against women. The Federal Government should serve as a model employer and should lead the Nation in identifying and eliminating that part of the wage gap which is attributable to discrimination.

I consider title I of H.R. 5680 to be the most important civil rights legislation to come out of the Committee on Post Office and Civil Service since I have been in Congress. During our 1982 hearings on pay equity, I did a little research on wage discrimination in the Federal Government. Here is what I found:

Women are concentrated in a few, low-paying occupational categories. The largest single occupational category in the Federal Government is secretary. Ninety-nine percent of all secretaries are women and the average pay is $15,800. The second largest category is clerk-typist. That job is 96 percent women and pays an average of $11,600.

The level of job segregation is higher in the Federal Government than in the private sector. Sixty-two percent of women work in jobs which are 2 to 1 female or more and 69 percent of men work in jobs which are 2 to 1 male.

Female-dominated jobs pay less—far less—than male-dominated jobs. We conducted a regression analysis which found that for each additional percentage point of men in a job, the job paid an average of $176.36 more. A typical job which is made up of all females would pay $13,350, while a typical job category made up exclusively of men would pay $31,190.

All this results in a situation where women in the Federal Government make 63 cents for every $1 earned by men.

Title I requires the Office of Personnel Management to study the wage and classification systems of the Government and locate discriminatory wage-setting practices. The bill stops there. After the study is completed, I believe it will be necessary for Congress to revisit this issue to decide how to eliminate the discrimination found. The one thing the litigation in the State of Washington stands for is the proposition that we must act when we have received the report documenting discriminatory wage-setting practices. That's the way it should be: The law forbids continuation of wage discrimination against women. How we move to clean up this discrimination is the type of public policy choice we were elected to make.

Whether we mandate a study of wage discrimination against women or not, there will be relentless pressure—through lawsuits, through labor-management negotiations, through legislation—on the Government to address the issue of pay equity. The reason we should mandate a study is to ensure that the analysis is responsible and to establish a process which will permit reasonable, yet prompt, correction of the problem. The pay equity issue is not going to go away. If we bury our heads in the sand, we are going to get kicked elsewhere. Title I of H.R. 5680 is the responsible and right way to address this problem.

SENIOR EXECUTIVE SERVICE

Title III of H.R. 5680 contains a number of technical adjustments in the law governing the Senior Executive Service [SES]. The committee report describes these changes in ample detail. I will, therefore, only focus on some of the more significant changes.

Section 301 places Congress firmly on record in support of continuation of the SES. When Congress passed the Civil Service Reform Act of 1978, it included, at the suggestion of Representative Gladys Noon Spellman, a modified sunset for the SES after 5 years. The Subcommittee on Civil Service conducted extensive oversight hearings on the SES during this past winter. Although there are problems with the program, none of the problems warrant a return to the old system. Hence, this bill will make a congressional finding that the SES should be continued indefinitely.

Section 302 attempts to reduce the controversy surrounding performance awards, by removing the cap on the percentage of employees who can get awards and replacing it with a cap on the amount of money which can be used for awards. This provides greater flexibility for agency managers, yet serves to safeguard the interest of the taxpayer. I believe that these performance awards can motivate senior executives to perform better and can increase the productivity of the Government. Hence, the bill includes both a cap of 4 percent of payroll for performance awards and a floor of 2 percent of payroll for performance awards. Performance awards cannot motivate better performance unless they are awarded. The Congressional Budget Office says this provision will, at most, cost $4 to $5 million a year, although it could save an equal amount.

Section 303 clarifies the limitation on noncareer senior executives. Before the creation of the Senior Executive Service, political appointees could only fill certain designated positions. Under the SES they can fill all but a limited number of career reserved positions. To ensure that this major change in the management of Government would not lead to abuse, the Civil Service Reform Act contained a provision to establish a mix between careerists and political appointees of at least 9 to 1. This provision was drafted to ensure that no more than 10 percent of SES positions could be filled by political appointees. However, we did not expect an average of 13 percent of SES positions to be vacant during the first 5 years of the program. This high vacancy rate has meant that the mix has shifted much too far in the direction of political appointees. During our oversight hearings on the SES, the problem of too many political appointees in jobs requiring careerists was the single biggest deficiency of the SES noted.

The bill would shift the cap on political appointees from 10 percent of SES positions to 10 percent of the average number of filled SES positions during the preceeding fiscal year. This change would require the dismissal of no one. So far in fiscal year 1984, there have been an average 6,974 filled SES positions. On March 31, 1984, there were 694 noncareer appointees, or 3 below the new limit. The bill also shifts the agency specific cap from 25 percent of SES positions to 25 percent of the average number of filled SES positions during the preceding fiscal year. I do not have all the data on average number of senior executives by agencies. Preliminary indications are that a few agencies—ACTION, State, USIA, and HUD—might be slightly over the new limit. Obviously, we will not know for sure until the end of the current fiscal year. The point is that section 303 of H.R. 5680 will not lead to a major purge of political appointees. Whether this is good news or bad news depends on your perspective.

Section 304 provides greater protection for senior executives in a reduction in force situation. It requires the Office of Personnel Management to spend 45 days attempting to place career executives in vacant SES jobs before these executives can be placed back in GS-15 positions. The Office of Personnel Management has done a dreadful job with its placement authority and so it is not surprising that they would like to be able to place career executives in GS-15 positions with no placement effort. Senior executives are a valuable resource to the Government. We should make an effort to use their talents in executive positions before we downgrade them.

H.R. 5680 is good legislation which deserves the support of all Members.

□ 1420

This is really done in the spirit of Gladys Spellman's provisions to the original Civil Service Reform Act of 1978.

I thank the gentlewoman from Ohio and all of the Members who have worked so hard on this legislation. I urge its speedy adoption so that we can get on with the study and on with the SES.

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

Mr. Chairman, I have a chart here to my left which I think initially in this consideration of the bill will put into perspective some of the data on which the Members can utilize in order to make an informed judgment.

The column most to the left here, all women 1980 annual earnings, was 59 percent of what men earned in that year. On an hourly basis the figure for that first category would be 62 percent.

The next column is black women versus black men in 1980. The figure there is 74 percent for earnings, black women versus black men. Then all women in 1983, the middle column, it is 72 percent. That is based on hourly earnings and that is all women versus all men working in the private and public sector. The wage percentage is 72 percent of what men earned in that year.

Then to show some trends that have been taking place in our economy, the second column from the right, women age 20 to 24 against all men of that same group, 89 percent were the earnings of women versus men. On the column most on the right in the age category 25 to 64, single women versus single men in 1983, 91 percent.

So the disparity that we found as a result of Census Bureau data in 1980 is changing. It is changing in the method that these figures disclose; namely, that the gap percentagewise between men and women is closing, and that is well and good.

Mr. Chairman, the focus of my remarks is on title I, the so-called pay equity study of 2.1 million nonpostal, nonmilitary Federal employees.

Title I is legislation of good intention. However, it sets a dangerous precedent for wage-setting in and out of Government. That precedent is comparable worth. It is not equal pay for equal work. This bill gets Congress into the quicksand of comparable worth out of which we will not extract ourselves or remedies for sex-based wage discrimination.

The central question in the debate over title I is this: Will this study get at sex discrimination? I contend that this bill and this study will not get at sex discrimination in the Federal work force. Instead, this bill puts new and awesome power in the hands of a consultant who will determine for Congress what is and is not discriminatory about Federal wages. Title I sets up a new, ineffective, potentially expensive, and hopelessly subjective definition of sex-based wage discrimination.

This bill, if amended by the gentle lady from Ohio, would have a consultant comparing white and blue collar jobs, secretaries and printers, nurses, and chemists. And all on the basis of a consultant's judgment of the value of the job difficulty.

There are other questions as well: Will this study invite a costly and unfair lawsuit if Congress rejects the study as happened in Washington State last year? Will this study jeopardize the separate blue-collar pay system?

The debate over title I and Federal wage-setting comes down to just two words: Comparable and equal. Are they the same? This bill calls for equalizing the wages of work found to be comparable not equal. The entire weight of the title I study comes down to just one word: Comparable.

Now this may seem a lot of weight for what is portrayed as a little old study. But let us remember: This bill is not just about Federal workers. We are assured by the author of this legislation, the distinguished Chair of the Compensation Subcommittee, that this legislation is a model for the private sector. This bill deals with the largest single work force in the country. Having the precedent of this study sit on the private sector is rather like an elephant deciding to rest on an ant hill. We can only hope that the ants can work fast enough to relocate before being visited by the elephant.

Let me make clear though that I support a study, just not this study or its new method of comparable worth.

The real problem with title I is that it gives a consultant the power to determine what is and is not discriminatory in studying those Federal jobs held mostly by men and women.

There is no problem with looking at different ways to evaluate jobs that are held primarily by men and women. But when the legislation attaches the power of law to the findings of a subjective study of job worth or content—well, let us be very careful.

The problem with title I is that it sets forth a new definition of sex-based wage discrimination. Nevertheless, the committee report states that this definition is "the mostly widely accepted" explanation of sex-based wage discrimination. I respectfully disagree.

There are two ways to establish sex-based wage discrimination. The first is through a finding of equal—not comparable—work where there is unequal pay. The second is through a judicial finding of intent to discriminate. This is the standard under title VII of the Civil Rights Act of 1964.

H.R. 5680 proposes a third and different method of establishing a finding of sex-based wage discrimination. Title I leaves the finding of discrimination in the hands of a consultant whose job is to assign points to jobs based on his or her valuation of the skill, effort, responsibility, and working conditions of a position. Those jobs with the same points should be paid the same under this scheme of wage-setting, which is known as comparable worth.

Title I is based on the theory that there is some objective, mathematical way to evaluate existing job content. The theory may work. We do not know. But this theory carries the weight of law, carries the power to say—this is discriminatory and this is not.

Now we could debate this issue all day. But as the saying goes, when all else fails, read the bill. This is the definition that is most critical:

> The term "discriminatory wage-setting practices" means practices resulting in a situation in which the rates of pay (for mostly female positions) are lower than the rates of pay (for male positions) although the work performed in each instance involves comparable duties, responsibilities, and qualification requirements, and is performed under comparable working conditions * * *.

□ 1430

That is the definition that is in this proposed study.

We do not know if this method can reach sex discrimination. It appears to say that any wage disparity between broadly comparable job categories is discriminatory. If we want to try it, let us do so, but without the burden of legal findings of discrimination at this time. Approving this method at this time is rather like putting a Member of Congress in a space shuttle and saying, "Good luck" on the morning of the launch.

Congress should not grant this consultant this kind of power at this time. It is as simple as that. In one short title, Congress is elevating a new job evaluation method from an art to a science and then to a law. That is going too far too soon.

It is not too soon to remedy discrimination. But it is too soon to adopt a subjective comparison of different jobs for the purpose of equalizing the pay of jobs held primarily by men and women.

Let us hear what the mayor of Detroit, Coleman Young, had to say about comparable worth:

> Any time a city gets hung up on an abstract study that makes arbitrary comparisons of jobs but does not take into account the impact on society and its ability to pay, that's dealing in potential anarchy and inviting bankruptcy * * *. If a painter makes more than a secretary then let more women be painters.

Jane Bryant Quinn, a columnist for Newsweek said of comparable worth:

> While approving the end, I doubt the means. (This) approach assumes that personnel studies can satisfactorily compare different kinds of jobs. But what happens when the studies disagree?

William Raspberry, a columnist for the Washington Post said:

> I'm not convinced of the workability of * * * ranking jobs on a point system and setting equal pay scales for vastly different

jobs that rate the same number of points: clerk typists and warehouse workers, for example.

Is title I a comparable worth study? Listen to the findings of the original legislation, H.R. 4599: "The purpose of this Act is (in part) to help assure that all Federal employees * * * receive comparable pay for work of comparable worth." The findings also stated that discriminatory wage setting practices are present in the United States generally and in the Federal Government.

Those findings were dropped from the bill. But the definition of discriminatory wage-setting practices that accompanied those findings remains the same.

The title I study relies not on a finding of equality of work, nor on a finding of intent to discriminate to establish a claim of discrimination. Title I rests on the findings of a consultant.

I stated before that the entire debate over title I comes down to two words: Comparable and equal. The current standard of the law is equal or substantially equal—for this Nation and Federal employees.

The legislative history of the Equal Pay Act of 1963 explicitly rejected the notion of "comparable work." In fact, the motion to substitute "equal work" for "comparable" work was made in the House by Representative Katherine St. George, who expressed concern that the term " 'comparable' opens up great vistas. It gives tremendous latitude to whoever is to be the arbitor in these disputes;" 21 years later her words still ring true.

Title VII is broader than the Equal Pay Act and has very little legislative history. But the standard of intent to discriminate still has to be observed.

In the leading case, County of Washington against Gunther, the U.S. Supreme Court in a 5-to-4 decision held that the broader provisions of title VII could be used to prohibit employers from intentionally paying female employees less because of their sex than male employees who were performing different work. But the court noted that its decision was not based on the "controversial concept of 'comparable worth.' "

For Federal employees, substantially equal, not comparable, is the pay-setting standard. This is true for both blue-collar (5 U.S.C. 5341) and white-collar (5 U.S.C. 5101) work.

Now the gentlelady from Ohio has an amendment to the bill as reported which references both the Equal Pay Act and title VII. But the language is somewhat ambiguous and appears to say that those laws are fine but this bill may go beyond those standards.

We may buy a multibillion dollar lawsuit if we buy this bill in its present form. If we decide to let a consultant determine what is or is not discriminatory, we may be stuck with a judgment similar to the Washington State case.

In the words of the Federal judge who found the State guilty:

> The purpose of the 1974 Willis study was to examine and identify salary differences that may pertain to job classes predominantly filled by men compared to * * * women, based on job worth. * * * This methodology purports to value each employment classification on the basis of four factors.

The study found in part that female librarians and nurses should be paid about twice as much as male carpenters and chemists. The State rejected the study and did not appropriate the funds to fill up those gaps. A public-sector union sued. Interestingly, this union did not have a comparable worth wage-setting policy for its own employees.

The State lost because the study had shown wage differentials based on a comparison of dissimilar jobs. The State could not even introduce a new study that showed the first study to be seriously flawed.

If the Washington State judgment of $861 million is applied to the Federal Government, we would be up against a $10 billion lawsuit—$6.7 billion in backpay and $1.8 billion each for annual pay increases and extra pension costs.

Now before someone says: "Oh, I see. You just don't want to pay for discrimination. You are just concerned about cost, not justice."

Not at all. I am very concerned about an unjust decision based upon a theory of wage setting that does not hold water.

How are blue-collar jobs jeopardized? In the Federal Government, blue-collar pay is under a separate system. If we start comparing blue- and white-collar jobs on a common basis, that will surely lead to merging the two pay systems, for good or bad.

This bill assumes that there are no overpaid jobs in the Federal Government. Indeed, this bill assumes that the higher wage is the right wage and only legal wage when making comparisons of dissimilar positions. Not one overpaid job? This study prohibits any pay cuts in order to equalize the wages of jobs found to be comparable by the consultant. Now I agree that no employee should have his pay cut if his job is found to be comparable. But that should not stop the Government from reducing the pay for that position for those entering that job later. Why should we, the taxpayer, be locked into high wages for positions where the pay may be excessive?

Indeed, the General Accounting Office did a study last year and found that some printing jobs paid higher wages than employees at other Federal agencies or in local private sector firms. Does this bill put a wage safety zone around every Federal position?

At a minimum, several changes are needed to make this title I study more acceptable. First, a consultant must not be granted the power of law in findings of the study before Congress has a chance to review the study and his methodology. The Congress is taking a large risk with the notion of comparable worth and should understand this concept before it is used unfairly against us and the taxpayers of this Nation.

In other words, if Congress wants to try comparable worth—and I think we should not—we should not bet the farm at the outset.

Second, the study should not be used in any legal proceedings in the event that Congress rejects the work products of the consultant. As the bill is now constructed, the Congress may reject the study at the peril of a lawsuit.

This study should also be based on current law which calls for substantially equal not comparable work in the grading of positions.

We should also make clear that as long as blue- and white-collar jobs are under separate pay systems, that they should be studied separately. If we are going to put them under a common evaluation system, let us do so in plain language.

In summary, H.R. 5680 is a bill of good intentions, but with a dangerous precedent.

This legislation says simply—absent a finding of equal work, or a showing of intent to discriminate, we believe a consultant can find discrimination using his or her judgment of the comparable content to worth of jobs held primarily by men and women.

Let us not put the power of new discrimination law in the hands of a consultant. Let us not take wage setting out of the hands of employees and employers. Let us approve a study of sex discrimination that will get at sex discrimination and not merely raise wages indiscriminately.

□ 1440

Let us get at those practices that keep women in their place rather than paying some women to stay in their place.

I suppose that one of the better ways to explain how this bill would apply would be to recognize that there is a saying, I guess, that goes through life which says, "When I go to work, I want an inside job with no heavy lifting. And I want the highest pay that that job can provide."

Well, in a certain sense that maxim applies all throughout our culture. An inside job with no heavy lifting. Now, if you have an inside job with no heavy lifting, the economics of the marketplace would dictate that that type of work would pay at a certain level. But when you go outside and

begin to work in the elements and increase the risk of industrial-type injuries, that job in the marketplace in our country pays more money. Why? Well, quite frankly, it is unpleasant to work outside in the elements as contrasted with inside work with no heavy lifting.

In this Member's experience, one of the jobs I had in getting through college was working in the oil fields. And I had the privilege of working different hours. The one that was particularly onerous was working from 11:30 at night to 7:30 in the morning, when at times, even though this was southern California, it may be 28 degrees. I can assure my colleagues that working at 2:30 in the morning with the wind blowing at 28 degrees in the wintertime is not my idea of an ideal job.

The reason I was working under those conditions was that it was the best paying job I could find, because I had to come home in the summertime and earn enough in order to save enough money to go back to school in the fall.

Now if I had chosen to take an inside job with no heavy lifting, I would not have made it. Perhaps I could have borrowed the money.

But the point is the marketplace in our society has determined that there is a difference in wage scales that pertain to certain types of work. Now my friends may want to know were there any women working on that oil well drilling rig. The answer is "No." It was not because they were not capable of working on that rig, because some ladies have the brawn to do it, but they chose not to. Why? I think essentially there was a great risk of harm because we injured people on that job at a rate that was sometimes unacceptable for those who thought about entering the work force.

The reason I am mentioning this experience of a personal nature is that this effort on the part of the proponents of this legislation to craft a method of getting at alleged wage discrimination is a subtle little way of getting the head of the camel into the tent. If you can get away with it, more power to you. But for people who choose to work in an inside job with no heavy lifting, our society pays a certain wage. If you want to work outside as a carpenter or a plumber, or an oil field worker, or what have you, where you have the risk of the elements, increased risk of injury, moving about, seasonal jobs, moving about from different areas from State to State, that pays a higher rate of pay. And all of those factors on to this concept of comparable worth are just out the window. I do not believe it is appropriate for us to go down this road of establishing comparable worth in the manner that the bill describes.

The study should be conducted, but by the language of it we should not dictate what the result will be so that we would then be in the position that after the study is accomplished, it is laid on the shelf and then Congress does not adopt it because we do not agree with the conclusion that where women predominate or men predominate is the result of sex discrimination.

Then what do you know, some public employee union is probably going to file a lawsuit such as happened in the State of Washington and then they will subpoena that study from the shelf, where it is gathering dust into the courtroom and then it may be argued, "Mr. Judge, you have got to enter a judgment against the Federal Government based on this study." And that is what happened in the State of Washington.

If we adopt this bill in the form that it is presented, that could happen to us here.

The politics, I think, are interesting to the proponents of the legislation because if the judge renders a judgment that causes the $8 billion cost to come into the Federal Government pay, then the Member of Congress, when the taxpayer comes in and complains to the Member of Congress, "Why have my taxes gone up to implement this cost of comparable work?", the Member of Congress will then say, "Don't look at me, it was the court that made this judgment. Go down there and talk to the judge because the judge is the one who caused this judgment to come into existence."

It is pretty clever. It is pretty subtle. But before we go that road, I think we should know precisely where we are going.

Again, I will say, I have no objection to the study, but we should not preordain its result, nor should we be placed in a position where some Federal judge somewhere is going to cause an $8 billion increase to the taxpayers of this country.

If we are going to have an increase of that magnitude, or any magnitude, based on this study of sexual discrimination, it should be a conscious act, up or down, by Members of Congress, not the indirect way that happened to the State of Washington.

Ms. OAKAR. Mr. Chairman, will the gentleman yield?

Mr. DANNEMEYER. I yield to the gentlewoman from Ohio.

Ms. OAKAR. I thank the gentleman for yielding.

Would the gentleman make the same argument about people not going to court if we were talking about a study that talked about age discrimination or race discrimination? The fact of it is I know the gentleman is talking about the Asme lawsuit that has really no bearing on what we are trying to do.

But the fact remains that I do not think we would be worried about court cases, which is in no way implied in our study, if the gentleman were talking about wage discrimination and discrimination as it relates to race or age. Just because we are talking about a study that relates to the manner in which the Government workers are paid, all of a sudden the gentleman is taking us down the route of court cases.

I say to the gentleman that is not the intent of the chair of the subcommittee. The gentleman knows that. But if a study, as in the case of the State of Washington, did show discrimination and it was a study purported by that State and then they did not do one thing to implement it, unlike the State of Minnesota and so many other States, then the laws are on the books. We have the Civil Rights Act, title VII. We have the Fair Pay Act. There is nothing right now that prohibits a Federal employee who believes that he or she is discriminated against whereby they can go to court because the laws are in place.

All we are asking for is a study that will show how we arrive at how we classify people and we have not looked at the Civil Service in 50 years, 51 years to be precise. Is it not about time we took a look at that? That is all we are doing.

But I am saying to the gentleman that any person could go to court right now without any kind of a study if they wanted to because the laws are in place. Furthermore, if we were talking about something that was a little more sensitive, let us say, like race discrimination, we would not even raise the issue of one going to court based on a study.

The other thing is, if the gentleman will yield further, I would like to ask the gentleman where he got his figures—these are real new ones to me—where you say that black women—I notice that the gentleman changed his base depending on the scheme here—the gentleman says black women make 74 cents for every black wage hourly rate—that is not annual, but hourly, which is a big difference—that a black man makes. What do black women make in comparison to white men?

Mr. DANNEMEYER. The figures that I furnished, in response to my colleague, came from Census Bureau. If the gentlewoman wants to accept them, fine; if she wants to quarrel with them, I suggest the gentlewoman contact the Census Bureau.

The CHAIRMAN. The time of the gentleman from California [Mr. DANNEMEYER] has expired.

Ms. OAKAR. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. DANNEMEYER].

I thought they came from the interpretation by an individual who works for something called the Urban Institute, which I understand most of her colleagues disagree with her in terms

of her interpretation. But I have seen these figures before and I do not believe they are accurate and I think they are the interpretation of one individual.

□ 1450

They are comparing apples with oranges. You are not comparing annual earnings. You are comparing hourly earnings. And then you are segregating who you actually compare them to. It is really a false way, it is an illogical way, I think, to promote figures. The Labor Department has figures——

Mr. DANNEMEYER. I will reclaim my time, if I may.

Ms. OAKAR. Well, I just gave the gentleman 2 minutes, but you can——

Mr. DANNEMEYER. Well, if I have the time, I will be happy to respond.

Ms. OAKAR. Sure.

Mr. DANNEMEYER. As I say, if you quarrel with the figures, talk to the Census Bureau. They are the ones from whom we receive them.

In response to your earlier comment, you know, the law says today that if a person is discriminated against in terms of employment because of race or age—clearly that is not the issue here—that person has a cause of action to redress that. Everyone in this society accepts that.

But we are witnessing here a new concept called comparable worth, and I have in my remarks attempted to define that for my colleagues so that we have before us truly what we are up against. So long as we know and make an informed judgment on what we are doing, that is what this place is about. But I have taken this time, which is rather extensive, and I apologize to my colleagues for the time I have spent on the issue, to say: Be aware of what this is. It is a significant step down the road of seeking to modify compensation of people on an interesting theory that is divorced from the realities of the marketplace in the manner that I attempted to describe.

I thank my colleague for the time.

The CHAIRMAN. The gentlewoman from Ohio [Ms. OAKAR] has 11 minutes remaining.

Ms. OAKAR. Mr. Chairman, I yield myself such time as I may consume, to respond to a few things that my friend said, and I would be glad to respond to the gentleman in the course of doing this, if he would like.

First of all, he mentioned that we ought to depend on the marketplace, whatever the market will pay, that is what we ought to pay.

You know, they said the same thing—if you read the arguments—when Congress was debating the child labor laws. The chairman here is on the Education and Labor Committee. You know very well that if you read the history of the child labor laws that were family passed, you know that these same arguments against having young children work in a very industrial age, and the same arguments that were used with respect to slavery, "We cannot afford to end slavery, the marketplace will not be able to absorb it." "We cannot afford not to hire little kids who are 8 and 9 years old because the marketplace will not be able to absorb it." It is the same argument.

The other point is, we are not just talking about women taking the so-called traditional male jobs. No one is talking about women lifting weights more, or whatever that argument is. We are talking about a very simple point, and that is that there seems to be in the marketplace that whenever you have jobs that are female dominated, they pay the least. And we are talking about jobs that are crucial to the American way of life. Where would we be without teachers, social workers, nurses, secretaries who are at the focal point?

I am saying—and I do not apologize for saying this to my friend from California, who is the ranking minority member on my subcommittee—that the value of those kinds of jobs has not been paid properly.

Our study does not presume anything. As a matter of fact, we do not even use the words "comparable worth." We talk about comparable duties. We talk about comparable duties with respect to skills, to efforts, to responsibilities involved in performing jobs. And we do not want to take 1 penny away from any male worker. You are right. I do not. That is a presumption that we say that our study should not recommend lowering anybody's salary.

And I will tell you why I put that provision in there. For several reasons. One is that whenever we talk about an issue related to economic justice for women, those who oppose it—and I am not necessarily referring to my friend from California; to be honest, others, who testified before our committee—will always try to pit men against women. That is not the issue. The average man wants his mother to make a fair and decent salary. The average and typical man wants his sister, they want their children to make the wages that they deserve. And the average man knows in this American society that the poorest person in the country is a female over 65 years old. And there are two really good reasons why she is the poorest person in the country. One is, one's insurance, one's pension is very often, and specifically, I should say, based on one's earnings, and women's earnings are very, very low in general. That is one reason. And the second reason—and this is another issue that I am very familiar with because I chair a task force related to the inequities of social security toward women—women are discriminated against when they get to the area of their own pensions, and 95 out of 100 women depend on social security. So they get a double whammy when they get older. They not only have their pension based on their wages that were already low, they are discriminated against with respect to what is for them their own life's blood. And when they do get another pension—and only 20 percent of the women get any pension other than social security—they have to go to the Supreme Court, as one woman was courageous and had the savvy to do, to show that she paid the same amount in her pension for the same number of years and, yes, even doing the same kind of work, and she got $40 a month less than the man who was her counterpart.

That is why we are sensitive about the issue of pay equity. And we do not want this to be a confrontational issue, and I will not permit this in my own debate of the subject to be a confrontational issue between men and women. You know that the Chair fights just as hard for the men of this country as for women. But we know very well that, in general, Federal employees are underpaid, to begin with. The President's own Commission shows that they are 21 percent underpaid. And when you take where women are, in terms of where they are in the classification, they are in the lowest classification, the seven lowest. And very few of them are in the upper classifications and have that opportunity for upward mobility. We are saying: Why not take a look at it? We are not reaching a conclusion. We are saying: Let us take a look at it, let us study it.

And the only reason is—and the gentleman knows, and you made a presumption regarding an amendment that I am going to introduce—the only reason I am not going to allow OPM to have an involvement in the study except a cooperative involvement is because of a memo written by an individual who is a political appointee, who makes $59,000 a year, more than twice as much as the average man who works for the Federal Government, and more than three times more than the average female. And what does his memo recommend? That they attempt to cause disorder in this House, that they attempt to pit union against union, they attempt to pit the unions against the women's groups. I mean, the absolute absurdity. Talk about a person who is not worth the value of what we are paying him to just write out these memos and get $59,000 a year, when the average Federal employee is underpaid, that is why we do not want OPM to do this study. And you better believe I am going to introduce an amendment to make sure that

this study is objective, and that is the purpose of it.

I would just like to conclude by saying this: Obviously, the controversial part of the bill—and there are three titles to the bill—relates to a study relative to pay equity. It is about time we studied the issue. And we want to do it in a spirit of fairness, and let us take a look at how we treat our Government employees. Let us say to the American people that we feel the manner in which we treat our Government employees ought to be a benchmark for the way we treat the rest of the Nation and the workers of this country.

● Mr. FORD of Michigan. Mr. Chairman, I rise to support the much-needed changes in the civil service laws embodied in H.R. 5680.

At the beginning I would like to say that this bill, entitled the Federal Pay Equity and Management Improvement Act of 1984, is the product of much hard work on the part of members of the Committee on Post Office and Civil Service—especially the gentlewoman from Ohio [Ms. OAKAR], the gentlewoman from Colorado [Mrs. SCHROEDER], and the gentleman from Virginia [Mr. WOLF]—and other members, such as the gentleman from Maryland [Mr. HOYER].

The Civil Service Reform Act of 1978 created a Merit Pay System. Under this system, which applies only to mid-level managers—grades GS-13 through GS-15—pay increases are based solely on performance.

The problem that we are attempting to correct today is that this system has not worked as we intended. In fact, it has not worked at all.

Even Dr. Devine, the Director of the Office of Personnel Management, with whom I am frequently at odds, understands this. Quite candidly, it is one of the very few areas where Dr. Devine and I agree.

Among those who have studied the problem, there is a consensus that the Merit Pay System must be changed for the sake of equity and fairness.

The measure before us today would make the necessary changes. It would ensure that sufficient funds are available to reward good performance. And it would bring consistency to the performance evaluation process by mandating the establishment of five performance levels. It would, as well, guarantee that individual agencies recognize, and thereby encourage, outstanding performance.

This bill also calls for important changes in the Senior Executive Service [SES]. Congressional review of the SES was required after 5 years under the Civil Service Reform Act of 1978. Such a review has been conducted by the committee and it was decided that SES should continue. Some changes, however, are necessary—in such areas as limitations on performance awards and political appointments and procedures for RIF's. H.R. 5680 spells out the required changes.

Finally, H.R. 5680 would require a pay equity study in the Federal Government. There is no question in my mind that we have an obligation to do whatever is necessary to guarantee that no sex-based wage discrimination exists in the Federal Government, which indeed should serve as a model in this area for the rest of the Nation.●

● Mr. GRAY. Mr. Chairman, on May 17, 1984, the distinguished chairwoman of the Compensation and Employee Benefits Subcommittee, Ms. OAKAR, introduced compromise legislation to promote pay equity in the Federal sector, establish a performance management and awards system, and to make improvements in the Senior Executive Service. The bill, H.R. 5680, is the culmination of months of intensive study of two separate, but wholly related, problems affecting civilian employees in the Federal sector.

First, the legislation strengthens and improves the merit pay provisions of the Civil Service Reform Act of 1978, under which pay increases for Federal managers are calculated. Under current law, all managerial and supervisory employees covered by the merit pay concept receive at least one-half of the salary increases paid to all other Federal employees. Employees in this category whose performance appraisals are "fully successful" or above were entitled, under the provisions of the enabling legislation, to bonuses above the rate of their comparability increase.

However, because the performance evaluation system is imprecise and unreliable, and because of insufficient funding allocated to the merit pay pool, coupled with the guarantee of one-half of the comparability increase to all merit employees, regardless of performance, many employees who achieve "excellent" performance evaluations have received less than they would have received had they not been under the merit pay system.

H.R. 5680 would create a new formula for determining pay increases for merit pay employees. Under the new formula, employees who rate "unsuccessful" would receive no pay increase; employees who rate "marginally successful" would receive one-half of the General Schedule comparability increase; employees who rate "fully successful" would receive full comparability increases, and an additional 2-percent bonus; employees who rate "exceptional" would receive full comparability, plus an additional 3-percent bonus.

The legislation also provides for clarification of the performance appraisal standards, and mandates that merit increase decisions be made based on the results of annual performance evaluations.

The second major component of the legislation, embodied in the substitute to title I, is the acknowledgment that the Federal Government, as the premier employer in this Nation, should set an example to all other employers and be a model for equality in wage setting.

As such, H.R. 5680 directs the Office of Personnel Management, the employment arm of the Federal Government, to establish a Pay Equity Study Council, whose purpose is to guide and direct the Government's study of its current wage-setting system to determine if discriminatory practices exist, and to identify remedial legislative activity. The Council will work under the auspices of a consultant with experience in the area of Government position classification systems.

It was the original intent of the draft of this legislation to authorize the Office of Personnel Management to perform the pay equity study. The sponsors of the legislation, including myself, believed that the Office, as the personnel arm of the Government, would have been the most logical entity to conduct the study.

Unfortunately, over the past several weeks, the Office and its Director, Donald Devine, have illustrated that they are more concerned with playing partisan politics than they are in conducting an accurate, scientific, and unbiased study of possible pay inequities in the Federal sector.

It was because of this evidence that the distinguished chairwoman of the Subcommittee on Compensation and Employee Benefits felt compelled to offer a substitute to title I, and remove the responsibility for the study from the Office of Personnel Management.

I support her actions, as I wholeheartedly support the intent of this legislation.

My own State of Pennsylvania enacted legislation in 1959 which forbids wage discrimination "in any place of employment between employees on the basis of sex * * *" when the work involved demands comparable skills and conditions. That law has worked well in my State, and we are proud of its achievement.

I believe that the time has come for the Federal Government to follow suit and establish itself as the model for equity and fairness for all the Governments of the industrialized world to emulate.●

● Ms. SNOWE. Mr. Chairman, I rise in strong support of H.R. 5680, the Federal Pay Equity and Management Improvement Act of 1984, and of the Oakar substitute to title I of this legislation.

Mr. Chairman, I believe that wage discrimination is the single most im-

portant issue facing American women today. Contrary to popular belief, however, pay equity is not a new issue for women. More than 100 years ago, Susan B. Anthony observed:

> There are many women equally well qualified with men for principals and superintendents of schools, and yet while ¾ of the teachers are women, nearly all of them are relegated to subordinate positions on half or at most ⅔ of the salaries paid to men * * * sex alone settles the question.

Unfortunately, things have changed very little in the past 100 years. In fact, when you look at the earnings gap between the sexes, you could say that things have not changed at all. In 1984, women continue to earn less than two-thirds the wages paid to men.

The Federal Government's record with respect to pay equity offers little improvement over the national picture. Women, who comprise 40 percent of the Federal work force, are clustered in the lower pay grades and earn an average of $17,000 annually, while men occupy positions in the middle and upper grades and have an average salary of $28,000. Only 3 percent of women in the Federal civil service system earn more than $20,000 per year.

H.R. 5680, as amended by the Oakar substitute, will require an independent consultant to conduct a study of wage differentials within the Federal Civil Service System. The consultant will work with both the Office of Personnel Management and a Pay Equity Study Council composed of representatives of labor unions and employee organizations representing substantial numbers of female employees.

The concept of this legislation—a study of wage-setting practices in the Federal Government to identify and correct sex-based wage discrimination—is hardly a radical one. In fact, according to testimony presented to the U.S. Civil Rights Commission during their consultation on pay equity, 25 States have either completed or are in the process of conducting a study of this type. The Federal Government certainly should do no less.

Pay equity has been a priority issue of the Congressional Caucus on Women's Issues for a long time, and as cochair of the caucus, I have had the opportunity to work closely with my colleagues in developing legislation to address sex-based wage discrimination. I introduced legislation last January, along with Congresswomen OAKAR and SCHROEDER, to focus on sex and race-based wage discrimination within the legislative branch.

My legislation would establish a 12-member, bipartisan Commission on Pay Equity. The Commission would employ the services of private contractor to conduct a pilot study of one agency within the legislative branch to determine if people are being paid according to the work they are doing—and not according to their sex or race. Within 1 year, the Commission will report its findings along with the recommendations for a comprehensive plan to insure pay equity within the legislative branch.

The issue of including congressional staff in the study has been raised by a number of my colleagues, and I certainly agree that it is important for Congress to include itself in the laws it passes for this country. At the same time, I believe we would be well advised to begin this process with a well-constructed pilot study in one of our agencies that can later be extended to other parts of the legislative branch. It is the intent of my legislation that following completion of the pilot study, the Commission will be required to address, through recommendations, the steps that will be necessary to ensure pay equity throughout the rest of the legislative branch.

Mr. Chairman, we have made freedom from discrimination in employment the law of the land, and I believe it is our responsibility to ensure that the Nation's largest employer—the Federal Government—pay its employees the compensation that is rightfully theirs. I urge my colleagues to support the Federal Pay Equity and Management Improvement Act of 1984.●

● Mr. BARNES. Mr. Chairman, I rise to strongly support H.R. 5680 and to congratulate my colleague from Ohio [Ms. OAKAR] for enabling the House to take an historic step on the difficult road toward economic justice. I refer to title I of the bill, which provides for a 7-month study of the Federal Government's pay practices and how we have fared since the battle for equal pay for equal work began 20 years ago.

I would also like to congratulate Members on both sides of the aisle who have worked so hard to develop the reforms of the merit pay system that appear in title II. Title II puts an end to inequitable pay practices that unfairly deprive top Federal managers of the rewards that the Civil Service Reform Act of 1978 promised to deliver. It is the culmination of several years of difficult debate and negotiation. These reforms enjoy broad support on both sides of the aisle and from the White House.

On the other hand, the administration opposes the principles of pay equity incorporated in the bill because it would prefer to maintain labor markets that bear the stamp of sex discrimination. From time to time, this House has the opportunity and the responsibility to expand the frontiers of decency and opportunity. And when our body does rise to the occasion, our Nation is strengthened in the bargain. The administration has chosen to back away from this particular moment—so it is up to us to make a statement on behalf of American women. It is up to us to recognize the economic needs of women who are becoming single parents in increasing numbers. Women and children are the first victims of the heinous sex-based discrimination that we must eliminate.

Sex-based discrimination suffered by American women is not an injury of the moment; it can not be endured and forgotten. Differentials in pay that title I's study seeks to examine are only one effect of discrimination about which we are concerned. Another major result of a lifetime of pay differentials, and sex-based job classifications at the lower end of the pay scale, is that the pensions women earn provide dramatically less income than those earned by men.

Members may be surprised to learn that, according to the Office of Personnel Management, only 13.5 percent of the women who work for the Federal Government ever enjoy optional retirement. There are 747,287 Federal retirees on the rolls who have exercised optional retirement; less than 200,000 of them are women. Of this relatively small group of female retirees who receive any pension, only 14.5 percent or 28,931 receive monthly annuities that range from $1,000 or $2,999 a month—the upper range of the annuity spectrum.

Despite the popular, and factually inaccurate, view that Federal pensions are overly generous only 73,757—5 percent—of 1.3 million Federal retirees earn pensions that exceed $2,000 per month. Of retirees at the top of the scale, only 3,485 are women—4 percent. Such are the wages of lifetime discrimination. We have to turn these figures around to fit the realities of a society in which the single female parent is no longer the exception.

Later this week, the House will be asked to consider the Oakar substitute to title I of H.R. 5680. The OPM itself made this substitute necessary by engaging in conduct, with respect to the pay equity debate, of such questionable character that it disqualified the Office from undertaking what under any other circumstances would be its responsibility. I urge my colleagues to support the Oakar substitute which provides up to $500,000 to hire a consultant to accomplish this important task.

A number of Members who support the principle of pay equity have asked whether it is feasible to devise a system capable of providing a fair remedy to discrimination. The administration argues—rather disingenuously—that it would not be possible to rate jobs on a point-factor system and that the result of undertaking such an analysis would be the devaluation of men's pay, particularly for blue collar workers. Those who understand Federal classification systems as they now stand realize that the Federal Govern-

ment already classifies positions on the basis of point-factor analyses. We have the means to get the job done. The Oakar bill wisely precludes the reduction of pay based upon the results of the pay equity study—a major assurance that whatever remedy is fashioned will be applied fairly.

Many States have already taken the plunge without reservation and are making important progress. My home State of Maryland, for example, enacted the Maryland Equal Pay Act 18 years ago in 1966. The act requires equal pay for work of comparable character in the same business or establishment.

H.R. 5680 is important, well-crafted legislation whose time has come. I hope that we can send a signal to the Nation by adopting it overwhelmingly later this week.●

● Ms. MIKULSKI. Mr. Chairman, I support H.R. 5680, the Federal Pay Equity and Management Act of 1984, as amended by Ms. OAKAR. This legislation will require a pay equity study within the Federal civil service. Given the opposition to this measure registered by the Office of Personnel Management, I support Ms. OAKAR'S amendment to title I which would require that the study be conducted by an outside consultant.

Simply put, pay equity is a policy which calls for correcting the practice of paying women less than men for work that requires comparable skill, effort, responsibility, and working conditions. Pay equity is a method of closing the wage gap between men and women.

Given the changes in the marketplace, this wage gap is especially critical today. Each year, 2 million more women enter the workplace. The great majority of these women are in the workplace because they have to support their families. Over 22 percent of all children now live in single parent families; the vast majority of these are headed by women.

Yet these women, often traumatized by the tragedies of divorce, widowhood, desertion, or chronic nonsupport, are twice traumatized by the realities of their inadequate pay checks. Over 13 million children in this country live in poverty, yet, their mothers—often their only source of parental support—cannot earn a sufficient wage to move them out of poverty.

Despite passage of the Equal Pay Act of 1963 and the Civil Rights Act of 1964, women still only earn about 60 cents to the dollar that men earn. The insidious persistence of this gap reflects, in large part, the occupational segregation of some into a narrow spectrum of low-paying, low-status, dead-end jobs in service industries, retail stores, factories, plants, and clerical occupations. These traditional "pink collar" jobs constitute only 20 out of the 427 occupations listed by the Census Bureau.

In the face of this reality, many opponents of pay equity argue that this policy cannot be instituted because it is too costly. To those who claim we cannot afford comparable pay for comparable work, I answer: Cost is no excuse for discrimination.

Our achievements in fair and progressive legislation have never been won without a fight. Yet we have won the fight for child labor laws, the minimum wage and health and safety laws despite those who said that these were "too expensive." And we will win this battle, too.

It is time to acknowledge that pay equity is a fundamental civil rights issue. It is time that sex-based wage discrimination must be outlawed just like race-based wage discrimination. The results are just as insidious and devastating.

The jobs performed by women are vital to the support and development of our society. It is time they were valued as such. Therefore, I urge my colleagues to support H.R. 5680, the Pay Equity Act, as amended by Ms. OAKAR. Thank you.●

● Mr. PARRIS. Mr. Chairman, it has been known for some time that the recent addition of the pay equity provision to the House version of the merit pay bill may jeopardize passage of this legislation and eliminate, at least for now, any chance for improvements in this area of much needed revision. I wholeheartedly support the concept of pay equity, but regret that this issue may unintentionally undermine the bipartisan efforts which have led to this reform.

Both the House merit pay plan and the bill already approved by the Senate would give Federal managers and supervisors full annual pay raises and within grade hikes. The administration supports this supervisory merit pay reform but now there could be the threat of veto of any bill that includes the House proposal for a pay equity study.

I intend to support the merit pay reform/pay equity bill to be voted on soon by the House. Unfortunately, I will do so with the apprehension that its chances of becoming law are increasingly slim and it may not benefit the more than 100,000 Federal supervisors and managers which deserve better treatment than they are presently receiving from their elected officials.●

● Mr. MATSUI. Mr. Chairman, it gives me great pleasure to join with my colleagues today in support of H.R. 5680, the Federal Pay Equity and Management Improvement Act of 1984. I congratulate Chairwoman OAKAR and my colleagues on the Federal Government Service Task Force for their efforts to bring long overdue reform to the Federal Government pay system.

Over 180,000 Federal managers and supervisors remain captive to a system that has failed to provide them with level of pay designed to be commensurate with the level of their performance. It is a system that has deprived them of pay received by their subordinates; has subjected them to inaccurate or often politicized evaluations and has failed to motivate them or their subordinates. Touted as an incentive pay program, merit pay has been more than a disincentive, it has undermined the managers' fundamental belief in pay for performance.

H.R. 5680 provides the relief that Federal managers have been seeking. H.R. 5680 replaces the current merit pay system with a performance management and recognition system which uses performance appraisals to determine pay and awards. Through a performance management system, Federal managers will not only be recognized for quality, they will be rewarded for their performance.

If we want Federal employees to give merit pay a second chance, the reforms we enact must restore the fundamental employee trust that has been so lacking in the current pay system. The Office of Personnel Management has done very little to encourage employee trust. In fact, the agency has inspired even less confidence here in Congress. The Office of Personnel Management's public and vocal opposition to the pay equity system is unexplainable to my constituents that make up the Federal work force in my district. The recent disclosure of an interoffice memorandum to Dr. Devine stating that this bill would give OPM the opportunity to create disorder within the Democratic House pitting union against union and both against feminist groups is reprehensible. OPM has certainly rendered itself incapable of conducting a fair and impartial study of pay equity.

Therefore, it is incumbent upon us, as conscientious and concerned Members of Congress, to make certain that the largest employer in the Nation—the Federal Government—provides its employees with fair and equitable pay and does not discriminate against any class of employee. H.R. 5680 addresses this critical issue by establishing a performance management and recognition system for midlevel Federal managers and by improving the Senior Executive Service. Furthermore, it goes one step further toward ensuring pay equity by certain discriminatory wage-setting practices within the Federal civil service.

Federal employees are highly motivated and want to contribute their best to Federal service. It is time we gave our employees a merit pay system that answers this dedication with adequate recognition and accu-

rate feedback. I urge my colleagues to support the passage of this bill.●

● Mrs. BURTON of California. Mr. Chairman, I would like to thank my colleague and friend, Representative OAKAR, for convening this special order to commend her tireless efforts in advancing the Pay Equity Act of 1984.

Mr. Chairman, for the women of this Nation, this is a bread and butter issue. Wage discrimination is the most insidious form of bias women face. The evidence is very clear. Women wage earners begin and end other labor force participation on an unequal footing with their male counterparts. The median wage for all full-time women workers is about $11,000 compared to about $18,000 for men.

Wage discrimination prevents women from realizing the full potential of their economic vitality. It also keeps many locked into a vicious cycle of poverty that is quickly becoming the cruel domain of an increasing number of women.

I believe this is a challenge we can easily overcome. If our economic system is to be truly open and resilient we must dismantle artificial wage differentials. Only then will women become authentic partners in this Nation's economy.●

● Mrs. BOXER. Mr. Chairman, I'd like to thank my friend, the gentlewoman from Ohio [Ms. OAKAR] for authoring H.R. 5680, the Federal Employees Pay Equity Act of 1984 and I commend her leadership on this extremely important issue.

Mr. Chairman, this current administration has an almost perfect record of saying one thing and doing another and the issue of economic equity for women is no exception. Claiming to have the best interest of American women in mind, we have seen the administration time and time again undercut and undermine necessary and just legislation such as H.R. 5680.

The recent OPM memorandum from Mr. Byrnes to Mr. Devine is but one more example of the administration betraying the women of this country. In discussing pay equity for women Mr. Byrnes writes:

> The blue-collar craft union would especially be concerned, since they would be the inevitable losers in such a comparable worth adjustment process. Moreover, the unions would be pitted against the radical feminist groups and would further divide the left * * * we could create disorder in the democratic House by pitting union against union and both against radical feminist groups.

I find such a statement from a high official of the Reagan administration to be absolutely outrageous. Clearly, there is little if any space for economic justice for women in the minds of President Reagan and his staff. In fact Mr. Chairman, such statements only serve to prove how absolutely essential it is to pass legislation like the Federal Employees Pay Equity Act of 1984.

H.R. 5680 would not pit union against union and both against women. Very simply, it asks that the Federal Government take a look at its own employment system and determine whether it is operating within the law. It is good legislation, it is just legislation, and it is necessary legislation if we hope to see economic equity become a reality for women.●

● Mrs. HALL of Indiana. Mr. Chairman, economic discrimination against women is not a thing of the past. Today women earn only 62 cents for every dollar a man earns.

While pay equity is the single most important issue affecting all women in the workplace, it is even more significant to women of color who suffer economic discrimination disproportionally in today's society.

Women of color, as well as white women, are concentrated in a relatively small number of occupations with low wages. Pay equity is an idea whose time has come. As we have witnessed in the AFSCME against State of Washington case, pay equity means the elimination of discrimination in wages for jobs which are undervalued because they are held predominantly by women. When wages are based on the worth of a job rather than the gender or race of the people who have traditionally been held to those jobs, pay equity will be achieved.

Over the last two decades, the wage gap between white women and women of color has narrowed significantly. The wage gap between women and men, however, has remained essentially the same. The National Committee on Pay Equity and the National Institute for Women of Color in their study "Women of Color and Pay Equity" point out several facts:

Fact: Women of color earn less than either white men, men of color, or white women. To an even greater extent than women overall, women of color hold the lowest paying jobs.

Fact: More than one-half of black and Hispanic female-headed households live in poverty.

Fact: Women of color are concentrated in a small number of occupational categories, as are white women. 59½ percent of black women work in only 2 of 12 major occupations—clerical and service work—compared to 53.3 percent of white women who work in those two occupations.

Fact: Increasingly, women of color are moving into the same occupations as those in which white women work, so that clerical work now accounts for almost one-third of women workers in nearly every racial and ethnic group.

The concept of pay equity gets to the heart of the problem of sex discrimination—occupational segregation.

Although there are still differences in the types of jobs held by women, the single most important source of women's low earnings is their concentration in relatively few job categories with low wages. For example, one-third of all women were employed as clerical workers.

In the studies of pay scales in different States, countless numbers of examples of inequities are surfacing. The California study pointed out that a senior licensed vocational nurse at a University of California medical school is paid $1,500 per month while a senior-ranked maintenance worker at the same school makes $2,000.

The Pay Equity Act of 1984 will prompt the Federal Government to study its own activities in order that pay equity will become a reality.

In light of the information available to us, I urge my colleagues to consider favorably the Pay Equity Act of 1984.●

● Mr. WOLF. Mr. Chairman, I am pleased that the House is acting on this much-needed merit pay and SES reform legislation. I believe we have an opportunity to do something very positive for Federal workers today. Since the signing of the Civil Service Reform Act, the morale of Federal employees has plummeted. This decline in employee work attitude has only been intensified for managers and executives because of the inequities inherent in the current merit pay system and the unfortunate tampering with the senior executive service early on in its implementation. We can make a difference for Federal employees at the highest levels, today, and I appreciate the House Post Office and Civil Service Committee's Chairman WILLIAM FORD and subcommittee Chairwoman MARY ROSE OAKAR's persistence and mutually shared commitment to moving these reform initiatives.

Most of the provisions of this legislation were derived from my merit pay bill and Senator TRIBLE's efforts in the other body (S. 958/H.R. 5066). My colleague from Maryland, Mr. HOYER, should also be recognized for his contribution to this legislation. The merit pay provisions are supported by the employee groups covered. I have worked for over 3 years to change the merit pay system and believe that in H.R. 5680 we now have an effective vehicle for accomplishing positive reform. Because the Nation's managers and executives have patiently waited for these changes, I believe we must act quickly to ensure that these reforms are implemented before the next merit payout scheduled for October 1.

I would like to note that the Department of Defense, which has nearly half of the entire merit pay population, is scheduled to rate its employees on June 30. It is imperative that congressional action is completed soon and I urge the House to adopt these provisions to facilitate the urgency

with which these changes must be made.

I believe bipartisanship is the most essential element in successfully moving this total package through to final passage. Like many of my colleagues, I have reservations about certain portions of the bill, but believe the positive reforms incorporated in this legislation outweigh the negatives. Although I am disappointed with the manner in which the SES portions of H.R. 5680 were developed and am not pleased with the final provisions under title III of this legislation, I have received assurances from the Chairman that these problems can be resolved in conference. With these commitments I urge my colleagues support for adoption of these vital management and pay for performance reforms.

In conclusion, I believe we have an opportunity today to approve positive legislation for the often-maligned Federal work force. It is my hope that agreement on these issues of mutual concern can be reached.

Again, my sincere appreciation, Mr. Chairman, to you for your quick action on this legislation and my appreciation to Ms. OAKAR and Mr. FORD for the important role they have played in facilitating this process. I also want to acknowledge the difficult role Mr. DANNEMEYER has played in this process. I recognize that initially, Mr. DANNEMEYER had deep reservations on the merit pay portions of the bill, but regardless of these concerns played a vital role in each step of the negotiations process and worked diligently to bring this legislation to the fine compromise we have before us today. I believe he has been very successful and I want to mention the hard work of his staff member, Steve Ramp, whose earnest attention to detail has been particularly helpful in reaching this merit pay agreement.

There are many individuals whose contributions should be recognized. I want to publicly thank the Federal personnel directors in the agencies for their response and attention to my numerous requests for practical guidance on these new merit pay concepts. The direction provided by this input along with the assistance from Federal employee organizations has significantly influenced this bill.

I feel a personal debt of gratitude to the Federal Managers Association under the leadership of Bun Bray, Red Evans, and Mike Minahan, all of whom have kept an ear to the ground throughout the past 2 years in plugging ahead with this merit pay reform, even when the odds were frequently not in our favor. The members of FMA have been well represented by this leadership team's persistence and diligence.

I want to commend the innovative concepts introduced by the Professional Managers Association under Don Gillis and Lisa Carlson. On a special note, Don was a congressional fellow in my office and played an influential role on behalf of Government managers in shaping the complexion of this legislation. Neil Reichenberg and the International Personnel Management Association were also helpful in support and guidance on issues of paramount concern to personnelists in all levels of Government.

Member organizations of the Federal Employees Coordinating Committee and other groups whose support and help in formulating this initiative are appreciated were the diversified Social Security Managers Association, the academic and practical advice provided by the Classification & Compensation Society and the support of the well-established Organization of Professional Employees at the Department of Agriculture.

I would like to mention several civil servants who have been influential in the formulation of this legislation. Rich Liebl of the Department of Navy originally introduced many of these concepts to my office and should be commended with one of the first merit pay awards under this legislation. Earle Payne of the Office of Secretary of Defense, Bob Moffit, George Nesterczuk with the Office of Personnel Management along with his career staff—John Fossom, Barbara Fiske, and Al Levan, General Accounting Office experts Jerry Miller and Gil Fitzhugh are just some of the others who deserve to share in the credit for this positive reform legislation.

As I indicated earlier my disappointment that this legislation does not represent senior executive service changes which I would support, I would like to thank Jerry Shaw and Dave Burckman of the Senior Executive Association for the outstanding representation of senior executives' concerns they provided in my original merit pay/senior executive service legislation (H.R. 5066).

In closing, I would like to personally recognize the tremendous effort that my staff, Sara Boney, has done on this legislation. She has worked on it for better than 2 years and without her day-in-day-out work we would not be here today.●

Ms. OAKAR. Mr. Chairman, I yield back the balance of my time.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore [Mrs. SCHROEDER] having assumed the chair, Mr. KILDEE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5680) to promote pay equity and to eliminate certain discriminatory wage-setting practices within the Federal civil service; to establish a performance management and recognition system; to improve the Senior Executive Service; and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Ms. OAKAR. Madam 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. 5680.

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

There was no objection.

CIVIL RIGHTS ACT OF 1984

The SPEAKER pro tempore. Pursuant to House Resolution 528 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5490.

□ 1500

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5490) to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabiliation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964, with Mr. SWIFT in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from California [Mr. EDWARDS] will be recognized for 30 minutes; the gentleman from New York [Mr. FISH] will be recognized for 30 minutes; the gentleman from Illinois [Mr. SIMON] will be recognized for 30 minutes; and the gentleman from Missouri [Mr. COLEMAN] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Chairman, I yield such time as he may consume to the chairman of the Committee on the Judiciary, the gentleman from New Jersey [Mr. RODINO].

Mr. RODINO. I thank the gentleman for yielding to me.

Mr. Chairman, I first want to commend the gentleman from California, who has been the chairman of the Subcommittee on Civil Rights, for the work that he has been doing over these many years in this very, very important area. Again, the chairman is to be commended for immediately bringing to the attention of the Congress to act in a matter that, if allowed to go unattended, would certainly

work a disservice to all of the work that has been performed by this Congress over the years in the area of civil rights.

I also wish to commend the gentleman from New York [Mr. FISH], the ranking minority member of the Judiciary Committee for not only his cooperation, but his very, very diligent efforts in this area, and I think that he along with the gentleman from California have really done what is to be commended as a yeoman job in the preservation of our Civil Rights Acts.

Mr. Chairman, I rise to urge this body to act swiftly and pass H.R. 5490, the Civil Rights Act of 1984.

We must act quickly so that we can assure the Nation that the Congress will not tolerate turning back the clock on hard-won civil rights protections.

Passage of H.R. 5490 is imperative because of misunderstandings and misinterpretations of current law. I was deeply involved in the debate and passage of the 1964 Civil Rights Act and the other laws that now must be clarified by H.R. 5490 in the wake of the Supreme Court's ruling in the Grove City case. From my experience, I know well what the Congress intended with enactment of those laws: That they were meant to outlaw discrimination in all the activities of an institution or agency that receives taxpayer money. Until last year, every administration correctly read that congressional intent. Until this year, every court did the same.

But last February 28, the Grove City ruling changed all that. The Supreme Court ruled that title IX of the 1972 education amendments applies only to the particular program that gets Federal dollars, not to all activities of a recipient institution.

I do not believe that is what the law says; I know that is not what the law intends. Nevertheless, the Supreme Court has so ruled. If we do not change this ruling the Nation will face a string of serious setbacks for the cause of civil rights. The broad application of the Court's narrow interpretation will undermine enforcement not only of title IX but also section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the 1964 Civil Rights Act, the foundation on which the other laws rest.

Before enactment of title VI, Federal funds were used to build and maintain all manner of segregated institutions and programs. The historic purpose of title VI was to end all that—to put an end to using money collected from all the people for unequal, unjust, and separate treatment of some of the people. All subsequent laws designed to prevent discrimination by recipients of tax dollars were modeled after title VI.

H.R. 5490 will make clear for all time that the ban on discrimination applies to an entire entity if any part of it receives Federal aid. It is imperative that Congress act now to ensure that no private or public institution that chooses to take tax dollars can discriminate on the basis of sex, race, national origin, age, or handicap.

I know that this is what the Congress intended when we originally passed these antidiscrimination laws. That is what we meant when the House voted, 414 to 8, last November to oppose the narrow interpretation of title IX that the administration urged on the Court after reversing traditional Justice Department policy. H.R. 5490 erases any doubt about our intent.

Some administration critics have called this bill radical legislation that would bring about sweeping change—rhetoric similar to that used by those who fought unsuccessfully extension of the Voting Rights Act 2 years ago.

As with the Voting Rights Act, there is nothing radical or extreme about H.R. 5490. It merely restores the law to where it was before Grove City.

And, like the Voting Rights Act, this legislation has broad, bipartisan support, despite the critics' alarms.

I urge passage of H.R. 5490, to let the Nation know that discrimination by an agency or institution that accepts money from the Public Treasury will not be tolerated.

Mr. FISH. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of H.R. 5490, the Civil Rights Act of 1984.

H.R. 5490 is a response to the U.S. Supreme Court's decision in *Grove City College* v. *Bell* (465 U.S. —, 104 S. Ct. 1211 (1984)). At issue in this case was the interpretation of the term in title IX program or activity. In Grove City, the Supreme Court held that while the receipt of BEOG's [Pell grants] does constitute Federal financial assistance to an educational institution, the receipt of Pell grants by students who subsequently give such funds to the institution in payment of tuition does not cause institution-wide coverage under title IX. Instead, coverage is limited to the institution's financial aid office. Therefore, the rest of the institution could discriminate without losing Federal funds and without being subject to action by the Justice Department. In other words, the Supreme Court read the term "program or activity" in a very narrow manner. This interpretation was contrary to the implementing regulations, and to many of us in Congress who had always believed that coverage of title IX was broad enough to prohibit the entire educational institution from discriminating, while enforcement for purposes of funds termination was limited to the specific program or activity found guilty of discrimination. A continued narrow reading of title IX will cause much of the progress that has been achieved since title IX was adopted 10 years ago to backslide. For example, since 1972, enrollment of women in the professional schools has substantially increased—over 100 percent in dental schools, 120 percent in veterinary schools, and 337 percent in law schools. Without the incentive and force of law of title IX, there is concern that these advances will not be continued.

Title IX is expressly modeled after title VI of the Civil Rights Act of 1964, and similar language regarding program or activity appears in section 504 of the Rehabilitation Act of 1973 and in the Age Discrimination Act of 1975. The narrow interpretation of such language resulting from the Grove City decision could be applied to these other critical civil rights statutes, opening up the opportunity for discrimination against minorities, the handicapped, and elderly individuals.

H.R. 5490 is intended to legislatively overrule the statutory interpretation in the Grove City case. It amends four major civil rights statutes: title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1974. In each of these statutes, the term "program or activity" is replaced with the defined term "recipient."

The definition of "recipient" is drawn from current regulations. This definition has been in existence with regard to title VI for almost 20 years. It is also basically the same definition used in the regulations implementing the three other statutes affected by H.R. 5490. It is this definition in title IX regulations that the Supreme Court utilized in finding that Grove City College was indeed a recipient of Federal financial assistance. The Court held:

> * * * we have little trouble concluding that Title IX coverage is not foreclosed because federal funds are granted to Grove City students rather than directly to one of the College's educational programs.

Specifically, H.R. 5490 makes it clear that any recipient of Federal aid would be required to conform to these Federal nondiscrimination laws in virtually all aspects of its operations. The only exception to this general rule would be with respect to employment under title IV and the Age Discrimination Act. Under title VI, employment discrimination is not included, unless the primary purpose of the Federal assistance is to provide employment. Employment discrimination based upon age is not addressed in the Age Discrimination Act but, rather, is covered in the Age Discrimination in Employment Act [29 U.S.C. § 621, et seq.].

The word "recipient" is defined so as to cover an entire educational institution as well as State and local governments, public or private agencies, institutions, organizations, or other entities—and their subunits.

It has been argued that H.R. 5490 goes beyond what the law was prior to the Supreme Court's ruling in Grove City College against Bell. This, Mr. Speaker, is not the case. The committee report accompanying H.R. 5490 specifically refutes this claim, as found on page 36 thereof, which states:

> The Committee intends that enactment of H.R. 5490 will not require revisions in the regulations defining the nature of the prohibition against discrimination and the remedies available for the discrimination which were in place prior to the Supreme Court's decision in *Grove City College* v. *Bell.*

Thus, the current definition of "recipient" in the regulations will remain basically unchanged.

H.R. 5490 comes before the House of Representatives after being subjected to careful scrutiny by both the House Committee on the Judiciary and the House Committee on Education and Labor. H.R. 5490 was subjected to 6 days of joint hearings by these two committees. In addition to 33 public witnesses, eight Members of the House, a former U.S. Senator, and a former Member of the House all testified regarding the need for enactment of H.R. 5490. Their testimony addressed H.R. 5490's potential impact on administrative compliance, pending litigation in the Federal courts, and the importance of congressional action in view of the Supreme Court's opinion in Grove City College against Bell.

On May 22, 1984, the House Judiciary Subcommittee on Civil and Constitutional Rights unanimously reported H.R. 5490 to the full committee without amendment. The following day, the full Judiciary Committee ordered H.R. 5490 favorably reported to the full House of Representatives.

H.R. 5490 is cosponsored by 179 House Members and by 63 Members of the other body. It is also supported by more than 200 educational, disability, minority, senior citizens', religious, labor, womens', and business groups. It is my sincere hope that the House will pass H.R. 5490 by a large margin. This legislation is crucial to the commitment Congress made to the people covered by the four affected civil rights statutes. Passage of H.R. 5490 will reconfirm this commitment.

Mr. Chairman, the gentleman from Wisconsin, Mr. SENSENBRENNER, the ranking member of the House Judiciary Subcommittee on Civil and Constitutional Rights, remains hospitalized as a result of injuries in a fire that occurred in his home 1 month ago. It is expected that he will be released from the hospital early this week. He deeply regrets his inability to be present for consideration of H.R. 5490 and asks that I convey to you his strong support for this legislation. Mr. SENSENBRENNER also asks that, at the appropriate time in the House, I place his statement in support of H.R. 5490 in the RECORD.

□ 1510

Mr. EDWARDS of California. Mr. Chairman, I yield myself such time as I may utilize.

Mr. Chairman, we do appreciate the grand support the gentleman from Wisconsin [Mr. SENSENBRENNER] is providing, and we all, of course, regret his illness as a result of the unfortunate accident.

Mr. Chairman, I now yield 5 minutes to the gentleman from New York [Mr. BIAGGI].

Mr. BIAGGI. I thank the gentleman for yielding this time to me.

Mr. Chairman, today, Congress has an opportunity to make a dramatic statement. If we are serious about ending taxpayer-subsidized discrimination, we will make that statement. That statement means that we adopt this legislation before us, H.R. 5490, and reaffirm our national policy of outlawing discrimination based on age, sex, handicap, raced, or national origin.

This bill is not a major rewrite of our four major civil rights statutes: title IX of the Education Amendments of 1972, title VI of the Civil Rights Act, the Age Discrimination Act of 1975, and section 504 of the Rehabilitation Act of 1973. Those of us who thought we had successfully adopted laws that would provide us with the tools to assure that discrimination of this sort does not occur were sadly disappointed by the Supreme Court's recent decision in the matter Grove City College against Bell which placed a narrow interpretation on title IX.

Despite what a number of detractors have said—this bill is not an attempt to expand civil rights coverage for any group of individuals in this country. Instead, it is a simple, but coherent attempt to assure continued enforcement interpretations and practices under these four major statutes in light of the Grove City College decision.

That decision specifically addressed the question whether student financial aid, specifically Basic Education Opportunity Grants, now called Pell Grants, constituted Federal aid for the purpose of title IX coverage prohibiting sex discrimination. The Court held that BEOG's did constitute Federal financial assistance, but stopped short of affirming the intent of Congress in making sure that the antidiscrimination provisions applied to the entire institution. Instead, the Court held that, indeed, Grove City College, in accepting students who received BEOG's was subject to title IX coverage but the only part of the institution that was covered was the Office of Student Financial Aid, which processed the BEOG's applications. As such, H.R. 5490 is needed to more clearly define that we intend to assure institution-wide coverage of discrimination provisions in all areas. Since the 1964 Civil Rights Act provided the model for the other three major laws that we are amending under this bill, it was necessary to amend each of these four statutes to assure that congressional intent is carried out in each instance.

Mr. Chairman, as a member of the Education and Labor Committee since 1969, I was priviledged to have played a role in the development of the 1972 title IX amendments, as well as section 504 of the Rehabilitation Act and the landmark Age Discrimination act. It was clear then—as it is clear now—that we intended to use Federal funds to assure nondiscrimination in all institutions and that the narrow imterpretation by the Supreme Court in the case of Grove City College demands that we act expeditiously to assure that our intent—in law and in implementation—continues to be carried out.

The Education and Labor Committee held 6 days of hearings on this bill and heard from a number of distinguished witnesses, including former Office of Civil Rights Directors under Presidents Nixon, Carter, and Ford. We heard that throughout the history of these laws, under both Republican and Democratic administrations, that these laws were carried out through broad interpretation of the statutes and that the intent of Congress in deciding what programs would be covered, was never in question until the current administration seized upon the Grove City College decision as a way of weakening our commitment to enforcement of civil rights. The growth in Federal funds since enactment of all of these laws has increased the strength of these laws in outlawing discrimination. To try and reverse this trend would be to abrogate time-honored practices as well as the intent of Congress in using Federal dollars to outlaw discrimination.

Mr. Chairman, I believe that in drafting the committee report to accompany this bill, we have taken special care to outline specifically those instances where the law would apply and what, in fact, constitutes recipient of Federal dollars. This interpretation is critical to the continued enforcement efforts or especially the Education Department—which has already begun to narrow its enforcement activities in a number of areas in response to the Grove City College decision. Under title IX these include:

Twenty-three education complaints involving large institutions have been

closed in admissions, student services, and student support services;

Six compliance reviews have been narrowed;

Eighteen compliance reviews and five complaint investigations have been interrupted, and

Nine cases involving public schools and 46 involving colleges and universities are being reviewed to determine whether they can proceed;

Under section 504 these include:

Five complaint cases and one pending compliance review has been narrowed; and

Seven cases are being reviewed to determine whether they can proceed; and

Under title VI:

One complaint has been closed; and

Five cases have been modified because of the Department's perception of the Supreme Court ruling.

I believe these cases underscore the growing body of evidence that indicates that this ruling will have disastrous consequences for ongoing and future enforcement of civil rights in all areas unless we pass H.R. 5490.

As a cosponsor of this measure, I join with my colleagues to urge adoption of this bill without substantial changes. The intent is clear—and will not be changed—discrimination can and will not be subsidized with Federal dollars.

□ 1520

Mr. FISH. Mr. Chairman, I yield 10 minutes to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Chairman, H.R. 5490 is intended to provide for the institution-wide coverage of Federal aid recipients thought to have existed prior to the Grove City decision. The bill, however, appears to both provide less coverage in some cases and broader coverage in other cases than existed even under expansive interpretations of the civil rights law before Grove City. Indeed, the bill can easily be interpreted by agency civil rights enforcement officials—who have never been reluctant to provide very broad readings of their own authority—and Federal judges as creating a breathtaking expansion of Federal power.

The scope of such terms and phrases as "education recipient," "recipient," entity "which receives support from the extension of Federal financial assistance to any of its subunits"—in the definition of "recipient"—and the precise meaning of the language defining a Federal agency's termination power require careful clarification.

It is also important to bear in mind that private litigants will also be able to take advantage of the growth in coverage under the bill—thus putting in the hands of the judiciary the ability to define the scope of these laws.

QUESTIONS

First, the bill's definition of "recipient" includes States, instrumentalities of States, public agencies, including any subunit of such entities.

If a State receives a categorical health grant for its health department, is the State government itself the recipient, thereby subjecting all of its activities to these four civil rights laws? Or is the recipient only the State health department?

If the physics department of a branch of a State university system received Federal education aid, is the entire State university system subject to the civil rights laws? Would the entire State government be subject to these laws if the physics department at one branch of the State university system received Federal aid?

Broad coverage under title IX's ban against sex discrimination in education programs prior to Grove City would have subjected all of the recipient's educational activities to title IX, but the Federal agencies and the courts never seemed to go further than such educational activities. If a college receives Federal educational aid, would its commercial activities, unrelated to the educational activities of the college but providing revenue to the college; for example, commercial rental property, be covered by title IX? The bill, on its face, would seem clearly to cover these commercial activities.

Similarly, Federal education aid to a college was apparently never used to reach such commercial properties under section 504. Would a college's receipt of Federal education aid lead to section 504 coverage of its commercial property, including the need to add ramps and other accommodations? The bill, on its face, would seem clearly to cover these commercial activities.

If a State receives a social service block grant, are all of the activities of the State government covered under the bill?

Second, while H.R. 5490's definition of "recipient" is modeled on definitions in existing regulations, it contains a significant additional clause not found in those definitions. The definition of "recipient" includes entities "which receive [ ] support from the extension of Federal financial assistance to any of its subunits."

What does this portion of the definition cover?

If a municipality's fire department receives Federal funds to build a fire station, clearly the fire department is covered under the bill. Does the municipal government receive support from the fire department, which is, after all, one of its subunits? If so, are all activities of the municipal government covered under the bill?

If the federally assisted fire department performs routine checks on fire safety equipment in municipal buildings and puts out fires in municipal buildings, is that support to the municipal government from the fire department which then subjects all of the municipal government's activities to the civil rights statutes?

If the municipality was able to spend on other activities the funds it would have spent on the federally assisted fire department, would that support trigger coverage of the municipal government's other activities?

Third, H.R. 5490's definition of recipient includes "any successor, assignee, or transferee of any * * * State, subdivision, instrumentality, agency, institution, organization or entity or any * * * subunit, to which Federal financial assistance is extended (directly or through another entity or a person) * * *"

If a municipal health department which receives Federal financial assistance conducts a health inspection of a local restaurant, is the restaurant a recipient of Federal financial assistance and thereby subject to the Age Discrimination Act, section 504, and title VI?

Are local businesses which obtain their water from a municipal water system, or from a private water company, which has received a Federal waste water treatment grant recipients of Federal financial assistance?

Is an airline landing at a federally financed airport, or an airport which received some Federal aid, either a recipient or transferee of a recipient, thereby subjecting itself to these civil rights statutes, including section 504's regulatory requirements of physical accessibility?

Fourth, a number of Federal funding statutes ban religious discrimination in "programs or activities"—not entire recipients—funded under the statutes. H.R. 5490 does nothing to reverse the effects of Grove City on the scope of the ban against religious discrimination in these statutes.

The Full Employment and Balanced Growth Act of 1978 forbids religious discrimination only in programs—not entire recipients—funded under the act. Does H.R. 5490 provide for institution-wide coverage of religious discrimination under this act? The answer is clearly "No."

Fifth, the revenue sharing program, which provides unrestricted, general aid for localities, has a three-layered, antidiscrimination scheme, as follows: First, a program-specific ban, like title VI now, against discrimination on the basis of race, color, national origin and sex; second, it incorporates by reference, inter alia, the Age Discrimination Act and section 504; and third, a proviso that the prohibitions against discrimination; that is, layers 1 and 2 "do not apply when the [local] government shows, by clear and convincing evidence, that a payment under this

chapter is not used to pay for any part of the program or activity." Thus, if a locality spent its revenue-sharing funds only to build a swimming pool and could show that its revenue-sharing funds were spent nowhere else, even the broad approach prior to Grove City would only have covered the recreation department, and not all of the activities of the locality. If H.R. 5490 is adopted, would a locality receiving revenue-sharing funds have all of its activities covered, or would it be able to avoid such broad coverage if it could show, as in this example, that it only used the funds to build a swimming pool?

Sixth, if a private, religious school participates in the Federal title I education program for disadvantaged children, is the entire school covered by the civil rights statutes, including section 504's accessibility requirements, if H.R. 5490 is adopted? The Department of Education's Office of Civil Rights has always tried to be minimally intrusive in the affairs of such private, religious schools receiving aid under title I. Under H.R. 5490 a Federal agency's authority—as well as the ability of a private litigant to bring a lawsuit—will be greatly broadened.

Seventh, what effect, if any, will H.R. 5490 have on traditionally black institutions, such as Lincoln University and Howard University?

Eighth, will a private undergraduate college such as Wellesley, which is now a single-sex institution, be required to admit members of the opposite sex if H.R. 5490 is adopted? The answer should be "no" because title IX currently exempts undergraduate admissions programs at private colleges.

Ninth, proponents of H.R. 5490 assert that the bill is not intended to change the scope of an agency's currently narrow fund termination power; for example, in section 602 of title VI and section 902 of title IX. That termination power is currently "limited in its effect to the particular program, or part thereof, in which noncompliance has been * * * found." H.R. 5490 changes this language in the clause limiting the fund termination power. If H.R. 5490 is not intended to change the scope of the termination power, why doesn't it retain the language currently in the statute? The likely answer to this question is: "Because we want to remove the term 'program' anywhere it appears in the statute—that was the troublesome term in Grove City." The response to this answer is—it is necessary to remove the term "program" in the fund termination part of these statutes because there, it does not affect the scope of jurisdiction in the statutes operative provision which is already going to have the phrase "program or activity" deleted.

□ 1530

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. FISH. Mr. Chairman, I yield 1 more minute to the gentleman.

Mr. DANNEMEYER. Mr. Chairman, I thank my colleague, the gentleman from New York, for this additional time.

I have raised these questions because I think they deserve to be asked when we go down the road under the flag of civil rights.

The goal that we seek, the elimination of discrimination in our society is a goal that we all share, but in pursuing that goal if we are going to expand the operations of the Federal Government in the manner that these questions seem to indicate that we perhaps will be doing, Members I think should be alert that we are doing that, so if we are going to expand vastly the power of the Federal Government in this country and its instrumentalities in the executive and the judicial branch, that we know what we are about.

I submit some of these questions raise serious doubts as to whether or not it truly is the intention of Congress that we expand the power of the Federal Government in the manner that perhaps may be intended by the language that is in this bill.

Mr. FISH. Mr. Chairman, I yield myself such time as I may use. I will be very brief.

The previous speaker raised a couple questions that I think should be put to rest at this point, although I think they will be dealt with at greater length during the 5-minute rule consideration; but the gentleman mentioned that there was new language in the definition of "recipient." I would like to read from page 30 of the committee report accompanying the measure before us:

> The term "support" is a new term in the "recipient" definition; it did not appear in that regulatory definition. "Federal financial assistance" and "support" are similar concepts. The current regulations defining "federal financial assistance" which remain unchanged are guidance for the meaning of "support." Both federal financial assistance and support should be interpreted broadly.
>
> The concepts of "federal financial assistance" and "supports," found within the "recipient" definition, are threshold questions with respect to each of the affected statutes. In *Grove City*, the Supreme Court correctly held that the Basic Educational Opportunity Grants were federal financial assistance to the college. Other forms of federal assistance will also continue to trigger coverage by these statutes. These include, but are not limited to, Medicare and Medicaid, federally Guaranteed Student Loans and grants and loans for building construction, endowments, land grants and a wide range of other resources. Agency regulations for the amended statutes should be consulted for more detailed explanation of the various forms of assistance which trigger coverage.

I think that as a general proposition, Mr. Chairman, we can say that the judicial and the executive branch interpretations and the enforcement practices subsequent to the enactment of this legislation will be the same as they were before the Grove City College decision. This legislation does not make any substantive changes in the law. It would not result in any changes in the status quo as to the type or number of recipients. It would not require any changes in the regulation.

In sum, the Civil Rights Act of 1984 will not expand the law. It will simply restore the law to its previous scope and coverage.

Mr. EDWARDS of California. Mr. Chairman, I yield myself 9 minutes.

Mr. Chairman, I join with the distinguished gentleman from New York [Mr. FISH] in bringing the title VI portion of this bill to the full House for consideration. As you know, this bill has broad bipartisan support—a total of 181 cosponsors. It has brought together a broad-based coalition both within the House and among the various constituent groups supporting this bill.

H.R. 5490 has been carefully considered by the two committees, following extensive jointly held hearings. I commend my colleagues from these committees and the various caucuses for the support they have provided in bringing this legislation to the floor. The committee report was a true bipartisan effort with staff from both sides of the aisle coming together in a spirit of full cooperation; I thank them for the fine work they have done.

Mr. Chairman, as noted throughout the committee's report, title VI served as the model for each of the other three provisions addressed by H.R. 5490. Together these four statutes prohibit Federal financial assistance to public or private entities which discriminate on the basis of race, color, national origin, handicap, age, and, in education on the basis of sex. It is necessary to enact H.R. 5490 to correct part III of the Supreme Court's Grove City ruling which, if allowed to stand would limit severely the enforcement of these statutes.

We know the Court's ruling has already changed the enforcement practices of the Department of Education because it has closed 23 title IX complaints, and 1 title VI complaint and other complaints are still under review.

The purpose of this legislation is to clarify the coverage of these four statutes. We do this by reaffirming pre-Grove City College judicial and executive branch interpretations and enforcement practices which provided for broad coverage of these antidiscrimination provisions. Such broad coverage will enable Federal funding

departments and agencies to conduct civil rights investigations unimpeded without tracing funds to determine the jurisdiction over discrimination complaints. Furthermore, it will permit the Attorney General and private parties to seek institution-wide judicial relief against continued discrimination.

Mr. Chairman, H.R. 5490 makes four changes to each of the statutes:

First, it deletes the phrase "program or activity" wherever it appears, because the phrase was so narrowly construed by the Supreme Court;

Second, it substitutes the term, "recipient";

Third, it adds a definition of recipient to each statute; this definition is modeled after existing Federal regulations defining the term; and

Fourth, it modifies the fund termination provision of the enforcement section and in so doing retains the "pinpointing" concept of this enforcement mechanism.

Extant statutory limitations on the scope of these laws are not affected by the changes made in this bill. Thus, for example, the employment limitations found in title VI and the Age Discrimination Act and the gender-based associations exempted in title IX—for example, mother and daughter or father and son banquets, single-sex schools, social fraternities, and sororities—are not changed.

By enacting this bill, we do not expand or contract who or what is covered, nor do we alter what constitutes Federal financial assistance.

□ 1540

We have described in the committee reports certain concepts basic to the operation of the four statutes. We have illustrated these concepts by setting forth hypotheticals to demonstrate pre-Grove City interpretations—interpretations which this legislation will reaffirm.

Mr. Chairman, the committees stressed that we cannot anticipate and answer every likely fact situation to be raised by these statutes. It is our intent that agency and judicial interpretations of this legislation be guided by the concept of broad rather than narrow application of the coverage of these provisions. As a general rule of thumb, if a recipient of Federal funds was covered before the Grove City ruling, it will be covered following enactment of this legislation; conversely, if it was not covered pre-Grove City it will not be covered after passage of H.R. 5490.

We believe, above all, that the enforcement record to date has been guided by a commonsense approach. That is why we should look to prior agency regulations and practices for guidance in the future enforcement of these laws. It is for this reason that major changes in agency regulations will not be required. Any changes in the regulations should conform to the broad coverage clarification intended by this bill.

Mr. Chairman, let me emphasize that the concerns over the reach of these statutes, after enactment of H.R. 5490, are without basis. Claims that beneficiaries of general-purpose governmental assistance programs, such as social security, food stamps and welfare, will be covered by these statutes and that they will transfer their coverage to others engaging in transactions with them are ill founded. They can be explained thusly: First, such beneficiaries are not recipients within the meaning of these laws—they were not before and they will not be after passage of H.R. 5490, and second, such assistance to them does not constitute Federal financial assistance within the meaning of these laws. Since these beneficiaries are not covered they cannot transfer coverage to some other person or entity.

Under the Grove City ruling and existing agency regulations there is, however, a distinction between no coverage of the ultimate beneficiary and coverage of, for example, a nursing home or hospital whose patients'/clients' medical needs are paid for by Medicaid/Medicare or a college or university whose students receive veteran's education benefits and Federal student financial aid. Such indirect aid constitutes Federal financial assistance and the receiving entity is a recipient within the meaning of these laws. Coverage means those recipients must comply with the antidiscrimination provisions of title VI, title IX, section 504 and the Age Discrimination Act.

Mr. Chairman, in conclusion, I would like to extend my special appreciation and thanks to the gentleman from Illinois [Mr. SIMON], for his leadership in reviewing executive branch enforcement of these statutes. The gentleman from Illinois has long recognized that these laws have offered the best guarantee of equal opportunity for blacks, Hispanics, women, and the handicapped.

Early on Mr. SIMON recognized a shift in executive branch enforcement of these and equal educational opportunity laws. He conducted an extensive series of hearings around the country to determine Hispanics' access to higher education. In addition, our two subcommittees conducted joint oversight hearings approximately 1½ years ago on the changed enforcement practices by the Departments of Justice and Education on title VI, title IX, and section 504. Representatives from black, Hispanic, women, and handicapped groups explained the damaging impact these changes, which are now embodied in the Grove City decision, will have if not corrected.

I would also like to thank the gentlewoman from Rhode Island [Mrs. SCHNEIDER] for boldly moving forward House Resolution 190 which reaffirmed congressional intent that title IX should be applied broadly—the vote overwhelmingly supporting that resolution was 414 to 8. Her continued determination to restore pre-Grove City enforcement of these laws is evident from her dedicated support for H.R. 5490.

Mr. Chairman, throughout all of our endeavors to enact H.R. 5490, the gentleman from New Jersey, the chairman of the full committee, has been, as he always is, of invaluable help.

Last, but surely not least, I wish to extend my appreciation to my fellow Judiciary Committee members, the gentleman from New York [Mr. FISH], and the gentleman from Wisconsin [Mr. SENSENBRENNER].

The gentleman from Wisconsin [Mr. SENSENBRENNER] is ill and cannot be here today. He is the ranking minority member of the subcommittee that I chair. These two gentlemen have recognized the importance of bringing this legislation before you for your support. I deeply regret that the gentleman from Wisconsin is unable to be here. We are grateful for his support and wish him a speedy recovery.

Mr. Chairman, the gentleman from New York has a long and distinguished career in this Congress as an advocate for civil rights and as always I am proud to join with him again.

I am confident, Mr. Chairman, that H.R. 5490 succeeds in achieving its limited purpose which is to clarify the scope of coverage of these four laws. I urge my colleagues to adopt the bill and reaffirm congressional intent that these provisions be applied broadly and, thus, overturn the narrow coverage resulting from the Grove City ruling.

Mr. FISH. Mr. Chairman, I yield myself sufficient time to thank my colleague, the gentleman from California, for his very generous comments.

Mr. Chairman, I yield such time as she may consume to the gentlewoman from Rhode Island [Mrs. SCHNEIDER].

Mrs. SCHNEIDER. Mr. Chairman, in 1963, President John Kennedy in an address to students in Nashville, TN, said:

> This Nation is now engaged in a continuing debate about the rights of a portion of its citizens. That debate will go on and those rights will expand until the standard first forged by the Nation's Founders has been reached and all Americans enjoy equal opportunity and liberty under the law.

Much has happened since these words were spoken and many rights have been hard fought and won by minorities, women, senior citizens, and disabled persons. The 1964 Civil Rights Act outlawing discrimination based on race and national origin, title IX of the 1972 education amendments,

section 504 of the 1973 Rehabilitation Act and the 1975 Age Discrimination Act prohibiting discrimination against older persons were all highly influential in providing the opportunities and access necessary for individual achievement.

The blatant discrimination of the fifties and sixties which required blacks to ride in the back of the bus and women to have higher SAT scores than men has since been outlawed due in large part to the effectiveness of these laws. Impressive statistics abound attesting to the marked gains that women, minorities, seniors, and disabled persons have made in the realm of education and employment and public access. For instance, there are 60 percent more black physicians today than 20 years ago while the percentage of professional degrees earned by women has quadrupled since 1972.

Despite the gains, the ideals expressed by the Founding Fathers in the Declaration of Independence have not yet been fulfilled.

Almost 20 years to the day after the Congress of the United States passed with pride the Civil Rights Act of 1964, we today are assembled in the House of Representatives to debate the merits of the Civil Rights Act of 1984. No member should underestimate the significance of this legislation since it is in fact a test of congressional commitment to the goals of equal opportunity for all Americans.

The antidiscrimination fury of the sixties has diminished. Congress has turned its attention away from civil rights to more immediate concerns such as Federal deficits, trade and defense spending arguments. While these issues are important, such issues come and go each year. Civil rights stays with us throughout the course of time a civil rights movement, while quieter than its predecessor, does exist today. It exists in our schools, our neighborhoods, our offices and factories. We observe each day the progress that women, minorities, disabled persons, and seniors have made but also stand witness still to how far we as a nation need to go before true equality is achieved.

During the past 20 years, the Nation has grown as a result of having admitted to the marketplace the minds and abilities of the millions of Americans previously prevented from competing. Surely this country is a better place today than 20 years ago because the talents and skills of all its people are being utilized. And throughout the world, the United States, in less than two decades, has given persons the hope and courage to fight for liberties that they too desire and deserve.

H.R. 5490, the Civil Rights Act of 1984, carries on the American ideal of providing an equal opportunity to all its citizens. It does not give any one population the edge in competing for jobs or educational slots, but simply restates the fundamental commitment to achieve according to the talents of the individual provided for in title VI, title IX, section 504 and the Age Discrimination Act.

I would like to digress just a moment to shed some additional light on why H.R. 5490 is a necessary and explain my own involvement in this issue.

Back in 1981 when I first arrived in Congress I learned that my distinguished colleague, Senator ORRIN HATCH, had introduced legislation designed to narrow the scope of title IX of the 1972 education amendments. As the only Federal law prohibiting sex discrimination in education, I had witnessed first hand the surge of women entering medical, engineering, and law professions. I observed the progress that women were making in the world of business and politics. Title IX obviously was working to open up doors previously closed to women.

I strenuously objected to the Hatch legislation and introduced a resolution citing the contribution that title IX has made to society and opposed any effort any effort to narrow the applicability of title IX coverage. Recognizing the legitimacy of the pro-title IX arguments, Senator HATCH graciously withdrew his legislation. In the meantime, a small private college in Pennsylvania, Grove City College, was challenging a Third Circuit Court of Appeals ruling which had ordered the college to sign a title IX compliance form since some of its students used basic educational opportunity grants [BEOG's] or Pell grants to finance part of their education. The college, with a history free from discrimination complaints, believed that Pell grants alone did not constitute Federal financial assistance and declared that they would not sign the title IX compliance form. The college brought the case to the Supreme Court which on February 28, 1984, made the following decision: First, that BEOG's did constitute Federal financial aid, and second, that Grove City need only comply with title IX in its financial aid office since only that office directly receives Federal funds. I should tell you that prior to the Supreme Court decision, I had taken several steps to clarify congressional intent of the title IX statute. I had introduced a resolution clarifying that the Congress intended title IX to apply broadly—so the entire educational institution was covered whether or not each and every program or activity directly received Federal assistance. Second, I crafted an amicus brief for the Supreme Court Grove City College against Bell case and obtained bipartisan support from 75 Senators and Representatives. In the brief, I urged the justices to review the legislative history of title IX which clearly shows that title IX was supposed to cover entire educational institutions.

Despite these efforts, the Supreme Court determined that title IX should apply only to the program or activity earmarked to receive Federal funds. Soon after the Supreme Court decision, I introduced legislation designed to clarify the title IX statute so that once and for all the law would provide broad coverage while keeping the remedy, in the event of discrimination, narrow. Thus, if a science class was federally funded but a history course was not, the federally funded science class would trigger coverage for the entire institution. Under the Grove City decision, only the science class need comply with title IX. I believe, and the 414 to 8 vote proved, that the Congress does not approve of the kind of patchwork discrimination that would evolve from the Grove City decision.

It became readily apparent to me, however, that three other civil rights statutes, title VI of the Civil Rights Act, section 504 of the Rehabilitation Act and the 1975 Age Discrimination Act, like title IX, were in jeopardy of a narrow finding by the courts unless they too were clarified. I then joined with my distinguished colleague from New York, Representative FISH and the other Members—Representatives SENSENBRENNER, EDWARDS, and SIMON who worked so hard to carefully draft legislation that would return our most important civil rights statutes to pre-Grove City standing.

The Congress of 1984 can act none too soon in passing this important legislation. Already, since the Grove City decision, there have been 28 education complaints closed and in 18 antidiscrimination complaints the scope of the investigations have been narrowed. Also, one title VI case had been closed and five others have been modified.

I believe that the Congress owes it to the Nation to restore its major civil rights statutes to what has been the existing law of the land. As a Representative of Rhode Island where more than 300 years ago Roger Williams enshrined one of the fundamental freedoms of our Nation—freedom of religion—I am proud to stand here today to remind my colleagues that equality of opportunity should be a fact of American life—not a question mark.

□ 1550

The CHAIRMAN. The time of the gentleman from New York [Mr. FISH] has expired.

Mr. EDWARDS of California. Mr. Chairman, I yield 2 additional minutes to the gentlewoman from Rhode Island [Mrs. SCHNEIDER].

Mrs. SCHNEIDER. I thank the gentleman for yielding more time to me.

Mr. Chairman, I would like, however, to express my disappointment that Representative BARTLETT's amendment failed to pass out of the Rules Committee. The Bartlett amendment would have appropriately mandated that the Congress adhere to the civil rights laws found in H.R. 5490. It is simply inexcusable that the Congress of the United States exempts itself from compliance with the very laws that it requires from the rest of the Nation.

Despite this omission, H.R. 5490 is a sound piece of legislation. It is extremely important to send to the courts and the Nation a sign that Congress will not tolerate any backpeddling in its commitment to civil rights. There simply is no room for token support or apathy when it comes to equal treatment of Americans under the law. I remind you of Abraham Lincoln's words when he said: "to sin by silence when they should protest makes cowards out of men."

Mr. EDWARDS of California. Mr. Chairman, I yield 3 minutes to the distinguished chairman of the Subcommittee on Select Education of the Committee on Education and Labor, the gentleman from Pennsylvania [Mr. MURPHY].

Mr. MURPHY. I thank the gentleman from California for yielding.

Many of us in Congress are concerned with the impositions of Federal laws and rules and regulations on our institutions, both public and private. But likewise, many of us in Congress are also concerned with the progress that we have made in educating our handicapped and special young people of this Nation.

And we fear that the ruling that was recently handed down by the Supreme Court would drastically affect the rights of our handicapped youngsters to their full and complete education, to their fullest potential.

Therefore, I endorse the contents of H.R. 5490 insofar as it does extend and continue the protection of our young people who, although they may be somewhat physically or, some, mentally handicapped, do have a place in our society, do have a task and jobs that they can perform and have relied these past 10 years under the provisions of the act of Congress in 1974 that granted them a full and complete education.

I, therefore, Mr. Chairman, strongly urge my colleagues to support the contents of this very important measure.

Mr. Chairman, I rise in support of H.R. 5490. I would like to ask my colleagues to consider the importance of H.R. 5490 to the lives of this Nation's citizens who are handicapped. The Supreme Court decision narrowing the coverage of title IX affects section 504 of the Rehabilitation Act, the law which specifically protects the civil rights of handicapped individuals. Section 504 has extended the promise of equal citizenship for some 36 million disabled Americans, and in the 10 years since its enactment, has brought us a long way toward that goal. The Supreme Court decision now puts that progress in jeopardy and places a barrier in the path of further progress.

It is ironic that on the same day the Supreme Court handed down the Grove City decision, it reached a unanimous decision on another case, Consolidated Rail against Darrone, upholding broad employment coverage under section 504. Under the Grove City decision, however, a recipient could argue that its employment practices are not covered by section 504 if its personnel office receives no Federal funds. A school district or college or university may argue they are not covered in employment practices in departments not receiving Federal funds. Such a claim has been made in a case pending before the Department of Education. The Department found in an investigation that a teacher had been discriminated against "solely on the basis of disability." The school district has claimed that after Grove City the Office of Civil Rights has no jurisdiction to pursue the case since the teacher had been hired to teach math and physical education and neither of these programs receives Federal funds.

Similar setbacks may be seen in the area of education of handicapped children if Congress fails to pass H.R. 5490. Handicapped students have, prior to the Court's decision, been able to rely on the broad reach of section 504 to ensure their access to regular education programs, materials, and resources. The Federal Government presently supports handicapped students in a number of educational programs. The most familiar is the Education of the Handicapped Act, but there are handicapped children being federally supported in vocational education, chapter I compensatory education programs, bilingual education, and other programs. The Federal support of these programs has triggered the protections of section 504. Without H.R. 5490, however, it is possible that handicapped students will not be able to access regular education resources due to the lack of direct Federal support of those regular education programs.

For example, consider the case of a high school student with cerebral palsy who uses a wheelchair, is functioning at grade level academically and who is enrolled in special education in order to receive appropriate physical therapy. The Education of the Handicapped Act assures him of a free and appropriate education. But, without the protection of section 504, the Education of the Handicapped Act assures him only a free and appropriate special education. His access to materials, resources, and programs in regular education is a function of section 504. Without the full functioning of section 504, this high school student could find himself unable to obtain access to chemistry classes held in an upstairs classroom.

Federally assisted programs for handicapped students are deeply dependent upon regular education for their ultimate success. One of the major underlying principles of the Education of the Handicapped Act is that handicapped students be educated alongside their nonhandicapped peers to the greatest extent possible. Without the full functioning of section 504, this objective will be severely hampered. Section 504 in this regard serves as a bridge to resources and, just as importantly, to nonhandicapped people. If we choose not to ensure its applicability, we are jeopardizing not only the progress that has been achieved in the past, but also the future of handicapped students.

In section 504 Congress sought to assure that recipients of Federal financial assistance would discontinue discriminatory practices and policies and would take the steps necessary to assure equal opportunity and full participation by disabled citizens. Congress recognized that discrimination on the basis of disability is often the result of the failure to consider or to accommodate special needs, or of benign neglect or misdirected or erroneous assumptions and stereotypes. Congress also recognized, however, that the result—exclusion and segregation—is unjust and in need of a Federal remedy.

While section 504 is modeled after and is virtually identical to title VI and title IX, Congress recognized that the nature of disability-based discrimination would require different protections in order to assure is equal opportunity. The Department of Health, Education and Welfare was assigned the task of developing regulations to accomplish this result. After nearly 4 years of study, drafting, and comments, as well as continual congressional oversight, HEW published the first set of section 504 regulations in May 1977. The cornerstone of the 1977 HEW regulations is equal opportunity. HEW recognized that in the case of disability, identical treatment may in fact be discriminatory, while different treatment or accommodation may be necessary to assure equality of opportunity. The regulations prohibit any practice which, in purpose or effect, results in discrimination against disabled Americans.

Congress participated extensively in the regulatory process. As the Supreme Court stated in Consolidated Rail Corporation against Darrone, a case which correctly upheld section 504's prohibition against employment discrimination:

The regulations specifically merit deference in this case: the responsible congressional committees participated in their formulation, and both these committees and Congress itself endorsed the regulations in their final form * * * Congress incorporated the substance of the Department's regulations into the statute.

The HEW regulations correctly implement the integration and equal opportunity mandates of section 504. Section 504 requires recipients to accommodate the special needs of disabled citizens. This concept of accommodation takes place in all areas. No longer can disabled children be segregated from their peers because of architectural or communication barriers or the failure to provide specialized services. Similarly, section 504 opens the doors of higher education to qualified disabled students. In 1973, a disabled student who wished to pursue a higher education had few options. Only a handful of colleges and universities in the country were accessible to them. Today, a disabled student can make career and educational decisions on the same basis as other students. Barrier removal, accommodations, and academic adjustments have been incorporated into higher education. Since the promulgation of the section 504 regulations, the number of disabled college freshmen has more than doubled. In many instances, across the country, the number has increased tenfold or more. At the University of Pittsburgh, which has shown leadership in accommodating disabled students since 1975, the number of disabled students has increased since 1977 by 50 percent. Significantly, the university reports that, because of the effects of section 504 on attitudes and opportunities in employment, disabled students now study a broad range of subjects, including business, engineering, and the sciences. It is no longer assumed that disabled graduates will find employment in only a few occupations willing to accept them.

Section 504 has changed the national consciousness from thoughtlessness and neglect to consideration and action. Government officials can no longer ignore the needs of millions of Americans in making policy decisions. Section 504 prohibits the utilization of criteria which have the effect of discrimination against disabled Americans. Since section 504, policy decisions must be reviewed to determine the impact on this population, and alternatives must be explored.

Millions of disabled Americans can now compete for jobs from which they have historically been excluded. In every area of American life, section 504 allows disabled Americans to claim their rightful places.

Recipients of Federal financial assistance have done a commendable job in transforming the face of American life by accommodating the special needs of their disabled constituents in accordance with section 504. If one lesson has been learned in the last 10 years, it is that the short-term costs of compliance are far outweighed by the long-term gains and savings. Disabled people have entered the mainstream of American life with the opportunity to be productive, contributing members of our society.

But we are only just beginning. Our awareness as a country has changed remarkably. But there is still much that needs to be done to truly integrate our disabled citizens. Hundreds of years of neglect cannot be turned around in 10 short years. Section 504 has been the single most important tool in the long struggle of equal citizenship for disabled Americans.

Section 504 must continue as a strong law and enforcement mechanism. The failure to pass the Grove City amendment would signal a retreat from the societal commitment made to disabled citizens in 1973. All recipients of Federal funds are covered by section 504—that was our intent in 1973 and it is our intent now. This is not a burden—it is an opportunity and it is essential to the fundamental principle of equality on which this Nation is based.

I thank the chairman.

Mr. EDWARDS of California. Mr. Chairman, I have no further requests for time.

Mr. FISH. Mr. Chairman, I have no further requests for time.

Mr. EDWARDS of California. Mr. Chairman, I yield back the balance of my time.

PARLIAMENTARY INQUIRY

Mr. COLEMAN of Missouri. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. COLEMAN of Missouri. Mr. Chairman, it is my understanding that there are 2 hours of general debate, 1 hour to be controlled by members of the Committee on the Judiciary and 1 hour to be controlled by the Committee on Education and Labor; is that true?

The CHAIRMAN. The gentleman is correct.

Mr. COLEMAN of Missouri. Am I to control 30 minutes from this side?

The CHAIRMAN. The gentleman is correct.

Mr. COLEMAN of Missouri. Who is to control time on the other side?

The CHAIRMAN. The gentleman from Illinois [Mr. SIMON].

Mr. COLEMAN of Missouri. Mr. Chairman, are we going to proceed to that time now, or am I to take my time?

The CHAIRMAN. The Chair would hope we may proceed during this general debate this evening, yes.

□ 1600

Mr. COLEMAN of Missouri. Mr. Chairman, I will reserve my 30 minutes.

Mr. EDWARDS of California. Mr. Chairman, the gentleman from Pennsylvania [Mr. MURPHY] will represent the Committee on Education and Labor on this side for the additional period of time.

The CHAIRMAN. Pursuant to the rule, the gentleman from Pennsylvania [Mr. MURPHY] will be recognized for 30 minutes and the gentleman from Missouri [Mr. COLEMAN] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylania [Mr. MURPHY].

Mr. MURPHY. Mr. Chairman, we have no requests for time at this moment and would, therefore, allow the minority to proceed.

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

Mr. COLEMAN of Missouri. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 5490, the Civil Rights Act of 1984.

I am an original cosponsor of this legislation which was introduced in response to the Supreme Court's decision in Grove City College against Bell. The Court's decision was in response to the refusal of Grove City College to sign an assurance of compliance form under title IX of the Education Amendments of 1972. Title IX prohibits sex discrimination in educational programs and activities which receive Federal financial assistance.

The purpose of the legislation before us today is simple: It restores and reaffirms the judicial and executive branch interpretations of our civil rights statutes prior to the Grove City College decision in February 1984.

Since title IX was enacted in 1972, the Department of Education and its predecessor, the Department of Health, Education, and Welfare, have interpreted the statute so broadly that if any part of a school or college received Federal aid, the institution as a whole would be covered by the statute.

In Grove City College against Bell, the Supreme Court dealt with the issue of whether or not basic education opportunity grands (BEOG's), now referred to as Pell grants, constitute Federal financial assistance to Grove City College for the purposes of title IX coverage. The Court held that Pell grants are considered aid to the college. This portion of the decision reflects the regulatory and judicial history of title IX. Unfortunately, the Court also held that only the financial aid office of the college was required to comply with title IX. This portion of the decision directly contradicted the regulatory and judicial history of title IX.

Grove City set a new precedent for the interpretation of title IX which could significantly undermine our efforts to eradicate sex discrimination from education. Under the decision, only the specific campus program or activity which directly receives Federal aid would be covered under title IX. This means that women may be lawfully discriminated against in all other programs or activities not receiving Federal funds.

I, for one, regret the Supreme Court's decision because it severely limits the effectiveness of title IX. Not only does the decision jeopardize the tremendous gains made for women and girls in education, but it also curtails the protections of three other key civil rights statutes: Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. All three of these statutes contain the identical language that the Supreme Court narrowly interpreted in the Grove City College case.

As introduced, H.R. 5490 makes three changes in each of the four civil rights statutes:

The words "program or activity" are replaced with the word "recipient."

A definition of "recipient" taken directly from Department of Education title IX regulations is added.

The fund termination enforcement provisions are clarified.

H.R. 5490 was carefully drafted to restore the pre-Grove City vitality of all four civil rights statutes without breaking any new ground or expanding civil rights protections.

The Committee on Education and Labor and the Committee on the Judiciary heard testimony from numerous witnesses who were involved in the enactment of title IX in 1972. These witnesses included both former and current Members of the House and Senate, former members of the Office of Civil Rights in the Department of Health, Education, and Welfare, and civil rights activists. Each of these witnesses unequivocally testified that Congress intended coverage to be broad, comprehensive, and institution-wide under title IX. They expressed support of H.R. 5490 as the most effective means of reasserting Congress intent with respect to these laws.

Before title IX became law, sex discrimination was an open, accepted practice on many campuses. Among the problems:

Female applicants were required to have higher scholastic aptitude tests than males to be admitted to many colleges and universities.

Athletic scholarships for women were virtually nonexistent.

Female students were strongly advised to pursue so-called women's fields, leaving science, math, and medical studies primarily to male students.

Many women were teaching at prestigious colleges and universities without compensation. The colleges said that either they could not afford to pay the women, or that, because their husbands were employed by the school, policies barring nepotism prohibited paying them.

Today, women are teaching in the classrooms, more women are entering medical, law, business, and dental schools, and female high school students are receiving their fair share of scholarships.

One of the best examples of women gaining equal access in education thanks to title IX has been in the area of athletics. Before Title IX was passed, practically no college or university offered scholarships to talented female athletes. For every 100 athletic scholarships awarded in 1974, an average of 1 went to a woman. Today, 22 out of every 100 athletic scholarships are awarded to women. In my home State of Missouri alone, the dollar amount of female athletic scholarships awarded at the University of Missouri at Columbia has climbed from $8,000 in 1975 to $364,000 in 1984.

I am unaware of a program of Federal financial assistance that directly supports an athletic program on a college or university campus. Yet, since the enactment of title IX, athletic programs across the country have felt its tremendous impact. During 1981, over 10,000 athletic scholarships were awarded to female high school students.

H.R. 5490 must be enacted swiftly so that the tremendous gains that we have made for women and girls in education are preserved. Since the Supreme Court decision in February, the Office of Civil Rights within the Department of Education has dropped 22 cases which deal with sex discrimination in education. Secretary Terrel Bell has publicly stated that those cases will reopened and investigations resumed should the Congress approve H.R. 5490.

There is a great deal at stake in this issue. The part of the law the Court has interpreted so narrowly is the same language found in almost every civil rights bill guaranteeing equal treatment for minorities, the elderly, and the handicapped.

The Supreme Court decision puts at risk the signficant steps that have been made toward ridding our Nation of discrimination with regard to one's age, race, national origin, physical limitations, and sex. Our civil rights laws are safeguards to ensure that our citizens have equal rights. The House should pass H.R. 5490.

Mr. Chairman, I yield 5 minutes to the gentleman from Utah [Mr. NIELSON].

Mr. NIELSON of Utah. Mr. Chairman, in the Supreme Court's Grove City against Bell decision it was determined that title IX compliance applied only to programs that receive Federal assistance, not to the entire school. I have no problem if Congress wants to bring all educational activities at a recipient institution under title IX requirements. If a school makes a conscious and active effort to seek Federal moneys in any of its programs it should expect the federal strings attached to the money. We could have solved the title IX problem by simply having the words "program or activity" with "institution" as Representative SCHNEIDER's bill would have done. In my opinion that would have been preferable to House Resolution 190 which asked the Supreme Court to so rule.

CONCERNS OF PRIVATE INSTITUTIONS WHICH ARE NOT SEEKING FUNDS

Another part of the Supreme Court's decision is of much more concern and should be to all those who believe, as I do that a diverse educational system is important in our society. There are approximately twenty-seven 2- and 4-year institutions which receive no campus-based funds and which participate in the alternative distribution system (ADS) for BEOG's. Under the ADS method of BEOG distribution, the Department of Education calculates awards and makes disbursement directly to eligible students. The ADS method is used by those schools that wish to minimize their involvement in the administration of the BEOG program. As long as we are correcting the Supreme Courts oversights, I think we should exempt from Federal obligations those institutions of higher education whose only form of Federal assistance is indirect student assistance.

ANTI-CIVIL-RIGHTS AND EDUCATIONAL CHOICE BILL

Those colleges and universities that have made every effort to resist Federal money because they want to remain independent of Government control, would come under Federal requirements simply because one or more of its students received Federal assistance and then used that assistance to pay tuition at that school. Several representatives of these types of institutions have testified that they would be forced to refuse admittance to students that were receiving Federal assistance. This could seriously limit the educational choices of those students who would prefer to attend a small private college but that would be refused admission because they needed Federal assistance to afford the tuition.

NOT A CIVIL RIGHTS ISSUE—A GOVERNMENT INTERFERENCE ISSUE

Grove City was never accused of discrimination. Its only sin was the school's desire to keep the Federal Government at bay. It just wanted the

Government to mind its own business and refused to sign a certificate of compliance. Instead of discouraging institutions from remaining independent of Government control and financial largesse, we should encourage a diverse educational system and encourage those private colleges which wish to remain private.

□ 1610

I might point out that even the Washington Post has worried that this bill is too far reaching and it recommends that Congress "at least understand fully what the consequences of passage may be."

I am grateful to the gentleman from New York [Mr. FISH], who insisted on a full hearing of this bill and not having it on suspension, because there are some things about which we need to be concerned. When the Washington Post is worried about what the Federal Government is doing, and the idea that it may be making too large a power grab, it is time for the rest of us, it seems to me, to take a hard look at what is going on.

I would like to also indicate that I feel that the other three acts could be amended similarly to the one I suggested. On this one, all you have to do with title IX is to change it to say "institution" rather than "program or activity." For the case of the rehab Civil Rights Act, title VI, or age discrimination, a very simple change of the words "program or activity" could simply be "to the agency," and that would solve the problem without the complicated language in this bill.

I have no quarrel with civil rights, I have no quarrel with the intent of the legislation. I agree that it is good. But while we are correcting one wrong the Supreme Court may have done, let us also correct the other wrong, which I think we go much further than any of us intend.

Mr. COLEMAN of Missouri. Mr. Chairman, I yield 7 minutes to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Chairman, I will be entering a full statement into the RECORD at the conclusion of these remarks, but I would share with the House several observations that come from having gone through the hearings, reading the materials and reading the bill and participating in the committee report.

Mr. Chairman, I approach this bill with a good deal of reluctance and a good deal of skepticism. I began the hearings with many of the same questions that I have heard some of my colleagues raise today. I believe that those questions have been answered in each and every case.

Mr. Chairman, I stand here as a long-time supporter of civil rights and of antidiscrimination laws. I am a believer that Federal funds which are supplied by all of taxpayers, those benefits should also be available to all of the taxpayers. I believe that the law should be colorblind, should be sex blind and access to benefits should not be denied based on age or handicap.

However, along with many Americans I believe that in some instances in the last 10 years in this country remedies to discrimination have been excessive or overly zealous. Schoolbusing to achieve racial quotas, for an example, or reverse discrimination associated with various affirmative action and quota plans I believe have been excessive and have hurt the people they have tried to help.

The dissatisfaction that I have with certain remedies is a legitimate complaint shared by many. But I would point out to the House that those remedies which may have been excesses in fact are not included in H.R. 5490. H.R. 5490 only goes to the pinpoint withdrawal of Federal funding.

The Civil Rights Act of 1984 is specifically limited in its remedies to the termination of Federal funds.

I would further note the statements not just here but in committee and in the hearings and elsewhere of the sponsors of the bill and in the committee report, such as the gentleman from California, who said just today in the floor debate, that if an item or if a category was covered before Grove City, it would again be covered, and if it was not covered prior to Grove City, it would not be covered by H.R. 5490.

So the termination of Federal funds to programs which discriminate I think should be a fundamental fairness concept and is the fundamental concept of this bill. It is a fairness issue. An institution which receives Federal taxpayers' dollars should not be allowed to use that funding for discriminatory purposes. Discrimination under such circumstances equals the use of taxpayers' dollars to exclude a certain segment of those taxpayers. If an institution discriminates, in short, it should not receive Federal assistance to do so.

So I rise in support of the bill, after a good deal of thought, debate and participation in the hearings.

Now, I have heard and I would note that I have heard from many friends and thoughtful persons in my own State who are concerned about the consequences of some of the questions that have been raised, and so for the record let me cite, by example almost, some of the things that this bill does not do which in fact have been raised as questions. I believe the questions are answered.

For example, the bill does not extend coverage to financial institutions whose only Federal tie is through FDIC insurance or some other sort of guarantee. It does not extend coverage to those individuals who are Social Security recipients, nor to those landlords or retailers who merely sell goods to those Social Security recipients who use the proceeds of their Social Security check. It does not make any statement about sexual preferences. H.R. 5490 addresses four civil rights statutes, none of which deal in any way with sexual preference.

H.R. 5490 does not extend coverage to local school districts merely because the State may receive Federal aid. H.R. 5490 does not expand the civil rights coverage. It merely clarifies and reaffirms the threshold and the scope of the coverage. It does not change the enforcement scheme available to Federal agencies. It does not remove the effect of the limitations that are currently in title IX, such as the permission for mother-daughter banquets and single sex schools, and so forth.

It does not alter pinpointing principle; that is, the termination of Federal financial assistance that would be limited to that assistance which supports the discrimination found.

The purpose and the effect of this legislation is to reaffirm pre-Grove City College judicial and executive branch interpretation and enforcement practices which provided for broad coverage of those antidiscrimination provisions but for pinpoint remedies for violation.

So, Mr. Chairman, I plan to support this legislation, although there are two imperfections which I believe still exist in the legislation and I would hope would be corrected. One is, the bill does not extend coverage to Congress as an institution under the four civil rights statutes. This is an issue of basic fairness, because Congress should be willing to accept for itself and abide by the same laws which it passes for the rest of the Nation. And I plan to again offer my amendment, as I did in committee, to extend civil rights coverage to Congress as an institution.

The second imperfection, it seems to me, has to do with the fund's termination. And I have prepared a circuit-breaker type of amendment which would state that the remedy or the penalty to be applied would only be applied if there has been a finding of discrimination. The remedy should be used only as a last resort, and the termination of Federal funds should occur only in cases where there is a finding of discrimination and not in cases where there is a finding of a lack of paperwork or some sort of a paperwork violation, and the funding termination would only occur if there has been a finding of discrimination.

These imperfections can and ought to be corrected by Congress. The will of Congress ought to be permitted to work its way through passing and developing and considering carefully drafted, well thought out amendments

which would strengthen the legislation and not weaken it in any way.

Both of these amendments are designed to improve and strengthen the legislation. I do urge the House to perfect H.R. 5490 and to improve the Civil Rights Act of 1984 through serious and carefully crafted amendments.

Mr. Chairman, my support for H.R. 5490, the Civil Rights Act of 1984, was not immediate. It evolved rather slowly over the last 3 months. Even today I have an open mind on amendments, and hope those offered receive a fair hearing. In my tenure in public office, I have been faced with few issues more complicated or elusive than those addressed and affected by H.R. 5490—civil rights, discrimination, and enforcement of civil rights protections.

I welcome our debate on H.R. 5490 and hope that it will strengthen our understanding of the bill. My contribution will focus on two general topics—a description of how my position on H.R. 5490 evolved and the review of what I believe the bill would and would not do. My comments are targeted especially to those of my colleagues who may still have major concerns about H.R. 5490. It is my fervent hope that we can achieve a consensus—too much is at stake to do otherwise.

H.R. 5490 amends title VI of the Civil Righs Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. It is my present understanding that H.R. 5490 makes three changes in these four civil rights statutes:

First, the word "recipient" is substituted for the phrase "program or activity."

Second, a definition of "recipient" is added—it is modeled after the definition of "recipient" contained in current regulations.

Third, the concept of "pinpointing" as reflected in the fund termination provision is clarified.

These changes were construed as necessary to reaffirm the interpretation of the four statutes prior to the Supreme Court decision in Grove City College against Bell. The intent of H.R. 5490 is to reinforce two principles inherent in the current statutes:

First, coverage is to be broad. Acceptance of Federal financial assistance triggers broad coverage: It mandates that a recipient comply with prohibitions against discrimination based on race, national origin, color, sex—in educational programs—handicap, or age in any unit or subunit of the recipient whether or not the unit or subunit is supported by the Federal financial assistance.

Second, enforcement is to be narrow. Enforcement, when applied in the form of fund termination, is limited to the Federal financial assistance that supports the discrimination found.

Although the Grove City College against Bell decision confirmed that basic education opportunity grants [BEOG's] constituted Federal financial assistance to Grove City College, and thus that the college must comply with title IX assurances against sex discrimination, the Supreme Court held that compliance with title IX assurnaces would be required only in the financial aid office of the college. This interpretation was consistent with the general interpretation of the threshold of coverage, but it equated the extent of coverage with the "initial resting place" of Federal financial assistance. The decision made the scope of coverage and compliance equivalent.

The Court decision and H.R. 5490 gives us the opportunity to review the principles and process related to civil rights. By addressing several assumptions we will be able to judge individually and collectively if H.R. 5490 constitutes appropriate congressional action. In attending the 6 days of hearings I identified five assumptions which provide a context for assessing the need for H.R. 5490.

First, civil rights protections should be broad.

Second, equivalent civil rights protections should be afforded to all persons served by a recipient of Federal financial assistance.

Third, compliance with civil rights requirements does not pose an inordinate burden on recipients of Federal financial assistance.

Fourth, enforcement of civil rights statutes in the form of fund termination should be used only as a last resort.

Fifth, a legislative standard can be drafted that would protect civil rights, yet not allow remedies against discrimination to cause unintended effects.

Sixth, no entity which accepts Federal financial aid should be allowed to discriminate against the aged, the handicapped, minorities, or women.

CIVIL RIGHTS: THE NEED FOR BROAD COVERAGE

I believe that all of us would endorse the theoretical concept of civil rights if it were defined as prohibition against discrimination based on race, sex—in relation to education programs—handicap, or age. However, we may differ in practical terms about how prohibitions against discrimination can be assured. Moreover, we may differ on how to determine violations and on how to apply penalties. Even if we cannot agree on specific implementation strategies for protecting civil rights, we must make a good faith effort to make such civil rights universal. And, thus, even though each opportunity to ensure or violate an individual's civil rights presents some unique circumstances, we must err on the side of protecting those rights rather than accepting a standard which limits civil rights. The most readily available mechanism we have to promote civil rights is Federal financial assistance—that is as close as we can come to ensuring universal civil rights. Federal financial assistance permeates all facets of American life, and the risk of its loss is a most effective incentive.

If we endorse civil rights, if we believe they should be as universal as possible, if Federal financial assistance is viewed as an appropriate catalyst to ensure such civil rights, then coverage under civil rights statutes should be broad.

EQUAL PROTECTION: A BASIC PREMISE OF COVERAGE

If we support the universality of civil rights, we must attempt to set standards that ensure that individuals served by the same recipient have the opportunity for and receive comparable treatment. The availability of Federal financial assistance in any part of a recipient's operation should trigger civil rights protections to all individuals throughout the recipient's operation. Broad coverage would therefore represent an appropriate principle to apply to minimize unequal treatment of individuals served by a recipient of Federal financial assistance.

COMPLIANCE BURDEN: A LEGITIMATE BUT SEPARATE ISSUE

Receipt of Federal financial assistance brings with it the obligation to complete assurance forms, to submit to monitoring by Federal agencies, and to answer charges of discrimination. This obligation may be construed as a burden. However, it is a burden which can be relieved by streamlining of administrative policies which affect recipient burdens associated with assurance forms, monitoring visits, and discrimination charges. Such streamlining suggests procedural rather than substantive modification in the implementation of civil rights protections, and poses an issue not affected by H.R. 5490.

It would seem that the regulations promulgated for title VI, title IX, section 504, and the Age Discrimination Act have been fully tested in terms of their burden on recipients by agencies and the courts.

ENFORCEMENT INCLUDES EXTENSIVE DUE PROCESS PROTECTIONS FOR RECIPIENTS

In agency-initiated discrimination cases, extensive due process proceedings are defined in law and regulations and must precede fund termination or agency referrals to the Deparment of Justice. Although the requirements may be viewed as burdensome and instrusive, they also are a form of protection for the recipient of Federal financial assistance. The steps that must be taken are as follows:

There is a mandatory requirement that the agency seek voluntary com-

pliance of a finding of discrimination—this is a prerequisite to any further Government action. If voluntary compliance fails, the agency may pursue an administrative hearing leading to fund termination, or the agency may refer the case to the Department of Justice for litigation.

The administrative hearing is a full evidentiary proceeding with witnesses before an administrative law judge. The administrative law judge recommends a decision to the Department. That decision is reviewed by a reviewing panel. If fund termination is recommended, the Secretary of the agency makes the final decision. A 30-day notice is sent to the congressional committees having responsibility for the laws under which the funds were authorized. The recipient may seek a judicial review of an adverse finding.

Fund termination is the last stage in the agency process, and it is a remedy of last resort. Fund termination is used infrequently but is an important recourse to have available.

There is also a private right of action available. This has been established by the courts. It is specifically authorized in title VI of the Civil Rights Act of 1964 and in title IX of the Education Amendments of 1972.

Since 1970 there have been only six fund terminations under title VI, zero under title IX, one on appeal under section 504, and zero under the Age Discrimination Act. I would suggest that the number of cases that have resulted in fund termination have been to a large measure contained by the statutory provisions and their regulations as interpreted by agencies and the courts. This containment would continue if H.R. 5490 were enacted. However, if the *Grove City College* decision goes unchallenged, it may introduce new bureaucratic complexities into the enforcement process not intended by Congress. For example, if the Grove City College decision stands, then when making a charge of discrimination against a recipient, a Federal agency will now be required to establish up front that Federal financial assistance can be traced to the specific unit or subunit in which the alleged discrimination has occurred before an investigation can be initiated. It is my understanding that prior to the Grove City College decision, if any unit or subunit of a recipient's operation received Federal financial assistance, an investigation pertaining to alleged discrimination could be initiated, thus allowing resources to be immediately targeted on factfinding related to discrimination.

Unless Congress clarifies its intent on coverage through H.R. 5490, some investigation resources will be diverted to extensive review of financial accounts rather than being expended on investigating charges of discrimination. This effect would most likely require clarification in regulations. It may also raise issues related to the threshold of coverage, such as how much Federal financial assistance constitutes "enough" to trigger an investigation? Thus, even though the Supreme Court did not address the enforcement question in the Grove City College case, its interpretation of coverage could have potentially negative effects on enforcement proceedings in the future.

A REASONABLE STANDARD CAN BE DRAFTED

A reasonable standard which balances civil rights protections and coverage and enforcement can be set in law. However, given the complex nature of such protections and forms of discrimination, such a standard cannot stand alone. It must be supported by legislative history, regulation, and court interpretations. If inconsistencies in interpretation emerge in this support system, then it is incumbent upon Congress to eliminate or reduce the likelihood of inconsistencies emerging in the future. H.R. 5490 provides the opportunity to address and clarify the relationship between coverage and enforcement as understood prior to the Grove City College ruling.

Basic to a reasonable standard is the straightforward principle that Federal dollars should not be used to subsidize those who violate its laws. Public tax dollars should never be used to support discrimination.

WHAT H.R. 5490 WOULD AND WOULD NOT DO

It is impossible to delineate with total certainty how H.R. 5490 may and may not affect civil rights protections and enforcement. One limitation, as indicated earlier, is related to the nature of civil rights protections, discrimination, and enforcement. Another limitation is tied to the personal position one adopts on the relationship between coverage and enforcement. For example, if one endorses the position that coverage under the four statutes should be broad and enforcement, in the form of fund termination, should be "pin-pointed", then H.R. 5490 would probably be viewed solely as a corrective or restorative measure. However, if one endorses the position that the scope of coverage and enforcement should be equivalent, then H.R. 5490 would likely be viewed as an expansive legislative measure. The provisions in H.R. 5490 mean one thing to those who support broad coverage and "pin-pointed" fund termination, yet mean something entirely different to those who wish to equate coverage and enforcement.

In spite of these limitations, I would like to offer evidence for why I believe H.R. 5490 is not expansive legislation:

It does not expand civil rights coverage, but rather clarifies and reaffirms the threshold and scope of coverage.

It does not change the enforcement scheme available to Federal agencies.

It does not alter the "pinpointing" principle, that is, that termination of Federal financial assistance is limited to that assistance which supports the discrimination found.

It does not establish a basis for investigation of a recipient by multiple Federal agencies.

It does not counter the Supreme Court's interpretation on exempting certain forms of Federal financial assistance from coverage under the four statutes.

It does not affect the likely use of quotas or affirmative action plans as remedies.

Before I elaborate on each of these points, I wish to acknowledge again a proposition I presented in the beginning of my remarks. I believe that civil rights statutes cannot be considered in isolation. Our understanding of them and their usefulness is dependent on agency interpretation of legislative history, through regulations and administrative actions, as well as court interpretation of legislative history through the application of the statutory standards, regulations, and case law.

COVERAGE IS NOT EXPANDED

Statutory limitations on the scope of title VI, title IX, section 504, and the Age Discrimination Act are not altered by H.R. 5490. For example, the limitations on employment discrimination in title VI and ADA are not changed by H.R. 5490. Similarly, the limitation to education of title IX, as well as the exemptions for gender-based associations in title IX, are not altered by H.R. 5490.

The regulatory language defining "recipient" for the four statutes is the basis for the definition of "recipient" in H.R. 5490. Similarly, the inclusion of the "subunit" and the "successor" clauses in the definition are drawn from the regulations. It would seem, therefore, that the codification of current regulatory language would serve to contain rather than expand agency actions related to civil rights. This proposition is reinforced in the committee report (Rept. 98-829, part I):

> . . . The addition of the definition of "recipient" to Title IX, Title VI, Section 504 and the Age Discrimination Act is not intended to result in any change . . . as to the type or number of recipients affected by the regulations before the Supreme Court decision in *Grove City College* v. *Bell*. Therefore, the Committee intends that no major changes in the regulations will be required. [p. 36]

The term "support" is a new term in the "recipient" definition. It is contained in the portion of the definition addressing direct or indirect Federal financial assistance. The provision reads, in part, "* * * or which receives support from the extension of Federal financial assistance to any of its subunits." Those with concern about expansion of coverage cite the use of the

term "support" as evidence of expansion given its inherent ambiguity. The committee report offers this clarification:

Federal financial assistance" and "support" are similar concepts. The current regulations defining "federal financial assistance" which remain unchanged are guidance for the meaning of "support." [p. 30]

The report makes no reference to the concept of expanding Federal support to include the "freeing-up" of non-Federal funds.

The committee report offers additional examples of how coverage is not expanded by H.R. 5490. One example addresses the relationship between States and political subdivisions within States. The other example describes, in part, the relationship between a city and its subunits. The theme in both cases is containment.

Political subdivisions (such as cities) are legal entities unto themselves and should not be treated as subunits of their States. . . . A political subdivision must itself receive assistance in order to be covered. This may happen through the direct receipt of Federal funds, or through the receipt of Federal funds from a State . . . but it is not the automatic result of a State's coverage. [p. 26]

The second example establishes the same limitation:

If a subunit . . . is the recipient, such as a . . . city fire department, coverage of the parent entity and all of its operations is not automatic. A subunit's receipt of federal financial assistance will trigger coverage of the parent entity of which it is a part, *if* [emphasis added] the assistance to the subunit supports the larger entity as well. . . . So, for example, administrative overhead from Federal assistance which a subunit gives to its parent entity will "support" the larger entity and thus lead to coverage. [p. 26]

The committee report also makes a distinction between entities covered by the "successor" clause and those it characterizes as "secondary recipients":

This clause does not apply to Federal funds which are transferred to "secondary recipients" for the performance obligations flowing from transactions outside the purpose or character of Federal funds. [p. 32]

This means, for example, that if the city housing authority uses community development block grant funds to pay the electric company, the electric company does not become a recipient of Federal financial assistance for the purposes of the four statutes.

ENFORCEMENT PROCEDURES ARE NOT ALTERED

The enforcement mechanisms contained in the four statutes are not altered by H.R. 5490. Thus, the due process protections available to recipients prior to the Supreme Court's decision in Grove City College against Bell and those available now would still be in place if H.R. 5490 were enacted.

THE PINPOINTING PRINCIPLE IS RETAINED

The committee report makes the following statement:

H.R. 5490 retains . . . the requirement that a nexus be established between the discrimination found and any Federal funding that is be terminated or suspended. [p. 33]

This is known as the pin-pointing principle. The committee report makes a distinction between funds subject to fund termination and other Federal financial assistance held by a recipient:

. . . Termination is limited to those funds which sustain, benefit or assist the noncompliance rather than federal funds sustaining, benefiting or assisting other functions within the noncomplying entity. [p. 34]

This report language, as well as the previous excerpt, suggests the intent to contain and clarify rather than expand the reach of the four statutes.

The report offers a caveat on fund termination, but it, too, is offered in the spirit of containment:

It is impossible to predict with certainty whether [all federal financial assistance being terminated if discrimination is found in a subunit not directly receiving federal funds] will . . . lead to the termination of all or only some of the funds going to a particular recipient. The answer will . . . vary with each fact situation. However, the Committee is satisfied, based on testimony about previous enforcement practices, that the due process requirements are amply met. The procedures required by law to precede the use of [fund termination] provide numerous opportunities for the relevant facts to be presented and reviewed so that funds which support discrimination are terminated and those which do not continue to flow. . . . [p. 34]

NO LIKELIHOOD OF MULTIPLE AGENCY INVESTIGATIONS OF RECIPIENTS

Executive Orders 12250 and 12067 gave a central role to the Justice Department in coordinating cooperation among agencies which may have overlapping enforcement responsibilities under title VI, title VII, title IX, and section 504. Such responsibility included involvement in the development of joint regulations. H.R. 5490 would leave the coordinating responsibilities of the Justice Department and the interagency regulations intact. If there is overlap among enforcement agencies which causes confusion among recipients of Federal financial assistance in terms of compliance obligations, corrective action may be necessary, but it is a separate issue from H.R. 5490.

GENERAL ASSISTANCE PROGRAMS APPEAR TO BE EXCLUDED

Opponents of H.R. 5490 have raised objections to the bill because they believe that it would extend civil rights compliance requirements to entities which accept food stamps, funds derived originally from welfare payments, and other forms of general-purpose governmental aid to the poor. Justice White, in a footnote in the Grove City College against Bell decision, proposed several criteria which, if applied, would not result in an unintended extension of coverage. Justice White stated the following:

Grove City's attempt to analogize BEOGs to food stamps, Social Security benefits, welfare payments, and other forms of general-purpose governmental assistance to low-income families is unavailing. First, there is no evidence that Congress intended the receipt of federal money in this manner to trigger coverage under Title IX. Second, these general assistance programs were not designed to assist colleges and universities. Third, educational institutions have no control over, and indeed perhaps no knowledge of, whether they ultimately receive federal funds made available to individuals under general assistance programs, but they remain free to opt out of federal student assistance programs. Fourth, individuals' eligibility for general assistance is not tied to attendance at an educational institution.

H.R. 5490 does not alter this section of the Court's opinion.

H.R. 5490 WOULD HAVE NO EFFECT ON AFFIRMATIVE ACTION PLANS

Some are concerned that if H.R. 5490 were enacted, it would have a dramatic impact on agency-initiated legal actions and the use of certain remedies such as quotas and affirmative action plans. Simply stated, H.R. 5490 is mute on the question of remedies. The use of various remedies will not increase or decrease because of H.R. 5490. Other factors may influence the use of such remedies. For example, the Supreme Court held in a recent decision on Firefighters Local Union No. 1784 against Stotts et al. that courts could not interfere with seniority systems in court-ordered affirmative action plans. This decision will very likely limit the use of quotas and affirmative action plans.

CONCLUSION

H.R. 5490 is most likely going to be adopted by this body. The legislative history associated with its passages is very important. Therefore, in our debate I hope we offer facts instead of rhetoric, clarifications rather than accusations, reasoned judgments in lieu of speculation, and finally seek consensus in spite of philosophical differences.

AMENDMENTS

I urge this body to exercise its responsibility and use the opportunity we will have to improve H.R. 5490 through the amendment process.

I plan to offer two amendments that will strengthen and improve the Civil Rights Act of 1984.

The first amendment would bring Congress under the authority of the act. It is timely and appropriate that the 39,300 employees of Congress be covered.

The American people will no longer tolerate that Congress continue to exempt itself from laws which it passes for the rest of the Nation. We cannot continue to operate under the principle, "Do as I say, not as I do."

I am also considering a second amendment to improve H.R. 5490. The amendment would prohibit any Federal agency from terminating funds

unless there is a finding of discrimination.

Amendments such as I have described are in the best interests of the law which Congress is considering, as well as of the persons whom the law is designed to protect.

AMENDMENT TO H.R. 5490, AS REPORTED, OFFERED BY MR. BARTLETT

Page 10, after line 22, insert the following:

SEC. 6. With respect to matters relating to the performance of their official duties, Members of Congress shall be deemed to be recipients of Federal financial assistance for purposes of section 901 of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, section 303 of the Age Discrimination Act of 1975, and section 601 of the Civil Rights Act of 1964.

Mr. COLEMAN of Missouri. Mr. Chairman, I yield 11 minutes to the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. I thank the ranking Member on my side of the aisle for the time, and I appreciate it very much, particularly not being a member of the committee.

I want to spend the few minutes that I have kind of framing for my colleagues on this Monday, of a week of a session that will be very busy, my conerns about the legislation that will be before us.

We know that essentially there were two holdings in the Grove City case. First, that student financial aid, as indirect a benefit as it is, can be considered Federal assistance to an institution and, second, that since title IX as written specifically restricts the authority of that program to "programs and activities" receiving such aid, the Court limited their decision according to the clear wording of the legislation as written by the Congress.

This dual holding by the Court points to the first area of confusion that arises when the sponsors of this legislation tell us that their intent is to overturn Grove City.

□ 1620

If I knew that what they meant was that title IX was to be given institutionwide coverage so that no part of the university would get away with sex discrimination, and that if there was reason to believe that this was the extent of the effect of H.R. 5490, I would frankly have no problem with this bill.

What I think we have to do is to shift the focus of the debate from not what the stated goals of this legislation are, and what in fact we might agree on ought to be the goals of this legislation, but actually to what the impact of this legislation is likely to be. The issue with this legislation is not whether the Federal Government believes in equal educational opportunities for women, or is the issue whether or not Grove City College ever discriminated or wanted to discriminate on the basis of gender. That, in fact, has never been an issue or even been alleged.

The issue is rather, whether a grant given directly to a student by the Federal Government should give the Government the right to tell the university how to run the other parts of that school. In other words, to what extent should the university be regulated by the Federal Government because a student is receiving Federal student loans?

In the Grove City case, Justice White was quoted as saying, and I quote him:

> We have found no pervasive evidence suggesting that Congress intended that the Department's regulatory authority follow federally aided students from classroom to classroom, building to building, or activity to activity.

Now the point I hope to raise here is one of intellectual honesty and consciencious legislative draftsmanship or, perhaps I should say, draftspersonship, where we openly discuss what this bill is likely to do or that we send it back to committee, where it is sure to undergo closer and more appropriate scrutiny. But the issue does not stop with title IX or simply educational institutions, because this legislation amends all four major civil rights statutes. We are seeking carefully to craft a piece of legislation that I think may have been put on too fast a track that might stymie some fuller consideration of all the ramifications of it as we move through this body with the discussion that may exist under the 5-minute rule.

In the words of Charles Rice, a law professor at Notre Dame, and I quote him: "The potential displacement of state authority and private autonomy by H.R. 5490 is so extensive as to justify Dr. Michael Horowitz's conclusion" who, parenthetically, is an analyst at OMB, that, "buttressed by the legislative history created to date, the bill, if passed, would largely eliminate the remaining distinction between Federal and State, or Federal and private concerns."

What the sponsors of the legislation say are fully amplified by letters that all of our colleagues have received. Letters from the ACLU; letters from the Women's Equity Action League; letters from Benjamin Hooks and Ralph Neas who attach a list of some 200 groups, among them the Gays Rights National Lobby, the NEA, the National Council of Churches, the Americans for Democratic Action, Common Cause, the AFL-CIO, NAACP, National Gay Rights Task Force, the YMCA, the YWCA, the National Easter Seal Society, the Epilepsy Foundation, the League of Women Voters, and so on, saying do not amend this bill. We are not trying to break new ground; we just want to go back to per the Court decision.

I thought that was a pretty good, worthwhile goal. As a sponsor of the resolution on title IX, as someone who believes in civil rights and civil liberties and in eliminating gender-based discrimination even in statutes, let alone regulations, until I began to read the words of the bill proposed, and until you read it and apply some of your own intuitions and legal or practical experience to this bill's working, I think we will have all agreed. Despite the sponsors claiming that they only want to return to the original scope of coverage prior to Grove City, the poorly drafted wording of this bill before us, has serious and substantial ramifications for the public and private sector alike.

Let me ask a few quick questions and I will put information into the RECORD later about what the Farm Bureau's concerns are; about what Hillsdale College's concerns are, who have decided, according to Dr. George Roche, its president, a college in Minnesota, that they do not want to take aid anymore if this is going to be the case.

Who is likely to be affected by the legislation? State and local governments; small business men and women? Banks, and hospitals, and universities. Grocery stores, drug stores, farmers, homeowners, franchisers, licensees, and contractors. Almost all employers, almost all employees. Common carriers, public utilities, broadcasters, the cable television industry, airports, sports arenas, and procurement contractors.

So the question is probably better framed: Who will not be affected by this legislation? The wording of the bill and the legislative history that has been established so far gives us little, if any, clues as to where we stop. Let me ask two quick questions. Essentially there are two basic ones that need much clarification, Mr. Chairman, before we pass this bill.

One, who will be deemed to be a recipient under the bill? Second, what will be deemed to be financial aid per this bill? Does the committee have any idea how many more entities will be covered than are currently covered by the four civil rights statutes that we are talking about? In terms of compliance with these four statutes, what does this actually entail for a small businessman, a farmer, a licensee, as I have said; what kind of forms, what kind of studies? What are the numbers against whom discrimination cases can be brought in private sector?

Exactly what is discrimination for the purposes of expanding title IX? Is it discrimination that a low number of whites ever make it on a professional basketball team or college basketball teams? Is it discrimination when 50 percent of the whites taking the bar exam in a particular State fail as do 75

percent of the blacks taking that same test fail?

In other words, do the sponsors intend the use of the discriminatory intent test or the use of a discriminatory effect test? It is very important that we resolve that in the debate on this legislation. I want to make it very clear that that is critical.

To what extent would the following people be affected by H.R. 5490? A company that sells materials or leases equipment to a federally funded project? How about bar examinations or medical boards? What about teacher competency tests? What about licensing and professional certification procedures? What about this bill's implication for revenue sharing? Implications for Small Business Administration loans and other Federal loans? Would a business housed in a facility financed through the use of tax-exempt bonds be covered given the implications of the tax bill that is about to be brought before this body? Would this bill require affirmative action or quotas? Will landlords whose tenants pay rent with federally funded public assistance programs or vouchers be affected? What about the grocer who takes food stamps?

In summary, on the basis of the legislative history which has been established to date, the courts could very well feel compelled to give H.R. 5490 the broadest interpretation that is consistent with its very plain language. Very plain language. I feel extremely uncomfortable knowing that some of the answers to the questions raised in this debate are supposedly answered satisfactorily in the committee report.

Frankly, since we will have the opportunity to amend this bill, let us make sure, before we move to final passage, that this bill does say what it means so that it will mean what we say.

Let us consider clarifying amendments that would, for example, reverse the part of Grove City that we find most objectionable without tampering with an otherwise effective and successful statutory scheme. Because of the importance of any modification to our civil rights statutes, I believe this body has a responsibility to consider any change to these important laws with full debate and discussion. To do a shoddy or a haphazard job of drafting and clarifying our intent in this matter will not do anybody any good. Let us not confuse the recipients, the agencies, or the courts, which is exactly what we will be doing if we pass the bill in its current form.

The fact that Congress exempts itself from the very coverage that is purported to be fair is something that is just very difficult for me to understand. It is the ultimate of ironies.

□ 1630

When we voted on the rule, I think we adopted a position that was pretty clear. The people who were opposed to the rule were opposed to it for one reason: Simply because we would not make ourselves subject to the very provisions that amount to the committee's intent on this particular piece of legislation.

Mr. Chairman, I want to conclude by reading some supplemental views in the report. I was very taken back by the language signed by Messrs. ERLENBORN, PACKARD, and NIELSON, and I commend the reading of their supplemental views to the membership of this body. I quote in part:

> We are in effect saying this new bill is too complicated to understand. We will just have to pass it to find out what it means.

● Mr. SIMON. Mr. Chairman, I rise in strong support of H.R. 5490, the Civil Rights Act of 1984. As an original cosponsor of this legislation, I want to commend my colleagues, DON EDWARDS, the chairman of the Judiciary Subcommittee on Civil and Constitutional Rights; the chairman of the Committee on Education and Labor, my friend from Kentucky, Mr. PERKINS; along with Mr. COLEMAN of Missouri, Mr. SENSENBRENNER, Mr. BARTLETT, and my other colleagues in the House who have worked with us to bring this bill before the House today. I also want to acknowledge the role played by my friend from Illinois, our ranking Republican member, Mr. ERLENBORN. Although we have not always been in agreement on the issues in this legislation, he has played the part of the loyal opposition and done so effectively. His concerns have aided us in writing an excellent committee report, which I urge all Members to read.

H.R. 5490 is not a partisan piece of legislation. The protection and enforcement of civil rights in America should not be a matter of politics because it is our individual and constitutional responsibility to assure that equality of opportunity is not denied to any American. Since the enactment, almost 20 years ago, of the Civil Rights Act of 1964, that act and its progeny—which make up the vanguard of our civil rights arsenal—have been consistently interpreted and uniformly enforced by the Federal courts and by Democratic and Republican Presidents alike. Recently, it has been suggested by some, both in and out of Government, that we have gone too far and that the rights of the majority—assumed to be white males—are being compromised to benefit minorities and women. We have not gone too far because:

Women still earn 49 cents for every $1 that men make for comparable work;

Black Americans constitute less than 10 percent—9.8 percent—of undergraduate enrollment nationwide; 4.9 percent of law school enrollment and about 7 percent of medical school enrollment;

Approximately 50 percent of Hispanic Americans drop out of high school, only 7 percent of Hispanics finish college, and nearly 18 percent of Hispanics, 25 or older, are classified as functionally illiterate; and

Non-Indian institutions of higher education have a dropout rate approaching 90 percent for native American students, while these same students after completing a 2-year degree at tribally controlled colleges and who transfer to a 4-year non-Indian institution have an 80-percent completion rate.

We have not gone too far because we shall not be free as a nation until we are all free—when equality of educational opportunity is a reality and not just rhetoric. Frederick Douglass put it much more graphically: "You cannot put a chain on the ankles of bondmen without finding the other end of it around your neck."

The Civil Rights Act of 1984 is simple and straightforward—providing the legislative guidance the Supreme Court sought in Grove City against Bell—it overturns the limitation on coverage included in the Court's opinion and reaffirms both executive branch and judicial interpretations and enforcement practices of four major civil rights laws: First, title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance; second, title IX of the Education Amendments of 1972 prohibits sex discrimination against students and employees in all aspects of federally assisted education; third, section 504 of the 1973 Rehabilitation Act as amended in 1978 bars discrimination on the basis of disability in all federally assisted and federally connected programs or activities; and fifth, the Age Discrimination Act of 1975 bars age discrimination in federally assisted programs and activities. Each of the these laws has a simple objective, which was stated by President John F. Kennedy in his message to Congress in 1962 proposing enactment of comprehensive civil rights legislation: Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion, which encourages, subsidizes, or results in racial discrimination.

President Kennedy's view of simple justice has been logically extended to sex discrimination in education, to discrimination based on age or disability, as well as color and national origin. It is fitting and proper that 20 years after Congress' enactment of the 1964 Civil Rights Act and 30 years after the historic Brown against Board of Edu-

cation decision, that the Congress should reaffirm its commitment to equality of opportunity by enacting H.R. 5490.

Since 72 Members of this House introduced H.R. 5490 on April 12, 1984, many of my colleagues have asked three basic questions: First, what does this bill do? Second, does it really take us back to where we were before the Supreme Court decided the Grove City case? And, third, will the bill cause all the mischief the opponents and administration officials say it will?

Each of the questions is reasonable and deserves an answer.

H.R. 5490 was introduced in response to the Supreme Court's February 28, 1984 decision in Grove City College against Bell. That decision narrows the application of coverage of title IX of the Education Amendments of 1972. It is anticipated that the other provisions addressed by the bill—title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975 will be similary narrowed in their application as a result of changed agency enforcement practices and subsequent judicial interpretations.

Already the Department of Education has taken the following steps to dismiss complaints or restrict compliance reviews because of the Grove City ruling:

Twenty-three education complaints involving large institutions have been closed in admissions, student services, and in student-support services;

Six compliance reviews have been narrowed;

Eighteen compliance reviews and five complaint investigations have been interpreted; and

Nine cases involving public schools and 46 involving colleges and universities are being reviewed to determine whether they can proceed.

Under section 504—

Five complaint cases and one pending compliance review have been narrowed; and

Seven cases are being reviewed to determine whether they can proceed.

Under title VI—

One complaint has been closed; and

Five cases have been modified because of the Department's perception of changes brought about by the decision in Grove City College.

It is clear then that the scope of the Grove City decision was not confined to title IX and that its impact is potentially far reaching. H.R. 5490 amends each of the four principal civil rights laws governing discrimination in education based on sex and discrimination in any federally assisted entity based on age, race, national origin, or disability. The bill makes three major changes in the four current laws: First, deletion of "program of activity"; second, addition of a definition of "recipient"; and, third, retention of the "pinpointing" concept in the fund termination section, while altering the language to delete the word "program".

The Committees on Education and Labor and the Judiciary held 6 days of hearings in order to better understand the law and regulations before the Supreme Court's decision and the potential impact of not acting immediately to legislatively cure what I believe was a fundamental error in the Court's understanding and interpretation of the law. We heard from Members of Congress, administration officials both past and present, especially those charged with interpreting and administering the laws and regulations, college and university presidents, interest groups and advocates, including those who both supported and opposed the pending bill. While some have suggested this bill "goes too far" or "leaves things up to the courts" that Congress should decide, others have developed serious questions, as well as absurd hypotheticals based on the language in H.R. 5490. The committee report addresses each of the basic coverage and termination questions—from a factual perspective—in order to answer real questions about the application of the law, as amended.

H.R. 5490 simply restores the broad coverage found in executive branch and judicial interpretations construing these law since 1964. The bill does this by making the following changes in each statute:

The operative phrase, "program or activity" is removed wherever it appears in the statute, and the word "recipient" is substituted;

A definition of recipient is added to the statute, the definition is modeled after agency regulations first promulgated in December 1964; and

The pinpointing concept, as the fund termination provision has been construed, is retained.

Existing statutory limitations on the scope of these statutes are not affected by the changes in H.R. 5490. For example, the employment limitations found in title VI and the Age Discrimination Act, and the gender-based associations in title IX, that is, mother and daughter or father and son banquets, single-sex schools, social fraternities, and sororities are not changed.

Nothing in the bill expands existing coverage with respect to employment. The Supreme Court has ruled that title IX and section 504 cover employees without restriction. Title VI covers employment if the primary purpose of the Federal funds is for employment or, in schools, when the students are affected by discrimination in employment.

The effect of these changes is that the concept of broad coverage of these statutes is reaffirmed. With respect to title IX, the limitation to education is retained. Thus, a recipient of Federal financial assistance will understand that receipt of Federal funds means it is covered throughout its operations. Likewise a subunit receiving Federal assistance will trigger coverage of its parent entity if the Federal funds benefit the parent entity; once coverage is triggered the parent entity is covered throughout its operations. The committee bill clarifies that agency and judicial interpretations of this legislation should be guided by the concept of broad rather than narrow application of these coverage provisions. This legislation also retains the pre-Grove City investigation and enforcement interpretations and posture.

Fund termination is the last stage in the agency process, and it is a remedy of last resort. Fund termination is used infrequently but is an important recourse to have available. Given the history of these statutes it is interesting to observe how few times it has been used: Never for title IX, once for section 504 and 220 times for title VI—197 school districts, 5 higher education institutions and 18 health or social service facilities.

H.R. 5490 also retains the requirement that a nexus be established between the discrimination found and any Federal funding that is to be terminated or suspended by the administrative agency enforcing the law. The nexus requirement, known as "pinpointing," applies to fund termination only.

H.R. 5490 retains this pinpointing concept so that only those funds which actually support the discrimination are subject to termination. The operative fund termination clause in H.R. 5490 is "limited in its effect to the particular assistance which supports such noncompliance so found." This language will assure, for example, that when a school discriminates, the Federal Government has the authority to terminate the Federal funds within the school district which support the discrimination at the school.

Finally, many of my colleagues have expressed concern about all of the horror stories and worst-case scenarios that have been raised about the effect of this bill. Again I hope my colleagues will read the committee report, in order to educate themselves on both the changes we have made and on their practical application.

Importantly, in my view, is the positive result likely to accrue if the Congress enacts this bill. Among those are a less burdensome, less costly administrative procedure, than would be obtained if the Court's decision were allowed to stand uncorrected. In addition, the likelihood of increased litigation—due to an unresponsive, more complex administrative process if this bill is not enacted—has not been properly emphasized. As the Congressional

Budget Office, in its official estimate on H.R. 5490, told Chairman PERKINS: The enactment of H.R. 5490 may result in savings to the Federal, State, and local governments. To monitor adherence to nondiscrimination policies under current law, the Federal, State, and local governments would have to increase their administrative efforts and accounting capabilities to trace the flow of Federal financial assistance to individual programs and activities. The Federal Government might also have incurred costs from an increase in discrimination suits pursued judicially rather than administratively. The enactment of H.R. 5490 would avoid such potential costs.

In conclusion, the dilemma of time has plagued and does plague this bill. Both committees have drafted carefully, listened attentively, and debated conscientiously this legislation. We bring it to the House assured of its accuracy and convinced of the need for its immediate enactment. We know debate will be protracted in the Senate, so much so that final congressional action is not certain before the Labor Day recess. Let the House vote now and vote overwhelmingly for equality of opportunity for all Americans.●

● Mr. SENSENBRENNER. Mr. Chairman, as a cosponsor of H.R. 5490 and the ranking Republican member of the House Judiciary Subcommittee on Civil and Constitutional Rights, I strongly urge the House of Representatives to pass this bill. I am a cosponsor of this piece of legislation because I strongly believe that the Supreme Court's decision in the Grove City College case is far too restrictive and does not enunciate the intent of Congress when title IX was passed about 10 years ago, guaranteeing nonsex discrimination in federally funded institutions of education. Because the applicable language of title IX was based on title VI, as was section 504 and the Age Discrimination Act, it is imperative that all these statutes be changed to reflect a congressional intent for a broad interpretation of their scope.

I do believe that title IX has been effective in reducing the wage gap that we hear much about, wherein women get 62 cents on the dollar of wages for comparable work as members of the male sex.

The efficacy of title IX, I think, is dramatized by the point that the last census figures indicate that for women under 30, who were the principal beneficiaries of the title IX protections during their education, the figure is 85 cents on the dollar rather than 62 cents on the dollar for comparable wages for society as a whole.

That is why I believe that the letter and the spirit of title IX should remain the law and that the decision in the Grove City College case was far too restrictive and a step backward. The same success story has been evidenced in title VI, section 504, and the Age Discrimination Act.

When the hearings started, I was concerned that H.R. 5490 might go beyond the status quo with regard to its applicability to private Christian schools who receive no direct or indirect Federal funds. The report language addresses these fears in a responsible fashion.

To illustrate my concerns in this area, consider the following scenario which appeared in the committee report on H.R. 5490:

> A private school which receives no direct Federal funds invites Officer Friendly to speak to a sixth grade class about traffic safety. Officer Friendly's salary is paid through a Safe Streets Act grant from the Department of Justice. Is the school covered under title IX or title VI as a result of Officer Friendly's appearance?
>
> No. A private school would not bring itself within coverage of the statutes merely by having a police officer who works for a department that receives Federal funds speak at the school. (Committee report, at page 30.)

The speech by Officer Friendly is not Federal financial assistance. Thus, current law is not changed.

Concerns have been raised about the analogy between coverage triggered by student Federal financial assistance and recipients of supplemental security income, food stamps, welfare, or other general-purpose governmental assistance programs. The Supreme Court adequately addressed this issue in a footnote to the Grove City College ruling:

> *Grove City's attempt to analogize BEOGs to food stamps, Social Security benefits, welfare payments, and other forms of general-purpose governmental assistance to low-income families is unavailing.* First, there is no evidence that Congress intended to receipt of federal money in this manner to trigger coverage under Title IX. Second, these general assistance programs, were not designed to assist colleges and universities. Third, educational institutions have no control over, and indeed perhaps no knowledge of, whether they ultimately receive federal funds made available to individuals under general assistance programs, but they remain free to opt out of federal student assistance programs. Fourth, individuals' eligibility for general assistance is not tied to attendance at an educational institution. [Emphasis added.]

H.R. 5490 would not alter this section of the opinion. The same reasoning by which the Supreme Court did not analogize BEOG's to food stamps is applicable in not construing a grocer to be a recipient merely because he receives food stamps as a method of payment.

In the words of the committee report:

> The purpose of H.R. 5490 is simple and straightforward: to reaffirm pre-*Grove City College* judicial and executive interpretations and enforcement practices which provide for broad coverage of these [four] anti-discrimination statutes.

Former Republican executive branch officials, who were responsible for drafting and interpreting the laws and regulations dealing with title VI—race discrimination; title IX—sex discrimination; section 504—handicapped discrimination; and the Age Discrimination Act, testified as to the broad coverage that was originally intended. These witnesses included: John Rhinelander, HEW General Counsel under the Nixon-Ford administration; Stanley Pottinger, former Office of Civil Rights Director and Assistant Attorney General for Civil Rights during the Nixon and Ford administrations; and Martin Gerry, current civil rights lawyer, who served as Director of the Office of Civil Rights with the Nixon and Ford administrations. They all concluded H.R. 5490 restores the original intent of the four statutes.

Former Democratic administration officials were in agreement with the above interpretation. Drew Days, Assistant Attorney General for Civil Rights during the Carter administration, reviewed the ways that these laws have been enforced in the past. He noted that the Grove City College against Bell case "flies in the face of the last 20 years of congressional efforts to combat discrimination by those who thrive on Federal funds." Mary Frances Berry, a current member of the U.S. Commission on Civil Rights, and former Assistant Secretary of Education—HEW—reviewed the urgent need for this legislation. Her view is that H.R. 5490 would ensure that the other three statutes would not be "subjected to similar narrow interpretations * * *." She noted that title IX enforcement had already been narrowed since the Grove City case. Commissioner Berry summarized the Department of Education's actions with title VI, title IX, and section 504 complaints and compliance reviews since February of this year. Under title IX—

Twenty-three education complaints involving large institutions have been closed in admissions, student services, and student support services;

Six compliance reviews have been narrowed;

Eighteen compliance reviews and five complaint investigations have been interrupted; and

Nine cases involving public schools and 46 involving colleges and universities are being reviewed to determine whether they can proceed.

Under section 504—

Five complaint cases and one pending compliance have been narrowed; and

Seven cases are being reviewed to determine whether they can proceed.

Under title VI—

One complaint has been closed; and

Five cases have been modified because the Department's perception of

changes brought about by the decision in Grove City College.

The characterizations made by opponents that H.R. 5490 goes beyond what the law was prior to the Grove City case are not true. For example, the definition of "recipient" is almost identical to the definition of "recipient" that exists in the regulations implementing the four existing antidiscrimination statutes. This definition has been in existence in our civil rights regulations for almost 20 years.

H.R. 5490 does not go beyond what the law was prior to the Grove City case. The report language makes clear that the addition of the word "recipient" is not intended to result in any change in the status quo as to the type and number of recipients. The report language reads:

The Committee intends that enactment of H.R. 5490 will not require revisions in the regulations defining the nature of the prohibitions against discrimination and the remedies available for the discrimination which were in place prior to the Supreme Court's decision in *Grove City College* v. *Bell.* This bill is not intended to convey either the approval of disapproval of Congress concerning the validity or appropriateness of regulations issued under Title IX concerning health care insurance and/or services for employees and students with regard to abortion. Moreover, the addition of the definition of "recipient" to Title IX, Title VI, Section 504 and the Age Discrimination Act is not intended to result in any change of the status quo as to the type or number of recipients affected by the regulations before the Supreme Court decision in *Grove City College* v. *Bell.* Therefore, the Committee intends that no major changes in the regulations will be required.

Thus, the current regulations would continue to be operative. As evidenced above, H.R. 5490 is to be neutral on the title IX regulations dealing with abortion.

Retained in current law are all the procedural safeguards present in current enforcement interpretations and practices. The following report language describes the enforcement mechanism:

H.R. 5490 retains pre-*Grove City College* investigation and enforcement interpretations and practices. As with coverage, Title VI was the enforcement model for each of these statutes and has four distinct enforcement mechanisms:

A mandatory requirement that the agency seek voluntary compliance of a finding of discrimination—this is a prerequisite to any further government action. If voluntary compliance fails,

The agency may pursue an administrative hearing leading to fund termination, or

The agency may refer the case to the Department of Justice for litigation.

There is also a private right of action.

The administrative hearing is a full evidentiary proceeding with witnesses before an Administrative Law Judge. The Administrative Law Judge recommends a decision to the Department. That decision is reviewed by a reviewing panel. If fund termination is recommended, the Secretary of the agency makes the final decision. Thirty days notice is sent to the Congressional committees with responsibility for the laws under which the funds were authorized. The recipient may seek a judicial review of an adverse finding.

It should be noted that before the funds can be cut off, there must still be a nexus established between the discrimination found and any Federal funding that is to be terminated or suspended by the administrative agency enforcing the law.

H.R. 5490 is not an expansion of current law. The enforcement remedies are the same. If an institution or entity was a recipient prior to the Grove City case, it would remain a recipient if this bill is enacted into law. H.R. 5490 stands for nothing more—and nothing less.

Our country has come a long way with regard to civil rights. Please vote "aye" for H.R. 5490. It is a vote to keep the status quo in regards to our civil rights laws.●

● Mr. CORRADA. Mr. Chairman, I rise in support of H.R. 5490, to clarify the application of title IX of the Higher Education Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

The purpose of this legislation is simple: to clearly state the intention of the Congress in enacting antidiscrimination provisions and the extent to which these provisions apply to recipients of Federal funds. This bill does not impose new standards for requirements on institutions receiving Federal dollars, but rather spells out what before the Supreme Court's decision in Grove City College against Bell was understood to be the coverage of laws prohibiting discimination on the basis of sex, handicap, race, and age.

In Grove City College against Bell, the Supreme Court ruled that the recipient for purposes of coverage under title IX's nondiscrimination clause was the particular program office to which funding was awarded, rather than the institution itself. This meant that for an institution receiving only student financial aid moneys, only the financial aid office would be subject to antidiscrimination provisions.

This narrow interpretation urged by the Supreme Court would provide a perfect mechanism by which institutions could avoid their obligations to cease discrimination, simply by compartmentalizing their Federal funds. It ignores the fact that Federal student aid, once it arrives at the institution, loses its identity and is used to support all institutional programs and activities. In effect, the decision provides a blank check to an institution which may be receiving millions of Federal dollars in student financial aid moneys to unrestrainedly practice discrimination through admissions policies, athletics, faculty hiring, and all other facets of its operations.

Testimony from attorneys who had been involved with discrimination litigation through the Office of Civil Rights stated forcefully that the practical effect of the Grove City decision would be to repeal the four civil rights statutes, and to tacitly endorse activities which exclude individuals because of their race, sex, age, or handicap. Additionally, the Grove City decision would impose a need to identify and trace the source of Federal aid and to distinguish between which program or actitivy receives aid prior to instituting enforcement procedures on the institution. This promises to become an administrative nightmare for both the Government and the recipient.

Mr. Chairman, I do not believe that the time has come to back away from our enforcement of laws providing for the equal treatment of all Americans. We cannot retreat from our commitment to ensure an equal opportunity for every citizen to participate in our society, and we must continue to insist that Federal tax revenues not be spent to support discriminatory action.

H.R. 5490 is vitally needed to countermand the weakening effect of the Supreme Court decision on our fight against discrimination. It will return to the Federal Government the mechanisms by which to enforce the concept of equality embodied in title IX, section 504, the Age Discrimination Act, and title VI. I urge my colleagues to join me in defeating any weakening amendments and approve this bill.●

● Mr. ACKERMAN. Mr. Chairman, I rise in strong support of the Civil Rights Act of 1984, H.R. 5490. This measure takes a most significant step to reaffirm Congress' unequivocal committment to equal protection under the law. The act would restore broad and comprehensive scope to four basic civil rights statutes—title IX of the Education Amendments of 1972, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

H.R. 5490 enjoys bipartisan support and has been endorsed by a wide-ranging coalition of civil rights, women's, senior citizen, business, religious, education, labor, and disability organizations. As a cosponsor of this bill, I believe that it is critical to understand that this measure merely clarifies the scope of the existing legislation. H.R. 5490 would overrule the Supreme Court decision in Grove City College against Bell, which substantially narrowed the reach of title IX, and thus set a dangerous precedent for the applicability of other civil-rights statutes. The High Court held that title IX's prohibition against sex discrimination applies only to the specific program or activity within an institution which receives Federal financial assistance—not to the entire institution.

But Congress, in passing all of these laws, planned to provide wider, far-reaching coverage. That legislative intent had been enforced by previous administrations, had been upheld by prior court decisions, and was overwhelmingly reiterated by the House in a resolution last November.

During joint hearings by the House Committees on Education and Labor, and Judiciary, on H.R. 5490, I asked Assistant Attorney General William Bradford Reynolds if the Government ought to financially support institutions that discriminate. His answer was a straightforward "No." Unfortunately, the Reagan administration that Mr. Reynolds serves has not acted so unequivocally. This legislation is a congressional attempt to force the administration to fulfill its legal and moral reponsibility to investigate discriminatory policy and to enforce the different Civil Rights Acts.

The catalyst for this legislation was the Grove City decision, and its threat to educational equity throughout this Nation. Title IX has given women and men at every level of the educational ladder the opportunity to achieve their full potential. Over the past 11 years, students have been able to broaden their horizons with the help of title IX by knocking down arbitrary educational and social stereotypes that society has imposed over the decades and over the centuries. Gradually, important strides have been made in sexually integrating the traditionally segregated vocational education system. New opportunities have opened for women in traditionally male bastions, and men have had access to careers that had been limited to women only.

Although much more progress needs to be made, the Reagan administration, despite its protestations to the contrary, has been determined to widen the gender gap and other chasms and crevices that separate people because of superficial differences. Too many times, this administration has forsaken our historical ideals of civil rights and equality of opportunity. For example, under the cloak of reorganizing the Department of Education, the administration has eliminated the Women's Educational Equity Act program. The President has trampled on the independence on the Civil Rights Commission by firing three of its commissioners—an action for which the House clearly expressed its contempt earlier in this Congress. The administration has decided to enforce civil rights statutes at discriminatory schools only for those specific programs actually receiving Federal funds, and has continued to pay for other programs at these institutions. In the face of these actions, it is clear that Congress must reaffirm our dedication to educational and social equity.

Mr. Chairman, I urge my colleagues to support this crucial legislation and reaffirm this Nation's commitment to equal justice, under law, for all.●

● Mr. MARKEY. Mr. Chairman, today the House considers H.R. 5490, a bill to overturn the recent Supreme Court ruling in the Grove City College against Bell decision. I rise in strong support of this bill.

The past three administrations all enforced title IX of the Education Amendments Act the same way. If a school or educational institution practiced sexual discrimination in any of its programs, all of its programs were denied Federal funding. In this way, educational equality of the sexes was advanced over the past decade.

After 20 years of progress, the Supreme Court pulled the plug on equality 4 months ago. In its Grove City College ruling, the Court held that only those portions of an institution which receive Federal funding need to comply with title IX restrictions. Under this ruling, discrimination in countless educational, extracurricular, and social programs on college campuses would be permitted.

Furthermore, the Court's ruling threatens the similarly drafted title VI of the Civil Right Act prohibiting racial discrimination, as well as the Age Discrimination Act, which prohibits discrimination against our Nation's senior citizens.

I shudder to think how far back the clock could be turned under this ruling. Could women's sports programs be abolished? Could schools permit or even fund race segregated clubs? Would we be back in the sixties, or even the fifties, with respect to equality and integration in education?

The Supreme Court's ruling makes a mockery of equal justice under law. It would allow Federal financial support to institutions which openly and flagrantly discriminate.

Already in the months since the Supreme Court decision the Reagan administration has closed 28 title IX discrimination complaints and narrowed investigations in 18 others. Several title VI cases have been affected.

H.R. 5490 would undo this misjustice. It would return the interpretation of our civil rights laws to where they have been for the past 20 years. It would prohibit all discrimination by any institution receiving Federal funding in any of its programs. It would require that any school which received tuition assistance or student loans not practice racial or sexual discrimination.

I urge my colleagues to support this bill, without any weakening amendments. It is time to tell the Reagan administration that equality and justice are here to stay, and that they cannot reverse the progress of the past two decades.●

● Mr. FAUNTROY. Mr. Chairman, I rise in support of H.R. 5490, the Civil Rights Act of 1984. This legislation enjoys broad bipartisan support and is offered in response to the Supreme Court's decision in the Grove City College against Bell case.

The decision in this case announced on February 28, 1984, in the absence of this legislation, would severely narrow the application of coverage under title IX of the Education Amendments of 1972 which provided institutionally wide remedies for redressing sexual discrimination. Supporters of this legislation also anticipated that title VI of the Civil Rights Act of 1964, section 504 of the 1973 Rehabilitation Act, and the Age Discrimination Act of 1975, would be similarly narrowed in their application and coverage as a result of the Supreme Court decision.

The Supreme Court in the Grove City College against Bell case contradicted previous judicial and executive branch interpretations and enforcement practices which provided for broad coverage in the application of these antidiscrimination laws. Prior to the Grove City College decision, the history of antidiscrimination enforcement had consistently been on the basis of institution-wide coverage. That is, if an institution such as Grove City College was found to be discriminating against a covered class, then the institution itself would be subject to a cutoff of Federal funds. The Supreme Court's decision in the Grove City College case severely narrowed the interpretation of coverage by limiting enforcement to the specific program or activity.

This interpretation flies in the face of the legislative history of title VI of the Civil Rights Act of 1964, which served as the model for successive civil rights legislation such as title IX, section 504 of the 1973 Rehabilitation Act, and the Age Discrimination Act of 1975. It also is in direct contradiction to previous judicial holdings and executive branch regulations and enforcement practices.

Specifically, H.R. 5490 deletes the phrase "program or activity" and substitutes language found in executive branch and Judicial decisions construing laws, starting with the title VI regulations of the Civil Rights Act of 1964. The four civil rights laws potentially affected by the Grove City College against Bell case, are changed by this legislation in that the operative phase "program or activity" is removed wherever it appears in the statutes, and the word "recipient" is substituted. The definition of "recipient" is operationalized to mean an institution in its entirety including its subunits. Thus under this legislation if Grove City College were found to be discriminating, as it has been, Federal

funding would be cut off to the entire institution and not just to a particular program or activity in which the discrimination is found to have taken place.

In the consideration of this legislation, numerous witnesses, who had participated in the drafting of the affected civil rights statutes and others who had carried out enforcement responsibilities, spoke to the need to preserve broad coverage of recipients if the civil rights protections which have served our national interest so well are to be conserved.

During consideration of this legislation held jointly by the Committee on Education and Labor and the Judiciary Subcommittee on Civil and Constitutional Rights, witnesses cited the administrative and judicial problems that would occur in the absence of legislation such as H.R. 5490. Commonsense must be the guidepost in the enforcement of civil rights statutes and the decision of the Supreme Court in Grove City College against Bell is in direct opposition to the last two decades of congressional efforts to combat discrimination by those who benefit from Federal dollars.

I urge my colleagues to support this conservative and restoring legislation. Its passage is necessary if our Nation is to live up to the principles it espouses.●

● Mr. BARNES. Mr. Chairman, the recent Supreme Court decision in the Grove City against Bell case has transformed the landscape of civil rights laws enacted in this country over the last 20 years, and given us new cause for concern for the future of antidiscrimination enforcement. The interpretation of title VI of the Civil Rights Act by HEW and other agencies over the years was based on the long-accepted constitutional principle that all levels of Government should refrain from providing public funds to institutions which discriminate. As President Johnson said: "It is simple justice that all should share in programs financed by all, and directed by the Government of all the people."

The implications of the Grove City decision, therefore, are far reaching. For the handicapped, for example, the progress that has been made in allowing disabled individuals to take their rightful place as participating members of society could come to a grinding halt. For instance, a student financial aid office could be in compliance with section 504, while library services or other academic programs remained inaccessible to the handicapped.

In addition, the decision could lead to a cumbersome and expensive enforcement process which would divert the attention of both Government and institutions from what should remain the foremost concern—the elimination of discrimination based on race, national origin, sex, age or handicap. The Grove City decision, in effect, threatens to destroy what has been, up to now, a relatively smooth and efficient process for remedying civil rights violations.

H.R. 5490 does nothing more than bring the law back to its original purpose—that is, to guarantee the full protection of the Constitution that Congress sought to accomplish by the original language of title VI of the Civil Rights Act. Yet is symbolizes nothing less than the basic rights of many Americans to live free from discrimination and to achieve equal opportunity.●

● Mr. FORD of Michigan. Mr. Chairman, today I rise in support of H.R. 5490, the Civil Rights Act of 1984. This bill is necessary to ensure that the same protections minorities have been receiving for the last 20 years continue to exist. The need for this legislation was occasioned by a Supreme Court decision, Grove City College against Bell, which seriously limited the scope of civil rights coverage under the four principal civil rights statutes—title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Although the Grove City College decision affected only one of these statutes directly—title IX of the Education Amendments of 1972—because the language in each statute is very similar and patterened after the 1964 Civil Rights Act, by implication all four statutes would be affected and subjected to the same limitations. To reinforce this implicit concept, representatives of the Department of Justice stated soon after the decision was announced that it was their intention to apply the parameters of the decision to all four laws.

I do not quarrel with the accuracy of the decision. The court had a judgement to exercise. It is a matter of "Monday morning quarterbacking" the intentions of the legislators who put the law together in the first place. What is essential now is that we have the language that expresses precisely what we mean and that firmly keeps in place enforcement procedures which have worked so well nailed down so that we do not leave open the possibility of future arguments before the Court that could lead to interpretations similar to Grove City College. That is what the Civil Rights Act of 1984 will accomplish.

The first of the major civil rights efforts, title VI of the Civil Rights Act of 1964, started to effectively change the pattern for the future of people who were literally locked into a stagnant and discriminatory code of practice for all the history of this country. The other civil rights laws recognized that there were many groups of individuals who had their potential stifled by the same types of practices which had so effectively denied equal opportunity and participation to blacks in this country. But there were those who opposed the passage of the 1964 Civil Rights Act and there were those who opposed passage of title IX of the 1972 education amendments, as well as those who thought section 504 of the 1973 Rehabilitation Act and the Age Discrimination Act were unnecessary or would lead to burdensome requirements and Federal Government intrusion into otherwise private activities.

In spite of the opposition, the four statutes did pass the Congress and were signed into law. And fortunately through the leadership of four administrations over a 16-year period, regulations and enforcement procedures were put in place which allowed these statutes to be effectively and meaningfully administered in line with the intent of the Congress. Although the Supreme Court decision in Grove City College does not recognize this intent, other courts at all levels have and H.R. 5490 perspicuously defines it.

I do not understand how those who applaud the Grove City College decision and want it to stand without the clarifications of H.R. 5490 expect that it will contribute to the strength of this country and the strength of the American people. I do not find in their discussions any advocacy or explanation of how this will make things better for us as a country and better for us as a people. Public policy that does neither, defeats the labors of thousands of people over the last 20 years who have successfully dedicated their efforts to the insurance of the rights of every citizen.

There is a great urgency about this matter, not only to pass H.R. 5490, but to once again affirm that we are living in an era where this kind of an issue is no longer a partisan one, but a matter of the public conscience and its desire to protect something which we already have and which the Congress understands and will enforce.

H.R. 5490 is an excellent piece of legislation. It was not done hurriedly or haphazardly. It involved the input of numerous Congressmen, their staffs, and wide variety of individuals from the public at large who have diverse interests on both sides of the issue. The result is a piece of legislation we can all be proud of and that deserves our support. Hundreds of hours of work, research and discussions have gone into analyzing all the possible ramifications of this bill and into crafting the precise legislative language that codifies civil rights enforcement in America before the Grove City College decision without enhancing, impeding or altering it in any way. That task has been accomplished. I urge my colleagues to support this bill as it comes to use today.●

31-059 O-87-42 (Pt. 13)

● Mr. MATSUI. Mr. Chairman, I rise in strong support of H.R. 5490, the Civil Rights Act of 1984. This important legislation maintains our historic commitment to assuring that the rights of all Americans; those of women, minorities, the handicapped and senior citizens are not eroded.

H.R. 5490 overturns the Supreme Court's decision in Grove City College against Bell which narrowed the application of title IX of the Education Amendments of 1972. The Court decided that title IX's prohibition against sex discrimination applies only to the specific program or activity within an institution which receives Federal funds, not the entire institution.

Title IX, in its original formulation, represents one of our most effective tools against sex discrimination in education. The Court's decision not only raised grave concerns that our efforts to end sex discrimination would be impaired, it almost guarantees a more restrictive interpretation of statutes outlawing discrimination based on race, handicap, and age. For this reason, Congress should take corrective action and reestablish the original foundation of all our antidiscrimination laws.

The House committees responsible for bringing this bill forward heard favorable testimony on H.R. 5490 by high-ranking Department of Justice officials from the Johnson, Nixon, Ford, and Carter administrations. Such bipartisan support certainly underscores the original intent of title IX and other civil rights laws—to provide broad authority to root out discriminatory practices and allow all our citizens to enjoy the privileges of being Americans as envisioned in our Constitution.

I would urge my colleagues to adopt this bill as a reaffirmation of our guiding national principle: the proposition that all people are created equally.●

● Ms. SNOWE. Mr. Chairman, I rise in strong support of H.R. 5490, the Civil Rights Act of 1984.

On February 28, 1984, the Supreme Court broke with logic, past history, and congressional intent. It decided that within a college only those specific programs or activities actually receiving Federal dollars are covered by title IX. In other words, within a given educational institution, only those programs or activities which directly receive Federal funds are barred from discriminating on the basis of sex.

The Civil Rights Act of 1984 is neither a ground-breaking piece of legislation nor a revolutionary idea in civil rights. This is not to say, however, that this legislation is not of critical importance to American women. It is. This bill is needed to return to American women the legal rights and remedies they had prior to the Court's decision, and it will restore the broad scope of coverage to title IX which marked its enforcement during both Republican and Democratic administrations prior to the Grove City decision.

Before title IX was enacted, it was both legal and common for women to be excluded from professional schools, barred from access to vocational education programs, and denied opportunities for athletic competition and scholarships.

Since 1972, title IX has been the primary legal preventive against such discrimination, and it has dramatically expanded the opportunities for women and girls to pursue a quality education. Between 1972 and 1982, title IX helped open the floodgates into our Nation's professional schools. Women's enrollment in medical schools increased from 11 to 29 percent, in dental schools from 2 to 20 percent, and in law schools from 10 to 36 percent.

The Supreme Court's decision was a giant step backward for the progress women have made in achieving equal educational opportunity. In the wake of Grove City, there is no longer any Federal law which comprehensively prohibits sex discrimination in education.

Although the Grove City case is about title IX, its ramifications are much more far reaching. If title IX were to remain program specific, three other major civil rights statutes, similarly worded, would be likely to suffer the same fate. Section 504 of the Rehabilitation Act, the Age Discrimination Act, and title IX were all modeled on the guarantees found in title VI of the Civil Rights Act. Together these statutes ensure that discrimination by beneficiaries of Federal financial assistance is prohibited. Indeed, the Assistant Attorney General for Civil Rights has stated publicly that the Grove City holding will be applied to other civil rights laws.

Mr. Chairman, H.R. 5490 makes necessary changes in each statute that will ensure their ability to carry out the original intent of Congress. It clarifies the scope of coverage by eliminating the program or activity language which has been so narrowly interpreted by the Supreme Court, and by defining the term "recipient" in a broad manner. The effect of this change is that an entire institution—that is, the "recipient"—would be barred from discrimination when any of its parts receives Federal funds.

I urge each of my colleagues to support H.R. 5490. If we did not make clear to the Supreme Court what we meant when these four critical civil rights statutes were originally passed, we will make it perfectly clear today. Discrimination based on race, sex, national origin, age, or disability has no place in our society, and where it is practiced by recipients of Federal funds, it is clearly against the law.●

The CHAIRMAN. All time of the gentleman from Missouri [Mr. COLEMAN] has expired.

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

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. MONTGOMERY] having assumed the chair, Mr. SWIFT, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5490) to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964, had come to no resolution thereon.

GENERAL LEAVE

Mr. MURPHY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and insert extraneous matter, in connection with the consideration of H.R. 5490.

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

There was no objection.

APPOINTMENT OF ADDITIONAL CONFEREES ON H.R. 5167, DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1985

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that the Speaker be allowed to appoint nine additional conferees to the bill (H.R. 5167) to authorize appropriations for fiscal year 1985 for the military functions of the Department of Defense, to prescribe military personnel levels for that fiscal year for the Department of Defense, and for other purposes.

The SPEAKER pro tempore [Mr. MURPHY]. Is there objection to the request of the gentleman from Mississippi? The Chair hears none, and without objection, appoints the following additional conferees, solely for consideration of title VII of the House bill and section 106b of the Senate amendment: Messrs. EDWARDS of California, EDGAR, SAM B. HALL, JR., LEATH of Texas, SHELBY, APPLEGATE, HAMMERSCHMIDT, WYLIE, and SOLOMON.

There was no objection.

REAGAN'S TRAINING EXERCISES—A COVER FOR MILITARIZING HONDURAS

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend

his remarks and include extraneous matter.)

Mr. ALEXANDER. Mr. Speaker, information which came to me in January of this year raised serious questions concerning the legality of the actions of the Reagan administration during its conduct of military training exercises in Honduras. Acting on that information I requested that the Comptroller General of the United States provide me with a formal legal decision on whether these actions were undertaken in compliance with American law or were in fact violations of our laws.

Mr. Speaker, I now have that decision.

The decision states that the majority of construction activities undertaken during the U.S. military training exercises in Honduras, all the military training provided to Hondurans by U.S. military personnel participating in the joint training exercises, and all of the civic and humanitarian actions conducted by U.S. military personnel participating in those exercises violate Federal law.

The decision suggests that the Reagan administration is clearly guilty of a widespread misuse of funds in Honduras. It is my opinion that such misuse was intentional on the part of the administration and that the training exercises have been used as a cover for a policy of militarization of the country of Honduras.

I have previously stated, and so state here, that I believe Americans have every reason to be proud of the conduct of our U.S. military service men and women participating in the military training exercises in Honduras. I believe that those training exercises were of substantial value to our military ability to meet the challenges which face our Defense Establishment. But, I do not believe we as a people governed by law can condone or tolerate the achievement of our objectives through the violation of our laws.

Throughout most of our Nation's history, our Presidents have used overt action to protect and further our Nation's interest in the Western Hemisphere. This is especially clear when we study the actions of our Presidents from Woodrow Wilson through Lyndon Johnson. With the advent of the 1970's and the Presidency of Richard Nixon came a profound change in Presidential policy. Covert, secretive actions were taken to enforce political preferences on our neighboring nations in the Western Hemisphere.

It is now clear that the Reagan administration has moved our Nation in yet a new direction. This new direction adds to covert and overt actions, direct violation of American law in the drive to achieve Presidential objectives in the policies of other Western Hemisphere nations.

The Reagan administration has initiated a policy that has not been approved by the Congress. It is a policy that requires the violation of law. This is a policy that has neither the support of the American people nor the support of American law.

A decision by the Comptroller General is binding. It is far reaching since it affects not just the activities undertaken in one part of the world by all such activities conducted by a Presidential administration in any part of the world. Such decisions are made after careful and intense study of current law and of the facts concerning activities on which the Comptroller General has been asked to rule. The fact that nearly 5 months lapsed before the formal legal decision I requested was provided is ample proof scrutiny which the Comptroller General gave this matter.

The Comptroller General has ruled that major parts of the activities carried out by the Reagan administration in Honduras during the U.S. military training exercises there were, in fact, conducted in violation of American law. Because incompleteness of the information thus far provided to the Congress and to the General Accounting Office, of which the Comptroller General is the chief officer, a final evaluation on all activities undertaken during these training exercises is yet to be made. The Comptroller General has formally requested the Reagan administration to provide the necessary information.

Because of the interest and concern I know that my colleagues have in these questions, I intend to make a part of the RECORD at the end of this speech both the Comptroller General's decision and the appendix to that decision. Portions of that appendix have been judged by the Department of Defense to be of a security classified nature. I have deleted from the document all such material.

Further, information available to me as well as information provided to the Comptroller General by the DOD makes clear that the Reagan administration ignored the advice of its own legal counsel in undertaking certain activities in Honduras. I believe that it will be of interest to my colleagues to know that information on the Judge Advocate General's review of the proposed activities under Big Pine II is considered by DOD to be classified for security reasons.

Such a security classification surely cannot be justified in the interests of the American people. Our Government is one of laws by the people, for the people, and of the people. Condoning selective violation of our laws undermines the traditions of our legal heritage. It erodes the security our people have in the belief that their government is one of laws, rather than the whims of their leaders.

I will now summarize the instances in which the Comptroller General found the actions of the Reagan administration under the military training exercises in Honduras to be in violation of our laws.

During Big Pine II, at Puerto Castilla extensive training in the use of 105mm artillery was provided to Honduran military forces. Prior to this training, the Hondurans did not have personnel trained in the use of such artillery. At San Lorenzo basic and/or advanced classroom and field training was provided to four Honduran battalions, on mortars, fire direction, and counterinsurgency tactics. In addition, during the same exercise, U.S. military medical personnel at Palmerola Air Force Base, Comayaqua, Honduras, provided three 5-week combat medical training courses for approximately 100 Hondurans. This training was financed from operations and maintenance funds appropriated to DOD by the Congress. The Comptroller General found that using funds for this training violated American law.

Extensive civic and humanitarian assistance activities were a integral part of the Big Pine II training exercises. Such actions occurred on an almost daily basis. During Medical Civil Action Programs medical and/or dental treatment was provided to approximately 53,000 Honduran civilian patients. A veterinary program treated more than 37,000 animals. U.S.-donated medical supplies, clothing, and food were transported to various locations in Honduras. A school was built using materials supplied by the U.S. Agency for International Development. These activities were financed with operations and maintenance funds appropriated to DOD by the Congress. The Comptroller General has determined that using such funds for these purposes violates American law.

During Big Pine II, the Reagan administration constructed four base camps, designed to house and/or support approximately 3,000 U.S. troops. These were built at Palmerola Air Force Base, Comayaqua; in the Trujillo-Puerto Castilla area; Aquacate, and San Lorenzo. In addition, airfields were built, improved, or extended at Trujillo, Aquacate, San Lorenzo, and Tiger Island. The Comptroller General's decision states that—

> It is our view that the majority of the construction activities could not be funded out of O&M (operations and maintenance funds) as ordinary operations expenses of the joint exercises. * * *

Since DOD financed these activities from O&M funds these activities were carried out in violation of American law.

Under certain limited conditions facilities construction during military training exercises using operations and maintenance funding is allowed. But,

even these projects would be limited to a total funded cost of $200,000. The data on cost of construction facilities under Big Pine II which has been provided to the Congress and the General Accounting Office is incomplete since this data is generally limited only to the materials cost. It does not cover, for instance, such costs as transportation of the troops and equipment involved or the cost of operating the equipment. Both of these costs are, by DOD's own regulations, funded costs of such projects.

Even so, based only on the data thus far provided, it is clear that construction costs at some sites exceeded the $200,000 maximum. These include the base camp at Palmerola Air Force Base, Comayaqua, current reported cost, $704,000; the airstrip and base camp at San Lorenzo, $406,000; and the airstrip improvements at Trujillo, $260,000. Further, even on the basis of incomplete data provided by DOD on the base camp and airstrip improvements at Aquacate, the construction at this location cost $199,000. Thus, it is reasonable to assume when the complete cost data is available, this project will be found to have exceeded the $200,000 maximum.

The Reagan administration could not have been unaware of the requirements of Federal law and of previous decisions by the Comptroller General which, in some measure, impacted some of the activities planned, and carried out, during the military training exercises in Honduras. Further, prior to the Grenadero I training exercises in Honduras, this year, the administration was clearly on notice that the Comptroller General was examining the legality of the activities undertaken during Big Pine II. Yet, the administration willfully carries out, during Grenadero I, similar activities.

In the interest of preservation of our long tradition of government by law, the Nation would have been far better served if the Reagan administration had come to the Congress and sought to change the laws rather than behave in a manner of such doubtful legality.

The Comptroller General's decision letter and its appendix follow:

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, DC, June 22, 1984.

Hon. BILL ALEXANDER,
House of Representatives.

DEAR MR. ALEXANDER: By letter dated January 25, 1984, you requested that we provide you with a formal legal decision regarding the propriety of funding methods used by the Department of Defense (DOD) in its recent joint combined exercises in Honduras. This letter responds to your request. We would emphasize that the sole concern of our legal review relates to DOD's use of appropriations in carrying out its activities in Honduras, and not to the policy implications of those activities.

On the question of DOD's use of exercise operation and maintenance (O&M) funds, we found the following:

DOD may use O&M appropriations, under authority of 10 U.S.C. § 2805(c), to finance minor military construction projects under $200,000. Thus, to the extent that DOD's construction activities in Honduras fell within this $200,000 limit, use of O&M funding was proper. Apart from this specific authority, however, DOD's construction expenses may not be charged to O&M as operational costs, but must be charged to funds available for military construction (or, in some cases, security assistance). Consequently, O&M funding of construction activities in Honduras in excess of that permitted under 10 U.S.C. § 2805(c) was improper.

Site preparation and installation costs of establishing radar facilities in Honduras, if under $200,000 per project, may also be charged to O&M as minor military construction under 10 U.S.C. § 2805(c). Again, however, O&M funding of such activities in excess of that permitted under 10 U.S.C. § 2805(c) was improper. Costs of operating these facilities were properly chargeable to O&M.

Costs pertaining to training of Honduran armed forces during, or in preparation for, the Ahuas Tara II exercise should have been financed as security assistance to Honduras. Use of O&M funds for such activities was unauthorized.

DOD has no separate authority to conduct civic action or humanitarian assistance activities, except on behalf of other Federal agencies (such as AID) through the Economy Act, 31 U.S.C. § 1535, or (for minor projects) as incidental to the provision of security assistance. Such activities conducted in Honduras during the course of Ahuas Tara II were improperly charged to DOD's O&M appropriations.

The grounds for our conclusions as to proper funding sources are set out in detail in the classified appendix.

Regarding your further questions as to possible violations of the funding purposes restrictions of 31 U.S.C. § 1301(a) and the Antideficiency Act, 31 U.S.C. § 1341(a), it is our conclusion that expenses for training Honduran forces, and for the provision of civic and humanitarian assistance, have been charged to DOD's O&M funds in violation of 31 U.S.C. § 1301(a). We canot make a similar determination with regard to DOD's use of O&M funds to finance exercise construction activities, as such funds may properly have been used under authority of 10 U.S.C. § 2805(c) (minor military construction projects under $200,000). By letter of today's date, however, we are requesting DOD to reexamine its accounting for construction expenses to verify that the conditions of 10 U.S.C. § 2805(c) have been met. To the extent that that authority was exceeded, use of O&M funds for construction activities violated 31 U.S.C. § 1301(a).[1]

Although 31 U.S.C. § 1301(a) does not specify the consequences (or remedies) for its violation, it is clear that such an expenditure is subject to disallowance by this office. *See* 32 Comp. Gen. 71 (1952). In actual practice, GAO's treatment of such violations has varied. *See* 36 Comp. Gen. 386 (1956), 17 Comp. Gen. 1020 (1938) (admonishing agency to discontinue the improper practice); 14 Comp. Gen. 103 (1934) (adjustment of accounts); 17 Comp. Gen. 748 (1938) (taking exception to applicable account). In the present case, it is our view that reimbursement should be made to the applicable O&M appropriation, where funds remain available, from the appropriations that we have identified to be the proper funding sources (i.e., security assistance funds for training of Honduran forces, foreign aid funds for civic/humanitarian assistance activities, and, to the extent that O&M funds were not available under 10 U.S.C. § 2805(c), military construction funds for exercise-related construction).

Where adjustment of accounts is not possible (i.e. because alternate funding sources are already obligated), expenditures improperly charged by DOD to O&M appropriations were made in violation of the Antideficiency Act, 31 U.S.C. § 1341(a). Not every violation of 31 U.S.C. § 1301(a) also constitutes a violation of the Antideficiency Act. *See* B-208697, September 28, 1983. Even though an expenditure may have been charged to an improper source, the Antideficiency Act's prohibition against incurring obligations in excess or in advance of available appropriations is not also violated unless no other funds were available for that expenditure. Where, however, no other funds were authorized to be used for the purpose in question (or where those authorized were already obligated), both 31 U.S.C. § 1301(a) and § 1341(a) have been violated. In addition, we would consider an Antideficiency Act violation to have occurred where an expenditure was improperly charged and the appropriate fund source, although available at the time, was subsequently obligated, making readjustment of accounts impossible.

As the above indicates, a final determination as to whether DOD's activities in Honduras violated the Antideficiency Act depends upon the availability of alternate funding sources. After-the-fact determinations as to available alternate funding, however, are more properly the responsibility of DOD. We are therefore transmitting to DOD our attached analysis of the funding of combined exercises in Honduras, with a request that DOD make funding adjustments, where feasible, and, where not feasible, report Antideficiency Act violations and take appropriate administrative action under 31 U.S.C. § 1349.

Funding adjustments made by DOD in light of our conclusions here must, of course, be consistent with the ordinary rules governing the use of appropriated funds, including fiscal year limitations. The latter requirement is particularly important with respect to adjustments in the present case because some of the exercise activities that we have addressed took place in the previous fiscal year. Unless funds remain available from that previous fiscal year (most likely, unexpended multiple-year authority), adjustment of accounts may be impossible. Security assistance funds, for example, are generally available only for one fiscal year. *See, e.g.,* Further Continuing Appropriations Resolution, 1984, Pub. L. No. 98-151, § 101(b)(1), 97 Stat. 964, 966 (1983). Thus, new security assistance agreements, which must be funded with current-year appropriations, could not be used to "cure" funding violations with respect to obligations incurred in the previous fiscal year.

We are also recommending to DOD that it examine its funding of current activities in Honduras under the present exercises

[1] Costs of several construction projects in Honduras have been reported elsewhere as being in excess of $200,000. *See, e.g.,* our report GAO/C-NSIAD-84-8, March 6, 1984, App. II, p. 57. The accounting method used to calculate such costs, however, may differ from that used under 10 U.S.C. § 2805(c). *See, e.g.,* DOD Directive 7040.2, January 18, 1961, *as amended* March 5, 1964, at p. 6 (funded project costs exclude military labor).

(Grenadero I) in light of this decision, and making funding adjustments as required. Finally, as we have under similar circumstances where DOD has incurred obligations in excess of its authority, we are recommending to DOD that it seek specific funding authorization from the Congress if it wishes to continue performing such a wide variety of activities under the aegis of an O&M-funded exercise. *Compare* 62 Comp. Gen. 323 (1983).

We hope that the above, and our analysis under separate cover, is of assistance to you.

Sincerely yours,

MILTON J. SOCOLAR,
Comptroller General of the United States.

APPENDIX TO COMPTROLLER GENERAL DECISION B-213137, JUNE 22, 1984—FUNDING OF JOINT COMBINED MILITARY EXERCISES IN HONDURAS

I. BACKGROUND

On August 3, 1983, the Defense Department commenced Ahuas Tara (Big Pine) II, the second in a recent series of joint combined military expercises in Honduras.[1] During the exercise, which lasted until February 8, 1984, some 12,000 American troops participated in joint maneuvers with members of the Honduran military. In addition, over the 6 month course of the exercise, participating American units constructed one 3,500-foot dirt assault (or "hasty") airstrip, expanded one 4,300-foot dirt airstrip to 8,000 feet, expanded a 3,000-foot asphalt airstrip to 3,500 feet, installed or constructed nearly 300 wooden huts to serve as barracks, dining, and administrative facilities, deployed two radar systems, provided medical assistance to nearly 50,000 Honduran civilian patients, provided veterinary services to approximately 40,000 animals, built a school, and provided artillery, infantry, and medical training to hundreds of Honduran military personnel. These numerous activities, all carried out as a part of Ahuas Tara II, have raised questions, both within DOD and in the Congress, as to the scope of the authority under which such activities take place. This decision is intended to resolve some of these questions.

In connection with our investigation of DOD's activities in Honduras, we requested, on November 28, 1982, that DOD provide us with an explanation of funding sources used for each of 7 categories of Ahuas Tara II activities, authority for such use of funds permanency of facilities, and, where appropriate, existence of reimbursement agreements. A related letter, sent on December 1, 1983, asked DOD to explain its authority to conduct humanitarian/civic activities in Central America.

DOD's detailed response, dated March 8, 1984, identified the O&M appropriations of the participating military departments as the funding source of most of the activities about which we had inquired.[2] The Department justified all "engineering work," civic action, radar installations, etc., as incidental to the exercise program. According to DOD, no formal training of Honduran troops took place, and any support services provided to Honduran soldiers would have been incurred in the absence of Honduran participation. DOD also described all exercise construction projects as temporary in nature. Finally, DOD stated that reimbursement agreements for any of its exercise activities were unnecessary as "all O&M funds usage is considered correct and proper." In its separate response to our question concerning its authority to carry out humanitarian assistance, however, DOD's General Counsel stated that "DOD has no separate statutory authority to perform humanitarian or civic action programs [except] under the authority of the Economy Act or other similar authority * * *." The apparent conflict between these statements was not explained.

In addition to DOD's formal comments to us, we have also reviewed an Army Judge Advocate General (JAG) staff analysis of exercise activities in Honduras, prepared during the planning stage of Ahuas Tara II. That analysis, transmitted to the U.S. Southern Command (SOUTHCOM, the command responsible for planning and carrying out the exercises), as the U.S. Army position, (classified material deleted).

DOD's formal comments and the Army JAG's analysis will be addressed at further length where relevant to the discussion that follows.

II. DISCUSSION

Operations and maintenance appropriations are typically provided for "expenses, not otherwise provided for, necessary for the operation and maintenance of" the applicable service or agency. *See, e.g.,* Department of Defense Appropriations Act, 1984, Pub. L. No. 98-212, 97 Stat. 1421, 1423 (1983). This particular category of appropriations has been described as a "murky world which does not easily lend itself to clearcut conclusions." Hearings on TAKX Pre-Positioning Ship Program, before the Subcommittee on Readiness, House Committee on Armed Services, 97th Cong., 2d Sess. 2 (1982) (statement of Chairman Daniel). Because they are used for such a wide variety of activities in support of the operation of each military department, and because they are not subject to the same line-item scrutiny as are other types of appropriations, DOD's O&M funds are considered by many to be more discretionary than other types of defense appropriations. *See id.* The Department of Defense, however, clearly does not have unlimited discretion in determining which activities may be financed with O&M funds.

This Office has identified three factors to be considered in determining whether a certain expense is necessary or incidental to the proper execution of the object of an appropriation (here, those expenses necessary for the operation and maintenance of the various military departments). First and foremost, the expenditure must be reasonably related to the purposes for which the appropriation was made. *See* 42 Comp. Gen. 226, 228 (1962). Second, the expenditure must not be prohibited by law. 38 Comp. Gen. 782, 785 (1959). Finally, the expenditure must not fall specifically within the scope of some other category of appropriations. *Id.* This last requirement applies even if the more appropriate funding source is exhausted and therefore unavailable. B-139510, May 13, 1959.

Case-by-case decisions as to which appropriation may be used for a particular expenditure are left to the agency involved and, so long as such determinations are made in general conformity with the above three rules, they have not been generally questioned by this Office. *See* 18 Comp. Gen. 298, 292 (1938). In certain cases, either of the two appropriations may reasonably be construed as available for an expenditure not specifically mentioned under either appropriation. In such cases, it is within the discretion of the agency to determine which appropriation is to be used for the activity in question, although once the determination has been made, it cannot later be changed. *See, e.g.,* 59 Comp. Gen. 518 (1980).

The following discussion constitutes a review, in light of the factors discussed above, of each category of O&M-funded activities carried out by DOD in Honduras under the Ahuas Tara II joint combined exercise.

A. Ahuas Tara II construction activities

1. *Facts:* As described in our February 8, 1984 briefing to Representative Alexander, Ahuas Tara II construction activities centered around the establishment of four base camps, designed to house and/or support approximately 3,000 U.S. troops. Base camps were constructed at the following locations:

Palmerola/Comayagua. Exercise O&M funds were used to construct Joint Task Force-11 (JTF) headquarters at Palmerola Air Base near the central Honduran town of Comayagua. The camp was also the site of a mobile field hospital, aviation battalion, and support group. Army engineers and line troops constructed 132 "Central American Tropical" (CAT) huts[3] (or their equivalent) to serve as barracks, offices, a post exchange, mess halls, and latrines. Part of the camp was tied into public electrical and sewage systems. Army engineers also constructed an unpaved road network, unspecified vertical security structures, and fuel storage berms.

According to DOD's March 8, 1984, comments to us, the Palmerola camp was specifically intended to be used after completion of the Ahuas Tara II exercises. It has in fact continued in use as command headquarters for later combined exercises (classified material deleted).

The exercise-constructed camp at Palmerola has become an integral part of the air base at the same location. The air base at Palmerola is a separate $13 million military construction project approved by the Congress in 1982. The completed facility, as currently proposed by DOD, will include a 8000-foot jet-capable airfield and parking apron, and (as separately-funded projects) air munitions storage facilities, and a "semi-permanent" operations facility (including living quarters for 100 men). A similar project ($8 million in military construction funds) was approved for La Cieba Air Base in northern Honduras, although in 1983 the Congress prohibited DOD from obligating funds for that project pending the provision of an overall military construction plan for the region. *See:* Pub. L. No. 98-116, 97 Stat. 795, 796 (1983).

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[1] The first exercise, Ahuas Tara I, took place during three weeks in January and February of 1983 and involved activities by some 1,600 U.S. troops. The current exercise, Grenadero I, began on April 1, 1984, will continue through the summer, and will involve the deployment of over 3,500 U.S. troops.

[2] According to DOD, it is standard practice in joint exercise programs for the costs of exercise activities for each military service to be funded from the O&M appropriation of that service (other than airlift, sealift, inland transportation and port handling costs, paid from O&M funds available to the Joint Chiefs of Staff (JCS)). Thus, airstrip construction by Seabees is charged to Navy O&M, and that by Army engineers is charged to Army O&M. DOD has stated that O&M appropriations of the Army, Air Force, Navy, and Marine Corps were each used to finance activities of Ahuas Tara II.

[3] CAT huts are 16 foot by 32 foot wooden structures with corregated tin roofs, built from locally-purchased materials.

Trujillo/Puerto Castilla: The second base camp was constructed near Trujillo, several miles south of the northern Honduran port of Puerto Castilla, and about 10 miles west of the Regional Military Training Camp (RMTC), a security assistance-funded project presently used for formal training of Honduran and Salvadoran troops. Near Trujillo, Navy Seabees constructed "Camp Sea Eagle," a complex of barracks, offices and messhalls built from 40 "South East Asia" (SEA) huts.[4] Camp Sea Eagle was used to house the 3/319 Infantry Battalion, which participated in field artillery exercises in the area. Seabees also constructed a 16-hut encampment nearby for their own use.[5]

About a mile from Camp Sea Eagle, Seabees helped to extend an existing asphalt airstrip from C-47 to C-130-capable length (from 3,000 feet to 3,500 feet). Seabee engineers performed grading and filling, and supervised paving operations performed by a Honduran firm. The paving contract cost about $120,000, charged to exercise O&M funds. According to DOD, C-130 use of the airstrip has left the surface "rutted and cracked," to an extent that it will soon be unusable. Honduras has sought compensation from DOD for repair of the damage.

In addition to camp and airstrip facilities at Trujillo, Navy Seabees constructed a "soil-cement" helicopter pad and concrete port off-loading ramp at Puerto Castilla, and built more than 5 miles of roads in the vicinity. (Classified material)

At or near the RMTC security assistance project, Seabees constructed guard towers and roads, dug wells, repaired culverts, and constructed 10 CAT huts. Additional 17 CAT huts, also financed with exercise O&M funds, were constructed at the RMTC by Honduran troops, who had received instruction from Navy Seabees. According to DOD's March 8, 1984 comments, the CAT huts at the RMTC were constructed to house members of the 3/319 Artillery Battalion moved due to flooding at Camp Sea Eagle. Our own investigation showed, however, that huts were not used by members of that battalion, but were used to house Honduran RMTC security guards immediately upon construction.

Although improvements constructed in the Trujillo/Puerto Castilla area were used extensively during Ahuas Tara II, it is clear that a more extended use was also contemplated by DOD. For example, the exercise plan for Ahuas Tara II proposed the expansion of the Trujillo airfield (classified material deleted) U.S. Southern Command, Joint Task Force-11, Ahuas Tara II Exercise Plan (draft), August 3, 1983, p.3 (emphasis added). In addition, Army officials have stated that the Trujillo airfield was extended specifically to support the nearby RMTC.

As of April 1984, the airstrip at Trujillo, although damaged, was still C-130 capable.

Aguacate: A third base camp was constructed by engineers of the 46th Army Engineering Battalion at Aguacate in eastern Honduras. The camp included an airfield facility/and 8 CAT huts (or their equivalent), used as dining, and administrative buildings. Engineers also installed a piped water system for the camp, consisting of over 13,000 feet of 3 inch pipe.

The airfield at Aguacate was 4300 feet in length prior to the commencement of Ahuas Tara II, and was thus already capable of handling the largest aircraft used in-country during the exercise, the C-130 transport (which requires a 3500-foot runway). Army engineers, however, expanded the runway to 8000-feet and upgraded it with 30,000 cubic yards of local gravel. Construction also involved installation of cement drainage culverts, which, according to DOD, have been paid for by the Honduran government. Once paved, as apparently is planned by Honduras, the facility will be able to accommodate (classified material deleted) aircraft.

The airfield at Aguacate was used as a take-off point for two exercise events during Ahuas Tara II. According to DOD's March 8, 1984 comments, expansion of the airfield was necessary to accommodate parking for "transient aircraft" during the exercise, and was done in lieu of constructing a parking apron. DOD states that the airfield expansion was thus intended to fulfill exercise requirements. In addition, DOD notes that construction activities at Aguacate corresponded to DOD-established training requirements for participating combat engineers. While its jurisdiction for airfield construction at Aguacate is founded on these exercise and training benefits, DOD does acknowledge that its construction activities contributed to a "longstanding" plan by the Honduran Armed Forces to make the Aguacate airfield usable for forward-basing of Honduran aircraft.

Ahuas Tara II planning documents show construction at Aguacate to have been conducted as part of an exercise activity to (classified material deleted). *See* Cable from JCS, Washington, to U.S. Commanders-in-Chief, July 19, 1983. According to an August 10, 1983, cable from the U.S. Southern Command, (classified material deleted).

As of April 1984, the airfield at Aguacate was still C-13 capable. Buildings were occupied by Honduran military personnel.

San Lorenzo/Choluteca: The fourth base camp constructed during Ahuas Tara II was at the southern port town of San Lorenzo. San Lorenzo was the headquarters of the 46th Army Engineering Battalion, as well as base for about 120 Special Forces personnel. The camp consisted of a C-130-capable dirt airstrip (expanded from an existing facility), and 94 CAT huts used for barracks, administrative facilities and mess halls. Other construction in the area included road-building and ammunition shelters. In addition, as part of anti-armor exercises, the 46th Engineers constructed 11 miles of earthen tank traps near Choluteca, just east of San Lorenzo. The Southern Command had initially planned to construct concrete tank traps in the Choluteca region, but amended its plans after Army JAG lawyers indicated that concrete structures would have to be military construction- or security assistance-funded.

Although facilities constructed at San Lorenzo were given substantial use during Ahuas Tara II, exercise planning documents show that the fulfillment of exercise requirements was the only purpose for such construction. The original exercise plan for Ahuas Tara II contained the following background information: (Classified material deleted) Ahuas Tara II Exercise Plan (draft), *supra*, p. 2 (emphasis added).

The exercise plan further explains that (classified material deleted) *Id.* The exercise plan specifically included, in support of an anti-armor field training exercise in the choluteca area, the construction of a 3500-foot C-130 capable airstrip at nearby San Lorenzo, thus fulfilling the need specified by the Honduran General Staff.

The airfield facility at San Lorenzo was also used by U.S. troops during post-Ahuas Tara II exercises in March and has been used to support the current Grenadero I exercises.

As of April 1984, the airfield at San Lorenzo was still C-130 capable, and had been regarded by Honduran forces. We have been informed that the camp, although unoccupied, is in good condition. According to a Defense Property Disposal Office official in Panama, huts at San Lorenzo will be sold to the Honduran government for 20 percent of cost. Some huts, in the meantime, have been used by U.S. Army Engineers during the current (Granadero I) exercise.

2. *Analysis:* Construction activities during the course of Ahuas Tara II were charged to O&M appropriations as operational expenses of the exercise. Although 10 U.S.C. § 2805(c) (1982) provides separate authority for financing a minor military construction project with up to $200,000 of O&M funds, this authority was apparently not the basis of DOD's use of O&M funds for its construction activities in Honduras. Consequently, the principal question to be addressed here is whether DOD has authority apart from 10 U.S.C. § 2805(c) to use O&M funds for its construction activities in Honduras.

It is a basic premise in appropriations law that expenses which are not necessary to carry out the purposes of a particular appropriation may not be funded from that source. As indicated previously, there are three factors to consider in applying the necessary expense rule: whether the expenditure reasonably relates to the object of the appropriation, whether it is otherwise prohibited by law, and whether it falls within the scope of another appropriation. *See* p. 3 *supra.*

Because military construction activities are generally performed in furtherance of specific operational requirements of the various military departments, we do not question whether expenditures for such activities are "reasonably related" to the purposes of O&M appropriations, the first of the three factors discussed above. Nonetheless, it is clear, based upon the two remaining factors, that O&M funds are not generally available for military construction activities, first because of a specific statutory prohibition contained in 41 U.S.C. § 12 (1982), and second because specific appropriations are made by the Congress for such purposes.

Section 3733 of the Revised Statutes, codified to 41 U.S.C. § 12, provides: "No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose."

This provision is applicable to all executive departments, including the Department of Defense. *Sutton v. United States,* 256 U.S. 575, 579 (1921). It has been interpreted by this Office to require that funding for DOD construction projects be specifically authorized by the Congress; other, more general, appropriations are not ordinarily available for such projects. *See* 42 Comp. Gen. 212,

[4] SEA huts are 16 foot by 48 foot wooden structures, built from pre-cut materials brought from the U.S.

[5] Camp Sea Eagle was inadvertently built in a swamp, which flooded during the exercise period, causing some huts to be damaged. At one time the Honduran government was considering purchasing the facility for 10 percent of the cost of materials; we understand AID is currently considering acquiring the structures for use in other parts of Honduras.

214-15 (1962); B-165289-O.M., October 22, 1968.

In addition to the restrictive statutory language of 41 U.S.C. § 12, such activities fall clearly within the scope of appropriations provided by the Congress for those purposes. Where construction is carried out for the use of a military department or defense agency, funding is provided under annual military construction appropriation acts, which typically provide funds to each military department or agency for: "acquisition, construction, installation and equipment of temporary or permanent public works, military installations, facilities and real property * * *." *See* Military Construction Appropriation Act, 1984, Pub. L. No. 98-116, 97 Stat. 795 (1983).

Where such activities are conducted for the benefit of a foreign nation, funding is ordinarily provided under annual security assistance appropriations, such as those "for necessary expenses to carry out sections 23 and 24 of the Arms Export Control Act." *See* Further Continuing Appropriations Resolution, 1984, Pub. L. No. 98-151, § 101(b)(1), 97 Stat. 964, 966 (1983). Sections 23 and 24 of the Arms Export Control Act authorize the President to finance the procurement by foreign countries of, *inter alia*, military "design and construction services." 22 U.S.C. §§ 2763-64 (1982). *See also* 22 U.S.C. § 2769 (1982), relating to Foreign Military Construction Sales.

Based, therefore, on the statutory prohibition of 41 U.S.C. § 12, as well as on the existence of other more specific appropriation categories, we conclude that military construction activities, except as specifically permitted under 10 U.S.C. § 2805(c), may not be financed from general appropriation categories such as O&M. This Office has reached the same conclusion in previous cases. For example, in a 1961 report on DOD's misuse of O&M funds for military construction activities, we stated: "Ordinarily, because of the restrictions in section 3678, Revised Statutes (31 U.S.C. § 628) [now codified to 31 U.S.C. § 1301(a)], and section 3733, Revised Statutes (41 U.S.C. § 12), use of operation and maintenance funds to finance construction or construction-type projects, constituting public improvements under section 3733, would have to be specifically authorized unless [under the predecessor to 10 U.S.C. § 2805(c)] the projects were urgently needed and did not exceed $25,000." B-133316, January 24, 1961 (airfield construction at Ft. Lee, Virginia, and other unauthorized construction).

Having stated our opinion that military construction activities, as a general rule, must be financed from funds specifically appropriated therefor, it is necessary to determine whether that rule applies to the present case. In its March 8, 1984 response to our request for comments, DOD justified its use of O&M funding of exercise construction activities on three grounds: the temporary nature of the facilities constructed, the fact that facilities constructed where used to fulfill various exercise needs, and the training benefit to engineers involved in the construction. The last two factors relate to whether the activities in question have a readiness or operational benefit, an aspect of construction that we have already acknowledged, but which does not eliminate ordinary military construction funding requirements.[6] The first factor, however, is one that may in fact be determinative in the present case. Although military construction appropriations are provided for both "temporary and permanent" facilities (see Military Construction Appropriation Act, 1984, supra, p. 10), both DOD regulations and the decisions of this Office recognize that certain types of temporary structures or facilities need not be considered to be public works for purposes of determining proper funding sources for construction activities.

Defense Department regulations define three categories of permanency of construction: "permanent" (expected to last more than 25 years), "semi-permanent" (to last from 5 to 25 years), and "temporary" (to last less than 5 years). See DOD Instruction 4164.14, December 21, 1966. Army regulations governing the conduct of joint exercises provide guidance as to which activities are properly chargeable to O&M exercise funds. See Army Regulation (AR) 350-28, App. J, December 15, 1983 (replacing AR 220-55, ¶23, July 1, 1978). These regulations provide the following example of obligations not properly chargeable to Army exercise O&M funds:

"Permanent or semipermanent construction. Costs of certain minor and temporary construction required for an exercise may be charged under special circumstances when authorized by the exercise directive. (An example is temporary latrines.)" AR 350-28, App. J-2(k), December 15, 1983.

The regulation clearly does not specify that all temporary construction may be charged to exercise O&M funds, although this appears to be the interpretation made by those officials responsible for carrying out Ahuas Tara II. The sole reference to "temporary latrines" in AR 350-28 is in sharp contrast to barracks and support structures for 3000 troops, construction or expansion of three airfields, and other miscellaneous construction activities carried out under Ahuas Tara II and funded with exercise O&M appropriations.

The decisions of this Office also indicate that the "temporary structure" exception to ordinary military construction funding requirements is extremely limited in scope. In 42 Comp. Gen. 212 (1962), the Comptroller General addressed the question of whether funds appropriated to the Department of Defense (from property-disposal proceeds) for the operation of DOD's property-disposal program could be used to pay for minor temporary construction ("transitory shelters, concrete segregation bins and other work") in connection with that program. The Comptroller General held that construction of the facilities in question could not be funded as operational expenses of the program, based upon the requirement of 41 U.S.C. § 12 that construction of public improvements be authorized by specific appropriations. 42 Comp. Gen. 215.

In interpreting 41 U.S.C. §12, the Comptroller General stated:

"The terms 'public building' and 'public improvements' as used in the foregoing statute likewise have been the subject of numerous decisions of the accounting officers over a long period of time. The decisions uniformly have been to the effect that any structure in the form of a building not *clearly of a temporary character* is such a public building or public improvement, the expenditures for which must be authorized by specific appropriations. Also, such structures as temporary sheds for the shelter of farm animals; portable houses for temporary use of employees; temporary portable buildings for use in the detention and treatment of aliens; barns, sheds, cottages, etc., of frame construction of a temporary nature with dirt floors and contemplated to be destroyed; hangars, shops and storehouses; and quonset huts, have been considered as being such public buildings or public improvements. *Minor structures clearly of a temporary nature* and intended to be used for only a temporary period have been held not to be public buildings or public improvements (26 Comp. Dec. 829), but the structrues and improvements involved generally in your disposal program are clearly not of this nature. The mere fact that the buildings are prefabricated, movable, and accounted for as personal property, in itself, is immaterial as to whether they are public buildings or public improvements within the contemplation of section 3733, Revised Statutes. It is common practice today to construct both temporary and permanent structures with prefabricated material which may be dismounted and moved, but the structures are nevertheless public buildings or public improvements." 42 Comp. Gen. at 214-215. [Citations omitted and emphasis added.]

See also 30 Comp. Gen. 487 (1951) (Quonset huts); 6 Comp. Gen. 619 (1927) (frame shed). Although these and other cases involve only the construction of vertical structures, we believe that the same principles may be considered to apply to other types of public improvements as well, including roads and airstrips. Those principles, applied to the present case, prohibit the funding of exercise-related construction not "clearly of a temporary nature" as operational expenses of the exercise program. Such expenses must be financed separately * * * construction.

DOD has stated its view that all facilities constructed during Ahuas Tara II were temporary in nature, and, as evidence of this, has cited deterioration of Camp Sea Eagle, near Trujillo. As we noted previously, however, that facility was inadvertently constructed in a swamp and we do not consider it to be at all typical of those facilities built during the exercises. On the contrary, our own investigations (as recent as late April 1984) show that the majority of these facilities remain in good condition, and in fact continue to be used, both by U.S. and Honduran personnel. Although DOD's March 8,

[6] For example, in its March 8, 1984 comments to us, DOD justified engineer construction activities at the Aguacate airfield on grounds that the project "enabled engineers to train on 84 Army Training Evaluation Program Tasks" by undergoing "training in construction management and equipment maintenance in [a] remote area for small field engineer elements." The Army Training and Evaluation Program (ARTEP) is a battalion-specific "reference document" for trainers and training managers, specifying training objectives and guidance. As DOD stated, the Engineer Combat Battalion (Heavy) ARTEP specifically includes as an assigned battalion task (at the company level) the construction of forward tactical landing strips. Nonetheless, in our view, the fact that an engineering unit performs tasks listed in the ARTEP does not mean that the performance of such activities may automatically be charged to O&M training for exercise funds. If DOD were to use Army engineering units to construct a new Honduran port complex, including administrative and storage buildings, piers, fuel storage tanks and pipelines, together with an associated all-weather airfield (all corresponding to ARTEP tasks), it is clear that military construction or security assistance funds would have to be used, no matter how beneficial the work would be from a training viewpoint. Compare Army Regulation (AR) 415-32, June 23, 1967, which provides guidelines covering the proficiency training of Army Engineer construction units through assignment to established military construction-funded projects.

1984 comments to us state that airfields and facilities "will deteriorate if not maintained" and that "Hondurans do not have resources to maintain," U.S. Army engineers in Honduras inform GAO auditors that airfields could be used indefinitely with a minor amount of maintenance. Facilities remaining in U.S. custody continue to be maintained by the U.S. military; those under Honduran control, we have observed, are being maintained by the Hondurans. In addition, as described previously, planning documents for the exercise clearly indicate DOD's intention that [Classified material deleted.]

It is apparent to us that the majority of facilities constructed during Ahuas Tara II are substantially less "temporary" than many of those which we described in 42 Comp. Gen. 212 as requiring specific funding as public improvements. See 42 Comp. Gen. 212, 214 (1962). Consequently, it is our view that the majority of construction activities could not be furnished out of O&M as ordinary operational expenses of the joint exercises.

This conclusion does not resolve the question of what appropriation sources could properly have been used for exercising construction activities. In our view, DOD could have chosen as one of several funding sources. We stated previously that the principal categories of appropriations are specifically provided by the Congress for military construction activities. When the construction relates to facilities intended for use by a defense agency or military department, funds are ordinarily provided by the annual military construction acts; when facilities are provided for the benefit of a foreign government, construction is ordinarily provided through security assistance programs (such as the Foreign Military Construction Sales Program).

The 4 base camps and associated facilities constructed during Ahuas Tara II were used by U.S. forces during those exercises and, to a large degree, after their conclusion.

In light of the Ahuas Tara II construction, it is our conclusion that most construction activities could properly have been financed by DOD as either military construction or security assistance: this Office would not have objected to DOD's selection of either category for any particular project. See 59 Comp. Gen. 518 (1980).

As indicated earlier, our discussion here has concerned DOD's authority to charge construction costs to O&M appropriations apart from the authority provided under 10 U.S.C. § 2805(c). Where DOD has charged construction expenses in Honduras to O&M as operational costs of Ahuas Tara II, we would not object to those obligations (so long as they did not exceed $200,000 per project) because they could properly have been charged to O&M as minor military construction costs under 10 U.S.C. § 2805(c). To the extent, however, that DOD has charged its O&M appropriations with the costs of any individual construction project in Honduras in excess of $200,000, the excess charge was made in violation of the purposes-restriction of 31 U.S.C. § 1301(a). When adjusting its accounts to remedy any overcharge, O&M appropriations may be reimbursed from any military construction funds available for such readjustment (and which were available at the time of the original obligation). Alternatively, [classified material deleted] in adjusting its accounts, charge the entire construction cost component of any particular project to security assistance funds (again, subject to ordinary availability requirements).[7] If neither of these two adjustment alternatives are available, DOD should report excess charges to O&M as having been made in violation of the Antideficiency Act, 31 U.S.C. § 1341(a).

3. *Conclusion:* Apart from the specific statutory authority of 10 U.S.C. § 2805(c), DOD has no general authority to charge costs of construction activities to O&M funding appropriations. To the extent, therefore, that O&M funding was not available under 10 U.S.C. § 2805(c), exercise construction expenses charged to O&M were made in violation of 31 U.S.C. § 1301(a), which prohibits the application of appropriations to objects other than those for which they were made. In addition, to the extent that § 2805(c) funding was unavailable and alternate funding (either military construction or security assistance) was also unavailable, exercise construction projects charged to O&M were in violation of the Antideficiency Act, 31 U.S.C. § 1341(a), which prohibits the incurring of obligations in excess of or advance of available appropriations.

DOD, in light of our conclusions here, should make adjustments, where feasible, to those appropriation accounts to which construction activities during Ahuas Tara II were charged; where adjustments are not feasible, DOD should report such obligations as being in violation of the Antideficiency Act.

B. Radar facilities

The Defense Department has established two radar installations in Honduras, each originally deployed as part of joint combined exercises, but used extensively (both during and after exercises) for general support to both U.S. and Honduran military [classified material deleted] activities. All costs pertaining to these two radar systems have been paid from O&M funds.

In August 1982, in response to a Honduran government request for U.S. assistance, the Secretary of Defense directed the Joint Chiefs of Staff to assess Honduran radar requirements. In October of the same year, a JCS staff study concluded that [classified material deleted].

The TPS-43 radar system was initially installed at La Mesa Air Base, in western Honduras, during the Ahuas Tara I exercise in February 1983. After that exercise, the system was placed in storage (in Honduras) until May 1983, at which time it was installed in a facility at Cerro la Mole, in southern central Honduras. The system, manned by 65 U.S. Air Force personnel, provides tracking data to a Honduras Air Force Operations Center at Tegucigalpa. The site at Cerro la Mole was prepared by the Honduran military with some assistance from U.S. troops. American units also installed trailers for living quarters.

A second radar system, a Marine Corps AN-TPS-63/65, was installed during August 1983 on Tiger Island, in the Bay of Fonseca. The Bay of Fonseca is located between El Salvador, Honduras, and Nicaragua, and has been cited as a major arms route between Nicaragua and Salvadoran insurgents. The installation, which supplements the one at Cerro la Mole, was manned and secured by about 100 U.S. Marines. Site preparation including construction of a small (C-7 capable) dirt airstrip, well-digging, and earthwork construction was performed by U.S. military personnel as part of the Ahuas Tara II exercise. Flight tracking data from Tiger Island were relayed to U.S. personnel at the Honduran Air Force Operations Center at Tegucigalpa. The Tiger Island installation finally closed down in May 1984. [Classified material deleted.]

There are two principal cost components relating to the two radar facilities in question: installation costs and operational costs. Installation costs for both radar systems were relatively minimal, generally because extensive facilities are not necessary for such installations, and because some construction services (particularly at Cerro la Mole and including clearing, roadbuilding, installation of power lines) were provided by the Honduran government (although with some U.S. assistance). Nonetheless, as with other facilities constructed or installed in Honduras either as part of joint exercises or for other purposes, construction costs incurred by DOD cannot be regarded as mere operational expenses unless the facilities involved are clearly of a temporary nature. See discussion supra, p. 13.

As with base camp construction in Honduras (including airstrips) it is not apparent to us that radar installations, when established by DOD, were "minor structures clearly of a temporary character" as that phrase is used in 42 Comp. Gen. 21 (1962). The Tiger Island facility, although in actuality only operational for eight months, had no specific removal date when originally deployed; it was used to provide tracking data well after completion of Ahuas Tara II. The Cerro la Mole facility, although deployed for only a two-year period (thus falling within the "temporary" facility category defined in DOD regulations) is certainly capable, if deployment is extended, of being used for a much longer period of time. Additionally, in our view neither of these facilities is a "minor" improvement comparable to those considered in our previous decisions. It is therefore our opinion that installation costs should either have been funded as military construction or security assistance.[8] At the same time, however, it is unlikely that installation and site preparation costs at either facility exceeded $200,000, and it is probable that DOD could properly have financed installation costs with O&M funds as minor military construction under 10 U.S.C. § 2805(c). On this basis, we would not object to DOD's use of O&M funds for radar site preparation and installation expenses, although DOD should verify that conditions of 10 U.S.C. § 2805(c) have been met.

The second cost component associated with radar installations in Honduras relates to operational costs. These types of expenses make up the bulk of costs associated with the two radar installations. Because such costs clearly fall within the scope of O&M appropriations, use of such funds by DOD was proper.

One additional issue that has been raised, particularly in connection with radar installations, is the use of exercise personnel and funding for non-exercise projects. "Exercise" personnel were used for support of radar facilities in Honduras, including installation and operation of the TPS-43

[7] DOD does not, however, have the option of charging project costs up to $200,000 to O&M under 10 U.S.C. § 2805(c) and charging costs in excess of $200,000 to security assistance funds, as it must elect between financing a project as security assistance or as military construction. See 59 Comp. Gen. 518 (1980).

[8] Like other facilities, [classified material deleted]. Because of this dual benefit, we would not object to DOD's choice of either funding method.

during Ahuas Tara I, installation/operation of the TPS-63/65 at Tiger Island during and after Ahuas Tara II, and other general support (transportation, medical assistance) as needed at each facility. Through this assistance, "exercise" O&M funds were used to support radar facilities, even though such facilities were primarily used for non-exercise requirements.

No separate appropriation is made for "exercise" expenses; rather, such expenses are paid from lump-sum O&M appropriations made to each military department or defense agency. See footnote 2 supra, p. 2. Consequently, once the availability of O&M appropriations has been established for a particular purpose or activity, it is not legally significant (from a funding standpoint) whether the activity is performed by exercise personnel or by other DOD units. Thus, it is our view that, so long as O&M funding for radar facilities was authorized (both for operational expenses, and for installation expenses under 10 U.S.C. § 2805(c)), the use of exercise personnel and "exercise" O&M funding was permissible.

C. Training activities

Accordingly to DOD's March 8, 1984 comments to us,

"[t]here was no formal training of Honduran troops as part of the exercise, however, the U.S. and Honduran forces participated in integrated exercises which included familiarization and safety orientation at no additional cost to the U.S."

This view differs significantly from our own observations, as described in our audit report GAO/C-NSIAD-84-8, March 6, 1984, and as discussed below.

During October 1983, a GAO field team in Honduras identified 3 types of training being conducted by U.S. forces as a part of the Ahuas Tara II joint combined exercises:

1. U.S. military personnel assigned to the 41st Combat Support Hospital at Comayagua/Palmerola provided three 5-week combat medic training courses for approximately 100 Hondurans. DOD later acknowledged that such classes took place, but stated that they were performed by off-duty U.S. volunteers, provided "humanitarian" medical instruction to Hondurans, and contributed to U.S. readiness by exposing U.S. personnel to "indigenous methods of operation and culture."

2. In Puerto Castilla, members of the 3/319th Field Artillery Battalion provided 3-4 weeks of instruction on 105 mm artillery to two Honduran artillery battalions prior to combined field training exercises. DOD describes the activity as a "22 day combined operations period" for interoperability and safety development, and states that each gun section had a U.S. and a Honduran section chief and integrated crew. Our personnel, however, observed gun crews of 8-12 Hondurans being supervised and instructed by teams of 2-4 U.S. servicemen, half of whom spoke Spanish. We were told that, about the time that these events took place, Honduras took delivery (under the Foreign Military Sales Program) of 105mm artillery, the first guns of this type in Honduras' arsenal. We were informed by personnel of the Military Assistance Group that, without training provided under the exercise, Honduras would had to purchase the services of U.S. military training teams at a cost of from $250,000 to $500,000.

3. U.S. Special Forces personnel in San Lorenzo provided basic and/or advanced classroom and field training to four Honduran battalions, on mortars, fire-direction, and counterinsurgency tactics. This training was similar to that provided by security assistance-funded military training teams at the Regional Military Training Camp in Trujillo. DOD describes these activities as: joint review and practicing of tactics and techniques for interoperability, including some "minor individual remedial preparation" for safety and standardization.

Whenever combined military exercises are conducted, it is natural (and indeed desirable) that there be a transfer of information and skills between the armed forces of the participating countries. In addition, where there is a marked disparity of military sophistication between the two nations' armed forces, it is not surprising that this transfer is principally in one direction, i.e. to the benefit of the less-developed military force. In addition, as emphasized by the Defense Department, some degree of familiarization and safety instruction is necessary before combined-forces activities are undertaken, in order to ensure "interoperability" of the two forces.

At the same time, where familiarization and safety instruction prior to combined exercises rise to a level of formal training comparable to that normally provided by security assistance projects, it is our view that those activities fall within the scope of security assistance, for which comprehensive legislative programs (and specific appropriation categories) have been established by the Congress. Where such extensive "interoperability" training is in fact necessary, combined exercises should not be conducted without the formal training needed to equalize the participating forces.

A view similar to that expressed above was put forth in a Army Judge Advocate General (JAG) staff review of the Ahuas Tara II exercise proposal. The JAG analysis emphasized that [classified material deleted]. In addition, previous guidance in this area was set out in a February 24, 1977 memorandum from the Department of Defense General Counsel. That memorandum stated that [classified material deleted].

Based upon our own observations of formal training provided to Honduras soldiers "in preparation for" exercise participation (and otherwise), the previous DOD guidance was disregarded by the U.S. Southern Command in its execution of Ahuas Tara II. Training provided to Honduran troops during the exercise, although certainly related to exercise activities, was essentially the same as that ordinarily provided through security assistance, and consequently should have been funded as such: security assistance funds are specifically provided by the Congress to be used to train the military forces of friendly foreign governments, including formal or informal instruction provided as part of training exercises. See, e.g., Further Continuing Appropriations Resolution, 1984, Pub. L. No. 98-151, § 101(b)(1), 97 Stat. 964, 966 (1983), providing funds for fiscal year 1984 to carry out credit sales and guaranties for procurement of defense services by foreign countries, under sections 23 and 24 of the Arms Export Control Act, 22 U.S.C. § 2263-64; section 47 of that Act (22 U.S.C. § 2794) defines "defense services" to include all types of military training.

The Defense Department, in its March 8, 1984 letter, has put forward several justifications for its training of Honduran soldiers as part of exercise operations, in addition to the contribution to "interoperability." DOD emphaiszes that training of Honduran troops contributes to the readiness of U.S. forces, by exercising the U.S. role of "force multiplier," by permitting U.S. troops to improve their professional skills in a bilingual environment, and by exposing U.S. forces to indigenous cultures. As we stated in connection with our examination of construction activities under Ahuas Tara II, however, the mere fact that an activity carried out by DOD has a readiness or operational benefit does not mean that it may automatically be financed with O&M appropriations. We previously acknowledged that facilities constructed during the Honduran exercises contributed significantly to U.S. military readiness in the region, but concluded that they must be financed as military construction or security assistance. See p. 11, supra. The same is true in the case of training of foreign troops. The fact that such training has a concurrent benefit to the readiness of U.S. forces does not remove it from the scope of security assistance.

Regarding the provision of combat medic training to Honduran troops, DOD's March 8, 1984 comments to us imply that there are no funding problems in connection with these activities because they were "humanitarian" services performed by "off-duty" U.S. troops on a voluntary basis. We cannot agree. The activities that we observed constituted combat medical training of foreign troops, activities which we categorize as military training rather than civic or humanitarian assistance. We would also note that active duty military personnel, unless in an approved leave status, are considered as being "on-duty" at all times. See B-203251, December 15, 1981. Although an active-duty member may, when not scheduled to perform official duties, engage in activities that are not inconsistent with his military status, it is our view that the provision of military training to foreign troops constitutes a military function that should properly be considered as part of the official duties of that member, even if performed on a "voluntary" basis. DOD cannot discharge its reponsibility to ensure proper funding of its activities by saying that they are performed by "off-duty volunteers."

We do not dispute the fact that the level of training provided to Honduran forces was generally necessary to prepare them for the exercise events in which they participated. It should, however, have been apparent to DOD at the time the exercises were planned that substantial training would be required for adequate Honduran participation: for example, DOD scheduled combined field artillery exercises using 105mm guns with Honduran soldiers who had never been trained on such weapons. In our opinion, DOD should have carried out exercise activities in rather than treating training as an integral part of the exercise operation.

Based upon the foregoing, it is our opinion that the Department of Defense engaged in the training of foreign military forces during the course of the Ahuas Tara II exercises in Honduras, and should have financed such training as security assistance. To the extent that these activities were financed from O&M appropriations as exercise operational expenses, the Department violated 31 U.S.C. § 1301(a), which requires that funds be applied solely to the purposes for which they were appropriated. It is also possible that such activities were performed in violation of the Antideficiency Act. DOD should make a final determination in this regard based on the availability of alternate funding sources to make the improperly used account whole.

D. Civic and humanitarian assistance

The Defense Department has long carried out a wide variety of humanitarian assistance and civic action programs in Central America, both as a part of, and independent from, combined exercises such as Ahuas Tara II. In some cases, assistance has been provided through written agreements with the Agency for International Development (AID) under authority of the Economy Act, 31 U.S.C. § 1535. In other cases, however, U.S. forces have carried out humanitarian and civic action activities without reimbursement from AID or the host-country.

During Ahuas Tara II, civic action and humanitarian assistance activities took place on an almost-daily basis. According to DOD, personnel of the 41st Combat Support Hospital conducted MEDCAP's (Medical Civil Action Programs) throughout Honduras over the course of the exercises, resulting in the treatment of over 46,000 Honduran civilian medical patients, 7,000 dental patients, 100,000 immunizations, and the treatment, under a veterinary program, of more than 37,000 animals. Medicines utilized for these activities were taken from U.S. government supplies nearing the end of their shelf-life, or were donated (by the Honduran government or charitable organizations). In addition to this comprehensive medical aid, U.S. forces tranported U.S.-donated medical supplies, clothing, and food to various locations in Honduras. In one case, a team of 15-20 Navy Seabees constructed a 20 foot-by-80 foot school-house at the village of Punta Piedra, using AID-supplied materials.

Notwithstanding the broad range and scope of humanitarian and civic action activities recently carried out by DOD in Central America, there appears to be some question within DOD itself as to the authority for such activities. At the time that the Ahuas Tara II exercise was being planned, the Army JAG staff review of the exercise proposal [classified material deleted].

The JAG view also appears to reflect that the DOD's General Counsel. On December 1, 1983, we requested DOD to provide us with an explanation of its authority to conduct humanitarian or civic action programs in Central America. The response, from DOD's General Counsel, was that DOD has no separate statutory authority to carry out such activities, but could do so on a reimbursable basis on behalf of the Department of State or AID "under the authority of the Ecomony Act or other similar authority." In response, however, to our separate request to DOD for a description of reimbursement agreements or arrangements covering any or all of the wide range of Ahuas Tara II exercise civic/humanitarian activities, we were informed by the Assistant Secretary of Defense for International Security Affairs (in DOD's March 8, 1984 comments) that no such agreements existed. Although exercise personnel consulted with AID officials (and occasionally utilized AID-supplied provisions or materials such as for the schoolhouse built at Punta Piedra), costs of carrying out civic/humanitarian activities were, on the whole, borne by DOD, and charged to exercise O&M funds.

The Department of Defense has recently started to reexamining in detail its conduct of civic/humanitarian activities. On January 12, 1984, Secretary Weinberger established a DOD "Task Force on Humanitarian Issues," to explore DOD's current authority in the area, to identify DOD requirements, and to determine if legislative or regulatory changes are necessary. In particular, the task force was to consider "[r]evising USC Title 10 to include 'humanitarian' missions within the definition of military missions * * * [to] enable DOD to use 'exercise' and Operations and Maintenance (O&M) funds for civic action and humanitarian efforts."

The task force was due to report on April 30, 1984, although we have not yet been provided details of its work.

We agree with DOD's General Counsel that the Department's authority to carry out civic/hunanitarian activities is limited in scope. The principal authority, as noted by DOD, is through Economy Act transactions, i.e., under an order place by another Federal agency (such as AID) ordinarily responsible for carrying out such activities. See 31 U.S.C. § 1535. Economy act orders are placed on a reimbursable basis, and, when made, constitute an obligation of the ordering agency (charged to funds appropriated by the Congress to that agency—in this case, for example, AID).

Apart from the authority of the Economy Act, DOD may carry out civic action activities on a limited basis through its security assistance programs. Under section 502 of the Foreign Assistance Act of 1961, defense articles and services may be provided to a foreign country for, among other purposes:

"The purpose of assisting foreign military forces in less developed friendly countries (or the voluntary efforts of personnel of the Armed Forces of the United States in such countries) to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries. It is the sense of the Congress that such foreign military forces should not be maintained or established solely for civic action activities and that such civic action activities not significantly detract from the capability of the military forces to perform their military missions and be coordinated with and form part of the total economic and social development effort." 22 U.S.C. § 2302 (1982).

Based upon this authority, DOD may, through the provision of defense articles and services to Honduras under security assistance programs, assist the Honduran government with civic projects and programs. The legislative history of this provision provides that:

"Any civic action activity should be incidental to the performance of the usual duties of a military unit or a byproduct of the presence of such unit in a particular locality. The construction of a schoolhouse might qualify as well as a village access road, a small community sanitation project, or other activities that improve the relationship of the military to the local civilian population. The primary purposes of miltiary assistance should be to meet military requirements. * * * The Committee wants to make clear that civic action programs are to be neither extensive nor expensive." H.R. Rep. No. 321, 89th Cong., 1st Sess. 26-27 (1965). Similar authority is provided under section 4 of the Arms Export Control Act, 22 U.S.C. § 2754 (1982), in connection with Foreign Military Sales.

Based upon DOD's March 8, 1984 comments to us, it does not appear that civic/humanitarian activities under Ahuas Tara II were performed either under authority of the Economy Act or as incidental to DOD's security assistance programs. Instead, DOD has justified such activities on the basis (1) that they were "ancillary" to exercise events, (2) that in some cases, they provided training to participating U.S. units, and (3) that they contributed to U.S. regional readiness by improving relations with friendly foreign nations and by creating a positive image of the U.S. military among the indigenous population.

As was the case with exercise-related construction of facilities and training of Honduran forces, we do not dispute DOD's assertion that civic and humanitarian activities conducted during the course of Ahuas Tara II had distinct operational benefits (i.e. training experience of U.S. medical units) and contributed to U.S. regional readiness. Again, however, the fact that an activity carried out by DOD has a readiness or operational benefit does not mean that it may automatically be financed with O&M appropriations: that factor is but one of three that must be considered in making a determination as to proper funding source. Another source may be required if the activity is otherwise prohibited by law or falls within the scope of another category of appropriations. See p. 3 supra.

In this case, it is our view that civic/humanitarian assistance activities by DOD fall clearly within the scope of other appropriation categories and thus may not be financed with O&M funds. The types of civic and humanitarian assistance provided during the exercises are similar to those ordinarily carried out through health, education, and development programs under the Foreign Assistance Act of 1961, 22 U.S.C. § 2151 et seq., administered by the U.S. International Development Cooperation Agency (of which AID is a part). See Executive Order 12163, September 29, 1977, as amended. Funds for such foreign assistance activities are specifically provided by the Congress in annual appropriations acts. See e.g., Further Continuing Appropriation Resolution, 1984, Pub L. No. 98-151, § 101(b)(1), 97 Stat. 964, 966 (1983). Alternatively, as noted above, minor assistance projects may be carried out where incidental to activities performed under authority of section 502 of the Foreign Assistance Act of 1961, 22 U.S.C. § 2302, or section 4 of the Arms Export Control Act, 22 U.S.C. § 2754. In either case, it is our opinion that DOD's operation and maintenance funds may not be used to finance such activities in light of the availability of other appropriations specifically provided therefor.

Based on the above, it is our conclusion that DOD's use of O&M funds to finance civic/humanitarian activities during combined exercises in Honduras, in the absence of an interagency order or agreement under the Economy Act, was an improper use of funds, in violation of 31 U.S.C. § 1301(a). As with DOD's use of O&M funds for training of foreign forces (and military construction in excess of that permitted under 10 U.S.C. § 2805(c)), such activities may also have been performed in violation of the Antideficiency Act. DOD should make a final determination in this regard based upon the availability of alternate funding sources to reimburse the improperly used account.

III. SUMMARY

We have attempted, in the foregoing analysis, to address separately a number of different categories of activities carried out by DOD during the course of the Ahuas Tara II joint combined exercises in Honduras, to determine the propriety of DOD's financing of such activities as incidental operational expenses of these exercises. Although we recognize that most, if not all, of the activities examined in some way contributed to exercise requirements and to regional readiness goals, our analysis has focused upon

other factors relevant to a determination of funding availability, particularly whether the activities in question fall more properly within the scope of another appropriation category.

Based upon this analysis, we conclude:

Exercise-related construction should not have been charged to O&M appropriations, except under authority of 10 U.S.C. § 2805(c), which permits the use of up to $200,000 of O&M funds for minor military construction projects.

Operational expenses of radar installations in Honduras were properly charged to O&M funds. Site preparation and installation costs, however, should only have been funded with O&M if less than $200,000 per project, pursuant to 10 U.S.C. § 2805(c).

In at least 3 instances, DOD provided training to Honduran armed forces in connection with the Ahuas Tara II exercises. Such training, comparable to that ordinarily provided through security assistance, should have been funded with security assistance appropriations.

Civic action and humanitarian assistance activities carried out by DOD during Ahuas Tara II were improperly charged to O&M funds as operational expenses of the exercises. Such activities should have been carried out under a reimbursable order under the Economy Act, 31 U.S.C. § 1585.

ORDER OF BUSINESS

Mr. WALKER. Mr. Speaker, I ask unanimous consent that I be permitted to take my special order in advance of the one requested by the gentleman from Michigan [Mr. SILJANDER].

The SPEAKER pro tempore. [Mr. MONTGOMERY]. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

ONE PERSON-ONE VOTE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. WALKER] is recognized for 60 minutes.

Mr. WALKER. Mr. Speaker, the concept of one person-one vote is a concept that has been etched into the American political psyche. It is something that we as a Nation have become thoroughly involved with and we have come to thoroughly believe in: that each person's vote should be weighted the same as every other person's vote; that no person's vote in this country should be worth more than any other person's vote.

Every 10 years, when we go through the reapportionment process to reapportion the State legislatures, to reapportion the Congress in terms of the seats and the way in which people vote for those seats, we go great lengths to assure that everyone's vote is equal. We split counties, we split cities and towns, and in some cases we even split up neighborhoods to draw precise, exact lines to assure that everyone's vote is the equal to everyone else's vote. We assure that we have precise, proportional representation in our legislative bodies.

The American people have come to believe that each person's vote should be equal. That is believed everywhere in this country except in the U.S. House of Representatives. It is believed in our State legislatures, it is believed in the U.S. Senate, it is believed in the makeup of city and county councils across the country. Even on international scene, the major Western democracies have a one person/one vote practice in the conduct of the legislative bodies of those democracies.

Only here in the House of Representatives is there a difference. Here the American people find the committee system of this Congress stacked in a partisan fashion for power-wielding purposes. In the House of Representatives, the situation is as was described in the famous Baker against Carr case that mandated one man-one vote on the national legislative reapportionment process.

Justice Clark wrote in that famous case:

> The people have been rebuffed at the hands of the Assembly.

So it is the House. The American people elect Representatives of the House in good faith. They expect that since every Representative represents equal numbers of people, that he or she will have an equal voice in the congressional deliberations, but that is not the case in all respects. On the committees, a pattern has developed that gives the majority party extra seats on nearly all the committees, extra seats beyond what their proportional base in the House of Representatives would entitle them to.

The situation is, in my opinion, appalling.

□ 1640

According to statistics developed by Congressman WILLIAM DANNEMEYER of California:

> In the 96th Congress, we Republicans in the minority in the House were shorted 15 slots on major committees and 58 slots on subcommittees.
>
> In the 97th Congress, running from 1981 through 1982, we were shorted 30 slots on committees and 37 slots on subcommittees.
>
> In this Congress, starting last year, we were shorted 22 slots on major committees.

In other words, the majority party arbitrarily decides that some of the American people deserve more representation than others. What is the penalty of that decision? That penalty is stated best in a court suit filed in this issue after the 1980 election. That Federal Court suit, brought by 14 Members of this House, contended, among other things:

> The ability of the voter to ultimately influence congressional action through the instrumentality of his elected representative depends on a chain of events linking the voter to such final congressional actions. The strength of that connection is directly determined by constitutional standards applied at each link in the chain, including standards of voter and candidate qualification, the apportionment of congressional districts, procedures for tallying ballots, standards for seating duly-elected Representatives and the assignment of committee positions to their elected Representatives. Weakening of any link in this chain of representation would substantially erode the ultimate power of that citizen's vote.

The committees have become a very important link in the chain of proper representation. Freshmen Congressmen are often told that the most important work they will do is in their committees. The prime committee assignments around this body are eagerly sought after, even fought for. The lobbying for committee slots that takes place prior to each new congressional term attests to the preeminence of committee power in the legislative process.

Some Capitol Hill observers even assert the committees are more important than the floor of the House itself. They argue that the floor in the modern House merely exists to ratify the actions of the committees. As perverted an approach to legislative business as that is in my opinion, given what the forefathers envisioned for the people's body, that analysis has some basis in reality in the way we operate this House presently.

Therefore, stacking committees against the minority and thereby disenfranchising millions of Americans is serious business. Those disenfranchised citizens are being denied their opportunity to influence properly the broad scope of national policy.

The final report of the House Select Committee on Committees in the 96th Congress, published on April 1 of 1980, puts it this way:

> Discriminatory committee assignment practices diminish the effective participation of the minority at the primary level of legislative decision making, committees and subcommittees. The ability of the minority to advance viewpoints, incorporate amendments or implement reforms is unquestionably impaired by inequitable apportionment. Furthermore, adherence to improperly aligned ratios disparages the very spirit of representative government.

It would be argued by some that what is happening on the committee ratios is simply what has always gone on in this Congress, but history says otherwise. In 1789 when Congress was first being put together, when this House was first being put together, the House chose the members of committees that consisted of three people or more. In other words, if there was a committee being put together that had more than three members, the House itself made the decision, not on a partisan basis, but on a basis often of ability or of past experience of who should serve on those particular committees.

In 1790, the next year, that was modified some. At that point the House adopted a rule letting the Speaker make committee assignments "unless otherwise specifically directed by the House".

The Speaker retained that power until 1911. In other words, for more than a century, when the abuse of that authority led to a revolt and we had the establishment of a rule directing that all standing committees would be elected by the entire House of Representatives.

For most of the 20th century, the House selected the committee members after informal arrangements had been made by the leadership of the two parties. Generally those agreements came close to providing proportional representation on the committees. In other words, what you had happening was the majority leader and the minority leader and the Speaker would get together. They would decide who would serve on the committees. They would decide the proportional ratios of those committees and that would be then ratified by the whole House of Representatives.

In most cases, because it was an informal arrangement at the beginning of each Congress, when you go back through and look at the historic trends what you find is that the representation was basically proportional.

During the post World War II period, there were Congresses where precise proportional committee ratios did not exist, but the relative insignificance of committee decisions in the entire legislative process made the whole matter somewhat of a nonissue during that period of time, particularly since the two leaderships had worked out the deal beforehand.

In other words, once the minority had signed off through its leadership on the decision, if the number of people on committees was not proportional, then it did not become much of an issue.

There was a big change, though, that came about in 1975. By this time the committees were beginning to play a major role in legislative policy making. This was the period of time of post-Watergate, or post-Vietnam War, when the committee structure in this body has begun to take on particular significance.

The Democrats came to the new Congress flush with their post-Watergate super majority and they decided to seize full control of the committee process.

Surprisingly, if you go back and look at the record, you find out that this power play was labeled as reform, but what happened was that the Democratic Caucus adopted a policy of requiring the committees and the subcommittee ratios to be 2 to 1, plus 1. In other words what they required was that every committee and every subcommittee would have a ratio of two Democrats to every Republican, and then one more Democrat added on for extra measure. This created major league inequities to the point the Republican minority by 1978 was underrepresented in percentage terms on 146 of the 148 committees and subcommittees in the House of Representatives.

The problem has persisted since that time with each new Congress permitting the Democratic Caucus to assign unfair and unbalanced committee assignments to the minority party.

By the advent of the 97th Congress, the inequity of the situation became readily apparent. The Republicans had done reasonably well in the 1980 congressional elections which preceded that Congress by getting 44.1 percent of all the seats in the House, leaving the Democrats with a 55.86 percent majority, but when it came time for allocating the committee slots, the Democrats allocated for themselves 65.71 percent of all the seats on the powerful Ways and Means Committee; in other words, a 10-percent differential; 68.75 percent of the seats on the prestigious Appropriations Committee; in other words, that is about a 13-percent differential, and 60 percent of the seats on the Budget Committee, about a 5-percent differential.

When the 98th Congress was organized in January of 1983, Republicans found themselves shorted 22 committee slots and 37 subcommittee seats.

What does this mean to the American people? It means that when tax policy is decided by the Committee on Ways and Means, that there is no one person-one vote fairness, in that process.

It means when massive deficits are authorized by the spending practices of the Appropriations Committee, there is no one person-one vote protection for the American people in that process.

It means when the Federal budget is decided on in the Budget Committee, that one person, one vote, does not figure in the final tally of that committee.

It means that when the issues of importance, like education, energy and crime, are acted upon by the Education and Labor Committee, the Energy and Commerce Committee, and the Judiciary Committee, that the people cannot prevail because one person-one vote is not permitted.

There are other legislative bodies that practice a committee assignment policy similar to that employed by the U.S. House of Representatives. Congressman BILL DANNEMEYER has identified those places as the Iron Curtain countries of Albania, Bulgaria, Poland, and the U.S.S.R. Only where dictatorships rule and mock legislatures affirm their rule, do we find a committee ratio situation similar to that in the people's body of this Congress.

□ 1650

If we as a Nation believe so thoroughly in the principle of one person-one vote that we are willing to go to tremendous lengths to affirm it in nearly every facet of our national political life, how can we permit the scandalous undermining of that principle in the House of Representatives? Clearly we cannot if the American people are to be properly represented in their Congress.

I yield back the balance of my time.

FOIA HEARING POSTPONEMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oklahoma [Mr. ENGLISH] is recognized for 5 minutes.

● Mr. ENGLISH. Mr. Speaker, the Subcommittee on Government Information, Justice, and Agriculture is currently holding hearings on S. 774, the Freedom of Information Reform Act. Three days of hearings have already been held, and more than two dozen witnesses have been heard. A fourth and final day had been scheduled for Wednesday, June 27, 1984. The Department of Justice and the Federal Bureau of Investigation were invited to testify at the June 27 hearing.

Both the Department and the FBI have refused to send a witness to this hearing. Instead, we have been asked to postpone the hearing until after the Fourth of July recess.

I am both surprised and disheartened by the Justice Department's request that the hearing be postponed. I said in April that the subcommittee would attempt to complete all hearings on S. 774 before the July recess. With the June 27 hearing, that commitment would have been fulfilled.

The hearings already held have demonstrated that S. 774 is an extremely controversial bill and that there is considerable opposition to it. Nevertheless, I had hoped to concentrate on some of the less controversial provisions and take up a bill early in September. The completion of the hearings in June would have left all of July and August for a review of the hearing record and for further work on the legislation. The need to reschedule the last day of FOIA hearings will cause a substantial disruption in our plans.

It is no secret that I have been less enthusiastic than some about the prospect of amending the FOIA. Nevertheless, when the Senate finally passed S. 774 after 3 years of effort, I promptly agreed to consider the bill. When the hearings are complete, I am prepared to consider limited FOIA reform legislation during the few days that remain in the 98th Congress.

At this crucial time in the legislative process, the Jusitice Department is suddenly unable to find a responsible official who is willing or able to explain or defend its position on FOIA legislation. I do not understand why. The bill before the subcommittee is not a new piece of legislation. It is essentially the same bill that was considered in the Senate Judiciary Committee during the 97th Congress.

I am offering this lengthy explanation because I want the recored to show clearly the reason for the postponement of the hearing. I believe that the Government Information Subcommittee has approached S. 774 in a very responsible fashion, and I am sorry that we will have to waste valuable time while we wait for the Justice Department.

I hope to announce a new date in the next 2 weeks.●

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. ERLENBORN (at the request of Mr. MICHEL), for today and the balance of the week, on account of attending the I.L.O. conference as a congressional adviser.

Mr. SENSENBRENNER (at the request of Mr. MICHEL), for today and the balance of the week, on account of recovery from surgery.

SPECIAL ORDERS GRANTED

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

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

Mr. WALKER, for 60 minutes, today.

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

Mr. ANNUNZIO, for 5 minutes, today.

Mr. AUCOIN, for 5 minutes, today.

Mr. ENGLISH, for 5 minutes, today.

Mr. ALEXANDER, for 60 minutes, today.

Mr. GONZALEZ, for 60 minutes, today.

Mr. GAYDOS, for 60 minutes, on June 26.

EXTENSION OF REMARKS

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

Mr. ALEXANDER, 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 $4,123.

Mr. HUBBARD, during debate on the bill, H.R. 5655, on the Suspension Calendar today.

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

Mr. HUNTER.

Mr. ROTH.

Mr. SHUMWAY.

Mr. MILLER of Ohio in three instances.

Mr. BROOMFIELD.

Mr. PETRI.

Mr. GRADISON.

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

Mr. ANDERSON in 10 instances.

Mr. GONZALEZ in 10 instances.

Mr. BROWN of California in 10 instances.

Mr. ANNUNZIO in six instances.

Mr. JONES of Tennessee in 10 instances.

Mr. BONER of Tennessee in five instances.

Mr. BATES.

Mr. LIPINSKI.

Ms. MIKULSKI in two instances.

Mr. STARK.

Mr. HAMILTON.

Mr. MARKEY in two instances.

Mr. WON PAT.

Mr. TRAXLER.

Mr. DOWNEY of New York.

Mr. LEHMAN of Florida.

Mr. FAUNTROY.

Mr. MATSUI in two instances.

SENATE BILLS REFERRED

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

S. 296. An act for the relief of Ramzi Sallomy and Marie Sallomy; the Committee on the Judiciary.

S. 516. An act for the relief of Barbara Crisp, Sean Anthony Crisp, and Andrea Leech; the Committee on the Judiciary.

S. 796. An act for the relief of Bassam S. Belmany; the Committee on the Judiciary.

S. 1140. An act for the relief of Patrick P. W. Tso, Ph.D.; to the Committee on the Judiciary.

S. 1414. An act for the relief of Rebecca Lynn Higgins; to the Committee on the Judiciary.

S. 2729. An act for the relief of Jean Willhelm Willrich; to the Committee on the Judiciary.

ADJOURNMENT

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

The motion was agreed to; accordingly (at 4 o'clock and 52 minutes p.m.) the House adjourned until tomorrow, Tuesday, June 26, 1984, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

3619. Under clause 2 of rule XXIV, a letter from the Clerk of the House of Representatives, transmitting the annual compilation of personal financial disclosure statements filed by Members of the House of Representatives and legislative personnel for the period covering January 1, 1983, to December 31, 1983, pursuant to 2 U.S.C. 703(a), (H. Doc. No. 98-235); was referred to the Committee on Standards of Official Conduct and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

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

[*Pursuant to an order of the House on June 22, 1984, the following report was filed on June 23, 1984.*]

Mr. ROSTENKOWSKI: Committee of conference. Conference report on H.R. 4170 (Rept. No. 98-861). 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 Mrs. BOXER (for herself and Mr. LEVINE of California):

H.R. 5922. A bill to limit the employment by Government contractors of certain former Government personnel; to the Committee on Government Operations.

By Mr. DUNCAN:

H.R. 5923. A bill to amend title 11 of the United States Code to provide that in cases under chapter 11 certain transfers by State banks to satisfy debts arising from deposits shall not be voidable; to the Committee on the Judiciary.

By Mr. LONG of Louisiana:

H.R. 5924. A bill to amend title 28 of the United States Code to set up a regime of repose for certain archeological and ethnological material and cultural property; to the Committee on the Judiciary.

By Mr. DIXON (for himself, Mr. ACKERMAN, Mr. AKAKA, Mr. ALBOSTA, Mr. ALEXANDER, Mr. ANDERSON, Mr. ANDREWS of North Carolina, Mr. ANDREWS of Texas, Mr. APPLEGATE, Mr. AUCOIN, Mr. BADHAM, Mr. BARNES, Mr. BATES, Mr. BEDELL, Mr. BEILENSON, Mr. BEREUTER, Mr. BEVILL, Mr. BIAGGI, Mrs. BOGGS, Mr. BONER of Tennessee, Mr. BONKER, Mr. BONIOR of Michigan, Mr. BORSKI, Mrs. BOXER, Mr. BREAUX, Mr. BRITT, Mr. BROOMFIELD, Mr. BROWN of California, Mrs. BURTON of California, Mr. CARNEY, Mr. CARPER, Mr. CHAPPIE, Mr. CHENEY, Mr. CLAY, Mr. CLINGER, Mr. COATS, Mr. COELHO, Mrs. COLLINS, Mr. CONTE, Mr. CONYERS, Mr. CORRADA, Mr. COUGHLIN, Mr. COYNE, Mr. CROCKETT, Mr. DANNEMEYER, Mr. DASCHLE, Mr. DE LA GARZA, Mr. DELLUMS, Mr. DE LUGO, Mr. DERRICK, Mr. DICKS, Mr. DONNELLY, Mr. DORGAN, Mr. DOWNEY of New York, Mr. DWYER of New Jersey, Mr. DYMALLY, Mr. EDGAR, Mr. EDWARDS of California, Mr. EDWARDS of Oklahoma, Mr. EVANS of Illinois Mr. FASCELL, Mr. FAUNTROY, Mr. FAZIO, Ms. FERRARO,

Mr. FISH, Mr. FLIPPO, Mr. FOGLIETTA, Mr. FOLEY, Mr. FORD of Michigan, Mr. FORD of Tennessee, Mr. FOWLER, Mr. FRANK, Mr. FROST, Mr. FUQUA, Mr. GEJDENSON, Mr. GILMAN, Mr. GINGRICH, Mr. GORE, Mr. GRAMM, Mr. GREEN, Mr. GRAY, Mr. GUARINI, Mrs. HALL of Indiana, Mr. HALL of Ohio, Mr. HAMILTON, Mr. HARKIN, Mr. HAWKINS, Mr. HAYES, Mr. HEFTEL of Hawaii, Mr. HIGHTOWER, Mr. HORTON, Mr. HUGHES, Mr. HUNTER, Mr. HYDE, Mr. JEFFORDS, Ms. KAPTUR, Mr. KILDEE, KOSTMAYER, Mr. LAGOMARSINO, Mr. LANTOS, Mr. LEACH of Iowa, Mr. LEHMAN of Florida, Mr. LELAND, Mr. LEVIN of Michigan, Mr. LEVINE of California, Mr. LEWIS of California, Mr. LIVINGSTON, Mr. LONG of Maryland, Mr. LONG of Louisiana, Mr. LOWERY of California, Mr. LOWRY of Washington, Mr. LUNDINE, Mr. LUNGREN, Mr. MCCAIN, Mr. MCCLOSKEY, Mr. MCCURDY, Mr. MCDADE, Mr. MCHUGH, Mr. MCNULTY, Mr. MADIGAN, Mr. MARKEY, Mrs. MARTIN of Illinois, Mr. MARTINEZ, Mr. MATSUI, Mr. MAVROULES, Mr. MAZZOLI, Ms. MIKULSKI, Mr. MILLER of California, Mr. MINETA, Mr. MITCHELL, Mr. MOAKLEY, Mr. MOLINARI, Mr. MOODY, Mr. MOORHEAD, Mr. MORRISON of Connecticut, Mr. MURPHY, Mr. MURTHA, Mr. NATCHER, Mr. NEAL, Mr. NELSON of Florida, Mr. NICHOLS, Ms. OAKAR, Mr. OBERSTAR, Mr. OBEY, Mr. O'BRIEN, Mr. ORTIZ, Mr. OTTINGER, Mr. OWENS, Mr. PANETTA, Mr. PASHAYAN, Mr. PATTERSON, Mr. PEPPER, Mr. PERKINS, Mr. PICKLE, Mr. PORTER, Mr. PRITCHARD, Mr. PURSELL, Mr. RANGEL, Mr. RATCHFORD, Mr. REGULA, Mr. REID, Mr. RICHARDSON, Mr. RINALDO, Mr. RITTER, Mr. RODINO, Mr. ROSE, Mr. ROTH, Mr. ROWLAND, Mr. SABO, Mr. SAVAGE, Mr. SCHEUER, Mrs. SCHNEIDER, Mrs. SCHROEDER, Mr. SCHUMER, Mr. SHUMWAY, Mr. SIMON, Mr. SMITH of New Jersey, Mr. SMITH of Florida, Mrs. SMITH of Nebraska, Ms. SNOWE, Mr. SOLARZ, Mr. SPRATT, Mr. STARK, Mr. STOKES, Mr. STRATTON, Mr. SUNIA, Mr. SYNAR, Mr. TALLON, Mr. TAUZIN, Mr. THOMAS of Georgia, Mr. THOMAS of California, Mr. TORRICELLI, Mr. TOWNS, Mr. TRAXLER, Mr. UDALL, Mr. VENTO, Mr. WALGREN, Mr. WATKINS, Mr. WAXMAN, Mr. WEISS, Mr. WHEAT, Mr. WHITTEN, Mr. WILSON, Mr. WINN, Mr. WIRTH, Mr. WOLPE, Mr. WON PAT, Mr. WORTLEY, Mr. WYDEN, Mr. YATES, Mr. YATRON, and Mr. YOUNG of Alaska):

H.J. Res. 604. Joint resolution to designate July 9, 1984, as "African Refugees Relief Day"; to the Committee on Post Office and Civil Service.

ADDITIONAL SPONSORS

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

H.R. 1676: Mr. TAYLOR.

H.R. 2437: Mr. RICHARDSON.

H.R. 2996: Mr. GREEN, Mr. SIKORSKI, Mr. MACK, Mr. LANTOS, Mr. LAFALCE, Mr. RIDGE, Mr. FLORIO, Mr. BOUCHER, Mr. TAUKE, Mr. KOGOVSEK, Mrs. KENNELLY, Mr. KOSTMAYER, Mr. KLECZKA, Mr. CARR, Mr. YOUNG of Missouri, Mr. LIVINGSTON, and Mr. FAZIO.

H.R. 3005: Mr. TORRICELLI.

H.R. 4459: Mr. DYMALLY, Mr. RATCHFORD, and Mr. HUNTER.

H.R. 4642: Mr. PACKARD and Mr. GORE.

H.R. 4805: Mr. SEIBERLING, Mr. MORRISON of Connecticut, Mr. GRAY, and Ms. FERRARO.

H.R. 5232: Mr. MRAZEK, Mr. MARKEY, Mr. SEIBERLING, Mr. PANETTA, Mr. WEISS, Mr. SAVAGE, Mr. MURPHY, and Mr. SWIFT.

H.R. 5377: Mr. ERDREICH, Mr. TORRICELLI, Mr. DWYER of New Jersey, Mr. LEWIS of California, Mr. JONES of Oklahoma, Mr. HOWARD, Mr. COUGHLIN, and Mr. RATCHFORD.

H.R. 5438: Mr. PERKINS.

H.R. 5457: Mr. SPRATT.

H.R. 5581: Mr. DWYER of New Jersey, Mr. LUNDINE, Mr. FASCELL, and Mr. JEFFORDS.

H.R. 5745: Mr. WILLIAMS of Montana.

H.R. 5784: Mr. DAUB, Mr. WAXMAN, Mr. HUNTER, Mr. BERMAN, Mr. NEAL, Mr. MARTINEZ, Mr. REID, Mr. ECKART, Mr. BARTLETT, Mr. EDGAR, Mr. WEISS, Mr. BRYANT, Mr. GILMAN, Mr. CORCORAN, Mr. DARDEN, and Mr. KEMP.

H.R. 5804: Mr. MARKEY.

H.R. 5838: Mr. STARK, Mr. FOGLIETTA, Mr. MCNULTY, Mr. TOWNS, Mr. LOWRY of Washington, and Mr. LEVIN of Michigan.

H.R. 5845: Mr. BATEMAN, Mr. CARNEY, Mr. CHANDLER, Mr. CLARKE, Mr. COUGHLIN, Mr. DASCHLE, Mr. DEWINE, Mr. ERDREICH, Ms. FERRARO, Mr. FUQUA, Mr. GLICKMAN, Mr. HIGHTOWER, Mr. IRELAND, Mr. KOLTER, Mr. LEVIN of Michigan, Mr. MCHUGH, Mr. MADIGAN, Mrs. MARTIN of Illinois, Mr. PARRIS, Mr. PURSELL, Mr. RINALDO, Mr. SABO, Mr. SHUMWAY, Mr. SIKORSKI, Mr. SMITH of Iowa, Mr. SPRATT, Mr. SYNAR, Mr. TAYLOR, Mr. WEISS, Mr. WOLPE, Mr. WORTLEY, and Mr. YOUNG of Alaska.

H.R. 5846: Mr. HIGHTOWER, Mrs. SCHROEDER, Mr. VOLKMER, Mr. KOLTER, Mr. MOLLOHAN, Mr. MRAZEK, Mr. SIKORSKI, and Mr. MILLER of Ohio.

H.J. Res. 453: Mr. ADDABBO, Mr. AKAKA, Mr. ALBOSTA, Mr. ALEXANDER, Mr. ANDERSON, Mr. ANDREWS of Texas, Mr. ANTHONY, Mr. APPLEGATE, Mr. AUCOIN, Mr. BADHAM, Mr. BARNES, Mr. BATEMAN, Mr. BATES, Mr. BERMAN, Mr. BEVILL, Mr. BIAGGI, Mr. BLILEY, Mr. BONER of Tennessee, Mr. BOUCHER, Mrs. BOXER, Mr. BRITT, Mr. BROWN of California, Mr. BROOKS, Mr. BRYANT, Mr. CHANDLER, Mr. CLAY, Mrs. COLLINS, Mr. CONTE, Mr. CROCKETT, Mr. DIXON, Mr. DWYER of New Jersey, Mr. EDWARDS of California, Mr. ERDREICH, Mr. FAUNTROY, Mr. FAZIO, Mr. FISH, Mr. FOGLIETTA, Mr. FORD of Tennessee, Mr. FRENZEL, Mr. FROST, Mr. FUQUA, Mr. GUARINI, Mrs. HALL of Indiana, Mr. HAWKINS, Mr. HARRISON, Mr. HEFNER, Mr. HEFTEL of Hawaii, Mr. HIGHTOWER, Mr. HORTON, Mr. HOYER, Mr. HUGHES, Mr. HUTTO, Mr. JACOBS, Mr. KASICH, Mr. KEMP, Mr. KOLTER, Mr. LAFALCE, Mr. LAGOMARSINO, Mr. LEHMAN of California, Mr. LELAND, Mr. LEWIS of Florida, Mr. LUJAN, Mr. LUKEN, Mr. LUNDINE, Mr. MCGRATH, Mr. MCKERNAN, Mr. MCNULTY, Mr. MARTINEZ, Mr. MATSUI, Mr. MINETA, Mr. MITCHELL, Mr. NEAL, Ms. OAKAR, Mr. OWENS, Mr. PATTERSON, Mr. RAHALL, Mr. RANGEL, Mr. RATCHFORD, Mr. RICHARDSON, Mr. ROE, Mr. ROWLAND, Mr. SIKORSKI, Mr. SIMON, Mr. SMITH of Florida, Mr. SOLARZ, Mr. STAGGERS, Mr. STOKES, Mr. STANGELAND, Mr. SUNIA, Mr. TORRICELLI, Mr. VALENTINE, Mr. VENTO, Mr. WALGREN, Mr. WAXMAN, Mr. WEBER, Mr. WHEAT, Mr. WILSON, Mr. WOLF, Mr. WYDEN, Mr. YOUNG of Missouri, Mr. ZSCHAU, Mr. GEKAS, Mr. WORTLEY, Mr. WON PAT, Mr. SABO, Mr. HAYES, and Mr. LUNGREN.

H.J. Res. 485: Mr. AUCOIN, Mr. BEILENSON, Mr. BEREUTER, Mr. BIAGGI, Mr. BLILEY, Mr. COATS, Mr. CORRADA, Mr. COYNE, Mr. PHILIP M. CRANE, Mr. DARDEN, Mr. DAVIS, Mr. DICKINSON, Mr. DONNELLY, Mr. DURBIN, Mr. DWYER of New Jersey, Mr. DYSON, Mr. FAUNTROY, Mr. HANCE, Mr. GILMAN, Mr. FRANKLIN, Mr. FOWLER, Mr. HOPKINS, Mrs. JOHNSON, Mr. LENT, Mr. LONG of Louisiana, Mr. LUKEN, Mr. MCDADE, Mr. MCEWEN, Mr. MCGRATH, Mr. MAVROULES, Mr. MICA, Mr. MINETA, Mr. MINISH, Mr. MOLINARI, Mr. MONTGOMERY, Mr. MORRISON of Washington, Mr. NATCHER, Mr. PORTER, Mr. QUILLEN, Mr. ROEMER, Mrs. ROUKEMA, Mr. RUSSO, Mr. SISISKY, Mr. DENNY SMITH, Mr. STARK, Mr. STOKES, Mr. STRATTON, Mr. SUNDQUIST, Mr. TAUZIN, Mr. THOMAS of California, Mr. TORRES, Mr. WHITEHURST, Mr. WISE, Mr. WORTLEY, Mr. WYDEN, Mr. LEHMAN of Florida, Ms. MIKULSKI, Mr. KLECZKA, Mrs. COLLINS, Mr. SAM B. HALL, Jr., Mr. RAHALL, Mr. CORCORAN, Mr. SAWYER, Mrs. SCHNEIDER, Mr. DIXON, Mr. LUNGREN, Mr. LEVINE of California, Mr. WHITTAKER, Mr. BURTON of Indiana, Mr. MOORE, Mr. KRAMER, Mr. BRITT, Mr. BATEMAN, Mr. MORRISON of Washington, Mr. ROSE, Mrs. HALL of Indiana, Mr. ERDREICH, Mr. EDWARDS of Alabama, Mr. STANGELAND, Mr. HOYER, Mr. WILLIAMS of Ohio, Mr. MURPHY, Mr. EDWARDS of California, Mr. PARRIS, Mr. BARNES, Mr. FEIGHAN, Ms. KAPTUR, Mr. MOAKLEY, Mr. CHAPPIE, Mr. SIMON, and Mr. BERMAN.

H.J. Res. 505: Mr. ANNUNZIO, Mr. BENNETT, Mr. BOEHLERT, Mr. BOLAND, Mr. BROOMFIELD, Mr. DOWDY of Mississippi, Mr. ERDREICH, Mr. FORD of Michigan, Mr. HATCHER, Mr. HAYES, Mr. JEFFORDS, Mr. JENKINS, Mr. KOGOVSEK, Mr. LEWIS of Florida, Mr. MCHUGH, Mr. OLIN, Mr. PRITCHARD, Mr. ROBERTS, Mr. TAUZIN, and Mr. LEHMAN of California.

H.J. Res. 543: Mr. SUNIA, Mr. GOODLING, Mr. WHITLEY, and Mr. CORCORAN.

H.J. Res. 555: Mr. GEKAS, Mrs. HOLT, Mr. ALEXANDER, Mr. CORCORAN, Mr. HUTTO, Mr. CROCKETT, Mr. ROWLAND, Mr. JEFFORDS, Mrs. BOXER, Mr. BATES, Mr. RITTER, Mr. TOWNS, Mr. FRENZEL, Mr. TRAXLER, Mr. ROYBAL, Mr. MCHUGH, Mr. MYERS, and Mr. DYSON.

H.J. Res. 566: Mr. GEJDENSON, Mr. LUJAN, Mr. PACKARD, Mr. FOGLIETTA, Mr. ASPIN, Mr. BREAUX, Mr. IRELAND, Mr. GIBBONS, Mr. STARK, Mr. CARR, Mr. MARKEY, Mr. DWYER of New Jersey, Mr. LEVINE of California, Mr. SIKORSKI, Mr. PASHAYAN, Mr. HATCHER, Mr. MOLINARI, Mr. APPLEGATE, Mr. CHENEY, Mr. DERRICK, Mr. WALGREN, Mr. DANIEL, Mr. KOSTMAYER, Mr. BORSKI, Mr. STUDDS, Mr. DICKS, Mr. PORTER, Mr. PATTERSON, Mr. NOWAK, Mr. BIAGGI, Mr. AKAKA, Mr. HANSEN of Idaho, Mr. HILER, Mr. TORRICELLI, Mr. GEPHARDT, Mr. MOAKLEY, Mr. ADDABBO, Mr. MCDADE, Mr. CRAIG, Mr. CORCORAN, Mr. VOLKMER, Mr. PRITCHARD, Mr. JEFFORDS, Mr. WILLIAMS of Ohio, Mr. SIMON, Mr. SKEEN, Mr. FLORIO, Mr. FORD of Michigan, Mr. BADHAM, Mr. CHAPPIE, Mr. MOODY, Mr. SMITH of Iowa, Mr. SAVAGE, Mr. OLIN, Mr. MCKERNAN, Mr. KLECZKA, Mr. MACKAY, Mr. BROWN of California, Mr. O'BRIEN, Mr. ORTIZ, Mr. WOLPE, Mr. TRAXLER, Mr. BLILEY, Mr. MARRIOTT, Mr. MURPHY, Mr. ROWLAND, Mr. FISH, Mr. PRICE, Mr. JENKINS, Mr. DEWINE, Mr. DELLUMS, Mr. SHANNON, Mr. SKELTON, Mr. NEAL, Mr. GUNDERSON, Mr. HERTEL of Michigan, Mr. LEHMAN of California, Mrs. SCHNEIDER, Mr. LENT, Mr. BOSCO, Mr. FAZIO, Mr. BONIOR of Michigan, Mr. RITTER, Mr. VALENTINE, Mr. OTTINGER, Mr. COURTER, Mr. MORRISON of Washington, Mr. HALL of Ohio, Mr. KASICH, Mr. MCNULTY, Mr. TORRES, Mr. BEREUTER, Mr. HARKIN, Mr. HARTNETT, Mr. CARPER, Mr. MONTGOMERY, Mr. RINALDO, Mr. MARTIN of New York, Mr. DAUB, Mr. CLINGER, and Mr. MCCLOSKEY.

H.J. Res. 570: Mr. ACKERMAN, Mr. ADDABBO, Mr. AKAKA, Mr. APPLEGATE, Mr. BARNARD, Mr. BATES, Mr. BEDELL, Mr. BERMAN, Mr. BILIRAKAS, Mr. BONIOR of Michigan, Mrs. BOXER, Mr. CARNEY, Mr. COATS, Mr. COELHO, Mr. CORRADA, Mr. COYNE, Mr. DASCHLE, Mr. DAUB, Mr. DE LA GARZA, Mr. DE LUGO, Mr. DEWINE, Mr. DWYER of New Jersey, Mr. EDGAR, Mr. EMERSON, Mr. FAUNTROY, Mr. FAZIO, Mr. FRANK, Mr. FRENZEL, Mr. FROST, Mr. GRAMM, Mr. GUNDERSON, Mr. HAWKINS, Mr. HAYES, Mr. HERTEL of Michigan, Mr. HILLIS, Mrs. HOLT, Mr. HORTON, Mr. HOWARD, Mr. HOYER, Mr. HUTTO, Mr. JEFFORDS, Mrs. KENNELLY, Mr. KOGOVSEK, Mr. KOLTER, Mr. KRAMER, Mr. LELAND, Mr. LEVIN of Michigan, Mr. LEVINE of California, Mrs. LLOYD, Mr. LOWERY of California, Mr. LUKEN, Mr. LUNGREN, Mr. MCCOLLUM, Mr. MACKAY, Mr. MADIGAN, Mr. MARKEY, Mr. MARTINEZ, Mr. MINETA, Mr. MOLLOHAN, Mr. MONTGOMERY, Mr. MORRISON of Connecticut, Mr. MURPHY, Mr. NEAL, Ms. OAKAR, Mr. OWENS, Mr. RAHALL, Mr. RANGEL, Mr. REID, Mr. RINALDO, Mr. ROBINSON, Mr. ROE, Mr. SAWYER, Mr. SIMON, Mr. SISISKY, Mr. STARK, Mr. STENHOLM, Mr. THOMAS of California, Mr. TORRICELLI, Mr. TOWNS, Mr. VENTO, Mr. WAXMAN, Mr. WILLIAMS of Ohio, Mr. WOLF, Mr. WORTLEY, Mr. WYDEN, Mr. YOUNG of Florida, and Mr. EVANS of Illinois.

H.J. Res. 572: Mr. TAYLOR, Mr. VANDER JAGT, Mr. WYLIE, Mr. YOUNG of Florida, Mr. ASPIN, Mr. CONABLE, Mr. CLINGER, and Mr. TRAXLER.

H.J. Res. 592: Mr. BATES, Mr. ECKART, Mr. EDGAR, Mr. FAZIO, Mr. KOGOVSEK, Mr. LEVINE of California, Mr. LOWRY of Washington, Mr. REID, and Mr. SEIBERLING.

H. Con. Res. 302: Mr. TAUKE, Mr. DIXON, Mr. WON PAT, Mr. ACKERMAN, and Mr. ROWLAND.

H. Con. Res. 312: Mr. WORTLEY and Mrs. JOHNSON.

H. Con. Res. 315: Mr. CARNEY and Mr. GEKAS.

H. Con. Res. 317: Mr. DAUB, Mr. WAXMAN, Mr. HUNTER, Mr. BERMAN, Mr. NEAL, Mr. MARTINEZ, Mr. REID, Mr. ECKART, Mr. BARTLETT, Mr. EDGAR, Mr. WEISS, Mr. BRYANT, Mr. GILMAN, Mr. CORCORAN, Mr. DARDEN, and Mr. KEMP.

H. Con. Res. 322: Mr. WOLPE, Mr. GOODLING, Mr. O'BRIEN, Mr. YOUNG of Florida, Mr. MCCURDY, Mr. BONER of Tennessee, Mr. WEAVER, Mr. ADDABBO, Mr. RINALDO, Mr. BRITT, Mr. FRANK, Mr. DOWNEY of New York, Mr. LELAND, and Mr. YOUNG of Alaska.

H. Res. 518: Mr. FRENZEL.

AMENDMENTS

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

H.R. 3282

By Mr. LEVITAS:

Amendments to the amendment in the nature of a substitute.

—After section 13 of the bill, insert the following:

GRANTEE CERTIFICATION OF TREATMENT PROCESS

SEC. 14. Section 203(a) of the Federal Water Pollution Control Act is amended by inserting after the second sentence the following: "The approval of construction plans and specifications by the Administrator under this section shall not include a determination or approval of the treatment work's unit processes, or the configuration of the treatment work's unit processes, which constitute the treatment technology. The Administrator shall not approve plans, specifications, and estimates for a project under this section unless the applicant certifies that the proposed unit processes and treatment technology are capable of meeting the effluent limitations for which such process and technology are designed.".

Redesignate succeeding sections accordingly.

In subsection (1) of section 205 of the Federal Water Pollution Control Act, as proposed to be added by subsection (f) of section 16 of the amendment, insert before the closing quotation marks the following:

such sums shall be in addition to, and not in lieu of, any sums otherwise appropriated for or allocated to the Office of the Inspector General.

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

TURNKEY CONTRACTS

SEC. 58. Section 203 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(f)(1) After completion of an approved facility plan for a treatment works that has an estimated total cost of $8,000,000 or less (as determined by the Administrator), the applicant proposing to construct such treatment works may enter into an agreement with the Administrator under this subsection for the preparation of construction plans and specifications and the building and erection of such treatment works, in lieu of proceeding under the other provisions of this section.

"(2) An agreement entered into under this subsection shall—

"(A) set forth an amount agreed to by the Administrator and the applicant as the maximum Federal contribution to the project, based upon a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

"(B) set forth a date for completion of construction of the treatment works by the applicant and a schedule of payments by the Administrator of the Federal contribution to the project;

"(C) contain such assurances by the applicant as the Administrator may require that (i) the proposed treatment works will be an operable unit and will meet all the requirements of this title (except as otherwise provided in paragraph (3) of this subsection), and (ii) not later than one year after the date specified as the date for completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act; and

"(D) require the applicant and any agent or contractor of the applicant to provide a bond in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as the Administrator deems necessary to ensure compliance with this title (except as provided in paragraph (3) of this subsection).

"(3) Sections 201(g)(3), 203 (other than this subsection and except with respect to the development and approval of a facility plan), 204(a)(5), 204(a)(6), and 204(d)(1) shall not apply to grants made pursuant to this subsection.

"(4)(A) Upon entering into an agreement under this subsection, the Administrator shall deposit, from amounts allotted to the State for such fiscal year under section 205 of this Act, the amount of the Federal contribution to the project agreed upon by the Administrator and the applicant into an interest-bearing account. Such amount shall be available only for making payments to the grantee in accordance with the schedule contained in the agreement.

"(B) Interest earned on amounts in the account under subparagraph (A) shall be available for payments to the grantee. Such payments shall be made solely for the purpose of reducing the net interest costs incurred by the grantee on obligations issued by the grantee for construction of such treatment works. The amount of such payments shall be in addition to the Federal share of the project otherwise allowable. The amount of any such interest earned which exceeds the amount of such interest costs incurred shall be deposited in the general fund of the Treasury after the final audit of the project.

"(5) The Administrator shall reserve a portion of the amount in the account under paragraph (4)(A) until the final audit of the project. If the amount deposited into the account by the Administrator under paragraph (4)(A) exceeds the cost of preparing construction plans and specifications and the building and erection of the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

"(6) The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 205 of this Act for grants pursuant to this subsection.

"(7) In no event shall the Federal contribution for the cost of preparing construction plans and specifications and the building and erection of treatment works pursuant to this subsection exceed the amount agreed upon under paragraph (2), plus interest paid to the grantee under paragraph (4)(B).

"(8) In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (2), the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

"(9) A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.".

H.R. 5899

By Mr. PARRIS:

—Strike the following: page 3, line 20 through page 4, line 7; and page 21, line 21 through page 22, line 7 (sections 119 and 120), and renumber subsequent lines, sections and pages accordingly.

—(In section 114) in line 21 of page 20, insert the following after the word "Appropriations" and before the word "and": ", the House Committee on the District of Columbia, the Subcommittee on Governmental Efficiency and the District of Columbia of the Senate Committee on Governmental Affairs".