HOUSE OF REPRESENTATIVE—*Friday, September 14, 1984*

The House met at 10 a.m.

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

Almighty God, the inspiration of all that is good and all which is beautiful, we give thanks for those whose vision, determination, and labor have built our Nation and given us a good heritage. As we have received the responsibility for the affairs of government from those who have gone before, so may we be faithful in our stewardship for our land through acts of justice and mercy that we will leave to those who follow us, a nation strong of purpose, rich in our diverse culture, and committed to living peacefully with all people. 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.

Mr. BROWN of Colorado. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

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

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 250, nays 16, answered "present" 1, not voting 165, as follows:

[Roll No. 392]

YEAS—250

Addabbo	Bevill	Clinger
Akaka	Bilirakis	Coats
Anderson	Bliley	Coleman (MO)
Andrews (NC)	Boland	Collins
Andrews (TX)	Boner	Conable
Annunzio	Bonker	Conte
Anthony	Borski	Courter
Archer	Boucher	Darden
Badham	Breaux	Daschle
Barnes	Brown (CA)	Davis
Bateman	Brown (CO)	de la Garza
Bates	Burton (CA)	DeWine
Bedell	Burton (IN)	Dicks
Bellenson	Campbell	Dingell
Bennett	Carr	Dixon
Bereuter	Chappell	Dorgan
Berman	Clarke	Downey
Dreier	Kramer	Rangel
Duncan	Lagomarsino	Ratchford
Dwyer	Latta	Ray
Eckart	Leach	Regula
Edgar	Leath	Reid
Edwards (AL)	Lehman (CA)	Richardson
Edwards (CA)	Lehman (FL)	Ridge
Edwards (OK)	Lent	Rinaldo
English	Levin	Ritter
Erdreich	Levine	Robinson
Erlenborn	Levitas	Rodino
Evans (IL)	Lewis (CA)	Roe
Fazio	Lewis (FL)	Rogers
Fiedler	Livingston	Rose
Fields	Lloyd	Rowland
Fish	Loeffler	Roybal
Flippo	Long (LA)	Russo
Foglietta	Long (MD)	Sabo
Ford (TN)	Lott	Schaefer
Frank	Lujan	Scheuer
Frenzel	Lundine	Sensenbrenner
Gekas	Lungren	Sharp
Gingrich	Madigan	Shaw
Glickman	Marlenee	Shelby
Gonzalez	Martin (NY)	Shumway
Goodling	Matsui	Shuster
Gore	Mavroules	Slattery
Gradison	Mazzoli	Smith (FL)
Gray	McCloskey	Smith (IA)
Green	McCollum	Smith (NE)
Gunderson	McCurdy	Snowe
Hall (OH)	McDade	Solarz
Hall, Ralph	McEwen	Spence
Hall, Sam	McGrath	Spratt
Hamilton	McHugh	Staggers
Hammerschmidt	McKernan	Stenholm
Hance	Michel	Stokes
Hatcher	Mineta	Stratton
Hawkins	Molinari	Sundquist
Hefner	Montgomery	Synar
Hertel	Moody	Tallon
Hightower	Moore	Tauke
Hillis	Moorhead	Taylor
Hopkins	Morrison (WA)	Thomas (GA)
Horton	Mrazek	Udall
Howard	Murphy	Valentine
Hoyer	Murtha	Vento
Hubbard	Myers	Watkins
Huckaby	Natcher	Waxman
Hughes	Nelson	Weiss
Hutto	Nowak	Wheat
Hyde	Oakar	Whitehurst
Ireland	Obey	Whittaker
Jeffords	Owens	Whitten
Jenkins	Packard	Williams (MT)
Johnson	Panetta	Winn
Jones (NC)	Parris	Wise
Jones (OK)	Pashayan	Wolf
Kasich	Patman	Wortley
Kastenmeier	Paul	Wyden
Kazen	Pease	Wylie
Kildee	Petri	Yates
Kindness	Pickle	Young (AK)
Kleczka	Porter	Young (FL)
Kogovsek	Price	Young (MO)
Kolter	Pursell	
Kostmayer	Rahall	
Britt	Hansen (ID)	Quillen
Brooks	Hansen (UT)	Rostenkowski
Broomfield	Harkin	Roth
Broyhill	Harrison	Roukema
Bryant	Hartnett	Rudd
Byron	Hayes	Savage
Carney	Heftel	Sawyer
Carper	Hiler	Schneider
Chandler	Hunter	Schroeder
Chappie	Jones (TN)	Schulze
Cheney	Kaptur	Schumer
Coelho	Kemp	Seiberling
Coleman (TX)	Kennelly	Shannon
Conyers	LaFalce	Siljander
Cooper	Lantos	Simon
Corcoran	Leland	Sisisky
Coyne	Lipinski	Skeen
Crane, Daniel	Lowery (CA)	Skelton
Crane, Philip	Luken	Smith (NJ)
Crockett	Mack	Smith, Denny
D'Amours	MacKay	Smith, Robert
Daniel	Markey	Snyder
Dannemeyer	Marriott	St Germain
Daub	Martin (IL)	Stangeland
Dellums	Martin (NC)	Stark
Derrick	Martinez	Studds
Donnelly	McCain	Stump
Dowdy	McCandless	Swift
Durbin	McKinney	Tauzin
Dyson	McNulty	Thomas (CA)
Early	Mica	Torres
Fascell	Mikulski	Torricelli
Feighan	Miller (CA)	Towns
Ferraro	Minish	Traxler
Florio	Mitchell	Vander Jagt
Foley	Moakley	Vandergriff
Ford (MI)	Mollohan	Volkmer
Fowler	Morrison (CT)	Vucanovich
Franklin	Neal	Walgren
Frost	Nichols	Walker
Fuqua	Nielson	Weaver
Garcia	O'Brien	Weber
Gaydos	Oberstar	Whitley
Gephardt	Olin	Williams (OH)
Gibbons	Ortiz	Wilson
Gilman	Ottinger	Wirth
Gramm	Oxley	Wolpe
Gregg	Patterson	Wright
Guarini	Pepper	Yatron
Hall (IN)	Pritchard	Zschau

NAYS—16

Clay	Gejdenson	Roberts
Coughlin	Holt	Roemer
Craig	Jacobs	Sikorski
Dickinson	Lowry (WA)	Solomon
Emerson	Miller (OH)	
Evans (IA)	Penny	

ANSWERED "PRESENT"—1

Dymally

NOT VOTING—165

Ackerman	AuCoin	Boehlert
Albosta	Barnard	Boggs
Alexander	Bartlett	Bonior
Applegate	Bethune	Bosco
Aspin	Biaggi	Boxer

□ 1020

Mr. REID changed his vote from "present" to "yea."

So the Journal was approved.

The result of the vote was announced as above recorded.

APPOINTMENT OF MEMBERS TO THE MARTIN LUTHER KING, JR., FEDERAL HOLIDAY COMMISSION

The SPEAKER. Pursuant to the provisions of section 4(a), Public Law 98-399, the Chair appoints as members of the Martin Luther King, Jr., Federal Holiday Commission, the following Members on the part of the House:

Mr. GRAY of Pennsylvania;
Mrs. HALL of Indiana;
Mr. REGULA of Ohio; and
Mr. COURTER of New Jersey.

□ 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.

PRESIDENT REAGAN'S TAX INCREASES

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

Mr. WILLIAMS of Montana. Mr. Speaker and my colleagues, President Reagan says that perhaps, maybe, he will not raise taxes if he is reelected, maybe.

For the first time in my life a Presidential candidate, in this instance Walter Mondale, has been refreshingly frank about what his economic policies will be if he is elected. I am told that folks down at the White House are pointing with alarm to the fact that Mr. Mondale says he wants to close tax loopholes on the rich which were opened by the White House, and I know for a fact that my Republican colleagues in this body are pointing with alarm to 1985 when the Mondale proposal will collect $85 billion.

Now, what they do not tell you is this: Since he has been President, Ronald Reagan has quietly worked for, supported and quietly signed for tax increases which by 1985 will amount to $113 billion. That is $25 billion more in taxes than Walter Mondale suggests. Ronald Reagan has already signed tax increases which will collect an additional $113 billion by 1985.

A TRIBUTE TO CHAD COLLEY, NATIONAL COMMANDER, DISABLED AMERICAN VETERANS

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

Mr. HAMMERSCHMIDT. Mr. Speaker, Arkansas is extremely proud of one of its most outstanding citizens and patriots, Mr. Chad Colley.

Mr. Colley has just recently been elected as National Commander of the Disabled American Veterans. This great organization has been growing steadily over the years and it will be Chad's great fortune and honor to preside over the DAV as that organization achieves its long-sought goal of 1 million members during 1985. The DAV couldn't have a better or more qualified leader.

Mr. Speaker, Chad Colley is a constituent of mine and I have known him and his fine family for many years. I can assure you from personal knowledge that he is an inspiration to all who know him. He survived the blast of a land mine in Vietnam even though he lost both legs and an arm. His resolute determination caused him to overcome this tremendous adversity and to return home to a very successful and productive life.

Before entering service, Mr. Colley graduated from North Georgia College where he was listed in Who's Who among college students. While a student, he won the school's sports and distinguished military graduate awards. He was a member of ROTC.

Following graduation, Mr. Colley was commissioned as a second lieutenant in the U.S. Army in 1966. He served in Vietnam with the famed 101st Airborne Division. It was during such service at a place just northwest of Saigon that he received his devastating wounds.

Chad returned home as a determined citizen wanting to help his country. He became active in the DAV in Arkansas. He rose to positions of prominence in his local chapter and then in his State department. On three occasions, he held high national office in the DAV, culminating in his selection this year as its National Commander. As the leader and principal spokesman for the organization, he will travel across the country visiting local chapters, speaking at State and national meetings, and appearing on numerous radio and television programs. He will be an eloquent advocate for disabled veterans.

In 1970, Mr. Colley was the recipient of the DAV's Outstanding Disabled Veteran of the Year. He has been awarded the honor medal by the Daughters of the American Revolution and was finalist in the Junior Chamber of Commerce national oratorical contest. He owns and operates a mobile home and land development company near Fort Smith, AR. He lives nearby in Barling, AR, with his wife, Betty Ann, and two children, Emily and Ryan.

Mr. Speaker, you will understand the pride that the citizens of Arkansas have in the fact that a native son is now the National Commander of the Disabled American Veterans. That organization is a forceful and dynamic voice for good. It speaks out for the disabled veterans of our country and represents their interests in the Congress of the United States and all across the Nation. Chad Colley will follow a succession of fine National Commanders who have been its leaders. I congratulate the DAV for having the wisdom to elect him to its highest office.

WE SHOULD REGULATE, NOT DEREGULATE BANKS

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

Mr. ROEMER. Mr. Speaker, I believe in regulating banks, if done fairly regulation in this industry promotes competition, safety, and soundness, serving both the consumer and the investor.

We do not need to deregulate banks, we need to reregulate them, eliminating current double standards which pit the small banks against the big banks.

Look at some examples of the double standard: Capital requirements, your local bank has a larger percentage capital requirement in practice than does any of America's top 20 banks, giving the big banks more leverage, more profit, and more power.

No. 2, long write-off requirements: Your local bank works under tough rules writing off loans in default; not the big boys. Millions of dollars of foreign loans sit unclassified on the big banks' books.

The regulations would close your local bank this afternoon under a comparable circumstance.

Finally, protection of depositors: The FDIC protected every depositor in the Continental Illinois Bank while it let Penn Square and Oklahoma go down the tubes, taking many depositors with it.

A double standard? You bet. We need to change that. We need to reregulate banks, not deregulate them.

Deregulation allows the small banks to fail while it protects the big boys and lets them accelerate their accumulation of money, power, and even greed.

FLORIDA SOFTBALL TEAM: NO. 1 WHERE IT COUNTS

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

Mr. LEWIS of Florida. Mr. Speaker, I had the pleasure Wednesday night of going out to the ballfield and seeing the all-Florida softball team fight and claw its way to its fifth victory in 3 nights, earning a berth in the finals of the Robert V. Rota Congressional Softball Tournament.

The all-Florida team, a mixture of dedicated staff persons from almost all of the Florida delegation offices, was upset in the finals last night.

They lost by a total of three runs in the two final games and finished second in only their second year as a team on Capitol Hill.

In my mind, they are not losers, most of the all-Florida team was tired, hurt, and sore, but they played on with heart and with courage like the true champions they are.

I congratulate them for a super season. To coin a phrase well known to University of Florida fans—wait 'til next year, orange and blue.

PANAMA CANAL ACT OF 1979 AMENDMENTS

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

Mr. SHUMWAY. Mr. Speaker, there can be no doubt that the maintenance of an adequate American work force in Panama is essential to the national and commercial security of this Nation. It is because of this national interest that I am introducing, this morning, a bill to amend the Panama Canal Act of 1979 to help reverse a decline in our U.S. employees' morale which threatens the ability of the Canal Commission to maintain an adequate work force in Panama.

This decline in morale is a direct result of a treaty-mandated loss of U.S. military exchange, commissary and APO mailing privileges which, up until now, have been available to the American employees of the Canal Commission. In response to this loss of privileges, the Commission has put together a package of in-kind benefits designed to partially offset the monetary value of loss incurred by the employees.

Without an effective compensation package, Mr. Speaker, we risk a mass exodus of U.S. employees from Panama. However, the effect of the package settled on by the Canal Commission will be minimal if it is to be considered as taxable income as would be the case unless provided otherwise for through legislation. This bill, then, that I am introducing today, makes that necessary change.

Mr. Speaker, I hope that this legislation, which should be considered noncontroversial with regard to House consideration but imperative with regard to the maintenance of our citizen work force in Panama, gains timely passage.

□ 1030

CHILD PROTECTION ACT

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

Mr. REID. Mr. Speaker, crime is a pervasive problem that confronts us all.

As a former policeman, defense lawyer and prosecutor, I am strongly committed to our legislative efforts to penalize those who violate our laws. That's why I cosponsored the Child Protection Act, now public law, to strengthen the Federal laws against child pornography.

Other important anticrime measures that have become law include the Controlled Substances Registrants Protection Act to protect the manufacturing and distribution of controlled substances from burglary and robbery and the Federal Anti-Tampering Act to provide criminal penalties for tampering with drugs and consumer products.

The House has passed legislation to match funds to State and local governments to carry out specific anticrime programs. We are also working on stronger legislation to prevent illegal drug use and distribution.

And though our session is near an end we will continue to consider other measures to alleviate the fears of law-abiding citizens who deserve protection from the threat of crime.

DEATH PENALTY LEGISLATION SHOULD BE CONSIDERED

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

Mr. GEKAS. Mr. Speaker, the polls consistently show that the American public is overwhelmingly in favor of the imposition of the death penalty in proper cases involving violent homocides.

Yet, the House of Representatives and its Judiciary Committee have refused steadfastly over the last 18 months to even consider the question of the death penalty.

The crime package that the President has promulgated and sent to the Congress of the United States contains a provision that would allow the imposition of the death penalty in proper cases. Yet, no action has been taken.

Several of us have introduced legislation in the House here offering to debate the question of the death penalty. Yet no action.

Very recently, in a meeting of the Criminal Justice Subcommittee of the Judiciary Committee, when we attempted to offer an amendment to an assault on Federal officials piece of legislation, the majority in the Criminal Justice Subcommittee, on a straight party line, rejected the amendment.

How long can we go on without this needed deterrent in our criminal justice system?

Many of the States have restored the death penalty, which is acting as a deterrent to violent crime. It is time that the Federal jurisdiction applied the death penalty in proper cases.

I ask that every Member consider fast action on this issue.

ALL-FLORIDA SOFTBALL TEAM

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

Mr. SHAW. Mr. Speaker, some have said that finishing in second place is like attending a wedding and dancing with the bride's mother. It can be nice but is not quite the real thing.

I disagree somewhat with that, however. Last night, the all-Florida softball team finished second in the Robert Rota Congressional B-League tournament and to everyone involved that achievement is as sweet as if they were dancing with the bride.

The all-Florida team, made up of staffers from the offices of the Florida delegation, has only been in existence for 2 years. Yet even in that short time this team was not only able to hold its own in a league made up of over 200 more seasoned teams, but the Florida team managed to successfully compete in a tournament comprised of 56 of the very best teams in the league. This fine accomplishment serves as an excellent reminder that winners don't only come in first place.

On behalf of the other Florida Members whose offices include all-Florida players, we just want to say that we're proud of the all-Florida team. And who knows, maybe next year we really will be dancing with the bride.

MONDALE'S PROMISES WILL HURT AMERICA

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

Mr. BURTON of Indiana. Mr. Speaker, Walter Mondale says his budget program will make things better for Americans.

Really? How can a program that will cost 205,000 people jobs help Americans; 4,200 of these people are from my State, the great State of Indiana.

The only area where Mondale promises to make specific cuts is in the country's vital defense program. The cuts that will cost 205,000 jobs nationally, including 4,200 jobs in Indiana, is the B-1 bomber program. The B-1 is a replacement for the aging B-52 bomber and is vital to our national defense.

Once again, Walter Mondale's promises will hurt America. Not only will he hurt severely our national defense program, but he will put 205,000 of his fellow Americans out of work in the process.

HIGH PLAINS STATES GROUND WATER DEMONSTRATION PROGRAM ACT OF 1983

Mr. KAZEN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 71) to authorize and direct the Secretary of the Interior to engage in a special study of the potential for ground water recharge in the High Plains States, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 2, line 6, strike out "Act." and insert Act: *Provided*, That funds made available pursuant to this Act shall not be used for the study or construction of groundwater recharge demonstration projects in the High Plains States and other Reclamation Act States which would utilize water origi-

nating in the drainage basin of the Great Lakes.

Page 5, after line 16, insert:

SEC. 5. The Secretary, acting through the Bureau, and the Administrator of the environmental Protection Agency (hereinafter referred to as the "Administrator") shall enter into a memorandum-of-understanding to provide for an evaluation of the impacts to surface water and groundwater quality resulting from the groundwater recharge demonstration projects constructed pursuant to this Act. The Administrator shall consult with the United States Geological Survey and shall make maximum use of data, studies, and other technical resources and assistance available from State and local entities in conducting the evaluation. The evaluation of water quality impacts shall be completed so as to be included in the Secretary's final report to the Congress referred to in section 4(c)(2) of this Act.

Page 5, line 17, strike out "5" and insert "6".

Page 5, strike out all after line 23 over to and including line 5 on page 6, and insert:

SEC. 7. There is authorized to be appropriated for fiscal years beginning after September 30, 1983, $20,000,000 (October 1983 price levels) to carry out phase II. Amounts shall be made available pursuant to the authorization contained in this section in sums for individual projects based on findings of feasibility by the Secretary.

Page 6 line 6, strike out "7" and insert "8".

Page 6 line 7, strike out "6" and insert "7".

Page 6 line 17, strike out "8" and insert "9".

Page 7, after line 2, insert:

SEC. 10. No funds authorized to be appropriated by this act shall be used for any activities associated with:

(1) the interstate transfer of water from the State of Arkansas; or

(2) the study or demonstration of the potential for the interstate transfer of water from the State of Arkansas.

Mr. KAZEN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. TALLON). Is there objection to the request of the gentleman from Texas?

There was no objection.

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

Mr. BROWN of Colorado. Reserving the right to object, Mr. Speaker, would the gentleman from Texas explain to the body the nature of the Senate amendments.

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

Mr. BROWN of Colorado. I yield to the gentleman from Texas.

Mr. KAZEN. I thank the gentleman for yielding.

Mr. Speaker, H.R. 71 authorizes the construction of demonstration projects for ground water recharge.

The Senate amendments require specific line item appropriations for each demonstration project. This will give Congress the opportunity to judge each proposed project on its merits, should it choose to do so.

Another amendment involves the EPA to the extent that it would assure that none of the projects would degrade ground water resources which are, or may be, used for drinking water.

Two other amendments approved by the Senate prohibit the use of any funds authorized to be appropriated for the diversion of water from the Great Lakes or the Arkansas River Basin. Since it was never intended that the demonstration projects involve interbasin transfers of water, the amendments are not likely to have any significant impact on the demonstration program.

Mr. BROWN of Colorado. Mr. Speaker, I want to take this opportunity to congratulate Chairman KAZEN and Congressman BEREUTER of Nebraska who have put so much hard work into getting this bill passed. I note that the bill was essentially unchanged by the Senate, which added what are basically technical or clarifying amendments to the House bill. This speaks very well for the efforts of the subcommittee on this bill.

As many Members know, the problem of ground water overdrafting is an increasingly serious one in Colorado and in the West. According to Congressman BEREUTER of Nebraska:

It is likely that some areas of the High Plains will have totally exhausted their available ground water supplies by the turn of the century. Because of this projected depletion of ground water, it is estimated that more than 5 million acres in the High Plains will revert to dryland farming practices or rangeland by the year 2020.

We need to make a concerted effort now to find the best ways to deal with this problem before the crisis which some are predicting for the future becomes a reality. The ground water recharge demonstration program is a key step which will provide important new information to help in dealing with this problem.

As amended by the Senate, the bill sets up a two-phase program for demonstration projects for ground water recharge. The Bureau of Reclamation will be the principal agency to administer the program. In phase I, the Bureau of Reclamation will develop plans for demonstration projects "the purpose of which is to determine whether various recharge technologies may be applied to diverse geologic and hydrologic conditions represented in the High Plains States and other Reclamation Act States." There is $500,000 authorized for phase I. In phase II, the Bureau of Reclamation is "authorized and directed" to design, construct, and operate a number of demonstration projects in the High Plains States. There is $20 million authorized for phase II.

I understand the Bureau of Reclamation may issue an informational notice describing the program and calling for project proposals by interested local areas. A preliminary selection of projects is scheduled to be made 6 months after funds are first appropriated.

I call particular attention to the fact that the bill requires that States or local communities contribute 20 percent of the cost of these projects. This requirement is intended to ensure both the fiscal soundness and the desirability of projects which are chosen, since the State and Federal Governments will both have strong interests in overseeing their investments with such a requirement in place.

The problem of ground water overdrafting is probably not susceptible to a simple solution, but I believe this bill can make a significant contribution to our understanding of the problem, and I support its passage.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Texas [Mr. KAZEN]?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

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

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

There was no objection.

MARINE SANCTUARIES AMENDMENTS OF 1983

Mr. BREAUX. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1102) to provide authorization of appropriations for title III of the Marine Protection, Research, and Sanctuaries Act of 1972, 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 Louisiana?

Mr. YOUNG of Alaska. Reserving the right to object, Mr. Speaker, and I will not object to this bill but merely wish to commend my colleagues for bringing it to the floor today.

While I continue to have reservations about the marine sanctuaries title of the bill, I am satisfied with the colloquy held with the chairman and hope that the legislative intent demonstrated will help to prevent any future problems for ocean resource industries.

I also want to mention my strong support for the other provisions of the bill, especially the amendments to the fishermen's contingency fund and the fisheries loan program. The amendments we will adopt today make both of those programs more responsive to the needs of our commercial fishing industry. I am especially pleased with the new provisions that allow a higher recovery for economic loss. This will certainly help those fishermen who lose gear in the course of fishing operations.

I would like to make some specific comments regarding marine sanctuaries. The intent of section 303 is to ensure that marine sanctuaries are not designated unless they are carefully screened and meet specific standards. Also, section 304 requires additional steps, including an environmental impact statement and resource assessment, before designation. Subsection 303(a) contains five mandatory standards for designation, each requiring a secretarial finding or determination following extensive interagency review. Subsection 303(b) lists nine complex factors the Secretary must carefully consider in conjunction with interagency consultations before designating a marine sanctuary. Subsections 303 (a) and (b) combined, therefore, include 14 inter-related criteria. Further, the resource assessment required under paragraph 303(b)(3) must be included in the environmental impact statement required by paragraph 304(a)(2). It is my understanding that the Congress does not condone the designation of any marine sanctuary unless it is first carefully screened and meets each of the required standards.

Before a marine sanctuary is designated, the Secretary must find that it is small enough to allow comprehensive management and that it will not be designated if present or potential uses are or will be conducted under laws, regulations, or policies adequate to protect the area. Further, consulatation by the Secretary means precisely that, and not agreement after the fact by personnel in other agencies. In particular, subparagraphs 303(a)(2)(D) and 303(b)(1)(F) refer to size of a marine sanctuary. These provisions require that the area be "discrete." This means small enough to, and of a nature which would, allow coordinated and comprehensive management. Clearly, areas of the size of some marine sanctuaries that have been proposed for designation in the past are not discrete and are not of a nature which would allow coordinated and comprehensive management. If the intent of this program is to achieve coordinated and comprehensive management of special areas in the absence of existing authorities, then it should be clearly demonstrated that this program has the fiscal and administrative capacity to do so for any proposed marine sanctuary area, particularly in terms of its physical size. Certainly, the largest of the existing marine sanctuaries is the maximum size currently contemplated to satisfy the provisions of subparagraphs 303(a)(2)(D) and 303(b)(1)(F). Furthermore, the Secretary should not designate an area as a marine sanctuary if existing authorities or programs provide the desired level of protection for the area and its resources. Specifically, subparagraph 303(a)(2)(B) directs the Secretary to make a finding that "existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area * * *" prior to designating a marine sanctuary. I believe such a finding would be difficult to make and sustain considering the many existing stringent State and Federal environmental laws and regulations which already ensure extensive protection of the marine environment

Another issue pertains to interagency consultations prior to marine sanctuary designation and those related to implementation of a marine sanctuary including proposed regulations, covered respectively by paragraph 303(b)(2). These provisions, in a nutshell, require a secretary to consult extensively with other Federal and State agencies on a number of issues prior to designation. These before-the-fact consultations must, for each candidate for designation as a marine sanctuary, include thorough interagency discussion of proposed findings and analysis of factors evaluated to make the findings. Without adhering to strict interagency review procedures it would be impossible for the Secretary to designate a marine sanctuary or regulate it in any particular manner. The legal validity of any designation action under this legislation requires before-the-fact interagency review. It should also be noted that subparagraph 303(b)(2)(A) also requires consultation with the Congress, in particular the Merchant Marine and Fisheries Committee.

One important purpose of these amendments is to avoid disrupting ongoing programs conducted or monitored by other Federal agencies, or in the case of commercial fishing, by the Regional Fishery Management Councils. The purpose of all the before-the-fact interagency review and approval is to ensure that ongoing or planned Federal programs administered by other agencies are not disrupted by the designation of a marine sanctuary and its subsequent management. The intent is to provide the agencies whose programs would be affected by a designation with the opportunity to review the impact of designation and subsequent regulation and management of a marine sanctuary on their programs, and not to let the Secretary unilaterally make that judgment for them.

In addition, the intent of this bill is to ensure that other agencies involved in activities in a proposed site have full rights of participation in the regulatory process, so that implementing regulations do not unduly restrict other agency activities without their prior review.

Because some of the provisions are not fully covered by legislative history, I also want to offer the following to more clearly explain congressional intent behind the various sections of this bill.

SECTION-BY-SECTION ANALYSIS OF S. 1102

TITLE I—MARINE SANCTUARIES

This title completely revises the existing law regarding marine sanctuaries.

It defines Congressional intent with respect to the marine sanctuaries program and codifies the program's existing purposes and policies as outlined in NOAA's Program Development Plan (PDP). Further, it sets specific standards and factors that the Secretary of Commerce must consider when designating a marine sanctuary and expands the consultation procedures required when designating a sanctuary to include consultation with Regional Fishery Management Councils.

The Secretary of Commerce is required to include, as part of the Draft EIS on a proposed sanctuary, a resource assessment report documenting the present and potential uses of the area, including fishing, minerals, and energy development. Procedures are established that the Secretary must follow in preparing the sanctuary proposal, including public notice and notice to the Congress, the environmental impact statement, and public hearing requirement.

Regional Fishery Management Councils are given the opportunity to draft regulations governing fishing within proposed sanctuaries. If the Council declines, or fails within a reasonable time, to prepare appropriate regulations, the Secretary shall prepare the draft regulations.

Finally, it establishes a 45-day Congressional review and reporting period prior to final site designation and sets up Congressional and gubernatorial disapproval processes. The Congressional disapproval vehicle is a prescribed joint resolution to be approved and signed by the President. If the Governor disapproves a site designation, that designation shall not take effect in state waters.

The Secretary of State, in consultation with the Secretary of Commerce, has discretionary authority to make necessary arrangements with other governments for the protection of any sanctuary and the promotion of the sanctuaries' purposes. These arrangements may well be useful, although the need for them may be reduced by the recent establishment of the United States Exclusive Economic Zone which augments previous U.S. authority over ocean areas where sanctuaries may be designated.

Appropriations are authorized as follows: FY 85—$3 million; FY 86—$3.3 million; FY 87—$3.6 million; and FY 88—$3.9 million.

House Report No. 98-187 sets forth a fuller discussion of the Congressional mandate and of each provision of the bill. The provisions regarding resource assessment report, criteria for drafting fishing regulations by the Councils, reduction of the time

for Congressional and gubernatorial disapproval, consistency with the recent *Chadha* decision, the privileged and undebatable status of the joint resolution, and clarification of access and valid rights have been modified since that report was published but to the extent possible should be interpreted as consistent with that report. The clarification of rights is merely a grandfather for certain existing rights which are all subject to regulation by the Secretary of Commerce. The word "valid" is included for emphasis only and is considered to be legally redundant and superfluous.

TITLE II—MARINE SAFETY

Subtitle A contains the Maritime Safety Act of 1984. It requires the owner, agent, or managing operator of a vessel, which is required to be inspected by the Coast Guard, to inform the Coast Guard at least 30 days, but nor more than 60 days, before the vessel's current certificate of inspection exprires. Further, it provides penalties for operation of a vessel without a certificate of inspection. The penalty will be up to $2,000 per day for vessels under 1,600 tons and up to $10,000 per day for other vessels. The Coast Guard can waive the penalty if unforeseen circumstances prevent a scheduled inspection. The Secretary of Transportation is authorized to order the owner, agent, or managing operator of the vessel, which lacks a required certificate of inspection, to return the vessel to its mooring until a certificate is issued, or take other appropriate action. In addition, it amends several existing laws relating to vessel inspection, in order to increase, and make more uniform, the civil penalty applicable for a violation of those laws. Many of the penalties are for up to $5,000 per violation.

The owner, agent, or managing operator of any vessel of the United States is required to immediately notify the Coast Guard when that person has reason to believe, becuase of lack of communication with or non-appearance of the vessel or any other incident, that the vessel may have been lost or imperiled and to immediately try to determine the status of the vessel, which is required to report under USMER, is required to try immediately to determine the status of the vessel and to notify the Coast Guard if more than 48 hours have passed since hearing from the vessel. It also requires the master of the USMER vessel to report to the owner at least once every 48 hours and provides civil penalties for failure to make any of the required reports.

In addition, it raises the $60 per ton limit of shipowner's liability for death and personal injury claims to $420 per ton to adjust the figure due to inflation since the 1936 enactment of the $60 per ton law.

House Report No. 98-525 contains the full statement of Congressional intent and a detailed analysis of each provision. Slight modifications have been made since the report was published, which should be interpreted to be consistent with that report.

Subtitle B concerns recreational diving safety. It requires the Rules of the Road Advisory Council and the National Boating Safety Advisory Council to report, within 180 days after enactment, recommendations to the Secretary of Transportation concerning the need for display of the red-with-diagonal-white-stripe "divers flag" to promote recreational diving safety. Any factor may be considered by each Council including those enumerated in the provision. There is a particular concern to receive a recommendation regarding preemption of state law, as approximately 30 of the 50 states have their own statutes. The Secretary is required to report to Congress, within one year after enactment, the Councils' recommendations, the Secretary's evaluation of them, the Secretary's recommendations, and proposed legislation to implement the Secretary's recommendations if required. The intent is to set up a process for the full examination of the safety issues surrounding divers and vessels in the maritime environment. Existing law is unaffected by this provision.

TITLE III—NOAA CORPS PROVISIONS

Subtitle A concerns health care for certain NOAA personnel. It responds to a provision in the Omnibus Budget Reconciliation Act of 1981, which phased out Public Health Service (PHS) hospitals and other facilities, and subsequent determinations (effective with the enactment of the second continuing resolution for 1983) prohibiting the PHS from budgeting for health services for eligible NOAA employees.

First, it provides permanent authority for the Secretary of Commerce to budget for dental and medical care for the NOAA Corps, including dependents and survivors, and the crews of NOAA vessels, and authorizes the Secretary to provide health care by contracting directing with private facilities or by reimbursing another agency—including the Public Health Service—qualified to provide care. It changes no basic entitlements and is virtually identical to authority given to the Coast Guard.

In addition, it contains technical amendments to clarify that non-NOAA Corps crew members, dependents, and retired ships' officers who are eligible for hospitalization care are entitled to this care without regard to whether care is provided at PHS facilities or by contract with private hospitals and facilities. This section affects roughly 165 older career NOAA employees who have either been retired or in continuous active service for at least 20 years. These individuals are entitled to PHS health care by law. However, their PHS hospitalization benefits were inadvertently cut off by closure of PHS facilities. When similar care was provided on a contract basis with private facilities, there was an administrative determination that care in private facilities was not allowed under existing law. For a more detailed explanation of Subtitle A, see House Report 98-526.

Subtitle B amends the Coast and Geodetic Survey Commissioned Officers' Act of 1948 in several respects. It establishes similar involuntary separation entitlements for commissioned officers of the National Oceanic and Atmospheric Administration to those already provided for officers of the Armed Services, provides the Secretary of Commerce with greater flexibility in the assignment of NOAA Corps officers throughout the Administration by removing the restriction on the number of NOAA Corps officers who may hold temporary promotions, and provides authority to designate a limited number of positions of importance and responsibility as flag grades when held by commissioned officers. Additionally, this subtitle will align the grade structure of the NOAA Corps with that of the Navy by replacing the grade of rear admiral (lower half) with the grade of commodore.

With respect to the involuntary separation provisions, it includes the rank of lieutenant commander among the ranks which, if not otherwise qualified for retirement, may be separated from the service as recommended by a personnel board. Further, it provides that any officer who is separated from the NOAA Corps and who has completed five or more years of continuous active service immediately before that separation is entitled to the amount of separation pay which is 10 percent of the product of the years of active service times one year's salary at the time of separation or $30,000, which ever is less, unless the Secretary determines that the payment is unwarranted. Any officer who is separated from the NOAA Corps and who has completed more than three but less than five years of continuous active service is entitled to one-half of the above amount but in no event more than $15,000, unless the Secretary determines that the payment is unwarranted. The period for which an officer has previously received separation pay, severance pay, or readjustment pay may not be included in determining the years of creditable service. Also, an officer who has received separation pay under this section or severance pay or readjustment pay under any other provision of law and who later qualifes for retirement shall have the amount of separation pay deducted from retirement payment.

The provisions creating greater flexibility in the assignment of commissioned officers allow the President to appoint, with advice and consent of the Senate, one officer to the grade of vice admiral, three officers to the grade of rear admiral, and three officers to the grade of commodore. Certain positions within NOAA designated by the Secretary may be filled with NOAA Corps commissioned officers so appointed. An appointment under this provision creates a vacancy on the active list. However, the officer retains the permanent grade held by that officer at the time of the appointment. Savings clauses are provided so that an officer serving as rear admiral (upper half) before enactment of this Act shall, after enactment, serve in the grade of rear admiral. An officer serving as rear admiral (lower half) before enactment shall, after enactment, serve in the grade of commodore but shall retain the title and uniform of rear admiral.

In addition, these provisions remove the limit on the number of officers holding temporary promotions. An officer in any permanent grade may, under current law, be temporarily promoted to the next higher grade by the President and the temporary promotion will terminate upon the transfer of the officer to a new assignment.

Administratively, this subtitle replaces the appointment authority for flag grades contained in Reorganization Plan No. 4 of 1970 and affirms the authority of the Secretary to assign commissioned officers to a wide range of administrative and operational positions. This subtitle will also correct an obvious drafting error in Section 3(a)(1) of Public Law 95-219.

TITLE IV—FISHERIES

Subtitle A renames the Pacific Tuna Development Foundation as the Pacific Fisheries Development Foundation in order to illustrate the broader concerns of the Foundation and to make the name consistent with that of similar foundations.

Subtitle B makes changes in the Fishermen's Contingency Fund as established under the Outer Continental Shelf Lands Act Amendments (OCSLAA) of 1978. The OCSLAA were to compensate commercial fishermen for damages to vessels and gear resulting from oil and gas exploration, development, and production in areas of the Outer Continental Shelf, and for resulting economic loss. Currently, OCSLAA provides for compensation of an amount equal to 25

percent of economic loss. This subtitle increases that to an amount equal to 50 percent of loss. The term "resulting economic loss" means the gross income, as estimated by the Secretary, that a commercial fisherman eligible for compensation will lose by reason of not being able to engage in fishing or having to reduce the fisherman's fishing effort during the period before the damaged or lost fishing gear is repaired or replaced and available for use. It ensures an adequate amount of time to file claims by prescribing a minimum 90-day period to do so.

Subtitle C makes changes to the Fisheries Loan Fund (FLF). It extends through Fiscal Years 1985 and 1986 the authority of the Secretary of Commerce to deposit foreign fishing fees into the Fisheries Loan Fund, and to make loans from the Fisheries Loan Fund to fishermen to avoid default on Federal loan guarantees, to avoid default on vessel loans not guaranteed by the Federal Government, or to cover vessel operating expenses under certain circumstances. Further, it extends through Fiscal Years 1985 and 1986 the authorization of $50,000 for the Secretary of Commerce and $100,000 for the Department of the Interior to recruit, train, and accept volunteers to assist in fish and wildlife programs.

Finally, it provides that all monies in the Fisheries Loan Fund shall be invested by the Secretary of Commerce in United States obligations, except money needed for loans or administrative expenses. The accrued proceeds shall be credited by the Secretary of the Treasury to the debt incurred under the Title XI Fishing Vessel Loan Guarantee Program. The investment proceeds would assist in the liquidation of approximately $18 million of debt borrowed from the Treasury by the Secretary of Commerce because of inadequate reserves to cover payments necessitated by an excessive number of defaults on government guaranteed vessel loans. The crediting of investment proceeds would be subject to appropriations.

Subtitle D approves the Governing International Fisheries Agreement between the United States and the Government of Denmark and the Faroe Islands.

TITLE V—VESSELS

This title lists seven vessels made eligible for documentation as U.S. vessels. It cures various defects in the vessels' titles under the terms of the Merchant Marine Act or title 46, United States Code. These vessels are: WINGAWAY, official number 654146; ENDLESS SUMMER, official number 296259 (House Report No. 98-514); MUSKEGON CLIPPER, official number 252908; SCUBA KING, official number 532376; ULULANI, official number 239729; NO SLACK, official number 587630; LA JOLIE, Michigan number MC2780LB (House Report No. 98-516).

The format of this title has been developed for use in drafting provisions of this nature by the Merchant Marine and Fisheries Committee and is recommended for future provisions of this nature. It is understood that any defect of the type corrected by this title, occurring subsequent to the enactment of this title, would require additional legislative action to cure it.

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I would like to engage the subcommittee chairman, the gentleman from Louisiana [Mr. BREAUX], in a colloquy regarding marine sanctuaries in this bill. I have included detailed remarks for the congressional intent and understanding regarding sections 303 and 304, as well as various actions permitted under this legislation with regard to the designation of marine sanctuaries. In addition, I have included in my statement a detailed analysis of the entire bill, S. 1102.

Does the gentleman from Louisiana agree that this is an accurate statement regarding these sections of congressional intent on this bill?

Mr. BREAUX. Mr. Speaker, the gentleman has precisely stated the situation. I commend him for his comments. His statements accurately reflect the intent of the legislation.

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

Mr. Speaker, further reserving the right to object, I yield to the gentleman from New York [Mr. MOLINARI].

Mr. MOLINARI. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of S. 1102.

I am particularly pleased to note that my bill, H.R. 5732, the "Diver Down Flag" bill, is incorporated as subtitle B, of title II.

Recognizing the need to promote and protect the safety of recreational skin and scuba divers across the country signifies a long awaited awareness of the needs of this large body of diving enthusiasts.

For almost 27 years, whenever divers have engaged in their sport, they have proudly displayed a bright red flag with a white diagonal strips which by tradition means "Diver down, stay clear."

I say proudly displays with good reason. The flag was diver inspired and diver designed, and is today not only instantly recognized, but is required as a safety measure by more than 30 States.

We have now reached the point where, in order to provide adequate safety for this ever-growing sport, a uniform nationwide safety standard based upon this flag, must be developed. This is what subtitle B will do.

It directs the Rules of The Road Advisory Council, and the National Boating Safety Advisory Council, to develop within 180 days, recommendations on how the traditional divers flag should be displayed. These councils will work with the recreational diving community to design appropriate standards that will assure diving safety throughout the country.

These standards and provisions are essential to safeguard the diving community of this Nation and I urge you to approve this bill.

Mr. YOUNG of Alaska. Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1102

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

TITLE I—MARINE SANCTUARIES

SEC. 101. This title may be cited as the "Marine Sanctuaries Amendments of 1983".

SEC. 102. Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) is amended to read as follows:

"TITLE III—NATIONAL MARINE SANCTUARIES

"SEC. 301. FINDINGS, PURPOSES, AND POLICIES.

"(a) FINDINGS.—The Congress finds that—

"(1) this Nation historically has recognized the importance of protecting special areas of its public domain, but such efforts have been directed almost exclusively to land areas above the high-water mark;

"(2) certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities which give them special national significance;

"(3) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment;

"(4) a Federal program which identifies special areas of the marine environment will contribute positively to marine resource conservation and management; and

"(5) such a Federal program will also serve to enhance public awareness, understanding, appreciation, and wise use of the marine environment.

"(b) PURPOSES AND POLICIES.—The purposes and policies of this title are—

"(1) to identify areas of the marine environment of special national significance due to their resource or human-use values;

"(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas which will complement existing regulatory authorities;

"(3) to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas;

"(4) to enhance public awareness, understanding, appreciation and wise use of the marine environment; and

"(5) to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.

"SEC. 302. DEFINITIONS.

"As used in this title, the term—

"(1) 'draft management plan' means the plan described in section 304(a)(1)(E);

"(2) 'Magnuson Act' means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

"(3) 'marine environment' means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law;

"(4) 'Secretary' means the Secretary of Commerce; and

"(5) 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands,

American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

"SEC. 303. SANCTUARY DESIGNATION STANDARDS.

"(a) STANDARDS.—The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary determines that such designation will fulfill the purposes and policies of this title, and if the Secretary finds that—

"(1) the area is of special national significance due to its resource or human-use values;

"(2) existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research and public education, and that designation of such area as a national marine sanctuary will facilitate these objectives; and

"(3) the area is of a size and nature which will permit comprehensive and coordinated conservation and management.

"(b) FACTORS AND CONSULTATIONS REQUIRED IN MAKING FINDINGS.—

"(1) FACTORS.—For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a), the Secretary shall consider—

"(A) the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biogeographic representation of the site;

"(B) the area's historical, cultural, archaeological, or paleontological significance;

"(C) the present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

"(D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);

"(E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this title;

"(F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

"(G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

"(H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development; and

"(I) the socioeconomic effects of sanctuary designation.

"(2) CONSULTATION.—In making such determination, the Secretary shall consult with—

"(A) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;

"(B) the Secretaries of State, Defense, Transportation, the Secretary of the Department in which the Coast Guard is operating, the Secretary of the Interior, the Administrator, and the heads of other interested Federal agencies;

"(C) the responsible officials or relevant agency heads of the appropriate State and local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary;

"(D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act (16 U.S.C. 1852) that may be affected by the proposed designation; and

"(E) other interested persons.

"(3) RESOURCE ASSESSMENT REPORT.—In making such determination, the Secretary also shall draft, as part of the environmental impact statement referred to in section 304(a)(1), a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial recreational uses. The Secretary, in consultation with the Secretary of the Interior, shall be responsible for drafting a resource assessment section for the report regarding any commercial or recreational resource uses in the area under consideration which are subject to the primary jurisdiction of the Department of the Interior.

"SEC. 304. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION.

"(a) SANCTUARY PROPOSAL.—

"(1) NOTICES.—In proposing to designate a national marine sanctuary, the Secretary shall issue in the Federal Register a notice of the proposal, proposed regulations that may be necessary and reasonable to implement such proposal and a summary of the draft management plan. The Secretary shall provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal. The Secretary shall also prepare a draft environmental impact statement, as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), on the proposal. Such draft statement shall include the resource assessment report required under section 303(b)(3), and maps depicting the boundaries of the proposed designated area and the existing and potential uses and resources of the area. Copies of the draft environmental impact statement shall be available to the public. No sooner than thirty days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area as a national marine sanctuary for the purpose of receiving the views of interested parties. On the same day as such notice is issued, the Secretary shall also submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a prospectus on the proposal which shall contain—

"(A) the terms of the proposed designation;

"(B) the basis of the findings made under section 303(a) with respect to the area;

"(C) an assessment of the considerations under section 303(b)(1);

"(D) proposed mechanisms to coordinate existing regulatory and management authorities within the area;

"(E) the draft management plan detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement and surveillance activities for the area;

"(F) an estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education;

"(G) the draft environmental impact statement;

"(H) an evaluation of the advantages of cooperative State and Federal management where proposed marine sanctuaries lie within the territorial limits of any State or are superjacent to the subsoil and seabed within the seaward boundary of a State, as the term 'boundary' is used in the Submerged Lands Act (43 U.S.C 1301 et seq.); and

"(I) proposed regulations to implement the terms of designation and the measures referred to in subparagraphs (A), (D), and (E) and paragraph (3).

"(2) TERMS OF DESIGNATION.—The terms of designation of a sanctuary shall include the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that will be subject to regulation by the Secretary in order to protect those characteristics. The terms of designation may be modified only by the same procedures by which the original designation is made.

"(3) FISHING REGULATIONS.—The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare such draft regulations for fishing within the United States Fishery Conservation Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council or a Council determination that regulations are not necessary pursuant to this paragraph shall be accepted and promulgated by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this title and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall also use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare such regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to fishing regulations shall be drafted, approved and promulgated in the same manner as the original regulations.

"(4) COMMITTEE ACTION.—After receiving the prospectus under subsection (a)(1), the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the prospectus. If within the forty-five day period of continuous session of Congress beginning on the date of submission of the prospectus, either Committee issues a report concerning matters addressed in the prospectus, the Secretary shall consider such report before publishing a notice to designate the national marine sanctuary.

"(b) TAKING EFFECT OF DESIGNATIONS.—

"(1) NOTICE.—In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall also advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(4). The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless—

"(A) the Congress disapproves the designation or any of its terms, by enacting a joint resolution of disapproval described in paragraph (3); or

"(B) in the case of a national marine sanctuary that is located partially or entirely within the jurisdiction of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the jurisdiction of the State.

"(2) WITHDRAWAL OF DESIGNATION.—If the Secretary considers that actions taken under paragraph (1) (A) or (B) will affect the designation in such a manner that the goals and objectives of the sanctuary cannot be fulfilled, the Secretary may withdraw the designation. If the Secretary does not withdraw the designation, only those portions of the designation not disapproved under paragraph (1)(A) or not certified under paragraph (1)(B) shall take effect.

"(3) RESOLUTION OF DISAPPROVAL.—For the purposes of this subsection, the term 'resolution of disapproval' means a joint resolution which states after the resolving clause the following: 'That the Congress disapproves the national marine sanctuary designation entitled that was submitted to Congress by the Secretary of Commerce on .', the first blank space being filled with the title of the designation and the second blank space being filled with the date on which the notice was submitted to Congress. In the event that the disapproval is addressed to one or more terms of the designation, the joint resolution shall state after the resolving clause the following: 'That the Congress approves the national marine sanctuary designation entitled that was submitted to Congress by the Secretary of Commerce on but disapproves the following terms of such designation: first blank space being filled with the title of the designation, the second blank space being filled with the date on which the notice was submitted to Congress, and the third blank space referencing each term of the designation which is disapproved.

"(4) PROCEDURES.—

"(A) In computing the forty-five-day periods of continuous session of Congress pursuant to subsection (a)(4) and paragraph (1) of this subsection—

"(i) continuity of session is broken only by an adjournment of Congress sine die; and

"(ii) the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain are excluded.

"(B) When the committee to which a joint resolution has been referred has reported such a resolution, it shall at any time thereafter be in order to move to proceed to the consideration of the resolution. The motion shall be privileged and shall be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

"(C) This subsection is enacted by Congress as an exercise of the rulemaking power of each House of Congress, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the case of resolutions described in this subsection. This subsection supersedes other rules only to the extent that they are inconsistent therewith, and is enacted with full recognition of the constitutional right of either House to change the rules (so far as those relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

"(5) ACCESS AND VALID RIGHTS.—Nothing in this title shall be construed as terminating, or granting to the Secretary the right to terminate, any valid lease, permit, license, right of subsistence use, or right of access: *Provided,* That such lease, permit, license or right was in existence on the date of enactment of the Marine Sanctuaries Amendments of 1983, with respect to any national marine sanctuary designated before such date: *Provided further,* That such lease, permit, license or right is in existence on the date of designation of any national marine sanctuary, with respect to any national marine sanctuary designated after the date of enactment of the Marine Sanctuaries Amendments of 1983: *And provided further,* That the exercise of such lease, permit, license or right shall be subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.

"SEC. 305. INTERNATIONAL APPLICATION OF REGULATIONS AND NEGOTIATIONS.

"(a) REGULATIONS.—The regulations issued under section 304 shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory. Unless the application of the regulations is in accordance with such principles or is otherwise authorized by an agreement between the United States and the foreign state of which the affected person is a citizen or, in the case of the crew of a foreign vessel, between the United States and flag state of the vessel, no regulation applicable to areas or activities outside the jurisdiction of the United States shall be applied to a person not a citizen, national, or resident alien of the United States.

"(b) NEGOTIATIONS.—After the taking effect under section 304 of the national marine sanctuary that applies to an area or activity beyond the jurisdiction of the United States, the Secretary of State shall take such action as may be appropriate to enter into negotiations with other governments in order to make necessary arrangements for the protection of the sanctuary and to promote the purposes for which it is established.

"SEC. 306. RESEARCH AND EDUCATION.

"The Secretary shall conduct such research and educational programs as are necessary and reasonable to carry out the purposes and policies of this title.

"SEC. 307. ENFORCEMENT.

"(a) IN GENERAL.—The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this title. The Secretary shall, whenever appropriate, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities on a reimbursable basis in carrying out the Secretary's responsibilities under this title.

"(b) CIVIL PENALTIES.—

"(1) CIVIL PENALTY.—Any person subject to the jurisdiction of the United States who violates any regulation issued under this title shall be liable to the United States for a civil penalty of not more than $50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

"(2) NOTICE.—No penalty shall be assessed under this subsection until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

"(3) IN REM JURISDICTION.—A vessel used in the violation of a regulation issued under this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

"(c) JURISDICTION.—The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued under this title, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States. The Attorney General may bring suit either on his own initiative or the request of the Secretary.

"SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

"To carry out this title, there are authorized to be appropriated not to exceed the following sums:

"(1) $2,264,000 for fiscal year 1984.

"(2) $2,500,000 for fiscal year 1985.

"(3) $2,750,000 for fiscal year 1986.

"SEC. 309. SEVERABILITY.

"If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this Act and of the application of such provision to other persons and circumstances shall not be affected thereby.".

TITLE II—MARINE SAFETY

SUBTITLE A

SEC. 201. (a) Before February 12, 1984, the Secretary of the Department in which the Coast Guard is operating shall prescribe final regulations requiring exposure suits on appropriate vessels operating in waters that are less than sixty degrees Fahrenheit.

(b) A vessel may not be exempted from the requirements of this section only because that vessel carries other lifesaving equipment.

(c) An exposure suit required by this section must provide adequate themal protection, buoyancy, and flotation stability, and any other requirement the Secretary prescribes.

(d)(1) The owner, charterer, managing operator, agent, master or individual in charge of a vessel violating thiis section or a regulation prescribed under this section is liable to the United States Government for a civil

penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

(2) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel violating this section or a regulation prescribed under this section may be fined not more than $25,000, imprisoned for not more than five years, or both.

(e) The Secretary shall by regulation designate waters in specified geographic areas, and shall designate specified times of the year, that meet the temperature standards of this section. Those regulations are deemed to comply with this section.

(f) The regulations prescribed under this section shall be effective before August 31, 1984.

SUBTITLE B

SEC. 210. This subtitle may be cited as the "Maritime Safety Act of 1983".

SEC. 211. (a) Section 3309 of title 46, United States Code, is amended by adding at the end:

"(c) At least 30 days (but not more than 60 days) before the current certificate of inspection issued to a vessel under subsection (a) of this section expires, the owner, charterer, managing operator, agent, master, or individual in charge of the vessel shall submit to the Secretary in writing a notice that the vessel—

"(1) will be required to be inspected; or

"(2) will not be operated so as to require an inspection.".

(b) Section 3311 of title 46, United States Code, is amended by—

(1) inserting "(a)" before "A vessel";

(2) striking the word "valid"; and

(3) inserting at the end the following:

"(b) The Secretary may direct the owner, charterer, managing operator, agent, master, or individual in charge of a vessel subject to inspection under this chapter not having a certificate of inspection—

"(1) to have the vessel proceed to mooring and remain there until a certificate of inspection is issued; or

"(2) to take immediate steps necessary for the safety of the vessel, individuals on board the vessel, or the environment.".

(c) Section 3318 of title 46, United States Code, is amended as follows:

(1) Subsection (a) is amended by—

(A) striking "The" the first time is appears and substituting "Except as otherwise provided in this part, the" and

(B) by striking "$1,000, except that when the violation involves operation of a barge, the penalty is $500.", and substituting "not more than $5,000.".

(2) Subsection (c) is amended by striking "$2,000," and substituting "$5,000,".

(3) Subsection (d) is amended by striking "$2,000," and substituting "$5,000,".

(4) Subsection (e) is amended by striking "$2,000," and substituting "$10,000,".

(5) Subsection (f) is amended by striking "$5,000," and substituting "$10,000,".

(6) Subsection (g) is amended by striking "shall be fined not more than $10,000, imprisoned for not more than one year, or both," and substituting "is liable to the Government for a civil penalty of not more than $5,000,".

(7) Subsection (h) is amended by striking "United States Government for a civil penalty of not more than $500." and substituting "Government for a civil penalty of not more than $1,000.".

(8) At the end add the following:

"(i) A person violating section 3309(c) of this title is liable to the Government for a civil penalty of not more than $1,000.

"(j)(1) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel required to be inspected under this chapter operating the vessel without the certificate of inspection is liable to the government for a civil penalty of not more than $10,000 for each day during which the violation occurs, except when the violation involves operation of a vessel of less than 1,600 gross tons, the penalty is not more than $2,000 for each day during which the violation occurs. The vessel also is liable in rem for the penalty.

"(2) A person is not liable for a penalty under this subsection if—

"(A) the owner, charterer, managing operator, agent, master, or individual in charge of the vessel has notified the Secretary under section 3309(c) of this title;

"(B) the owner, charterer, managing operator, agent, master, or individual in charge of the vessel has complied with all other directions and requirements for obtaining an inspection under this part; and

"(C) The Secretary believes that unforeseen circumstances exist so that it is not feasible to conduct a scheduled inspection before the expiration of the certificate of inspection.

"(k) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel failing to comply with a direction issued by the Secretary under section 3311(b) of this title is liable to the Government for a civil penalty of not more than $10,000 for each day during which the violation occurs. The vessel also is liable in rem for the penalty.

"(l) A person committing an act described by subsections (b)-(f) of this section is liable to the Government for a civil penalty of not more than $5,000. If the violation involves the operation of a vessel, the vessel also is liable in rem for the penalty.".

SEC. 212. (a) Chapter 23 of title 40, United States Code is amended as follows:

(1) At the end of the chapter analysis, add the following:

"2306. Vessel reporting requirements.".

(2) In section 2301, strike "This chapter" and substitute "Except as provided in section 2306 of this title, this chapter".

(3) Add at the end the following:

"§ 2306. Vessel reporting requirements

"(a)(1) An owner, charterer, managing operator, or agent of a vessel of the United States having reason to believe (because of lack of communication with or nonappearance of a vessel or any other incident) that the vessel may have been lost or imperiled immediately shall use all available means to determine the status of the vessel and notify the Coast Guard.

"(2) When more than 48 hours have passed since the owner, charterer, managing operator, or agent of a vessel required to report to the United States Flag Merchant Vessel Location Filing System under authority of section 212(A) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1122a), received a communication from the vessel, the owner, charterer, managing operator, or agent immediately shall use all available means to determine the status of the vessel and notify the Coast Guard.

"(3) A person notifying the Coast Guard under paragraph (1) or (2) of this subsection shall provide the name and identification number of the vessel, the names of individuals on board, and other information that may be requested by the Coast Guard. The owner, charterer, managing operator, or agent also shall submit written confirmation to the Coast Guard within twenty-four hours after nonwritten notification to the Coast Guard under these paragraphs.

"(4) An owner, charterer, managing operator, or agent violating this subsection is liable to the United States Government for a civil penalty of not more than $6,000 for each day during which the violation occurs.

"(b)(1) The master of a vessel of the United States required to report to the System shall report to the owner, charterer, managing operator, or agent at least once every forty-eight hours.

"(2) A master violating this subsection is liable to the Government for a civil penalty of not more than $1,000 for each day during which the violation occurs.

"(c) The Secretary may prescribe regulations to carry out this section.".

(b)(1) Section 6101 of title 46, United States Code, is amended—

(A) in subsection (a), by striking "and incidents", and

(B) by striking subsection (c).

(2) Section 6103 of title 46, United States Code, is amended by striking "or incident".

SEC. 213. (a) Subsection (b) of section 4283 of the Revised Statutes of the United States (46 App. U.S.C. 183(b)) is amended by striking out "$60" each place it appears and insert in lieu thereof "$420".

(b) The amendment made by subsection (a) shall apply to incidents occurring after the date of enactment of this Act.

SEC. 214. Sections 211(a) and 212 of this subtitle are effective one hundred and eighty days after the date of enactment of this Act.

TITLE III—MISCELLANEOUS

SUBTITLE A

SEC. 301. (a) Section 3 of the Act of December 31, 1970 (33 U.S.C. 857-3) is amended by adding "(a)" after "SEC. 3." and by adding at the end the following new subsection:

"(b) The Secretary may provide medical and dental care, including care in private facilities, for personnel of the Administration entitled to that care by law or regulation.".

(b) The matter before subsection (b) in the first section of the Act of July 19, 1963 (42 U.S.C. 253a(a)), is amended by striking "at facilities of the Public Health Service: *Provided*, That" and inserting in lieu thereof "by Public Health Service if".

(c) The first sentence of subsection (b) of the first section of that Act (42 U.S.C. 253a(b)) is amended—

(1) by striking out "at its hospitals and relief stations"; and

(2) by striking out "at hospitals of the Public Health Service: *Provided*, That" and inserting in lieu thereof "by the Public Health Service if".

SUBTITLE B

SEC. 310. (a) Chapter 9 of title 14, United States Code, is amended by inserting after section 181 the following new section:

"§ 181a. Cadet applicants; preappointment travel to Academy

"The Secretary is authorized to expend appropriated funds for selective preappointment travel to the Academy for orientation visits of cadet applicants.".

(b) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 181 the following new item:

"181a. Cadet applicants; selective preappointment travel to Academy.".

SEC. 311. (a)(1) Section 42(b) of title 14, United States Code, is amended by striking out ".375" both places it appears and inserting in lieu thereof "0.375".

(2) Section 290 of such title is amended by striking out "Board" in the fourth sentence and inserting in lieu thereof "Boards".

(3) The table of sections at the beginning of chapter 13 of such title is amended by striking out the item relating to section 462a.

(4) Section 724 of such title is amended—

(A) by inserting "(1)" after "(b)";

(B) by striking out the last sentence; and

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

"(2) The authorized number of Reserve officers in an active status not on active duty in the grades of commodore and rear admiral is a total of two. However, the Secretary may authorize an additional number of Reserve officers not on active duty in the grades of commodore and rear admiral as necessary in order to meet planned mobilization requirements.".

(b)(1) The matter in the table in section 201(a) of title 37, United States Code, under the heading "Navy, Coast Guard, and National Oceanic and Atmospheric Administration" and in the columns for O-8 and O-7 is amended to read as follows:

.....	"Rear admiral (Navy and Coast Guard) and Rear admiral (upper half) (National Oceanic and Atmospheric Administration)
.....	"Commodore (Navy and Coast Guard) and Rear admiral (lower half) and commodore (National Oceanic and Atmospheric Administration)"

(2)(A) The heading of section 202 of such title is amended to read as follows:

"§ 202. Pay grade: retired Coast Guard commodores".

(B) The item relating to section 202 in the table of sections at the beginning of chapter 3 of such title is amended to read as follows:

"202. Pay grade: retired Coast Guard commodores.".

(c) The matter in the table in section 741(a) of title 10, United States Code, under the heading "Navy and Coast Guard" is amended—

(1) by striking out "Rear admiral (Navy) and Rear admiral (upper half) (Coast Guard)" and inserting in lieu thereof "Rear admiral"; and

(2) by striking out "Commodore (Navy) and Rear admiral (lower half) (Coast Guard)" and inserting in lieu thereof "Commodore".

SEC. 312. (a) Chapter 55 of title 10, United States Code, is amended as follows:

(1) Section 1072 is amended—

(A) by striking out "the Secretary of Defense" and all that follows through "may be," in paragraph (2)(D)(iii) and inserting in lieu thereof "the administering Secretary"; and

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

"(3) 'Administering Secretaries' means the Secretaries of executive departments specified in section 1073 of this title as having responsibility for administering this chapter.".

(2) Section 1073 is amended by striking out "and the Secretary" and all that follows through "Navy, and" and inserting in lieu thereof "the Secretary of Transportation shall administer this chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services shall administer this chapter".

(3) Section 1074 is amended by striking out "Secretary of Defense and the Secretary of Health and Human Services" each place it appears and inserting in lieu thereof "administering Secretaries".

(4) Section 1076 is amended by striking out "the Secretary of Defense and the Secretary of Health and Human Services" in subsections (b) and (d) and inserting in lieu thereof "the administering Secretaries".

(5) Section 1078 of title 10, United States Code, is amended by striking out "the Secretary of Health and Human Services" in subsections (a) and (b) and inserting in lieu thereof "the other administering Secretaries".

(6) Section 1079 is amended—

(A) by striking out "the Secretary of Defense and the Secretary of Health and Human Services" each place it appears and inserting in lieu thereof "the administering Secretaries"; and

(B) by striking out "with the Secretary of Health and Human Services" in subsections (a) and (h)(2) and inserting in lieu thereof "with the other administering Secretaries".

(7) Section 1080 is amended by striking out "the Secretary of Health and Human Services" in the second sentence and inserting in lieu thereof "the other administering Secretaries".

(8) Section 1081 is amended by striking out "the Secretary of Defense or the Secretary of Health and Human Services" and inserting in lieu thereof "one of the administering Secretaries".

(9) Section 1083 is amended by striking out "the Secretary of Health and Human Services" in the second sentence and inserting in lieu thereof "the other administering Secretaries".

(10) Section 1084 is amended—

(A) by striking out "the Secretary of Defense or the Secretary of Health and Human Services" in the first sentence and inserting in lieu thereof "an administering Secretary"; and

(B) by striking out "he" in the second sentence and inserting in lieu thereof "the administering Secretary".

(11) The text of section 1085 of title 10, United States Code, is amended to read as follows:

"If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed at rates established by the President to reflect the average cost of providing the care.".

(12) Section 1086 is amended—

(A) by striking out "the Secretary of Health and Human Services" in subsection (a) and inserting in lieu thereof "the other administering Secretaries"; and

(B) by striking out "the Secretary of Defense and the Secretary of Health and Human Services" in the second sentence of subsection (e) and inserting the lieu thereof "the administering Secretaries".

(b)(1) Before October 1, 1985, the Secretary of the department in which the Coast Guard is operating may test a flat rate per diem allowances system for military travel allowances.

(2) These flat rate per diem allowances are an amount determined by the Secretary to be sufficient to meet normal and necessary expenses in the area in which travel is performed.

(3) The allowances may be not more than $75 for each day in the continental United States.

(4) The test may not begin before the Committees on Commerce, Science, and Transportation and Armed Services of the Senate and the Committees on Merchant Marine and Fisheries and Armed Services of the House of Representatives are notified of the test.

SUBTITLE C

SEC. 320. Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the vessel Wingaway, official number 654146, owned by George M. Brereton, has the right to engage in the coastwise trade.

SEC. 321. Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of the department in which the Coast Guard is operating shall cause the vessel Dad's Pad, official number 549526, owned by John C. Sciacca, to be documented as a vessel of the United States with the privilege of engaging in the coastwise trade, on compliance with all other requirements of law.

SEC. 322. Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of the department in which the Coast Guard is operating shall cause the vessel Zorba, official number 229763, owned by Howard Costa, to be documented as a vessel of the United States with the privilege of engaging in the coastwise trade, on compliance with all other requirements of law.

SEC. 323. Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of the department in which the Coast Guard is operating shall cause the vessel La Jolie, Michigan registration number MC-2807-LB, owned by Hugh Lewis, to be documented as a vessel of the United States with the privilege of engaging in the coastwise trade, on compliance with all other requirements of law.

SEC. 324. Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of the department in which the Coast Guard is operating shall cause the vessel Endless Summer, official number 296259, owned by the Commonwealth of Virginia, to be documented as a vessel of the United States with the privilege of engaging in the coastwise trade, on compliance with all other requirements of law.

SEC. 325. (a) Section 8101(g) of title 46, United States Code, is amended by striking "or part B of this subtitle applies" and substituting "applies or which is subject to inspection under chapter 33 of this title".

(b) Section 8301(a) of title 46, United States Code, is amended by—

(1) [illegible]ter "lakes" inserting "(except the Great Lakes)"; and

(2) striking "to which part B of this subtitle applies" and inserting "subject to inspection under chapter 33 of this title".

(c) Section 8301(a)(1) of title 46, United States Code, is amended by inserting "propelled by machinery or carrying passengers" after "vessels".

(d) The analysis of chapter 85 of title 46, United States Code, is amended by adding:

"8503. Federal pilots authorized.".

(e) Section 8501(a) of title 46, United States Code is amended by striking "part," and substituting "subtitle,".

(f) Chapter 85 of title 46, United States Code, is amended by adding the following new section:

"§ 8503. Federal pilots authorized

"(a) The Secretary may require a pilot licensed under section 7101 of this title on a self-propelled vessel when a pilot is not required by State law and the vessel is—

"(1) engaged in foreign commerce; and

"(2) operating on the navigable waters of the United States.

"(b) A requirement prescribed under subsection (a) of this section is terminated when the State having jurisdiction over the area involved—

"(1) establishes a requirement for a State licensed pilot; and

"(2) notifies the Secretary of that fact.

"(c) For the Saint Lawrence Seaway, the Secretary may not delegate the authority under this section to an agency except the Saint Lawrence Seaway Development Corporation.

"(d) A person violating this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of not more than $25,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

"(e) A person that willfully and knowingly violates this section or a regulation prescribed under this section shall be fined not more than $50,000, imprisoned for not more than five years, or both.".

(g) Section 7 of the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1226) is repealed.

SUBTITLE D

SEC. 330. Section 2 of the Central, Western, and South Pacific Fisheries Development Act (Public Law 92-444; 16 U.S.C. 758e) is amended by striking out "Pacific Tuna Development Foundation" and inserting in lieu thereof "Pacific Fisheries Development Foundation".

SUBTITLE E—SHIPPING

SEC. 340. Subtitle II of title 46, United States Code, "Shipping", is amended as follows:

(1) Section 2101(13) is amended by striking "except an oceanographic research vessel or an offshore supply vessel." and substituting "except a fishing, fish processing, oceanographic research, or offshore supply vessel.".

(2) Section 2101(21)(C) is amended by—

(A) striking "an offshore supply" and substituting "a fishing or fish processing vessel, a vessel exempt under section 3302(k) of this title, or an offshore supply";

(B) striking "or" at the end of subclause (viii);

(C) striking "board." at the end of (ix) and substituting "board; or"; and

(D) adding at the end the following:

"(x) for a fishing or fish processing vessel or a vessel exempt under section 3302(k), an individual employed in fishing or fish processing carried on board the vessel; or"; and

(3) Section 2101 is amended by inserting between clauses (10) and (11) the following:

"(10a) 'fish' means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.".

(4) Section 2101 is amended by inserting between clauses (11) and (12) the following:

"(11a) 'fishing' means—

"(A) the catching, taking, or harvesting of fish;

"(B) the attempted catching, taking, or harvesting of fish; or

"(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish.

"(11b) 'fishing vessel' means any vessel used primarily for, or equipped to be used primarily for, or of a type normally used primarily for, commercial fishing.

"(11c) 'fish processing' means processing or any other activity primarily in support of commercial fishing, including preparation, supply, storage, refrigeration, or transportation.

"(11d) 'fish processing vessel' means any vessel used primarily for, or equipped to be used primarily for, or of a type normally used primarily for, fish processing.".

(5) Section 3302 (b) and (c) is amended to read as follows:

"(b) A fishing vessel is exempt from section 3301 (1), (4), and (7) of this title.

"(c) A fish processing vessel is exempt from section 3301 (1), (4), (6), and (7) of this title.".

(6) Section 3302 is amended by adding the following subsection:

"(k) Before January 1, 1989, a fishing or fish processing vessel, in operation prior to January 1, 1984, carrying cargo or carrying not more than twelve individuals employed in fishing or fish processing to or from another fishing or fish processing vessel or a facility used in fish processing, or and to or from a remote community in Alaska, is exempt from section 3301 (1), (3), (4), (6), (7), and (8) of this title.".

(7) Section 3702 (c) and (d) is amended to read as follows:

"(c) This chapter does not apply to a fishing or fish processing vessel.

"(d) A fishing or fish processing vessel is subject to regulation by the Secretary when carrying flammable or combustible liquid cargo in bulk and when not used only for fishing or fish processing.".

(8)(A) Item 7111 in the analysis of chapter 71 is amended to read as follows:

"7111. Licenses for fishing and fish processing vessels.".

(B) section 7111 is amended to read as follows:

"§ 7111. Licenses for fishing and fish processing vessels

"Examinations for licensing individuals on fishing and fish processing vessels shall be oral.".

(9) Section 7301(a)(1) is amended by striking "fishing" and substituting "fishing or fish processing".

(10) Section 8104(c) is amended by striking "fishing" and substituting "fishing or fish processing".

(11) Section 8104(d) is amended by striking "a fishing or whaling vessel," and substituting "a fishing, fish processing, or whaling vessel, a vessel exempt under section 3302(k) of this title,".

(12) Section 8701(a) is amended by—

(A) striking "and" at the end of clause (4);

(B) striking "personnel." at the end of clause (5) and substituting "personnel; and" and

(C) adding at the end the following clause:

"(6) a vessel exempt under section 3302(k) of this title.".

(13) Section 8702(a) is amended by—

(A) striking "and" at the end of clause (4);

(B) striking "personnel." at the end of clause (5) and substituting "personnel; and" and

(C) adding at the end the following clause:

"(6) a vessel exempt under section 3302(k) of this title.".

(14) Sections 8301(c), 8302(a)(1), 10303(c), 10309(c), 10311(e), 10313(b), 10313(e), 10313(h), 10314(e), 10504(a), 10504(d), 10505(d), 10509(c), 10901, 11103(c), and 11106(d) are amended by striking "a fishing or whaling vessel" and substituting "a fishing, fish processing, or whaling vessel".

(15) Section 11108 is amended by striking "a fisherman employed on a fishing vessel" and substituting "an individual employed on a fishing or fish processing vessel".

(16) Section 11109(c) is amended to read as follows:

"(c) This section applies to an individual on a fishing or fish processing vessel.".

SUBTITLE F—PACIFIC SALMON

SEC. 350. Insert in 22 U.S.C. 1978(a)(1) after "under circumstances which diminish the effectiveness of" the following: "domestic conservation efforts relating to Pacific salmon or".

The SPEAKER pro tempore. The Chair recognizes the gentleman from Louisiana [Mr. BREAUX].

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. BREAUX

Mr. BREAUX. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. BREAUX: Strike all after the enacting clause and substitute:

TITLE I—MARINE SANCTUARIES

SEC. 101. This title may be cited as the "Marine Sanctuaries Amendments of 1984".

SEC. 102. Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) is amended to read as follows:

"TITLE III—NATIONAL MARINE SANCTUARIES

"SEC. 301. FINDINGS, PURPOSES, AND POLICIES.

"(a) FINDINGS.—The Congress finds that—

"(1) this Nation historically has recognized the importance of protecting special areas of its public domain, but these efforts have been directed almost exclusively to land areas above the high-water mark;

"(2) certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities which give them special national significance;

"(3) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment;

"(4) a Federal program which identifies special areas of the marine environment will contribute positively to marine resource conservation and management; and

"(5) such a Federal program will also serve to enhance public awareness, understanding, appreciation, and wise use of the marine environment.

"(b) PURPOSES AND POLICIES.—The purposes and policies of this title are—

"(1) to identify areas of the marine environment of special national significance due to their resource or human-use values;

"(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas that will complement existing regulatory authorities;

"(3) to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas;

"(4) to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and

"(5) to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.

"SEC. 302. DEFINITIONS.

"As used in this title, the term—

"(1) 'draft management plan' means the plan described in section 304(a)(1)(E);

"(2) 'Magnuson Act' means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

"(3) 'marine environment' means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law;

"(4) 'Secretary' means the Secretary of Commerce; and

"(5) 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth territory, or possession of the United States.

"SEC. 303. SANCTUARY DESIGNATION STANDARDS.

"(a) STANDARDS.—The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary—

"(1) determines that the designation will fulfill the purposes and policies of this title; and

"(2) finds that—

"(A) the area is of special national significance due to its resource or human-use values;

"(B) existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

"(C) designation of the area as a national marine sanctuary will facilitate the objectives in subparagraph (B); and

"(D) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

"(b) FACTORS AND CONSULTATIONS REQUIRED IN MAKING DETERMINATIONS AND FINDINGS.—

"(1) FACTORS.—For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a), the Secretary shall consider—

"(A) the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biogeographic representation of the site;

"(B) the area's historical, cultural, archaeological, or paleontological significance;

"(C) the present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

"(D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);

"(E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this title;

"(F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

"(G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

"(H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development; and

"(I) the socioeconomic effects of sanctuary designation.

"(2) CONSULTATION.—In making determinations and findings, the Secretary shall consult with—

"(A) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;

"(B) the Secretaries of State, Defense, Transportation, and the Interior, the Administrator, and the heads of other interested Federal agencies;

"(C) the responsible officials or relevant agency heads of the appropriate State and local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary;

"(D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act (16 U.S.C. 1852) that may be affected by the proposed designation; and

"(E) other interested persons.

"(3) RESOURCE ASSESSMENT REPORT.—In making determinations and findings, the Secretary shall draft, as part of the environmental impact statement referred to in section 304(a)(1), a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses. The Secretary, in consultation with the Secretary of the Interior, shall draft a resource assessment section for the report regarding any commercial or recreational resource uses in the area under consideration that are subject to the primary jurisdiction of the Department of the Interior.

"SEC. 304. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION.

"(a) SANCTUARY PROPOSAL.–

"(1) NOTICE.—In proposing to designate a national marine sanctuary, the Secretary shall—

"(A) issue, in the Federal Register, a notice of the proposal, proposed regulations that may be necessary and reasonable to implement the proposal, and a summary of the draft management plan;

"(B) provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal; and

"(C) on the same day the notice required by subparagraph (A) is issued, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a prospectus on the proposal which shall contain—

"(i) the terms of the proposed designation;

"(ii) the basis of the findings made under section 303(a) with respect to the area;

"(iii) an assessment of the considerations under section 303(b)(1);

"(iv) proposed mechanisms to coordinate existing regulatory and management authorities within the area;

"(v) the draft management plan detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement, including surveillance, activities for the area;

"(vi) an estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education;

"(vii) the draft environmental impact statement;

"(viii) an evaluation of the advantages of cooperative State and Federal management if all or part of a proposed marine sanctuary is within the territorial limits of any State or is superjacent to the subsoil and seabed within the seaward boundary of a State, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 et seq.); and

"(ix) the proposed regulations referred to in subparagraph (A).

"(2) ENVIRONMENTAL IMPACT STATEMENT.—The Secretary shall—

"(A) prepare a draft environmental impact statement, as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), on the proposal that includes the resource assessment report required under section 303(b)(3), maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area; and

"(B) make copies of the draft environmental impact statement available to the public.

"(3) PUBLIC HEARING.—No sooner than thirty days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area as a national marine sanctuary for the purpose of receiving the views of interested parties.

"(4) TERMS OF DESIGNATION.—The terms of designation of a sanctuary shall include the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. The terms of designation may be modified only by the same procedures by which the original designation is made.

"(5) FISHING REGULATIONS.—The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the United States Fishery Conservation Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this title and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that the standards are consistent and

compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations.

"(6) COMMITTEE ACTION.—After receiving the prospectus under subsection (a)(1)(C), the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the prospectus. If within the forty-five day period of continuous session of Congress beginning on the date of submission of the prospectus, either Committee issues a report concerning matters addressed in the prospectus, the Secretary shall consider this report before publishing a notice to designate the national marine sanctuary.

"(b) TAKING EFFECT OF DESIGNATIONS.—

"(1) NOTICE.—In designating a national marine sancturay, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(6). The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless—

"(A) the designation or any of its terms is disapproved by enactment of a joint resolution of disapproval described in paragraph (3); or

"(B) in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.

"(2) WITHDRAWAL OF DESIGNATION.—If the Secretary considers that action taken under paragraph (1) (A) or (B) will affect the designation of a national marine sanctuary in a manner that the goals and objectives of the sanctuary cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not disapproved under paragraph (1)(A) or not certified under paragraph (1)(B) shall take effect.

"(3) RESOLUTION OF DISAPPROVAL.—For the purposes of this subsection, the term 'resolution of disapproval' means a joint resolution which states after the resolving clause the following: 'That the Congress disapproves the national marine sanctuary designation entitled that was submitted to Congress by the Secretary of Commerce on .', the first blank space being filled with the title of the designation and the second blank space being filled with the date on which the notice was submitted to Congress. In the event that the disapproval is addressed to one or more terms of the designation, the joint resolution shall state after the resolving clause the following: 'That the Congress approves the national marine sanctuary designation entitled that was submitted to Congress by the Secretary of Commerce on but disapproves the following terms of such designation: the first blank space being filled with the title of the designation, the second blank space being filled with the date on which the notice was submitted to Congress, and the third blank space referencing each term of the designation which is disapproved.

"(4) PROCEDURES.—

"(A) In computing the forty-five-day periods of continuous session of Congress pursuant to subsection (a)(6) and paragraph (1) of this subsection—

"(i) continuity of session is broken only by an adjournment of Congress sine die: and

"(ii) the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain are excluded.

"(B) When the committee to which a joint resolution has been referred has reported such a resolution, it shall at any time thereafter be in order to move to proceed to the consideration of the resolution. The motion shall be privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

"(C) This subsection is enacted by Congress as an exercise of the rulemaking power of each House of Congress, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the case of resolutions described in this subsection. This subsection supersedes other rules only to the extent that they are inconsistent therewith, and is enacted with full recognition of the constitutional right of either House to change the rules (so far as those relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rules of such House.

"(c) ACCESS AND VALID RIGHTS.—

"(1) Nothing in this title shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access if the lease, permit, license, or right—

"(A) was in existence on the date of enactment of the Marine Sanctuaries Amendments of 1984, with respect to any national marine sanctuary designated before that date; or

"(B) is in existence on the date of designation of any national marine sanctuary, with respect to any national marine sanctuary designated after the date of enactment of the Marine Sanctuaries Amendments of 1984.

"(2) The exercise of a lease, permit license, or right is subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.

SEC. 305. APPLICATION OF REGULATIONS AND INTERNATIONAL NEGOTIATIONS.

"(a) REGULATIONS.—The regulations issued under section 304 shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—

"(1) generally recognized principles of international law;

"(2) an agreement between the United States and the foreign state of which the person is a citizen; or

"(3) an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.

"(b) NEGOTIATIONS.—The Secretary of State, in consultation with the Secretary, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established.

"SEC. 306. RESEARCH AND EDUCATION.

"The Secretary shall conduct research and educational programs as are necessary and reasonable to carry out the purposes and policies of this title.

"SEC. 307. ENFORCEMENT.

"(a) IN GENERAL.—The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this title. The Secretary shall, whenever appropriate, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities on a reimbursable basis in carrying out the Secretary's responsibilities under this title.

"(b) CIVIL PENALTIES.—

"(1) CIVIL PENALTY.—Any person subject to the jurisdiction of the United States who violates any regulation issued under this title shall be liable to the United States for a civil penalty of not more than $50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

"(2) NOTICE.—No penalty shall be assessed under this subsection until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

"(3) IN REM JURISDICTION.—A vessel used in the violation of a regulation issued under this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

"(c) JURISDICTION.—The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued under this title, and to grant such other relief as may be appropriate. Actions shall be brought by the Attoney General in the name of the United States. The Attorney General may bring suit either on the Attorney General's own initiative or at the request of the Secretary.

"SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

"To carry out this title, there are authorized to be appropriated:

"(1) $3,000,000 for fiscal year 1985.

"(2) $3,300,000 for fiscal year 1986.

"(3) $3,600,000 for fiscal year 1987.

"(4) $3,900,000 for fiscal year 1988.

"SEC. 309. SEVERABILITY.

"If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this Act and of the application

of such provision to other persons and circumstances shall not be affected thereby.".

TITLE II—MARINE SAFETY

Subtitle A—Inspection and Reporting Requirements

SEC. 210. This subtitle may be cited as the "Maritime Safety Act of 1984".

SEC. 211. (a) Section 3309 of title 46, United States Code, is amended by adding at the end:

"(c) At least 30 days (but not more than 60 days) before the current certificate of inspection issued to a vessel under subsection (a) of this section expires, the owner, charterer, managing operator, agent, master, or individual in charge of the vessel shall submit to the Secretary in writing a notice that the vessel—

"(1) will be required to be inspected; or

"(2) will not be operated so as to require an inspection.".

(b) Section 3311 of title 46, United States Code, is amended by—

(1) striking "A vessel" and substituting "(a) Except as provided in subsection (b), a vessel";

(2) striking the word "valid"; and

(3) inserting at the end the following:

"(b) The Secretary may direct the owner, charterer, managing operator, agent, master, or individual in charge of a vessel subject to inspection under this chapter and not having on board a certificate of inspection—

"(1) to have the vessel proceed to mooring and remain there until a certificate of inspection is issued;

"(2) to take immediate steps necessary for the safety of the vessel, individuals on board the vessel, or the environment; or

"(3) to have the vessel proceed to a place to make repairs necessary to obtain a certificate of inspection.".

(c) Section 3318 of title 46, United States Code, is amended as follows:

(1) Subsection (a) is amended by—

(A) striking "The" the first time it appears and substituting "Except as otherwise provided in this part, the" and

(B) striking "$1,000, except that when the violation involves operation of a barge, the penalty is $500.", and substituting "not more than $5,000.".

(2) Subsection (c) is amended by striking "$2,000," and substituting "$5,000,".

(3) Subsection (d) is amended by striking "$2,000," and substituting "$5,000,".

(4) Subsection (e) is amended by striking "$2,000," and substituting "$10,000,".

(5) Subsection (f) is amended by striking "$5,000," and substituting "$10,000,".

(6) Subsection (g) is amended by striking "shall be fined not more than $10,000, imprisoned for not more than one year, or both," and substituting "is liable to the Government for a civil penalty of not more than $5,000,".

(7) Subsection (h) is amended by striking "United States Government for a civil penalty of not more than $500." and substituting "Government for a civil penalty of not more than $1,000.".

(8) At the end add the following:

"(i) A person violating section 3309(c) of this title is liable to the Government for a civil penalty of not more than $1,000.

"(j)(1) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel required to be inspected under this chapter operating the vessel without the certificate of inspection is liable to the Government for a civil penalty of not more than $10,000 for each day during which the violation occurs, except when the violation involves operation of a vessel of less than 1,600 gross tons, the penalty is not more than $2,000 for each day during which the violation occurs. The vessel also is liable in rem for the penalty.

"(2) A person is not liable for a penalty under this subsection if—

"(A) the owner, charterer, managing operator, agent, master, or individual in charge of the vessel has notified the Secretary under section 3309(c) of this title;

"(B) the owner, charterer, managing operator, agent, master, or individual in charge of the vessel has complied with all other directions and requirements for obtaining an inspection under this part; and

"(C) The Secretary believes that unforeseen circumstances exist so that it is not feasible to conduct a scheduled inspection before the expiration of the certificate of inspection

"(k) The owner, charterer, managing operator, agent, master, or individual in charge of the vessel failing to comply with a direction issued by the Secretary under section 3311(b) of this title is liable to the Government for a civil penalty of not more than $10,000 for each day during which the violation occurs. The vessel also is liable in rem for the penalty.

"(l) A person committing an act described by subsections (b)-(f) of this section is liable to the Government for a civil penalty of not more than $5,000. If the violation involves the operation of a vessel, the vessel also is liable in rem for the penalty.".

SEC. 212. (a) Chapter 23 of title 46, United States Code is amended as follows:

(1) At the end of the chapter analysis, add the following:

"2306. Vessel reporting requirements.".

(2) In section 2301, strike "This chapter" and substitute "Except as provided in section 2306 of this title, this chapter".

(3) Add at the end the following:

"§ 2306. Vessel reporting requirements

"(a)(1) An owner, charterer, managing operator, or agent of a vessel of the United States, having reason to believe (because of lack of communication with or nonappearance of a vessel of any other incident) that the vessel may have been lost or imperiled, immediately shall—

(A) notify the Coast Guard; and

(B) use all available means to determine the status of the vessel.

"(2) When more than 48 hours have passed since the owner, charterer, managing operator, or agent of a vessel required to report to the United States Flag Merchant Vessel Location Filing System under authority of section 212(A) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1122a), has received a communication from the vessel, the owner, charterer, managing operator, or agent immediately shall—

(A) notify the Coast Guard; and

(B) use all available means to determine the status of the vessel.

"(3) A person notifying the Coast Guard under paragraph (1) or (2) of this subsection shall provide the name and identification number of the vessel, the names of individuals on board, and other information that may be requested by the Coast Guard. The owner, charterer, managing operator, or agent also shall submit written confirmation to the Coast Guard within 24 hours after nonwritten notification to the Coast Guard under those paragraphs.

"(4) An owner, charterer, managing operator, or agent violating this subsection is liable to the United States Government for a civil penalty of not more than $5,000 for each day during which the violation occurs.

"(b)(1) The master of a vessel of the United States required to report to the System shall report to the owner, charterer, managing operator, or agent at least once every 48 hours.

"(2) A master violating this subsection is liable to the Government for a civil penalty of not more than $1,000 for each day during which the violation occurs.

"(c) The Secretary may prescribe regulations to carry out this section.".

(b)(1) Section 6101 of title 46, United States Code, is amended—

(A) in subsection (a), by striking "and incidents"; and (B) by striking subsection (c).

(2) Section 6103 of title 46, United States Code, is amended by striking "or incident".

SEC. 213. (a) Subsection (b) of section 4283 of the Revised Statutes of the United States (46 App. U.S.C. 183(b)) is amended by striking out "$60" each place it appears and inserting in lieu thereof "$420".

(b) The amendment made by subsection (a) shall apply to incidents occurring after the date of enactment of this Act.

SEC. 214. Sections 211(a) and 212 of this subtitle are effective 180 days after the date of enactment of this Act.

Subtitle B—Recreational Diving Safety

SEC. 220. (a) Within 180 days after the date of enactment of this section, the Rules of the Road Advisory Council and the National Boating Safety Advisory Council shall report to the Secretary of the department in which the Coast Guard is operating recommendations regarding the need for the display of a divers flag (traditionally recognized as a bright or fluorescent red flag having a diagonal white stripe) or any other signal, if appropriate, to promote safety in recreational diving operations and navigation under the jurisdiction of the United States. In developing the recommendations, the councils shall consider, as a minimum: visibility requirements; restriction of diver and vessel operations in a diving area; adequacy of, and conformity with, the laws of the States and international practice and with the laws of the United States governing navigation safety; appropriate penalties; and the views of the recreational diving community.

(b) Within one year after the date of enactment of this section, the Secretary of the department in which the Coast Guard is operating shall transmit to Congress the recommendations required under subsection (a) of this section and the Secretary's evaluation and recommendations for recreational diving safety and, as appropriate, proposed legislation to implement those recommendations.

TITLE III—NOAA CORPS

SUBTITLE A—HEALTH CARE

SEC. 310. (a) Section 3 of the Act of December 31, 1970 (33 U.S.C. 857-3) is amended by adding "(a)" after "SEC. 3." and by adding at the end the following new subsection:

"(b) the Secretary may provide medical and dental care, including care in private facilities, for personnel of the Administration entitled to that care by law or regulation.".

(b) The matter before subsection (b) in the first section of the Act of July 19, 1963 (42 U.S.C. 253a(a)), is amended by striking "at facilities of the Public Health Service: *Provided*, That" and inserting in lieu thereof "by the Public Health Service if".

(c) The first sentence of subsection (b) of the first section of that Act (42 U.S.C. 253a(b)) is amended—

(1) by striking "at its hospitals and relief stations"; and

(2) by striking "at hospitals of the Public Health Service: *Provided,* That" and inserting in lieu thereof "by the Public Health Service if".

SUBTITLE B—PERSONNEL PROVISIONS

SEC. 320. (a)(1) Sections 8 and 9 of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853g, 853h) are amended to read as follows:

"SEC. 8. (a) as recommended by the Personnel board—

"(1) an officer in the permanent grade of captain or commander may be transferred to the retired list; and

"(2) an officer in the permanent grade of lieutenant commander, lieutenant, or lieutenant (junior grade) who is not qualified for retirement may be separated from the service.

"(b) In any fiscal year, the total number of officers selected for retirement or separation under subsection (a) plus the number of officers retired for age may not exceed the whole number nearest four percent of the total number of officers authorized to be on the active list, except as otherwise provided by law.

"(c) Any retirement or separation under subsection (a) shall take effect on the first day of the sixth month beginning after the date on which the Secretry of Commerce approves the retirement or separation, except that if the officer concerned requests earlier retirement or separation, the date shall be as determined by the Secretary.

"SEC. 9. (a) An officer who is separated under section 8 and who has completed more than three years of continuous active service immediately before that separation is entitled to separation pay computed under subsection (b) unless the Secretary of Commerce determines that the conditions under which the officer is separated do not warrant payment of that pay.

"(b)(1) In the case of an officer who has completed five or more years of continuous active service immediately before that separation, the amount of separation pay which may be paid to the officer under this section is 10 percent of the product of (A) the years of active service creditable to the officer, and (B) 12 times the monthly basic pay to which the officer was entitled at the time of separation, or $30,000, whichever is less.

"(2) In the case of an officer who has completed three but fewer than five years of continuous active service immediately before that separation, the amount of separation pay which may be paid to the officer under this section is one-half of the amount computed under paragraph (1), but in no event more than $15,000.

"(C) In determining an officer's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

"(d)(1) A period for which an officer has previously received separation pay, severance pay, or readjustment pay under any other provision of law based on service in a uniformed service may not be included in determining the years of creditable service that may be counted in computing the separation pay of the officer under this section.

"(2) The total amount that an officer may receive in separation pay under this section and separation pay, severance pay, and readjustment pay under any other provision of law based on service in a uniformed service may not exceed $30,000.

"(e)(1) An officer who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in a uniformed service and who later qualifies for retired pay under this Act shall have deducted from each payment of retired pay so much of that pay as is based on the service for which the officer received that separation pay, severance pay, or readjustment pay until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.

"(2) An officer who has received separation pay under this section may not be deprived, by reason of receipt of that pay, of any disability compensation to which the officer is entitled under the laws administered by the Veterans' Administration, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay received. Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of separation pay received because of an earlier discharge, separation, or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.".

(2) Section 1174(h)(1) of title 10, United States Code, is amended by striking out "severance pay" the first and second place it appears and inserting in lieu thereof "separation pay, severance pay,".

(b) Section 12(c) of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853j-1(c)) is amended—

(1) by striking out "deemed necessary or desirable" and inserting in lieu thereof "determined";

(2) by striking out "alone provided" and inserting in lieu thereof "alone. Any";

(3) by striking out "will terminate" and inserting in lieu thereof "terminates"; and

(4) by striking out "assignment," and all that follows and inserting in lieu thereof "assignment.".

(c)(1) The Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853a et seq.) is amended by adding at the end thereof the following new section:

"SEC. 24. (a) The Secretary may designate positions in the Administration as being positions of importance and reponsibility for which it is appropriate that commissioned officers of the Administration, if serving in those positions, serve in the grade of vice admiral, rear admiral, or commodore as designated by the Secretary for each position, and may assign officers to those positions. An officer assigned to any position under this section has the grade designated for that position if appointed to that grade by the President, by and with the advice and consent of the Senate.

"(b) The number of officers serving on active duty under appointments under this section may not exceed—

"(1) one in the grade of vice admiral;

"(2) three in the grade of rear admiral; and

"(3) three in the grade of commodore.

"(c) An officer appointed to a grade under this section, while serving in that grade, shall have the pay and allowances of the grade to which appointed.

"(d) An appointment of an officer under this section—

"(1) does not vacate the permanent grade held by the officer; and

"(2) creates a vacancy on the active list.

"(e) The provisions of section 2(g) of Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090, 5 U.S.C. App.) apply to an officer who serves in a grade above captain under an appointment under this section in the same manner as if the officer served in that grade under section 2(d) or 2(f) of that Reorganization Plan.".

(2) After the date of the enactment of this Act, no appointment of a commissioned officer may be made under section 2(d) or 2(f) of Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090, 5 U.S.C. App.).

(3) Effective as of December 28, 1977, section 3(a)(1) of Public Law 95-219 is amended by striking out "Section 2" and inserting in lieu thereof "Section 2(e)".

(4)(A) An officer of the commissioned corps of the National Oceanic and Atmospheric Administration who on the day before the date of the enactment of this Act was carried on active duty in the grade of rear admiral and was receiving the basic pay of a rear admiral of the upper half shall after that date be serving in the grade of rear admiral.

(B) An officer who on the day before the date of the enactment of this Act was serving on active duty in the grade of rear admiral and was receiving the basic pay of a rear admiral of the lower half shall after that date be serving in the grade of commodore, but shall (while serving in that grade) retain the title of rear admiral and be entitled to wear the uniform and insignia of a rear admiral.

(C) An officer who on the date before the date of the enactment of this Act held the grade of rear admiral on the retired list retains the grade of rear admiral and is entitled to wear the uniform and insignia of a rear admiral.

TITLE IV—FISHERIES

SUBTITLE A—PACIFIC FISHERIES DEVELOPMENT FOUNDATION

SEC. 410. Section 2 of the Central, Western, and South Pacific Fisheries Development Act (Public Law 92-444; 16 U.S.C. 758e) is amended by striking out "Pacific Tuna Development Foundation" and inserting in lieu thereof "Pacific Fisheries Development Foundation".

Subtitle B—Fishermen's Contingency Fund

SEC. 420. Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1841 et seq.) is amended—

(1) by striking in section 403(a)(1) "limitation on" and substituting "limitation of not less than 90 days on";

(2) by striking out "25 per centum" in section 403(c)(1) and inserting in lieu thereof "50 percent";

(3) by striking out ", except" and all that follows thereafter in section 405(a) and inserting in lieu thereof "under subsection (d)(1).''; and

(4) by inserting "time," before "form" in section 405(d)(1).

Subtitle C—Fisheries Loan Fund

SEC. 430. The Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) is amended—

(1) by striking out "September 30, 1984" each place it appears in section 4(c) and inserting in lieu thereof "September 30, 1986"; and

(2) by striking out "1982, 1983, and 1984." in section 7(c)(6) and inserting in lieu thereof "1982, 1983, 1984, 1985, and 1986.".

SEC. 431. Section 221(a) of the American Fisheries Promotion Act (16 U.S.C. 742(c) note) is amended—

(1) by amending subsection (a)—

(A) by amending the side heading to read as follows: "LOAN AUTHORITY.—", and

(B) by striking out "September 30, 1984" and inserting in lieu thereof "September 30, 1986";

(2) by amending subsection (b)—

(A) by striking out "each of fiscal years 1982, 1983, 1984," in paragraph (2)(A) and inserting in lieu thereof "each of fiscal years 1982, 1983, 1984, 1985, and 1986,", and

(B) by striking out "1981, 1982, 1983, and 1984" in paragraph (2)(C) and inserting in lieu thereof "1981, 1982, 1983, 1984, 1985, and 1986"; and

(3) by striking out "any of fiscal years 1981, 1982, 1983, and 1984," in subsection (c)(1) and inserting in lieu thereof "any of fiscal years 1981, 1982, 1983, 1984, 1985, and 1986,".

SEC. 432. All moneys in the Fisheries Loan Fund established under Section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c), as amended, shall be invested by the Secretary of Commerce in obligations of the United States, except so much as shall be currently needed for loans or administrative expenses authorized under the Fisheries Loan Fund. All accrued proceeds from such investment shall be, subject to amounts provided in advance by appropriations, credited by the Secretary of the Treasury to the debt of the Secretary of Commerce incurred under Section 1105(d) of the Merchant Marine Act, 1936 (46 U.S.C. 1275), as amended, in connection with fisheries financing under title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271-1280), as amended, for so long as such debt exists. All accrued proceeds from such investment, after such debt has been liquidated, shall be, subject to amounts provided in advance by appropriations, credited to the fisheries portion of the Federal Ship Financing Fund established under Section 1102 of the Merchant Marine Act, 1936 (46 U.S.C. 1272), as amended, and used for the fisheries purposes provided in title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271-1280), as amended.

Subtitle D—Governing International Fishery Agreement With the Home Government of the Faroe Islands and the Government of Denmark

SEC. 440. Notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act of 1976, the Governing International Fishery Agreement between the Government of the United States of America of the One Part and the Home Government of the Faroe Islands and the Government of Denmark of the Other Part Concerning Faroese Fishing in Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated July 13, 1984—

(1) is approved by Congress as a governing international fishery agreement for purposes of that Act; and

(2) may enter into force with respect to the United States in accordance with the terms of Article XVI of the Agreement following the enactment of this title.

TITLE V—VESSELS

SEC. 510. Notwithstanding sections 12105(d), 12106(a)(2), 12107(a)(2), and 12108(a)(2) of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 833), as applicable, the Secretary of the department in which the Coast Guard is operating may issue certificates of documentation for the following vessels—

(a) Wingaway, official number 654146;

(b) Endless Summer, official number 296259;

(c) Muskegon Clipper, official number 252908;

(d) Scuba King, official number 532376;

(e) Ululani, official number 239729;

(f) No Slack, official number 587630; and

(g) La Jolie, Michigan registration number MC2780LB.

Mr. BREAUX (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

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

There was no objection.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from Louisiana [Mr. BREAUX].

The amendment in the nature of a substitute was agreed to.

Mr. BREAUX. Mr. Speaker, I am pleased to rise in support of S. 1102 which, I believe, will substantially strengthen the existing Marine Sanctuaries Program. In addition, titles II through V of this bill contain several noncontroversial yet very important provisions that have been worked out among our committee and the Senate relating to maritime safety, the NOAA corps, fisheries and the documentation of certain vessels under U.S. law.

Since its inception in 1972, the Marine Sanctuaries Program has been wrought with controversy largely attributable to the initial failure of Congress to provide clear and specific guidance regarding the objectives of this program. The bill before us represents the product of an extensive and commendable effort on the part of the Members and staffs of the House and the Senate to rectify many of the deficiencies in existing law.

First, title I of the bill clarifies that the Marine Sanctuaries Program is not to be used as an oceanwide management tool but is simply a means to protect relatively small, discrete areas of the marine environment where existing State and Federal authorities are inadequate. Such areas must possess certain unique characteristics of national significance which not only should, but can be practically managed as a unit. Furthermore, this legislation specifies that while the overall thrust of the program is to protect certain unique areas from degredation, we have not created another wilderness area system in which man's activities are to be uniformly excluded. Instead, man's activities are to be permitted, and in some cases, encouraged in marine sanctuaries to the extent that such activities do not detract from the integrity of the sanctuary.

Over the years, many ocean resource user groups have indicated a need for greater access to a better defined decisionmaking process regarding marine sanctuary designations. In this bill we have provided explicit guidelines for the Secretary of Commerce, in full cooperation with other affected Federal agencies, to evaluate and ultimately select proposed marine sanctuary sites. This evaluation must include the preparation of an environmental impact statement along with a resource assessment report documenting the present and potential uses of the area, including fishing, minerals, and energy development.

Marine sanctuary proposals are then to be submitted to the Merchant Marine and Fisheries Committee and the Committee on Commerce, Science, and Transportation in the Senate for their evaluation. It is intended that these committees will provide a forum to hear and evaluate disputes raised by those interests directly impacted by proposed marine sanctuary designations and to make responsible recommendations to the Secretary thereon. I fully expect that the Secretary will seriously consider the recommendations of Congress in making final marine sanctuary designations. If this is not found to be the case, I believe it will be appropriate for Congress to assert greater authority in designing marine sanctuaries through an affirmative sanctuary approval process.

Title I of the bill further directs the regional fishery management councils to develop draft regulations which pertain to fishing within marine sanctuaries. It is intended that the Secretary of Commerce shall promulgate such regulations according to proper administrative procedure to the extent that such draft regulations are consistent with the purposes and policies of the Marine Sanctuaries Act and the goals and objectives of the proposed sanctuary designation. It is further intended that, in developing such draft regulations, the regional fishery management councils will apply the national standards for fishery management of the Fishery Conservation and Management Act.

Title II of this bill contains the Maritime Safety Act of 1984 which addresses a number of deficiencies in existing law regarding the safe operation of U.S. merchant vessels. These provisions include a requirement for the owner, agent, or managing operator of a vessel to notify the Coast Guard well in advance of any upcoming inspection requirements of vessels under their purview, as well as stiff civil penalties for the operation of a vessel without a certificate of inspection.

In order to facilitate and expedite a timely response to maritime disaster

by the U.S. Coast Guard, title II further requires the owner, agent or managing operator and the master of a merchant vessel to maintain frequent scheduled communications as a means to keep constant track of vessels. Immediate notification of the U.S. Coast Guard is also required if scheduled communications with a vessel are broken and there is a reason to believe that such vessel may have been lost or imperiled.

Lastly, the Maritime Safety Act of 1984 contained in title II of this bill attemts to modernize a 1936 law which imposes a $60 per ton limit of shipowner's liability for death and personal injury claims by raising that limit, consistent with inflation, to $420 per ton.

Title II of the bill also contains a noncontroversial provision relating to the safety of recreational diving in U.S. waters. The bill directs the rules of the Road Advisory Council and the National Boating Safety Advisory Council in cooperation with the U.S. Coast Guard to fully examine and report on the safety issues surrounding divers and vessels in the maritime environment, particularly with respect to the need for display of the divers flag to promote diving safety as it relates to existing State laws.

Briefly, title III of S. 1102 attempts to bring the health care and retirement benefits of certain National Oceanic and Atmospheric Administration [NOAA] personnel, particularly those in the NOAA Corps which is responsible for operating the NOAA vessel fleet, more into line with other similar agencies. The health care provisions respond to the fact that the Public Health Service facilities which provide services to the NOAA Corps personnel have been phased out of existence. These provisions change no basic entitlements and are virtually identical to the authority given to the U.S. Coast Guard. In order to improve the administration and functioning of the NOAA Corps, this title of the bill also provides the Secretary of Commerce with the flexibility to assign commissioned officers in the NOAA Corps to a wide range of administrative operational positions.

Title IV of the bill contains several noncontroversial but very important provisions relating to fisheries. Briefly, section 410 amends the Central, Western, and South Pacific Fisheries Development Act to change the name of the Pacific Tuna Development Foundation to the Pacific Fisheries Development Foundation. This change simply reflects the intention of the National Marine Fisheries Service and the Foundation to expand their traditional tuna fishery development activities to include the development activities to include the development of other fishery resources in the central, western, and south Pacific region.

Section 420 amends the fishermen's contingency fund established under title IV of the Outer Continental Shelf Lands Act. As you know, the fishermen's contingency fund provides compensation to U.S. commercial fishermen for vessel, gear, and economic loss resulting from obstructions related to oil and gas exploration and development on the Outer Continental Shelf [OCS]. The fund is entirely capitalized by assessments on the oil and gas industry operating on the OCS.

Because of difficulties in program administration and with fishermen meeting the current statutory deadline for filing claims within 60 days, the amendment directs the Secretary of Commerce to establish by regulation a timeframe for claim filing procedures which is more responsive to the needs of both industry and the National Marine Fisheries Service which administers this program. The amendment does specify, however, that in no case shall the limit on the time for filing a claim be less than 90 days. In addition to these provisions, section 420 of the bill amends the fishermen's contingency fund to increase the level of compensation for a fishermen's economic loss—that being the gross revenue lost during the time required for gear or vessel repair—from 25 percent to 50 percent. This level of compensation will preserve the strong disincentive for fraudulent economic loss claims yet will provide a much more equitable settlement to an aggrieved fishing industry.

Section 430 of the bill reauthorizes the fisheries loan fund established pursuant to the Fish and Wildlife Act of 1956. As you know, this fund is currently used primarily to provide short-term assistance to commercial fishermen in danger of defaulting first, on Federal loan guarantees under the Title XI Obligation Guaranty Program and, second, on other non-Federal loans. As such, the fund has served as an important protection for Federal investments in a number of fisheries throughout the United States and is capitalized entirely by fees assessed on foreign fishermen for the privilege of fishing in U.S. waters.

Section 430 also amends the Fisheries Loan Fund Program to deposit the moneys in the fund in an interest bearing account which will generate revenue, subject to appropriations, to assist in compensating any defaults which have or will occur under the title XI program. I think this provision represents a sound business approach to the management of these funds and is a very appropriate use of foreign fishing fees to assist our Government and fishing industry.

Finally, section 440 of this title provides the necessary congressional approval of a Governing International Fishery Agreement [GIFA] recently negotiated by the State Department between the United States and Denmark on behalf of the Faroe Islands. This agreement will permit the Faroese shark fishermen to continue to operate a small fishery in U.S. waters in the North Atlantic and will contribute to the maintenance of very positive fishery relations with this Nation.

Last, title V of the bill authorizes the Secretary of the department in which the Coast Guard is operating to issue certificates of documentation for seven vessels so that they may engage in coastwise trade in the United States.

● Mr. JONES of North Carolina. Mr. Speaker, S. 1102 is a bill composed of a number of different parts that include various measures of interest to the Committee on Merchant Marine and Fisheries.

The primary bill, to which all other legislative vehicles have been attached, would reauthorize and make some important changes to the National Marine Sanctuaries Program. The House bill, H.R. 2062, was passed by this body on June 14, 1983, under suspension of the rules by a 379-38 vote. This bill that has been sent to us from the other body maintains the essential features and integrity of H.R. 2062.

The concept of protecting special areas of the public domain is not a new one: This Nation has dedicated 81.5 million acres as national parks; 90 million acres as national wildlife refuges; and millions more acres as national forests, wilderness areas, wild and scenic rivers, and other special designations. Applying the concept to special areas of the ocean environment is relatively new.

In 1972, title III of the Marine Protection, Research and Sanctuaries Act gave a broad mandate for protection of special ocean areas. While that broad mandate has led to certain misunderstandings, it has not led, as some have suggested, to widespread misuse. In the program's 10-year history, only six sites have been designated as national marine sanctuaries, encompassing some 1.5 million acres. This amounts to only 0.15 percent of the entire Outer Continental Shelf [OCS]. By any standard, the program has been a modest one.

While the concept is a sound one, and its administration has been modest, legitimate questions and concerns have arisen regarding the program's future directions and long-range objectives. The original, broad mandate of title III is not sufficient to resolve such concerns. H.R. 2062, a bill which passed the House by a vote of 379-38, refined and clarified that original mandate. S. 1102 is virtually identical to that bill, and achieves the same objectives, which I will enumerate:

First, a clear and consistent statement of findings and purposes clarifies that the primary and overriding objective of a national marine sanctuary is resource protection. Although management is to be based on the concept of multiple use of sanctuary resources, the emphasis is on active conservation and management—including regulation where necessary—to control the mix of uses and maintain the recognized values of the site.

Second, a system of checks and balances is instilled within the legislation to prevent duplicative protections and regulations. Several provisions of this legislation are designed to ensure that sanctuary designation will occur only where there is evidence that existing authorities are insufficient to achieve the desired protections. In addition, sanctuary management is to rely primarily on coordination and enhancement of existing authorities, and only secondarily on additional regulation.

Third, exhaustive procedural clarifications provide a step-by-step outline for decisionmaking. Clear designation standards and compulsory consultation will facilitate more effective public involvement. Enhanced congressional review, including advanced notification and reporting requirements and opportunity for dissapproval of any designation, will lead to a process which is more sensitive to the concerns of affected parties.

While both the House-passed and Senate-passed bills are virtually identical organizationally, procedurally, and programmatically, several differences need explanation:

(1) The Senate bill contains the requirement of a resource assessment report, in conjunction with development of an environmental impact statement, which is designed to ensure that all present and potential uses of sanctuary resources are cataloged and considered. Such information would be available without this requirement, but this provision would ensure that it is consolidated and presented in report form;

(2) Common to both bills is a requirement that the relevant regional fishery management councils draft any regulations to govern fishing within a sanctuary. Although S. 1102 places greater restrictions on the Secretary's authority to reject or modify such draft regulations, the operative clause of both bills is identical: Regulations drafted by a regional council must fulfill the purposes and policies of title III and the goals and objectives of the proposed designation;

(3) The vehicle for disapproval of a proposed designation is changed from a concurrent resolution—in H.R. 2062—to a joint resolution—in S. 1102. This change was necessitated by the recent decision of the U.S. Supreme Court in Chadda against the U.S. Immigration and Naturalization Service. Additionally, under S. 1102, a resolution of disapproval would, once reported from committee, be considered a privileged motion. The latter constitutes an amendment to the rules of the House for which we have received consent from the Committee on Rules; and

(4) A provision safeguarding access and valid rights to use sanctuary resources was added to the Senate bill to ensure that sanctuary designation would not be used as a mechanism to terminate access or rights which had been established prior to designation of an area as a sanctuary. Such rights include permits, leases, licenses and subsistence use rights. It is clear, however, that all such rights are subject to regulation, by the Secretary, as necessary to provide protection to sanctuary resources.

The Members and staff of both bodies have worked through both sessions of the 98th Congress to arrive at this measure. It is thoroughly considered, and it will serve well to balance the needs for development and protection of that Nation's ocean margins. This is not an easy task, and it will not come without conflict, but this measure will ensure that such conflicts are addressed directly, and resolved fairly.

● Mr. Speaker, I would also like to address the colloquy between the gentleman from Louisiana and the gentleman from Alaska.

I would like to take this opportunity to clarify for the record that these distinguished members of the committee are offering their comments on the marine sanctuaries portion of S. 1102 in their individual capacities and not on behalf of the Committee on Merchant Marine and Fisheries. To the extent that their comments differ from the interpretations or statements of intention that are contained in the committee's report, the latter should be understood to reflect the views of the committee, while the former reflects the views of these individual members. To clarify the record, I would like to take a few moments to point out several areas in which the gentlemen's colloquy differs from the committee's understanding of the legislation.

First, there is no intention to favor the selection of small sites as implied in the colloquy.

The colloquy erroneously interprets the bill to require that no marine sanctuary may be designated unless the Secretary finds that "it is small enough to allow comprehensive management * * *". In fact, the bill requires a finding that "the area is of a size and nature that will permit comprehensive and coordinated conservation and management. While an area may be too large for comprehensive management, it is also possible that an area may be too small, and therefore, insufficient to control activities affecting sanctuary resources. In addition, the House report—page 21—allows that:

> The Secretary retains the flexibility to tailor the boundaries of a sanctuary in order to protect the resources of the area. However, the Secretary should limit the size of sanctuaries to the geographic area necessary to protect these resources.

The bill's intent is to ensure that a sanctuary is of a proper size to achieve the stated purpose—resource protection—no bigger and no smaller.

Second, the colloquy incorrectly claims that the term "discrete" refers to, and places limitations on, the size of a sanctuary.

The colloquy suggests that these amendments require that marine sanctuaries be discrete and that this term means "small enough to, and of a nature which would, allow coordinated and comprehensive management." I must clarify for the record the committee's understanding of the term "discrete."

Section 303(a) authorizes the Secretary to "* * * designate any discrete area of the marine environment as a national marine sanctuary * * *". The term is also applied in section 303(b)(1)(F) which requires the Secretary to consider:

> The manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities.

The term is not defined in the legislation and was not discussed in the House report. The intent was that the plain meaning of the term would apply. Webster's new collegiate dictionary defines the term to mean "constituting a separate entity or individually distinct." Furthermore, the context in which the term is applied in section 303(b)(1)(F) reveals that the term "discrete" does not modify or refer to size. Rather, it refers to ecological considerations and to the stated preference that the sanctuary constitute an ecological unit with clearly definable boundaries.

Third, there is no requirement for demonstration of fiscal and administrative capacities prior to designation of a sanctuary.

The colloquy suggests that no sanctuary should be designated unless it is first:

> Clearly demonstrated that this program has the fiscal and administrative capacity to * * * achieved coordinated and comprehensive management.

It should be noted that the bill itself requires no demonstration of fiscal or administrative capacity prior to designation. Section 304(a)(1)(C) requires the Secretary to provide specific information to the Congress regarding each proposed designation, and clause (vi) identifies the following information:

An estimate of the annual cost of the proposed designation, including costs of personnel, equipment, and facilities, enforcement, research, and public education.

However, the intent of this provision is simply to facilitate more informed review of the proposal by the Congress. In addition, the House report—page 21—references "fiscal and staff constraints" as one additional factor which the Secretary should evaluate in establishing sanctuary boundaries. However, in no manner could this be construed as a requirement for demonstration of such capacity prior to designation.

Fourth, there is no basis for asserting that any of the established standards will be difficult to sustain.

Section 303(a) outlines five standards which must be met by any area proposed for designation as a marine sanctuary. Section 303(a)(2)(B) requires a finding that:

Existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area * * *

The colloquy concludes that:

* * * such a finding would be difficult to make and sustain considering the many existing stringent State and Federal environmental laws and regulations which already ensure extensive protection of the marine environment.

Under section 303(a), there is no basis for a judgment that one of the five standards would be any more or less difficult to sustain than the others. Neither is this interpretation supported by the detailed discussion of this standard in the House report. Furthermore, such an interpretation is not compatible with the general intent of the bill as expressed in the House report and floor debate on H.R. 2062. The future designation of marine sanctuaries is clearly anticipated in the findings—section 301(a)—and the purposes and policies—section 301(b). The degree of difficulty associated with any one of the findings will turn on the facts of each case. In general, the committee intended to adopt a set of findings that would, as a whole, constitute reasonable and appropriate standards to govern the designation process. It did not, however, intend by these requirements to erect a set of difficult barriers to the designation of marine sanctuaries, just as it did not intend these findings to be mere formalities.

Lastly, it is not the intent of these amendments to ensure that the activities of other Federal agencies are not disrupted, but rather, that they are disrupted only to the extent necessary to achieve the desired protection.

The colloquy strongly implies that a designation is not to occur if it would disrupt the ongoing or planned activities of another Federal agency. Such interpretation is contradictory to the authority which is granted to the Secretary of Commerce by these amendments. The Secretary is authorized to designate marine sanctuaries and to promulgate regulations necessary to implement that designation. There is no condition on the Secretary's authority to regulate activities affecting the sanctuary except those provided in sections 304(a)(5) and 304(c), governing fishing regulations and access and valid rights respectively. Neither of these provisions precludes, either explicitly or implicitly, disruption of Federal agency activities.

While interagency consultation is designed to inform the Secretary of the concerns of other Federal agencies, it is the Secretary who is empowered with final decisionmaking authority, including the decision to designate a site and to regulate activities affecting the resources of that site. Such decisions may necessarily involve the disruption of other Federal agency activities. However, such disruptions are to be limited to the extent necessary to achieve protection of the resource.

Finally, the colloquy implies that the views of Federal agencies are to be elevated above those of other potentially affected or interested parties enumerated in section 303(b). This implication is inappropriate. The views of all parties should be afforded due consideration by the Secretary.●

● Mr. D'AMOURS. Mr. Speaker, I rise in support of S. 1102, which, among other things, reauthorizes the National Marine Sanctuary Program. The House counterpart to this provision is H.R. 2062 which was introduced by myself and Mr. PRITCHARD and passed the House on June 14, 1983, by the overwhelming vote of 379 to 38.

The National Marine Sanctuary Program was created in 1972 in order to provide a mechanism to protect and manage valuable areas of our marine environment. Six sanctuaries have been designated to date. These sanctuaries have been designated to protect such diverse areas as the historically and culturally significant Civil War ironclad U.S.S. *Monitor*, recreationally and educationally valuable reef areas off Georgia and Florida, and marine mammal and bird habitats off California that are important for their ecological conservation and research values.

S. 1102 reauthorizes the program for 4 years. The authorization levels start at $3 million for fiscal year 1985 and increase to $3.9 million for fiscal year 1988. These levels will allow the designation and management of one new sanctuary per year.

The program has not been without controversy. This is largely because of mistaken public perceptions about the goals and purposes of this program and because of the failure of Congress to provide clear policy directives. Many of the early problems were successfully solved by the current program managers, and this bill attempts to correct the remaining outstanding problems.

H.R. 2062, as passed by the House, would substantially amend title III of the Marine Protection, Research and Sanctuaries Act. It reaffirms that the mission of the program is the establishment of a system of national marine sanctuaries based on identification, designation, and comprehensive management of special marine areas for the long-term benefit and enjoyment of the public. It sets forth explicit purposes and policies for the program by codifying the program's existing goals and policies as set forth in the January 1982 "program development plan" for the National Marine Sanctuary Program. It establishes standards and factors for the Secretary of Commerce to apply when assessing areas of the marine environment for sanctuary designation. It outlines site designation procedures for the Secretary to follow, including broadened consultations with affected parties, participation by regional fishery management councils in the drafting of fishing-related regulations and a review period for Congress to analyze proposed sanctuaries.

All of the major provisions of H.R. 2062 were acceptable to the Senate and are contained in S. 1102. Some modifications and clarifications are contained in the Senate-passed version and I want to briefly highlight them:

S. 1102 requires the Secretary of Commerce, in consultation with the Secretary of the Interior, to complete a resource assessment report documenting present and potential uses of an area, including fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses;

S. 1102 clarifies the specific criteria used to determine when it is appropriate for regional fishery management councils rather than the Secretary of Commerce to assume responsibility for drafting of sanctuary regulations. The Senate version is identical to the previous House version, however, in making clear that even when it falls to the regional councils to draft the regulations, it is up to the Secretary to make the final determination that the regulations are consistent with the purposes and policies of the program and the goals and objectives of the proposed sanctuary;

S. 1102 reduces the time for congressional and gubernatorial disapproval from 90 days to 45 days and changes the concurrent resolution to a joint resolution, consistent with the Chadha decision;

S. 1102 makes in order a privileged and nondebatable motion to consider a joint resolution on the floor; and

S. 1102 seeks to protect existing access and valid rights in current and

proposed sanctuaries, with the understanding that access and rights are subject to regulation by the Secretary consistent with the purpose of the sanctuary designation.

Mr. Speaker, these modifications are constructive and I see no reason why we should not adopt them.

S. 1102 and its companion bill H.R. 2062 represent carefully crafted compromises. The amendments will allow program managers to protect and comprehensively manage marine areas for the long-term benefit and enjoyment of the public by designating representative areas of the marine environment that are important because of their resource or human-use values, yet will still ensure that affected parties can be active participants in the designation process.

This bill represents long hours of effort on the part of many people. I want to commend the Members of both Houses for their work on the bill. The sanctuary program is an important marine program, and I strongly believe that S. 1102 will strengthen the program. I urge my colleagues to support this bill.●

● Mr. CARPER. Mr. Speaker, I rise as a strong supporter of the Marine Sanctuaries Program. The need for a functional and effective program is no less now than it was when Congress passed the original legislation in 1972. Indeed, the increase in human activity in our coastal waters has made this program even more important by allowing for the protection of discrete but significant areas of our coastal waters. The richness and diversity of our offshore areas are no less deserving of responsible management and protection than our national parks, wilderness areas, wildlife refuges and other components of our treasured natural heritage.

It is for this reason that I am concerned by some comments which have been made on the House floor regarding the legislative intent behind this worthwhile bill. First, I feel the Marine Sanctuaries Amendments of 1983 speak eloquently, in their own way, of the purpose intended for this legislation. Furthermore, members of both the House and Senate committees have worked diligently to clarify the proposed law in their committee reports.

It is correctly asserted that the Secretary of Commerce must, according to this legislation, determine that proposed sanctuaries meet five standards before they are designated. The Secretary is also requested to consider nine other factors in reaching his decisions. Clearly, neither the House Merchant Marine and Fisheries Committee nor the Senate Commerce Committee intend that the standards set by this bill would be so restrictive that no sanctuaries would be designated. The purpose of this legislation is to provide for the conservation and management of nationally significant marine areas, not to establish insurmountable hurdles to the designation of marine sanctuaries.

Another issue of concern involves the size of areas to be designated as marine sanctuaries. This legislation authorizes the Secretary of Commerce to "designate any discrete area of the marine environment as a national marine sanctuary" and to promulgate appropriate regulations (sec. 303(a)). In an earlier colloquy, it was interpreted that discrete means "small." Indeed, the true meaning of the word and the intent in using this term, is that a designated area be "individually distinct" and easily definable in geographic scope and ecological, cultural or other character. A careful review of the bill shows clearly that a designated area should be limited to a "size and nature which will permit comprehensive and coordinated conservation management" (sec. 303(a)(3)). This requirement is a hard and fast standard that must be met by all designated sites, and constitutes the only restriction on the size of sanctuaries designated by the Secretary.

In order to make a reasonable determination on sanctuary designations, the Secretary is required to consult with the House Merchant Marine and Fisheries Committee and with the Senate Commerce Committee, several Federal agencies, State and local governments, the appropriate Regional Fishery Management Council, and other interested persons. In no case, however, is the Secretary required to secure the approval of these parties—a point clearly made by the legislation and both House and Senate reports.

There are, however, a number of public and private uses of ocean resources that could be affected by the designation of a national marine sanctuary, including fishing and energy development. Under this legislation, public and private uses of the resources in a marine sanctuary may be allowed provided they are "compatible with the primary objective of resource protection" (sec. 301(b)(5)). Specific protection for fisheries (sec. 304 a 3) and for preexisting leases and permits (sec. 304(b)(5)) are included in the bill.

Moreover, contrary to the assertions made in the colloquy, the existing protections afforded the marine environment by existing statutes are not necessarily adequate for the proper management of valuable resources. A Congressional Research Service report in 1980 and a 1981 General Accounting Office report indicate the Marine Sanctuary Program can provide environmental protection not otherwise available. This finding is reinforced by the Merchant Marine and Fisheries Committee report (H. Rept. 98-187, pp. 20-21) which states:

> Depending on the location, the resources, and the existing mechanisms, a sanctuary could either complement existing mechanisms by filling specific gaps or could form a management umbrella over a fragmented system to help coordinate diverse but related efforts.

For many reasons, our coastal waters need careful and responsible protection. Their biological productivity is far more than a scientific curiosity, it is the underpinning of this Nation's bountiful fisheries resources. Protection of selected areas of our offshore waters is a pressing need in the face of accelerating coastal development and human activity.

Once again, I am delighted to see this important legislation reach this stage on its path toward enactment. I commend my colleagues in both Houses for their work on this bill.●

● Mrs. BOXER. Mr. Speaker, I rise in strong support of S. 1102, which reauthorizes and amends title III of the Marine Protection, Research, and Sanctuaries Act of 1972.

Under the current administration, we have seen increased pressure to develop our marine resources, more often than not, at the expense of our environment. The marine sanctuaries program authorized by this bill recognizes that "certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities which give them special national significance." For the purposes of environmental protection and preservation, our National Marine Sanctuaries Program identifies areas of the marine environment of special national significance and provides for the coordinated conservation and management of these areas.

The chairman of the Merchant Marine and Fisheries Committee has indicated that the colloquy entered into by the Members managing this bill on the House floor does not represent the views of the committee. I concur with the chairman.

The meaning and intent of the Marine Sanctuaries Amendments of 1984 are amply explained in the House report (H. Rept. 98-187) and Senate report (S. Rept. 98-280). As the House report clearly states, these amendments codify the existing administration of the marine sanctuaries program.

As a member of the Merchant Marine and Fisheries Committee who participated in the hearings and vote on H.R. 2062, the companion bill to S. 1102, my understanding of congressional intent in passing the 1984 amendments is to grant the Secretary of Commerce unambiguous authority to designate areas as marine sanctuaries and adopt regulations to protect the natural resources of these areas.

The bill directs the Secretary of Commerce to consult with the House

Mechant Marine and Fisheries Committee, the Senate Commerce Committee, several Federal agencies, State and local governments, the appropriate Regional Fishery Management Council, and other interested persons. Nowhere do the 1984 amendments require the Secretary to secure the approval of these parties. Nowhere do the 1984 amendments require congressional approval in the designation of marine sanctuaries.

The 1984 amendments do require, however, that before designating a national marine sanctuary, the Secretary of Commerce must determine that such designation will fulfill the purposes and policies of the act and find that the proposed sanctuary meets four standards. The committee did not intend to create barriers or obstacles to the designation of marine sanctuaries. The standards in section 303 are not intended to be standards that are difficult to meet. Rather, these standards are intended to be reasonable ones that will ensure that marine areas of special national significance are designated as national marine sanctuaries.

While the marine sanctuaries program encourages the coordination of existing Federal programs in the area of a proposed marine sanctuary, this does not mean that the marine sanctuary program should avoid disruption of Federal activities. The primary purpose of the marine sanctuaries program and the 1984 amendments is to protect marine resources. Toward that end, the designation and implementing regulations of marine sanctuaries will inevitably involve some disruption of other Federal activities in the area.

Off the coast of my district, the Point Reyes-Farallon Islands National Marine Sanctuary is home to a unique seabird community and various marine mammal populations, including the gray whale, California sea lion, harbor seal, and elephant seal. The designation of this outstanding area as a marine sanctuary was greatly hailed in my State of California. While the sanctuary represents only a minuscule fraction of the Outer Continental Shelf, it is a critical habitat for many bird and pinniped species. I strongly support the Marine Sanctuaries Amendments of 1984 which continue the program's historical emphasis on resource protection by excluding disruptive activities such as oil and gas development.●

● Mr. D'AMOURS. Mr. Speaker, I rise in support of S. 1102, which, among other things, reauthorizes the National Marine Sanctuary Program. The House counterpart to this provision is H.R. 2062 which was introduced by myself and Mr. PRITCHARD and passed the House on June 14, 1983 by the overwhelming vote of 379 to 38.

The National Marine Sanctuary Program was created in 1972 in order to provide a mechanism to protect and manage valuable areas of our marine environment. Six sanctuaries have been designated to date. These sanctuaries have been designated to protect such diverse areas as the historically and culturally significant Civil War ironclad U.S.S. *Monitor*, recreationally and educationally valuable reef areas off Georgia and Florida, and marine mammal and bird habitats off California that are important for their ecological, conservation, and research values.

S. 1102 reauthorizes the program for 4 years. The authorization levels start at $3 million for fiscal year 1985 and increase to $3.9 million for fiscal year 1988. These levels will allow the designation and management of one new sanctuary per year.

The program has not been without controversy. This is largely because of mistaken public perceptions about the goals and purposes of this program and because of the failure of Congress to provide clear policy directives. Many of the early problems were successfully solved by the current program managers, and this bill attempts to correct the remaining outstanding problems.

H.R. 2062, as passed by the House, would substantially amend title III of the Marine Protection, Research, and Sanctuaries Act. As set forth in the committee's report on the bill (H. Rept. 98-187, p. 1) H.R. 2062 reaffirms that the mission of the program is the establishment of a system of national marine sanctuaries based on identification, designation, and comprehensive management of special marine areas for the long-term benefit and enjoyment of the public.

It sets forth explicit purposes and policies for the program by codifying the program's existing goals and policies as set forth in the January 1982 program development plan for the National Marine Sanctuary Program. It establishes standards and factors for the Secretary of Commerce to apply when assessing areas of the marine environment for sanctuary designation. It outlines site designation procedures for the Secretary to follow, including broadened consultations with affected parties, participation by regional fishery management councils in the drafting of fishing-related regulations and a review period for Congress to analyze proposed sanctuaries.

All of the major provisions of H.R. 2062 were acceptable to the Senate and are contained in S. 1102. Some modifications, clarifications, and structural changes are contained in the Senate-passed version and in the version we take up today and I want to briefly highlight them:

S. 1102 requires the Secretary of Commerce, in consultation with the Secretary of the Interior, to complete a resource assessment report documenting present and potential uses of an area, including fishing, research and education, minerals and energy development, subsistance uses, and other commercial or recreational uses.

S. 1102 clarifies the specific criteria used to determine when it is appropriate for regional fishery management councils rather than the Secretary of Commerce to assume responsibility for drafting of sanctuary regulations. The Senate version is identical to the previous House version, however, in making clear that even when it falls to the regional councils to draft the regulations, it is up to the Secretary to make the final determination that the regulations are consistent with the purposes and policies of the program and the goals and objectives of the proposed sanctuary.

S. 1102 reduces the time for congressional and gubernatorial disapproval from 90 days to 45 days and changes the concurrent resolution to a joint resolution, consistent with the Chadha decision.

S. 1102 makes in order a privileged and nondebatable motion to consider a joint resolution on the floor.

S. 1102 seeks to protect existing access and valid rights in current and proposed sanctuaries, with the understanding that access and rights are subject to regulation by the Secretary consistent with the purposes of the sanctuary designation.

Mr. Speaker, these modifications are constructive and I see no reason why we should not adopt them.

S. 1102, like its counterpart H.R. 2062 establishes definite procedures for the Secretary of Commerce to follow when designating and managing national marine sanctuaries. Section 303(a) requires that before designating any area as a marine sanctuary, the Secretary must determine that the designation will fulfill the purposes and policies as set forth in section 301, and must make four findings: First, the area is of special national significance because of its values; second, existing State and Federal regulatory and management mechanisms are not adequate to provide for coordinated and comprehensive management of the area; third, designation as a sanctuary will facilitate coordinated and comprehensive management; and fourth, a proposed sanctuary will be of a size and nature that will facilitate comprehensive and coordinated conservation and management.

Section 303(b)(1) outlines nine factors for the Secretary to consider when making the determination and findings of section 303(a). There is no requirement that a sanctuary must meet all nine factors in order to be designated, but rather the Secretary must use the factors to evaluate proposed sanctuaries.

Section 303(b)(2) obligates the Secretary to consult with several persons and organizations before designating an area as a marine sanctuary. As it is made clear in the House report, inadequate or ill-timed consultation has led to problems in the past. In order to alleviate these problems, the Secretary is expected to consult with all interested persons and groups of all important stages of the site evaluation and designation process. However, it is understood that the Secretary has the ultimate authority to designate sanctuaries.

The issue of the size of a national marine sanctuary received considerable discussion within the Merchant Marine and Fisheries Committee. Ultimately the committee chose not to legislatively limit the size of sanctuaries, but rather to provide factors to guide the Secretary in tailoring the boundaries of a sanctuary in order to protect the resources of the area. These factors include but are not limited to distribution of the area's resources; human activities in the area; fiscal and staff constraints; accessibility; potential enforcement and surveillance problems; and the capabilities of State and Federal authorities. The committee concurred with a NOAA policy statement that the upper limit of the sanctuary size spectrum is represented by the Channel Islands National Marine Sanctuary.

Another issue that received considerable attention in discussions before the Merchant Marine and Fisheries Committee involved the regulation of activities within established sanctuaries, especially fishing activities. The committee discussed the variety of uses that are likely to take place within sanctuaries and what controls might be necessary to control the mix of uses in order to maintain the recognized values of a site. The committee affirmed that it may be both necessary and proper to regulate specific uses in order to conserve or manage a site's inherent resource or human-use values. The committee made it clear in section 301(b)(5) that public and private uses of the resources of a marine sanctuary may be allowed provided that they are compatible with the primary objective of resource protection. This emphasis upon resource protection is also explicity expressed regarding fisheries in section 304(a)(3) and preexisting leases and permits in section 304(c)(2).

Mr. Speaker, S. 1102 and its companion bill, H.R. 2062, represent carefully crafted compromises. The amendments will allow program managers to protect and comprehensively manage marine areas for the long-term benefit and enjoyment of the public by designating representative areas of the marine environment that are important because of their resource or human-use values, yet will still ensure that affected parties can be active participants in the designation process.

This bill represents long hours of effort on the part of many people. I want to commend the Members of both Houses for their work on the bill. The sanctuary program is an important marine program, and I strongly believe that S. 1102 will strengthen the program. I urge my colleagues to support this bill.●

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

GENERAL LEAVE

Mr. BREAUX. Mr. Speaker, I ask unanimous consent that all Members who wish to do so may have 5 legislative days in which to revise and extend their remarks on the Senate bill just passed.

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

There was no objection.

CORRECTING ERRORS IN ENROLLMENT OF S. 1538, DRUG PRICE COMPETITION AND PATENT TERM RESTORATION ACT

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 141) to correct technical errors in the enrollment of the Senate bill (S. 1538) to amend the Federal Food, Drug, and Cosmetic Act to revise the procedures for new drug applications, to amend title XXXV, United States Code, to authorize the extension of the patents for certain regulated products, and for other purposes, and ask for its immediate consideration in the House.

The SPEAKER pro tempore. The Clerk will report the Senate concurrent resolution.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 141

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (S. 1538) to amend the Federal Food, Drug, and Cosmetic Act to revise the procedures for new drug applications, to amend title 35, United States Code, to authorize the extension of the patents for certain regulated products, and for other purposes, the Secretary of the Senate shall make the following changes. In sections 505(j)(4)(B)(iii)(III) and 505(c)(3)(C)(iii) of the Federal Food, Drug, and Cosmetic Act as added by sections 101 and 103(b) of the bill, respectively, strike out "not invalid" and insert in lieu thereof "invalid".

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

Mr. BLILEY. Mr. Speaker, reserving the right to object—and I shall not object—will the gentleman from California [Mr. WAXMAN] explain the resolution?

Mr. WAXMAN. If the gentleman will yield. This concurrent resolution is necessary to correct an error in S. 1538, the Drug Price Competition and Patent Term Restoration Act, which has been passed by the House and the Senate. In title I of the bill, the phrase, "if the court decides that such patent is not invalid or not infringed" appears in sections 101 and 103. The double negative "not invalid" is incorrect. This concurrent resolution will correct the phrase to read, "if the court decides that such patent is invalid or not infringed."

Mr. BLILEY. I thank the gentleman for his explanation.

Mr. Speaker, I support the bill, and I withdraw my reservation of objection.

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

There was no objection.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

INDIAN HEALTH CARE AMENDMENTS OF 1984

Mr. HALL of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 560 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 560

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4567) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill for failure to comply with the provisions of section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs and thirty minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce, the bill shall be considered for amendment under the five-minute rule. In lieu of the amendments recommended by the Committees on Interior and Insular Affairs and Energy and Commerce now printed in the bill, it shall be in order to consider an amendment in the nature of a substitute consisting of the text of the bill H.R. 6039 as an original bill for the purpose of amendment under the five-minute rule, each section of said substitute shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of clause 5(a) of rule XXI are hereby waived. At the conclusion

of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text by this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. HALL] is recognized for 1 hour.

Mr. HALL of Ohio. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Mississippi [Mr. LOTT], for purposes of debate only, pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 560 is an open rule providing for 1 hour of general debate on H.R. 4567, the Indian Health Care Amendments of 1984. The rule provides 30 minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs, and 30 minutes to be equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce. Both committees have been provided with an equal amount of time since H.R. 4567 was jointly referred to them.

It should be noted that the rule waives section 402(a) of the Budget Act because the Energy and Commerce Committee was unable to file its report on the bill by the required deadline of May 15, 1984.

The rule makes in order an amendment in the nature of a substitute consisting of the text of H.R. 6039 as an original bill for purpose of amendment under the 5-minute rule. Each section of the substitute shall be considered as having been read. The substitute, H.R. 6039, is the product of discussions between the two committees that had jurisdiction over the original legislation.

With respect to the substitute, the rule waives points of order for failure to comply with the provisions of clause 5(a) of rule XXI, which prohibits appropriations in a legislative bill.

The rule also provides for one motion to recommit with or without instructions.

House Resolution 560 is an open rule, and any germane amendment is in order either to the bill or to the amendment in the nature of a substitute. I am not aware of any opposition to this open rule, and I urge my colleagues to adopt it.

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

Mr. Speaker, House Resolution 560 is an open rule, providing for 1 hour of general debate on the bill, H.R. 4567, the Indian Health Care Amendments of 1984. Thirty minutes of the debate time is allotted to the Committee on Interior and Insular Affairs, and 30 minutes to the Committee on Energy and Commerce.

Mr. Speaker, the rule waives section 402(a) of the Budget Act against the consideration of the bill. Section 402(a) requires that bills be reported prior to May 15. Although the Interior Committee reported its version on May 15, the Energy and Commerce Committee did not report until May 21, thus necessitating this waiver.

Mr. Speaker, because the two committees of jurisdiction reported different versions, a compromise was subsequently worked out between the chairmen of those two committees and introduced as H.R. 6039. That bill is made in order as an original bill for the purpose of amendment under this rule, and each section is considered as read.

Finally, the rule waives clause 5(a) of rule 21 against the substitute because there are matters in here which can technically be considered appropriations, and clause 5(a) prohibits appropriations in a legislative bill.

Mr. Speaker, the bill which this rule makes in order would extend for 3 years the Indian Health Care Improvement Act which was first enacted in 1976. The purpose of that act is to raise the health status of American Indians and Alaskan Natives to the highest possible levels. While much has been accomplished under that act, much remains to be done.

The health status of American Indians is still far below that of the average American. The tuberculosis death rate among Indians is about six times greater than that of the U.S. population at large. The alcoholism mortality rate for Indians is five times greater than the general population.

The consensus bill made in order by this rule would authorize approximately $208 million over the next 3 years for a variety of health programs for Indians, including Indian health professions development health and sanitation facilities construction, and health services to the urban Indian population.

Mr. Speaker, the bill is not without constroversy, however. While the measure was reported from both committees by voice vote, there are three sets of minority, separate, and dissenting views in the report of the Committee on Energy and Commerce. The ranking minority member of the Health Subcommittee [Mr. MADIGAN] indicated in his testimony before the Rules Committee that there are several provisions in the bill which need improvement and to which he would like to offer amendments.

Finally, I should point out that the administration has expressed opposition to the compromise bill and has recommended amendments to reduce the authorization levels; to confine the Indian Health Service to using only funds made available from other appropriations for the construction of sanitation facilities—rather than authorize additional funds for that purpose; to delete unnecessary program expansions not included in the President's budget; and to delete that section which moves the IHS from its present location in the Health Resources and Services Administration and which provides for a separate IHS budget submission to the President.

However, Mr. Speaker, I would again point out that this is a completely open rule which will afford Members an opportunity to offer amendments to further improve this legislation. I urge its adoption so we can proceed with the general debate and amendment process on this bill.

□ 1050

Mr. HALL of Ohio. Mr. Speaker, I have no requests for time, and I move the previous question on the resolution.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the resolution.

There was no objection.

The SPEAKER pro tempore. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to House Resolution 560 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. 4567.

□ 1052

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. 4567) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes, with Mr. HALL of Ohio 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 Arizona [Mr. UDALL] will be recognized for 15 minutes; the gentleman from Alaska [Mr. YOUNG] will be recognized for 15 minutes; the gentleman from California [Mr. WAXMAN] will be recognized for 15 minutes; and the gentleman from Virginia [Mr. BLILEY] will be recognized for 15 minutes.

The Chair recognizes the gentleman from Arizona [Mr. UDALL].

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

Mr. Chairman, I am pleased to bring before the House for consideration H.R. 4567, to reauthorize and amend

the Indian Health Care Improvement Act.

This legislation has been the subject of intensive consideration by the Interior Committee. In anticipation of the expiration of the authorization for the Health Care Improvement Act in fiscal year 1984, the Interior Committee, in cooperation with the Senate Select Committee on Indian Affairs, held exhaustive oversight hearings early in 1983.

Hearings were held, either by my committee or the Senate committee, in Albuquerque, NM; Phoenix, AZ; Bismarck, ND; Billings, MT; and Anchorage, AK. Scores of witnesses were heard and most Indian tribes across the country had an opportunity to make their views and needs known to the Congress.

After extensive committee drafting, I introduced H.R. 4567 on November 18, 1983, with broad, bipartisan cosponsorship.

Finally, in March and April of this year, my committee held 4 days of hearings on the bill and, again, took testimony from many Indian tribes and other public witnesses. In May of this year, my committee reported this bill, with several amendments, by voice vote.

I want to take this opportunity to thank Congressmen McNULTY, McCAIN, RICHARDSON, LUJAN, VENTO, and KOGOVSEK for the active concern, involvement, and support they have shown in the committee development and consideration of this important legislation.

H.R. 4567 was also jointly referred to the Committee on Energy and Commerce because of their general jurisdiction over health matters. Under the guidance of the gentleman from California [Mr. WAXMAN] that committee reported the legislation on May 21 of this year. The Energy version was, in a few areas, substantially different from the Interior version and these differences engendered some controversy.

However, our committees were able to work out our differences and arrive at compromise language. This compromise was introduced by myself and Mr. WAXMAN as H.R. 6039, the text of which is being considered for amendment today. I want to express my appreciation to Mr. WAXMAN and his subcommittee for their cooperation and support in the development of this legislation.

Mr. Chairman, I will not dwell on the details of H.R. 4567 as amended. In the main, it reauthorizes and continues the programs, efforts, and reforms in Indian health which were put into place by the Indian Health Care Improvement Act and continued by the 1980 amendments. While this act has already brought about significant improvement in Indian health conditions and our administration of Indian health programs, there is yet much that remains to be done if Indians are to enjoy a health status comparable to the rest of the population.

Except for diseases of affluence, Indians in this Nation still suffer from afflictions and poor health conditions at rates higher than the rest of the Nation.

And we have not fairly met our legal and moral obligation to the Indian tribes and people in this area. As noted in the Interior Committee report, our appropriations to the Indian Health Service, on a per capita basis in constant 1983 dollars, declined from $906 in 1977 to $707 in 1984. The per capita health expenditures for the general population rose from $1,087 in 1977 to $1,177 in 1984.

Mr. Chairman, I also believe that my committee has acted responsibly in terms of the fiscal restraints we face. The total authorization contained in the Indian Health Care Improvement Act for fiscal year 1984, was approximately $202,215,000. Actual appropriation under that act for fiscal year 1984 was $134,494,000. The cost of this legislation, as contained in H.R. 6039, is $65,950,000 for fiscal year 1985; $68,500,000 for fiscal year 1986; and $71,600,000 for fiscal year 1987.

Mr. Chairman, this is badly needed legislation and good legislation. I am including with my statement today a brief analysis of the provisions of the legislation as contained in H.R. 6039, including discussion of the compromises reached between the Interior and Energy Committee on their differences.

I urge the Members to support this bill.

ANALYSIS OF H.R. 6039 AS AN AMENDMENT TO H.R. 4567 IN THE NATURE OF A SUBSTITUTE AS COMPARED WITH THE INTERIOR AND ENERGY COMMITTEE VERSIONS OF H.R. 4567

SECTION 1

Subsection (a) cites the Act as the "Indian Health Care Amendments of 1984". Same in all versions.

Subsection (b) notes that cited amendments are to the Indian Health Care Improvement Act, as amended, unless otherwise stated. Same in all versions.

SECTION 2

Section 2 amends section 4 of the Act by striking all of subsection (i), (j), and (k) relating to rural Indian definitions. Same in all versions.

SECTION 3

Subsection (a) amends section 102 of the Act to reauthorize funding for the Health Professions Recruitment Programs for Indians for FY 1985, 1986, and 1987. Substantially the same in all versions.

Subsection (b) amends section 103 of the Act to reauthorize funding for the Health Professions Preparatory Scholarship Programs funding for Indians. Substantially the same in all versions, except that language limiting the authority of the Secretary to deny scholarships solely on the basis of scholastic achievement was moved to this subsection in H.R. 6039 from subsection 3(c) as contained in the two Committee versions.

Subsection (c) amends section 104 of the Act to rewrite and reauthorize the Indian Health Scholarship Program. Substantially the same in all versions, except as noted in subsection (b) above.

Subsection (d) amends section 105 of the Act to reauthorize funding for the Indian Health Service Extern program. Same in all versions.

SECTION 4

Subsection (a) amends section 201 of the Act with respect to health services. Section 201 of the Act established a scheme to raise the health standards of all tribes to a level comparable to the rest of the Nation within seven years. As reported by the Interior Committee, subsection (a) refocused the purpose of section 201 to achieve a parity of funding of health services among all tribes, while still trying to achieve the goal of eliminating the gap between Indians and non-Indians, by establishing a special fund for tribes having a greater degree of deficiency in health resources.

The Energy version of subsection (a) adopted an entirely different approach by requiring a reallocation of any increases in funding of the Indian Health Service to tribes within States having the lowest per capita expenditure of the IHS funding in the previous fiscal year.

H.R. 6039 adopts, basically, the Interior version with minor amendments.

Subsection (b) of the Interior version established an Indian Catastrophic Health Emergency Fund to better enable the Indian Health Service to meet the extraordinary costs associated with catastrophic illnesses and medical disasters.

The Energy version contained no similar provision.

H.R. 6039 adopted the Interior language with modifications. The differences between the Interior version and H.R. 6039 are—

(1) the threshold costs above which the concerned IHS service unit would be entitled to reimbursement from the funds was changed from $15,000–$25,000 to $10,000–$20,000.

(2) the fund was only authorized for three fiscal years instead of being open-ended.

(3) the authorization level was changed from $15,000,000 to $12,000,000.

(4) a Secretarial report was required on the operation of the fund.

SECTION 5

Section 5 amends section 301 of the Act relating to the construction of Indian Health facilities. The section is substantially the same in all versions.

Section 301, as amended by section 5, requires the Secretary to submit to the Congress the current health priority system report including the top priority inpatient facilities and the top ten priority outpatient facilities. It requires consultation with the tribes on the report for the succeeding two fiscal years.

Section 301(b)(1) simply makes clear what is already law under the Indian Self-Determination Act that Indian tribes may contract for or secure a grant of funds for the construction of facilities for the benefit of their tribes and members.

SECTION 6

Section 6 amends section 302 of the Act relating to the contruction of sanitation facilities for Indian tribes and communities. The section is substantially the same in all versions.

Section 302, as amended by section 6, requires the Secretary to submit a report to

Congress defining the deficiencies of sanitation facilities for all Indian tribes and requires him to embark on a plan to bring all tribes up to certain defined levels of deficiency within ten years. It also authorizes the Secretary to provide certain financial assistance to Indian tribes operating their own sanitation systems. Section 302(f), again, simply makes clear the law under the Self-Determination Act that tribes have a right to contract for, or secure a grant of funds designated for the construction of sanitation facilities of their benefit.

SECTION 7

Section 7 reauthorizes and amends title V of the Act establishing Health Services for Urban Indian programs. It is substantially the same in all versions. The section deletes all provisions for Rural Indian programs in the original Act. A section of the Interior version requiring the Secretary to apply a funding allocation formula among urban Indian organization applicants, which was not contained in the Energy versions, was dropped in H.R. 6039.

SECTION 8

Section 8 amends title VI of the Act to provide for the creation of an Office of Indian Health Service in the Public Health Service. The effect of the provision is to remove IHS from the Health Resources and Services Administration and to create it as a co-equal agency within the Public Health Service.

The Interior version had a provision creating an Office of Indian Health Service within the Department of Health and Human Services under a new Assistant Secretary for Indian Health. This was dropped in H.R. 6039 in favor of the Energy provision noted above.

SECTION 9

Section 9 amends section 705 of the Act to provide that Federal contracting requirements for competitive bidding can be waived or bids thereunder rejected under certain circumstances with respect to the procurement of health services. Substantially the same in all versions.

SECTION 10

Section 10 amends section 706 of the Act by providing a new program relating to Indian juvenile alcohol and drug abuse. Substantially the same in all versions.

SECTION 11

Section 11 amends section 707 of the Act relating to a nuclear resources development health hazard study for Indian reservations by reauthorizing the study and authorizing the study to be made by the National Academy of Sciences. Identical in all versions.

SECTION 12

Section 12 amends section 708 of the Act by inserting a new provision authorizing treatment of non-Indian or otherwise ineligible persons in IHS facilities or through IHS resources and establishes standards for such treatment. An identical provision was contained in both the Interior and Energy version. Minor amendments were made to this provision in H.R. 6039.

SECTION 13

Section 13 amends section 706 of the Act by inserting new language defining California Indians for purposes of eligibility for IHS services. No provision in this respect was included in the Interior version. H.R. 6039 adopts the Energy language with minor amendments. The definition under section 706(2) of H.R. 6039 is intended to include California Indians who met the requirements of section 1 of the 1928 Act and not persons covered under subsequent amendments to the 1928 Act.

SECTION 14

Section 14 amends section 710 of the Act to provide new language to continue the special program started by IHS for the control and reduction of Hepatitis-B among Alaska Natives. Substantially the same in all versions.

SECTION 15

Section 15 amends title VII of the Act by adding the following new sections:

Section 712 provides that California, except for certain designated urban counties, shall be considered as a contract health care delivery area for the purpose of providing contract health care to Indians within the State. The Interior version had no similar provision. H.R. 6039 adopts the Energy provision, but adds the language excluding the urban counties.

Section 713 provides that IHS shall provide funds for maintenance, employee training, cost-of-living increases, and other related expenses to tribal contractors under the Indian Self-Determination Act. The Interior version had no similar provisions. H.R. 6039 adopts the Energy version provision. This provision is primarily boiler-plate as the designated costs are provided for in the Self-Determination Act.

In addition, section 713 incorporates language from the Energy version making provision for Self-Determination contracts for health services where there are non-tribal Indians serviced by the service unit. No similar provision was in the Interior version. The H.R. 6039 provision limits the effect of the section to California.

Section 714 limits the authority of the Secretary to remove, or withdraw funding for, members of the National Health Service Corp in IHS facilities. No similar provision was included in the Interior versions. H.R. 6039 adopts the Energy version language with minor amendments.

Section 715 relates to the use of funds, other than funds appropriated for the Indian Health Service, for lobbying or litigation purposes by Indian contractors. No similar provision was included in the Interior version. H.R. 6039 adopts the Energy language with minor amendments.

Section 716 requires the Secretary to develop and implement a plan to reduce the rate of Indian infant and maternal mortality to the national level by January, 1990. A similar provision is included in all versions. H.R. 6039 adopts the Energy language.

Section 717 defines, for purposes of this Act, the terms "Area Office" and "service unit". No such provision was included in either the Interior or Energy version.

Mr. YOUNG of Alaska. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 4567, the Indian Health Care Amendments of 1984.

I would first like to commend the gentleman from Arizona, the chairman of the Interior Committee, for his leadership on this legislation. I would also like to thank my colleagues on the Energy and Commerce Committee for their work on H.R. 4567 and on the compromise legislation now before us as H.R. 6093.

H.R. 4567 continues a comprehensive effort to improve the health status of American Indians and Alaska Natives. That effort began in 1976, with passage of Public Law 94-437, the Indian Health Care Improvement Act. That act recognized the clear legal and moral obligation of the United States to provide health care to Indians. It was tailored to meet the extensive, often shocking, health care needs on reservations and in native villages. And it provided for a systematic effort to overhaul the understaffed, outdated and ill-equipped facilities of the Indian Health Service. The act also authorized a modest but vital effort to address the health needs of native Americans living in urban areas.

In the 1976 act, Congress authorized funding for the first 4 years of an ambitious, 7-year effort to raise the level of Indian and native health to a par with the general population. In 1980, Congress revised and extended these authorizations through fiscal 1984. Because appropriations have lagged well behind the amounts authorized, and because inflation in medical costs has been very high over the past 8 years, the goals of the original act have only been partially met.

Progress in some areas has been dramatic; in others, it is hardly noticeable. Because of the act, more Indians are studying and working in health professions than ever before. Many acute health care shortages on reservations and in Native villages have been relieved. More than a dozen hospitals and clinics have been replaced, and others have been modernized or repaired. There are now 37 clinics serving Indians in urban areas. Despite this, Indians and Alaska Natives still suffer from a greater incidence and a wider range of diseases and afflictions than does the general population.

In terms of access to health care resources, more than half of all Indians and Alaska Natives are considered by the Indian Health Service to be 40 to 60 percent deficient. In other words, care for many types of ailments or injuries is simply not available.

To deal with these realities, H.R. 4567 continues the programs authorized under the 1976 act through fiscal year 1987, and provides some changes in program administration.

It continues the successful manpower programs.

It authorizes funding to raise the 184 tribes who are 40 to 60 percent deficient in access to health resources to a 20- to 40-percent deficiency level.

Because the Indian Health Service is experiencing a shortfall of approximately $15 million each year in contract care funding for health emergencies, the bill authorizes a catastrophic health fund as a distinct supplement to the IHS contract care budget.

It requires the administration to submit estimates for construction of the highest priority projects, to enable

Congress to make more informed decisions about funding hospital construction.

It requires similar information to be submitted as a basis for a 10-year program to reduce the health hazards caused by poor water and sanitation in Indian communities.

It provides continued authority for the urban Indian projects. These projects have proven extremely valuable and cost effective, and have managed to generate more than a dollar from supplemental sources for each Federal dollar appropriated.

Mr. Chairman, this bill provides new authority, identified as necessary by the GAO, to enable the Indian Health Service to protect the Federal investment in Indian community water and sanitation systems.

It also provides direction and new authority to coordinate Federal agency efforts to provide a program of education and prevention concerning juvenile alcoholism and drug abuse. Substance abuse is probably the most serious health and social problem affecting Indians and Natives, yet there is no specific overall effort to prevent it among vulnerable Indian young people. This program is a much-needed but modest beginning toward that end.

I am very pleased that H.R. 4567 continues a special program in Alaska to deal with a serious outbreak of hepatitis-B virus. This effort, in cooperation with State officials, must be continued to assure the health and safety of all Alaskans.

H.R. 4567 provides for an important change in the bureaucratic structure in the Department of Health and Human Services. It would raise the status of the Director of the Indian Health Service to a level equal to that of the Director of the Health Services and Resources Administration. I strongly support this move as a small but important step toward making the IHS more responsive to Indians and to the Congress. It would put the IHS Director in a better position to advocate the needs and special concerns of the Indian Health Service and would reduce some of the redtape which he must contend with in order to run the IHS. This change is supported by virtually all Indian tribes and Alaska Natives, and I believe it is long overdue.

Mr. Chairman, I believe that in view of the budgetary problems we face, H.R. 4567, as amended by H.R. 6039, is a fiscally responsible bill. The authorization levels can hardly be considered excessive. The bill authorizes $65.9, $68.5 and $71.6 million for fiscal years 1985, 1986 and 1987, or a total of $206 million. The existing authorization for these programs in fiscal 1984 alone is $202 million, of which $134 million was actually appropriated.

The responsibility of the United States to provide health services to Indians and Alaska Natives is clear and unique. As a matter of law we are committed to raising the health standards of these people to the highest possible level. If they are ever to reach parity in health status with the rest of the Nation, we must acknowledge the extent of their needs and the real costs of addressing them, including inflation. In considering these authorizations and future appropriations, we must recognize the fact that per capita appropriations to the IHS, in constant 1983 dollars, have declined from $906 to $707 since 1977. At the same time, per capita health expenditures for the general population have increased from $1,087 to $1,177.

H.R. 4567 will maintain a modest rate of increase in the effort to raise the health status of Indians and Natives. The program changes and authorizations it contains reflect extensive evidence compiled in hearings over the past 2 years. The bill enjoys overwhelming support from the Indian and Alaska Native community. It has broad bipartisan support and substantial, if less than total, support from the administration. H.R. 4567 is a sound and reasonable piece of legislation. I urge the House to pass it.

Mr. UDALL. Mr. Chairman, I yield 2 minutes to the gentleman from New Mexico [Mr. RICHARDSON].

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

Mr. Chairman, I rise in strong support of H.R. 4567, the Indian Health Care Amendments of 1984.

Mr. Chairman, in my home State of New Mexico, there are over 110,000 native American residents. My district has the highest native American population in the country; 96,000 native Americans in New Mexico's Third Congressional District depend on the Indian Health Service for their medical care. And while the leaders of the Pueblos and reservations in my district are working hard to improve the quality of life for their people, unemployment remains high and health care needs are many.

Based on the Constitution, numerous treaties, and statutes, and historical development, the United States has assumed a unique moral and legal obligation to provide health care services to the Indian people. Inherent in this obligation is the responsibility that Indians enjoy a health status comparable to that of the rest of the Nation.

Washington bureaucrats continue to tell the Indian people that health care is not a trust responsibility of the Federal Government. I strongly disagree with the callous, uncaring cost benefit approach of this administration to the health care needs of native Americans and its disregard for our constitutional obligations to the Indian people. I see extreme health care needs on the reservations, Pueblos and in the urban areas in my district—and I believe that human needs are more important than management objectives.

In recognition of the extreme deficiencies of health resources for Indian people, Congress enacted the Indian Health Care Improvement Act in 1976. New programs were established to increase the health professional manpower available to serve native Americans and to meet the growing medical needs of Indians in urban areas. While significant improvements in Indian health conditions have resulted from this action, the Indian tribes still suffer some of the most severe health conditions in this Nation.

The Indian Health Care Amendments of 1984 would continue the fight to improve Indian health care. This bill would reauthorize the programs and efforts in Indian health established by the Indian Health Care Improvement Act of 1976 for the next 3 years. It would make major improvements in Indian health care efforts by adding new provisions for catastrophic illnesses and medical disasters, Indian juvenile alcohol and drug abuse programs and urban Indian health care services. The bill would also require the Secretary of Health and Human Services to submit reports detailing the status of Indian health services, Indian health care needs and the special health care needs of urban Indians.

The Congress, by supporting the Indian Health Care Amendments of 1984, will be reaffirming its commitment to native Americans and will help to ensure that the U.S. Government honor its obligations and trust responsibilities to the Indian people. I urge my colleagues to join with me in strong support of this important legislation.

□ 1100

Mr. UDALL. Mr. Chairman, on our side I only have one further request. However, the gentleman from Minnesota is not here, and I reserve the balance of my time.

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

Mr. Chairman, I rise in support of H.R. 4567, the Indian Health Care Amendments of 1984.

This bill would revise and extend for 3 years the Indian Health Care Improvement Act. First enacted in 1976, and then reauthorized in 1980, this act was intended to raise the health status of American Indians and Alaska Natives to the highest possible level.

The act has helped to bring about some significant improvements in the health status of Indians. For example, the infant mortality rate for Indians has dropped from 17.7 deaths per 1,000 live births over the 1975 to 1977 period to 14.6 over the 1978 to 1980

period. The age-adjusted tuberculosis death rate for Indians dropped from 8.5 deaths per 100,000 population in 1976 to 3.6 in 1980.

But anyone who read Monday's Washington Post article on the Rosebud Reservation in South Dakota can see that much remains to be done to improve Indian access to quality health care.

According to the Post, the Indian Health Service operates a small, 29-bed hospital on the reservation to provide health services to the Rosebud Sioux Tribe. The hospital operating room has been closed since 1978, and critical cases must be airlifted to cities several hours away. Over the past 3 years, the hospital has hired over 200 temporary doctors to fill vacant positions at the hospital. A number of these physicians have been unqualified at best, and dangerous to their patients at worst.

It is evident that the quality and continuity of patient care have been seriously compromised at Rosebud by the lack of adequate resources. But even more disturbing is the fact that, according to the Indian Health Service, the Rosebud Sioux have fewer resource requirements than 156 other tribes elsewhere throughout the country. You have to ask yourself, how adequate is the health care that members of those more needy tribes are receiving?

In part because of such widespread resource deficiencies, the health status of Indians remains below that of the general U.S. population. The age-adjusted Indian death rate for tuberculosis is about six times greater than for the general U.S. population. For alcoholism, the Indian mortality rate is five times greater than the general U.S. rate.

These differences in health status are simply not acceptable. We as a nation have a moral obligation to the Indian people to do what we can to raise their health status to at least the level of the U.S. population. This bill provides a framework for meeting this obligation.

H.R. 4567 would extend the existing Indian health manpower authorities that are the source of much-needed physicians and other health professionals for the Indian people.

The bill would make major improvements in the procedures for building and renovating Indian health and sanitation facilities.

The bill would extend the successful Urban Indian Health Program, which provides critical health and referral services to Indians no longer living on or near reservations.

The bill would reaffirm congressional support for Indian control of their own health programs, by placing tribal contractors on an equal footing with programs operated directly by the Indian Health Service with regard to funding, eligibility, and other matters. These provisions are of particular importance in California, where all health services are delivered by the tribes themselves under contract with the IHS.

I want to assure those Members who are concerned about the bill's fiscal impact that it is not, by any stretch of the imagination, a "budget buster." According to CBO, this bill provides for new budget authority of only $208 million over the next 3 years. Given the unmet health needs in many Indian communities, this is a very modest sum indeed. In fact, it represents a reduction from the authorization levels now in the Indian Health Care Improvement Act.

I want to emphasize that the text of the bill now before the House represents the joint recommendations of both of the committees that considered these issues in detail. The provisions contributed by the Energy and Commerce Committee are explained in our committee's report.

The bill now before the House does not contain a provision, reported by the Energy and Commerce Committee, intended to make the allocation of IHS funds among the tribes in various States more equitable. Instead, the bill would address the inequitable distribution of Indian health resources, which has severely disadvantaged tribes in California, Utah, and other States, through a special Indian health care improvement fund.

This bill has the support of all major national Indian organizations as well as the major tribal and nontribal groups in my own State of California, including the California Rural Indian Health Board, the California Urban Indian Health Council, and Riverside-San Bernardino County Indian Health, Inc.

I believe this is a sensible, necessary, and fiscally responsible piece of legislation that Members on both sides of the aisle can support. I urge you to vote "aye" on final passage.

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

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

Mr. Chairman, I whole-heartedly support simple reauthorization of the Indian Health Care Improvement Act. While improvements in the health status of Indians have been made, there continues to be a disparity betweeen the health status of Indians and that of the general population. Although Indian health services are authorized by other provisions of law, the Indian Health Care Improvement Act is essential for a number of necessary programs including manpower, and the use of the buy Indian authority for construction.

However, H.R. 6039, which I understand will be introduced as an amendment in the nature of a substitute to H.R. 4567, contains several provisions which make substantial changes in the Indian Health Care Improvement Act. I believe that a number of these changes are counterproductive to the cause of improved health care for Indians.

Section 8 of the bill, which requires a reorganization of the Indian Health Service, is ill conceived and inappropriate. Removing the Indian Health Service from the Health Resources and Services Administration would not be in the best interests of the Indian people. The Indian Health Service should remain a component of the Health Resources and Services Administration [HRSA], it is the largest bureau within HRSA and draws a major share of that agency's administrative support. HRSA also administers most of the health services delivery programs of the Department of Health and Human Services, including the National Health Service Corps, many of whose members serve in the Indian Health Service. In fact, during the last 2 fiscal years, over 65 percent of the Indian Health Service physicians were provided by the National Health Service Corps Program. Over 100 scholarship obligated physicians were assigned to the Indian Health Service last year and a similar number are expected to be assigned to the Service this fall. I think it would be very unfortunate if the existing working relationship among these programs was disturbed. I worry that it would impede the progress of the Indian Health Service.

The other provision in section 8 requires independent submission of the IHS budget to the President for review and submission to Congress. The Indian Health Service budget should be processed according to the normal budget procedure where competing needs can be evaluated and considered judgments made. Although the Indian Health Service is an extraordinarily important bureau within the Department of Health and Human Services, it should not be singled out for special treatment in assessing the resources it needs to function well.

I sincerely hope that the reorganization provision as well as the budget bypass provision of section 8 of H.R. 6039 can be modified if and when we go to conference on this legislation.

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

Mr. WAXMAN. Mr. Chairman, I yield 5 minutes to the very distinguished gentleman from South Dakota [Mr. DASCHLE].

Mr. DASCHLE. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in support of H.R. 4567, the Indian Health Care Improvement Act Amendments, and commend Chairmen UDALL and WAXMAN and their staffs for their diligent and

successful efforts in working out a bill acceptable to both the Interior and Energy and Commerce Committees.

The Indian Health Care Improvement Act is like a partially filled glass of water. It is half full but also half empty. The health of Indian people has certainly improved since its enactment in 1974. The goal of that law was to bring the level of health of Indian people up to par with the rest of the population within 7 years. While that goal has not been met, important gains have been made in some areas. The incidence of tuberculosis and the infant mortality rate among Indian people have been reduced. Nevertheless, the tuberculosis rate is three times higher and the infant mortality rate is 20 percent higher among Indian people than the rest of the population.

Another area where improvement can be directly tied to the Indian Health Care Improvement Act is the increasing number of Indian people receiving training in medial professions. There are now 3,221 Indian nurses and 720 Indian doctors working at IHS facilities. This is a dramatic improvement, but there is still a long way to go. There are twice as many doctors and nurses available to non-Indians than are available to the Indian population. The vacancy rate at the Indian Health Service for doctors and nurses is very high, with the Aberdeen area having a 50-percent vacancy rate for both doctors and nurses. I am hopeful that the tribal colleges can play an increasingly important role in the training of Indian health professionals. The Oglala Lakota College on the Pine Ridge Reservation has trained 50 percent of the nurses currently at the Pine Ridge and Rosebud Hospitals.

Without a conscious and visible effort such as the mandates in the Indian Health Care Improvement Act these and other areas of improvement in Indian health would not have taken place.

Examples where the glass is certainly empty are diseases among Indian people associated with poverty, diseases most of the non-Indian population has not had to contend with for many years. There have been recent outbreaks of bubonic plague among Southwest Indians and hepatitis-B in Alaska. Another disease which has not even come close to having the proper emphasis is alcoholism, a disease with complex causes, some of which certainly are the despair resulting from extreme poverty and joblessness.

I have seen the administration's official position on the legislation before us today, and it is most disappointing. It does not reflect what I know is the level of understanding and concern of many people at the Indian Health Service. Only the Office of Management and Budget, with an obvious lack of knowledge about these subjects, would characterize the modest steps contained in this bill relating to juvenile Indian substance abuse as "unnecessary and uncalled for." I highlight this portion of the administration's position statement because the juvenile alcohol and drug provisions are the ones in which I have been the most intensely involved. Substance abuse, ranging from lysol, to drugs, to alcohol, is seen more prevelant among Indian youth than the adolescent population as a whole. And at the same time, there are fewer financial resources available to help fight this problem in Indian country. States generally do not use their already inadequate funds for tribal alcohol and drug programs, feeling that they are a Federal responsibility. There are, in addition, few private funds available among a population where unemployment levels reach 80 and 90 percent. The Federal Government has made very little effort in trying to help prevent and arrest alcohol and drug abuse among Indian people. The Warm Springs Tribe, home of Assistant Secretary for Indian Affairs, Ken Smith, has documented that 70 percent of their contract health care costs are alcohol related. The amount of authorization in this bill, by the way, is $1.5 million for the training of education personnel in the area of alcohol and drug abuse.

Another area of administration objection to this bill is the catastrophic fund provision. There was a tragedy in my area of the country last year which illustrates the need for this fund. Eight children at the Santee Reservation in Nebraska were severly burned in a propane explosion. The cost paid by IHS to treat these children was $200,000. This $200,000 represented 22 percent of the health care budget for the Wagner Service Unit area which included the Santee and Yankton Tribes and a portion of the Rosebud Reservation. The care for these children must continue, and the total bill will be anywhere from $500,000 to $1 million. Other similar catastrophies, some involving dialysis, have occurred which have in one fell swoop depleted IHS funds for a particular tribe, thus denying many tribal members health care services.

Finally, I would like to express my support for the elevation of IHS within the Department of Health and Human Services. Just as it took a highly visible and conscious decision in 1974 to improve Indian health by enacting the Indian Health Care Improvement Act, the elevation of IHS can serve a similar purpose. IHS should not be buried under layers of bureaucracy which do not have much knowledge or sensitivity to Indian health issues. Raising the position of the Indian Health Service within the Department of Health and Human Services will improve the chances that the health of Indian people, now the worst of any people in the Nation, receives the constructive attention it deserves.

□ 1110

Mr. YOUNG of Alaska. Mr. Chairman, I yield such time as he may consume to the gentleman from New Mexico [Mr. LUJAN].

Mr. LUJAN. I thank the gentleman from Alaska for yielding to me.

Mr. Chairman, let me congratulate those who have worked so hard on this legislation. I am very much in support of this legislation, and it shows the commitment that this Congress has, and particularly those members of the Committee on Interior and Insular Affairs, the chairman who has brought the entire Indian affairs question into the full committee to give it that visibility. I think that is very good. The commitment that is shown through this legislation to proper health for our Indian citizens is correct and proper.

However, Mr. Chairman, we are judged so many times by the old philosphy of how much money we put into a program. I am very concerned throughout the Congress, not just on this legislation that there is very little oversight to look at the quality of the program. It seems that every time we talk about a program, all that we discuss is how much we put into it last year and how much we are going to put into it this year. It is taken for granted that if we put in more money, then we are great supporters of the particular program, and if we do not think it ought to have all of the money that is requested that, therefore, somehow we are opposed to quality health care or whatever the program may be.

Mr. Chairman, that is the case throughout the health care industry, not only in the health programs for our Indian citizens. But it is time to look at the quality of those programs. Are they really delivering the services for the amount of money that they are spending?

In the Medicare-Medicaid field everyone knows that it has gotten so expensive that we have to look at cost containments, and there are several things going on in that area that I am pleased to see, but very, very little is being done in this particular area.

Mr. Chairman, I bring those things up only to point out that more of that needs to be done. As a matter of fact, this Congress has been remiss in monitoring the various programs and seeing that we are getting our money's worth.

Having said that, and not knowing whether we are getting the maximum return for what we are putting in it because of the shortcomings in Indian health programs, I do intend to support this legislation.

Mr. YOUNG of Alaska. Mr. Chairman, I yield 5 minutes to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. I thank the gentleman from Alaska for yielding this time to me.

Mr. Chairman, I commend the key members of the two committees involved in this legislation. I stand in strong support of the legislation.

I would like to associate myself with the remarks in two areas that my neighbor, the gentleman from South Dakota [Mr. DASCHLE] spoke about, first the catastrophic health insurance fund that would be established, an allocation, an earmarking of funds for handling those catastrophes that occasionally appear. Unfortunately, the catastrophe that brought my attention to a deficiency in the current programs came in my own district.

The gentleman from South Dakota mentioned the eight children involved in a propane fire from the Santee Sioux Reservation. It was for that reason that I brought this problem of fund allocation, not to mention the human suffering, to the attention of the Committee on Interior and Insular Affairs, and I very much appreciate their dealing with this problem very effectively in this legislation.

The Wagner Unit which received funds for this also covers a variety of Indian tribes in the State of South Dakota, including the Rosebud Sioux Reservation. One really only has to look at the newspaper accounts in the Washington Post during this week about conditions on the Rosebud Sioux Reservation in South Dakota to realize that life on many of our reservations has become little more than a relentless effort to survive.

Jobs are scarce or nonexistent, housing in many cases in desperately inadequate, and sadly enough, the biggest health and social problem on the reservations today is typically alcoholism. Some estimates claim that Indian people suffer from the disease 18 times more frequently than non-Indian people. Some Indian children of 9 or 10 years of age use alcohol. Many are habitual users by the age of 14.

During the last 2 weeks, this Member visited a school on a Indian reservation. According to the school superintendent, 30 children out of a special education population of 140, mentally or physically handicapped, are victims of fetal alcohol syndrome. This is out of a total population of 440 children.

In addition, he estimates that there are many more children in the school suffering from this syndrome who have not yet been accurately diagnosed. This means that almost certainly at least 25 percent of the special education students in that school are suffering from a condition that, with education, could have been prevented. But for all of these children, their life prospects, already bleak, are really almost hopeless. The Indian communities where their children live are losing the battle against alcohol and drug abuse. They are losing their hopes and dreams for a better future—their children.

I commend the committee for the special attention given to the problems of juvenile alcohol and chemical abuse. I think it is extremely important that we concentrate our efforts on this, and I also call the attention of my colleagues to a more comprehensive effort in the form of a bill recently introduced by myself and the gentleman from South Dakota [Mr. DASCHLE].

Again, my commendations to the committee for their involvement in this legislation and for the legislation they have presented to us.

Mr. VENTO. Mr. Chairman, I rise in strong support of H.R. 4567, the reauthorization of the Indian Health Care Improvement Act. As a member of the Interior and Insular Affairs Committee, and a sponsor of this bill, I am pleased that the House is considering this vital legislation. H.R. 4567 is an affirmation of our commitment to address the severe health care problems that Indians face. This legislation is the means by which we can assure that Indians have the quality health care they need and deserve.

The unique legal relationship between the United States and Indians has, in the past, been a restraint which precluded both reservation and urban Indians from making use of national health care resources on the same basis as other citizens. In 1976, Congress enacted into law the original Indian Health Care Improvement Act to upgrade the depressing health status that Indians as a people faced. While much has been accomplished in meeting the health care needs of Indians, tremendous work still remains in bringing the Indian community to an acceptable health care level. Today, Indian people still suffer the lowest health status of any ethnic group in the country. The Indian Health Service cites the average age of death for Indians at 47.2 years. Indian infants are twice as likely to die before their first birthday as compared to the general public.

Representing an urban district, I have seen first hand the health care problems that urban Indians face. That is why I have taken a special interest in title V, the Urban Indian Health Program. According to the 1980 census, over 50 percent of the American Indian population now resides in urban communities across the Nation. It is only in the last decade that we have begun to comprehensively address the health needs of an urban group who has fallen through the safety net available to others in the community. Currently, there are 37 urban Indian health programs located in 19 States, which provide a wide range of health services. These urban health programs have demonstrated outstanding success in improving the overall health status of their client population. The funds and support services available under title V have provided a critical base and serve as a catalyst for funds and support from other Federal, local, and private sources.

One of the tragedies in the last 4 years has been the Reagan administration's attempts to zero out the modest Federal funding for title V, even as their budget requests readily admit that the urban Indian population is medically underserved. Congress has resisted these efforts by recognizing the value of the Urban Indian Health Program.

The comprehensive health care system embodied in H.R. 4567 is vital to our efforts to secure for our Indian citizens, as promised in our treaties and statutes, a health status comparable to the rest of the Nation. I commend the legislation to the House and urge its passage.

● Mr. ROTH. Mr. Chairman, I rise in support of H.R. 4567, the Indian health care amendments as reported. This legislation reauthorizes vital health services made available to American Indians.

Congress enacted the Indian Health Care Improvement Act in 1976 to authorize health programs specifically targeted to improve the health status of American Indians. Despite some improvements in Indian health care, it is apparent that the majority of Indians continue to live in an environment characterized by inadequate and understaffed health facilities, improper waste disposal and water supply systems, and continuing dangers of deathly or disabling conditions. As a result, the health status of Indians remains far below that of the general public.

The Indian Health Care Improvement Act expires in fiscal year 1984. We as a nation must now continue to support a policy which seeks to gurantee American Indians adequate health care. The United States has assumed a unique legal and moral obligation to provide health services to Indian people. Inherent in this obligation is the responsibility to ensure that Indians enjoy a health status comparable to that of the rest of the Nation. Unfortunately, we have not yet met that responsibility.

In consideration of the reauthorization of the Indian Health Care Improvement Act, we must examine closely the attempt made to improve the operation of the program so that the original goal of the act of elevating the health status of Indians to a

level comparable to the rest of the Nation can be more nearly approached. This goal can be met with the implementation of this bill.

One important step in achieving this goal will be made by elevating the Indian Health Service from a bureau within the Health Resources and Services Administration to a major agency within the Public Health Service, allowing IHS to submit its annual budget directly through the President to Congress, bypassing Health and Human Services [HHS] and the Office of Management and Budget [OMB]. Under this plan, an Assistant Secretary for Indian Health would administer all Indian health programs and report directly to the Secretary. This action will clearly result in improvement of the ability of IHS to meet and discharge its obligations, and it will signal to the Indian community that we are serious about meeting our responsibility.

According to the Indian Health Service, there are currently an estimated 1.5 million American Indians in the United States. In Wisconsin the American Indian population is 32,026 with the Indian Health Service providing health care for 18,941 statewide. The IHS in Wisconsin operates six full-time health service centers and four health service stations. All of these health facilities are operated by the tribes. I strongly support our continuing commitment in authorizing these facilities and upholding our obligation to provide adequate Indian health care.

Mr. Chairman, we need to pass this legislation today. Let us continue this Nation's efforts in achieving the original goal of this vital program.●

● Mr. McCAIN. Mr. Chairman, I am pleased to rise in strong support of H.R. 4567, the Indian Health Care Amendments of 1984.

As the distinguished chairman of the Interior Committee has stated, this legislation has been the subject of extensive hearings in three committees of the House and Senate over the past 2 years.

The record of those hearings shows that substantial progress has been made in the status of Indian health as a result of the programs and efforts established under the Indian Health Care Improvement Act of 1976 and the 1980 amendments to it.

The record also shows that Indian health continues to lag well behind that of the general population. Indeed, recent statistics indicate that on more than half the 265 reservations in the continental United States and in Alaska Native villages, native Americans are 40 to 60 percent deficient in terms of their access to a standard measure of health care resources. In my State of Arizona, with its large Indian population, 17 of 20 reservations rate a 40 to 60 percent deficiency.

The Indian health scholarship programs of the 1976 act have enabled hundreds of young Indians to obtain education and skills in various health professions. Many now work on or near reservations in IHS facilities. Many more are needed, however, to eliminate shortages of health professionals that are common to IHS facilities, especially in remote reservation areas.

As a result of title II appropriations, many health service backlogs for surgeries, such as for otitis media, an inner ear disease, and the incidence of such diseases as tuberculosis, have been eliminated or reduced. However, statistics reveal Indian people continue to suffer from a variety of environmentally related diseases and other afflications at rates well above those of the general population. Alcoholism, which is an economic and social problem as well as a health problem, remains the scourge of Indian society.

Since 1976 more than a dozen IHS hospitals have been upgraded to meet JCAH accreditation standards. Several new Indian hospitals and clinics have been built. Other facilities have been modernized, repaired, and staffed with Medicare and Medicaid funds available to IHS as a result of the 1976 act. Despite these improvements, 9 of 48 IHS hospitals still are unable to meet accreditation standards, and many of the more than 200 IHS health stations and clinics are understaffed and/or located in substandard structures.

In urban areas, where roughly half of all native Americans now live, Indians have experienced considerable difficulty gaining access to health care. Under the 1976 act, 37 urban clinics provide a wide range of direct and indirect care and help Indians obtain access to existing health care resources. In Phoenix, as in other cities, the Urban Indian Program does yeoman work in meeting the needs of so-called urban Indians.

If we are to achieve the goals of the 1976 act—to raise the health status of Indian people to a level of parity with the general population and to increase Indian involvement in their health care system—then Congress has a duty to continue the efforts begun under the Health Care Improvement Act. That is the purpose of the legislation before us.

H.R. 4567 is a sound, fair, reasonable bill that represents a responsible effort to fulfill this Nation's legal and moral obligations to improve the health of Indian people. It enjoys bipartisan support in this House and in the other body. It has unanimous support from Indians and Indian tribes around the country. The administration, with some objections to particular provisions, supports reauthorization. H.R. 4567 is good legislation and I urge my colleagues to support it.●

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

Mr. UDALL. Mr. Chairman, we have no more speakers, and I yield back the balance of my time.

Mr. BLILEY. Mr. Chairman, I yield back the balance of my time.

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

The CHAIRMAN. Pursuant to the rule, the text of H.R. 6039 shall be considered as an original bill for the purpose of amendment under the 5-minute rule in lieu of the amendments recommended by the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce, and each section of said substitute shall be considered as having been read.

The Clerk will designate section 1.

The Clerk proceeded to designate section 1.

Mr. UDALL. Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The amendment in the nature of a substitute consisting of the text of H.R. 6039 is as follows:

H.R. 6039

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Indian Health Care Amendments of 1984".

(b) Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Indian Health Care Improvement Act (25 U.S.C. 1601 et. seq.).

SEC. 2. Section 4 is amended by striking out subsections (i), (j), and (k).

SEC. 3. (a) Subsection (c) of section 102 is amended to read as follows:

"(c) For the purposes of this section, there are authorized to be appropriated $550,000 for fiscal year 1985, $600,000 for fiscal year 1986, and $650,000 for fiscal year 1987.".

(b) Section 103 is amended by—

(1) inserting "(1)" after "SEC. 103. (a)", redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adding at the end thereof the following new paragraph:

"(2) The Secretary shall not deny scholarship assistance to an eligible applicant under this section solely on the basis of an applicant's scholastic achievement where such applicant has been admitted to or maintained good standing at an accredited institution.";

(2) inserting before the period at the end of subsection (c) the following: "of a grantee while attending school full time"; and

(3) amending subsection (d) to read as follows:

"(d) For the purposes of this section, there are authorized to be appropriated $4,000,000 for fiscal year 1985, $4,700,000 for fiscal year 1986, and $5,400,000 for fiscal year 1987.".

(c) Section 104 is amended to read as follows:

"INDIAN HEALTH SCHOLARSHIPS

"SEC. 104. (a) In order to provide health professionals to Indian communities, the Secretary, acting through the Service and in accordance with this section, shall make scholarship grants to Indians who are enrolled full time in schools of medicine, osteopathy, dentistry, veterinary medicine, nursing, optometry, public health, and allied health professions. Such scholarships shall be designated Indian Health Scholarships and shall be made in accordance with section 338A of the Public Health Service Act (42 U.S.C. 254l) except as provided in subsection (b) of this section.

"(b)(1) The Secretary, acting through the Service, shall determine who shall receive such scholarships and shall determine the distribution of such scholarships among such health professions on the basis of the relative needs of Indians for additional service in such health professions.

"(2) An individual shall be eligible for a scholarship under subsection (a) in any year in which such individual is enrolled full time in a health professions school referred to in subsection (a).

"(3) The active duty service obligation prescribed under section 338B of the Public Health Service Act (42 U.S.C. 254m) shall be met by a recipient of an Indian Health Scholarship by service in the Indian Health Service, including service under a contract under the Indian Self-Determination and Education Assistance Act (Public Law 93-638); in a program assisted under title V of this Act; or in the private practice of his profession if, as determined by the Secretary, in accordance with guidelines promulgated by him, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

"(c) For the purpose of this section, the term 'Indian' has the same meaning given that term by subsection (c) of section 4 of this Act, including all individuals described in clauses (1) through (4) of that subsection.

"(d) For the purposes of this section, there are authorized to be appropriated $6,100,000 for fiscal year 1985, $7,000,000 for fiscal year 1986, and $8,100,000 for fiscal year 1987.".

(d) Section 105(a) is amended by—

(1) inserting "(1)" after "SEC. 105. (a)" and adding at the end thereof the following paragraph:

"(2) No stipend may be paid to any person under sections 103 and 104 of this title while such person is employed under this section."; and

(2) amending subsection (d) to read as follows:

"(d) For the purposes of this section, there are authorized to be appropriated $300,000 for fiscal year 1985, $350,000 for fiscal year 1986, and $400,000 for fiscal year 1987.".

SEC. 4. (a) Section 201 is amended to read as follows:

"HEALTH SERVICES

"SEC. 201. (a)(1) To further implement the national policy of raising the health status of Indians to a zero level of deficiency as defined in subsection (c) by eliminating backlogs in health care services and meeting unmet Indian health needs as soon as possible and in an equitable manner, the Secretary is authorized to expend, through the Service, over the three-year period beginning with fiscal year 1985 the amounts authorized to be appropriated by subsection (e) of this section. Funds requested under this section shall be separately stated in the Service budget request as submitted to Congress under section 1105 of title 31, United States Code, and funds appropriated under this section shall not be used to offset or limit appropriations made to the Service under authority of the Act of November 2, 1921 (25 U.S.C. 13) or any other law. Funds appropriated under this section in any fiscal year shall be included in the base budget of the Service for the purpose of determining appropriations under this section in subsequent fiscal years.

"(2) Nothing in this section is intended to diminish the primary responsibility of the Service to eliminate existing backlogs in unmet health care needs of the Service, nor is it intended to discourage the Service from undertaking additional efforts to achieve parity among tribes.

"(b)(1) Funds appropriated under this section shall be expended to augment the ability of the Service to meet the following health service responsibilities—

"(A) clinical care (direct or indirect);

"(B) preventive health;

"(C) dental care (direct or indirect);

"(D) mental health, including community mental health services, inpatient mental health services, dormitory mental health services, therapeutic and residential treatment centers, and training of traditional Indian practitioners;

"(E) emergency medical services;

"(F) treatment and control of, and rehabilitative care related to, alcoholism among Indians;

"(G) accident prevention programs;

"(H) community health representative programs; and

"(I) maintenance and repair.

"(2) Where any funds allocated to a service unit are used for a contract under the Indian Self-Determination and Education Assistance Act, not more than 15 percent of such funds shall be used for health planning, training, technical assistance, and other administrative support functions.

"(3) To the extent that all or a portion of the funds appropriated under subsection (e) are required to raise service units which are below a Level II deficiency, as defined in subsection (c), to such level, such funds shall not be available for allocation to service units at or above such level. Funds appropriated under this section shall be allocated on a service unit basis and apportionment of a service unit's allocation of funds among the health service responsibilities listed in paragraph (1) shall be as determined by the Service and the affected Indian tribe or tribes.

"(c)(1) Within sixty days of the date of enactment of the Indian Health Care Amendments of 1984, the Secretary shall submit to the Congress the current health services priority system report of the Service for each service unit including units serving newly recognized or acknowledged tribes. Such report shall contain—

"(A) the methodology for determining tribal health resources deficiencies; the level of health resources deficiency for each service unit; the amount of funds necessary to raise all service units below a Level II deficiency to a Level II deficiency; the amount of funds necessary to raise all service units below a Level I deficiency to a Level I deficiency; and the amount of funds necessary to raise all service units to a zero level of deficiency; and

"(B) an estimate of—

"(i) the amount of health service funds appropriated under the authority of this or any other Act for the preceding fiscal year which is allocated to each service unit or comparable entity; and

"(ii) the number of Indians eligible for health services in each service unit.

"(2) For purposes of this section, health resources deficiency levels shall be defined as follows:

"Level I—0 to 20 percent deficiency,

"Level II—21 to 40 percent deficiency,

"Level III—41 to 60 percent deficiency,

"Level IV—61 to 80 percent deficiency, and

"Level V—81 to 100 percent deficiency.

"(3) The Secretary shall establish by regulation procedures which allow any Indian tribe to petition the Secretary for a review of any determination of the health resources deficiency level of the service unit through which such tribe receives health services.

"(d) Upon enactment of the Indian Health Care Amendments of 1984, the Secretary, acting through the Service, shall take all necessary action, in cooperation with each Indian tribe, to bring current the tribal specific health plans which were developed as a part of the plan required by section 703 of this Act and which formed the basis for such plan in response to the requirements of section 701 of this Act. These plans shall be based upon the methodology submitted under subsection (c), may be further modified through tribal consultation, and shall form the basis for the health services priority system report to be submitted by the Secretary for fiscal years 1986 and 1987. Such reports shall be submitted to the Congress not more than thirty days after the submission of the annual budget for such fiscal years to the Congress by the President.

"(e) For each of the three fiscal years beginning with fiscal year 1985, there are authorized to be appropriated for the purposes of this section such sums as may be necessary to raise all service units to at least a Level II deficiency on the health services priority system. Any funds appropriated under this subsection shall be designated as the Indian Health Care Improvement Fund.

"(f) The Secretary, acting through the Service, shall expend directly or by contract, including contracts under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), not less than 1 percent of the funds appropriated under subsection (e) for research in the areas of Indian health care set out in subparagraphs (A) through (G) of subsection (b)(1).".

(b) Title II is amended by adding at the end thereof the following new section:

"CATASTROPHIC HEALTH

"SEC. 202. (a) There is established an Indian Catastrophic Health Emergency Fund to be administered by the Secretary, acting through the Service, solely for the purpose of meeting the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses

falling within the responsibility of the Service. The fund shall be administered by the central office of the Service and shall not be allocated, apportioned, or delegated on a service unit or area office basis. Funds appropriated under subsection (c) shall not be used to offset or limit appropriations made to the Service under authority of the Act of November 2, 1921 (25 U.S.C. 13) or any other law. No part of the fund or its administration shall be subject to contract or grant under any law, including the Indian Self-Determination and Education Assistance Act (Public Law 93-638).

"(b) The Secretary shall, through the promulgation of regulations consistent with the provisions of this section—

"(1) establish a definition of disasters and catastrophic illnesses for which the cost of treatment, whether provided under contract or directly by the Service, would qualify for payment from the fund; and which shall provide that a service unit shall not be eligible for reimbursement for the cost of treatment from the fund until its cost of treating any victim of such catastrophic illness or disaster shall have reached a certain threshold cost which the Secretary shall establish at not less than $10,000 or not more than $20,000;

"(2) establish a procedure for the reimbursement of service units or facilities rendering treatment or, whenever otherwise authorized by the Service, the reimbursement of non-Service facilities or providers rendering treatment;

"(3) establish a procedure for payment from the fund where the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service;

"(4) establish a procedure that will assure that no payment shall be made from the fund to any provider to the extent that the provider is eligible to receive payment for the treatment from any other Federal, State, local, or private source of reimbursement for which the patient is eligible or by which the patient is covered.

"(c) There is authorized to be appropriated for the purposes of this section $12,000,000 for fiscal year 1985 and in fiscal years 1986 and 1987 such sums as are necessary to maintain the fund at $12,000,000. Funds appropriated under this section shall remain available until expended.

"(d) The Secretary shall report to Congress on the operation of the fund on January 1, 1987. Such report shall include—

"(1) the number and nature of disasters and catastrophic illnesses for which reimbursement was sought;

"(2) the costs associated with these disasters or illnesses;

"(3) the amounts reimbursed by the fund in connection with such illnesses and disasters;

"(4) the effect of the fund on the ability of the service unit to meet the health needs of their Service populations; and

"(5) the Secretary's recommendations regarding the future operation of the fund.".

SEC. 5. Section 301 is amended to read as follows:

"HEALTH FACILITIES

"SEC. 301. (a)(1) Within sixty days after the date of enactment of the Indian Health Care Amendments of 1984, the Secretary shall submit to the Congress a report which shall set forth the current health facilities priority system of the Service and which shall include the planning, design, construction, or renovation needs for the ten top priority inpatient care facilities and the ten top priority ambulatory care facilities together with required staff quarters, the justification for such priority listings, and the projected cost of such projects. The report shall also include the methodology adopted by the Service in establishing priorities under its health facilities priority system.

"(2)(A) Within thirty days of the submission of the annual budget to the Congress by the President for fiscal years 1986 and 1987, the Secretary shall submit to the Congress a report which complies with the requirements of paragraph (1).

"(B) In preparing such report in such fiscal years, the Service shall consult with tribes and tribal organizations including those tribes or tribal organizations operating health programs or facilities with funds from the Service under the Indian Self-Determination Act, and shall review the needs of these tribes and tribal organizations for inpatient and outpatient facilities, including their needs for renovation and expansion of existing facilities.

"(3) The Service shall use the same criteria for fiscal years 1985, 1986, and 1987 to evaluate the needs of facilities operated under contract under the Indian Self-Determination Act as it uses to evaluate the needs of facilities operated directly by the Service in such fiscal years.

"(b)(1) All funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13) for the planning, design, construction, or renovation of health facilities for the benefit of a tribe or tribes may be used for the expenses of such activities incurred by such tribe or tribes under contracts or grants under the Indian Self-Determination Act. Title to any facility constructed under a grant under this section shall be in the United States.

"(2) Any tribal contractor or grantee shall expend such funds for the purpose for which appropriated pursuant to rules and regulations established by the Secretary for contracting and procurement.

"(c) Prior to the expenditure of, or the making of any firm commitment to expend, any funds appropriated for facilities planning and design, construction, or renovation under the Act of November 2, 1921 (25 U.S.C. 13), the Secretary, acting through the Service, shall—

"(1) consult with any Indian tribe that would be significantly affected by such expenditure for the purpose of determining and, wherever practicable, honoring tribal preferences concerning size, location, type, and other characteristics of any facility on which such expenditure is to be made, and

"(2) ensure, wherever practicable, that such facility, not later than one year after its construction or renovation, shall meet the standards of the Joint Commission on Accreditation of Hospitals.

"(d) The Secretary shall not close, under any existing authority, any Service hospital or other outpatient health care facility or any portion thereof unless he has submitted to the Congress at least one year prior to the planned closure date an evaluation of the impact of the proposed action which shall include the following factors—

"(1) accessibility of alternative health care resources for the service population;

"(2) cost effectiveness of the closure;

"(3) quality of health care to be provided to the service population after closure;

"(4) availability of contract health care funds to maintain current levels of service; and

"(5) the views of the Indian tribe or tribes served by such facility on the planned closure.

"(e)(1) Notwithstanding any other law, an Indian tribe may acquire and expend funds, other than funds appropriated to the Service, for major renovation and modernization, including planning and design for such renovation and modernization, of Service facilities, including facilities operated under contract under the Indian Self-Determination and Education Assistance Act (Public Law 93-638).

"(2) Any project undertaken under paragraph (1) shall be subject to the approval of the Area Director and shall—

"(A) not require or obligate the Service to provide any additional staff or equipment; and

"(B) not divert Service funds from a higher priority project on the current health facilities priority system as provided in subsection (a).

"(3) Any tribe undertaking a project under paragraph (1) shall have full authority to administer such project, but shall do so in accordance with applicable rules and regulations promulgated by the Secretary governing construction or renovation of Service health facilities.".

SEC. 6. Section 302 is amended to read as follows:

"SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES

"SEC. 302. (a)(1) Congress finds that—

"(A) the provision of safe water supply and sanitary sewage and solid waste disposal systems is primarily a health consideration and function;

"(B) Indian people suffer an inordinately high incidence of disease, injury, and illness directly attributable to the absence or inadequacy of such facilities;

"(C) the long-term cost to the United States of treating and curing such disease, injury, and illness is substantially greater than the short-term cost of providing such facilities and other preventive health measures;

"(D) many Indian homes and communities still lack safe water supply and sanitary sewage and solid waste disposal facilities;

"(E) it is in the interest of the United States and it is the policy of the United States that all Indian communities and Indian homes, new and existing, be provided with safe and adequate water supply and sanitary sewage and solid waste disposal facilities as soon as possible; and

"(2) Congress reaffirms the primary responsibility and authority of the Service to provide the necessary sanitation facilities and services as provided in section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a).

"(b) Beginning in fiscal year 1985, the Secretary, acting through the Service, shall develop and begin implementation of a ten-year plan to provide safe water supply and sanitary sewage and solid waste disposal facilities to existing Indian homes and communities and to new and renovated Indian homes.

"(c)(1) Within sixty days of the date of the enactment of the Indian Health Care Amendments of 1984, the Secretary shall report to Congress on the Service's sanitation facilities priority system. The Secretary, in preparing such report, shall uniformly apply the methodology for determining sanitation deficiencies to all Indian tribes. Such report shall identify the methodology for determining sanitation deficiencies; the level of deficiency for each Indian community or tribe; the amount of funds necessary to raise all communities to a level I deficiency; and the amount of funds neces-

sary to raise all communities or tribes to a zero level of deficiency. For the purpose of such report—

"(A) a level I deficiency means a sanitation system which complies with all applicable water supply and pollution control laws and regulations in which the defined deficiencies consist of routine replacement, repair, or maintenance needs;

"(B) a level II deficiency means a sanitation system which complies with all applicable water supply and pollution control laws and regulations in which the defined deficiencies consist of capital improvements necessary to improve the facilities to meet the needs of the communities for domestic sanitation facilities;

"(C) a level III deficiency means a sanitation system which has an inadequate or partial water supply and sewage disposal facility which does not comply with applicable water supply and pollution control laws and regulations or which has no solid waste disposal facility.

"(D) a level IV deficiency means a sanitation system which lacks either a safe water supply system or a sewage disposal system; and

"(E) a level V deficiency means the absence of a safe water supply and sewage disposal system.

Any tribe or community which lacks the operation and maintenance capability to meet pollution control laws and regulations shall be deemed to have a level III deficiency;

"(2)(A) Within thirty days of the submission of the annual budget to the Congress by the President for fiscal years 1986 and 1987, the Secretary shall submit a report to the Congress which meets the requirements of paragraph (1).

"(B) In preparing such report in such fiscal years, the Secretary, acting through the Service, shall consult with tribes and tribal organizations including those operating health care programs or facilites under contracts under the Indian Self-Determination and Education Assistance Act to determine the sanitation needs of each tribe.

"(d)(1) To clarify the powers conferred by subsection (a) of section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a) the Secretary, acting through the Service, is authorized to provide—

"(A) financial and technical assistance to Indian tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities,

"(B) ongoing technical assistance and training in the management of utility organizations, and

"(C) operation and maintenance assistance for and emergency repairs to tribal sanitation facilities when necessary to avoid a health hazard or to protect the Federal investment in sanitation facilities in situations where the community or tribe or family is not financially or technically capable of performing the required emergency repairs with their own resources.

"(2)(A) This section is not intended to diminish the primary responsibilities of the Indian family, community, or tribe to establish, collect, and utilize reasonable user fees, or otherwise set aside funding, for the purpose of operation and maintenance of sanitation facilities.

"(B) The financial and technical capability of an Indian tribe or community to safely operate and maintain a sanitation facility shall not be a precondition for the provision or construction of such facilities and the Secretary may not require a tribe or community to accept a transfer of such facilities where he has determined the tribe or community does not have, or may not be reasonably expected to achieve, such capability.

"(e) For the purpose of providing necessary funds and staff to implement the expanded responsibilities of the Service under subsection (d)—

"(1) there is authorized to be appropriated $5,000,000 for each of the fiscal years 1985, 1986, and 1987, and

"(2) there is authorized to be appropriated for each of the fiscal years 1985, 1986, and 1987, $850,000 to support thirty new full-time equivalents for the Service

"(f) Any funds appropriated and allocated for the purpose of providing water supply and sewage disposal services for the benefit of any tribe or tribal organization may be used for expenses incurred by any such tribe under contract or grant for the provision of such services under the Indian Self-Determination Act.".

SEC. 7. Title V is amended to read as follows:

"TITLE V—HEALTH SERVICES FOR URBAN INDIANS

"PURPOSE

"SEC. 501. The purpose of this title is to encourage the establishment of programs in urban areas to make health services more accessible to the urban Indian populations.

"CONTRACTS WITH URBAN INDIAN ORGANIZATIONS

"SEC. 502. The Secretary, acting through the Service, shall enter into contracts with urban Indian organizations to assist such organizations to establish and administer, in urban centers in which such organizations are situated, programs which meet the requirements of this title. The Secretary, acting through the Service, shall include such conditions in any such contract as he considers necessary to effect the purpose of this title.

"CONTRACTS FOR THE PROVISION OF HEALTH CARE OR REFERRAL SERVICES

"SEC. 503. (a) The Secretary, acting through the Service, shall enter into contracts with urban Indian organizations for the provision of health care or referral services for urban Indians residing in the urban centers in which such organizations are situated. Any such contract shall include requirements that the urban Indian organization undertake to—

"(1) determine the population of urban Indians residing in the urban center in which such organization is situated who are or could be recipients of health care or referral services;

"(2) determine the current health status of urban Indians residing in such urban center;

"(3) determine the current health care needs of urban Indians residing in such urban center;

"(4) identify all public and private health service resources within such urban center which are or may be available to urban Indians;

"(5) determine the use of public and private health services resources by the urban Indians residing in such urban center;

"(6) assist such health service resources in providing service to such urban Indians;

"(7) assist such urban Indians in becoming familiar with and utilizing such resources;

"(8) provide basic health education to such urban Indians;

"(9) establish and implement manpower training programs necessary to accomplish the directives described in paragraphs (6) through (8);

"(10) identify gaps between unmet health needs of urban Indians and the resources available to meet such needs;

"(11) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians; and

"(12) where necessary, provide or contract for health care services to urban Indians.

The Secretary may not renew any contract entered into under subsection (a).

"(b) The Secretary, acting through the Service, shall by regulation prescribe the criteria for selecting urban Indian organizations with which contracts may be entered into under this title. Such criteria shall include—

"(1) the extent of the unmet health care needs of urban Indians in the urban center involved;

"(2) the size of the urban Indian population in the urban center involved;

"(3) the accessibility to, and utilization of, health care services (other than services provided under this title) by urban Indians in the urban center involved;

"(4) the extent to which the requirements described in subsection (a) would duplicate—

"(A) any previous or current public or private health services project which is situated in an urban center and which is not funded under this title; or

"(B) any project funded under this title;

"(5) the capability of an urban Indian organization to meet the requirements of subsection (a);

"(6) the satisfactory performance and successful completion by an urban Indian organization of other contracts with the Secretary under this title;

"(7) the appropriateness and likely effectiveness of conducting the activities described in subsection (a) in an urban center; and

"(8) the extent of existing or likely future participation in the activities described in subsection (a) by appropriate health and health-related Federal, State, local, and other agencies.

"CONTRACTS FOR THE DETERMINATION OF UNMET HEALTH CARE NEEDS

"SEC. 504. (a) The Secretary, acting through the Service, may enter into contracts with urban Indian organizations which are situated in urban centers and for which contracts have not been entered into under section 503.

"(b) Any contract entered into by the Secretary under subsection (a) shall require—

"(1) the urban Indian organization—

"(A) to document the health care status and unmet health care needs of urban Indians in the urban center involved;

"(B) with respect to urban Indians in the urban center involved, to determine the matters described in paragraphs (2), (3), (4), and (8) of section 503(b); and

"(2) the urban Indian organization to complete performance of the contract within one year after the date on which the Secretary and such organization enter into such contract.

"EVALUATIONS: CONTRACT RENEWALS

"SEC. 505. (a) The Secretary, acting through the Service, shall develop procedures to evaluate performance of contracts entered into by urban Indian organizations under this title. Such procedures shall in-

clude provisions for carrying out the requirements of this section.

"(b) The Secretary, acting through the Service, shall conduct an annual onsite evaluation of each urban Indian organization which has entered into a contract under section 503 for purposes of evaluating the performance of such organization under such contract.

"(c) If, as a result of the evaluations conducted under subsection (b), the Secretary determines that an urban Indian organization has not satisfactorily performed a contract under section 503, the Secretary shall, prior to renewing such contract, attempt to resolve with such organization the areas of unsatisfactory performance and modify such contract to prevent future occurrences of such unsatisfactory performance. If the Secretary determines that such unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such organization and may enter into a contract under section 503 with another urban Indian organization which is situated in the same urban center as the urban Indian organization whose contract is not renewed under this section.

"(d) In determining whether to renew a contract with an urban Indian organization under section 503, or whether to enter into a contract with an urban Indian organization under section 503 which has completed performance of a contract under section 504, the Secretary shall review the information generated by the urban Indian organization in compliance with sections 503(a) and 504(b), the reports submitted under section 507, and, in the case of a renewal of a contract under section 503, the results of the on-site evaluations conducted under subsection (b).".

"OTHER CONTRACT REQUIREMENTS

"SEC. 506. (a) Contracts with urban Indian organizations under this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provisions of the Act of August 24, 1925 (40 U.S.C. 270a).

"(b) Payments under any contract under this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of this title.

"(c)(1) Notwithstanding any provision of law to the contrary, the Secretary may, at the request, or with the consent, of an urban Indian organization, revise or amend any contract made by the Secretary with such organization under this title as necessary to carry out the purposes of this title.

"(2) Whenever an urban Indian organization requests the Secretary to assume responsibility for any contract entered into under this title, the Secretary shall assume such responsibility not more than one hundred and twenty days from the date of the request by the organization or at such later date as may be mutually agreed to by the Secretary and the organization.

"(d) The Secretary may permit an urban Indian organization performing a contract under this title to use federally owned facilities within the Secretary's jurisdiction under such terms and conditions as may be jointly agreed upon for the use and maintenance of such facilities.

"(e) Contracts with urban Indian organizations and regulations adopted under this title shall assure the fair and uniform provision to urban Indians of services and assistance under such contracts by such organizations.

"REPORTS

"SEC. 507. (a) For each fiscal year in which an urban Indian organization receives or expends funds under a contract under this title, such organization shall submit to the Secretary a quarterly report including—

"(1) in the case of a contract under section 503, information gathered under paragraphs (10) and (11) of subsection (a) of such section;

"(2) information on activities conducted by the organization under the contract;

"(3) an accounting of the amounts and purposes for which Federal funds were expended; and

"(4) such other information as the Secretary may request.

"(b) The report required under subsection (a) and information production required under sections 503(a) and 504(b) of any urban Indian organization under a contract under this title shall be subject to audit by the Secretary and the Comptroller General of the United States.

"(c) The Secretary shall allow as a cost of any contract entered into under section 503 the cost of an annual private audit conducted by a certified public accountant.

"REPORTS OF THE SECRETARY

"SEC. 508. (a) Within one year after the date of enactment of the Indian Health Care Amendments of 1984, the Secretary, acting through the Service, shall submit a report to Congress which assesses the health status and health care needs of urban Indians. The report shall—

"(1) specify the health care needs of urban Indians and, with respect to urban centers for which urban Indian organizations have entered into contracts under section 503, whether additional health care personnel are required to meet such needs;

"(2) make recommendations for additional programs, technical assistance, funding, and additional health care personnel to meet the health care needs of Indians in urban centers; and

"(3) contain recommendations for legislation and administrative actions to achieve the national goal of raising the health status of urban Indians to a level equal to that of the general population.

"(b) Not later than April 1, 1987, the Secretary, acting through the Service and with the assistance of the urban Indian organizations that have entered into contracts under this title, shall review the programs established under this title and submit to Congress an assessment thereof and recommendations for any further legislative efforts the Secretary deems necessary to meet the purpose of this title.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 509. There are authorized to be appropriated for contracts with urban Indian organizations under this title $12,000,000 for fiscal year 1985, $13,200,000 for fiscal year 1986, and $14,400,000 for fiscal year 1987.".

SEC. 8. (a) Title VI is amended to read as follows:

"TITLE VI—OFFICE OF INDIAN HEALTH SERVICE

"OFFICE OF INDIAN HEALTH SERVICE

"SEC. 601. Not later than 6 months after the date of enactment of this Act, the Indian Health Service shall be removed as a bureau of the Health Resources and Services Administration and shall be placed in the Public Health Service at the same level as such Administration.

"BUDGET ESTIMATE

"SEC. 602. The Director of the Service shall prepare and submit, directly to the President for review and transmittal to Congress, an annual budget estimate for programs of the Indian Health Service and shall receive directly from the President and the Office of Management and Budget all funds appropriated for obligation and expenditure by the Service.".

SEC. 9. Section 705 is amended to read as follows:

"COMPETITIVE PROCUREMENT

"SEC. 705. (a) The Secretary, acting through the Service, may waive any statutory or administrative requirement for competitive procurement of health services if, in the judgment of the Chief Medical Officer who will have jurisdiction over such health services, such competitive procurement would compromise the accessibility, quality, and continuity of health services or would not result in any appreciable competition or savings.

"(b) The Secretary, acting through the Service, shall reject any bid submitted under any statutory or administrative requirement for competitive procurement of health services upon the certification of the Chief Medical Officer who will have jurisdiction over such health services that acceptance of such bid would compromise the accessibility, quality, and continuity of health services.".

SEC. 10. Section 706 is amended to read as follows:

"JUVENILE ALCOHOL AND DRUG ABUSE

"SEC. 706. (a) Within ninety days of the date of enactment of the Indian Health Care Amendments of 1984, the Secretary shall enter into an agreement with the Secretary of the Interior and the Secretary of Education to coordinate the efforts of their Departments related to alcohol and drug abuse among Indian juveniles. The agreement shall provide for the identification and coordination of available resources and programs to combat Indian juvenile alcohol and drug abuse through prevention, education, counseling, and referral. The Secretary shall publish such agreement in the Federal Register within one hundred and twenty days of the date of enactment of the Indian Health Care Amendments of 1984.

"(b) The Secretary, acting through the Service and in consultation and cooperation with the Secretary of the Interior and the Secretary of Education, shall develop a program to provide training in—

"(1) preventive education;

"(2) the identification of juvenile alcohol and drug abusers; and

"(3) counseling techniques on juvenile alcohol and drug abuse.

Such training shall be provided to elementary and secondary teachers and counselors—

"(A) in schools operated by the Bureau of Indian Affairs;

"(B) in schools operated under contract with the Bureau of Indian Affairs; and

"(C) in public schools on or near Indian reservations (including public schools in Oklahoma and Alaska with significant numbers of Indian students).

The Service may provide such training either directly or through contract with qualified private or public entities.

"(c) The Secretary of the Interior, acting through the Bureau of Indian Affairs and in consultation with the Service, shall review

existing literature and reports on juvenile alcohol and drug abuse, including studies and school curricula and any other material relevant to an understanding of the problem of juvenile alcohol and drug abuse, and shall make available the results of such review to the schools described in subsection (b).

"(d) The Secretary shall establish an Office of Alcohol and Drug Abuse within the Service which shall be responsible for the administration of the programs and authorities of the Service in the field of alcohol and drug abuse. The Office shall have assigned to it a number of full-time equivalent positions which shall be not less than eight full-time equivalent positions in the Central Office of Service and one full-time equivalent position in each Service area and Program Office.

"(e) For the purpose of implementing subsection (b), there is authorized to be appropriated $1,500,000 for each of the fiscal years 1985, 1986, and 1987.".

SEC. 11. Section 707 is amended to read as follows:

"NUCLEAR RESOURCE DEVELOPMENT HEALTH HAZARDS

"SEC. 707. (a) The Secretary, acting through the Service, shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the health hazards to Indian miners of nuclear materials and Indians on or near Indian reservations and in Indian communities as a result of nuclear resource development. Such study shall include—

"(1) an evaluation of the nature and extent of nuclear resource development related health problems currently exhibited among Indians and the causes of such health problems;

"(2) an analysis of the potential effect of ongoing and future nuclear resource development on Indians living in or near Indian reservations and communities;

"(3) an evaluation of the types and nature of activities, practices, and conditions causing or affecting such health problems, including uranium mining and milling, uranium mine tailing deposits, nuclear powerplant operation and construction, and nuclear waste disposal;

"(4) a summary of any findings and recommendations provided in Federal and State studies, reports, investigations, and inspections during the ten years prior to the date of enactment of the Indian Health Care Amendments of 1984 that directly or indirectly relate to the activities, practices, and conditions affecting the health or safety of such Indians; and

"(5) an evaluation of the efforts that have been made by Federal and State agencies and mining and milling companies to effectively carry out an education program for such Indians regarding the health and safety hazards of nuclear resource development.

To assist the Academy in conducting such study, the Secretary and the Secretary of the Interior shall furnish at the request of the Academy any information which the Academy deems necessary for the purpose of conducting the study. In addition, they shall cooperate with the Academy in obtaining information necessary to carry out the intent of the study.

"(b) Upon the completion of such study, the Secretary, acting through the Service, shall, on the basis of the results of such study, develop a health care plan to address the health problems studied under subsection (a). The plan shall include—

"(1) methods for diagnosing and treating Indians currently exhibiting nuclear resource development related health problems;

"(2) preventive care for Indians who may be exposed to such health hazards as a result of nuclear resource development, including the monitoring of the health of individuals who have or may have been exposed to excessive amounts of radiation, or otherwise affected by nuclear development activities that have had or could have a serious impact upon the health of such individuals; and

"(3) a program of education for Indians who, by reason of their work or geographic proximity to nuclear development activities, may experience health problems.

"(c) The Secretary shall submit to Congress the results of the study conducted under subsection (a) no later than eighteen months after the date of enactment of the Indian Health Care Amendments of 1984. The health care plan prepared under subsection (b) shall be submitted to Congress no later than one year after the date the results of the study are submitted. Such report shall include recommended activities for implementation of the plan, as well as an evaluation of any activities previously undertaken by the Service to address such health problems.

"(d) For the purpose of conducting the study required by subsection (a) of this section, there is authorized to be appropriated $350,000.".

SEC. 12. Section 708 is amended to read as follows:

"SERVICE TO INELIGIBLE PERSONS

"SEC. 708. (a)(1) The Secretary, acting through the Service, may provide or authorize the provision of medical care, treatment, or benefits by the Service to persons who are not otherwise eligible for such services in health facilities maintained by the Service or contracted under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) or through contract health care services, subject to the limitations of this section.

"(2) Persons eighteen years of age or under who are the natural or adopted children (including foster- and step-children), legal wards, or orphans of an eligible Indian person and who are not otherwise eligible for the medical care, treatment, or benefits of the Service shall be eligible for all such services on the same basis and subject to the same rules as apply to eligible Indians until their nineteenth birthday. The existing and potential medical needs of such persons shall be taken into consideration by the Service in determining the need for, or the allocation of, its health resources. Any such person who has been determined to be legally incompetent prior to their nineteenth birthday shall remain eligible for such services until one year after the date such disability has been removed.

"(3) Non-Indian spouses of eligible Indians or spouses of Indian descent who are not otherwise eligible for the medical care, treatment, or benefits of the Service shall not be eligible for such service unless they are made eligible, as a class, by an appropriate resolution of the governing body of the relevant Indian tribe. The medical needs of persons made eligible under this subsection shall not be taken into consideration by the Service in determining the need for, or allocation of, its health resources.

"(b)(1)(A) At the request of the Indian tribe or tribes included within the service area of any service unit of the Service, the Secretary may authorize the medical care and treatment of otherwise ineligible persons residing within such service area in health facilities maintained and operated by the Service.

"(B) Persons receiving medical care and treatment under this subsection shall be liable for the payment for such services under a fee schedule adopted by the Secretary which, in the judgment of the Secretary, shall result in reimbursement in an amount not less than the actual cost of providing the service. Fees collected under this subsection, including medicare or medicaid reimbursements under titles VIII and XIX of the Social Security Act, shall be credited to the account of the facility providing the service and shall be used solely for the provision of health services within that facility.

"(2)(A) Except as provided in subparagraph (B), where the governing body of an Indian tribe or, in the case of a multi-tribal service area, any Indian tribe revokes its concurrence to the provision of services under paragraph (1)(A), the Secretary's authority to provide such service shall terminate at the end of the fiscal year following the fiscal year in which such revocation was adopted.

"(B) In California, in the case of a multi-tribal service area, unless 51 percent or more of the Indian tribes in the Service area revoke their concurrence to the provision of services under paragraph (1)(A), the authority to provide such service shall not be affected.

"(3)(A) In the case of health facilities operated directly by the Service, such medical care and treatment may be provided under this subsection only where the Secretary and the affected tribe or tribes have jointly determined that—

"(i) the provision of such service will not result in a denial or diminution of services to eligible Indian persons; and

"(ii) there is no reasonable alternative health facility or service, within or without the service unit area, available to meet the medical needs of such persons.

"(B) In the case of health facilities operated under contract under the Indian Self-Determination and Education Assistance Act, the governing body of the Indian tribe or tribal organization providing health services under a contract with the Service under the Indian Self-Determination Act is authorized determine the eligibility for such services of persons who are not otherwise eligible for such services. Such determination shall be in accordance with the requirements of this section.

"(4) The Service may continue to provide medical care, treatment, and benefits to persons not provided service under subsections (a) or (b) to achieve stability in a medical emergency, to prevent the spread of a communicable disease or otherwise deal with a public health hazard; to provide care to non-Indian women pregnant with an eligible Indian's child for the duration of the pregnancy through post partum, or to immediate family members of an eligible person where such care is directly related to the treatment of the eligible person.

"(5) Hospital privileges in health facilities operated and maintained by the Service or operated under contract under the Indian Self-Determination and Education Assistance Act may be extended to non-Service health care practitioners under a plan adopted under subsection (d) of this section. Such non-Service health care practitioners shall not be regarded as employees of the Federal Government for purposes of sec-

tions 1346(b) and 2671 et seq. of title 28 of the United States Code relating to Federal tort claims even if providing services to eligible persons as a part of the condition under which privileges are extended. This subsection shall not affect the conditions under which ineligible persons may be provided health services at Service facilities in cases where non-Service health care practitioners may be extended hospital privileges in Service facilities under any other provision of law.".

SEC. 13. Section 709 is amended to read as follows:

"ELIGIBILITY OF CALIFORNIA INDIANS

"SEC. 709. The following California Indians shall be eligible for care from the Service:

"(1) Members of federally recognized tribes.

"(2) All Indians of California as defined in the first section of the Act of May 18, 1928 (25 U.S.C. 651).

"(3) Indians who hold trust interests in public domain, national forest, or Indian reservation allotments in California.

"(4) Indians in California who were listed on the plans for distribution of the assets of California rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), and their descendants. This paragraph shall cease to be effective after October 1, 1988.".

SEC. 14. Section 710 is amended to read as follows:

"REDUCTION AND CONTROL OF HEPATITIS-B IN ALASKA

"SEC. 710. The Secretary, acting through the Indian Health Service and the centers for Disease Control, shall, in cooperation with the State of Alaska, provide for screening and reporting of cases of hepatitis-B among Native Alaskans and vaccinations to prevent and control the incidence of hepatitis-B among Native Alaskans. Not later than December 30, 1986, the Secretary shall submit to Congress a report detailing the activities carried out under this section and outlining what subsequent actions should be taken to continue to control the incidence of hepatitis-B in Alaska, together with a recommended schedule for the completion of such actions.".

SEC. 15. Title VII is amended by adding at the end thereof the following new sections:

"CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

"SEC. 712. (a) The State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, and Santa Clara, shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health services to Indians in such State.

"(b) This section shall take effect October 1, 1984.

"CONTRACT HEALTH FACILITIES

"SEC. 713. (a) The Indian Health Service shall provide funds for health care programs and facilities operated by tribes and tribal organizations under contracts with the Indian Health Service under the Indian Self-Determination Act—

"(1) for the maintenance and repair of clinics owned or leased by such tribes or tribal organizations,

"(2) for employee training,

"(3) for cost-of-living increases for employees, and

"(4) for any other expenses relating to the provision of health services,

on the same basis as such funds are provided to programs and facilities operated directly by the Indian Health Service.

"(b) In the case of eligible California Indians as defined by section 709 of the Indian Health Care Improvement Act, as amended by this Act, who are not members of Indian tribes or eligible for membership in such tribes, the Secretary may not enter into a contract to provide health services to such Indians under section 103 of the Indian Self-Determination Act if 51 percent of the adult population of such Indians object prior to the award of such contract either individually or through any legally established organization of Indians, in which case the Secretary, acting through the Service, shall make alternate arrangements for the delivery of health care services to such Indians. Nothing in this section shall be construed to restrict or interfere with the right of any Indian tribe to contract for health services on behalf of its own members.

"NATIONAL HEALTH SERVICE CORPS

"SEC. 714. (a) The Secretary of Health and Human Services shall not—

"(1) remove a member of the National Health Service Corps from a health facility operated by the Indian Health Service or by a tribe or tribal organization under contract with the Indian Health Service under the Indian Self-Determination Act; or

"(2) withdraw funding used to support such member

unless the Secretary, acting through the Service, has ensured that the Indians receiving services from such member will experience no reduction in services. This section shall take effect as of October 1, 1983.

"RESTRICTIONS ON THE USE OF INDIAN HEALTH SERVICE APPROPRIATIONS

"SEC. 715. Unless otherwise specifically provided, any restriction placed on the use of appropriations for Indian health services shall not be interpreted—

"(1) to apply to the use of funds other than such appropriated funds by an entity with a contract with the Indian Health Service;

"(2) to prohibit the support of litigation with such other funds; or

"(3) to prohibit the promotion of public support for or opposition to any legislative proposal with such other funds.

"INFANT AND MATERNAL MORTALITY

"SEC. 716. Not later than January 1, 1985, the Secretary shall develop and begin implementation of a plan to achieve the following objectives by January 1, 1990:

"(1) Reduction of the rate of Indian infant mortality in each Area Office of the Service to twelve deaths per one thousand live births or to that of the United States population, whichever is lower.

"(2) Reduction of the rate of maternal mortality in each Area Office of the Service to five deaths per one hundred thousand live births or to that of the United States population, whichever is lower.

The Secretary shall report to Congress on January 1 of each year after fiscal year 1985 on the progress that has been made toward achieving such objectives.

"DEFINITIONS

"SEC. 717. As used in this Act—

"(1) 'Area Office' means an administrative entity including a program office, within the Indian Health Service through which services and funds are provided to the service units within a defined geographical area; and

"(2) 'service unit' means an administrative entity within the Indian Health Service or a tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination Act through which services are provided, directly and by contract, to the eligible Indian population within a defined geographic area.".

TECHNICAL AMENDMENTS OFFERED BY MR. UDALL

Mr. UDALL. Mr. Chairman, I have a series of technical amendments at the desk which I offer, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The CHAIRMAN. The Clerk will report the amendments.

The Clerk read as follows:

Technical Amendments offered by Mr. UDALL: On page 1, in line 7, strike the phrase "an amendment or repeal is expressed in terms if".

On page 9, in line 9, insert the word "as" before the word "may".

On page 11, at the end of line 18, insert the word "and".

On page 24, strike all of lines 1 and 2.

On page 26, at the end of line 2, insert the following: "(c) The Secretary may not renew any contract entered into under this section.".

On page 27, in line 19, strike "1925" and insert, in lieu thereof, "1935".

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that the amendments considered en bloc be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

Mr. YOUNG of Alaska. Mr. Chairman, reserving the right to object, may I ask the gentleman, are these the same amendments, numbered 1 through 6, which he provided to the minority?

Mr. UDALL. Mr. Chairman, if the gentleman will yield, the gentleman is correct. They are technical amendments. There are no hidden balls or substitutes here. The gentleman is entirely correct.

Mr. YOUNG of Alaska. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Chairman, I ask for the adoption of the amendments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Arizona [Mr. UDALL].

The amendments were agreed to.

AMENDMENT OFFERED BY MR. UDALL

Mr. UDALL. Mr. Chairman, I have another amendment at the desk which I offer.

The Clerk read as follows:

Amendment offered by Mr. UDALL: On page 30, beginning with line 25, strike all of section 601 and insert, in lieu thereof, the following:

"SEC. 601. (a) In order to more effectively and efficiently carry out the responsibilities, authorities, and functions of the United States to provide health care services to Indians and Indian tribes, as is or may be hereafter be provided by Federal statute or treaties, there is established within the Public Health Service of the Department of Health and Human Services an Office of Indian Health Service which shall be under the direction of an Administrator for Indian Health who shall report directly to the Assistant Secretary for Health.

"(b) All health programs and authorities under which health care is provided to Indians based upon their status as Indians which are administered by the Secretary, including but not limited to programs, functions, responsibilities, and authorities under this Act; the Act of November 2, 1921 (25 U.S.C. 13); the Act of August 5, 1954 (68 Stat. 674), as amended; the Act of August 16, 1957 (71 Stat. 370); the Indian Self-Determination and Education Assistance Act (P.L. 93-638); and the Act of December 5, 1979 (93 Stat. 1056), shall be delegated solely to the Administrator for Indian Health.

"(c) In the implementation of the delegation described in subsection (b), the Administrator for Indian Health shall undertake the administrative and financial management, personnel, contracting, granting, management and program policy development and planning, evaluation, and public information functions and shall receive compensation at the rate now or hereafter provided by law for Assistant Surgeon Generals corresponding with the grade of Major General or the Civil Service equivalent.

"(d) All personnel, records, equipment facilities, and interests in property that were administered by the Indian Health Service on the date of enactment of this section shall be transferred to the Office of Indian Health Service. There shall also be allocated to the Office of Indian Health Service budget and personnel ceiling authority necessary to implement fully the delegation described in subsection (b) and the functions described in subsection (c).

"(e) The requirements of this section shall be met within one hundred and eighty days after the date of enactment of this section. The Secretary is authorized to waive the Indian preference laws on a case-by-case basis for temporary transfers, under existing authority, involved in implementing this section."

Mr. UDALL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Chairman, when the Interior Committee reported H.R. 4567, it contained a provision providing for the creation of an Assistant Secretary for Indian Health within the Department of Health and Human Services. This provision was strongly supported by all the Indian witnesses before my committee. The adminsitration was almost alone in its opposition to the Assistant Secretary provision.

As a former chairman and current member of the Post Office and Civil Service Committee, I am generally opposed to the creation of new Assistant Secretary positions. However, based upon the testimony before my committee, I was firmly convinced that this provision would not just be a token or symbolic gesture, but would result in a significant improvement of the ability of IHS to meet the critical health needs of the Indian people.

Nevertheless, in the spirit of compromise with the Energy and Commerce Committee and in recognition of the administration's position, I agreed to drop the Assistant Secretary provision in favor of the Energy Committee provision which simply creates an Office of Indian Health Services in the Public Health Service. H.R. 6039, which is before us as an amendment in the nature of a substitute for H.R. 4567, contains that provision.

However, I am not satisfied that the existing language of the substitute is adequate to effectively accomplish the creation of this new office.

The amendment I am offering does not alter the purpose of section 8 of the substitute in creating a new Office of Indian Health Service in the Public Health Service. Rather, it provides more definitive language to ensure that the creation of that office and the transfer of the existing Indian Health Service will be more expeditiously and efficiently carried out.

Mr. Chairman, I urge the adoption of this strengthening amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona [Mr. UDALL].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. YOUNG OF ALASKA

Mr. YOUNG of Alaska. Mr. Chairman, I have an amendment at the desk which I offer.

The Clerk read as follows:

Amendment offered by Mr. YOUNG of Alaska: On page 16, line 12, add the following new subsection (f):

(f)(1) The Secretary shall convey to the Bethel Native Corporation, an Alaska Native Corporation organized pursuant to the Alaska Native Claims Settlement Act, all right, title, and interest of the United States in and to the following real property situated in Bethel, Alaska, described as: U.S. Survey No. 4000, excluding those lands identified as tracts A and B in the determination AA-18959 of the Bureau of Land Management issued on September 30, 1983 pursuant to section 3(e) of Public Law 92-203.

(2) The Secretary is authorized and directed to enter into a contract for sale of the service hospital, housing facilities owned by the Service, fixtures, equipment, and appurtances located on the property described in subsection (1) to the Bethel Native Corporation upon the execution of a lease-purchase agreement between the Service and the Bethel Native Corporation whereby the Bethel Native Corporation shall agree to a purchase of the service hospital, housing facilities, fixtures, equipment and appurtances at a price which recovers the actual federal expenditures in the construction of said hospital and facilities and whereby the Service shall agree to lease and operate said hospital and facilities.

Mr. YOUNG of Alaska (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Alaska?

There was no objection.

Mr. YOUNG of Alaska. Mr. Chairman, this amendment will resolve a conflict in land claims involving the Indian Health Service and the local Alaska Native Corp., for the village of Bethel, AK. In doing so, the amendment recognizes the valid selection of the Bethel Native Corp., a selection which has been determined by the Bureau of Land Management to be a valid selection under the Alaska Native Claims Settlement Act.

The land in question has long been claimed by the local Native group under the terms of ANCSA. The Public Health Service constructed in 1979 a new hospital and support facilities on these lands, in a location which had not been used previously by the Service. Therefore, a conflict arose over ownership of the lands on which the new hospital and facilities are located. Citing the previous claim of the Bethel Native Corp., under ANCSA, the BLM last year issued a determination that the selection of the village corporation was valid.

In order to resolve the conflict over ownership of lands in question, the amendment would authorize a conveyance of those lands to the village corporation. Additionally, the amendment authorizes the Secretary to enter into a contract for the sale of the hospital and related facilities in return for a leasing agreement by which the Indian Health Service will continue to operate the hospital. The purchase is to be privately financed and the price is to be set at a level which fully recovers the Federal expenditures.

Mr. Chairman, the amendment is intended to resolve the land title issues in a manner which recovers the Federal investment and ensures that quality medical services are continued to be supplied in the area. I believe it represents a fair resolution of the land title conflict and, for these reasons, I urge my colleagues to support this amendment.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. YOUNG of Alaska. I am glad to yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I appreciate the problem posed by the gentleman from Alaska and the purpose of his amendment. However, we have not had a full opportunity to review the

language of this amendment nor have we had an opportunity to receive the views of the administration and other concerned parties on this matter. I do understand that there may be some problems if this amendment is adopted in insuring adequate health care to the Alaska Natives in the Bethel area.

However, I am willing to interpose no objection to the adoption of this amendment subject to an understanding with the gentleman. It would be my intent to drop this amendment from the bill in conference, unless, in the interim, a firm case can be made for the proposal, including assurances that health care will not suffer, and no strenuous, meritorious objections are raised by the administration and other concerned parties.

Mr. YOUNG of Alaska. Mr. Chairman, knowing the superb leadership of the committee chairman, I am confident there will be the votes to remove the amendment if it is not agreed to, but we hope to resolve this conflict. It is a definite deterrent to the medical services, and there will be a conflict over the areas if we do not do it. But I gladly in this colloquy recognize the leadership of the committee chairman, and I am sure I will be able to support him in the conference.

Mr. UDALL. With that understanding, Mr. Chairman, I do not object to the adoption of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alaska [Mr. YOUNG].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. GEJDENSON

Mr. GEJDENSON. Mr. Chairman, the Clerk has an amendment at the desk which I offer.

The Clerk read as follows:

Amendment offered by Mr. GEJDENSON: Page 31, insert after line 10 the following:

SEC. 9. (a) Section 704 is amended by inserting "(a)" after "SEC. 704." and by adding at the end thereof the following new subsection:

"(b) The Secretary may enter into leases, contracts, and other legal agreements with Indian tribes, tribal organizations, or Indian organizations which hold—

"(1) title to;

"(2) a leasehold interest in; or

"(3) a beneficial interest in (where title is held by the United States in trust for the benefit of a tribe) facilities used for the administration and delivery of health services by the Indian Health Service or by programs operated by tribes, tribal organizations, or Indian organizations, to compensate such tribes, tribal organizations, or Indian organizations for costs associated with the use of such facilities for such purposes. Such costs include rent, depreciation based on the useful life of the building, principal and interest paid or accrued, operation and maintenance expenses, and other expenses determined by regulation to be allowable.".

Page 31, line 11, strike out "SEC. 9." and insert "(b) in lieu thereof.

Mr. GEJDENSON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. GEJDENSON. Mr. Chairman, I rise at this time to offer an amendment. This amendment seeks only to clarify existing policy regarding compensation for space costs to Indian tribes which contract out for the provision of health services. Let me briefly give my colleagues some background on this issue.

In 1975, the Congress enacted the Indian Self-Determination and Education Assistance Act, a milestone piece of legislation providing Indians with the authority to run their own programs rather than have them run by the Federal Government. Contracting provided the mechanism by which Indians could take over the administration of their own programs. Subsequently, many Indian tribes entered into contracts with the Indian Health Service for the administration of all or part of health service programs.

In 1976, the Congress enacted another milestone piece of legislation—the Indian Health Care Improvement Act, which for the first time set out a specific plan for the elevation of the health status of Indian people and which provided the resources necessary to begin to meet the goal of bringing the level of Indian health up to that of the general population. The act also sought to achieve the maximum participation of Indian people in Indian health programs. Finally, one small section of the 1976 Health Care Act gave the Secretary the authority to enter into leasing agreements with Indian tribes. What this provision means is that the Federal Government has the option of using a preexisting Indian facility for the provision of health services as long as the tribe which owns the facility is compensated for its use through lease payments.

Based on the two pieces of legislation I have mentioned, Mr. Chairman, the following scenario has become quite common: an Indian tribe contracts from IHS for the provision of health services, but because Federal dollars available for the construction of new facilities are quite scarce, the tribe goes out and gets a loan for the contruction of a health facility. Since the tribe itself has constructed the facility to be used, it naturally expects to receive IHS compensation for space costs which the tribe could in turn use toward making payments on the loan. This, in fact, has been the case for the past few years, as tribes which have taken over the administration of their own health programs, but which also use their own health facilities, have been able to receive compensation for the cost of these facilities from the Federal Government.

Now, because of organizational changes within the Department of Health and Human Services, the policy regarding lease payments has become confused. Many tribes have been told that they cannot receive lease payments on their facility unless IHS is operating the program. In my own district in Connecticut, our newly recognized Indian tribe, the Mashantucket Pequots, cannot yet go ahead with their application for a loan to construct a facility because Department officials have given them conflicting signals as to whether or not the tribe will be able to receive lease payments if they choose to enter into a contract for health services with IHS.

I am here today to make clear that in passing both the Indian Self-Determination Act of 1975 and the Indian Health Care Improvement Act of 1976, the Congress intended first—that to the greatest extent possible, Indians were to be responsible for running their own health programs, second—that it was desirable for the U.S. Government to enter into lease agreements with Indian tribes which provide their own health facilities for use in carrying out the Federal mandate of improving Indian health, and finally—that these two aims were in no way to be mutually exclusive.

Mr. Chairman, lease payments provide the Government with a way of avoiding the expenditure of enormous sums of money to construct health facilities for all tribes which need them. To deny lease payments to Indian tribes exercising their legitimate right to contract for health services is to discourage those tribes from assuming control of their programs and hence, to impede progress toward the goal of Indian self-determination.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, I am familiar with the gentleman's amendment and am willing to accept it.

Section 704 of the Indian Health Care Improvement Act, as amended in 1980, provided authority for the Secretary to enter into lease arrangements with Indian tribes for the purpose of carrying out the act and in general meeting the health care responsibilities of the Indian Health Services. As noted in the legislative history of the act, it was the committee's intent that the provision be given a liberal construction to achieve those purposes.

The gentleman has indicated that some of the tribes are encountering difficulty with the Department in entering into lease arrangements to better serve the health needs of their people. While I believe that the existing language was intended to permit the kind of lease arrangements he has

referred to, I concur that perhaps more forceful explicit guidance to the Department may be in order, and I, therefore support his amendment.

Mr. LUNDINE. Mr. Chairman, will the gentleman yield?

Mr. GEJDENSON. I yield to my colleague, the gentleman from New York.

Mr. LUNDINE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in strong support of this amendment. I first want to thank both the gentleman from Connecticut [Mr. GEJDENSON], the author of this amendment, and the distinguished chairman of the Interior Committee, Mr. UDALL, for their assistance and cooperation. This amendment addresses an issue which is critically important to the Seneca Indian Nation of the Southern Tier of New York which I represent in Congress.

This amendment clarifies congressional intent to permit the Secretary to enter into various lease and contract agreements with Indian tribes to compensate them fully as they would a private contractor for use of their tribal lands and buildings in providing health services to the Indian community. Such leasing and contracting agreements are critical to improving the health care delivery system for Indians and to achieving the goals and spirit of the Indian Self-Determination Act [Public Law 93-638].

Recent experience of the Seneca Nation of Indians in my congressional district indicates that the congressional intent regarding this leasing and contracting authority is being questioned by officials at the Department of Health and Human Services. The language in this amendment will make clear to Department officials congressional intent that the Indian Health Service reimburse tribes for all of the costs associated with the costs of financing and maintaining capital construction associated with the Indian health care delivery system.

As a result of a case brought before the courts by the Rincon Band of Mission Indians of California, the Indian Health Service was ordered by the courts to provide uniform levels of health care to all Indians around the country. The Seneca Nation of Indians located in my congressional district is one tribe found to be in need of additional health care upgrading under this court-ordered program. For the past 3 years, the Senecas have been the recipient of funds made available for programmatic expansion under this court order. However, they cannot achieve such programmatic expansion or utilize these funds unless they can also expand their facilities. The threat to the leasing arrangement being posed by the current intrepretation of the law endangers this court-ordered effort to provide an acceptable level of health care to our Indian community.

In my district, the Seneca Nation Health Department was founded in 1976 to deliver comprehensive health services to the Seneca people and other Indians residing in that area. The program was established with a special appropriation made by Congress to the Indian Health Service to fund the program through a cost-reimbursement contract under Public Law 93-638, the Indian Self-Determination Act.

Using tribal manpower and largely tribal funds, the Seneca Nation erected two outpatient health care facilities, one on each of its two populated reservations to house the program. However, under then available interpretations of the law regarding costs, only a fraction of the initial investment by the tribe in these facilities has been recouped. Recognizing that many tribes were only being reimbursed for a portion of their legitimate costs, as part of the Indian Health Care Improvement Act of 1980, the Congress authorized the Indian Health Service to begin to lease space from tribes. In 1982, a needed addition to the Cattaraugus Health Center was developed with tribal funds—this time under such a leaseback arrangement with the Indian Health Service through the Regional Office of Facilities, Engineering, and Construction [ROFEC] in New York City. This has worked well for the tribe.

Early in 1984, the tribe approached the Indian Health Service with a proposal to initiate under a similar leaseback arrangement a facility-based alcoholism program. This new program requires either tribal purchase of an existing structure or new construction. Because the New York City ROFEC office is currently being dismantled, the Senecas approached the Health Resources and Services Administration at the Department of Health and Human Services and were told that such a leaseback arrangement was not possible under current regulations. This, of course, calls into question the existing lease arrangement with the Senecas and has halted further development of the alcoholism project. Since that time, clinic expansions on both reservations have been stalled for the same reason.

This amendment should make clear congressional intent with respect to use of leasing arrangements to provide Indian nations a fair market use for Indian health care facilities in accordance with the goals of the Indian Self-Determination Act. Any contrary interpretation to this amendment will greatly frustrate the effort to finance health care facilities for Indian tribes and retard progress toward the very important goal of this legislation—providing quality health care to Native Americans. I urge the adoption of this amendment.

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

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

Mr. YOUNG of Alaska. Mr. Chairman, I have no objection to the amendment, and I want to compliment the gentleman from Connecticut [Mr. GEJDENSON] for offering it. It does solve some of the bureaucratic nightmares he is faced with and that probably other areas are faced with. Again I compliment the gentleman for offering his amendment.

Mr. LUNDINE. Mr. Chairman, I thank the gentleman for his support.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut [Mr. GEJDENSON].

The amendment was agreed to.

□ 1130

Mr. OBERSTAR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the Indian Health Care Act amendments.

Earlier this year, the public television series on Indian health under their series called NOVA carried a very special detailed documentary on the problems of Indian health throughout the United States. Just this past week the Washington Post ran a very extensive series of articles about the Rosebud Sioux Reservation in South Dakota, including a description of some of the very serious problems with the health care system on that reservation.

I think those two programs focus very refreshingly and very importantly on an aspect of health care among the Indian people of America that is very appropriate, very timely, and gives further impetus to this legislation.

In the northernmost part of my congressional district, in northeastern Minnesota, the Bois Forte Reservation is another and vivid example of the need for this legislation and the need for reform and improvement of the Indian health care delivery system. This is a reservation of Chippewa Indians. They live in a very isolated and sparsely settled area of northeastern Minnesota, over an hour away from the nearest hospital and until recently they had no ambulance service at all. The health care facilities on this reservation of nearly 100,000 acres are widely scattered and they are not very well coordinated. They have had a well-baby clinic for several years, but it has been operated with difficulty, with a great deal of need and enthusiasm, but without adequate services and financing. Access for residents of the reservation is extremely difficult and in addition to that, they simply do not have the trained health care pro-

fessionals needed to provide delivery of health care services.

The chemical dependency program on the reservation is located in a building that has no running water and no indoor plumbing. Those who come in for counseling do not even have privacy, because counseling has to be done in single large area rooms with no dividers and no partitions. They simply desperately need a new facility.

Those are just a few examples of the urgent need for improvement in health care for the Indian population in northeastern Minnesota, and of the seven reservations in Minnesota, five are located in a district that I represent; but that is not unique to northeastern Minnesota. I think you could find these situations on Indian reservations throughout the United States. Certainly it has been my experience in talking with representatives of other Indian tribes and other reservations throughout the United States that their principal concern is for an adequate health care system.

This legislation is a follow-on to the Indian Health Care Improvement Act that passed first in 1976 in which the Congress attempted to address serious health care problems among American Indians.

Much has been done in consequence of the act, but much more remains to be done. The agenda is long and it is urgent.

I compliment the chairman of this committee, the chairman of the Energy Committee, and the gentleman from California [Mr. WAXMAN] and his Subcommittee on Health for their combined joint efforts in focusing on the needs and problems of health care among American Indians.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I would be happy to yield.

Mr. UDALL. Mr. Chairman, I wanted to thank the gentleman for his sensitivity over the years to these problems. I guess most of the obligation falls on those of us in the committee to produce the details of the legislation, but with the strong bipartisan support of people like the gentleman from Minnesota and the gentleman from Nebraska [Mr. BEREUTER] and others who are not on the committee, we have been able to get to the floor here in a bipartisan spirit and do something about this very serious set of problems, so I thank the gentleman and commend him for his support and interest and his concern for the American Indians in his congressional district and his State.

Mr. OBERSTAR. Mr. Chairman, I thank the gentleman very much for those remarks.

I, too, want to commend the gentleman from Nebraska [Mr. BEREUTER] and the gentleman from Alaska [Mr. YOUNG], who represents a very great many Indians of many different origins. He has consistently reflected a deep concern and continuing effort.

If Members could just go to those reservations where health care facilities have been built, where health care professionals have been introduced to the reservation and are actively providing the services and see the joy and see the delight on the faces of the people and their gratitude, it would be compensation enough for the work done here today.

Mr. WILLIAMS of Montana. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am a cosponsor of and I encourage support for reauthorization of the Indian Health Care Improvement Act.

This bill has been carefully studied in two House committees, the Interior Committee and the Committee on Energy and Commerce. The result is legislation which will continue the important commitment to bettering the health conditions for American Indians and Alaskan Natives.

Many of you have recently read in the Washington Post details about the health conditions at the Rosebud Reservation in our neighboring State of South Dakota. Improvements have been made to the Indian Health Care Improvement Act, yet as the Post article reports, the task is not yet complete. It is a disgrace that the health status of Indians is still at a level much lower than all other Americans.

The act to date has resulted in the infant mortality and death rate from childhood illness dropping 70 percent since 1955, yet the health status of American Indians and Alaskan Natives still lags 15 to 20 years behind that of the general population. Indians still have a shorter life expectancy than any other Americans. Fatalities from flu, pneumonia, tuberculosis, and disabilities such as hearing loss from ear infections still exceed national norms for Indians. The doctor-to-population ratio for native Americans is half the current ratio for other Americans.

So the task is not complete. Yes; we need to pass this legislation and I urge my colleagues to vote yes for passage of reauthorization of the Indian Health Care Improvement Act.

The CHAIRMAN. Are there further amendments to the bill? If not, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. WILLIAMS of Montana] having assumed the chair, Mr. HALL of Ohio, 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. 4567) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes, pursuant to House Resolution 560, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

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

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have the usual 5 legislative days in which to insert their remarks in the RECORD on the bill just considered, and that I be allowed to include extraneous material in a section-by-section analysis of the bill.

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

There was no objection.

PERMISSION FOR COMMITTEE ON INTERIOR AND INSULAR AFFAIRS TO FILE A REPORT ON H.R. 6206, WATER RIGHTS OF THE AK-CHIN INDIAN COMMUNITY

Mr. UDALL. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs have until 5 p.m. today to file a report on the bill, H.R. 6206, a bill relating to the water rights of the Ak-Chin Indian community.

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

There was no objection.

LEGISLATIVE PROGRAM

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

Mr. LUJAN. Mr. Speaker, I yield to the gentleman from Pennsylvania [Mr. MURTHA] to see if he can give us an accounting of next week's program.

Mr. MURTHA. Mr. Speaker, the program for the House of Representatives for the week of September 17, 1984, is as follows:

On Monday, September 17, the House meets at noon.

All recorded votes on the Consent Calendar, the Suspension Calendar, and district bills will be postponed until the last item of business on Tuesday, September 18.

□ 1140

We have special District Day with three bills:

H.R. 6223, District of Columbia Group Hospitalization amendments;

H.R. 4994, D.C. Tax Exemption for Jewish War Veterans Memorial;

H.R. (to be announced), St. Elizabeth's Hospital.

Under suspensions (15 bills):

H.R. 5189, United States Code title 18 amendments re Secret Service;

H.R. 5164, Central Intelligence Information Act;

H.R. 3726, increase effectiveness of fighting fires on Federal lands;

S. 2155, Utah Wilderness;

H.R. 6206, Ak-Chin Indian community water rights;

H.R. 1511, common carriers by water in foreign commerce—United States and Canada;

H.R. 5831, medical computer crime;

H.J. Res. 551, reappoint Ann Armstrong to Board of Smithsonian;

H.J. Res. 552, reappoint A. Leon Higginbotham, Jr., to Board of Smithsonian;

H.R. 5611, authorize 11th Airborne Division Association to Establish a Memorial;

H.R. 4025, Smithsonian transfer bill;

H. Con. Res. 298, sense of Congress re Namibian prisoners;

H. Con. Res. 122, sense of Congress that South Africa should cease "blackspot" policy;

H. Res. 430, the Mandela freedom resolution; and

H. Con. Res. 42, honorary South African consulates in the United States.

Tuesday, September 18, the House meets at noon for the Private Calendar and under suspension six bills:

H.R. 6064, omnibus tariff bill;

H.R. 3336, insanity defense;

H.R. 6012, sentencing reform bill;

H.R. 5656, Dangerous Drug Diversion Control Act;

H.R. 3880, Strategic Petroleum Reserve Reliability Improvement Act; and

H.R. 5959, safe drinking water amendments.

Then we have H.R. 5290, Compassionate Pain Relief Act, open rule, 1 hour.

Recorded votes on District bills and suspensions debated on Monday, and recorded votes on suspensions debated on Tuesday.

Wednesday and the balance of the week the House meets at 10 a.m., September 19, 20, and 21 for consideration of H.R. 5585, the Railroad Safety Act, an open rule, 1 hour; H.R. 3082, the Emergency Wetlands Resources Act, an open rule, 2 hours; H.R. 6067, law enforcement officers protection, subject to a rule being granted; and House Joint Resolution to be announced, continuing appropriations, fiscal year 1985, subject to a rule being granted.

The House will adjourn by 3 p.m. on Friday. Conference reports will be brought up at any time. Any further program will be announced later.

Mr. LUJAN. I may have a couple of questions on the program for next week. First of all, the votes on suspensions will be held after the completion of all other business; is that correct?

Mr. MURTHA. That is correct.

Mr. LUJAN. It is anticipated that on the Compassionate Pain Relief Act that there would be votes sometime during the consideration of that bill; is that correct?

Mr. MURTHA. That is correct.

Mr. LUJAN. The other questions I have have to do with the continuing resolution; does the gentleman have any day that he might tell us when that continuing resolution might be scheduled? Has a date been set or time been set for it either on Thursday or Friday? It just appears on the program but does not indicate when.

Mr. MURTHA. It is anticipated at this time that the continuing resolution will be brought up Friday of next week.

Mr. LUJAN. Friday? So Members should anticipate there will be votes on Friday?

Mr. MURTHA. There will be votes on Friday.

Mr. LUJAN. I thank the gentleman.

ADJOURNMENT TO MONDAY, SEPTEMBER 17, 1984

Mr. MURTHA. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 12 noon on Monday next.

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

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. MURTHA. Mr. Speaker, I ask unanimous consent that the business in order under the calendar Wednesday rule shall be dispensed with on Wednesday next.

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

There was no objection.

ENHANCEMENT OF ECONOMIC DEVELOPMENT ON GUAM, THE VIRGIN ISLANDS, AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS

Mr. WON PAT. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5561) an act to enhance the economic development of Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment with amendments.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The Clerk will report the Senate amendment and the House amendments to the Senate amendment.

The Clerk read the Senate amendment and the House amendments to the Senate amendment, as follows:

Senate amendment: Strike out all after the enacting clause and insert:

TITLE I

SEC. 101. From the sums authorized to be appropriated to the Secretary of the Interior for technical assistance to the territories there may be appropriated not to exceed $2,000,000 for each of fiscal years 1985, 1986, and 1987 for technical assistance (including but not limited to management, marketing, and finance) in developing private enterprises in Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

SEC. 102. The Secretary of the Interior is authorized and directed to report to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate not later than Janaury 1 of fiscal years 1985, 1986, and 1987 on the executive branch's efforts regarding and recommendations for developing private enterprises in Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

TITLE II

SEC. 201. (a) Subsection (b) of section 8 of the Revised Organic Act of the Virgin Islands (48 U.S.C. 1574) is amended—

(1) by striking out "shall be sold at public sale and" in the fourth sentence of paragraph (i), and

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

"(iii)(A) The legislature of the government of the Virgin Islands may cause to be issued after September 30, 1984, industrial development bonds (within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954).

"(B) Except as provided in subparagraph (C), any obligation issued under subparagraph (A) and the income from such obligation shall be exempt from all State and local taxation in effect on or after October 1, 1984.

"(C) Any obligation issued under subparagraph (A) shall not be exempt from State or local gift, estate, inheritance, legacy, succession, or other wealth transfer taxes.

"(D) For purposes of this paragraph—

"(I) The term 'State' includes the District of Columbia.

"(II) The taxes imposed by counties, municipalities, or any territory, dependency, or possession of the United States shall be treated as local taxes.

"(E) For exclusion of interest for purposes of Federal income taxation, see section 103 of the Internal Revenue Code of 1954.".

SEC. 202. (a) The legislature of the government of American Samoa may cause to be issued after September 20, 1984, industrial development bonds (within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954).

(b)(1) Except as provided in paragraph (2), any obligation shall be exempt from all State and local taxation in effect on or after October 1, 1984.

(2) Any obligation issued under subsection (a) shall not be exempt from State or local gift, estate, inheritance, legacy, succession, or other wealth transfer taxes.

(3) For purposes of this subsection—

(A) The term "State" includes the District of Columbia.

(B) The taxes imposed by counties, municipalities, or any territory, dependency, or possession of the United States shall be treated as local taxes.

(c) For exclusion of interest for purposes of Federal income taxation, see section 103 of the Internal Revenue Code of 1954.

TITLE III

SEC. 301. Title 46, United States Code, is amended—

(a) in section 2101 add a new paragraph (3a) to read as follows: "(3a) 'citizen of the United States' means a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)) or an individual citizen of the Trust Territory of the Pacific Islands who is exclusively domiciled in the Northern Mariana Islands within the meaning of section 1005(e) of the Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (90 Stat. 278).";

(b) in section 12106 add the following at the end:

"(c) A coastwise license to engage in the coastwise trade of fisheries products between places in Guam, American Samoa, and the Northern Mariana Islands may be issued for a vessel that—

"(1) is less than two hundred gross tons;

"(2) was not built in the United States;

"(3) is eligible for documentation; and

"(4) otherwise qualifies under the laws of the United States to be employed in the coastwise trade."; and

(c) in section 12108 add the following at the end:

"(c) A fishery license to engage in fishing in the territorial sea and fishery conservation zone adjacent to Guam, American Samoa, and the Northern Mariana Islands may be issued to a vessel that—

"(1) is less than two hundred gross tons;

"(2) was not built in the United States;

"(3) is eligible for documentation; and

"(4) otherwise qualifies under the laws of the United States to be employed in the fisheries trade.".

SEC. 302. A vessel, whether United States-built or foreign-built, and otherwise meeting the criteria set forth in sections 12106(c) or 12108(c) of title 46 of the United States Code, may be sold, chartered, leased, mortgaged, or transferred by any other means to any "citizen of the United States" as defined in section 2101(3a) of such title, without the approval of the Secretary of Transportation, pursuant to section 9 of the Shipping Act, 1916, as amended (46 App. U.S.C. 808).

TITLE IV

SEC. 401. To further the rehabilitation, upgrading, and construction of public facilities in the territories of the United States:

(a) Section 1(a)(1) of the Act of August 18, 1978 (92 Stat. 487), as amended, is further amended by adding "effective October 1, 1985, $16,300,000," before the words "such sums".

(b)(1) There are authorized to be appropriated from funds heretofore authorized for technical assistance $600,000 in fiscal year 1985 (to remain available until expended) to the Secretary of the Interior who, in consultation with and with the assistance of the Secretary of Transportation, shall use said funds exclusively for planning improvements for the Alexander Hamilton Airport in St. Croix, Virgin Islands.

(2) Section 303 of the Act of October 19, 1982 (96 Stat. 1705), as amended, is further amended by inserting after "water and power" the words "and improvements for the Alexander Hamilton Airport in St. Croix, Virgin Islands".

(c) The Secretary of the Interior is authorized and directed, in consultation with and with the assistance of the Secretary of Housing and Urban Development, to study the desirability and feasibility of initiating a program for the development of housing in American Samoa and including the territory in existing Federal housing programs and to submit such recommendations (such recommendations to include, but are not limited to, any changes or modifications which would be necessary to such existing Federal housing programs to adapt them to the culture and traditions of American Samoa) as he may deem appropriate to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate of the United States within one year of the date of enactment of this Act.

(d) There are authorized to be appropriated $2,000,000 in fiscal year 1985 (to remain available until expended) to the Secretary of the Interior for grants to the government of Northern Mariana Islands for improvements in the production and distribution of water.

TITLE V

SEC. 501. There is hereby conveyed, without consideration, to the Frederick Lutheran Church of Charlotte Amalie, St. Thomas, Virgin Islands, all of the right, title, and interest of the United States in and to parcel numbered 9F, Estate Hospital Ground, Numbered 9 New Quarter, St. Thomas, Virgin Islands (known as Ebenezer Home), and improvements thereof.

SEC. 502. Section 11 of the Revised Organic Act of the Virgin Islands, as amended, is further amended by striking the words "St. Croix, free of rent" and inserting in lieu thereof "Saint Croix, which house, together with land appurtenant thereto is also transferred to the government of the Virgin Islands".

TITLE VI

SEC. 601. To rationalize the application of certain statutes so that the development of the territories of the United States is facilitated—

(a) section 1013 of the Act of November 10, 1978 (92 Stat. 3467) is amended by deleting "subsection" and inserting in lieu thereof "section";

(b) section 501(d) of the Act entitled "An Act to authorize certain appropriations for the territories of the United States, to amend certain Acts relating thereto, and for other purposes" (91 Stat. 1159), as amended, is further amended by deleting "Samoa" where it appears and inserting in lieu thereof "Samoa, Guam, the Virgin Islands,";

(c) section 119(n)(1) of the Act of August 22, 1974 (88 Stat. 633), as amended, is further amended by deleting "Guam" and inserting in lieu thereof "Guam, American Samoa, the Northern Mariana Islands";

(d) section 17(a) of the Act of April 27, 1935 (49 Stat. 163), as amended, is further amended by deleting "Puerto Rico, and the Virgin Islands" and "Puerto Rico and the Virgin Islands" and inserting in lieu thereof "Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands";

(e) the Act of December 22, 1975 (89 Stat. 871), as amended, is amended by deleting "Samoa" in sections 391(a) and 398(b) and inserting in lieu thereof "Samoa, the Northern Mariana Islands";

(f) section 3(4) of the Energy Policy and Conservation Act (42 U.S.C. 6202(4)), is amended to read as follows:

"(4) The term 'State' means a State, the District of Columbia, Puerto Rico, the Trust Territory of the Pacific Islands, or any territory or possession of the United States.".

(g) section 513(2) of the National Energy Extension Service Act (42 U.S.C. 7011(2)), is amended to read as follows:

"(2) 'State' means a State, the District of Columbia, Puerto Rico, the Trust Territory of the Pacific Islands, or any territory or possession of the United States.".

TITLE VII

VIRGIN ISLANDS

SEC. 701. In section 3 of the Revised Organic Act of the Virgin Islands, as amended (68 Stat. 4981; 48 U.S.C. 1561), the proviso in the next to the last paragraph is amended to read as follows: "Provided, That all offenses against the laws of the United States and the laws of the Virgin Islands which are prosecuted in the district court pursuant to sections 22 (a) and (c) of this Act may be had by indictment by grand jury or by information, and that all offenses against the laws of the Virgin Islands which are prosecuted in the district court pursuant to section 22(b) of this Act or in the courts established by local law shall continue to be prosecuted by information, except such as may be required by local law to be prosecuted by indictment by grand jury.".

SEC. 702. Section 21 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1611) is amended to read as follows:

"SEC. 21 (a) The judicial power of the Virgin Islands shall be vested in a court of record designated the 'District Court of the Virgin Islands' established by Congress, and in such appellate court and lower local courts as may have been or may hereafter be established by local law.

"(b) The legislature of the Virgin Islands may vest in the courts of the Virgin Islands established by local law jurisdiction over all causes in the Virgin Islands over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. Such jurisdiction shall be subject to the concurrent jurisdiction conferred on the District Court of the Virgin Islands by section 22 (a) and (c) of this Act.

"(c) The rules governing the practice and procedure of the courts established by local law and those prescribing the qualifications and duties of the judges and officers thereof, oaths and bonds, and the times and places of holding court shall be governed by local law or the rules promulgated by those courts.".

SEC. 703. (a) Section 22 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1612) is amended to read as follows:

"SEC. 22. (a) The District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of title 28, United States Code, and that of a bankruptcy court of the United States. The District Court of the Virgin Islands shall have exclusive jurisdiction over all criminal and civil proceedings in the Virgin Islands with respect to the income tax laws applicable to the Virgin Islands, regardless of the degree of the offense or of the amount involved, except the ancillary laws relating to the

income tax enacted by the legislature of the Virgin Islands. Any act or failure to act with respect to the income tax laws applicable to the Virgin Islands which would constitute a criminal offense described in chapter 75 of subtitle F of the Internal Revenue Code of 1954 shall constitute an offense against the government of the Virgin Islands and may be prosecuted in the name of the government of the Virgin Islands by the appropriate officers thereof in the District Court of the Virgin Islands without the request or the consent of the United States attorney for the Virgin Islands, notwithstanding the provisions of section 27 of this Act.

"(b) In addition to the jurisdiction described in subsection (a) the District Court of the Virgin Islands shall have general original jurisdiction in all causes in the Virgin Islands the jurisdiction over which is not then vested by local law in the local courts of the Virgin Islands: Provided, That the jurisdiction of the District Court of the Virgin Islands under this subsection shall not extend to civil actions wherein the matter in controversy does not exceed the sum or value of $500, exclusive of interest and costs; to criminal cases wherein the maximum punishment which may be imposed does not exceed a fine of $100 or imprisonment for six months, or both; and to violations of local police and executive regulations. The courts established by local law shall have jurisdiction over the civil actions, criminal cases, and violations set forth in the preceding proviso. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by local law for the purposes of determining the availability of indictment by grand jury or trial by jury.

"(c) The District Court of the Virgin Islands shall have concurrent jurisdiction with the courts of the Virgin Islands established by local law over those offenses against the criminal laws of the Virgin Islands, whether felonies or misdemeanors or both, which are of the same or similar character or part of, or based on, the same act or transaction or two or more acts or transactions connected together or constituting part of a common scheme or plan, if such act or transaction or acts or transactions also constitutes or constitute an offense or offenses against one or more of the statutes over which the District Court of the Virgin Islands has jurisdiction pursuant to subsections (a) and (b) of this section.".

(b) The provisions of this section shall not result in the loss of jurisdiction of the District Court of the Virgin Islands over any complaint or proceeding pending in it on the day preceding the effective date of this amendatory Act and such complaint and proceeding may be pursued to final determination in the District Court of the Virgin Islands, the United States Court of Appeals for the Third Circuit, and the Supreme Court, notwithstanding the provisions of this amendatory Act.

SEC. 704. Section 23 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1613) is amended to read as follows:

"SEC. 23. The relations between the courts established by the Constitution or laws of the United States and the courts established by local law with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings: Provided, That for the first fifteen years following the establishment of the appellate court authorized by section 21(a) of this Act, the United States Court of Appeals for the Third Circuit shall have jurisdiction of appeals from all final decisions of the highest court of the Virgin Islands from which a decision could be had. The Judicial Council of the Third Circuit shall submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this section.".

SEC. 705. The Revised Organic Act of the Virgin Islands is amended by adding to it a new section 23A:

"SEC. 23A. (a) Prior to the establishment of the appellate court authorized by section 21(a) of this Act, the District Court of the Virgin Islands shall have such appellate jurisdiction over the courts of the Virgin Islands established by local law to the extent now or hereafter prescribed by local law: Provided, That the legislature may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of the Virgin Islands or of any order or regulation issued or action taken by the executive branch of the government of the Virgin Islands with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the United States.

"(b) Appeals to the District Court of the Virgin Islands shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The chief judge of the district court shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges who are serving on, or are assigned to, the district court from time to time pursuant to section 24(a) of this Act: Provided, That no more than one of them may be a judge of a court established by local law. The concurrence of two judges shall be necessary to any decision by the appellate division of the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure. Appeals pending in the district court on the effective date of this Act shall be heard and determined by a single judge.

"(c) The United States Court of Appeals for the Third Circuit shall have jurisdiction of appeals from all final decisions of the district court on appeal from the courts established by local law. The United States Court of Appeals for the Third Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

"(d) Upon the establishment of the appellate court provided for in section 21(a) of this Act all appeals from the decisions of the courts of the Virgin Islands established by local law not previously taken must be taken to that appellate court. The establishment of the appellate court shall not result in the loss of jurisdiction of the district court over any appeal then pending in it. The rulings of the district court on such appeals may be reviewed in the United States Court of Appeals for the Third Circuit and in the Supreme Court notwithstanding the establishment of the appellate court.".

SEC. 706. (a) Section 24(a) of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1614(a)) is amended to read as follows:

"(a) The President shall, by and with the advice and consent of the Senate, appoint two judges for the District Court of the Virgin Islands, who shall hold office for terms of ten years and until their successors are chosen and qualified, unless sooner removed by the President for cause. The judge of the district court who is senior in continuous service and who otherwise qualifies under section 136(a) of title 28, United States Code, shall be the chief judge of the court. The salary of a judge of the district court shall be at the rate prescribed for judges of the United States district courts. Whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the district court, the chief judge of the Third Judicial Circuit of the United States may assign a judge of a court of record of the Virgin Islands established by local law, or a circuit or district judge of the Third Judicial Circuit, or a recalled senior judge of the District Court of the Virgin Islands, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge of the District Court of the Virgin Islands. The compensation of the judges of the district court and the administrative expenses of the court shall be paid from appropriations made for the judiciary of the United States.".

(b) Section 24(b) of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1614(b)) is amended to read as follows:

"(b) Where appropriate, the provisions of part II of title 18 and of title 28, United States Code, and, notwithstanding the provisions of rule 7(a) and of rule 54(a) of the Federal Rules of Criminal Procedure relating to the requirement of indictment and to the prosecution of criminal offenses in the Virgin Islands by information, respectively, the rules of practice heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18, and 28, United States Code, shall apply to the district court and appeals therefrom: Provided, That the terms 'Attorney for the government' and 'United States attorney' as used in the Federal Rules of Criminal Procedure, shall, when applicable to causes arising under the income tax laws applicable to the Virgin Islands, mean the Attorney General of the Virgin Islands or such other person or persons as may be authorized by the laws of the Virgin Islands to act therein: Provided further, That in the district court all criminal prosecutions under the laws of the United

States, under local law under section 22(c) of this Act, and under the income tax laws applicable to the Virgin Islands may be had by indictment by grand jury or by information: Provided further, That an offense which has been investigated by or presented to a grand jury may be prosecuted by information only by leave of court or with the consent of the defendant. All criminal prosecutions arising under local law which are tried in the district court pursuant to section 22(b) of this Act shall continue to be had by information, except such as may be required by the local law to be prosecuted by indictment by grand jury.".

SEC. 707. Section 25 of the Revised Organic Act of the Virgin Islands (68 Stat. 507; 48 U.S.C. 1615) is amended to read as follows:

"SEC. 25. The Virgin Islands consists of two judicial divisions; the Division of Saint Croix, comprising the island of Saint Croix and adjacent islands and cays, and the Division of Saint Thomas and Saint John, comprising the islands of Saint Thomas and Saint John and adjacent islands and cays. Court for the Division of Saint Croix shall be held in Christiansted, and for the Division of Saint Thomas and Saint John at Charlotte Amalie.".

SEC. 708. Section 27 of the Revised Organic Act of the Virgin Islands (68 Stat. 507; 48 U.S.C. 1617) is amended by substituting the words "courts established by local law" for "inferior courts of the Virgin Islands" wherever they appear, and by deleting the last two sentences.

SEC. 709. The Act of May 20, 1932 (47 Stat. 160, 48 U.S.C. 1400) is repealed.

TITLE VIII

GUAM

SEC. 801. Section 22 of the Organic Act of Guam (64 Stat. 389; 48 U.S.C. 1424), as amended, is amended to read as follows:

"SEC. 22. (a) The judicial authority of Guam shall be vested in a court of record established by Congress, designated the 'District Court of Guam,' and such local court or courts as may have been or shall hereafter be established by the laws of Guam in conformity with section 22A of this Act.

"(b) The District Court of Guam shall have the jurisdiction of a district court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of title 28, United States Code, and that of a bankruptcy court of the United States.

"(c) In addition to the jurisdiction described in subsection (b), the District Court of Guam shall have original jurisdiction in all other causes in Guam, jurisdiction over which is not then vested by the legislature in another court or other courts established by it. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by the laws of Guam for the purpose of determining the requirements of indictment by grand jury or trial by jury.

"SEC. 22A. (a) The local courts of Guam shall consist of such trial court or courts as may have been or may hereafter be established by the laws of Guam. On or after the effective date of this Act, the legislature of Guam may in its discretion establish an appellate court.

"(b) The legislature may vest in the local courts jurisdiction over all causes in Guam over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. Such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam by section 22(b) of this Act.

"(c) The practice and procedure in the local courts and the qualifications and duties of the judges thereof shall be governed by the laws of Guam and the rules of those courts.

"SEC. 22B. The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings: Provided, That for the first fifteen years following the establishment of the appellate court authorized by section 22A(a) of this Act, the United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the highest court of Guam from which a decision could be had. The Judicial Council of the Ninth Circuit shall submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives at intervals of five years following the establishment of such appellate Court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

"SEC. 22C. (a) Prior to the establishment of the appellate court authorized by section 22A(a) of this Act, the District Court of Guam shall have such appellate jurisdiction over the local courts of Guam as the legislature may determine: Provided, That the legislature may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of Guam or of any orders or regulations issued or actions taken by the executive branch of the government of Guam with the Constitution, treaties, or laws of the United States, including this Act, or any authority exercised thereunder by an officer or agency of the United States.

"(b) Appeals to the District Court of Guam shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The district judge shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division of any session shall be designated by the presiding judge from among the judges who are serving on, or are assigned to, the district court from time to time pursuant to section 24 of this Act: Provided, That no more than one of them may be a judge of a court of record of Guam. The concurrence of two judges shall be necessary to any decision of the appellate division of the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

"(c) The United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the appellate division of the district court. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

"(d) Upon the establishment of the appellate court provided for in section 22A(a) of this Act all appeals from the decisions of the local courts not previously taken must be taken to the appellate court. The establishment of that appellate court shall not result in the loss of jurisdiction of the appellate division of the district court over any appeal then pending in it. The rulings of the appellate division of the district court on such appeals may be reviewed in the United States Court of Appeals for the Ninth Circuit and in the Supreme Court notwithstanding the establishment of the appellate court.

"SEC. 22D. Where appropriate, the provisions of part II of title 18 and of title 28, United States Code, and notwithstanding the provision in rule 54(a) Federal Rules of Criminal Procedure relating to the prosecution of criminal offenses on Guam by information, the rules of practice and procedure heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18, and 28, United States Code, shall apply to the District Court of Guam and appeals therefrom; except that the terms, 'Attorney for the government' and 'United States attorney', as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of Guam, including the Guam Territorial income tax, mean the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.".

SEC. 802. Section 24 of the Organic Act of Guam, as amended (64 Stat. 390; 48 U.S.C. 1424b), is amended, by—

(a) substituting in the first paragraph of subsection (a) the words "for the term of ten years" for "for a term of eight years";

(b) substituting in the second paragraph of subsection (a) the words "a local court of record" for "the Island Court of Guam";

(c) inserting in the second paragraph of subsection (a) between the words "ninth circuit" and "or" the words "or a recalled senior judge of the District Court of Guam or of the District Court for the Northern Mariana Islands";

(d) substituting in subsection (b) the numbers "35" and "37" for "31" and "33", respectively; and

(e) deleting subsection (c).

SEC. 803. Section 1 of the Act of August 27, 1954 (68 Stat. 882), is amended by repealing that portion which reads: "that no provisions of any such rules which authorize or require trial by jury or the prosecution of offenses by indictment by a grand jury instead of by information shall be applicable to the District Court of Guam unless and until made so applicable by laws enacted by the Legislature of Guam, and except further".

TITLE IX

NORTHERN MARIANA ISLANDS

SEC. 901. Section 1 of the Act of November 8, 1977 (91 Stat. 1265, 48 U.S.C. 1694) is amended by—

(a) substituting in subsection (b)(1) the words "for a term of ten years" for "for a term of eight years";

(b) inserting in subsection (b)(2) between the words "President" and "or", the words "or a recalled senior judge of the District Court of Guam or of the District Court of the Northern Mariana Islands"; and

(c) substituting the following for subsection (c): "Where appropriate, and except as otherwise provided in articles IV and V of the Covenant approved by the Act of March 24, 1976 (90 Stat. 263), the provisions of part II of title 18 and of title 28, United States Code, the rules of practice and procedure heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to title 11, 18, and 28, United States Code, shall apply to the District Court for the Northern Mariana Islands and appeals therefrom; except that the terms 'Attorney for the government' and 'United States attorney', as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of the Northern Mariana Islands, include the Attorney General of the Northern Mariana Islands or such other person or persons as may be authorized by the laws of the Northern Mariana Islands to act therein.".

SEC. 902. Section 2(a) of the Act of November 8, 1977 (91 Stat. 1266; 48 U.S.C. 1694a(a)), is amended to read as follows:

"(a) The District Court for the Northern Mariana Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of title 28, United States Code, and that of a bankruptcy court of the United States. With respect to the government of the Trust Territory of the Pacific Islands or its agencies of instrumentalities the jurisdiction of the district court shall extend only (a) to actions brought by that government or its agencies or instrumentalities, (b) to actions brought against that government or its agencies or instrumentalities based upon a commercial activity carried on by that government or its agencies or instrumentalities within the Northern Mariana Islands, and (c) to actions in which money damages are sought against that government or its agencies or instrumentalities for personal injury or death, or damage to or loss of property, occurring in the Northern Mariana Islands and caused by the tortious act or omission of that government or its agencies or instrumentalities, or of any official or employee thereof while acting within the scope of his office or employment, except any claim based upon the exercise or failure to exercise a discretionary function, regardless of whether the discretion be abused, or any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights. In any suit by or against the government of the Trust Territory or its agencies or instrumentalities permissible under this section, that government or its agencies or instrumentalities shall be entitled to such rights and privileges as are applicable to the United States when it is a party. In cases in which the district court would have no jurisdiction over the government of the Trust Territory of the Pacific Islands if suit were brought against it, the district court shall equally have no jurisdiction over actions brought against the officers or employees of that government or its agencies or instrumentalities with respect to their acts or omissions colorably related to their official duties.".

SEC. 903. Section 3 of the Act of November 8, 1977 (91 Stat. 1266; 48 U.S.C. 1694b) is amended to read as follows:

"SEC. 3. (a) Prior to the establishment of an appellate court for the Northern Mariana Islands the district court shall have such appellate jurisdiction over the courts established by the Constitution or laws of the Northern Mariana Islands as the Constitution and laws of the Northern Mariana Islands provide, except that such Constitution and laws may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States, including the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (90 Stat. 263) (hereinafter referred to as 'Covenant'), or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of the Northern Mariana Islands or of any orders or regulations issued or actions taken by the executive branch of the government of the Northern Mariana Islands with the Constitution, treaties, or laws of the United States, including the Covenant or with any authority exercised thereunder by an officer or agency of the United States.

"(b) Appeals to the district court shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The judge appointed for the court by the President shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges assigned to the court from time to time pursuant to section 1(b)(2) of this Act: Provided, That no more than one of them may be a judge of a court of record of the Northern Mariana Islands. The concurrence of two judges shall be necessary to any decision by the appellate division of the district court on the merits of an appeal but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

"(c) The United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the appellate division of the district court. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.".

SEC. 904. Section 4 of the Act of November 8, 1977 (91 Stat. 1266, 48 U.S.C. 1694c) is amended by inserting the words, "including the Supreme Court of the United States," between the words "courts of the United States" and "and".

TITLE X

GENERAL PROVISIONS

SEC. 1001. With respect to cases and controversies which may have arisen or may arise in the Northern Mariana Islands against the Government of the Trust Territory of the Pacific Islands over which the District Court of the Northern Mariana Islands lacks jurisdiction, the High Court of the Trust Territory of the Pacific Islands shall have such jurisdiction as it possessed on January 8, 1978.

SEC. 1002. Sections 335, 336 and 402(e) of the Act of November 6, 1978 (92 Stat. 2680, 2682) are repealed.

SEC. 1003. (a) Any judge or former judge who is receiving, or will upon attaining the age of sixty-five years be entitled to receive, payments pursuant to section 373 of title 28, United States Code may elect to become a senior judge of the court on which he served while on active duty.

(b) The chief judge of a judicial circuit may recall any such senior judge of his circuit, with the judge's consent, to perform in the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands such judicial duties and for such periods of time as the chief judge may specify.

(c) Any act or failure to act by a senior judge performing judicial duties pursuant to this section shall have the same force and effect as if it were the act or failure to act of a judge on active duty; but such senior judge shall not be counted as a judge of the court on which he is serving for purposes of the number of judgeships authorized for that court.

(d) Any senior judge shall be paid, while performing duties pursuant to this section, the same compensation (in lieu of payments pursuant to section 373 of title 28, United States Code) and the same allowances for travel and other expenses as a judge in active service.

(e) Senior judges under subsection (a) of this section shall at all times be governed by the Code of judicial conduct for the United States judges, approved by the Judicial Conference of the United States.

(f) Any person elected to be a senior judge under subsection (a) of this section and who thereafter—

(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (b) of this section);

(2) engages in the practice of law; or

(3) materially violated the code of judicial conduct for the United States judges, shall cease to be a senior judge and to be eligible for recall pursuant to subsection (b) of this section.

SEC. 1004. The prosecution in a Territory or Commonwealth is authorized—unless precluded by local law—to seek review or other suitable relief in the appropriate local or Federal appellate court, or, where applicable, in the Supreme Court of the United States from—

(a) a decision, judgment, or order of a trial court dismissing an indictment or information as to any one or more counts, except that no review shall lie where the constitutional prohibition against double jeopardy would further prosecution;

(b) a decision or order of a trial court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the prosecution certifies to the trial court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding; and

(c) an adverse decision, judgment, or order of an appellate court.

SEC. 1005. The provisions of sections 706(a), 802(a), and 901(a) of this Act extending the terms of district court judges of the Virgin Islands, Guam, and the Northern Mariana Islands, respectfully, from eight to

ten years shall be applicable to the judges of those courts holding office on the effective date of this Act.

SEC. 1006. Titles VII, VIII, IX, and X of this Act shall become effective on the ninetieth day following their enactment.

House amendments to the Senate amendment: Amend title II by adding the following:

"SEC. 203. Section 11 of the Organic Act of Guam (64 Stat. 387, 48 U.S.C. 1423a), as amended, is amended by inserting, immediately before the sentence that begins with the words 'Should the Guam Power Authority fail to pay', the following language: 'At the request of the Board of Directors of the Guam Power Authority for a second refinancing agreement and conditioned on the approval of the Government of Guam pursuant to the law of Guam, and conditioned on the establishment of an independent rate-making authority by the Government of Guam, the Secretary may guarantee for purchase by the Federal Financing Bank, on or before December 31, 1984, according to an agreement that shall provide for—

"'(a) substantially equal semi-annual installments of principal and interest,

"'(b) maturity of obligations no later than December 31, 2004,

"'(c) authority for the Secretary, should there be a violation of a provision of this legislation, or covenants or stipulations contained in the refinancing document and after giving sixty days notice of such violation to the Guam Power Authority and the Governor of Guam, to dismiss members of the Board of Directors or the general manager of the Guam Power Authority, and (a) appoint in their place members or a general manager who shall serve at the pleasure of the Secretary, or (b) contract for the management of the Guam Power Authority, and

"'(d) an annual simple interest rate of seven percentum; and the Federal Financing Bank shall purchase such Guam Power Authority obligations if such Guam Power Authority obligations are issued to refinance the principal amount scheduled to mature on December 31, 1990. Should such second refinancing occur, (1) the independent rate-making authority to be established by the Government of Guam, or in its absence, the Board of Directors of the Guam Power Authority, shall establish rates sufficient to satisfy all financial obligations and future capital investment needs of the Guam Power Authority that shall be consistent with generally accepted rate-making practices of public utilities, and (2) the Government of Guam shall not modify the requirements of such refinancing agreement without agreement of the Secretary. There are authorized to be appropriated to the Secretary of the Interior for payment to the Federal Financing Bank such sums as are necessary to pay (1) the repurchase payment required under the fifth paragraph of the December 31, 1980, note from the Guam Power Authority to the Federal Financing Bank and any subsequent repurchase payments required under the second refinancing agreement, and (2) the interest rate differential between the seven percentum to be paid by the Guam Power Authority and the second refinancing agreement and the interest rate that would otherwise be determined in accordance with the above cited Section 6 of the Federal Financing Bank Act.'.

"SEC. 204(a) The Governor of any possession of the United States may for calendar years 1984 and 1985 proclaim a formula (different from that provided by section 103A(g) of the Internal Revenue Code of 1954) for allocating the State ceiling under such section among the governmental units in such possession having authority to issue qualified mortgage bonds (as defined in section 103A(c) of such Code).

"(b) The authority provided by subsection (a) shall not apply after the effective date of any legislation with respect to the allocation of the State ceiling enacted by the legislature of the possession after the date of the enactment of this Act.".

Amend title III as follows:

(a) in section 301(a), change "(90 Stat. 278)" to "(48 U.S.C. 1681 note).";

(b) in section 301(c) change the new section 12108(c)(4) to read:

"(4) otherwise qualifies under the laws of the United States to be employed in the fisheries."; and

(c) change section 302 to read:

"SEC. 302. A vessel that is or was last documented under chapter 121 of title 46, United States Code, may be sold, chartered, leased, mortgaged, or transferred by any other means to a citizen of the United States (as defined in section 2101 of that title) without the approval of the Secretary of Transportation under section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808).";

(d) After section 302, add the following:

"SEC. 303. The weight limitations contained in subsections (b) and (c) of Section 301 above shall not apply to the Northern Mariana Islands until the termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands (61 Stat. 3301).".

Amend title IV as follows:

(a) in section 401(b)(1), by striking the words "from funds heretofore authorized for technical assistance"; and

(b) in section 401(d), by changing "$2,000,000" to "$15,000,000".

Amend title V b · adding the following:

"SEC. 503. The Department of the Army may remove from American Samoa any of the 4500 kilowatt power plants sent to American Samoa pursuant to the 1974 loan agreement between the Department of the Army and the Department of the Interior, and all charges that may accrue or may have accrued under such agreement shall be excused.".

"SEC. 504. Section 818(b)(2) of the Military Construction Authorization Act, 1981 (Public Law 96-418) is amended by adding at the end thereof the following: 'Reasonable development costs shall be a fixed standard percentage of such monetary consideration received by the Government of Guam. The fixed standard percentage shall be determined by a study, conducted by the Secretary, typical development costs required to convert comparable lands to finished developed sites, expect that such percentage shall not exceed 30 percent.'.".

Amended title VI as follows:

(a) After paragraph (g) insert the following:

"'(h) Amend the first sentence of section 30 of the Organic Act of Guam (64 Stat. 392, as amended 48 U.S.C. 1421h) by adding after the words 'inhabitants of Guam' the following:

"'(including, but not limited to, compensation paid to members of the Armed Forces and pensions paid to retired civilians and military employees of the United States, or their survivors, who are residents of, or who are domiciled in, Guam)'.".

(b) Add the following after section 601:

"SEC. 602. Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by adding at the end the following new subsection:

"'(1) The requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay on Guam for a period not to exceed fifteen days, if the Attorney General, the Secretary of State, and the Secretary of the Interior jointly determined that—

"'(1) Guam has developed an adequate arrival and departure control system, and

"'(2) such a waiver does not represent a threat to the welfare, safety, or security of the United States.'.

"(b) Section 214(a) of such Act (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: 'No alien admitted to Guam without a visa pursant to section 212(l) may be authorized to enter or stay in the United States other than in Guam or to remain in Guam for a period exceeding fifteen days from date of admission to Guam.".

Amend title VII as follows:

(a) by striking in section 704 the words "of appeals from" and inserting in lieu thereof the words "to review by writ of certiorari"; and

(b) by adding after section 706(b) the following:

"(c) The provisions of subsection (a) of this section regarding the determination and qualifications of the chief judge of the District Court of the Virgin Islands shall not apply to a person serving as chief judge of said court on the effective date of this Act."

Amend title VIII by striking in section 801 where it amends section 22B of the Organic Act of Guam the words "of appeals from" and inserting in lieu thereof the words "to review by writ of certiorari".

Amend title IX by striking in section 902 all after the first sentence of the new text of paragraph (a) beginning with the words "With respect to" and ending "official duties.".

Amend title X by striking all of section 1001 and renumbering subsequent sections accordingly.

Mr. WON PAT (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment and the House amendment to the Senate amendment be considered as read and printed in the RECORD.

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

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, I might inquire of the gentleman from Guam: Are the amendments at the desk the same as the amendments that were worked out between the majority and the minority?

Mr. WON PAT. Mr. Speaker, will the gentleman yield?

Mr. LAGOMARSINO. I am glad to yield to the gentleman from Guam.

Mr. WON PAT. If the gentleman will yield, yes, they are.

The amendments to the Senate have the support of all the representatives of the territories and we believe they will be acceptable to the other body.

This will, we hope, conclude action on the 1984 omnibus territories bill as far as the House is concerned.

On behalf of all of the Delegates representing the U.S. territories, I want to thank the Members of the House for their help and contributions to progress for the peoples of our island communities.

I particularly want to thank my good friend, BOB LAGOMARSINO, who is always so helpful and constructive and with whom it is always a pleasure to work.

Mr. Speaker, H.R. 5561 is a bill to facilitate the economic development of the U.S. territories by providing necessary assistance for and removing unnecessary impediments to growth.

It received broad bipartisan support in the Committee on Interior and Insular Affairs, which has broad jurisdiction over matters affecting the territories. Further, upon passage of the House it had been amended to reflect concerns of the Committees on the Budget, Merchant Marine and Fisheries, and Ways and Means.

Of course, the gentleman from California and I also worked closely with territorial leaders and consulted with the administration on this legislation, which is so central to the longstanding national policy goal of territorial development.

In passing the bill just prior to the last recess, the Senate amended it in a number of respects. The most important of these changes dropped refinancing of the Guam Power Authority's Federal debt; increased the fiscal year 1986 authorization for essential Guam water projects; included the Northern Mariana Islands and the Trust Territory of the Pacific Islands in the Energy Policy and Conservation Act and the Energy Extension Service Act; dropped the authorization for sewer collector system grants; and substituted provisions of the legislation to improve the judicial relationship between the United States and Guam, the Virgin Islands, and the Northern Mariana Islands for the more limited judicial provisions in our bill.

We regarded the Senate additions to the bill as welcome, but the deletions as disappointing.

In explaining their reasons for having the two provisions I noted dropped from the bill, our Senate counterparts indicated a willingness to reconsider them if certain changes were made. This led to informal discussions of compromises. They centered on reflecting the concerns of the Senate but preserving the most important aspects of the assistance the House had approved.

Those discussions led to the amendments before the House. As I said, we believe that they are acceptable to Senate leaders on territorial issues.

Thus, we expect that if the House makes the amendments I am proposing, the Senate will concur in final congressional approval this 1984 omnibus insular areas assistance bill.

I must, in particular, express my appreciation to Senators WEICKER, JOHNSTON, MCCLURE, and MATSUNAGA for the leadership that would make this possible. It is also our hope that the administration will approve the bill, as we propose to amend it.

Although they opposed many of the provisions in their initial form, we have worked closely with the Department of the Interior, the agency responsible for the territories, as well as other agencies on administration concerns. The legislation I am asking the House to approve now has been amended substantially in a sincere effort to reach a reasonable compromise with the administration.

The help that it would provide the territories in their efforts to expand economic activity is imperative and substantial. As the gentleman suggests, it also represents the most careful congressional consensus developed on any annual omnibus insular areas bill within memory.

The gentleman knows that this would not have been possible without the sensitivity and diligence of the leaders of the Committee on Interior and Insular Affairs, Chairman MORRIS UDALL, and Banking minority member, MANUAL LUJAN, JR., and other members such as SALA BURTON.

Neither would it have been possible without the inspired, good work of my fellow territorial representatives, RON DE LUGO, BALTASAR CORRADA, and FOFO SUNIA.

Nor would it have been possible without the understanding and cooperation of leaders of other committees including the chairman of the Committee on Merchant Marine and Fisheries, WALTER JONES; the chairman of the Committee on Ways and Means, DAN ROSTENKOWSKI; the chairman of the Committee on Government Operations, JACK BROOKS; the chairman of the Committee on the Judiciary, PETER RODINO; and the chairman of the Subcommittee on Immigration, Refugees, and International Law, ROMANO MAZZOLI.

Let me now explain the changes our amendments propose to the bill as amended by the Senate.

Our first amendment would restore refinancing of Guam Power Authority as section 203.

This may be the most controversial—and critical—element of this bill.

It is needed to prevent a financial collapse by a utility that has already defaulted on Federal and private obligations. This collapse might very well result in costs possibly greater than those involved in the refinancing. And the utility is relied upon by some of our most strategic Pacific military installations as well as the people and businesses of the territory.

The language we now propose is the result of compromises between all concerned.

Most important, I believe, is that it would accomplish our primary goal of enabling GPA to continue to operate, meeting its obligations with stable finances and reasonable rates.

This is also the objective of Guam's visionary Governor, Ricardo Bordallo, and responsible legislature majority. They have agreed with us to substantial concessions to obtain financing terms that give GPA a new fiscal lease on life.

They recognize the wisdom of the independent ratemaking insisted on by my Senate counterpart, LOWELL WEICKER, who has been so helpful on this issue as he is with all territorial issues.

They also recognize that the standby authority demanded by the Reagan administration to ensure that GPA adheres to refinancing stipulations must be accommodated.

We propose to meet the Department of the Interior part way on this. We would agree to their basic point: that they be authorized to step in and provided management if, and only if, Guam violates the requirements of the refinancing.

However, we do not intend to authorize Interior to sell the utility if Guam violates the requirements of the refinancing in this legislation, as they would like.

This is not because we are opposed to private operation of the utility. Indeed, eventually that may make sense for this essential public service. Further, Congress would have to consider private operation if GPA is confronted with more overwhelming financial troubles as a result of noncompliance with the stipulations of this refinancing.

We have not included the authority to sell the utility that the administration wants because that is a judgment Congress should make only in the event that it is necessary. Additionally, it is a measure that should be taken only with the opportunity for the people of Guam to debate the question and make their views known to Congress.

Granting such authority before there is a necessity for such a drastic step would be excessive. It would not ensure the careful consideration that should be taken.

Frankly, neither does it express the confidence in the GPA board and management that should be expressed. As Senator WEICKER has understood, GPA's financial problems have not been of their making. We think that this amendment gives them the chance—and independence—they need to get GPA back on its feet.

This amendment also contains a new section 204 which would provide temporary authority for the Governors of the territories to allocate the authority to issue tax-exempt mortgage subsidy bonds among governmental units.

The Deficit Reduction Act of 1984 (Public Law 98-369) extended until the end of 1987 the authority of State and local governments to issue mortgage subsidy bonds. It subjected such bonds issued by the territories to the same limitations that apply to such issuance in the case of each State and the District of Columbia.

When limitations on the annual amount of mortgage subsidy bonds that can be issued in each State were enacted in 1980, each Governor was given temporary authority to allocate the ceiling among issuing authorities. This section would give similar temporary authority to the Governors of the territories that have the authority to issue such bonds.

Under the provision, the Governor may for calendar years 1984 and 1985 proclaim a formula, different from that provided by section 103A(g) of the Internal Revenue Code of 1954, for allocating the mortgage subsidy bond ceiling. This authority would not apply after the effective date of any allocation formula enacted by the territorial legislature after the date of enactment of this act.

The changes we would make to title III are essentially minor in nature. But this title itself is of major significance to the Pacific territories.

Title III would provide exemptions to vessel documentation and manning laws that have impeded the development of local fishing industries capable of tapping the tremendous ocean resources of the American Pacific islands.

We are indebted to the Committee on Merchant Marine and Fisheries for their sensitivity in this area. These provisions are a product of compromises between our committees.

The compromises are a noteworthy step in the rational adaptation of Federal maritime laws to the unique circumstances of the Pacific territories. They are accompanied by a welcome willingness to examine other related issues not addressed by this bill. At the same time that they enable Pacific island Americans to take advantage of the natural opportunity around them, they compromise no other domestic interests.

A letter from Chairman JONES to Chairman UDALL, who has also been most understanding on this issue, explains better than could I the changes in sections 301 and 302 of the Senate amendment. It reads:

COMMITTEE ON
MERCHANT MARINE AND FISHERIES,
Washington, DC, September 6, 1984.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: As you know, H.R. 5561 as passed by the House, was amended and passed by the Senate. I have been informed that the differences between the two versions will be worked out and there probably will not be a conference committee.

The Senate amendment poses a problem in that, while it allows a vessel documented in the fisheries or coastwise trade to be sold, chartered, or transferred to a national of Samoa, or a citizen of the Northern Mariana Islands without the Secretary's permission, it does not allow a vessel documented as a yacht or under registry to have the same privilege. This needs to be changed to make the application consistent to all vessels that are documented. There are also a couple of purely technical amendments that also need to be made.

I have enclosed a copy of an amendment that should be made to H.R. 5561. If this amendment is included, I see no reason to convene a conference on this bill since issues of concern to this Committee will have been resolved.

I appreciate all of your help on this project, and I look forward to working with you on similar endeavors in the future.

With best regards, I am

Sincerely,

WALTER B. JONES,
Chairman.

A new section 303 is added at the request of the Northern Mariana Islands new and capable representative, Froilan Tenorio. It would ensure that the exemption of those islands from certain vessel documentation laws is preserved through termination of the Pacific Islands Trusteeship and is not superseded by section 301.

This exemption was proclaimed by former President Jimmy Carter, pursuant to the authority of our covenant with the Northern Marianas and consistent with our trusteeship obligations regarding them. Until the Northern Marianas fully become the members of the American political family that they are to be, section 301 should not impose any new limitations upon them.

We would next amend section 401(b) as requested by the able Delegate from the Virgin Islands to restore the House's original method of authorizing $600,000 to plan improvements to the St. Croix, VI airport. This should not add to the cost of this bill but would provide the appropriations process and the administration with as much flexibility as they might need to fund this worthwhile project.

Section 401(d) would be amended to authorize $15 million to improve water facilities in the Northern Marianas as of fiscal year 1986. This is in addition to $2 million which we expect to have appropriated for this need this coming fiscal year.

As the Governor of the territory, Pedro P. Tenorio, persuasively points out, the need for Federal assistance is unquestionably manifest.

I visited Saipan just weeks ago. The water infrastructure and quality on that island is so poor as to present a clear danger to the public health.

I urge the administration, or its successor, to include these funds in its budget request next year. I also note here that the intent of this authorization is to provide funding for construction purposes and not further study of the problem.

I first considered what is proposed in our new section 503 when I visited American Samoa earlier this year and this problem was brought to my attention by the respected Delegate from that territory.

On that trip, staff and I examined the power situation of the islands, including the remaining generators of those loaned to the territory a decade ago to provide emergency service.

Much of this equipment must literally be described as junk. Its greatest possible value would be as a source of parts for the operational generators not among those already returned.

The condition of the equipment makes the proposal that the territory pay to have it all restored even more ludicrous than the facts of the loan make it. The responsibility is clearly a Federal one and our committee has been disappointed that the agencies involved have not worked out the payment issue.

In our report on the 1985 budget, we noticed our intent:

> to ensure that the problem is resolved in a manner that would not put additional strain on the resources of American Samoa or further encumber the limited resources that the administration seems willing to dedicate to the nation's territories.

This amendment responds to that by excusing any outstanding obligations between the territorial or Federal Governments or between Federal agencies.

I regret that we have had to resort to this or to a legislative solution at all. I recognize that it may not be regarded as the most desirable solution by both agencies involved. But this is apparently the only resolution that will not ultimately penalize the people of American Samoa and will also return to the Corps of Engineers equipment inventoried as part of their strategic reserve.

The corps has done some fine work in the Pacific territories. I am convinced that they are sensitive to the situation this amendment deals with. I hope that they know that their help in the emergency situation which existed in American Samoa was vital and is sincerely appreciated.

Our new section 504 is an amendment needed to resolve a problem un-

intentionally created by an amendment to legislation that was enacted 4 years ago at my request.

That law transferred title to 927 acres of excess Navy land to the government of Guam. The property is needed to develop Apra Harbor as the island's only commercial port. Unfortunately, the amendment conforming the transfer to other like transfers unintentionally, but effectively, prevented financing of the port development.

I am indebted to the sage chairman of the Committee on Government Operations, for his help in working out this solution to the problem.

Making use of the property is one of three elements of my effort to develop a harbor facility that is critical to a U.S. territory so distant from the U.S. mainland. The other aspects of my effort have been obtaining the funds needed to develop dock infrastructure and to move the Navy's ammunition wharf, the location of which has precluded commercial activity.

The section amends section 818 of the 1981 Military Construction Authorization Act to provide a mechanism for quantifying the reasonable development costs the Government of Guam may retain from sale or lease of this property. Section 818 requires all consideration from sale or lease of the property, minus reasonable development costs, be paid to the United States.

Under this amendment, the Secretary of the Navy will study typical development costs required to convert comparable lands to finished developed sites and determine a fixed standard percentage of all lease or sale proceeds that may be considered reasonable development costs. In no event, however, may that fixed standard percentage exceed 30 percent. It is our understanding that this amount will enable the government of Guam to develop the property.

This procedure will eliminate the disagreements and constant negotiations required to determine reasonable development costs for each transaction.

The amendment proposing a new section 601(h) is intended to rectify an inconsistency in Federal law which calls into question a basic principle in the fiscal relationship of the territories to the United States.

That principle is that Federal tax collections or what would be Federal tax collections in the territories are returned to the territorial governments.

This makes sense as a means of indirect Federal support in view of the need for the assistance. It also makes sense because the territories neither have a vote in the disposition of Federal funds, nor share equally in them.

A 1972 law enacted to respond to the request of the government of Guam during the Camacho administration, as interpreted by the Treasury, can be read to supersede the full authority to cover over for at least a couple of classes of Guam resident taxpayers. These include retired Federal employees on the island and Guam residents in the Armed Forces who are stationed elsewhere.

As a consequence, Guam is not now receiving all of the revenues which are generated from it. This is contrary to the intent of the Organic Act.

The Inspector General of the Department of the Interior brought the situation about to my attention a few months ago after administrative efforts to resolve the problem failed.

Both Interior and Treasury officials recognize the need for clarification.

We, therefore, propose to include additional language in the Organic Act to clarify the intent of that basic law establishing the Federal territorial relationship. It would ensure that taxes on the income of all Guam residents is covered over to the government of Guam, as Congress and the President intended in the Organic Act.

Selection 602 is identical to a provision that has passed the House twice, most recently in the immigration reform bill now in conference.

It is included here because that legislation is controversial for other reasons and the chairman of the Subcommittee on Immigration, Refugees, and International Law, and of the full Committee on the Judiciary, graciously recognize that its fate should not necessarily be tied to that of more far-reaching improvements of the Nation's immigration laws.

The section would provide for a narrow exception to visa requirements for the only Pacific territory subject to Federal immigration laws: Guam. It would permit the Justice, State, and Interior Departments to waive visa requirements for persons visiting the island for not more than 15 days for tourist or business purposes.

This waiver would be contingent upon Guam having an adequate control system and a Federal recognition that it in no way poses a threat to the rest of the Nation.

The waiver is needed to facilitate development of the island's tourism industry, which largely involves Japanese visitors. Many potential Japanese visitors to the territory are discouraged because of the difficulty of obtaining a U.S. visa.

Because they maintain their own immigration system, U.S. visas are not needed to visit Guam's sister and, in terms of tourism, competitor Mariana Islands.

The waiver would not permit a visitor to enter into any other part of the United States. The effective barrier to such entry remains in Honolulu. There all persons traveling from the U.S. territory of Guam to elsewhere in the United States go through immigration clearance.

As you may have detected from my tone, I am not particularly happy about Americans having to clear immigration when traveling between parts of America. Approval of this Guam only visa waiver, though, should make this inconvenience for the Americans of Guam worthwhile.

I stated that we are pleased with the addition of the Federal-territorial judicial reform provisions contained in titles 7 through 10 of the Senate amendment since we have been working on them with our counterparts on the other side of the Capitol.

In almost all respects this is an accurate. We have, however, made a few minor amendments.

In sections 704 and 801 we would provide the circuit courts of appeals the discretion to hear appeals from Virgin Islands and Guam courts of last resort, if the territories do indeed establish them, for the 15-year transition period during which the circuit courts would serve as an interim step to review by the Supreme Court.

We did this in response to a suggestion by the Administrative Office of the U.S. Courts. At the same time we did not include a similiar suggestion of providing this discretion prior to or if the territorial appellate courts are not established. There would, thus, continue to be a right of appeal to the circuit courts from appeals to the district courts, as there is now.

The amendment proposing a new section 706(c) is a worthwhile provision requested by the distinguished Delegate from the Virgin Islands. It is necessary to ensure that the current chief judge of the district court of the Virgin Islands, a respected jurist, may continue in that capacity. A question about this could otherwise be raised by the qualifications for chief judge which would be established by section 706(a).

Our amendments would also remove a portion of section 902 and section 1001 of the Senate amendment. These provisions were designed to clarify the proper roles of the high court, the U.S. district court for the Northern Marianas and the commonwealth court.

Questions were raised over the effect of these provisions subsequent to the Senate action.

In removing these provisions we do not express either approval or disapproval of the Senate action. Unfortunately, there is not sufficient time to fully research the questions raised from the Northern Marianas or obtain the views of the administration which supported the Senate action.

Removal of these provisions at this time will permit both the House and Senate as well as the administration to review the questions and, if necessary, modify these provisions.

The provisions were designed by the Senate primarily to clarify the status of the trust territory government, which is located in the Northern Marianas although it no longer exercises any administrative functions with respect to the commonwealth.

The other body reflected the view that it is important to wind down the high court as constitutional governments develop in the trust territory and that the geographic accident of the location of the trust territory government not be used to expand the jurisdiction of the district court in the Nothern Marianas over causes of action arising in the trust territory. There is merit in this. At the same time we must be careful that in resolving one problem we do not create others.

As I stated earlier, the removal of these sections should not be interpreted as either approval or disapproval of the language. It is, rather, a conservative approach to permit a fuller review of this issue and, if necessary, the development of an alternative which could be considered next year.

In addition, we must note that under sections 706(b) and 801, interlocutory appeals from an order of a district court judge would be governed in the same manner as such interlocutory appeals in the district courts are now governed, that is under 28 U.S.C. 1292.

Finally, Mr. Speaker, I want to tell Members that Senator WEICKER offered an excellent analysis of the Federal-territorial judicial relationship provisions contained in titles 7 through 10 when he offered the Senate amendment.

This analysis conforms to our own intent except to the extent that the statements I have just made regarding those provisions otherwise indicates.

Because we worked so closely on this landmark development of territorial judicial systems with the Senate and to provide a clear statement of legislative intent regarding these provisions if questions arise in the future, I would like to present to the Members, Senator WEICKER's analysis. In doing so, I want to acknowledge the outstanding contributions to these historic portions of this legislation by staff of the Senate Energy and Natural Resources Committee, officials of the Departments of Justice and Interior, and judges in the territories and the circuit courts affected.

TITLE VII—VIRGIN ISLANDS

Section 701. This section amends § 3 of the Revised Organic Act of the Virgin Islands of 1954 (referred to in this title as "Act"), 48 U.S.C. § 1561, by authorizing the prosecution by indictment or by information of violations of the laws of the United States and of certain local offenses closely related to such violations. It is designed to face the problem presented by *United States* v. *Christian*, 660 F.2d 892 (3rd Cir. 1981), which held that existing law precludes the impanelling fo federal grand jury for the investigation of violations of federal laws in the Virgin Islands.

Section 702. This section amends § 21 of the Act, 48 U.S.C. 1611, by authorizing the establishment of a local appellate court. It also authorizes the legislature of the Virgin Islands to vest in the local courts jurisdiction over all causes in the Virgin Islands over which the federal courts do not have exclusive jurisdiction. If the legislature exercises the authority, it must confer on the local courts exclusive jurisdiction. It may not provide litigants an option to proceed in local or in federal court. That jurisdiction of the local court, however, is subject to the concurrent jurisdiction of the district court provided for in § 22 (a) and (c). The procedure in the local courts is to be governed by local law.

Section 703. (a) Section 703(a) amends §§ 22 and 23 of the Act, 48 U.S.C. §§ 1612, 1613. Section 22(a) confers on the District Court of the Virgin Islands the full jurisdiction of a district court of the United States. In view of the decision in *Chase Manhattan Bank (N.A.)* v. *South Acres Development Co.*, 434, U.S. 236 (1978) § 22(a) states specifically that the district court has the diversity jurisdiction provided for in 28 U.S.C. § 1332. The redraft of § 22(a) takes account (a) of the amendment of 28 U.S.C. § 1331, which has eliminated the jurisdictional amount in the federal question jurisdiction of the district courts, and (b) of the amendment of § 22(a) by § 336(a) and 402(e) of the Bankruptcy Reform Act of 1978, 92 Stat. 2680, 2682, which conferred on the District Court of the Virgin Islands the jurisdiction of a bankruptcy court of the United States. In analogy to § 31 of the Organic Act of Guam, 48 U.S.C. § 1421i(h), the district court will also have exclusive jurisdiction in all proceedings under the income tax laws applicable to the Virgin Islands, except certain ancillary laws enacted by the legislature of the Virgin Islands.

This provision is based on the consideration that since the income tax laws applicable to the Virgin Islands are the provisions of the Internal Revenue Code uniformity of interpretation requires that questions involving the interpretation of those laws be litigated only in the federal courts. This provision appears to be necessary in view of the characterization of the income tax laws of the Virgin Islands as a local Territorial tax which is reviewable in the district court only by virtue of local legislation. *Dudley* v. *Commissioner of Internal Revenue*, 258 F.2d 182 (3rd Cr. 1958). Another reason for this provision is the factor that this bill would abolish the concurrent jurisdiction of the district court over causes based on local law, if local law has vested jurisdiction over them in the local courts. *See* Section § 22(b). The Section further provides that violations of the federal income tax laws applicable to the Virgin Islands constitute offenses against the government of the Virgin Islands, which the appropriate officer of the Virgin Islands may prosecute in the district court without the request or consent of the United States Attorney normally required by Section 27 of the Act, 48 U.S.C. § 1617. This sentence is modelled on Section 31(f) of the Organic Act of Guam; 48 U.S.C. § 421i(f).

The purpose of section 22(b) is to eliminate the present situation of both the district court and the local court having jurisdiction over strictly local causes. Upon the effective date, the district court will no longer have jurisdiction over any cause over which local law has vested jurisdiction in the local courts. The decision as to whether jurisdiction over strictly local causes should be vested in the district court or the local courts will be made by local law. At any time the local legislature may divest the local courts of jurisdiction over any cause which will automatically revest jurisdiction in the district court, or, by vesting jurisdiction in the local courts, the local law will have the effect of divesting the district court of jurisdiction.

The only exceptions are those provided by federal law, such as diversity cases under 28 U.S.C. 1332 or causes involving a federal question under 28 U.S.C. 1331. In addition, under section 22(c), the district court will retain concurrent jurisdiction over closely related offenses.

Section 22(c) confers on the district court concurrent jurisdiction over offenses of which the local courts have jurisdiction, if those offenses are closely related to offenses over which the district court has jurisdiction. The purpose of this provision is to obviate the need for trying in different courts separate aspects of the same offense or of closely related offenses. This subsection is based in part on Rule 8(a) of the Federal Rules of Criminal Procedure.

(b) Section 703(b) takes account of the loss of the district court's present concurrent jurisdiction over local causes transferred by local law to the local courts, and continues the jurisdiction of the federal courts over the local causes pending in the federal trial and appellate courts on the effective date of this Act.

Section 704. This section replaces § 23 of the Act, 48 U.S.C. § 1613. It provides generally that the relations between the local courts of the Virgin Islands and the federal courts, including the Supreme Court, shall be the same as the relation between the state courts and the federal courts, except that for the first fifteen years following the establishment of the local appellate court, all the decisions of the highest local court from which a decision may be had shall be reviewable in the United States Court of Appeals of the Third Circuit. The phrase "including the Supreme Court of the United States" is included to explicitly note the jurisdiction of the Supreme Court.

The transitional period of fifteen years is the same as the one provided for in § 4 of the Act of November 8, 1977, 48 U.S.C. § 1694(c), relating to the Northern Mariana Islands. It is based on the consideration that, during the formative years of the new appellate court and while it establishes its institutional traditions, its decisions should be reviewed by a court of appeals which is familiar with the local conditions rather than on a discretionary basis by the Supreme Court.

The Court of Appeals is authorized to promulgate rules necessary to carry out the provisions of this section and may, to the extent it decides it advisable as a matter of transition and consistent with its assessment of the institutional tradition of the local court and the rights of appellants, by rule proceed to review on the basis of certiorari. The Committee is aware of the long experience which the Virgin Islands already has of having appeals taken to the Third Circuit from the district court of strictly local matters and the concern that a shorter transition period could be enacted. The quality of the judicial process, however, is of critical concern and cannot be properly evaluated until after the establishment of the local appellate court. The section therefore requires the Judicial Council of the Third

Circuit at five year intervals to submit reports as to whether there is further need for review by the Court of Appeals for the Third Circuit. Should the Council indicate that the local appellate court has developed its institutional traditions, the Committee can consider legislation amending this section to shorten or eliminate the transition period.

After the expiration of the transitional period referred to in the proviso, the Supreme Court of the United States will have jurisdiction to review the decisions of the courts of the Virgin Islands in the same manner in which it reviews the decisions of the courts of the several states. See 28 U.S.C. § 1258 governing the review of the decisions of the Supreme Court of Puerto Rico by the Supreme Court of the United States.

Section 705. This section adds a new § 23A to the Act. It amplifies the last sentence of § 22 of the Act, 48 U.S.C. 1612, relating to the appellate jurisdiction of the district court over the decisions of the local courts. Section 23A provides that prior to the establishment of the appellate court authorized by § 21(a), the decisions of the local courts shall be reviewable in the district court, as provided by local law. The local legislature, however, may not preclude appeals to the district court from decisions of the local courts involving federal questions.

The pertinent proviso has been drafted (a) to assure the reviewability in the district court of local actions which are in conflict with the Constitution of the United States, federal statutes, including the Organic Act, and the acts of federal officials authorized by federal law and (b) to obviate the contention that every act of the legislative or executive branch of a territorial government raises a federal question because all those acts derive their authority from federal law, in particular the Organic Act. *See* in this context *Taisacan* v. *Camacho*, 660 F.2d 411, 413 (9th Cir. 1981) and *Camacho* v. *Civil Service Commission*, 666 F.2d 1257, 1261-1262 (9th Cir. 1982).

Although the section continues the current practice of review by the district court, the Committee agrees with the concerns raised by the Fourth Constitutional Convention, Governor Luis, and others that the present system of reviewing decisions of local courts by a single judge is inappropriate. The section creates an appellate division within the district court for the purpose of reviewing appeals from the local court.

The appellate division consists of three judges as on Guam and the Northern Mariana Islands (see 48 U.S.C. § 1424 and 1694b, respectively). Following the precedent of § 3 of the Act of November 8, 1977, 48 U.S.C. § 1694b, applicable to the Northern Mariana Islands, § 23A(b) provides that no more than one judge of a court established by local law may be a judge of the appellate division. This provision was included in the 1977 Act because it would be undesirable to have a majority in the appellate division consist of judges who are members of the very court the decision of which was being reviewed.

The section does provide, however, that any appeals which are pending in the district court on the effective date of the Act will continue to be heard and determined by a single judge. It likewise continues the jurisdiction of the district court over any appeal then pending upon the establishment of a local appellate court.

The final decisions of the district court on appeal from the local courts are reviewable in the Court of Appeals for the Third Circuit and, consistent with the administration of justice, may be limited to review by certiorari or other method of summary disposal as provided by rule.

Section 706. This section deals with the substance of § 24 (a) and (b) of the Act, 48 U.S.C. § 1414 (a) and (b), and the last two sentences of § 25 of the Act, 48 U.S.C. § 1615.

Section 706(a) amends § 24(a) of the Act by providing that the district judges shall be appointed for terms of ten years. Under existing law, the district judges of the territorial courts are appointed for terms of eight years. They become, however, eligible for retirement benefits only after ten years of service.

28 U.S.C. § 373. The purpose of the change is to avoid the hardship which 28 U.S.C. § 373 imposes on district judges who fail of reappointment after their first term. The redraft of § 24(a) incorporates by reference the amendment of 28 U.S.C. § 136(a), relating to the appointment of the chief judges of the district courts by § 202 of the Federal Courts Improvement Act of April 2, 1982, 96 Stat. 52. It would also authorize the Chief Judge of the Third Judicial Circuit to assign to the district court a recalled senior judge of the district court of the Virgin Islands.

While the extension of the term for district judges is prospective, the Committee is aware of the situation of those judges presently serving who would not be eligible for retirement benefits if not permitted to serve an additional two years until their successors are chosen and qualified or unless the existing law were amended to make such benefits available upon completion of their present term. Testimony was received suggesting that the extension of the term be made applicable to the terms of present judges and the Committee has addressed this issue in section 1005.

Section 706(b) replaces § 24(b) of the Act. It expands the scope of the next to the last sentence of § 25 of the Act, 48 U.S.C. § 1615 by extending to the Virgin Islands "where appropriate" Part II of title 18, and title 28, United States Code, and the rules of procedures adopted or promulgated pursuant to titles 11, 18, and 28, United States Code. At present some of the statutory procedural provisions are expressly applicable to the Virgin Islands in a haphazard manner, leaving it open whether and to what extent other provisions also apply to the Virgin Islands.

Moreover some chapters of title 28, United States Code, apply to some territories, but not to others. Thus chapter 43 relating to United States Magistrates applies to the Virgin Islands (28 U.S.C. § 631) and to Northern Mariana Islands (48 U.S.C. 1694(c)), but the Court of Appeals for the Ninth Circuit has taken the position that it does not apply to Guam. This subsection and its counterparts applicable to Guam and the Northern Mariana Islands (section 801 and 901(c) of this Act) would have the effect of making the provisions of part II of title 18 (such as venue) and title 28 generally applicable to all territorial courts. It is intended that in the Virgin Islands the only exceptions to this extension will be those provisions which are in conflict with specific legislation applicable to the Virgin Islands and those relating to judges who are appointed during good behavior.

The first proviso in § 24(b) is designed to provide that if the Attorney General of the Virgin Islands or his designee prosecutes in the District Court of the Virgin Islands any cases arising under the federal income tax laws applicable to the Virgin Islands he shall have the authority of a United States Attorney under the Federal Rules of Criminal Procedure as authorized by the amendments made by section 703(a) of this Act.

The last two provisos of § 24(b) implement the amendment of 3 of the Act by § 701 of this legislation. They provide (a) that federal offenses, local offenses coming within the scope of § 22(c), and offenses against the income tax laws applicable to the Virgin Islands may be prosecuted by indictment by grand jury or by information, and (b) that once a matter has been before a grand jury it may be prosecuted by information only by leave of court or with the consent of the defendant.

Section 707. This section amends § 25 of the Act, 48 U.S.C. 1615. It generally restates the first sentence of that section. The subject matter of the second sentence relating to the sessions of the court has been omitted since it is covered by 28 U.S.C. § 139, rendered applicable to the District Court of the Virgin islands, by § 24(b). The subject matter of the last two sentences has been transferred to § 24(b).

Section 708. Subsection (a) amends § 27 of the Act, 48 U.S.C. § 1617, by substituting the words "courts established by local law" used in this legislation for the term "inferior courts of the Virgin Islands" used in the Act. It also repeals the last two sentences of § 27 because they duplicate 28 U.S.C. § 546, which has been made applicable to the Virgin Islands by the amendment of § 24(b) and by the first sentence of § 27.

Section 709 repeals the Act of May 20, 1932 (47 Stat. 160, 48 U.S.C. 1400) which conferred admiralty jurisdiction on the district court of the Virgin Islands. This provision is no longer required in view of the amendment of § 22(a) of the Act, 48 U.S.C. § 1612(a), by § 703(a) of this legislation, which confers on the District Court for the Virgin Islands the full jurisdiction of a district court of the United States, including the admiralty jurisdiction under 28 U.S.C. § 1333.

TITLE VIII—GUAM

Section 801. This section restates and amplifies § 22 of the Organic Act of Guam (referred to in this title as the "Act"), 48 U.S.C. § 1414.

Section 22(a) restates the first sentence of § 22(a) of the Act, 48 U.S.C. § 1424(a).

Section 22(b) deals with the first clause of the second sentence of § 22(a) of the Act, 48 U.S.C. § 1424(a). It confers on the district court of Guam the full jurisdiction of a district court of the United States. In view of the decision in *Chase Manhattan Bank (N.A.)* v. *South Acres Development Co.* 434 U.S. 236 (1978), the section states specifically that the district court has the diversity jurisdiction provided for in 28 U.S.C. 1332.

Section 22(b) also takes account (a) of the amendment of 28 U.S.C. § 1331, which has eliminated the jurisdictional amount in the federal question jurisdiction of the district courts, and (b) of the amendment of § 22(a) by § 335(a) and 402(e) of the Bankruptcy Reform Act of 1978, which conferred on the district court of Guam the jurisdiction of a bankruptcy court of the United States.

Section 22(c) restates the second clause of the second sentence of § 22(a) of the Act, 48 U.S.C. § 1424. It adds that where the district court retains jurisdiction over local causes because they were not transferred by the legislature to the local courts, the district court shall be deemed to be a court estab-

lished by the laws of Guam for the purposes of the requirements of indictment by grand jury or trial by jury. The local legislature would also have the power to divest the local courts of jurisdiction over local causes and to return it to the district court.

Section 22A restates the part of the first sentence of § 22(a) of the Act, 48 U.S.C. § 1424(a), which relates to the local courts. The section specifically authorizes the legislature of Guam to establish an appellate court, but only after the effective date of this Act. The subsection therefore will not have the effect of reviving the Supreme Court of Guam which was established in 1974 and struck down by the Supreme Court of the United States in *Guam* v. *Olsen*, 431 U.S. 195 (1977).

Section 22A (b) and (c) generally restate the last sentence of the first paragraph of § 22(a) of the Act, 48 U.S.C. § 1424(a), relating to the power of the legislature to determine the jurisdiction and procedure in the local courts of Guam. Section 22A (b) spells out (a) that the legislature of Guam does not have the power to vest in the local courts jurisdiction over causes over which the federal courts exercise exclusive jurisdiction and (b) that the jurisdiction of the local courts of Guam is subject to the concurrent jurisdiction of the District Court of Guam under § 22(b). Section 22A(c) provides that the procedure in the local courts shall be governed by the laws of Guam or by the rules of court.

Section 22B deals with the relations between the federal courts and local courts of Guam. It provides generally that the relations between the local courts of Guam and the federal courts, including the Supreme Court of the United States, shall be the same as the relations between the state courts and the federal courts, except that for the first fifteen years following the establishment of the appellate court, all the decisions of the highest local court from which a decision may be had shall be reviewable in the United States Court of Appeals for the Ninth Circuit.

The transitional period of fifteen years is the same as the one provided for in § 4 of the Act of November 8, 1977, 48 U.S.C. § 1694c, relating to the Northern Mariana Islands. It is based on the consideration that, during the formative years of the new appellate court and while it establishes its institutional traditions, all decisions of that court should be reviewable by a court of appeals which is familiar with the local conditions rather than on a discretionary basis by the Supreme Court.

The Court of Appeals is authorized to promulgate rules necessary to carry out the provisions of this section and may, to the extent it decides it advisable as a matter of transition and consistent with its assessment of the institutional tradition of the local court and the rights of appellants, by rule proceed to review on the basis of certiorari. The Committee is aware of the long experience which Guam already has of having appeals taken to the Ninth Circuit from the district court of strictly local matters and the concern that a shorter transition period could be enacted. The quality of the judicial process, however, is of critical concern and cannot be properly evaluated until after the establishment of the local appellate court. The section therefore requires the Judicial Council of the Ninth Circuit at five year intervals to submit reports as to whether there is further need for review by the Court of Appeals for the Ninth Circuit. Should the Council indicate that the local appellate court has developed its institutional traditions, the Committee can consider legislation amending this section to shorten or eliminate the transition period.

After the expiration of the transition period referred to in the provisio, the Supreme Court of the United State will have jurisdiction to review the decisions of the courts of Guam in the same manner in which it reviews the decisions of the courts of the several states. See 28 U.S.C. § 1258 governing the review of the decisions of the Supreme Court of Puerto Rico by the Supreme Court of the United States.

Section 22C amplifies the second paragraph of § 22(a) of the Act, 48 U.S.C. § 1424(a), relating to the appellate jurisdiction of the district court. It provides that prior to the establishment of the appellate court authorized by § 22(a), the decisions of the local courts shall be reviewable in the appellate division of the district court, as provided by the local legislature. The latter, however, may not preclude appeals to the appellate division from decisions of the local courts involving federal questions.

The pertinent proviso has been drafted (a) to assure the reviewability in the appellate division of the district court of local actions which are in conflict with the Constitution of the United States, federal statutes, including the Organic Act, and the acts of federal officials authorized by federal law and (b) to obviate the contention that every act of the legislative or executive branch of a territorial government raises a federal question because all those acts derive their authority from federal law, in particular the Organic Act. See in this context *Taisacan* v. *Camacho*, 660 F.2d 411, 413 (9th Cir. 1981) and *Camacho* v. *Civil Service Commission*, 666 F.2d 1257, 1261-1262 (9th Cir. 1982).

Section 22C(b) provides for the establishment of an appellate division of the district court to review any appeals from the local courts and incorporates the precedent of § 3 of the Act of November 8, 1977, 48 U.S.C. § 1694b, applicable to the Northern Mariana Islands, by providing that no more than one judge of a local court of Guam may be a judge of the appellate division. This provision was included in the 1977 Act because it would be undesirable to have a majority in the appellate division consist of judges who are members of the very court the decision of which was being reviewed.

The final decisions of the appellate division are reviewable in the Court of Appeals for the Ninth Circuit and consistent with the administration of justice, may be limited to review by certiorari or other method of summary disposal as provided by rule.

Section 22D is based on and expands § 22(b) of the Act, 48 U.S.C. § 1424(b), which now generally makes the Federal Rules of Procedure applicable to Guam. Section 22D will also extend to Guam "where appropriate" the procedural provisions of title 18 and title 28, United States Code. At present some of the statutory procedural provisions are expressly applicable to Guam in a haphazard manner, leaving it open whether and to what extent other provisions also apply to Guam.

Moreover some chapters of title 28, United States Code, apply to some territories, but not to others. Thus chapter 43 relating to United States Magistrates applies to the Virgin Islands (28 U.S.C. § 631) and to the Northern Mariana Islands (48 U.S.C. § 1694(c)), but the Court of Appeals for the Ninth Circuit has taken the position that it does not apply to Guam. This subsection and its counterparts applicable to the Virgin Islands and the Northern Mariana Islands would have the effect of making the provisions of part II of title 18 and title 28 (such as venue) generally applicable to all territorial courts. It is intended that on Guam the only exceptions to this extension will be those provisions which are in conflict with specific legislation applicable to Guam and those relating to judges who are appointed during good behavior.

Section 22D omits the provisions of § 22(b) of the Act, 48 U.S.C. § 1424(b), relating to trial by jury and prosecution by information rather than by grand jury. These provisions appear to have been superseded by § 10 of the Elected Governor Act of 1968, 48 U.S.C. § 1421b(u), which introduced into Guam the Fifth and Sixth Amendments to the Constitution of the United States without the reservation relating to grand juries contained in the corresponding provisions applicable to the Virgin Islands. Grand juries and petit juries therefore have been utilized in federal prosecutions on Guam for many years.

Section 802 amends § 24 of the Act, 48 U.S.C. § 1424b, relating to the district judge and the officers of the District Court of Guam. Section 202(a) provides for the appointment of the district judge for a term of ten rather than eight years in order to provide for retirement benefits to district judges who fail to reappointment after their first term. The Committee's concerns expressed in the discussion of section 706 also apply to judges in Guam.

Section 802(b) is self explanatory.

Section 802(c) authorizes the Chief Judge of the Ninth Judicial Circuit to assign to the district court a recalled senior district judge. See Sec. 1003.

Section 802(d) conforms § 24(b) of the Act, 48 U.S.C. § 1424(b), to the renumbering of the chapters of title 28, United States Code, in 1966.

Section 802(e) repeals § 24(c) of the Act, 48 U.S.C. § 1224(c), which has become redundant as the result of the general applicability to Guam of title 28, United States Code by virtue of § 22D.

Section 803. The reason for this repeal is given in the last two sentences of the explanation of § 22D.

TITLE IX—NORTHERN MARIANA ISLANDS

This Title amends the Act of the November 8, 1977, 91 Stat. 1265, 48 U.S.C. §§ 1694-1694e (referred to as the Act in this title), which establishes the federal judicial system in, and its relationship to the local courts of, the Northern Mariana Islands in conformity with Article IV of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved on March 24, 1976, 90 Stat. 263 (Covenant), 48 U.S.C. § 1681, note.

Section 901(a) amends § 1(b)(1) of the Act. 48 U.S.C. § 1694(b)(1), by providing that the district judge shall be appointed for a term of ten rather than of eight years. The Committee's concerns expressed in the discussion of section 106 apply equally to the situation of judges in the Northern Mariana Islands. The purpose of this amendment is to provide for retirement benefits to a district judge who fails of reappointment after his first term. Sec. 901(b) authorizes the Chief Judge of the Ninth Judicial Circuit to assign to the District Court of the Northern Mariana Islands a recalled senior district judge. See § 1003.

Sec. 901(c) is based on and expands § 1(c) of the Act, which now generally makes the Federal Rules of Procedure applicable to

the Northern Mariana Islands, unless otherwise provided in Articles IV and V of the Covenant. In addition to the existing law, § 901(c) will extend to the Northern Mariana Islands the Part II of title 18 and 28, United States Code, where "appropriate" and not inconsistent with Articles IV and V of the Covenant.

At present some of those statutory procedural provisions are expressly applicable to the Northern Mariana Islands in a haphazard manner, leaving it open whether and to what extent other provisions also apply to them. Moreover some chapters of title 28, United States Code, apply to some territories, but not to others. Thus chapter 43 relating to United States Magistrates applies to the Virgin Islands (28 U.S.C. § 631) and to Northern Mariana Islands (48 U.S.C. § 1694(c)), but the Court of Appeals for the Ninth Circuit has taken the position that it does not apply to Guam. This subsection would have the effect of making the provisions of Part II of title 18 and title 28 (such as venue) generally applicable to the District Court for the Northern Mariana Islands. It is intended that the only exceptions to this extension will be those provisions which are in conflict with specific legislation applicable to the Northern Mariana Islands, in particular Articles IV and V of the Covenant, and those relating to judges who are appointed during good behavior.

Section 902 amends § 2(a) of the Act, 48 U.S.C. § 1694(a), in four aspects. First, it adjusts the section to the recent amendments of 28 U.S.C. § 1331, pursuant to which the district courts have federal question jurisdiction without regard to the amount in controversy. Second, it provides that the court will have the jurisdiction of a bankruptcy court of the United States, as have the district courts of Guam and of the Virgin Islands. Third, in view of the decision in *Chase Manhattan Bank* v. *South Acres Development Co.*, 434 U.S. 236 (1978), the section states specifically that the district court has the diversity jurisdiction provided for in 28 U.S.C. § 1332. Fourth, it provides that the jurisdiction of the district court with respect to the government of the Trust Territory of the Pacific Islands shall extend only to actions brought by that government and, generally, to those actions against it which may be brought against a foreign government under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605, *i.e.* to those which are based on commercial activities carried on in the Northern Mariana Islands or on certain torts occurring there. In such actions the Trust Territory Government is entitled to such rights and privileges as are applicable to the United States where it is a party, *e.g.* venue, the statute of limitations, absence of a jury trial, and counterclaims.

This provision has been prompted by the decision of the Appellate Division of the District Court for the Northern Mariana Islands in *Sablan Construction Company* v. *Government of the Trust Territory of the Pacific Islands*, 526 F.Supp. 135 (D. N.M.I. App. Div. 1981) in which the court assumed jurisdiction in a tax case involving the Trust Territory Government. The provisions of the bill to treat that government as a foreign government and not as an agency of the United States is based on a number of decisions which hold within a broad spectrum of issues, that the government of the Trust Territory is not an agency of the United States. See in this context in particular, *People of Saipan* v. *United States*, 502 F.2d 90, 95-96, 99-100, (9th Cir. 1974), *cert. denied* 420 U.S. 1003 (1975); *Gale* v. *Andrews*, 643 F.2d 826, 830, 832 (D.C. Cir. 1980); *Porter* v. *United States*, 204 Ct. Cl. 355, 364, 365, 496 F.2d 583, 589, 590 (Ct. Cl. 1976); *RCA Global Communications Inc.* v. *U.S. Department of the Interior*, 432 F.Supp. 791, 794 (D. Guam 1977). The last two decisions indeed consider the government to be a foreign government. The interests of the people of the Northern Mariana Islands are sufficiently protected by giving the district court contract and tort jurisdiction over the Trust Territory Government and by the provisions of § 1001. Above all, the preclusion of review by the district court of the governmental activities of the Trust Territory Government is not likely to prejudice the citizens of the Northern Mariana Islands since that government has exercised few, if any, governmental functions with respect to those Islands since 1976. On the other hand, continued jurisdiction of the district court over the Trust Territory Government may result in suits being brought against it by residents of other Micronesian islands and adversely affect the detailed claims settlement procedures provided for in the Compact with the Micronesian entities.

The Compact of Free Association which has been negotiated with the Republic of the Marshall Islands, the Federated States ofMicronesia, and the Republic of Palau sets forth a different legal and judicial relationship than that which obtains under the Trusteeship Agreement. The Committee will consider that relationship when the Compact is praesented to the Congress for approval and may also consider the respective roles of the Trust Territory High Court, the district court in the Marianas, the local courts of the Micronesian governments, and Court of Appeals for the Ninth Circuit during the period after approval of the Compact and prior to termination of the trusteeship and post-trusteeship as well as for any governments not covered by either the Compact or the Covenant.

The last sentence of Section 902 provides that a lack of the district court's jurisdiction over the Trust Territory Government cannot be circumvented by suits against the officers or employees of that government.

Section 903 deals with § 3 of the Act, 48 U.S.C. § 1694b, relating to the appellate jurisdiction of the district court for the Northern Mariana Islands.

First, § 903(a) establishes beyond any doubt that the appellate division of the District Court for the Northern Mariana Islands has jurisdiction only over the appeals from the decisions of the local courts of the Northern Mariana Islands and not over those of the district court. This clarification of the meaning of § 3 of the Act has been occasioned by the decision in *Sablan* v. *Santos*, 634 F.2d 1153 (9th Cir. 1980), which held that appeals from district court decisions in local law matters are to be taken to the appellate division of the district court rather than to the Court of Appeals for the Ninth Circuit. That decision is in conflict with § 402(c) of the Covenant with the Northern Mariana Islands (48 U.S.C. § 1681, note) on which § 3 of the Act is based. The explanation of § 402(c) in the Senate Report on the Covenant specifically states "the District Court will have such appellate jurisdiction over the decision of the local courts of the Northern Mariana Islands as the laws of the Northern Mariana Islands provide". (S. Rep. No. 433, 94th Cong. 1st Sess. 73 (1975) (emphasis added.)) The clause "such appellate jurisdiction as the laws of the Northern Mariana Islands provide" means, as do the corresponding provisions on Guam and in the Virgin Islands (48 U.S.C. § 1424(a) and 1612), that the laws of the Northern Mariana Islands may restrict the right of appeal, not that a local legislature can determine the court to which the decisions of a federal court may be appealed.

Moreover, the appellate division of the District Court for the Northern Mariana Islands has been patterned on the appellate division of the District Court of Guam. *In re Webster*, 363 F.2d 837, 839 (9th Cir. 1966), held that the appellate division of the District Court of Guam "has no jurisdiction except to hear appeals from the Island Court of Guam (*i.e.* the local court) to the District court of Guam." Subsequent decisions of the Court of Appeals for the Ninth Circuit, *Taisacan* v. *Camacho*, 660 F.2d 411, 413, (9th Cir. 1981), and *Camacho*, v. *Civil Service Commission*, 666 F.2d 1257, 1259-62 (9th Cir. 1982), point to the problems created by *Sablan* v. *Santos, supra*, viz., (a) the difficulty of determining whether a decision is based on local or Federal law (666 F.2d at 1262); (b) whether an appeal to the Court of Appeals lies from a decision of the appellate division on matters of local law; and (c) whether a decision of the district court on matters of federal law can be appealed directly to the Court of Appeals. Hence, it appears imperative to clarify the point that all appeals from the decisions of the trial division of the district court go directly to the Court of Appeals for the Ninth Circuit.

Second, § 903(a) provides, as do § 705, (§ 23A(a)) and § 801, to the appellate division of the district court from the decisions of the local courts which involve federal questions.

This provision has been drafted (a) to assure the reviewability in the Court of Appeals of local actions which are in conflict with the Constitution of the United States, federal statutes, including the Covenant, and the acts of federal officials authorized by federal law and (b) to obviate the contention that every act of the legislative or executive branch of the government of the Northern Mariana Islands raises a federal question because virtually all those acts derive their authority from federal law, in particular the Covenant. See in this context *Taisacan* v. *Camacho*, 660 F.2d 411, 413 (9th Cir. 1981) and *Camacho* v. *Civil Service Commission*, 666 F.2d 1257, 1261-1262 (9th Cir. 1982).

Sec. 904. This section amends § 4 of the Act which deals with the relationship between the courts established by the Constitution or laws of the United States and the local courts of the Northern Mariana Islands by especially referring to the Supreme Court of the United States. This amendment is designed to clarify that, after the expiration of the fifteen year period referred to in the proviso, the Supreme Court of the United States will have jurisdiction to review the decision of the courts of the Northern Mariana Islands in the same manner in which it reviews the decisions of the courts of the several States. *See* 28 U.S.C. § 1258 governing the review of the decisions of the Supreme Court of Puerto Rico by the Supreme Court of the United States.

TITLE X

Section 1001. This section is a correlative to Section 902. It provides in substance that with respect to claims against the Trust Territory Government arising in the Northern Mariana Islands over which the District Court for the Northern Mariana Islands lacks jurisdiction pursuant to Section 902,

the High Court of the Trust Territory shall have such jurisdiction as it possessed on January 8, 1978, *i.e.*, the day on which the constitution of the Northern Mariana Islands became effective.

Section 1002. This section repeals §§ 335, 336 and 402(e) of the Bankruptcy Act of 1978, because they have been incorporated in §§ 703(a), and 801.

Section 1003 provides for the recall to duty of certain territorial judges whose terms have expired. Judges of the United States, as defined in 28 U.S.C. § 451, retain their office after retirement pursuant to 28 U.S.C. § 371(b). Therefore they can be designated and assigned to perform active duty pursuant to 28 U.S.C. § 294. A territorial judge whose term has expired, however, ceases to be a judge. Hence, he cannot be recalled to active duty absent a statutory authorization.

Section 1003 establishes, in analogy to 26 U.S.C. 7447 (Tax Court) and 28 U.S.C. § 797 (United States Claims Court), a procedure pursuant to which a territorial judge who receives or will be eligible to receive retirement pay under 28 U.S.C. 373 may elect to become senior judge. Such senior judge may be recalled to duty by the Chief Judge of the Judicial Circuit in which the judge has served. The recall of a senior judge may obviate the need for assigning a judge from a distant district to a territorial court in the event of the temporary absence of the regular district judge or in order to designate an appellate division.

In order to protect the independence of the judiciary and to prevent conflicts of interest and other improprieties or the appearance thereof, a senior judge will remain subject to the requirements of the Code of Judicial Conduct of United States judges and be precluded from accepting civil office with the Government of the United States, or from practicing law. *Cf.* 26 U.S.C. § 7447(f).

Section 1004. This section has been prompted by the decision in *People of the Territory of Guam* v. *Okada*, 694 F.2d 565 (9th Cir. 1983) which held that the government of a territory may not appeal to a federal court in a criminal case from a ruling—even that of an appellate court—in the favor of the defendant, in the absence of a federal statutory authorization. Section 1004 sets forth the circumstances in which such appeals are authorized. This section is based in part on 18 U.S.C. 3731.

Section 1005. This section makes applicable to sitting judges the extension of the term for district court judges from eight to ten years provided in sections 706(a), 802(a) and 901(a). At present, the judges' term does not automatically end after eight years but as a practical matter they continue to serve until their successors are chosen and qualified. The effect of the amendment is simply to delay and appointment of a successor so that the judges, if they so choose, may continue to serve and become eligible for retirement benefits which accrue only after ten years of service.

Section 1006. This section provides that the proposed legislation in titles VII, VIII, IX and X will become effective on the ninetieth day following its enactment. In view of the many changes in the jurisdiction of courts contained in this legislation, its effectiveness should be delayed by at least ninety days following its enactment.

Mr. DE LUGO. Mr. Speaker, will the gentleman yield?

Mr. LAGOMARSINO. Further reserving the right to object, I yield to the gentleman from the Virgin Islands (Mr. DE LUGO).

Mr. DE LUGO. Mr. Speaker, I rise in support of H.R. 5561 as amended by the Senate, and as further proposed for amendment here today. The bill contains important items for all of the U.S. possessions, and has bipartisan support in this body and in the Senate.

I commend my colleague, TONY WON PAT, chairman of the Insular Affairs Subcommittee, for his leadership in developing this legislation and orchestrating the consensus it reflects.

I also commend the ranking minority member of the subcommittee, BOB LAGOMARSINO, for his continued interest and attention to the concerns and needs of the territories. I sincerely appreciate that through the efforts of both of these gentlemen, we have before us today a bill having firm bipartisan support.

There are several provisions in the bill of particular importance to the Virgin Islands, and I just want to take a moment to highlight a few of those provisions.

The bill makes funding available for the extension of the St. Croix Airport by adding this project to the authority already existing under Public Law 97-357 for water and power. The budget impact, therefore, is neutral. Additionally, $600,000 is authorized for design of the project.

This makes a total of $9.6 million available for the St. Croix Airport extension project, the estimated cost of which is $10 million. The St. Croix Airport is the only airport in the Virgin Islands capable of being extended to accommodate commercial aircraft loaded for long-distance flight. The importance of such capability is what has led the United States to complete the airport on Grenada. Grenada has to have access to the European, South American, the Western and Midwestern U.S. tourist markets as well as the closer U.S. east coast market, it is to survive economically. This country has recognized that tourism is the essence of Grenada's economic future, and has committed to helping the island nation. The Virgin Islands is also primarily a tourist economy and needs the same access to long-distance markets to be competitive.

The Virgin Islands proposes to extend the existing 7,000-foot runway on St. Croix to 10,000 feet. This extension will allow the Virgin Islands to accommodate the large commercial jets, such as the 727, 757, 767, DC-10, and L-1011, when loaded for long-distance flight. Our inability to handle such departures effectively cuts us out of the important tourist markets noted in reference to Grenada.

The bill also provides for the transfer of Government House on St. Croix to the people of the Virgin Islands. The transfer of ownership is an extension of Congress' earlier decision to transfer ownership of the St. Thomas Government House to the people of the Virgin Islands. As the center of local government activities on St. Croix, it is appropriate to tranfer ownership of Government House to the territory. This historic building was constructed during the Danish colonial rule in the Virgin Islands. It is currently maintained by the local government, and is viewed by island residents as properly their own.

The bill as passed by the House also clarifies the industrial development bond authority for the Virgin Islands and American Samoa, as provided in the Deficit Reduction Act of 1984. Additionally, the bill removes the arbitrary 3-year limitation placed on these two territories' ability to issue IDB's.

There is still work to be done regarding equitable access to IDB authority for the U.S. territories. The Deficit Reduction Act places a minimum IDB cap for the States at $200 million. The territories are limited to a strict per capita cap. Thus, the Virgin Islands and Guam face a $15 million IDB cap, to be reduced to $10 million after 1986. American Samoa is currently capped at $4.8 million, and the Northern Marianas Islands can only issue $2.4 million in IDB's.

An example of the problem this raises is the Virgin Islands' attempt to privitize its solid waste treatment.

The administration has consistently discussed its intention to help the territories privitize such activities. But, no private firm can reasonably finance the solid waste treatment plants needed without IDB's. The cost of the solid waste treatment plants is approximately $40 million. Under the current IDB limitations, the Virgin Islands would have to generate three separate bond issues over a 3-year period. The debt service and protracted time period would raise the overall cost of the project. Furthermore, this would be the territory's only IDB issue, since the authority is limited to 3 years. This type of problem was recognized in extending a minimum cap of $200 million to the States.

I do not suggest that each territory should have a $200 million cap. This would be a windfall. But the territories have tried to work for meaningful IDB authority. While we have not been successful in reaching the necessary consensus on this matter in the context of H.R. 5561, I ask my colleagues to lend their support to a more meaningful cap in the future.

The Senate has amended H.R. 5561 to provide needed changes in the court systems in the territories. Significantly, the diversity jurisdiction of Federal district courts in the territories is clarified. The review of the local court decisions is brought more in line with

the standard of appellate review in the rest of the Nation by a separate appellate division within the district court of the Virgin Islands consisting of a three-judge panel. This changes the procedure existing only in the Virgin Islands court system wherein one judge has the authority to reverse the decisions made by another. However, the right of direct appeal to the third circuit is not affected by this provision.

This Senate amendment also grants to the Virgin Islands the authority, similar to that existing in the States, to create its own system of appellate review. Such authority must come from Congress, given its jurisdiction over the territories. The provision is yet another grant of autonomy for the territory, bringing the Virgin Islands closer to the standing of other members of the American family. However, the provision leaves to the people of the Virgin Islands the decision as to when they are ready to undertake this responsibility. This is consistent with Congress' earlier grant of jurisdictional authority for local courts which allowed the people of the Virgin Islands to expand, as they see fit.

The jurisidiction of their local courts, provided this jurisdiction does not infringe on the standard jurisdiction of the Federal Courts. The Virgin Islands has approached this wide authority slowly. The current appellate provisions allow the territory the same capability of determining the need to broaden its judicial responsibility.

Also significant for the Virgin Islands is the exemption from up to $200,000 in local matching funds for Federal programs provided in section 601 of this bill. This provision responds to the developmental pressures faced by the Virgin Islands and the other territories, effectively cutting them out of needed Federal programs.

Additionally, the bill provides $2 million in technical assistance to aid economic development in the Virgin Islands and other territories. This provision responds to the special difficulty of attracting business to the insular territories.

This is a good bill. The items for the Virgin Islands and the other territories provide needed changes in Federal law, and include funding for programs which address the special developmental concerns of the U.S. offshore possessions. I, therefore, urge your support for passage of H.R. 5561 as presented by my able colleague, Chairman WON PAT.

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

Mr. LAGOMARSINO. Further reserving the right to object, I yield to the gentleman from American Samoa [Mr. SUNIA].

Mr. SUNIA. Mr. Speaker, I rise also in support of this particular legislation and to echo the sentiments of the gentleman from the Virgin Islands in his commendation of the chairman of this subcommittee, as well as the ranking minority member for consistency in their support of the territories.

□ 1150

As you know, Mr. Speaker, I am the only delegate who is not a member of the Territorial Affairs Subcommittee. However, I would like to state my sincere appreciation for the courtesy extended to me by the chairman [Mr. WON PAT] and the ranking minority member [Mr. LAGOMARSINO] for their consideration of the omnibus bill this year.

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, I want to thank all those who have spoken their kind words about me. I want to add my congratulations and commendations to all of them for their work on this bill. My only regret about this at all is that other committees of the Congress are not able or not willing to follow the same kind of procedure and have the same kind of bipartisan results that we do.

Mr. Speaker, I rise in support of H.R. 5561 with committee amendments.

This bill is a bipartisan effort to facilitate economic development in the U.S. territories. These territories are members of our American political and economic family. As such, they are entitled to the same economic encouragements that we give our citizens in the 50 States.

In short, the bill permits refinancing of Guam Power Authority; enables the citizens of the U.S. Pacific Territories and the Northern Mariana Islands to develop very promising fisheries resources; provides infrastructure assistance for water problems in Guam and the Northern Mariana Islands and transportation needs in the Virgin Islands; modernizes the judicial systems in the Virgin Islands, Guam, and the Northern Marianas; corrects oversights in the extension of Federal programs to all the U.S. territories; and, most importantly, encourages badly needed local investment projects through technical assistance funding and bonding authority with the stipulation that the Department of Interior report to the Congress on the efforts and progress being made in developing private enterprise projects in Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

Mr. Speaker, the Interior Committee has held two hearings on this bill and has conducted two field investigations. Moreover, the Interior Committee has worked many hours with the Committees on Merchant Marine and Fisheries, Ways and Means, Government Operations and Budget, as well as counterpart committees of the other body in order to arrive at a consensus. Similarly, the territorial governments and the Office of Territorial and International Affairs of the Department of the Interior were all frequently consulted, playing a crucial role in the development of this bill.

Mr. Speaker, I would like to address a few specific provisions of this bill. First, section 203 authorizes the Secretary of the Interior to enter into negotiations with the Government of Guam in order to arrive at an agreement to refinance Guam Power Authority. If the Government of Guam consents to this agreement—preconditioned on the establishment of an independent ratemaking authority—severe penalties may be imposed if violations of the agreement subsequently occur, including: First, the dismissal of the board of directors or the general management of the Guam Power Authority; second, assumption of management under contract by the Secretary; or three, outright sale of the facilities by the Secretary, subject to congressional approval.

Second, sections 401(a) and 401(d) authorize the development and construction of badly needed water improvement projects in Guam and the Northern Mariana Islands. Countless studies, prepared over the years, document the urgent necessity for water improvement in these two insular areas and the need for Federal assistance. Moreover, site-specific recommendations have been, in most cases, already identified. Both the Corps of Engineers and the Bureau of Reclamation have been involved in the development of these findings. Accordingly, I urge the Secretary of the Interior to scrutinize the prior efforts of both agencies, to coordinate their future activities and to allocate project construction in accordance with best capabilities. These authorizations are designed for construction—not for further study.

Last, upon request of the leaders of the U.S. Virgin Islands, section 502 conveys title of Government House on St. Croix to the Government of the Virgin Islands. I wish to point out that this structure is of great historical importance, not only to the Virgin Islands, but also to the United States as a whole. It is a reminder of the early years of one of America's staunchest patriots—Alexander Hamilton. Therefore, the Government of the Virgin Islands assumes with title this sacred trust. In the transfer of title, the citizens of the United States look to the Government of the Virgin Islands to carry out encumbent responsibilities in the maintenance and upkeep of this historical landmark.

Mr. Speaker, our responsibilities in the U.S. insular areas necessitate passage of this legislation. The provisions of H.R. 5561 as amended are prudent yet responsive to the current needs of the territories. I, therefore, urge my

colleagues for their unanimous support and approval of the amendments.

Mr. Speaker, I withdraw my reservation of objection.

● Mr. LUJAN. Mr. Speaker, I rise in support of H.R. 5561 with committee amendments.

I want to commend and thank Chairman WON PAT and the ranking Republican member on the Insular Affairs Subcommittee, Mr. LAGOMARSINO, for their hard work in facilitating agreement on a bill which helps to fulfill our responsibility to members of the American family in both the Pacific and Caribbean region. The bill has the support of Members on both sides of the aisle. H.R. 5561 is the product of many hours of hearings within the Interior Committee, as well as consultations with the Committees on Merchant Marine and Fisheries, Ways and Means, Government Operations, and Budget.

H.R. 5561 encourages investment in the territories' private sectors; grants industrial revenue bonding authority to the Virgin Islands and American Samoa; grants an exception to vessel documentation, manning and fisheries laws that impede development of local fisheries industries in the Pacific islands; provides authorization for technical assistance and construction to alleviate very serious water supply and distribution problems in Guam and the Northern Mariana Islands; and provides for a more viable judicial system in the U.S. Virgin Islands and Guam.

Mr. Speaker, the provisions of H.R. 5561 are necessary, yet frugal. The insular areas need our support in order to meet the growing needs of their developing communities. I urge unanimous approval and ask my colleagues for their support.●

● Mr. UDALL. Mr. Speaker, I want to thank the representative of Guam, TONY WON PAT, for his kind recognition of my role in developing this 1984 omnibus insular areas assistance bill.

However, we all know that it is his fine work as chairman of the subcommittee with jurisdiction over all territories' bills that will really make enactment of these proposals possible.

Chairman WON PAT has skillfully developed H.R. 5561 not only here in the House but in tough negotiations with the Senate and in necessary compromises with the administration.

The result is essential legislation deserving of the unanimous support he seeks. It has as its primary purposes enabling the territories to develop economically; but it also contains provisions critical to their social and political development.

As Chairman WON PAT proposes to amend it, H.R. 5561 is one of the most important territorial bills to come before the House in years. As I have explained, this is because of his leadership on territorial issues.

I urge the House to approve the request of our leader on territorial issues for approval of this omnibus territories bill.●

● Mrs. BURTON of California. Mr. Speaker, I am honored to support what we all hope will be final passage of H.R. 5561, the 1984 omnibus insular areas assistance bill.

I am even more honored that the distinguished chairman of the subcommittee, TONY WON PAT, noted my work on it in asking for the House's approval of this bill.

The tradition of combining most legislative proposals regarding the territories into an annual omnibus territories bill such as this one was begun by my husband, Phillip Burton, who preceded the representative of Guam as chairman of the subcommittee.

This omnibus territories bill contains several provisions that Phillip believed should become law.

One would provide Guam and the Virgin Islands with a limited waiver of matching fund requirements for their participation in any Federal grant program.

Another would refinance the Guam Power Authority's Federal loan that Phillip helped Chairman WON PAT obtain in 1976.

A third would upgrade the local judicial authority of Guam and the Virgin Islands, following the earlier upgrading of their local legislative and executive authority.

A final one would relax restrictions on the transfer of former Federal property to Guam needed for port development.

Thus, I know that Phillip, too, would have been honored to support this legislation.

He would have recognized that it carries on the legislative tradition he began. And he would have recognized that TONY WON PAT is carrying on the leadership on territorial legislation that he sought to provide.

All of our 3.5 million fellow Americans of the territories—not just those of Guam—benefit as a result.●

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Guam [Mr. WON PAT]?

There was no objection.

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

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. WON PAT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks in the RECORD on the legislation just considered.

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

There was no objection.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 5297, CIVIL AERONAUTICS BOARD SUNSET ACT OF 1984

Mr. MINETA. Mr. Speaker, I ask unanimous consent that the managers may have until 3 p.m. today to file the conference report on the bill (H.R. 5297) to amend the Federal Aviation Act of 1958 to terminate certain functions of the Civil Aeronautics Board, to transfer certain functions of the Board to the Secretary of Transportation, and for other purposes.

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

There was no objection.

HOW TO REALLY BALANCE THE BUDGET

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. GINGRICH] is recognized for 60 minutes.

Mr. GINGRICH. I thank the Speaker.

Mr. Speaker, I am going to talk today about a topic in a special order entitled "How to Really Balance the Budget."

You know, the deficit has become a very hot topic. How to balance the budget has become a very hot topic.

Partisan charges, ideological assertions back and forth have dominated much of the news.

The Wall Street Journal said this morning and I quote:

> On the evidence of what much of the financial and political community is talking about, the Federal deficit is now the front running campaign issue.

Budgets do matter. Unlike some of our colleagues, I believe that it is important in the long run that a society spend as much as it raises and no more and that in peace time a society pays off its national debt over time.

Indeed, in a recent book called Window of Opportunity I argued and I quote:

> For 50 years conservatives have made balancing the budget a key part of their political platform. They have preached that red ink and big deficits are bad for America. They have reminded the public that we can't run our family budgets with a constant deficit and neither can the country. They have been right.

I went on, though, to admit our current dilemma by saying:

> Now the Republicans are in power in the White House and share power in the Senate. They are finding it remarkably difficult to live up to 50 years of preaching.

Ronald Reagan who spent 20 years attacking the big spending Federal government, is now presiding over the fastest increase in the federal debt in American history.

Why is there such a contradiction between intentions and reality? The basic reason that the Federal deficit is uncontrollable is that Federal spending is uncontrollable. Washington is a city dedicated to picking the pockets of the average American taxpayers. Every special interest group in Washington gains power and influence by raising spending. Washington is an increasingly imperial city which considers it the duty of the rest of the country to pay tribute so that Washington can raise spending. This attitude is shared by lobbyists at cocktail parties, reporters in the press galleries, committee staffers and bureaucracies in the executive branch. Special interest groups work closely with congressional committees which provide money for their interests with special interest media which report appropriations and with the executive branch agency which will then disburse the money. The result is an iron triangle of special interests. Anything that threatens the increased expenditure of public funds is, by the interest groups' definition, bad. Since the various partisan interests mix at one another's parties, they share a general mind set which begins with the premise that "nothing can be done about spending." Given that presumption, the national corollary is that "we will simply have to raise taxes."

If this were a liberal country, being presided over by liberal capital, then that equation would be correct. However, the fact is that Americans are a conservative people who are increasingly angry that their taxes have gone up without curing the deficit problem.

Personally I am convinced that we will never balance the budget until we pass a constitutional amendment to require a balanced budget. But I am also convinced that by itself passing a balanced budget amendment is not enough. I think that we are going to have to look at a serious opportunity society program to get to a balanced budget and that is what I want to talk about today.

But let me make the first point that every liberal Democrat who talks about deficits and refuses to pass a balanced budget amendment to the Constitution to require balanced budgets should be questioned closely because the fact is this House and this Congress are organized today in a manner which increases the pressure for spending and you are only going to, in the long run, be able to control that pressure by invoking a constitutional requirement.

Since deficits have been a hot topic almost everyone seems to have come up with a plan and there are two key characteristics of virtually every plan, and you can check them and this is almost universally true. First, let's cut someone else's spending. And second, let's raise someone else's taxes.

□ 1200

Heavy industry is working on plan. Magnates of finance in New York are working on a plan. What is their plan? One, freeze or cut social spending, which they do not get. Two, cut defense spending, which they do not get. Three, raise consumption taxes, which they will essentially not pay. It is a perfect plan for a cocktail party in lower Manhattan. It will never pass in the U.S. Congress.

Second, on the other side. Walter Mondale and the liberal Democrats have a plan: First, increase Government spending for the allies; second, cut defense spending; third, tax people who earn above $60,000; and fourth, tax businesses. That plan is not going to pass either. In fact, if we were to offer that plan next week, as some of us think we might, I think you would find the Democrats in the House of Representatives would reject that plan. They are not about to go home having passed a massive tax increase and they are not about to strip America so it is defenseless.

Furthermore, there is built into the Mondale liberal Democratic plan an economic fantasy. Everything we have learned over the years is that taxing business kills jobs, taxing people kills jobs. There is clear proof and I might quote from Richard Rahn, vice president of the U.S. Chamber of Commerce, who said, "No tax increase ever resulted in a balanced budget." Dr. Rahn went on to say, "Four thousand years of human history shows tax increases slow economic growth."

So, it is clear that if you are committed to jobs and you are committed to growth you are not going to get that by going through the process of raising taxes. So, in fact, the Mondale liberal Democratic tax increase plan would actually kill jobs, put people back on unemployment and welfare, lower the amount of money people were paying in taxes since they would not be working and raise the amount of money the Government would be spending and therefore, increase the deficit.

We already went through that for 4 years under the Carter-Mondale administration and it would seem that people would eventually learn.

The other example is the Black Caucus Budget, which GERALDINE FERRARO voted for. It crippled defense with tremendous cuts, almost $200 billion over the next few years. It had a massive increase in Government/domestic spending. It then dramatically and awesomely increased taxes on working Americans. That budget got almost no votes and, again, is not likely to pass.

Now, faced with rightwing traditional budgets that are not going to pass, leftwing budgets that are not going to pass, politicians have been reduced to playing games. The Speaker, the liberal Democratic leader, sought to score political points by saying, "Why if Ronald Reagan would only send up a balanced budget we would bring it to the floor within 48 hours." Which might lead those who are concerned about a balanced budget to ask the question: Since every Budget Committee chairman since the founding of the Budget Committee has been a Democrat, why do not the Democrats write a balanced budget? One might even ask: Since today is the date we are supposed to have passed the second concurrent budget resolution and we have still not passed the first concurrent budget resolution, and we are now something like 5 months behind in this year's budget—that is a little bit, for those of us who have shorter time frames, if you have a monthly budget for your family, this is a little bit like being into the third week and you have not paid the bills that were due on the first. There is no prospect at all that this Congress will ever pass a budget resolution because the whole budget process is broken down.

The fact is that even though liberal Democrats next week will seek to embarass President Reagan with some trivial and minor gimmicks that are designed to embarass him, the reality is that there is no liberal Democratic plan for balancing the budget, nor, frankly, at the present moment, is there any other plan for balancing the budget.

There is a sound reason. The simple fact is that it is politically and economically impossible to balance the budget in 1 year. That is why those of us who favor a constitutional amendment to require a balanced budget have a 6-year process of phasing it in, that is why we recognize that while that is the goal we want that that goal has to be reached in a mature, responsible, adult manner. All of the current gobbledegook from liberal Democrats about, "Well, why would you vote for a balanced budget amendment when you cannot even balance the budget," is nonsense.

We are saying you have to vote for a constitutional amendment precisely because the mess is now so bad that there is no quick way to get there.

I want to point out and remind my friends again, when you talk about the mess in Washington, when we talk about the terrible tax loopholes that Walter Mondale is running commercials against, when we talk about the huge deficit, the House of Representatives has been controlled by the Democrats since I was 11 years old. You can tell by my gray hair that has been a while. For 30 years every tax bill was passed out of a Democratic Ways and Means Committee and passed by a Democratic controlled House. Every dollar spent by the U.S. Government for 30 years has been dollars appropriated by Democrats in this House. You legally under the Constitution cannot spend money the House does not approve.

So the next time a liberal Democrat gets up and says, "Why do you Republicans talk about a balanced budget?" the first answer is because after 30 years of you and your party running the House we have a really big mess and it is going to take a while to solve it.

If we were to try in 1 year to balance the budget, we would face economic chaos just as a patient who went through shock therapy and tried to get up out of bed too quickly might collapse.

Furthermore, it is politically impossible. I want to quote again from today's Wall Street Journal editorial because I think they put it correctly.

In 1974, the year Congress passed the Budget Control Act, Federal spending has been out of control ever since. In short, we find ourselves getting just a little impatient with these periodic mantras that go up from the business community in which the Federal spending problem and its solution are solemnly described in terms of simple arithmetic. Subtract from these categories, hold the growth in those categories to this percentage, add x level of new revenues, and the result will be sweet clover and whooping and hollering down Wall Street.

We realize these proposals are meant to be constructive, but there is hardly a Member on either side of the aisle in Congress who does not understand the spending problem. The Halls of Congress are awash with spending control plans. The problem is not economic, it is entirely political.

As it now stands, you simply cannot put together a coalition of 51 Senators and 218 Representatives who will support anyone's spending control proposals. The only effective spending control strategy we have seen in recent memory was the House coalition Ronald Reagan assembled in the first term of his Presidency.

Bill Simon, part of the five-Member bipartisan budget coalition correctly identified the spending problem on these pages as the Gang of 535.

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

Mr. GINGRICH. I yield to the gentleman from Idaho.

Mr. CRAIG. I thank the gentleman for yielding.

Let me compliment my friend from Georgia for bringing up what is an issue that I think a large majority of the American public are terribly frustrated over at this moment.

Why cannot this Congress control its spending habits? And I think the gentleman is absolutely correct that the growing No. 1 issue in this Nation is the mounting deficit and a concern on the part of the citizens of this country as to what that deficit will lead us to somewhere down the road, with potentially uncontrollable inflation and interest rates that could bring us back to the kind of economic chaos this country was in in the late seventies and early eighties.

I have to compliment my colleague from Georgia for bringing the analysis that I for some time have agreed with, that until you control spending in this Congress, you will be unable to control deficits. I think the Wall Street Journal is absolutely correct, that until we can devise a mechanism that controls the ability of this Congress to spend in an uncontrollable fashion, at least certainly one that is not in balance with the flow of revenue coming to this Government, that we will have those kinds of deficits.

I have for some time been a leader of a group here in this Congress called CLUBB, Congressional Leaders United for a Balanced Budget. Our effort has been twofold: One, recognizing that the Congress itself was uncontrollable, to go to those States to encourage State legislatures to use the second part of article 5 of the Constitution to bring some fiscal sense to this body by forcing them toward the balanced budget amendment.

□ 1210

To highlight what you are saying and a lack of understanding and, therefore, a frustration on the part of the American taxpayer as to why this body cannot control itself came in a phone conversation that I had with a State representative from Michigan just day before yesterday, when that most important issue was before a house committee in the Michigan Legislature, that issue of being a petition to Congress.

She said:

Why can't you just bring in a balanced budget down in Washington? You know, Congressman, it is really your responsibility to bring in that balanced budget, and why can't you just simply do that? You know, we here in Michigan have to do that.

Of course, I reminded her that Michigan is one of those States whose constitution required a balanced budget.

My colleague from Georgia, I think, is absolutely correct in his analysis. The environment in which we operate, the laws that govern this body and have propelled us into a perpetual state of spending without recognizing the fiscal responsibility that is necessary brings us to the deficit.

No matter whether Walter Mondale wants to tax us out, unless he is willing to control his appetite for spending and this body's appetite for spending, taxes will not bring us to a balanced budget.

The chamber of commerce is absolutely correct. There is not a time in the history of this body that a tax increase brought the budget under control. More money simply perpetuates the mechanism of the system in which we operate, and that system is to spend more money, to try to offer up solutions to whatever problem we are addressing.

I think it is important for the American people to understand that there is a system, there is a plan that we can devise that will be long term in nature but that is fixed in its course of action that brings us toward a balanced budget.

I am anxious that my colleague today is setting forth that plan, that we can in a period of time, if we follow a course of action, bring this Nation to a balanced budget. We cannot balance the budget in 1985 without massive tax increases or massive spending reductions. I think it is important that the American people understand that.

I think it is also important for them to understand that they ought not be listening to politicians in 1984 who are saying that it is irresponsible to talk of a balanced budget amendment requirement because we cannot balance the budget in 1 year.

I think it is important to understand that it will take a dedicated course of action on the part of this House and our colleagues across the way that in a 4- to 5-year period, if we are willing and able to hold our spending growth at a moderate level and allow the economy of this country to expand and grow as it currently is, that we can accomplish that.

I am anxious to hear my colleague address those key issues in the next few minutes.

I thank the gentleman.

Mr. GINGRICH. I appreciate very much the contribution of my colleague, the gentleman from Idaho [Mr. CRAIG], because he has been a real leader in a nationwide effort to get a constitutional amendment to require a balanced budget. And frankly, it has been in reaction to your efforts that various liberals have said, "Ah, but how would you balance the budget?" Then we began to work on the material and the program I am going to outline today, because it seemed to me that we did have an obligation to come back in a serious and responsible manner and lay out a plan.

In order to understand that plan, I think it is very important that we first start with an analysis of the four things that are wrong with our current to budget process. And remember, I am talking today on the date when we were supposed to be passing the second concurrent budget resolution, at a time when we have not even passed the first concurrent budget resolution. It is a sad commentary on Congress that we move the fiscal year back from July to October to be able to have time to do our job and so we have now failed to do our job even by October. Presumptively, if we were to skip a year, giving us an entire year to catch up with the year, we think we might get our job done. But I do not think so. Because the problems are not problems of time. The problems are problems of political will, of structure, and of the way in which we approach the budget.

There are four basic problems:

First, the timeframe is wrong; second, the economic numbers are wrong; third, the current process of budget development is focused on the wrong questions; and fourth, we have allowed micromanagement to dominate the entire process of budgeting.

Let me walk through these in some detail.

First, the timeframe for budgets is wrong. Annual budgets are doomed to fail. An annual budget maximizes the pain you are going to impose on any specific interest group by trying to change how much they get that year, maximizes the reward you get by giving them more and minimizes the time necessary to invest in the long run.

An apple orchard that is on an annual budget could never plant trees because they do not grow fast enough to give you apples that year. Any kind of corporation that wanted to build a serious large factory could never operate on a purely annual budget because it would never get a return on that investment. It would be pure loss. We would never build our highways on an annual basis because you would never be able to get the concrete or the asphalt down to have cars riding on the entire highway.

The very concept of an annual budget is basically wrong, and a final example is the Defense Department. You cannot build aircraft carriers, buy airplanes, or buy tanks from an efficient assembly line or an efficient shipyard on an annual basis. We need to go toward a 2-year budget; we need to go toward a process of looking, frankly, further down the road on multiyear contracts, not just in defense but in a number of areas, and we need to get to a point where we distinguish between the kinds of changes that take time to pay off and the kinds of irrational shortsighted steps that we all too often take.

Benjamin Franklin once warned us against being penny-wise and dollar-foolish. And he was right. The fact is that we are all too often very wise with this year's budget's pennies in ways that cost us next year's dollars.

Second, the economic numbers are very often simply wrong. I want to quote from a nationally famous economist, who said—quoting now from Dr. John Albertine of the American Business Conference: "We may as well consult fortune tellers or astrologers rather than listen to economists about what the economy will be like in '88 or '89."

Dr. Albertine, an economist himself, said: "Economists didn't predict the recession of '82, or its severity, or the recovery of '83-'84, or the strength of the recovery. They're 0 for 4!" Econometric data isn't worth the paper it is written on, stated Dr. Albertine.

Now, the reason that concept is important is because if you were forced to think in phony numbers by a phony computer program in order to make phony projections, you get into a phony debate. We have had three or four of these in the last couple years.

As long as the economic numbers drive everything else and the economic numbers are wrong, it is little wonder that we in this House are wrong. It is like going to a doctor who says, "Your temperature is 211." Now, since human beings die long before they get to a temperature of 211, you would know that either his machine was wrong or he was crazy. But it is improbable you had a temperature of 211. You would probably find a second doctor.

Now, our problem is that we keep listening to economists who are simply giving us data that is wrong while listening to econometric projections that are wrong.

Third, the current process of budget development is simply focused on the wrong questions. This body and the Office of Management and Budget and the Congressional Budget Office are all being driven by numbers, as though the numbers had meaning. They are saying. "Well, you have to have more or less."

The question in American politics, despite Walter Mondale and the liberal Democrats, is not more or less. More or less what? Would you like more alcoholism or less alcoholism? I would rather have less alcoholism. Would you rather have more automobile deaths or fewer automobile deaths? I would rather have fewer automobile deaths. Would you rather have more waste in government or less waste in government?

Let me give you a further example: We need to shift the whole debate from more versus less, which is a liberal welfare state argument, to two new terms, better or worse, and future or past. Do you want better government or worse government? Better government may even be less government some weeks. There may be less health care. Would you rather we gave you a modern microsurgery technique that allows you to have your knee operated on and never go to a hospital, or would you rather go to the hospital and have an older fashion technique that would keep you laid up for 2 weeks? That is better or worse, not more or less.

The other term is future or past. Do we want a Government that moves us into the future or do we want a Government that holds us in the past? It was this commitment to better and future that led President Reagan recently to say that GOP now stands for Great Opportunities Party.

Budgets should reflect the vision of society and Government rather than having society and Government reflect the budgets. We have to start with our vision of where we want America to go and what kind of government we need for America to get there and then write the budget. The current budget committee process, the current Office of Management and Budget process, and the current Congressional Budget Office process are all exactly upside down. They could not be more wrong if we had worked at it.

The current annual cycle is so swamped in silly rules, technical procedures, and phony deadlines that it is self-defeating by its very nature. It guarantees that we will talk much about the budget without ever really budgeting and that we will talk much about numbers without ever really changing them.

□ 1220

Fourth and finally, we have allowed micromanagement to dominate the entire process. We have a tyranny of subcommittees, staffs, interest groups, and specialized media. There is an "iron triangle" of committee staff, executive branch agent and interest groups, and that iron triangle of self-protection looks in the budget only from the question: "What are you going to do to me?" Their only argument is, "How can I get more?" Only once in recent years have we broken the pressure for spending. As the Wall Street Journal said this morning: "The only effective spending control strategy we have seen in recent memory was the House coalition Ronald Reagan assembled in the first term of his Presidency."

Let me make this central point: That coalition was on the House floor led by the President nationally, backed and forced onto Congress by the American people. All of the interest groups, all of the subcommittees, all of the staffs, all of the specialized media were on one side of the fight, and it was the general interest, the general public, the general media, the President, and the floor membership as a general body which forced spending control. That is the kind of structural change we are going to need.

To summarize this first layer, I would say that means we need a longer timeframe first. We need to look at economics seriously as a process. Second, we need a process of developing our vision of society and Government before we put in numbers. Third, we need to focus on general change on the House floor rather than the tyranny of subcommittees.

I yield to the gentleman from Ohio.

Mr. KASICH. I really appreciate what the gentleman has to say about the argument of more or less, because I think that somewhere in the overall argument, and everybody here who is participating in this special order is a supporter of the balanced budget amendment because we recognize that a mechanism must be imposed upon

the Congress to force the Congress to start to live within a budget.

We all recognize the fact that in the future we are going to have to pick and choose, and we are going to have to slow the growth of Federal programs. Let me say this to the gentleman, in accord with the debate on the balanced budget amendment, in accord with the debate on the budget process itself, we cannot fail to take into account the issue of proper monetary policy in this country. The issue, to a large degree, is more or less. There are those out there who, in the late seventies and early eighties, said the way in which we solve our problems in America is for Americans to expect less.

The Carter administration was dominated by people who were advocates of less for Americans. Where we ought to be headed is pursuing a policy that will bring as much economic growth, noninflationary economic growth, as is possible in America. That has to take into account the actions of the Federal Reserve System and, of course, the subsequent reaction on interest rates.

Now remember this, when Americans are working, America is healthy. So the bottom line is as every 1 percent of America goes back to work, that means a reduction in Federal deficits of somewhere in the vicinity of $30 billion. In America, as we have continued to see month after month activity that represents low inflation, whether we look at gold, silver, commodities, the strength of the dollar around the world, we recognize that there is not any evidence that we are going to see any new spurts of inflation in this country. In fact, we have got the lowest inflation in several decades. Yet, we continue to see activities on behalf of the Federal Reserve System that tightens credit in increasing amounts, driving up interest rates, and of course, the Federal funds rate—we are going to be debating this hopefully the next couple of weeks—has gone from 8 to almost 12 percent. It has moved down a little bit in recent days, but consistently has been higher, and I think as the gentleman from Georgia will agree, as interest rates get higher, there is less economic activity. As interest rates are lower, in accord with noninflationary growth, then revenues are higher. People go back to work and you begin to reduce your budget deficits by creating more in America. By telling Americans that they do not have to expect less.

What we want to do is to tell Americans there can be greater economic activity. That a 7-, or a 6-, or a 5-percent level of unemployment is nowhere near being acceptable as a level of unemployment. Our goal ought to be zero unemployment. As we put people back to work, we reduce deficits.

So in accord with the arguments that we are talking about today that focus on the budget process, and as we move from that and we discuss the balanced budget amendment, which is necessary to impose a mechanism on the Congress to control the growth in Federal spending, we cannot ignore the process of economic growth in America. That is what increasingly this party represents: Hope for people.

You know, my father and mother, both of whom have been long-term Democrats, always believed that it was the Democratic Party that provided the greatest opportunity for them. But as the Democratic Party has moved to the left, and as the Democratic leadership has talked about less, my parents have been left behind. It is these new ideas and this new philosophy that this party can represent that argues that let us get interest rates down. Let us put Americans back to work; let us bring more for America. America is the land that represents the greatest opportunity for the individual.

As those people go back to work, we reduce deficits, we move in the direction of balance our budgets by having the best possible thing happen in America: Creation of opportunity for every American that lives in this Nation.

Mr. GINGRICH. I want to thank the gentleman because I think he is raising exactly the point I want to drive at for just a minute. That is that like the gentleman from Ohio, who has been a real leader in looking at the Federal Reserve System, and of monetary policy, President Reagan, after 4 years in Washington, intuitively knows, first, that the economists are wrong. Second, that the special interests are wrong, and third, that the subcommittee-dominated legislative process in its current form is wrong.

In that sense, I think President Reagan is a little bit like a patient who is faced with two obsolete doctors. One obsolete doctor wants to cut off the right leg, the other obsolete doctor wants to cut off the left leg, and the President intuitively knows that we need a more modern medicine, a better way to keep America healthy. That somehow, whether you cut off the right leg by cutting spending, or you cut off the left leg by raising taxes, you are not going to have a whole patient that is healthy.

I think in that sense, what President Reagan is seeking from people like the gentleman from Ohio, is newer and better medicine and newer and better doctors. I think that the steps we are taking, and as I will get to it in a few minutes, on monetary policy, on budget proposals, on a program for growth, that kind of plan represents a new model of thought and budget, a shift from the welfare state to the opportunity society, and allows us to begin to develop the kind of program that the gentleman from Ohio is talking about.

I yield briefly to the gentleman from Ohio.

Mr. KASICH. You know, we have to snuff out the idea, and I think the gentleman from Georgia would agree, and you hear it all the time, when you read a newspaper, when you watch television, you think about this: Have you not heard it said that, No. 1, America is growing too fast. That somehow that the idea that too many Americans are going back to work is somehow bad. We have got to snuff out this idea that when America grows too fast it is bad.

I maintain that when America grows fast, it creates greater opportunity for everybody, and helps us to solve some of our fundamental problems such as crime. It helps us to bring in additional revenues to fund those Federal programs that we need because when people have jobs, I mean, that is really what people want: They want to work. They want to have an opportunity to go out there and earn an income so that tomorrow is better. So they can leave something for their children. So their children can have a better life. The bottom line is opportunity.

This attitude about America's growing too fast, that it creates inflation, that is hogwash. Americans going back to work is inherently good. It is something we ought to strive for. It is really the foundation of what our group ought to be all about: Creating additional opportunity for people.

I am going to tell you, you cannot do it when you have got a Federal Reserve policy that drives interest rates through the ceiling and does not recognize that we must walk that very delicate tightrope of noninflationary growth. We have got to discard those old ideas. You know, I agree with that one candidate for President on the Democratic side, we need new ideas, and we need to snuff those old, dangerous ideas out, and carry forward with programs that are going to mean more hope for people.

Mr. GINGRICH. Let me, if I might, say that I think that the concept of noninflationary growth, if we can explain it well enough, if we can show a systematic program for it, if we can develop it in a way that people understand, the old ideas will disappear of their own accord.

□ 1230

If we can develop an opportunity society vision, if we can genuinely turn the Republican Party into the great opportunity party, then I think that our vision of America and our vision of American Government will gradually supersede the welfare state.

Mr. LEWIS of California. Mr. Speaker, I wonder if the gentleman would yield.

Mr. GINGRICH. I will yield to my good friend from California [Mr.

LEWIS] who has been a leader in this area.

Mr. LEWIS of California. I appreciate my colleague yielding to me.

Mr. Speaker, I did not come to the floor to discuss my interests in monetary policy, but rather Mr. GINGRICH might be interested in knowing that this morning my responsibility on the Appropriations Committee, I sat through a rather extended session in which we passed what is known as a continuing resolution, a process whereby we fund the whole realm of Government through one committee, leaving out all the rest of the House in terms of participating in what ought to be an informative and hopefully a helpful debate for the American people.

I returned from that committee to my office to complete some of that work and I could not help but be fascinated by your discussion. I must tell you that I am disappointed that often in special orders Members have to go back to their offices and they listen to the debate on television and go gather a lot of information from that, but in this case the dialog was such that I was stimulated to come back over here to attempt to make your point at least for me and my constituents in a different sort of way.

One of my jobs in the Appropriations Committee is to serve as a member of the Subcommittee on Housing and Urban Development as well as some independent agencies such as NASA. And it struck me that the point that you are making is so clearly demonstrated day in and day out in the work of that subcommittee.

It only spends each year approximately $30 billion of the people's money within housing programs and a number of other programs—$38 billion.

One of the things that really needs to be communicated when you talk about better or worse versus more or less or the past versus whether we will be looking to a new horizon that is our future, that question, that line of discussion, the point is made so very well in our subcommittee work and let me try to illustrate it by pointing at two programs.

Within our budget this year we will be spending in excess of $11 billion of taxpayers' money on housing programs. We have been spending at that level for many a year in the past. We do not read in the newspapers about the reality that we have another deficit way beyond the one the leadership around here wants to talk about.

That deficit is some trillion dollars of obligation that American taxpayers have because of housing programs we obligated them to in the past.

Well, intriguingly enough, it is clear that President Reagan, working with a number of responsible Democrats on the other side of the aisle, has attempted to reduce, on the one hand the rate of growth of those programs but clearly he has not cut the heart out of such programs when you think about our spending $11 billion more in the next budget.

What we really are talking about is not more or less in our committee. We are attempting to get the leadership to begin to discuss, Let's do something better with the money we are going to spend, rather than that which we have done in the past.

Anybody who will but look knows that we do have in many urban centers in this country housing needs that are American needs that our taxpayers, if they are reasonable, are willing to support.

But the reality is, while we have been spending over $1 trillion in the past, we have failed to deliver real service desperately needed by many Americans. Many of those programs have been a failure and yet they have become sacred cows, so nobody is asking the question, How can we spend the money better, and where we need to help people; where there are people who need our assistance, why don't we see if we can reevaluate that past and improve the way we serve all Americans, Democrat and Republican alike.

At another level, talking about the past or the future, our NASA funding is fascinating. What are we going to do in the future in terms of space. We spend a good deal of money in that whole subject area. Our debate is not whether we will totally eliminate those programs or increase them by huge amounts, but rather are we on the verge of tapping a new horizon that is the next frontier that makes up the future for our children and our grandchildren.

Can we do the job better and in the process not only create hope and opportunity but indeed in that process establish a new foundation for peace for all of mankind.

Clearly, you have made the point time and time again. Our problem, and I hope the American public understands this as we repeat it. Our problem is that the leadership in this House is totally out of touch with the American people, Democrat and Republican alike.

The party of the leadership has gone in one direction and I think the American people including many of my friends on the other side of the aisle have gone in another direction. They want to say, "Look, we have spent trillions and yet we still have many who have not been served." Taxpayers have had it up to here. Many are not willing to support more spending.

Should we then not reevaluate how we have spent their dollars in the past? Cannot we do a better job for people while we strengthen America and while we strengthen opportunity for our children and our future?

I appreciate my colleague giving me this time. I think the point that you are making today is critical for the future of our country. I appreciate the contribution you are making.

Mr. GINGRICH. I appreciate your making this point because I think as a member of the Committee on Appropriations, you see it firsthand the way the rest of us do not exactly what goes on on a weekly basis in this body and why it is so difficult in a normal process to get the budget under control because all of the normal processes are for noncontrol. They are for, in fact, continued increases.

So I would bring us back to this framework and say if we are ever going to get it under control what would an opportunity society plan in an American Government be like, because I think ultimately the appropriations ought to flow from our vision rather than having our vision flowing from the budget and the appropriations. What would an opportunity society plan for a balanced budget be?

I think the first step to understand that is to recognize that there are three principles of an economic revolution that is underway. There is an opportunity society information age revolution underway. We are shifting from the welfare state industrial age approach to an opportunity society information age approach.

Let me make one distinction here. There are going to be automobile plants in the information age. There are going to be a lot more roboticized as we are already seeing with Chrysler, and Ford, and General Motors. They are going to be a lot more productive. The workers are going to earn a great deal of money.

There are going to be steel mills in the information age. Just as there is farming in the industrial age, there will be industry in the information age, but the driving force of that age is going to be the process of producing new ideas.

Not just the computers but particularly the revolutions in computers and space and biology are driving this change, what Alvin Toffler calls "The Third Wave" and John Naisbitt write in "Megatrends."

There are three major principles in this economic revolution. First, the rise of a new era. Second, the shift from mathematical economics to human economics. Third, the shift from a national economy to a global economy.

Let me start first with the dramatic rise of a new age. I am going to try to use this chart for just a second and I am going to draw three relatively flat S's; one on top of the other. They represent the S-curve of technological change.

S-curves, which is an idea very familiar to anyone who has worked in high technology, is the idea that you start developing a new industry or a new idea very slowly and then it accelerates very, very fast up the flat side of the curve and then, after you get to a mature industry it slows down and levels off at the top.

Take the Wright brothers. It is hard to believe, but only 71 years ago the first powered flight took off and landed in a space short enough to be on the wingspan of a Boeing 747. Airplanes developed very slowly for many years. Then as the technology advanced, there is a sudden explosion of opportunity and possibility first with propellers and later with jet aircraft, so that today you have a relatively mature aircraft industry which may, by the way in the 1990's enter a whole new era, a whole new S-curve in technology and a whole new set of opportunities.

If you view this at a level of macrohistory, these three curves, the bottom one is the agricultural revolution. The middle one is the industrial revolution and the top one is the information age.

To give you some sense of scale how radical the change is you have to recognize, and you might put this in the context of the recent World Bank study of population on the planet. In the Neolithic period in Egypt, there were only 40,000 hunter-gatherers in the whole country. By the end of this first period of growth, the end of the agricultural era in pharonic Egypt when the pharos built pyramids, there were 6 million people.

There were 40,000 here and 6 million up here. If the liberal economists had been available at the World Bank at the beginning of farming, they would have said clearly the 40,000 can never grow to be 6 million, because it takes about four elephants a year to feed a person in hunting-gathering, and that would be 24 million elephants, and you could never have 24 million elephants in Egypt, so obviously you cannot ever have this population grow to here.

□ 1240

You think that sounds exaggerated, and if that resembles the World Bank projections, let me show you two clear examples of exactly that kind of thinking.

First, at the beginning of the industrial era, Malthus, an English clergyman studying the first era, what Toffler called the first vave, the rise of agriculture, proved conclusively that you could never have more than 5 million people live in Britain or they would have a famine. Today there are 60 million people living in Britain. Obviously, Malthus was wrong.

But the important thing to recognize is that his wrongheadedness has carried right through to here, the beginning of the information age, when the Club of Rome wrote the limits to growth. They basically applied Malthusian concepts to the world and proved once again we cannot have another increase in population and wealth and productivity.

They are wrong, too, but the Western left, liberals in America and Britain, love looking back at the past and clinging to doom and despair. If Chicken Little were alive, he would love liberal Democrats. The fact is, they are just wrong.

At the same time, there was somebody looking forward. Writing at about the same time, but slightly before Malthus, Adam Smith wrote "The Wealth of Nations." Adam Smith was not a philosopher. Adam Smith, in fact, was a man who, while he had studied philosophy, looked at reality, and said what is really happening. What was happening was that England was leaving the agricultural revolution and entering the industrial age, and in "The Wealth of Nations" Adam Smith codified the rules, the principles, the ideas that would allow the modern era to develop. That is why he is basically right, Malthus was basically wrong, the entire Western left followed Malthus, the entire Western right tends to follow Adam Smith.

Here we are today, at the beginning of the information era. Let me put one fact up here. From 1962 to 1984, the amount of computing power you can buy per dollar has gone up by a factor of 4 million; that is, for a dollar you can buy 4 million times as much computer today as you could buy in 1962. That is a 99-percent-per-year real growth rate.

Let me go through this for a second, because it sounds impossible. All the little gimmicks we have today, the cars that talk and tell you that you left your door open or that you ran out of gas, the very fancy watches you can buy for $11 or $19, the desk watch they now give you if you subscribe to Time magazine by television, all of the different capabilities, the powerful capabilities of the space shuttle in computing, amounts to a revolution that has been going on at the rate of 99 percent a year real growth.

It is important to recognize this because, in fact, there is not a single mathematical model of the economy which takes into account the revolution we are living through. What we need today are the pediatricians of the information age, people who will help us rise in ability. What we have in most of our national economic experts are the gerontologists of the industrial age. So we need a dramatic change. We need people who are looking at the future, developing the future, planning for the future.

Second, we must move from mathematical economics to human economics. We must recognize that old-fashioned input-output models just do not work. You cannot explain the Dallas Cowboys without explaining Tom Landry. You cannot explain the qualities of Korean immigrants who come to America without looking at their background. You cannot explain Thomas Edison or Henry Ford without looking at their background.

There have been a number of recent examples. The book "In Search of Excellence" by Peters and Waterman is probably the best study of the fact that human beings can do dramatically better under the right circumstances and that those circumstances are not just a matter of numbers. Yet, one of the major failings of Washington today and of the whole process of looking at the budget and the economy is that we focus too much on mathematics and too little on human beings.

Third, we have to move from a national to a global perspective on the economy. There are two examples of this. First, when interest rates went up, it brought money in from overseas. That means more money was available in America than the economists had planned for. That meant all of their models, which are national models, are basically obsolete. It would be like planning for a horse-and-buggy economy in the age of the automobile and having no rules that said you could go 50 or 60 miles an hour, so I came to you and said, "I have to travel a hundred miles," and you said, "Well, with a horse and buggy, that is 2 days," and I said, "Well, I think I will make it in 90 minutes." You could not understand that because the whole model is wrong.

Similarly, today we have left the national economy and we are emerging into a global economy. This is a very, very important concept because it explains more than any other thing why we have a global imperative for growth. There is an inherent contradiction when people like Jesse Jackson and liberal Democrats claim they want to help the poor, when liberals claim they really want to create jobs. The contradiction is that liberal desires are destroyed by liberal policies. While liberals claim they want growth in raising living standards and growth in jobs, in fact they tend to hate the very people and ideas most likely to create growth and jobs. In effect, they are like doctors who love health but hate medicine.

It is a very, very deep problem. Liberals will come to the floor of the House who honestly want to create jobs and pass a tax bill which destroys the very entrepreneurs who are likely to create jobs. Liberals will come to the floor of the House and talk about the need for jobs, and then they will vote for a new redtape bill which is going to strangle entrepreneurs.

It is interesting. In today's Wall Street Journal there is an article by Peter Drucker entitled "Europe's High-Tech Delusion." I would suggest that you could read this article and substitute "liberal welfare state" every single place he talks about Europeans, or substitute "Mondale" or substitute "liberal Democrats" and it would be exactly correct, because he makes the point:

So far, however, European governments are still hostile to entrepreneurs other than in high-tech areas (in France contemptuous to boot). European tax law, for instance, penalize them and restrict their access to capital and credit. But European society also discourages people, and especially the educated young, from doing anything so uncouth as going to work in anything but a government agency or a big, established company. Unless this changes—and so far there are few signs of this—the infatuation with high-tech entrepreneurship will neither revive the ailing European economics nor even provide much high-tech. It must end the way an earlier European high-tech infatuation, the Concorde, ended: avery little gloire, an ocean of red ink, but neither jobs nor techological leadership.

I would suggest that you can substitute "liberal" and "liberal Democrat" and "Walter Mondale" in that paragraph for every single reference to Europe and you will understand the dilemma of the modern left. The fact is that America without Ronald Reagan and without a Great Opportunity Party Republican effort, and without an opportunity society approach, that America would resemble Europe.

If you love jobs, you have to help job creators. You have to help the entrepreneurs, the Ed Zschaus, the Roy Richards, the Eddie Richenbachers, the people who go out and create the future.

If you look at the case study of the capital gains tax, you will discover that when we cut the tax rate, more and more people invested money in capital gains and, in fact, the Treasury gained revenue. If you look at the fact that in May 1984 we were able to create more jobs than the entire European Common Market nations together created in the last 7 years, in 1 month we created more jobs, you can understand that there are lessons to be learned and there is a future that we ought to work at.

But while this growth is good, it is not enough. If we are going to help Bangladesh and Chad raise their standard of living, if we are going to help the people of the Third World export enough that they can pay off their bank debt, if we are going to help our European allies grow enough that the Western Alliance survives, the United States must have an absolute, total commitment to economic growth and growth in jobs and standard of living and shifting into this high technology third wave information society if we are going to be able to lead the planet.

□ 1250

The opportunity-society concept, the shift from the welfare state to the opportunity society, is the key to all of this. It is vital that we create an alternative for young people in the Third World, an alternative to communism, an alternative to terrorism. It is vital that young people grow up understanding that if they want to improve the standard of living of their family, whether they are blacks in the ghetto, Hispanics in areas who have just moved to America, people who live still in Chad, or Bangladesh, or Western Europeans who want to improve their country, the opportunity-society concept offers hope and practical medicine to improve the future.

The opportunity-society concept has to give direction and hope to young people, and in that sense the great opportunity party concept has to be a concept for all the people of the world, not just America.

This is vital because we have become one electronic neighborhood. Just as the Olympics were seen by 140 nations over TV, everyone today is beginning to be wired together, and by satellite we are having broadcasts to bring all of us into one room.

But there are immediate practical reasons to emphasize growth in jobs, in standard of living, and in wealth. First, the domestic economy will not stand stagnation. Drucker himself makes the point in today's article that as the European economy stagnates, the pressure builds to prop up the old economy. If you have tremendous growth, if there are lots of new jobs, if there is a lot of new wealth, then the old economy grows along with the new economy and you do not have a fight over what our policies will be. But if we have a severe recession, then the old industries, automobile, steel, and the industries of the Industrial Age, will use their political clout to protect themselves. Only by having domestic growth on a tremendous scale can you manage the transition without conflict.

Second, the foreign trade pressures will build dramatically without growth. As we begin to protect our economy by cutting off European steel, Europeans will begin to protect their economy by cutting off American computers. The Western Alliance will literally come in danger.

Third, the Third World will never be able to pay off its bank debt if it does not have a growing American economy that it can export to. If we go into a severe recession, Brazil, Mexico, and Argentina are going to face the prospect of going bankrupt because they will literally not be able to take care of everything they need. Therefore, idealism requires economic growth and jobs and an improved standard of living, the Third World requires economic growth and jobs and a better standard of living, the Western Alliance requires jobs and economic growth and an improved standard of living, and the future of the United States requires rapid growth in jobs, wealth, and standard of living.

Then how do we balance the budget? We have a seven-point plan. It starts with the understanding, as Richard Rahn of the U.S. Chamber said, that if we simply had 5.5-percent real growth a year for the next 4 years and we had relative restraint in spending, we would automatically balance the budget by the sheer increase in wealth in the United States. So many more people would have jobs and there would be so much more wealth being created that we would have caught up in revenue with our spending. But there are seven steps that can move us in the direction of a balanced budget over the next few years:

First, we need an omnibus growth bill;

Second, we need a 2-year budget and 2-year appropriations;

Third, we need a new-ideas bill to change the way we run the U.S. Government and the way we deliver goods and services;

Fourth, we need to develop genuine frugality in Washington in the tradition of Walpole, and Gladstone, and Coolidge;

Fifth, we need a simplified tax bill to draw people in from the underground economy and to lower the rates and have people shift their investments from tax shelters into real economic development—something like the Kemp-Kasten plan;

Sixth, we need to change the way we handle interest on the debt because the third largest item of expenditure in the U.S. Government, which is interest on the debt, is not really handled in a way that minimizes its cost, and there are potentially billions to be saved by changing the way we pay the interest on the debt; and

Seventh, we need monetary reform to have some guarantee that the inflation rate will stay at no more than 3 percent or so a year in order to allow us to move into a period of relative stability and tying the dollar either to gold or to a monetary basket based on commodities, some method of signaling the world and signaling investors that the dollar will be honest and the dollar will be stable.

Some kind of monetary reform has to be the seventh key component in developing a healthy economy and balancing the budget by 1989.

The SPEAKER pro tempore. The time of the gentleman from Georgia [Mr. GINGRICH] has expired.

Mr. GINGRICH. I thank the Chair, and I will next week take up in detail those seven principles.

CONFERENCE REPORT ON H.R. 5297

Mr. MINETA submitted the following conference report and statement on the bill (H.R. 5297) to amend the Federal Aviation Act of 1958 to terminate certain functions of the Civil Aeronautics Board, to transfer certain functions of the Board to the Secretary of Transportation, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 90-1025)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5297) to amend the Federal Aviation Act of 1958 to terminate certain functions of the Civil Aeronautics Board, to transfer certain functions of the Board to the Secretary of Transportation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Aeronautics Board Sunset Act of 1984".

AMENDMENT OF FEDERAL AVIATION ACT OF 1958

SEC. 2. Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.).

TERMINATION AND TRANSFER OF FUNCTIONS UNDER THE FEDERAL AVIATION ACT OF 1958

SEC. 3. (a) Section 1601(b)(1)(C) is amended by striking out "Justice" and inserting in lieu thereof "Transportation".

(b) Section 1601(a)(3) is amended by inserting after "Act" the following: "(other than section 204)".

(c) Section 1601(a) is amended by adding at the end thereof the following:

"(4) The following provisions of this Act (to the extent such provisions relate to interstate and overseas air transportation) and the authority of the Board with respect to such provisions (to the same extent) shall cease to be in effect on January 1, 1985:

"(A) Sections 401 (l) and (m) 405 (b), (c), and (d) of this Act (except insofar as such sections apply to the transportation of mail between two points both of which are with the State of Alaska).

"(B) Section 403 of this Act.

"(C) Section 404 of this Act (except insofar as such section requires air carriers to provide safe and adequate service).

"(5) The following provisions of this Act and the authority of the Board with respect to such provisions shall cease to be in effect on January 1, 1985:

"(A) Sections 407 (b) and (c) of this Act.

"(B) Section 410 of this Act.

"(C) Section 417 of this Act.

"(D) Sections 1002(d), (e), (g), (h), and (i) of this Act (except insofar as any of such sections relate to foreign air transportation).

"(6) Sections 412(a) and (b) of this Act (to the extent such sections relate to interstate and overseas air transportation) and section 414 of this Act (to the extent such section relates to orders made under sections 412(a) and (b) with respect to interstate and overseas air transportation) and the authority of the Secretary of Transportation under such sections (to the same extent) shall cease to be in effect on January 1, 1989.

"(7) Sections 408 and 409 of this Act and section 414 of this Act (relating to such sections 408 and 409) and the authority of the Secretary of Transportation under such sections (to the same extent) shall cease to be in effect on January 1, 1989.

"(8) Sections 401(l) and (m) and 405(b), (c), and (d) of this Act (to the extent such sections apply to the transportation of mail between two points both of which are within the State of Alaska) shall cease to be in effect on January 1, 1989.".

(d) Section 1601(b)(1)(D) is amended by inserting after "transportation" the following: "(other than for the carriage of mails between any two points both of which are within the State of Alaska)".

(e) Section 1601(b)(1) is amended by adding at the end thereof the following:

"(E) All authority of the Board under this Act which is not terminated under subsection (a) of this section on or before January 1, 1985, and is not otherwise transferred under this subsection is transferred to the Department of Transportation.".

(f) Section 1601(b) is amended by adding at the end thereof the following:

"(3) The authority of the Secretary of Transportation under this Act with respect to the determination of the rates for the carriage of mails between any two points both of which are within the State of Alaska is transferred to the Postal Service and such authority shall be exercised through negotiations or competitive bidding. The transfer of authority under this paragraph shall take effect on January 1, 1989.".

TRANSFERS OF FUNCTIONS UNDER OTHER LAWS

SEC. 4. (a) There are hereby transferred to and vested in the Secretary of Transportation all functions, powers, and duties of the Civil Aeronautics Board under the following provisions of law:

(1) The International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1159b).

(2) The Internatiopnal Aviation Facilities Act (49 U.S.C. 1151-1160).

(3) The Animal Welfare Act (7 U.S.C. 2131 et seq.).

(4) Section 11 of the Clayton Act (15 U.S.C. 21).

(5) Sections 108(a)(4), 621(b)(5), 704(a)(5), and 814(b)(5) of the Consumer Credit Protection Act (15 U.S.C. 1607(a)(4), 1681s(b)(5), 1691c(a)(5), and 16921(b)(5)).

(6) Section 382 of the Energy Policy and Conservation Act (89 Stat. 939, 42 U.S.C. 6362).

(7) Section 401 of the Federal Election Campaign Act of 1971 (2 U.S.C. 451).

(8) Section 5402 of title 39, United States Code (to the extent such section relates to foreign air transportation and to air transportation between any two points both of which are within the State of Alaska).

(9) Sections 4746 and 9746 of title 10, United States Code.

(10) Section 3 of the Act entitled "An Act to encourage travel in the United States, and for other purposes" (16 U.S.C. 18b).

(b) The transfer of any authority under subsection (a) of this section shall take effect on January 1, 1985.

(c) The authority of the Secretary of Transportation under section 5402 of title 39, United States Code, with respect to air transportation between any two points both of which are within the State of Alaska shall cease to be in effect on January 1, 1989.

COLLECTION OF DATA

SEC. 5. (a) Section 329(b)(1) of title 49, United States Code, is amended to read as follows:

"(1) collect and disseminate information on civil aeronautics (other than that collected and disseminated by the National Transportation Safety Board under title VII of the Federal Aviation Act of 1958 (49 U.S.C. 1441 et seq.)) including, at a minimum, information on (A) the origin and destination of passengers in interstate and overseas air transportation (as those terms are used in such Act), and (B) the number of passengers traveling by air between any two points in interstate and overseas air transportation; except that in no case shall the Secretary require an air carrier to provide information on the number of passengers or the amount of cargo on a specific flight if the flight and the flight number under which such flight operates are used solely for interstate or overseas air transportation and are not used for providing essential air transportation under section 419 of the Federal Aviation Act of 1958;".

(b) The amendment made by this section shall take effect on January 1, 1985.

REPORTS

SEC. 6. (a) The Secretary of Transportation shall submit a report to the appropriate committees of Congress not later than July 1, 1987, listing (1) transactions submitted to the Secretary for approval under section 408 of the Federal Aviation Act of 1958, (2) interlocking relations submitted to the Secretary for approval under section 409 of such Act, and (3) the types of agreements filed with the Secretary of Transportation under section 412 of such Act, and, with respect to such transactions, interlocking relationships, and agreements, those that have been exempted from the operation of the antitrust laws under section 414 of such Act. The Secretary shall recommend whether the authority under such sections 408, 409, 412, and 414 should be retained or repealed with respect to interstate and overseas air transportation and with respect to foreign air transportation.

(b) The Secretary of Transportation and the Postmaster General shall each submit a report to the appropriate committees of Congress not later than July 1, 1987, describing how the Secretary and the Postmaster General have administered their respective authorities to establish rates for the air transportation of mail and setting forth the recommendations of the Secretary and the Postmaster General as to whether the authority to establish rates for the transportation of mail between points within the State of Alaska should continue to be carried out by the Secretary by regulatory ratemaking or by the Postal Service through negotiations or competitive bidding.

INCORPORATION BY REFERENCE

SEC. 7. (a) Section 411 of the Federal Aviation Act of 1958 is amended by inserting "(a)" after "SEC. 411." and by adding at the end thereof the following new subsection:

"INCORPORATION BY REFERENCE

"(b) Any air carrier may incorporate by reference in any ticket or other written instrument any of the terms of the contract of carriage in interstate and overseas air transportation, to the extent such incorporation by reference is in accordance with regulations isued by the Board.".

(b) Section 411 of the Federal Aviation Act of 1958 is amended by inserting before subsection (a) (as designated by subsection (a) of this section) the following subsection heading:

"INVESTIGATIONS"

(c) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the center heading

TITLE IV—AIR CARRIER ECONOMIC REGULATION"

is amended by striking out

"Sec. 411. Methods of competition."

and inserting in lieu thereof

"Sec. 411. Methods of competition."

"(a) Investigations.

"(b) Incorporation by reference.".

REFERENCES TO CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

SEC. 8. Any reference in any law to a certificate of public convenience and necessity, or to a certificate of convenience and necessity, issued by the Civil Aeronautics Board shall be deemed to refer to a certificate issued under section 401 or 418 of the Federal Aviation Act of 1958.

MISCELLANEOUS AMENDMENTS

SEC. 9. (a)(1) Section 101(11) is amended to read as follows:

"(11) 'All-cargo air service' means the carriage by aircraft in interstate or overseas air transportation of only property or mail, or both.".

(2) Section 418(b)(3) is repealed.

(b) Section 1307(a) is amended by striking out ", after consultation with the Civil Aeronautics Board,".

(c) Section 11 of the International Aviation Facilities Act (49 U.S.C. 1159a) is amended in the second sentence by striking out "and the Civil Aeronautics Board" and by striking out "in collaboration with the Civil Aeronautics Board" and inserting in lieu thereof "in collaboration with the Secretary of Transporation".

(d) Section 2 of the International Air Transportation Fire Competitive Practices Act of 1974 (49 U.S.C. 1159b) is amended by—

(1) striking out "the Civil Aeronautics Board," in subsection (a);

(2) striking out "Civil Aeronautics Board" and "Board" each time they appear in subsecton (b) and the first sentence of subsection (d) and inserting in lieu thereof "Secretary of Transportation" and "Secretary", respectively;

(3) Striking out "and the Department of Transportation" in subsection (b)(2); and

(4) Striking out the last sentence in subsection (d) and inserting in lieu thereof the following: "the Secretaries of State and Treasury shall furnish to the Secretary of Transportation such information as may be necessary to prepare the report required by this subsection.".

(e) Section 5314 of title 5, United States Code, is amended by striking out "Chairman, Civil Aeronautics Board.". Section 5315 of title 5, United States Code, is amended by striking out "Members, Civil Aeronautics Board.".

(f) Section 3726(b)(1) of title 31, United States Code, is amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation with respect to foreign air transportation (as defined in the Federal Aviation Act of 1958)".

(g)(1) Sections 3401(b) and (c) of title 39, United States Code, are each amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation".

(2) Section 5005(b)(3) of title 39, United States Code, is amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation if for the carriage of mail in foreign air transportation (as defined in section 101 of the Federal Aviation Act of 1958)".

(3) Section 5401(b) of title 39, United States Code, is amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation".

(4) Section 5402 of title 39, United States Code, is amended—

(A) by striking out "Civil Aeronautics Board" each place it appears and inserting in lieu thereof "Secretary of Transportation";

(B) in the first sentence of subsection (a), by inserting "in foreign air transportation" after "points";

(C) in the second sentence of subsection (a), by striking out "10 percent of the domestic mail transported under any such contract or";

(D) in the first sentence of subsection (b), by inserting "in foreign air transportation" after "points";

(E) in the first sentence of subsection (c), by inserting "in foreign air transportation" after "points"; and

(F) by adding at the end thereof the following new subsections:

"(d) The Postal Service may contract with any air carrier for the transportation of mail by aircraft in interstate and overseas air transportation either through negotiations or competitive bidding.

"(e) For purposes of this section, the terms 'air carrier', 'interstate air transportation', 'overseas air transportation', and 'foreign air transportation' have the meanings given such terms in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301).

"(f) During the period beginning January 1, 1985, and ending January 1, 1989, the authority of the Secretary of Transportation and the Postal Service under subsections (a), (b), and (c) of this section shall also apply, and the authority of the Postal Service under subsection (d) shall not apply, to the transportation of mail by aircraft between any two points both of which are within the State of Alaska and between which the air carrier is authorized by the Secretary to engage in the transportation of mail.".

(h) Section 3502(10) of title 44, United States Code, is amended by striking out "the Civil Aeronautics Board,".

(i) Section 15(a) of the Animal Welfare Act (7 U.S.C. 2145(a)) is amended by striking out "the Civil Aeronautics Board" and inserting in lieu thereof "the Secretary of Transportation".

(j) Section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) is amended by striking out "the Civil Aeronautics Board".

(k) Sections 4746 and 9746 of title 10, United States Code, are each amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation".

(l) Section 7 of the Clayton Act (15 U.S.C. 18) is amended in the final paragraph by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation" and by striking out "Commission, Secretary, or Board" and inserting in lieu thereof "Commission or Secretary".

(m) Section 11 of the Clayton Act (15 U.S.C. 21) is amended—

(1) in subsection (a), by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation" and by striking out "Civil Aeronautics Act of 1938" and inserting in lieu thereof "Federal Aviation Act of 1958";

(2) in subsection (b), by striking out "Commission or Board" each place it appears and inserting in lieu thereof "Commission, Board, or Secretary"; and

(3) by striking out "commission or board" each place it appears in such section and inserting in lieu thereof "commission, board, or Secretary".

(n) The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation" each place it appears in section 108(a)(4) (15 U.S.C. 1607(a)(4)), section 621(b)(5) (15 U.S.C. 1681s(b)(5)), section 704(a)(5) (15 U.S.C. 1691c(a)(5)), and section 814(b)(5) (15 U.S.C. 1692l(b)(5)).

(o) Section 3 of the Act entitled "An Act to encourage travel in the United States, and for other purposes" (16 U.S.C. 18b; 54 Stat. 773), is amended by striking out "the Civil Aeronautics Authority,".

(p) Section 47(a)(7)(C) of the Internal Revenue Code of 1954 is amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation".

(q) Section 7701(a)(33)(E) of the Internal Revenue Code of 1954 is amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation".

(r) Section 419(c)(1) is amended by striking out "416(b)(3)" and inserting in lieu thereof "416(b)(4)".

(s) Section 412(c)(2) is amended by striking out "subsection (c) of this section" and inserting in lieu thereof "subsection (a) of this section".

(t) Section 407(e) is amended by striking out the first sentence and inserting in lieu thereof the following: "The Board shall have access to all lands, buildings, and equipment of any air carrier or foreign air carrier when necessary for a determination under section 401, 402, 418, or 419 of this title that such carrier is fit, willing, and able. The Board shall at all times have access to all accounts, records, and memorandums, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by air carriers, foreign air carriers, or ticket agents. The Board may employ special agents or auditors, who shall have authority under the orders of the Board to inspect and examine lands, buildings, equipment, accounts, records, and memorandums to which the Board has access under this subsection.".

(u) Section 105(a)(1) is amended by striking out "interstate air transportation" and inserting in lieu thereof "air transportation".

(v) The amendments made by this section shall take effect on January 1, 1985.

TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL

SEC. 10. (a) The personnel (including members of the Senior Executive Service) employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with, any function transferred by section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act, subject to section 1531 of title 31, United States Code, shall be transferred to the head of the agency to which such function is transferred for appropriate allocation. Personnel employed in connection with functions so transferred, or transferred in accordance with any other lawful authority, shall be transferred in accordance with any applicable laws and regulations relating to transfer of functions. Unexpended funds transferred pursuant to this subsection shall only be used for the purpose for which the funds were originally authorized and appropriated.

(b) In order to facilitate the transfers made by section 1610(b) of the Federal Aviation Act of 1958 and section 4 of this Act, the Director of the Office of Management and Budget is authorized and directed, in consultation with the Civil Aeronautics Board and the heads of the agencies to which functions are so transferred, to make such determinations as may be necessary with regard to the functions so transferred, and to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with, such functions, as may be necessary to resolve disputes between the Civil Aeronautics Board and the agencies to which functions are transferred by section 1601(b) of the Federal Aviation Act of 1958 and section 4 of this Act.

(c) The Chairman of the Civil Aeronautics Board and the Secretary of Transportation shall, beginning as soon as practicable after the date of enactment of this Act, jointly plan for the orderly transfer of functions and personnel pursuant to section 1610(b) of the Federal Aviation Act of 1958 and section 4 of this Act.

EFFECT ON PERSONNEL

SEC. 11. (a) Employees covered by the merit pay system under chapter 54 of title 5, United States Code, who are transferred under section 10 of this Act to another agency shall have their rate of basic pay adjusted in accordance with section 5402 of such title. With respect to the evaluation period during which such an employee is transferred, merit pay determinations for that employee shall be based on the factors in section 5402(b)(2) of such title as appraised in performance appraisals administered by the Civil Aeronautics Board in accordance with chapter 43 of title 5, United States Code, in addition to those administered by the agency to which the employee is transferred.

(b) With the consent of the Civil Aeronautics Board, the head of each agency to which functions are transferred by section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act is authorized to use the services of such officers, employees, and other personnel of the Board for such period of time as may reasonably be needed to facilitate the orderly transfer of such functions.

SAVINGS PROVISIONS

SEC. 12. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any agency or official thereof, or by a court of competent jurisdiction, in the performance of any function which is transferred by section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act from the Civil Aeronautics Board to another agency, and

(2) which are in effect on December 31, 1984,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the head of the agency to which such function is transferred, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) The transfers of functions made by section 1601(b) of the Federal Aviation Act of 1958 and section 4 of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time such transfers take effect before the Civil Aeronautics Board; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if such sections 1601(b) and 4 had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if such sections 1601(b) and 4 had not been enacted.

(c) Except as provided in subsection (e)—

(1) the transfer of any function under section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act shall not affect any suit relating to such function which is commenced prior to the date the transfer takes effect, and

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if section 1601(b) of the Federal Aviation Act of 1958 and section 4 of this Act had not been enacted.

(d) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Civil Aeronautics Board shall abate by reason of the transfer of any function under section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act. No cause of action by or against the Civil Aeronautics Board, or by or against any officer thereof in his official capacity shall abate by reason of the transfer of any function under section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act.

(e) If, before January 1, 1985, the Civil Aeronautics Board, or officer thereof in his official capacity, is a party to a suit relating to a function transferred by section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act, then such suit shall be continued with the head of the Federal agency to which the function is transferred.

(f) With respect to any function transferred to another agency by section 1601(b) of the Federal Aviation Act of 1958 or by section 4 of this Act and exercised after the effective date of such transfer, reference in any Federal law (other than title XVI of the Federal Aviation Act of 1958) to the Civil Aeronautics Board or the Board (insofar as such term refers to the Civil Aeronautics Board), or to any officer or office of the Civil Aeronautics Board, shall be deemed to refer to that agency, or other official or component of the agency, in which such function vests.

(g) In the exercise of any function transferred under section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act, the head of the agency to which such function is transferred shall have the same authority as that vested in the Civil Aeronautics Board with respect to such function, immediately preceeding its transfer, and actions of the head of such agency in exercising such function shall the same force and effect as when exercised by the Civil Aeronautics Board.

(h) In exercising any function transferred by section 1601(b) of the Federal Avaiation Act of 1958 or section 4 of this Act, the head of the agency to which such function is transferred shall give full consideration to the need for operational continuity of the function transferred.

DEFINITIONS

SEC. 13. For purposes of this Act—

(1) the term "agency" has the same meaning such term has in section 551(1) of title 5, United States Code; and

(2) the term "function" means a function, power, or duty.

ACCESS FOR HANDICAPPED PERSONS

SEC. 14. Section 104 is amended by adding at the end thereof the following new sentence: "In the futherance of such right, the Board or the Secretary, as the case may be, shall consult with the Architectual and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973, prior to issuing or amending any order, rule, regulation, or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped person.".

STUDY OF TRANSPORTATION TO AND FROM WASHINGTON DULLES AIRPORT

SEC. 15. (a) The Secretary of Transportation shall study the feasibility of constructing a rail rapid transit line between the West Falls Church, Virginia, station of the Washington, D.C. metrorail system and Dulles International Airport in Virginia. The study shall include, but need not be limited to, a study of the feasibility of heavy rail, light rail, monorail, magnetic levitation systems, and any other appropriate transportation systems. The Secretary shall study the feasibility of each such system with and without intermediate stops.

(b) The Secretary shall complete the study required by subsection (a) and transmit the results thereof to Congress not later than one year after the date of enactment of this Act.

AIR SERVICE IN THE STATE OF ALASKA

SEC. 16. (a)(1) Notwithstanding any other provision of law, with respect to air transportation to each of the points in Alaska listed in paragraph (4), essential air transportation for purposes of section 419 of the Federal Aviation Act of 1958 shall neither be specified at a level of service nor operated with aircraft of lesser seating and cargo capacity than provided for in CAB Order 80-1-

167 and its Appendices unless otherwise specified under an agreement between the Department of Transportation and the State of Alaska, after consultation with the community affected. This paragraph shall cease to be in effect on January 1, 1987.

(2) Notwithstanding any other provision of law, the total amount of compensation which may be paid under section 419 of the Federal Aviation Act of 1958 with respect to the points in Alaska listed in paragraph (4) shall not exceed $3,572,778 for each of the fiscal years 1985 and 1986 and shall not exceed $893,195 for service provided during the period beginning October 1, 1986, and ending at the close of December 31, 1986.

(3) The Secretary of Transportation shall study the feasibility of providing essential air transportation to each of the points in Alaska listed in paragraph (4) with aircraft having a smaller capacity than that required by paragraph (1), the level of compensation which would be required under section 419 of the Federal Aviation Act of 1958 for such transportation, and the impact of using such aircraft on the air transportation system in Alaska. The Secretary shall complete such study and submit a report of the results of such study to Congress not later than January 1, 1986.

(4) The points in Alaska referred to in paragraphs (1), (2), and (3) are Cordova, Yakutak, Gustavus, Petersberg, and Wrangell.

(b) Notwithstanding any other provision of law, no part of the order of the Civil Aeronautics Board in CAB docket number 38961 (CAB Order 84-6-77) shall enter into effect until after December 31, 1984.

And the Senate agree to the same.

NORMAN Y. MINETA,
GLENN M. ANDERSON,
ROBERT A. ROE,
GENE SNYDER,
JOHN PAUL HAMMERSCHMIDT,
Managers on the Part of the House.

BOB PACKWOOD,
BARRY GOLDWATER,
NANCY LANDON KASSEBAUM,
ERNEST F. HOLLINGS,
J. JAMES EXON,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5297) to amend the Federal Aviation Act of 1958 to terminate certain functions of the Civil Aeronautics Board, to transfer certain functions of the Board to the Secretary of Transportation, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SHORT TITLE

House bill

Section 1 provides that the Act may be cited as the "Civil Aeronautics Board Sunset Act of 1984".

Senate amendment

Same as House bill.

Conference substitute

Same as House bill.

CROSS REFERENCE

House bill

Section 2 of the House bill provides that unless otherwise expressly stated, all references to provisions of law in this legislation shall be considered to be references to the Federal Aviation Act of 1958.

Senate amendment

Same as House bill.

Conference substitute

Same as House bill.

TERMINATION AND TRANSFER OF FUNCTIONS UNDER THE FEDERAL AVIATION ACT OF 1958

House bill

Section 3 of the House bill provides for the termination and transfer of the authority of the Civil Aeronautics Board under the Federal Aviation Act, as follows:

(a) Amends the Federal Aviation Act of 1958 to provide that after the sunset of the Civil Aeronautics Board (CAB) on December 31, 1984, CAB's authority under Sections 408 (consolidation, merger, and acquisition of control), 409 (interlocking relationships), and Section 412 (pooling and other agreements), and CAB's related authority under Section 414 (antitrust exemption) will be administered by the Department of Transportation (DOT).

(b) Amends the Federal Aviation Act to provide that there will be no termination of the authority of the Civil Aeronautics Board under Section 204 of the Act, which includes CAB's rulemaking authority. CAB's authority under Section 204 will be transferred to the Department of Transportation on January 1, 1985.

(c) Provides that specified provisions of the Federal Aviation Act will cease to be in effect on January 1, 1985. Many of these provisions have already ceased to be effective by operation of the Deregulation Act of 1978 for interstate or overseas transportation or persons and by operation of CAB regulation for intersate and overseas transportation of property.

The following provisions of the Federal Aviation Act will cease to be in effect for interstate and overseas air transportation after January 1, 1985; Sections 401 (1) and (m) which require certificated air carriers to carry mail; Sections 405 (b), (c) and (d) which give the Postal Service and CAB various authority to require the carriage of mail; Section 403, which requires air carriers to provide reasonable through service and joint fares and prohibits unjust discrimination (this section continues in effect insofar as it requires air carriers to provide safe adequate service).

The following provisions of the Federal Aviation Act will cease to be in effect for any transportation after January 1, 1985: Sections 407 (b) and (c), which impose reporting requirements relating to stock ownership of air carriers and stock ownership by air carrier officers and directors; Section 41, which gives CAB authority over applications for loans and financial aid from the U.S. Government; Section 417, which authorizes CAB to allow charter air carriers to provide scheduled service in specified circumstances; and Sections 1002 (d), (e), (g), (h), and (i) (except insofar as such sections relate to foreign air transportation) which give CAB rdgulatory authority over air carrier rates and fares.

This section further provides that Sections 412 of the Federal Aviation Act, insofar as it relates to interstate and overseas air transportation, and Sections 408 and 409 of the Federal Aviation Act, and related authority under Section 414 to award antitrust immunity, shall cease to be in effect on January 1, 1989.

(d) Amends the ADA provision transferring to the Postal Service CAB's authority to set the rates for domestic mail. The amendment excludes the carriage of mail within Alaska from this transfer. Under subsection (e), below, CAB's authority to set rates for the transportation of mail within Alaska is transferred to the Department of Transportation. As discussed in Section (f) below, the bill establishes a sunset date for the transfer of Alaskan mail authority to DOT.

(e) Provides that all authority of CAB which this Act does not terminate on January 1, 1985, and which is not otherwise terminated or transferred, will be transferred to the Department of Transportation on January 1, 1985. The authority transferrred to DOT under this section includes the CAB's authority under Section 404 of the Act, to ensure safe and adequate service; the CAB's authority under Section 411 of the Act, to prevent unfair or deceptive practices or unfair methods of competition in air transportation; and the CAB's responsibilities under Section 401 of the Act, to ensure that carriers providing interstate or overseas air transportation are fit, willing, and able to perform the transportation proposed in their application and to conform to the requirements of the Federal Aviation Act and regulations adopted thereunder. Existing law transfers to the Department of Transportation CAB's authority with respect to foreign air Transportation and CAB's authority under Section 419 of the Act to establish a program for smail community air service. Existing law also transfers to the U.S. Postal Service CAB's authority to dewtermine rates for the carriage of mail in interstate and overseas air transportation. The Postal Service is to exercise this authority through negotiations or competitive bidding. Section 3 of this bill transfers to DOT, CAB's authority under Sections 408, 409, 412 and 414 of the Federal Aviation Act.

(f) Establishes a sunset date of January 1, 1989 for the transfer to DOT of CAB's authority to set rates for the carriage of mail between points in Alaska. This will permit Congress to consider at that time whether Alaskan mail rates should continue to be set by regulatory decision or whether the rates for Alaskan mail should be determined by negotiation and competitive bidding, the methods used for other domestic mail.

Senate amendment

Same as the House bill except that transfers to the Department of Justice rather than the Department of Transportation CAB's authority under Sections 408, 409, 412, and related authority under Section 414, after sunset of the CAB.

Conference substitute

Same as House bill. The Conference Substitute modifies existing law to preserve the status quo for the transportation of mail in Alaska. Under the current system, mail in

Alaska is transported by scheduled certificated air carriers at rates established by the CAB, and in some limited cases by carriers operating under contracts with the Postal Service. The governing statutes give the Postal Service some discretion to develop policies for selecting the carriers with which it will contract and to develop policies to ensure that mail is tendered to certificated carriers on an equitable basis. The Conferees intend that in exercising this discretion the Postal Service will use only carriers that have been operating in the State of Alaska for 90 days, or more, or in the case of a carrier inaugurating service, if the Postal Service reasonably concludes, and the carrier certifies, that it will provide year-round service. The rationale for this policy is that it will encourage carriers to operate in Alaska on a year-round basis rather than only during the peak summer season. This 90-day policy should not be followed if it would result in insufficient capacity for the Postal Service to move the mail in accordance with its deadline. The Conferees further intend that carriers designated to provide essential air service under Section 419 be eligible to carry mail immediately upon designation.

TRANSFERS OF FUNCTIONS UNDER OTHER LAWS

House bill

Section 4 of the House bill transfers to the Department of Transportation the authority of CAB under specified laws other than the Federal Aviation Act.

Senate amendment

Same as House bill.

Conference substitute

Same House bill.

COLLECTION OF DATA

House bill

Section 5 of the House bill amends the authority of the Department of Transportation to collect information on civil aeronautics to require that after January 1, 1985, the Department will, at a minimum, continue to collect information on the origin and destination of passengers in interstate and overseas transportation and information on the number of passengers traveling between points in interstate and overseas transportation. However, the Department will not be permitted to require carriers to submit this data on a flight-by-flight basis. The traffic data will be collected on a summary basis by carrier, by market.

Senate amendment

Same as House bill.

Conference substitute

Same as House bill.

REPORTS

House bill

Section 6 of the House bill requires the Secretary of Transportation to submit a report to the appropriate Committees of Congress not later than July 1, 1987, on the administration of Sections 408 and 409, 412 and 414 of the Federal Aviation Act and recommendations as to whether these authorities shall be continued. This section also requires the Secretary and the Postmaster General to submit a similar report on authority to establish rates for the carriage of mail between points in the State of Alaska.

Senate amendment

Same as House bill.

Conference substitute

Same as House bill.

INCORPORATION BY REFERENCE

House bill

Section 7 of the House bill amends Section 411 of the Federal Aviation Act to clarify CAB's authority to issue regulations establishing unform requirements governing notice to passengers of the terms of the contract between the airline and its passengers which are incorporated by reference in a ticket.

The Section provides that air carriers may incorporate contractual terms by reference in accordance with regulations issued by the Board establishing uniform notice requirements concerning such incorporation by reference.

Senate amendment

Same as House bill, except requires that incorporation by reference must comply with all applicable regulations issued by the Board (not only regulations establishing uniform notice requirements).

Conference substitute

Same as Senate Amendment.

REFERENCE TO CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

House bill

Section 8 of the House bill provides that any reference in any law to a certificate of public convenience and necessity shall be deemed to refer to a certificate issued under Section 401 or Section 418 of the Federal Aviation Act.

Senate amendment

Same as House bill.

Conference substitute

Same as House bill.

MISCELLANEOUS AMENDMENTS

House bill

Section 9 of the House bill makes amendments to conform the regulatory format in the Federal Aviation Act for interstate and overseas cargo transportation with the regulatory format governing interstate and overseas passenger transportation. Conforming changes are also made in a number of other statutes to reflect the termination of the CAB and the transfer of CAB authority to the Department of Transportation after January 1, 1985. The CAB's right of access to the lands, buildings and equipment of air carriers under Section 407(e) of the Federal Aviation Act is limited to access necessary for a determination under Sections 401, 402, 418, or 419 that an air carrier is fit, willing and able. This amendment does not change the CAB's right of access to accounts, records, and memorandums kept by air carriers, foreign air carriers, or ticket agents.

Under this Section the Postal Service's contracting authority in title 39 of the U.S. Code is modified to conform to the provisions in the Deregulation Act authorizing the Postal Service to use competitive bidding or negotiations in the place of CAB ratemaking for interstate or overseas mail transportation (other than transportation between points in the State of Alaska).

The Section provides that between January 1, 1985 and January 1, 1989 the Postal Service will continue to have authority to contract for the transportation of mail between points in Alaska under 54 USC Section 5402(a), (b), and (c). In contracts under Section 5402(a) not more than 10 percent of the domestic mail transportation shall consist of letter mail.

Senate amendment

Same as House bill, except that with respect to contracts under 54 USC Section 5402(a) for the transportation of mail between points in Alaska, the Amendment eliminates the requirement that not more than 10 percent of the mail transported under such contracts shall consist of letter mail.

Conference substitute

Same as Senate Amendment.

TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL

House bill

Section 10 governs the transfer and allocation of appropriations and personnel from the CAB to the agencies to which CAB functions are transferred.

The Section provides that the personnel (including members of the Senior Executive Service) employed in connection with any function transferred by section 1601(b) of the Federal Aviation Act or Section 4 of the House bill shall be transferred to the agency to which such function is transferred. Personnel employed in connection with functions so transferred shall be transferred in accordance with any applicable laws and regulations to transfer of functions.

Senate amendment

Same as House bill except clarifies that CAB employees transferred to other agencies by operation of any law, shall be transferred in accordance with any applicable laws and regulations relating to the transfer of functions.

Conference substitute

Same as Senate amendment. The intent of the Conference substitute is that all employees, including Senior Executive Service employees, employed in connection with any function transferred by Section 1601(b) of the Federal Aviation Act or Section 4 of the Conference substitute shall have the right to be transferred to the agency to which such function is transferred, even if there are no other laws or regulations governing such transfers.

EFFECT ON PERSONNEL

House bill

Section 11 of the House bill provides that transferred employees are entitled to have the CAB's evaluations used in determining merit pay, in addition to the evaluations of the new agency.

Senate amendment

Same as House bill.

Conference substitute

Same as House bill.

SAVINGS PROVISIONS

House bill

Section 12 of the House bill provides for the continuation of all effective CAB orders and proceedings after termination of the Board. The Section further provides that with respect to functions transferred to other agencies, references in Federal laws to CAB shall be deemed to refer to the agency obtaining the function, and that with respect to any function transferred, the head of the agency receiving the function shall have the same authority as CAB.

Senate amendment

Same as House bill.

Conference substitute

Same as House bill.

DEFINITIONS

House bill

Section 13 of the House bill defines "agency" and "function."

Senate amendment

Same as House bill.

Conference substitute

Same as House bill.

ACCESS FOR HANDICAPPED PERSONS

House bill

No comparable provision.

Senate amendment

Section 14 of the Senate amendment requires the Board or the Secretary to consult with the Architectural and Transportation Barriers Compliance Board prior to issuing or amending any order, rule, regulation, or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped persons.

Conference substitute

Same as Senate amendment.

Futherance of the Public Interest of Air Transportation

House bill

No comparable provision.

Senate amendment

Section 15 of the Senate amendment provides that the Board may upon its own initiative or the reasonable petition of any person directly affected undertake such studies as may be necessary to determine the extent to which any aspect of air transportation furthers or hinders the public interest as set forth in the policy statement of the Federal Aviation Act. Such studies shall be concluded within 120 days of receipt of a petition and the result shall be forwarded to the appropriate Committee of the Congress.

Conference substitute

Same as House bill. The Conferees note that under Section 204(a) of the Federal Aviation Act the CAB has authority to conduct such investigations as it shall deem necessary to carry out the provisions of, and to exercise and perform its duties under, all provisions of the Federal Aviation Act. By Section 3 of the Conference Substitute, the CAB's authority under Section 204 will be continued and transferred to the Department of Transportation on January 1, 1985.

STUDY OF TRANSPORTATION TO AND FROM WASHINGTON DULLES AIRPORT

House bill

No comparable provision.

Senate amendment

Section 16 of the Senate amendment requires the Secretary of Transportation to study the feasibility of constructing a rapid rail transit line between the West Falls Church, Virginia station of the Washington, D.C. Metrorail System and Dulles International Airport. The Secretary shall complete this study and transmit the results to Congress not later than one year after the date of enactment of this Act.

Conference substitute

Same as Senate amendment.

ESSENTIAL AIR SERVICE IN THE STATE OF ALASKA

House bill

No comparable provision.

Senate amendment

Section 17 of the Senate bill provides that essential air transportation in the State of Alaska shall be operated with the size aircraft provided for in CAB Order 80-1-167 unless otherwise specified under an agreement between the Department of Transportation and the State of Alaska.

Conference substitute

Provides that until January 1, 1987, essential air service at Cordova, Yakutat, Gustavus, Petersburg, and Wrangell, Alaska shall be operated with the size aircraft provided for in CAB Order 80-1-167 unless otherwise specified under an agreement between the Department of Transportation and the State of Alaska. During this period, the compensation paid for essential air service at these five cities shall not exceed $3,572,778 in each of fiscal years 1985 and 1986, and $893,195 for the period October 1, 1986 to January 1, 1987. No later than January 1, 1986 the Secretary of Transportation shall prepare and submit to the Congress a report on the feasibility of providing essential air transportation to the foregoing five cities with aircraft having a smaller capacity than the aircraft listed in CAB Order 80-1-167, the level of compensation which would be required for such transportation, and the impact of using such aircraft on the air transportation system in Alaska, taking into consideration the service from those five cities to Anchorage and Juneau, Alaska, and Seattle, Washington.

RATES FOR THE CARRIAGE OF MAIL IN THE STATE OF ALASKA

House bill

No comparable provision.

Senate amendment

Section 17 of the Senate amendment provides that no part of the order of the Civil Aeronautics Board, Docket 38961 (CAB Order 84-6-77) shall enter into effect until after December 31, 1984.

Conference substitute

Same as Senate amendment.

NORMAN Y. MINETA,
GLENN M. ANDERSON,
ROBERT A. ROE,
GENE SNYDER,
JOHN PAUL HAMMERSCHMIDT,
Managers on the Part of the House.

BOB PACKWOOD,
BARRY GOLDWATER,
NANCY LANDON KASSEBAUM,
ERNEST F. HOLLINGS,
J. JAMES EXON,
Managers on the Part of the Senate.

CONFERENCE REPORT ON S. 38

Mr. HAWKINS submitted the following conference report and statement on the bill (S. 38) entitled the "Longshoremen's and Harbor Workers' Compensation Act":

CONFERENCE REPORT (H. Rept. 98-1027)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 38) entitled the "Longshoremen's and Harbor Workers' Compensation Act", having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That (a) this Act may be cited as the "Longshore and Harbor Workers' Compensation Act Amendments of 1984".

(b) Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Longshoremen's and Harbor Workers' Compensation Act.

DEFINITIONS

SEC. 2. (a) Section 2(3) is amended to read as follows:

"(3) The term 'employee' means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include—

"(A) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;

"(B) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;

"(C) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);

"(D) individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are temporarily doing business on the premises of an employer described in paragraph (4), and (iii) are not engaged in work normally performed by employees of that employer under this Act;

"(E) aquaculture workers;

"(F) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length;

"(G) a master or member of a crew of any vessel; or

"(H) any person engaged by a master to load or unload or repair any small vessel under eighteen tons net;

if individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law.".

(b) Section 2(10) is amended by inserting before the period at the end thereof the following: "; but such term shall mean permanent impairment, determined (to the extent covered thereby) under the guides to the evaluation of permanent impairment promulgated and modified from time to time by the American Medical Association, in the case of an individual whose claim is described in section 10(d)(2)".

(c) Section 2(13) is amended to read as follows:

"(13) The term 'wages' means the money rate at which the service rendered by an employee is compensated by an employer under the contract of hiring in force at the time of the injury, including the reasonable value of any advantage which is received from the employer and included for purposes of any withholding of tax under subtitle C of the Internal Revenue Code of 1954 (relating to employment taxes). The term wages does not include fringe benefits, including (but not limited to) employer payments for or contributions to a retirement, pension, health and welfare, life insurance, training, social security or other employee or dependent benefit plan for the employee's or dependent's benefit, or any other employee's dependent entitlement.".

COVERAGE

SEC. 3. (a) Section 3 is amended to read as follows:

"COVERAGE

"SEC. 3. (a) Except as otherwise provided in this section, compensation shall be pay-

able under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).

"(b) No compensation shall be payable in respect of the disability or death of an officer or employee of the United States, or any agency thereof, or of any State or foreign government, or any subdivision thereof.

"(c) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

"(d)(1) No compensation shall be payable to an employee employed at a facility of an employer if, as certified by the Secretary, the facility is engaged in the business of building, repairing, or dismantling exclusively small vessels (as defined in paragraph (3) of this subsection), unless the injury occurs while upon the navigable waters of the United States or while upon any adjoining pier, wharf, dock, facility over land for launching vessels, or facility over land for hauling, lifting, or drydocking vessels.

"(2) Notwithstanding paragraph (1), compensation shall be payable to an employee—

"(A) who is employed at a facility which is used in the business of building, repairing, or dismantling small vessels if such facility receives Federal maritime subsidies; or

"(B) if the employee is not subject to coverage under a State workers' compensation law.

"(3) For purposes of this subsection, a small vessel means—

"(A) a commercial barge which is under 900 lightship displacement tons; or

"(B) a commercial tugboat, towboat, crew boat, supply boat, fishing vessel, or other work vessel which is under 1,600 tons gross.".

(b) Section 3 is further amended by adding at the end thereof the following:

"(e) Notwithstanding any other provision of law, any amounts paid to an employee for the same injury, disability, or death for which benefits are claimed under this Act pursuant to any other workers' compensation law or section 20 of the Act of March 4, 1915 (38 Stat. 1185, chapter 153; 46 U.S.C. 688) (relating to recovery for injury to or death of seamen) shall be credited against any liability imposed by this Act.".

LIABILITY FOR COMPENSATION

SEC. 4. (a) Section 4(a) is amended to read as follows:

"SEC. 4. (a) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 7, 8, and 9. In the case of an employer who is a subcontractor, only if such subcontractor fails to secure the payment of compensation shall the contractor be liable for and be required to secure the payment of compensation. A subcontractor shall not be deemed to have failed to secure the payment of compensation if the contractor has provided insurance for such compensation for the benefit of the subcontractor.".

(b) Section 5(a) is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, a contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by section 4.".

THIRD PARTY LIABILITY

SEC. 5. (a)(1) The third sentence of section 5(b) is amended to read as follows: "If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer.".

(2) Section 2(21) is amended by striking out "The" and inserting in lieu thereof "Unless the context requires otherwise, the".

(b) Section 5 is amended by adding at the end thereof the following new subsection:

"(c) In the event that the negligence of a vessel causes injury to a person entitled to receive benefits under this Act by virtue of section 4 of the Outer Continental Shelf Lands Act (43 U.S.C. 1333), then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel in accordance with the provisions of subsection (b) of this section. Nothing contained in subsection (b) of this section shall preclude the enforcement according to its terms of any reciprocal indemnity provision whereby the employer of a person entitled to receive benefits under this Act by virtue of section 4 of the Outer Continental Shelf Lands Act (43 U.S.C. 1333) and the vessel agree to defend and indemnify the other for cost of defense and loss or liability for damages arising out of or resulting from death or bodily injury to their employees.".

COMPENSATION

SEC. 6. (a) Section 6(b)(1) is amended to read as follows:

"(b)(1) Compensation for disability or death (other than compensation for death required by this Act to be paid in a lump sum) shall not exceed an amount equal to 200 per centum of the applicable national average weekly wage, as determined by the Secretary under paragraph (3).".

(b) Section 6 is amended—

(1) by striking out subsection (c) and redesignating subsection (d) as subsection (c); and

(2) by striking out "under this subsection" in subsection (c) (as redesignated) and inserting in lieu thereof "under subsection (b)(3)".

MEDICAL SERVICES AND SUPPLIES

SEC. 7. (a) The third sentence of section 7(b) is amended by inserting before the period the following: "or where the charges exceed those prevailing within the community for the same or similar services or exceed the provider's customary charges".

(b) Section 7(c) is amended to read as follows:

"(c)(1)(A) The Secretary shall annually prepare a list of physicians and health care providers in each compensation district who are not authorized to render medical care or provide medical services under this Act. The names of physicians and health care providers contained on the list required under this subparagraph shall be made available to employees and employers in each compensation district through posting and in such other forms as the Secretary may prescribe.

"(B) Physicians and health care providers shall be included on the list of those not authorized to provide medical care and medical services pursuant to subparagraph (A) when the Secretary determines under this section, in accordance with the procedures provided in subsection (j), that such physician or health care provider—

"(i) has knowingly and willfully made, or caused to be made, any false statement or misrepresentation of a material fact for use in a claim for compensation or claim for reimbursement of medical expenses under this Act;

"(ii) has knowingly and willfully submitted, or caused to be submitted, a bill or request for payment under this Act containing a charge which the Secretary finds to be substantially in excess of the charge for the service, appliance, or supply prevailing within the community or in excess of the provider's customary charges, unless the Secretary finds there is good cause for the bill or request containing the charge;

"(iii) has knowingly and willfully furnished a service, appliance, or supply which is determined by the Secretary to be substantially in excess of the need of the recipient thereof or to be of a quality which substantially fails to meet professionally recognized standards;

"(iv) has been convicted under any criminal statute (without regard to pending appeal thereof) for fraudulent activities in connection with any Federal or State program for which payments are made to physicians or providers of similar services, appliances, or supplies; or

"(v) has otherwise been excluded from participation in such program.

"(C) Medical services provided by physicians or health care providers who are named on the list published by the Secretary pursuant to subparagraph (A) of this section shall not be reimbursable under this Act; except that the Secretary shall direct the reimbursement of medical claims for services rendered by such physicians or health care providers in cases where the services were rendered in an emergency.

"(D) A determination under subparagraph (B) shall remain in effect for a period of not less than three years and until the Secretary finds and gives notice to the public that there is reasonable assurance that the basis for the determination will not reoccur.

"(E) A provider of a service, appliance, or supply shall provide to the Secretary such information and certification as the Secretary may require to assure that this subsection is enforced.

"(2) Whenever the employer or carrier acquires knowledge of the employee's injury, through written notice or otherwise as prescribed by the Act, the employer or carrier shall forthwith authorize medical treatment and care from a physician selected by an employee pursuant to subsection (b). An employee may not select a physician who is on the list required by paragraph (1) of this subsection. An employee may not change physicians after his initial choice unless the employer, carrier, or deputy commissioner has given prior consent for such change. Such consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for and appropriate to the proper care and treatment of the compensable injury or disease. In all other cases, consent may be given upon a showing of good cause for change.".

(c) Section 7(d) is amended to read as follows:

"(d)(1) An employee shall not be entitled to recover any amount expended by him for medical or other treatment or services unless—

"(A) the employer shall have refused or neglected a request to furnish such services and the employee has complied with subsections (b) and (c) and the applicable regulations; or

"(B) the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize same.

"(2) No claim for medical or surgical treatment shall be valid and enforceable against such employer unless, within ten days following the first treatment, the physician giving such treatment furnishes to the employer and the deputy commissioner a report of such injury or treatment, on a form prescribed by the Secretary. The Secretary may excuse the failure to furnish such report within the ten-day period whenever he finds it to be in the interest of justice to do so.

"(3) The Secretary may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee.

"(4) If at any time the employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the Secretary or administrative law judge may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal.".

(d) Section 7 is amended by adding at the end thereof the following new subsection:

"(j)(1) The Secretary shall have the authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out the provisions of subsection (c), including the nature and extent of the proof and evidence necessary for actions under this section and the methods of taking and furnishing such proof and evidence.

"(2) Any decision to take action with respect to a physician or health care provider under this section shall be based on specific findings of fact by the Secretary. The Secretary shall provide notice of these findings and an opportunity for a hearing pursuant to section 556 of title 5, United States Code, for a provider who would be affected by a decision under this section. A request for a hearing must be filed with the Secretary within thirty days after notice of the findings is received by the provider making such request. If a hearing is held, the Secretary shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse the findings of fact and proposed action under this section.

"(3) For the purpose of any hearing, investigation, or other proceeding authorized or directed under this section, the provisions of section 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act (15 U.S.C. 49, 50) shall apply to the jurisdiction, powers, and duties of the Secretary or any officer designated by him.

"(4) Any physician or health care provider, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision, but the pendency of such review shall not operate as a stay upon the effect of such decision. Such action shall be brought in the court of appeals of the United States for the judicial circuit in which the plaintiff resides or has his principal place of business, or the Court of Appeals for the District of Columbia. As part of his answer, the Secretary shall file a certified copy of the transcript of the record of the hearing, including all evidence submitted in connection therewith. The findings of fact of the Secretary, if based on substantial evidence in the record as a whole, shall be conclusive.".

(e) Section 7 is further amended by adding at the end thereof the following new subsection:

"(k)(1) Nothing in this Act prevents an employee whose injury or disability has been established under this Act from relying in good faith on treatment by prayer or spiritual means alone, in accordance with the tenets and practice of a recognized church or religious denomination, by an accredited practitioner of such recognized church or religious denomination, and on nursing services rendered in accordance with such tenets and practice, without suffering loss or diminution of the compensation or benefits under this Act. Nothing in this subsection shall be construed to except an employee from all physical examinations required by this Act.

"(2) If an employee refuses to submit to medical or surgical services solely because, in adherence to the tenets and practice of a recognized church or religious denomination, the employee relies upon prayer or spiritual means alone for healing, such employee shall not be considered to have unreasonably refused medical or surgical treatment under subsection (d).".

COMPENSATION FOR DISABILITY

SEC. 8. (a) Section 8(c)(13) is amended to read as follows:

"(13) Loss of hearing:

"(A) Compensation for loss of hearing in one ear, fifty-two weeks.

"(B) Compensation for loss of hearing in both ears, two-hundred weeks.

"(C) An audiogram shall be presumptive evidence of the amount of hearing loss sustained as of the date thereof, only if (i) such audiogram was administered by a licensed or certified audiologist or a physician who is certified in otolaryngology, (ii) such audiogram, with the report thereon, was provided to the employee at the time it was administered, and (iii) no contrary audiogram made at that time is produced.

"(D) The time for filing a notice of injury, under section 12 of this Act, or a claim for compensation, under section 13 of this Act, shall not begin to run in connection with any claim for loss of hearing under this section, until the employee has received an audiogram, with the accompanying report thereon, which indicates that the employee has suffered a loss of hearing.

"(E) Determinations of loss of hearing shall be made in accordance with the guides for the evaluation of permanent impairment as promulgated and modified from time to time by the American Medical Association.".

(b) Section 8(c)(20) is amended by striking out "$3,500" and inserting in lieu thereof "$7,500".

(c)(1) Section 8(c)(21) is amended to read as follows:

"(21) Other cases: In all other cases in the class of disability, the compensation shall be 66 2/3 per centum of the difference between the average weekly wages of the employee and the employee's wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of partial disability.".

(2) Section 8(c) is further amended by adding at the end thereof the following new paragraph:

"(23) Notwithstanding paragraphs (1) through (22), with respect to a claim for permanent partial disability for which the average weekly wages are determined under section 10(d)(2), the compensation shall be 66 2/3 per centum of such average weekly wages multiplied by the percentage of permanent impairment, as determined under the guides referred to in section 2(10), payable during the continuance of such impairment.".

(d) Section 8(d) is amended by striking out paragraph (3) and redesignating paragraph (4) as paragraph (3).

(e) Section 8(f) is amended—

(1) by inserting before the period at the end of the second and fourth sentences of paragraph (1) the following: ", except that, in the case of an injury falling within the provisions of section 8(c)(13), the employer shall provide compensation for the lesser of such periods";

(2) by inserting "(A)" after "(2)" in paragraph (2);

(3) by inserting before the period at the end of such paragraph the following: ", except that the special fund shall not assume responsibility with respect to such benefits (and such payments shall not be subject to cessation) in the case of any employer who fails to comply with section 32(a)";

(4) by adding at the end of paragraph (2) the following new subparagraph:

"(B) After cessation of payments for the period of weeks provided for in this subsection, the employer or carrier responsible for payment of compensation shall remain a party to the claim, retain access to all records relating to the claim, and in all other respects retain all rights granted under this Act prior to cessation of such payments."; and

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

"(3) Any request, filed after the date of enactment of the Longshore and Harbor Workers' Compensation Amendments of 1984, for apportionment of liability to the special fund established under section 44 of this Act for the payment of compensation benefits, and a statement of the grounds therefore, shall be presented to the deputy commissioner prior to the consideration of the claim by the deputy commissioner. Failure to present such request prior to such consideration shall be an absolute defense to the special fund's liability for the payment of any benefits in connection with such claim, unless the employer could not have reasonably anticipated the liability of the special fund prior to the issuance of a compensation order.".

(f) Subsection (i) of section 8 is amended to read as follows:

"(i)(1) Whenever the parties to any claim for compensation under this Act, including survivors benefits, agree to a settlement, the deputy commissioner or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress. Such settlement may include future medical benefits if the parties so agree. No liability of any employer, carrier, or both for medical, disability, or death benefits shall be discharged unless the application for settlement is approved by the deputy commissioner or administrative law judge. If the parties to the

settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within thirty days after submission for approval.

"(2) If the deputy commissioner disapproves an application for settlement under paragraph (1), the deputy commissioner shall issue a written statement within thirty days containing the reasons for disapproval. Any party to the settlement may request a hearing before an administrative law judge in the manner prescribed by this Act. Following such hearing, the administrative law judge shall enter an order approving or rejecting the settlement.

"(3) A settlement approved under this section shall discharge the liability of the employer or carrier, or both. Settlements may be agreed upon at any stage of the proceeding including after entry of a final compensation order.".

(g) Such subsection (i) is further amended by adding at the end thereof the following new paragraph:

"(4) The special fund shall not be liable for reimbursement of any sums paid or payable to an employee or any beneficiary under such settlement, or otherwise voluntarily paid prior to such settlement by the employer or carrier, or both.".

(h) Section 8 is amended by adding at the end thereof the following new subsection:

"(j)(1) The employer may inform a disabled employee of his obligation to report to the employer not less than semiannually any earnings from employment or self-employment, on such forms as the Secretary shall specify in regulations.

"(2) An employee who—

"(A) fails to report the employee's earnings under paragraph (1) when requested, or

"(B) knowingly and willfully omits or understates any part of such earnings,

and who is determined by the deputy commissioner to have violated clause (A) or (B) of this paragraph, forfeits his right to compensation with respect to any period during which the employee was required to file such report.

"(3) Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee in any amount and on such schedule as determined by the deputy commissioner.".

COMPENSATION FOR DEATH

SEC. 9. (a) The matter preceding subsection (a) of section 9 is amended to read as follows:

"SEC. 9. If the injury causes death, the compensation therefore shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:".

(b) Section 9(a) is amended by striking out "$1,000" and inserting in lieu thereof "$3,000".

(c) Section 9(e) is amended to read as follows:

"(e) In computing death benefits, the average weekly wages of the deceased shall not be less than the national average weekly wage as prescribed in section 6(b), but—

"(1) the total weekly benefits shall not exceed the lesser of the average weekly wages of the deceased or the benefit which the deceased employee would have been eligible to receive under section 6(b)(1); and

"(2) in the case of a claim based on death due to an occupational disease for which the time of injury (as determined under section 10(i)) occurs after the employee has retired, the total weekly benefits shall not exceed one fifty-second part of the employee's average annual earnings during the 52-week period preceding retirement.".

DETERMINATION OF PAY

SEC. 10. (a)(1) Section 10(d) is amended by inserting "(1)" after "(d)" and by adding at the end thereof the following:

"(2) Notwithstanding paragraph (1), with respect to any claim based on a death or disability due to an occupational disease for which the time of injury (as determined under subsection (i)) occurs—

"(A) within the first year after the employee has retired, the average weekly wages shall be one fifty-second part of his average annual earnings during the 52-week period preceding retirement; or

"(B) more than one year after the employee has retired, the average weekly wage shall be deemed to be the national average weekly wage (as determined by the Secretary pursuant to section 6(b)) applicable at the time of the injury.".

(2) Section 10 is further amended by adding at the end thereof the following new subsection:

"(i) For purposes of this section with respect to a claim for compensation for death or disability due to an occupational disease which does not immediately result in death or disability, the time of injury shall be deemed to be the date on which the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability.".

(b) Section 10(f) is amended to read as follows:

"(f) Effective October 1 of each year, the compensation or death benefits payable for permanent total disability or death arising out of injuries subject to this Act shall be increased by the lesser of—

"(1) a percentage equal to the percentage (if any) by which the applicable national weekly wage for the period beginning on such October 1, as determined under section 6(b), exceeds the applicable national average weekly wage, as so determined, for the period beginning with the preceding October 1; or

"(2) 5 per centum.".

NOTICE OF INJURY OR DEATH

SEC. 11. (a) Section 12(a) is amended to read as follows:

"SEC. 12. (a) Notice of an injury or death in respect of which compensation is payable under this Act shall be given within thirty days after the date of such injury or death, or thirty days after the employee or beneficiary is aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of a relationship between the injury or death and the employment, except that in the case of an occupational disease which does not immediately result in a disability or death, such notice shall be given within one year after the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability. Notice shall be given (1) to the deputy commissioner in the compensation district in which the injury or death occurred, and (2) to the employer.".

(b) Section 12(c) is amended by adding at the end thereof the following: "Each employer shall designate those agents or other responsible officials to receive such notice, except that the employer shall designate as its representatives individuals among first line supervisors, local plant management, and personnel office officials. Such designations shall be made in accordance with regulations prescribed by the Secretary and the employer shall notify his employees and the Secretary of such designation in a manner prescribed by the Secretary in regulations.".

(c) Section 12(d) is amended—

(1) by striking out "(or his agent in charge of the business in the place where the injury occurred)" and inserting in lieu thereof the following: "(or his agent or agents or other responsible official or officials designated by the employer pursuant to subsection (c))";

(2) by striking out "injury or death and" and inserting in lieu thereof "injury or death, (2)";

(3) by striking out "or (2)" and inserting in lieu thereof "or (3)"; and

(4) by inserting after "the ground that" in the clause redesignated as clause (3) (by paragraph (3) of this subsection) the following: "(i) notice, while not given to a responsible official designated by the employer pursuant to subsection (c) of this section, was given to an official of the employer or the employer's insurance carrier, and that the employer or carrier was not prejudiced due to the failure to provide notice to a responsible official designated by the employer pursuant to subsection (c), or (ii)".

TIME FOR FILING CLAIM BASED ON OCCUPATIONAL DISEASE

SEC. 12. Section 13(b) is amended by inserting "(1)" after "(b)" and adding at the end thereof the following:

"(2) Notwithstanding the provisions of subsection (a), a claim for compensation for death or disability due to an occupational disease which does not immediately result in such death or disability shall be timely if filed within two years after the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability, or within one year of the date of the last payment of compensation, whichever is later.".

PAYMENT OF COMPENSATION

SEC. 13. (a) Section 14(b) is amended by striking out "employer" and inserting in lieu thereof "employer has been notified pursuant to section 12, or the employer".

(b) Section 14 is amended by striking out subsection (j) and by redesignating subsections (k) and (l) as subsections (j) and (k), respectively.

LIENS ON COMPENSATION

SEC. 14. Section 17 is amended—

(1) by striking out "(b)";

(2) by striking out "entitled to compensation under this Act" and inserting in lieu thereof "covered under this Act"; and

(3) by striking out "this Act, the Secretary may authorize" and inserting in lieu thereof "this Act or under a settlement, the Secretary shall authorize".

REVIEW OF COMPENSATION ORDER

SEC. 15. Section 21(b) is amended—

(1) by striking out "three" in paragraph (1) and inserting in lieu thereof "five";

(2) by adding the following sentence at the end of paragraph (1): "The Chairman shall have the authority, as delegated by the Secretary, to exercise all administrative functions necessary to operate the Board.";

(3) by striking out "two" each place it appears in paragraph (2) and inserting in lieu thereof "three"; and

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

"(5) Notwithstanding paragraphs (1) through (4), upon application of the Chair-

man of the Board, the Secretary may designate up to four Department of Labor administrative law judges to serve on the Board temporarily, for not more than one year. The Board is authorized to delegate to panels of three members any or all of the powers which the Board may exercise. Each such panel shall have no more than one temporary member. Two members shall constitute a quorum of a panel. Official adjudicative action may be taken only on the affirmative vote of at least two members of a panel. Any party aggrieved by a decision of a panel of the Board may, within thirty days after the date of entry of the decision, petition the entire permanent Board for review of the panel's decision. Upon affirmative vote of the majority of the permanent members of the Board, the petition shall be granted. The Board shall amend its Rules of Practice to conform with this paragraph. Temporary members, while serving as members of the Board, shall be compensated at the same rate of compensation as regular members.".

MODIFICATIONS OF AWARDS

SEC. 16. Section 22 is amended—

(1) by inserting "(including an employer or carrier which has been granted relief under section 8(f))" after "party in interest";

(2) by inserting "(including a case under which payments are made pursuant to section 44(i))" after "review a compensation case"; and

(3) by adding at the end thereof the following new sentence: "This section does not authorize the modification of settlements.".

FEES FOR SERVICES

SEC. 17. Section 28(e) is amended to read as follows:

"(e) A person who receives a fee, gratuity, or other consideration on account of services rendered as a representative of a claimant, unless the consideration is approved by the deputy commissioner, administrative law judge, Board, or court, or who makes it a business to solicit employment for a lawyer, or for himself, with respect to a claim or award for compensation under this Act, shall, upon conviction thereof, for each offense be punished by a fine of not more than $1,000 or be imprisoned for not more than one year, or both.".

REPORTS

SEC. 18. (a) Section 30(a) is amended—

(1) by inserting after "injury" the first place it appears a comma and the following: "which causes loss of one or more shifts of work,"; and

(2) by adding at the end thereof the following new sentence: "Notwithstanding the requirements of this subsection, each employer shall keep a record of each and every injury regardless of whether such injury results in the loss of one or more shifts of work.".

(b) Section 30(e) is amended to read as follows:

"(e) Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by this section or knowingly or willfully makes a false statement or misrepresentation in any such report shall be subject to a civil penalty not to exceed $10,000 for each such failure, refusal, false statement, or misrepresentation.".

PENALTY FOR MISREPRESENTATION—PROSECUTION OF CLAIMS

SEC. 19. Section 31 is amended to read as follows:

"PENALTY FOR MISREPRESENTATION—PROSECUTION OF CLAIMS

"SEC. 31. (a)(1) Any claimant or representative of a claimant who knowingly and willfully makes a false statement or representation for the purpose of obtaining a benefit or payment under this Act shall be guilty of a felony, and on conviction thereof shall be punished by a fine not to exceed $10,000, by imprisonment not to exceed five years, or by both.

"(2) The United States attorney for the district in which the injury is alleged to have occurred shall make every reasonable effort to promptly investigate each complaint made under this subsection.

"(b)(1) No representation fee of a claimant's representative shall be approved by the deputy commissioner, an administrative law judge, the Board, or a court pursuant to section 28 of this Act, if the claimant's representative is on the list of individuals who are disqualified from representing claimants under this Act maintained by the Secretary pursuant to paragraph (2) of this subsection.

"(2)(A) The Secretary shall annually prepare a list of those individuals in each compensation district who have represented claimants for a fee in cases under this Act and who are not authorized to represent claimants. The names of individuals contained on the list required under this subparagraph shall be made available to employees and employers in each compensation district through posting and in such other forms as the Secretary may prescribe.

"(B) Individuals shall be included on the list of those not authorized to represent claimants under this Act if the Secretary determines under this section, in accordance with the procedure provided in subsection (j) of section 7 of this Act, that such individual—

"(i) has been convicted (without regard to pending appeal) of any crime in connection with the representation of a claimant under this Act or any workers' compensation statute;

"(ii) has engaged in fraud in connection with the presentation of a claim under this or any workers' compensation statute, including, but not limited to, knowingly making false representations, concealing or attempting to conceal material facts with respect to a claim, or soliciting or otherwise procuring false testimony;

"(iii) has been prohibited from representing claimants before any other workers' compensation agency for reasons of professional misconduct which are similar in nature to those which would be grounds for disqualification under this paragraph; or

"(iv) has accepted fees for representing claimants under this Act which were not approved, or which were in excess of the amount approved pursuant to section 28.

"(C) Notwithstanding subparagraph (B), no individual who is on the list required to be maintained by the Secretary pursuant to this section shall be prohibited from presenting his or her own claim or from representing without fee, a claimant who is a spouse, mother, father, sister, brother, or child of such individual.

"(D) A determination under subparagraph (A) shall remain in effect for a period of not less than three years and until the Secretary finds and gives notice to the public that there is reasonable assurance that the basis for the determination will not reoccur.

"(3) No employee shall be liable to pay a representation fee to any representative whose fee has been disallowed by reason of the operation of this paragraph.

"(4) The Secretary shall issue such rules and regulations as are necessary to carry out this section.

"(c) A person including, but not limited to, an employer, his duly authorized agent, or an employee of an insurance carrier who knowingly and willfully makes a false statement or representation for the purpose of reducing, denying, or terminating benefits to an injured employee, or his dependents pursuant to section 9 if the injury results in death, shall be punished by a fine not to exceed $10,000, by imprisonment not to exceed five years, or by both.".

SECURITY FOR COMPENSATION

SEC. 20. Section 32(a)(2) is amended by inserting "based on the employer's financial condition, the employer's previous record of payments, and other relevant factors," after "in an amount determined by the commission,".

COMPENSATION FOR INJURIES WHERE THIRD PERSONS ARE LIABLE

SEC. 21. (a) Section 33(b) is amended to read as follows:

"(b) Acceptance of compensation under an award in a compensation order filed by the deputy commissioner, an administrative law judge, or the Board shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six months after such acceptance. If the employer fails to commence an action against such third person within ninety days after the cause of action is assigned under this section, the right to bring such action shall revert to the person entitled to compensation. For the purpose of this subsection, the term 'award' with respect to a compensation order means a formal order issued by the deputy commissioner, an administrative law judge, or Board.".

(b) Section 33(e)(2) is amended by striking out ", less one-fifth of such excess which shall belong to the employer".

(c) Section 33(f) is amended—

(1) by inserting "net" before "amount recovered"; and

(2) by adding at the end thereof the following: "Such net amount shall be equal to the actual amount recovered less the expenses reasonably incurred by such person in respect to such proceedings (including reasonable attorneys' fees).".

(d) Section 33(g) is amended to read as follows:

"(g)(1) If the person entitled to compensation (or the person's representative) enters into a settlement with a third person referred to in subsection (a) for an amount less than the compensation to which the person (or the person's representative) would be entitled under this Act, the employer shall be liable for compensation as determined under subsection (f) only if written approval of the settlement is obtained from the employer and the employer's carrier, before the settlement is executed, and by the person entitled to compensation (or the person's representative). The approval shall be made on a form provided by the Secretary and shall be filed in the office of the deputy commissioner within thirty days after the settlement is entered into.

"(2) If no written approval of the settlement is obtained and filed as required by paragraph (1), or if the employee fails to notify the employer of any settlement obtained from or judgment rendered against a third person, all rights to compensation and medical benefits under this Act shall be terminated, regardless of whether the employer or the employer's insurer has made pay-

ments or acknowledged entitlement to benefits under this Act.

"(3) Any payments by the special fund established under section 44 shall be a lien upon the proceeds of any settlement obtained from or judgment rendered against a third person referred to under subsection (a). Notwithstanding any other provision of law, such lien shall be enforceable against such proceeds, regardless of whether the Secretary on behalf of the special fund has agreed to or has received actual notice of the settlement or judgment.

"(4) Any payments by a trust fund described in section 17 shall be a lien upon the proceeds of any settlement obtained from or judgment recorded against a third person referred to under subsection (a). Such lien shall have priority over a lien under paragraph (3) of this subsection.".

PENALTY FOR FAILURE TO SECURE PAYMENT

SEC. 22. Section 38 is amended by striking out "$1,000" each place it appears in subsections (a) and (b) and inserting in lieu thereof "$10,000".

ANNUAL REPORT

SEC. 23. The Act is amended by inserting the following new section after section 41:

"ANNUAL REPORT

"SEC. 42. The Secretary shall make to Congress at the beginning of each regular session, commencing at the beginning of the second regular session after the enactment of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, a report of the administration of this Act for the preceding fisal year, including a detailed statement of receipts of and expenditures from the fund established in section 44, together with such recommendations as the Secretary deems advisable.".

SPECIAL FUND

SEC. 24. (a) Section 44(c)(2) is amended to read as follows:

"(2) At the beginning of each calendar year the Secretary shall estimate the probable expenses of the fund during that calendar year and the amount of payments required (and the schedule therefor) to maintain adequate reserves in the fund. Each carrier and self-insurer shall make payments into the fund on a prorated assessment by the Secretary determined by—

"(A) computing the ratio (expressed as a percent) of (i) the carrier's or self-insured's workers' compensation payments under this Act during the preceding calendar year, to (ii) the total of such payments by all carriers and self-insureds under this Act during such year;

"(B) computing the ratio (expressed as a percent) of (i) the payments under section 8(f) of this Act during the preceding calendar year which are attributable to the carrier or self-insured, to (ii) the total of such payments during such year attributable to all carriers and self-insureds;

"(C) dividing the sum of the percentages computed under subparagraphs (A) and (B) for the carrier or self-insured by two; and

"(D) multiplying the percent computed under subparagraph (C) by such probable expenses of the fund (as determined under the first sentence of this paragraph).".

(b) Section 44 is further amended by striking out subsection (e) and by redesignating subsections (f) through (k) as subsections (e) through (j), respectively.

(c) Section 44(h) (as redesignated pursuant to subsection (b)) is amended by inserting "and unpaid assessments" after "civil penalties".

(d) Section 44(i) (as redesignated pursuant to subsection (b)) is amended—

(1) in paragraph (1), by striking out "and 11", by inserting "certain" before "initial", and by striking out "which occurred prior to the effective date of this subsection"; and

(2) in paragraph (4), by inserting "(e)" after "section 7".

(e) Section 44(j) (as redesignated pursuant to subsection (b)) is amended to read as follows:

"(j) The fund shall be audited annually and the results of such audit shall be included in the annual report required by section 42.".

REPEALS

SEC. 25. Sections 45, 46, and 47 are repealed.

DISCRIMINATION AGAINST EMPLOYEES WHO BRING PROCEEDINGS

SEC. 26. (a) Section 49 is amended by inserting after the first sentence the following new sentence: "The discharge or refusal to employ a person who has been adjudicated to have filed a fraudulent claim for compensation is not a violation of this section.".

(b) The second sentence of section 49 is amended—

(1) by striking out "$100" and inserting in lieu thereof "$1,000"; and

(2) by striking out "$1,000" and inserting in lieu thereof "$5,000".

CONFORMING AMENDMENTS

SEC. 27. (a) The Longshoremen's and Harbor Workers' Compensation Act is further amended—

(1) striking out paragraph (6) of section 2 and inserting in lieu thereof the following:

"(6) The term 'Secretary' means the Secretary of Labor.";

(2) by striking out "commission" each place it appears and inserting in lieu thereof "Secretary"; and

(3) by striking out "commission's" and inserting in lieu thereof "Secretary's".

(b) Section 18(b) is amended by striking out ", including the right of lien and priority provided for by section 17 of this Act,".

(c) Section 39(a) is amended by striking out "United States Employees' Compensation Commission" and inserting in lieu thereof "Secretary".

(d)(1) Section 1 is amended by striking out "Longshoremen's" and inserting in lieu thereof "Longshore".

(2) Reference in any other statute, regulation, order, or other document to the Longshoremen's and Harbor Workers' Compensation Act shall be deemed to refer to the Longshore and Harbor Workers' Compensation Act.

EFFECTIVE DATE

SEC. 28. (a) Except as otherwise provided in this section, the amendments made by this Act shall be effective on the date of enactment of this Act and shall apply both with respect to claims filed after such date and to claims pending on such date.

(b) The amendments made by sections 7(a), 7(e), 8(f), 11(b), 11(c), and 13 shall be effective 90 days after the date of enactment of this Act and shall apply both with respect to claims filed after such 90th day and to claims pending on such 90th day.

(c) The amendments made by sections 2(a), 3(a), 5, and 8(b) shall apply with respect to any injury after the date of enactment of this Act.

(d) The amendments made by sections 6(a), 8(d), and 9 shall apply with respect to any death after the date of enactment of this Act.

(e)(1) The amendments made by sections 2(c), 8(c)(1), 8(e)(4), 8(e)(5), 8(g), 10(b), 15 through 20, and 22 through 27 shall be effective on the date of enactment of this Act.

(2) The amendments made by sections 7(b), 7(c), 7(d), and 8(h) shall be effective 90 days after the date of enactment of this Act.

(f) The amendments made by section 6(b) shall apply with respect to any injury, disability, or death after the date of enactment of this Act.

(g) For the purpose of this section—

(1) in the case of an occupational disease which does not immediately result in a disability or death, an injury shall be deemed to arise on the date on which the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the disease; and

(2) the term "disability" has the meaning given such term by section 2(10) of the Act as amended by this Act.

(h)(1) The amendments made by section 7 of this Act shall not apply to claims filed under the Black Lung Benefits Act (30 U.S.C. 901 et seq.).

(2) Section 422(a) of the Black Lung Benefits Act is amended by striking out "During" and inserting in lieu thereof "Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during".

And the House agree to the same.

Amend the title so as to read: "An Act entitled the 'Longshore and Harbor Workers' Compensation Act Amendments of 1984'.".

GUS HAWKINS,
WILLIAM CLAY,
GEORGE MILLER,
DALE KILDEE,
MATTHEW G. MARTINEZ,
MAJOR OWENS,
FRANK HARRISON,
SALA BURTON,
JOHN N. ERLENBORN,
THOMAS E. PETRI,
RON PACKARD,
JOHN MCCAIN,
Managers on the Part of the House.

ORRIN G. HATCH,
DON NICKLES,
EDWARD M. KENNEDY,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 38) entitled the "Longshoremen's and Harbor Workers' Compensation Act" submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

STATEMENT OF MANAGERS

JURISDICTION

Senate bill

The Senate bill adds to the current express exemptions contained in section 2 of the Act the following: (1) Employees exclusively performing office clerical, secretarial, security, or data processing work; (2) club, camp, restaurant, museum, retail outlet and marina personnel; (3) personnel of suppliers, transporters or vendors temporarily doing business with covered employers; (4) aquaculture workers; (5) certain personnel employed in specified grain elevator loading operations; and (6) persons engaged in the construction or repair of recreational vessels under 65 feet in length and certain shipbuilding and ship repairmen building specified barges and vessels.

These exemptions are conditioned upon an employee being subject to coverage under a State workers' compensation law.

Also, the bill specifically exempts the following employers: (1) clubs, camps, restaurants, museums, retail outlets, and marinas; (2) aquaculture farms; and (3) builders or repairers of certain small vessels.

House amendment

The House amendment generally follows the Senate bill, but provides further qualifications. Individuals employed by a restaurant, museum, retail outlet, or marina are exempt if they do not engage in construction, replacement, or expansion of such facilities (with an exception being made for routine maintenance work). With respect to personnel of suppliers, transporters, or vendors temporarily doing business on the premises of covered employers, the House amendment restricts the exemption to personnel performing work not normally done by the covered employer. The exemption for individuals who build or repair recreational boats under 65 feet is subject to qualifications where the employer is working on both exempt and non-exempt boats.

The House amendment does not contain an exemption for certain grain elevator operations. Nor does the amendment contain the exemption for individuals building or repairing certain small vessels.

The House amendment prescribes rules for granting limited exemption to individuals performing land-based fabrication of offshore oil production platforms.

Conference substitute

The Conference substitute exempts the following individuals from coverage under the Act (by excluding them from the definition of employee in section 2(3)): (1) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work; (2) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet; (3) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance); (4) individuals who (a) are employed by suppliers, transporters or vendors, (b) are temporarily doing business on the premises of a covered employer, and (c) are not engaged in work normally performed by employees of that employer under this Act; (5) aquaculture workers; and (6) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length.

These exemptions are conditioned upon an individual being subject to coverage under a State workers' compensation law. Thus, if a State law exempts from coverage an individual who otherwise falls within any of the above exemptions of the Longshore Act, the Longshore exemption would not apply. It is noted that the Conference substitute incorporates the exemptions contained in the current statute (for a master or member of a crew of any vessel, and for any person engaged by a master to load or unload or repair any small vessel under 18 tons net); these exemptions are, of course, not conditioned upon coverage under a State workers' compensation law.

In developing the Conference substitute, the conferees reached certain understandings regarding the new exemptions.

The Senate bill and the House amendment contain indentical language for exempting individuals employed exclusively to perform office clerical, secretarial, security or data processing work. As noted in both the accompanyting Senate and House reports, this exemption reflects that these individuals are land-based workers otherwise covered under a State workers' compensation law, and their duties are performed in an office. However, the conferees expressly adopt a qualification contained in both reports: The Conference substitute does not exempt employees classified as longshore cargo checkers and clerks. Therefore, cargo checkers and clerks remain fully within Longshore Act jurisdiction.

With respect to club employees, the report accompanying the House amendment (House Report 98-570, 98th Cong., 1st Session, at 4 (1983)) drew a distinction between profit and nonprofit clubs, suggesting that the exemption applies only to the latter. Neither the Senate bill nor the language of the House amendment recognize such a distinction. Nor is it the intention of the Conference substitute to limit the exemption to nonprofit clubs.

The Senate report (Senate Report 98-81, 98th Cong., 1st Session, at 29 (1983)) describes what activities are included within the meaning of aquaculture operations. The conferees understand that, to date, the definition of maritime employment has never been intrepreted to mean the cleaning, processing, or canning of fish and fish products. But to foreclose any future problem of interpretation, the term "aquaculture operations" should be understood as including such activities.

The Conference substitute also incorporates an exemption from coverage (through an amendment to section 3 of the Act) for employees employed by facilities engaged in the business of building, repairing, or dismantling exclusively small vessels. The substitute defines what is meant by "small vessels", and also specifies the circumstances where the exemption would not apply.

EXCLUSIVENESS OF REMEDY AND THIRD PARTY LIABILITY

Senate bill

The Senate bill addresses seveal issues growing out of the liability of employers and third parties for damages or compensation. First, it provides that an employer's liability for compensation or benefits under the Longshore Act would preclude liability under any other workers' compensation law or the Jones Act. Second, the bill deals with what has not been exclusive liability for shipbuilders under current law: Section 5(b) of the Act now allows maritime negligence actions against shipbuilders, in addition to compensation otherwise available under the Act. The Senate bill removes that dual liability in two respects. It bars the maritime tort action, thus respecting the principle of workers' compensation being an exclusive remedy. Further, the bill, anticipating that a shipbuilder may be indirectly exposed to liability above compensation through actions by third parties grounded on theories of contractual or tort indemnity or contribution, bars those actions as well.

Finally, the Senate bill provides an exemption to the Longshore Act's current proscription of indemnity agreements under Section 5(b) of the Act. That section is made applicable currently to situations on the Outer Continental Shelf by virtue of Section 4 of the Outer Continental Shelf Lands Act (43 U.S.C. § 1333). The bill would legalize those indemnity agreements insofar as they apply to the Outer Continental Shelf and would further preempt the application of state laws prohibiting such indemnity agreements.

House amendment

The House amendment incorporates the exclusive liability rule for shipbuilders enunciated in the Senate bill. But the amendment did not address the other issues in the Senate bill.

Conference substitute

The Conference substitute deals with the issues of overlapping and indirect liability and of exclusive remedy as follows:

First, the substitute adopts, without change, the rule of exclusive liability for shipbuilders proposed in the Senate bill.

Second, the substitute removes the current proscription with respect to mutual indemnity agreements between employers and vessels as applied to the Outer Continental Shelf by virtue of the Outer Continental Shelf Lands Act.

Third, the substitute addresses that issue of immunity in the situation where an employee of a subcontractor brings a third party action against the contractor for a work-related injury. The Supreme Court in *Washington Metropolitan Area Transit Authority* v. *Johnson*, 104 S. Ct. 2827 (1984), changed key components of what had widely been regarded as the proper rules governing contractor and subcontractor liability and immunity under the Longshoremen's and Harbor Workers' Compensation Act.

The Conference substitute, in disapproving *WMATA* v. *Johnson*, achieves the following: First, the obligation of the contractor to secure compensation for the employee of the subcontractor is a contingent one, which is triggered only upon the failure of the subcontractor to secure compensation for its own employees. Second, the contractor remains amendable to suit by its subcontractors' employees in those instances where the subcontractor-employer has fulfilled its statutory obligation to secure compensation for its employees. Third, however, where the subcontractor defaults in securing compensation, thus triggering the contractor's obligation, and the latter fulfills that obligation, the contractor is deemed an "employer" for purposes of section 5(a) and therefore entitled to immunity from suit by the subcontractor's employees. Fourth, if the contractor utilizes a "wrap-up" insurance policy to provide insurance coverage for the benefit for satisfying the subcontractor's primary obligation to secure compensation, the contractor still remains amenable to suit by employees of the subcontractor; the contractor does not enjoy the immunity afforded by Section 5(a) of the Act.

The Conference substitute also provides a special effective date, so that these amendments apply to pending suits. This will avoid the dismissal, under *WMATA*, of third-

party suits which were pending or on appeal on the date of enactment. (Any suit which has gone to final judgment from which no appeal lies as of date of enactment would not be subject to the amendments). *WMATA*, the conferees believe, does not comport with the legislative intent of the Act nor its interpretation from 1927 through 1983. The case should not have any precedential effect.

MEDICAL SERVICES AND SUPPLIES

(a) Change of Physicians.

Senate bill

The Senate bill authorizes the Secretary to order a change in physicians or hospitals if charges exceed those prevailing in the community.

House amendment

No provision.

Conference substitute

The House recedes but adds that the doctor cannot charge more for Longshore clients than for other patients.

(b) Debarment of Medical Providers.

(1) Senate bill

The Senate bill mandates the Secretary to prepare a list of medical providers not authorized to render medical care or provide services under the Act.

House amendment

The House amendment contains similar language.

Conference substitute

The Senate recedes.

(2) Senate bill

The Senate bill sets out criteria under which the Secretary is required or permitted to refuse to authorize a physician to render medical care under the Act.

House amendment

The House amendment contains criteria under which physicians and health care providers shall be excluded from providing medical care when the Secretary makes certain determinations.

Conference substitute

The Senate recedes. The conferees do not intend to bar the use of fee schedules by the Secretary.

(3) *Senate Bill*

No provision.

House amendment

The House amendment provides specifically for reimbursement of employee's medical expenses rendered by a non-qualified physician or provider in an emergency.

Conference substitute

The Senate recedes.

(4) Senate bill and House amendment

The Senate bill and the House Amendment both prohibit employees from selecting a physician on the Secretary's list and restrict an employee's selection of a subsequent physician, where the initial choice was a specialist. Furthermore, both delete the requirement in the Act for an injured employee to request permission from the employer prior to seeking medical treatment and lengthen from 10 days to 21 days the period within which a treating physician must provide an employer with the report of injury or treatment.

Conference substitute

The Conference agreement makes two technical amendments. One is to make explicit the current requirement that the employee must *request* the employer to provide medical services in order to be entitled to reimbursement. The other is to retain the current law requirement that a treating physician provide an employer with the report of injury or treatment within 10 days. This is to conform with the current law requirements in § 14(b) and (d) for the employer to begin payments or controvert a claim.

(5) Senate bill

The Senate bill lists in subsections (j)(1) and (2) the mandatory and permissive grounds to debar physicians under Longshore.

House amendment

The House amendment incorporates these in an earlier provision.

Conference substitute

Senate recedes.

(6) Senate bill

The Senate bill requires certain providers to furnish the Secretary such data as is needed to enforce debarment.

House amendment

No provision.

Conference substitute

House recedes.

(7) Senate bill

The Senate bill provides authority for the Secretary subsequently to review a decision debarring a medical provider for possible reinstatement. The Senate bill also provides the basis for a determination to remain in effect.

House amendment

No provision.

Conference substitute

House recedes, but the conferees provide for a minimum debarment period of three years.

(8) Senate bill

The Senate bill grants the Secretary authority to make rules and regulations necessary to carry out the debarment procedures.

House amendment

The House amendment grants the same right but with changes. The House would require certain procedures, including hearings on the record pursuant to section 556 of title 5, United States Code, and appeal of Secretarial determination to the U.S. circuit court of appeals.

Conference substitute

The Senate recedes but the Conference agreement would add that the physician or health care provider would be debarred after the Secretary's decision, pending appeal.

(c) Justifiable Refusal.

Senate bill

The Senate bill clarifies the grounds for justifiable refusal to submit to medical or surgical treatment. The Senate bill states that religious tenets may excuse refusal to undergo vocational rehabilitation.

House amendment

The House amendment states that such grounds may excuse refusal to undergo physical rehabilitation.

Conference substitute

Senate recedes, and references to either vocational or physical rehabilitation are deleted.

HEARING LOSS CLAIMS

(a) apportionment of Liability.

Senate bill

The Senate bill specifically authorizes apportionment of hearing loss liability between or among employers.

House amendment

The House amendment makes no specific reference to apportionment authority.

Conference substitute

The Senate recedes, maintaining current law, whereby an employer can apportion its liability through the special fund. However, the conferees correct what the Benefits Review Board in *Primc* v. *Todd Shipyards Corporation*, 12 BRBS 190, 195 (1980), views as ". . . a gap in the statutory scheme . . ." of section 8(f). Currently, if an employee's aggravation of a pre-existing permanent partial disability results in a subsequent permanent partial or permanent total disability compensable under section 8(c)(1)–(20), "[t]he employer shall provide compensation for the applicable period of weeks provided for in that section for the subsequent injury or for one hundred and four weeks, whichever is the greater" with the balance assumed by the special fund.

This statutory scheme produces an inequity where the employer's liability for the subsequent injury translates into less than 104 weeks, in that the employer is still obligated to provide benefits for 104 weeks before special fund relief commences.

For this reason, the conferees amend section 8(f) by substituting "less" for "greater" in hearing loss cases compensated under section 8(c)(13). Thus, where the subsequent injury results in either a permanent partial disability or a permanent total disability for which the employer is responsible for less than 104 weeks' compensation, the employer will be obligated to pay only for the number of weeks attributable to the subsequent injury. If the subsequent injury translates into more than 104 weeks' compensation, the employer will pay only 104 weeks.

The conferees emphasize that in retaining current law with respect to apportionment of liability, the Conference substitute does not disturb the liability allocation and insurance coverage rules articulated by *Travelers Insurance Company* v. *Cardillo*, 225 F.2d 137 (2nd cir.), cert. denied, 350 U.S. 913 (1955), and the acceptance of any theory of injury aggravation by which an entire injury may be compensable.

(b) Audiograms.

Senate bill

The Senate bill and the House amendment both afford audiograms special status. The Senate bill states they are conclusive evidence of hearing loss.

House amendment

The House amendment affords audiograms presumptive weight if a three-part test is met and provides that the time period for filing a claim does not begin running until an employee is given a copy of the audiogram.

Conference substitute

The Senate recedes to the House. In requiring audiograms to be administered by certified audiologists or otolaryngologists, the conferees wish to assure that audiogram results are certified by competent medical personnel. In promulgating regulations under this section the conferees expect that the Department of Labor will incorporate audiometric testing procedures consistent with those required by hearing conservation

programs pursuant to the Occupational Safety and Health Act.

(c) AMA Guides.

The Senate bill, the House amendment, and the Conference substitute all require determinations of hearing loss in accordance with the Guides to the Evaluation of Permanent Impairment as promulgated and modified from time to time by the American Medical Association. The conferees view the AMA Guides to be the most widely accepted medical standards and wish to assure that determinations will always be in accordance with the most recently revised edition.

CAP ON DEATH BENEFITS

The Senate bill, House amendment, and Conference substitute impose a cap on death benefits of 200% of the national average weekly wage, the same maximum applicable to disability cases. The conferees intend that the national average weekly wage subjected to the cap shall be the national average weekly wage applicable on the date of death.

COMPENSATION OF OCCUPATIONAL DISEASE

Senate bill

The Senate bill did not specifically address the issue of occupational disease.

House amendment

The House amendment amended the current law in numerous instances with respect to claims related to occupational diseases.

Conference substitute

The Conference substitute provides that:

DEFINITIONS

Section 2. The conferees agree to a definition of "disability" in section 2(10) with respect to a case in which an occupational disease manifests itself subsequent to the claimant's date of retirement. In all such cases, the term "disability" shall mean permanent impairment, as determined by the *Guides to the Evaluation of Permanent Impairment* as periodically published by the American Medical Association. If those *Guides* do not evaluate the impairment, the conferees intend that other professionally recognized standards be utilized in the determination of impairment.

COMPENSATION FOR DEATH

Section 9(e). In the case of a death benefit for an individual whose occupational disease did not manifest itself prior to one year following retirement, the conferees intend that the death benefit shall be the lesser of (a) the applicable percentage of the national average weekly wage on the date of death, or (b) the last average annual earnings of the deceased prior to retirement.

DETERMINATION OF PAY

Section 10. The House amendment establishes that the time of injury in the case of a claim due to occupational diseases shall be the date of the onset of the disabling condition. The House amendment additionally establishes that in cases where the claimant was not employed, or not employed on a full-time basis, prior to onset of the disabling condition, the average weekly wage shall be established in accordance with subsections (a) through (d) of section 10, but in no case less than the current national average weekly wage.

The Senate has no comparable provision.

The Senate recedes, with a clarification that the "time of injury" for cases involving an occupational disease shall be the time when the claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware of the relationship between the employment, the disease, and the death or disability. The conferees specifically reject the date of last exposure to the injurious substance as the time of injury for determination of pay purposes. None of the amendments to sections 9, 10, 12, and 13 relating to an occupational disease disturb interpretations of existing insurance contracts.

The conferees note, however, that a claimant may have suffered a wage loss attributable to an occupational disease prior to recognizing its relationship to employment. In such case, the conferees intend that the phrase of section 10(c), "other employment of such employee", shall be interpreted so that compensation shall be based upon the claimant's wages prior to any reduction attributable to the disability.

In a case in which the claimant retired one year or less prior to the time of injury, the conferees intend that the claimant's last wage serve as the basis for determining compensation, in accordance with subsections (a) through (d)(1) of section 10, as amended. In cases where the time of injury occurs more than one year after retirement, the national average weekly wage at the time of injury shall be used for determining the level of benefits.

In adopting this section, the conferees specifically reject the holdings of the Benefits Review Board in *Dunn* v. *Todd Shipyards*, 13 BRBS 647 (1981), and *Aduddell* v. *Owens-Corning Fiberglass*, 16 BRBS 131 (1984).

NOTICE OF INJURY OF DEATH

Section. 12. The Senate bill deletes "reasonable diligence" as a basis for triggering the running of the 30-day notice period and adds in lieu thereof the communication of medical advice.

The House amendment retains the "reasonable diligence" basis while adding the "medical advice" basis, but states that no notice is required for occupational disease cases.

The conference substitute requires that, in the case of a disability resulting from an occupational disease, an employee or beneficiary shall provide notice of the injury to the employer within one year after the employee or the beneficiary was aware, or by exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the disability or death.

Time for Filing Claim Based on Occupational Disease

Section 13. The House amendment clarifies when the one year period for filing a claim begins to run in a occupational disease case.

The Senate has no comparable provision.

The Senate recedes, with an amendment providing the claimant two years to file a claim after the claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability.

SPECIAL FUND

(a) Retention Period.

Senate bill

The Senate bill increases an employer's retention period on section 8(f) special fund cases to four years.

House amendment

The House amendment increases the period to six years.

Conference substitute

The conferees retain the current two-year retention period, but in order to address more comprehensively the fund liability problem, the conferees adopt a new fund assessment formula, amending section 44(c).

(b) Unauthorized Insurers.

The conferees further amend section 8(f) by barring an uninsured employer or a carrier not authorized to write Longshore Act coverage, in violation of section 32(a), from special fund relief and, thereby, preclude such employer or carrier from realizing a benefit by avoiding the insurability requirements of the Act. This change does not alter the employer/carrier's underlying obligation to pay compensation or the Secretary's right to seek relief under section 18(b).

(c) Fund Liability Issue.

Senate bill

The Senate bill requires an employer to raise any section 8(f) special fund issues prior to consideration by an administrative law judge.

House substitute

The House amendment requires notification prior to the deputy commissioner's consideration, but affords the Secretary discretion in excusing notice where an employer could not reasonably have known of its basis for special fund relief.

Conference substitute

The Senate recedes to the House.

The conferees intend by this provision to encourage employers to raise the special fund issue early in the claims adjudication process, in order to assure the deputy commissioner and the Director of OWCP the opportunity to examine the validity of the employer's basis for seeking special fund relief.

(d) Technical Amendments.

Senate bill

No provisions.

House amendment

The House amendment makes several technical and conforming changes to payments under the special fund.

Conference substitute

The Senate recedes to the House with further technical amendments and clarifies that the results of the annual fund audit will be incorporated into the annual report required in new section 42.

(e) Conservator.

Senate bill

The Senate bill repeals existing section 45 and in lieu thereof adds new language creating a conservation committee, appointed by the Secretary, with the authority to protect the assets of the special fund. The committee would appoint a conservator who would be a party in every case in which the liability of the fund is raised and in every case for which the fund has already begun payment. The conservator would be empowered to order medical examinations and seek modification of benefit payments.

House amendment

No comparable House provision.

Conference substitute

The Senate recedes, with the conferees adopting amendments to sections 8(f) and 22 granting an employer/carrier continuing status as a party in interest in special fund disability and death cases attributable to them for the life of the claim. This authority would apply to all current fund cases. The conferees believe this provision to be

necessary to address an inability by the Labor Department to monitor the existing fund case load and is consistent with employers' greater direct liability stemming from the amended assessment formula.

By permitting an employer or carrier to remain a party in a special fund case, the conferees do not intend to expand or contract the rights of an employer or carrier beyond those prevailing in a non-special fund case. The conferees note that under existing procedures, no benefits may be reduced or terminated without the employer or carrier incurring a potential penalty.

SETTLEMENTS

Senate bill

The Senate bill provides a means to expedite settlements by requiring the deputy commissioner or administrative law judge to approve a settlement within 30 days, absent inadequacy or duress. If the deputy commissioner disapproves a settlement, a written statement containing the reasons for such disapproval must be issued within 30 days after submission. If the parties are represented by counsel, the agreements shall be deemed approved unless specifically disapproved within 30 days after submission. Settlements of death benefits and future medical benefits are permitted, and a settlement is a complete discharge of the employer's obligation.

House amendment

The House amendment is technical in deleting a specific provision granting automatic approval unless a settlement is specifically disapproved within 30 days after submission.

Conference substitute

The Senate recedes. Further, the conferees would prohibit an employer/carrier, after reaching a settlement with a claimant in a case which would otherwise be assigned to the special fund, from subsequently seeking relief from the special fund. A settlement shall operate as a release from further liability as the employer and carrier. The fund, furthermore, shall not be liable for the reimbursement of the costs of any settlement or for the costs of any voluntary payments of compensation made by the employer prior to a settlement. This provision is intended specifically to overturn the administrative law judge's decision in *Brady* v. *J. Young & Company*, 16 BRBS 31, (ALJ) (1983).

Finally, settlements are specifically not subject to modification under section 22.

EMPLOYEE WAGE STATEMENTS

Both the Senate bill and the House amendment included identical language authorizing employers to require employees receiving compensation to submit a statement of earnings not more frequently than semi-annually. An employee who fails to report earnings when requested, or omits or understates such earnings forfeits the compensation to which he was entitled during the period of non-compliance.

The conferees retain this language unamended but clarify that where compensation already has been paid, necessitating a credit in payments of future benefits, the deputy commissioner may use discretion in scheduling repayments of forfeited amounts so as to avoid burdening the employee with repayment of the full amount over an unduly brief period.

PRESUMPTION

Senate bill

The Senate bill codifies the Supreme Court's decision in *U.S. Industries/Federal Sheet Metal, Inc.* v. *Director, OWCP*, 455 U.S. 608 (1982), that the mere existence of a physical impairment is insufficient to raise the presumption of coverage.

House amendment

The House amendment is silent.

Conference substitute

The Senate recedes to the House. Senate language originally proposed was prior to the Supreme Court's reversal of the appeals court decision holding that an impairment itself would trigger the presumption. With the Supreme Court's decision the conferees agree the issue need not be addressed by the statute.

BENEFITS REVIEW BOARD

Senate bill

The Senate bill grants the Secretary authority to appoint up to four administrative law judges temporarily to the Benefits Review Board.

House amendment

The House amendment expands the Board's permanent membership from three to five, authorizes appointment of up to three administrative law judges for 18-month terms when the case backlog exceeds 1,000, requires a study of Board operations, and grants the Chairman of the Board authority over all administrative functions of the Board, as delegated by the Secretary.

Conference substitute

The confereees agree to expand the Board's membership to nine, combining the House's addition of two permanent members with the Senate's authority providing for discretionary appointment of up to four administrative law judges as temporary members upon recommendation of the Chairman of the Board.

However, given the Board's current backlog, the conferees expect the Secretary expeditiously to appoint four temporary and two permanent judges, and to provide the Board with the necessary support staff.

The conferees also accept the House's language granting the Chairman the authority to exercise all administrative functions necessary for the Board's operation, authorizing the Board to sit in panels of three (such panels constituting two permanent members) designating two members as a panel quorum and three permanent members as a Board quorum, and authorizing discretionary review of panel decisions but requiring any such vote to be taken by permanent members only.

Eliminated are the House's case-backlog threshold necessary for triggering appointment of temporary members and authority to conduct a study of Board operations.

Last, temporary members' terms are limited to one-year, the maximum permitted by the Office of Personnel Management.

REPORTS

Senate bill

The Senate bill imposes a civil penalty of up to $25,000 if an employer "willfully fails or refuses to send any report."

House amendment

The House amendment reduces this to $10,000 and utilizes a test of "knowingly and willfully."

Conference substitute

The Senate recedes with an amendment extending the penalty to the falsification or misrepresentation of information submitted in reports required by the Secretary.

PENALTY FOR MISREPRESENTATION-PRESENTATION OF CLAIMS

Senate bill

The Senate bill raises the penalty for misrepresentation from a misdemeanor to a felony and imposes a $25,000 fine/3 years imprisonment.

House amendment

The House amendment raises the penalty to a felony but imposes $10,000 fine/5 years imprisonment.

Conference substitute

Senate recedes.

Senate bill

The Senate bill provides that a United States Attorney shall make every reasonable effort to investigate promptly each complaint under this subsection.

House amendment

No provision.

Conference substitute

House recedes.

Senate bill

The Senate bill seeks to restrict the claimant's representatives who may represent employees in obtaining a benefit under the Act. Grounds for disqualifying representation activities are provided. The Secretary is required to license claimant representatives.

House amendment

The House amendment requires the Secretary to publish a list of individuals not authorized to represent claims based on Their falling within one of the grounds stated for disqualification. The House amendment conforms this debarment procedure to that afforded medical providers.

Conference substitute

Senate recedes.

Senate bill

The Senate bill penalizes an employer or carrier for false statements or representations in denying or terminating benefits. The Senate bill imposes $25,000 fine/3 years imprisonment.

House amendment

The House amendment retains the penalties but imposes $10,000/5 years imprisonment.

Conference substitute

Senate recedes.

COMPENSATION FOR INJURIES WHERE THIRD PERSONS ARE LIABLE

Senate bill and House amendment

the Senate bill and the House amendment both provide for a reversion to the employee of a right to file an action against a third person. The Senate bill affords this right following a "reasonable time" after such right passes initially from the employee to the employer without the employer filing such action. The House amendment requires ruling within 90 days.

The Senate bill and the House amendment also address when the 6-month period, within which period the employee has an initial right to file an action against a third party, begins to run. The Senate bill states that this period begins running at the issuance of a formal compensation order. The House amendment states that the period begins running either on issuance of a formal order or on payment to compensation voluntarily by an employer.

The Senate bill and the House amendment both alter the priority for distribution of proceeds in a recovery by judgment or

settlement where the employee brings an action against a third party. The Senate bill gives priority to the employer's lien on compensation and medical benefits paid, with the employee retaining any excess first for payment of attorney fees and costs. In a recovery by judgment only, the House amendment guarantees the employee 15 percent of any recovery remaining after reduction for attorney fees and costs, before exercise by the employer of its subrogation lien rights.

Conference substitute

The Conference substitute provides that the 6-month period within which a person entitled to compensation can file a third party suit commences only upon the entry of a formal order awarding compensation. This is in accord with the decision in *Pallas Shipping Agency* v. *Duris*, 103 S. Ct. 1991 (1983). The conferees expect that an employer who does make voluntary payments will be able to obtain without delay the necessary compensation order constituting the formal award, so that the 6-month period may commence. Once the assignment occurs, the employer has 90 days within which to file suit; otherwise, the right to sue reverts back.

The Conference substitute establishes the following priority for distribution of proceeds in a recovery by an employee: First, the litigation expenses, including reasonable attorney fees, are satisfied. This may require that the court exercise its discretion to adjust the attorney fee to assure equity for both the employee and his attorney. The compensation lien on the net recovery remains inviolable, consistent with *Bloomer* v. *Liberty Mutual Insurance, Co.*, 445 U.S. 74 (1980).

Senate bill

The Senate bill terminates the employer's liability for payment of compensation and medical benefits if the employee fails to notify the employer of any settlement obtained from a judgment rendered against a third party. In a case in which the special fund will be liable for payments, the fund has a lien on the proceeds of any settlement or judgment.

House amendment

The House amendment makes a technical amendment to change "Conservator" notice to "Secretary" since the provisions establishing such a Conservator are not contained in the House amendment.

Conference substitute

The Senate recedes with an amendment making the fund's lien subject to a priority lien which complies with section 302(c) of the Labor-Management Relations Act of 1947 (29 U.S.C. § 186(c)).

GUS HAWKINS,
WILLIAM CLAY,
GEORGE MILLER,
DALE KILDEE,
MATTHEW G. MARTINEZ,
MAJOR OWENS,
FRANK HARRISON,
SALA BURTON,
JOHN N. ERLENBORN,
THOMAS E. PETRI,
RON PACKARD,
JOHN MCCAIN,
Managers on the Part of the House.

ORRIN G. HATCH,
DON NICKLES,
EDWARD M. KENNEDY,
Managers on the Part of the Senate.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. MIKULSKI (at the request of Mr. WRIGHT), for today, on account of official business.

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. LENT) to revise and extend their remarks and include extraneous material:)

Mr. CRAIG, for 60 minutes, on September 19.

(The following Members (at the request of Mr. DE LUGO) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.
Mr. GONZALEZ, for 60 minutes, today.

EXTENSION OF REMARKS

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

Mr. VENTO, to revise and extend prior to passage of H.R. 4567.

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

Mr. BILIRAKIS.
Mr. BADHAM.

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

Mr. STARK in two instances.
Mr. COLEMAN of Texas.
Mr. HAWKINS.
Mr. FRANK.
Mr. LEVITAS.
Mr. RANGEL.
Mr. MCCLOSKEY.
Mr. ACKERMAN.
Mrs. BURTON of California.
Mr. VENTO.

ADJOURNMENT

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

The motion was agreed to; accordingly (at 12 o'clock and 55 minutes p.m.) under its previous order, the House adjourned until Monday, September 17, 1984, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

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

4038. A letter from the Deputy Assistant Secretary of the Air Force (Logistics and Communications, transmitting notification of the proposed decision to convert to contractor performance the base supply function at Vandenburg Air Force Base, CA, pursuant to 10 U.S.C. 2304 at (Public Law 96-342, section 502(b) (96 Stat. 747)); to the Committee on Armed Services.

4039. A letter from the Comptroller General of the United States, transmitting a report on his review of the U.S. Capitol Historical Society's financial statements for the years ended January 31, 1983 and 1982 (GAO/AFMD-84-66), pursuant to 40 U.S.C. 193m-1; to the Committee on Government Operations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

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

Mr. DELLUMS: Committee on the District of Columbia. Supplemental report on H.R. 6223, (Rept. No. 98-1022, Pt. II). Ordered to be printed.

Mr. DELLUMS: Committee on the District of Columbia. Supplemental report on H.R. 4994 (Rept. No. 98-1023, Pt. II). Ordered to be printed.

Mr. DELLUMS: Committee on the District of Columbia. Supplemental report on H.R. 6224 (Rept. No. 98-1024, Pt. II). Ordered to be printed.

Mr. MINETA: Committee of conference. Conference report on H.R. 5297 (Rept. No. 98-1025). Ordered to be printed.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 6206. A bill amending the Act of July 28, 1978 (Public Law 95-238), relating to the water rights of the Ak-Chin Indian Community, and for other purposes; with amendment (Rept. No. 98-1026). Referred to the Committee of the Whole House on the State of the Union.

Mr. HAWKINS: Committee of conference. Conference report on S. 38 (Rept. No. 98-1027). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ROSE:

H.R. 6252. A bill entitled "The Milk Protein Act of 1984"; to the Committee on Ways and Means.

By Mr. MATSUI:

H.R. 6253. A bill to amend the Internal Revenue Code of 1954 to permit individual retirement accounts and individually directed accounts to acquire and dispose of tangible investment assets in transactions with persons other than interested persons; to the Committee on Ways and Means.

By Mr. MOAKLEY:

H.R. 6254. A bill to amend the Internal Revenue Code of 1954 to make permanent the exclusion from gross income for amounts received under qualified group legal services plans; to the Committee on Ways and Means.

By Mr. NATCHER (for himself, Mr. SNYDER, Mr. MAZZOLI, Mr. HUBBARD, Mr. HOPKINS, and Mr. ROGERS):

H.R. 6255. A bill to designate the Federal building and U.S. courthouse in Ashland, KY, as the "Carl D. Perkins Federal Building and United States Courthouse"; to the

Committee on Public Works and Transportation.

By Mr. SHUMWAY (for himself and Mr. HUBBARD):

H.R. 6256. A bill to provide that certain allowances provided to certain employees of the Panama Canal Commission will be exempt from Federal taxation; to the Committee on Ways and Means.

By Mr. LEVITAS (for himself, Mr. CONTE, and Mr. DARDEN):

H.J. Res. 647. Joint resolution designating the week of January 7 through January 13, 1985, as "National Productivity Improvement Week"; 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. 2996: Mr. BORSKI.

H.R. 3024: Mrs. VUCANOVICH.

H.R. 4731: Mr. BRYANT, Mr. OBEY, Mr. WIRTH, Mr. HALL of Ohio, Mr. BOSCO, Mr. DE LA GARZA, Mr. SMITH of Iowa, Mr. YATES, Mr. TRAXLER, Mr. WOLPE, and Mr. FLORIO.

H.R. 4923: Mr. SCHEUER and Mr. MARKEY.

H.R. 5307: Mr. MOODY.

H.R. 5593: Mr. WILLIAMS of Ohio and Mr. MARTINEZ.

H.R. 5745: Mr. GILMAN.

H.R. 5944: Mr. RUSSO, Mr. HOWARD, Mr. LEVINE of California, Mr. LIPINSKI, and Mr. DONNELLY.

H.R. 5995: Mr. BERMAN and Mr. BORSKI.

H.R. 6054: Mr. COURTER, Mr. SEIBERLING, Mr. CRAIG, and Mr. BOEHLERT.

H.R. 6066: Mr. BRITT.

H.R. 6093: Mr. COURTER, Mr. CONTE, Mr. LOTT, Mr. ROBERTS, Mr. DENNY SMITH, Mr. SOLOMON, Mr. SWIFT, Mr. THOMAS of California, Mr. WINN, Mr. LUJAN, Mr. WHITEHURST, Mr. ALBOSTA, Mr. BARNES, Mr. MACK, Mr. LIPINSKI, Mr. SMITH of New Jersey, Mr. PURSELL, Mr. EDWARDS of Oklahoma, Mr. SILJANDER, Mr. CARNEY, Mr. ROSTENKOWSKI, Mr. LOEFFLER, Mr. HARTNETT, Mr. SENSENBRENNER, Mr. SNYDER, Mr. TAYLOR, Mr. WALKER, Mr. HAMMERSCHMIDT, Mr. LEWIS of California, Ms. FIEDLER, Mr. STAGGERS, Mr. GREGG, Mr. QUILLEN, Mr. CAMPBELL, Mr. WOLF, Mr. PARRIS, Mr. DREIER of California, Mr. RIDGE, Mr. GOODLING, Mr. BROOMFIELD, Mr. MICHEL, Mr. MCDADE, Mr. KASICH, Mr. BLILEY, Mr. STARK, Mr. LEACH of Iowa, Mr. DEWINE, Mr. DICKS, Mr. RUDD, Mr. UDALL, Mr. PRICE, Mr. MILLER of Ohio, Mr. SHUMWAY, Mr. SUNDQUIST, Mr. DELLUMS, Mr. MOLINARI, Mr. LUNGREN, Mr. WINN, Mr. HANSEN of Idaho, Mr. YOUNG of Alaska, Mr. YATES, and Mr. MARTIN of New York.

H.R. 6117: Mr. ANDREWS of Texas, Mr. BATES, Mr. BORSKI, Mrs. BOXER, Mrs. BURTON of California, Mr. CORRADA, Mr. DURBIN, Mr. ECKART, Mr. EVANS of Illinois, Mr. FEIGHAN, Mr. MCKINNEY, Mr. ORTIZ, Mr. OTTINGER, Mr. SCHEUER, Mrs. SCHROEDER, Mr. TORRES, Mr. TOWNS, Mr. UDALL, and Mr. WALGREN.

H.R. 6163: Mr. DE LA GARZA.

H.R. 6164: Mr. THOMAS of Georgia.

H.R. 6172: Mr. MARTINEZ, Mr. PATMAN, Mr. MAVROULES, Mr. BRITT, Mr. WHITTAKER, Mr. ECKART, Mr. PACKARD, Mr. TORRES, and Mr. DYMALLY.

H.J. Res 243: Mr. VOLKMER.

H.J. Res. 486: Mr. PRITCHARD, Mr. CLARKE, Mr. MOODY, Mr. BROYHILL, Mr. HEFNER, Mr. ST GERMAIN, Mr. LOWRY of Washington, Mr. MARTIN of North Carolina, Mrs. SCHNEIDER, Mr. AKAKA, Mr. FORD of Michigan, Mr. SISISKY, Mr. CHANDLER, Mr. HALL of Ohio, Mr. BONER of Tennessee, Mr. DENNY SMITH, Mr. RATCHFORD, Mr. HEFTEL of Hawaii, Mr. KEMP, Mr. BATEMAN, Mr. ROBERT F. SMITH, Mr. HILER, Mr. NOWAK, Mr. WYDEN, Mr. BRITT, and Mr. EARLY.

H.J. Res. 547: Mr. BATEMAN, Mr. RAHALL, Mr. COOPER, Mr. UDALL, and Mr. NICHOLS.

H.J. Res. 580: Mr. DASCHLE, Mr. DELLUMS, Mr. LANTOS, Mr. THOMAS of Georgia, Mr. MARKEY, and Mr. UDALL.

H.J. Res. 608: Mr. ANDERSON, Mr. ARCHER, Mr. BADHAM, Mr. BEDELL, Mr. BOEHLERT, Mr. BRITT, Mr. BROYHILL, Mr. CARPER, Mr. COYNE, Mr. DASCHLE, Mr. DERRICK, Mr. DIXON, Mr. DUNCAN, Mr. EDWARDS of Alabama, Mr. FISH, Mr. FLIPPO, Mr. FROST, Mr. HAMILTON, Mr. HANSEN of Utah, Mr. HAWKINS, Mr. HUTTO, Mr. JEFFORDS, Mr. JONES of Tennessee, Mr. LELAND, Mr. LEWIS of Florida, Mr. LOWERY of California, Mr. LOWRY of Washington, Mr. LUJAN, Mr. MADIGAN, Mr. MARRIOTT, Mr. MARTIN of New York, Mr. MARTIN of North Carolina, Mrs. MARTIN of Illinois, Mr. MOODY, Mr. NELSON of Florida, Mr. NOWAK, Mr. PORTER, Mr. PRITCHARD, Mr. ROE, Mr. SABO, Mr. SAWYER, Mr. SCHEUER, Mr. SHARP, Mr. SIKORSKI, Mr. SIMON, Mr. SNYDER, Mr. SOLARZ, Mr. WHEAT, Mr. YATRON, Mr. YOUNG of Florida, Mr. BONER of Tennessee, Mr. CHANDLER, Mr. COUGHLIN, Mr. DANIEL, Mr. BERMAN, Mr. ENGLISH, Mr. GRAMM, Mr. KOSTMAYER, Mr. LANTOS, Mr. MCEWEN, Mr. MORRISON of Washington, Mr. RODINO, Mr. TALLON, Mr. WILSON, Mr. ALBOSTA, Mr. ANDREWS of North Carolina, Mr. ANDREWS of Texas, Mr. BARTLETT, Mr. BIAGGI, Mrs. BOGGS, Mr. BROOMFIELD, Mr. BROWN of California, Mr. BROWN of Colorado, Mr. BRYANT, Mr. CARNEY, Mr. CHAPPELL, Mr. CHAPPIE, Mrs. COLLINS, Mr. DELLUMS, Mr. SMITH of Florida, Mr. NICHOLS, Mr. AUCOIN, Mr. LEVIN of Michigan, Mr. WOLPE, Mr. HARKIN, Mr. MURTHA, Mr. YOUNG of Missouri, Mr. TRAXLER, Mr. WYDEN, Mr. PETRI, Mr. MCKINNEY, Mr. SAM B. HALL, JR., Mr. NEAL, Mr. EDGAR, Mr. BILIRAKIS, Mr. BARNES, Mr. PENNY, Mr. PASHAYAN, Mr. GEPHARDT, Mr. KILDEE, Mr. WEISS, Mr. DOWNEY of New York, Mr. FASCELL, Ms. FIEDLER, Mr. CROCKETT, Mr. ANNUNZIO, Mr. MOORHEAD, Mr. GEKAS, Mr. EMERSON, Mr. TAUZIN, Mr. SHELBY, Mr. FOLEY, Mr. GEJDENSON, Mr. GINGRICH, Mr. HALL of Ohio, Mr. HARTNETT, Mr. HAYES, Mr. HILLIS, Mr. HOPKINS, Mr. HUNTER, Mr. HYDE, Mr. LEACH of Iowa, Mr. LEHMAN of Florida, Mr. LEVINE of California, Mr. LEVITAS, Mr. LONG of Maryland, Mr. MCKERNAN, Mr. MARKEY, Mr. MARTINEZ, Mr. MAVROULES, Mr. MOLLOHAN, Mr. NIELSON of Utah, Ms. OAKAR, Mr. OLIN, Mr. OXLEY, Mr. PANETTA, Mr. PATTERSON, Mr. PAUL, Mr. RICHARDSON, Mr. ROEMER, Mr. SAVAGE, Mr. SHAW, Mr. SILJANDER, Mr. SKEEN, Mr. ROBERT F. SMITH, Mr. DENNY SMITH, Ms. SNOWE, Mr. STANGELAND, Mr. STRATTON, Mr. SYNAR, Mr. TORRICELLI, Mr. TORRES, Mr. VANDER JAGT, Mr. WALKER, Mr. WINN, Mr. WYLIE, and Mr. YOUNG of Alaska.

H.J. Res. 611: Mr. TALLON, Mr. PASHAYAN, Mr. CARR, Mr. ROBERTS, Mr. JONES of North Carolina, Mr. BONER of Tennessee, Mr. COOPER, Mr. ACKERMAN, Mr. MARKEY, Mrs. ROUKEMA, Mr. WYLIE, Mr. DELLUMS, Mr. ROSE, Mr. MADIGAN, Mr. STOKES, Mr. SAWYER, Mr. WORTLEY, Mr. LOWERY of California, and Mr. LEWIS of California.

H.J. Res. 615: Mr. BIAGGI, Mr. BONER of Tennessee, Mr. BROWN of California, Mr. BURTON of Indiana, Mr. CONYERS, Mr. COURTER, Mr. CROCKETT, Mr. FISH, Mr. FRANK, Mr. FROST, Mr. GREEN, Mr. HERTEL of Michigan, Mr. HOYER, Mr. HUGHES, Mr. LELAND, Mr. MARTIN of North Carolina, Mr. MCGRATH, Mr. OWENS, Mr. RATCHFORD, Mr. RICHARDSON, Mr. SCHAEFER, Mr. SMITH of Florida, Mr. SNYDER, Mr. TORRICELLI, and Mr. WEISS.

H. Con. Res. 311: Mr. BURTON of Indiana, Mr. GREGG, and Mr. PATMAN.

H. Con. Res. 322: Mr. MOLINARI.

H. Con. Res. 355: Mr. BOEHLERT, Mr. PORTER, Mr. WORTLEY, Mr. MCNULTY, Mr. SMITH of Florida, Mr. BRYANT, and Mr. LANTOS.

H. Res. 171: Mr. VANDER JAGT, Ms. SNOWE, Mr. MOORE, Mr. PETRI, Mr. TAUZIN, Mr. SMITH of Florida, and Mrs. BURTON of California.