SENATE—*Thursday, May 16, 1985*

(Legislative day of Monday, April 15, 1985)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Our prayer this morning will be offered by His Eminence Archbishop Torkom Manoogian, primate, diocese of the Armenian Church of America, New York, NY. His Eminence is being sponsored by Senator CARL LEVIN. We are pleased to have you with us.

PRAYER

His Eminence Archbishop Torkom Manoogian, primate, diocese of the Armenian Church of America, New York, NY, offered the following prayer:

Glory to God our Father in Heaven.

Lord, we are gathered as Your humble stewards, laboring for the good of our Nation and the world.

We are grateful for the privileges of our generation: We live in a country where Your name is worshiped freely and with honor, and where the principles of human freedom and dignity are protected.

Imbue the work of this august body with peace and understanding. Open our hearts to the suffering of others; grant us Your precious spirit so that we might always uplift and exalt Your miraculous creation. You have made us stewards of the Earth; help us be good and tireless stewards.

You who have filled the world with signs of Your almighty power and boundless love, inspire the leaders of our Nation and the representatives of our people to use their talents and potentials wisely and to deliberate all matters with care and compassion. May they be guided continuously by the tenets of truth and justice, so that these virtues may never be undermined; virtues which my Armenian people have suffered to defend throughout their turbulent history.

And especially on this 70th year of remembrance of the genocide of the Armenian people, bless us with a mighty voice to praise You, a sharp eye to discern You, and the ability to direct our energies to the good of all peoples.

Thus Your blessed name, Lord of Creation, shall be praised by all nations, and from generation to generation. Amen.

RECOGNITION OF THE MAJORITY LEADER

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

Mr. DOLE. Mr. President, let me yield first to the distinguished Senator from Michigan, Senator LEVIN.

Mr. LEVIN. I thank my friend.

ARCHBISHOP MANOOGIAN

Mr. LEVIN. Mr. President, I am delighted, as all of us are, to have Archbishop Manoogian with us this morning to deliver the prayer. After listening to his thoughtful and poignant prayer, I know that his message is shared by all of us. I had the pleasure of meeting the archbishop last year in Detroit, where I have visited many friends along the years at St. John's Armenian Apostolic Church. Indeed, Archbishop Manoogian provides spiritual leadership for many of North America's 600,000 American-Armenians who can be proud of their rich culture and proud heritage as reflected in their church—from the time of St. Gregory the Illuminator, who led Armenia to become the first Christian nation of the world in A.D. 301, to the present, where Armenians make important contributions to every aspect of our society.

Archbishop Manoogian was born on February 16, 1919, in the deserts near Baghdad, Iraq, where his parents had fled from the massacres of more than 1.5 million Armenians in Ottoman, Turkey from 1915-23—the first genocide of the 20th century. He was 12 years old when he was sent to attend the Armenian School of the Monastery of St. James in Jerusalem. Upon graduation, he decided to continue his studies there in preparation for the priesthood. After ordination in 1939, he remained for several years at the monastery, serving in various capacities.

Archbishop Manoogian came to the United States in 1946 and was assigned to serve as pastor of the Holy Trinity Armenian Church of Philadelphia. In November 1951 he was named vicar of the diocese and held that post until 1955. Back in Jerusalem, he served from 1957 to 1960 as dean of the theological school, as a member of the Holy Synod and chairman of the general assembly of the St. James Brotherhood, and chancellor of the patriarchate.

Archbishop Manoogian worked on the publication of the sacred music of the Armenian Church together with Wardan Sarxian, one of the pupils of the musician-priest Gomidas Vartabed. These arrangements were subsequently published in the United States in two volumes. Archbishop Manoogian also published the "Sunrise Service of the Armenian Church" and prepared for the first time ever the complete music of the deacon's part on the Divine Liturgy.

In 1960 he returned to the United States and enrolled at the Episcopal Theological School in Cambridge, MA, as a postgraduate student where he remained for the next 2 years. In 1962 he was elected primate of the western diocese of the Armenian Church of America and in the same year he visited Etchmiadzin, where he was ordained bishop. In 1966 he was elected primate of the eastern diocese of the Armenian Church of America and in 1968 was elevated to the rank of archbishop.

Archbishop Manoogian has published many articles in periodicals as well as a number of pamphlets and books. He serves on the governing board and the executive committee of the National Council of Churches in Christ. This year he was elected chairman of the board of Religion in American Life and is also a member of the Appeal of Conscience Foundation.

In May 1982 Archbishop Manoogian was elected to an unprecedented fifth 4-year term as primate of the diocese of the Armenian Church by an overwhelming majority of the delegates representing the 50 parishes in the United States and Canada of the diocese.

SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders each have 10 minutes, followed by special orders for Senators PROXMIRE, DIXON, BUMPERS, and PRYOR. They will be in routine morning business not to extend beyond the hour of 11:30 a.m., with statements therein limited to 5 minutes each.

Following morning business, the Senate will resume consideration of the conference report to accompany H.R. 1869, repeal of auto recordkeeping. That will be under a 40-minute time agreement—10 minutes under the control of Senator PACKWOOD, or his designee, and 30 minutes to the distinguished Senator from Ohio, Senator METZENBAUM. I am advised there will

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

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not be a rollcall, but it is never a certainty.

Following the disposition of the conference report, there are a number of calendar items: The small business authorization (S. 408), the coin bill (H.R. 47), and safe drinking water (S. 124). We also have an Executive Calendar nomination of Vernon Walters, and an Executive Calendar nomination of Richard Hughes, and any other Legislative or Executive Calendar items cleared for action.

I assume there will be rollcall votes today. There will be a session on Friday. We hope to be on the defense authorization bill. It would be my hope that we could reach some agreement during the day to complete action on that bill by no later than 6 p.m. Thursday next so that we might complete action on this very important matter.

Mr. President, I reserve the balance of my time. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HUMPHREY). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is recognized for not to exceed 15 minutes.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that I may reserve the time of the minority leader, Senator BYRD, for his use later in the day.

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

GIVE STAR WARS A CHANCE BUT CUT FUNDING INCREASE

Mr. PROXMIRE. Mr. President, as we know, the President has proposed a massive increase in funding for the star wars program. The President would push the present $1.4 billion appropriated for 1985 to a colossal $3.7 billion in 1986. The Armed Services Committee has reduced that to some extent, but it is still a huge increase of more than 100 percent. The Armed Services Committee has recommended a $3 billion increase.

That would still hand star wars a colossal 114-percent increase in funding in 1 year. Dr. Richard Garwin, a brilliantly qualified expert, has recommended that the level of research be kept at $1.4 billion for 1986 for star wars. In this year of austerity, faced with the necessity for holding down all Federal spending and with military spending under special pressure, how generously should the Congress fund the star wars program?

Mr. President, Senators CHAFEE, BUMPERS, MATHIAS, and I have prepared an amendment that would permit a major increase in star wars research. It would increase star wars research funding for 1986 to $1.86 billion. That would mean an increase of more than 30 percent in funding for this highly controversial program in a stringent austerity year.

What would my amendment permit star wars research to do? It would permit high quality antiballistic missile defense. It would provide for a hedge against the Soviet ABM effort. And it would provide the basis for greater congressional oversight by developing the information necessary for the Congress to make a decision on the basis of the fullest possible information whether to go ahead to produce and deploy the immensely expensive hardware necessary to make star wars effective.

What would the Proxmire amendment eliminate in reducing the President's proposal to $1.86 billion? Mr. President, all of us agree with the President's observation that this program is not based on any single or preconceived notion of what an effective defense system would look like. Obviously, this is a long-term research project in its very early stages. Last month, a workshop at Stanford University issued a report on the Strategic Defense Initiative by an expert group that included both supporters and critics of the program. They agreed that it is now far too early for any program in strategic defense to consider technology demonstrations of types that could raise serious issues of compliance with the ABM treaty.

And they added this observation:

> In addition to the political costs of such early demonstrations (whether or not they violate the ABM treaty), premature promotion to the demonstration-and-test phase can be very harmful to attainment of any particular goal in strategic defense. A considerable body of evidence has shown that early demonstrations of new technologies have two deleterious effects. First, they tend to freeze the technology being demonstrated before it is fully mature, thus guaranteeing less than full capability. Second, they tend to absorb money from associated R&D programs, thus eliminating the possibility of better solutions . . . Therefore, at this time, sensible R&D should proceed; but demonstrations of types that could justify charges of ABM treaty violation should not even be considered before the new technologies reach sufficiently advanced performance goals to merit tests of their ability to meet systems criteria.

So our amendment permits funding increases for demonstration projects to increase only 4 percent. On the other hand, funding for the system survivability, lethality, and hardening projects would be allowed to increase at the rate the administration requested. And, as I have stated previously in speeches on the floor, a new program, threat analysis—that is a project designed to research Soviet countermeasures—would be created to assure the Congress that it would have the information available to meet the standard proposed by Paul Nitze. Nitze proposed that the star wars defense should only proceed if it meets a cost-effectiveness test. Nitze defined cost-effectiveness for star wars as a determination that the ABM defense costs less than the Soviets could spend to overcome it.

My amendment would also meet the President's stated objective that the star wars research be able to respond to the ongoing Soviet ABM effort. Any SDI research program funded by Congress should enable the United States to meet a Soviet breakout from the ABM treaty. Does the President's $3.7 billion request do this? The answer is a clear and emphatic "No." Does our proposed amendment meet the test? Yes. It would provide for research into conventional ABM systems. These systems provide the most practical and immediate hedge against a Soviet breakout of the ABM treaty. The amendment would also establish a new Hard Point Defense Technology Program.

What would be the purpose of a Soviet breakout from the ABM treaty? Obviously, it would be to reduce the effectiveness of the U.S. deterrent. How can we overcome such a Soviet move? Answer: Increase the ability of our offensive nuclear forces to penetrate Soviet defenses. What does our proposed amendment do about this? It doubles the Air Force penaids program in fiscal year 1986.

Mr. President, if the Congress proceeds with the SDI program, it will absorb a massive proportion of this country's military research dollars and an increasing proportion of the scientists and engineers engaged in developing weapons to provide our national security. For that reason, our amendment establishes a Strategic Defense Evaluation panel to monitor this technology and its implications for arms control, for our overall national security, and to report to the Congress.

Mr. President, I ask unanimous consent that a table comparing the star wars research funding for fiscal year 1984, fiscal year 1985, the President's proposed changes for 1986, and the alternative budget that we are proposing for 1986, be included in the RECORD. This table shows the increase in the research budget for star wars broken down in detail. It also shows the percentage increase over this year's funding in the amendment we propose—the "alternative budget."

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

SDI ALTERNATE BUDGET

[Dollar amounts in millions]

	Fiscal year—				
	1984 appropriation	1985 appropriation	1986 request	1986 alternate budget	Percent over 1985
Current year	991.8	1,397.2	3,722.3	1,860.2	33
63220C Surveillance	366.5	546.0	1,386.3	683.5	25
0001 Radar Discrimination Tech	24.1	29.9	74.1	38.9	30
0002 Optical Discrimination Tech	50.5	133.7	198.7	173.8	30
0003 Imaging Radar Tech SRB	6.3	15.3	45.8	19.9	30
0004 Imaging Laser Tech LIDAR	5.6	28.3	127.0	36.8	30
0005 IR Sensors and Data Tech	86.8	57.8	151.4	75.1	30
0006 Booster Surv and Track BSTS	28.3	38.0	131.1	49.4	30
0007 Space Surveil and Track SSTS	35.6	37.0	136.0	48.1	30
0008 Airborne Optical Sys AOS	28.8	117.0	191.6	121.7	4
0009 Terminal Imaging Radar TIR	100.5	6.0	74.6	6.2	4
0010 Space-Based Imaging Demo	0	0	5.8	5.8	
0011 Common Tech and Architecture	0	83.0	250.2	107.8	30
63221C Directed Energy Weapons	322.5	376.3	965.4	446.8	19
0001 Space-Based Laser System	167.0	162.7	371.9	169.2	4
0002 Ground-Based Laser Systems	133.1	178.1	431.5	231.5	30
0003 Space-Based Particle Beam	13.9	32.1	133.4	41.7	30
0004 Nuclear Directed Energy	8.5	3.4	28.6	4.4	30
63222C Kinetic Energy Weapons	195.8	256.0	860.0	305.0	19
0001 Endo Non-Nuclear Kill Tech	111.1	68.7	100.6	89.3	30
0002 Exo NNK Technology	.1	49.1	109.7	63.8	30
0003 System Eng and Analysis	2.4	4.0	11.8	5.2	30
0004 Hyper-Velocity Launcher	6.6	19.1	68.7	24.7	30
0005 Novel Concepts	2.3	9.0	29.5	11.7	30
0006 High-Endo Defense Sys HEDS	36.8	27.6	101.9	28.7	4
0007 Exo RV Intercept Sys ERIS	24.2	12.7	120.7	13.2	4
0008 SLBM Boostphase Engagement	.1	0	0	0	
0009 Space-Based Hyper-V Launch	6.6	3.5	39.3	3.6	4
0010 Space-Based NNK Rocket	5.5	30.0	147.4	31.2	4
0011 Terminal System Demo	.1	32.3	130.1	33.6	4
63225C Hard Point Defense Tech Dev				75.0	
63223C Systems Concepts and BMC3	83.0	99.0	243.3	127.8	30
3001 Battle Management and C3	50.0	46.0	145.0	58.9	30
3002 SDI Systems Architecture	33.0	53.0	98.2	68.9	30
63226C Threat Analysis				20.0	
63224C Support Projects	24	112.0	258.1	192.9	72
0010 System Survivability	9	36.2	72.1	72.1	99
0011 Lethality and Hardening	11.3	63.3	103.5	103.5	63
0012 Space Power and Conversion	2.0	11.0	63.8	14.3	30
0013 Space Logistics	1.0	1.5	18.7	3.0	100
65898C SDIO Management HQ	.5	8.0	9.2	9.2	15

SDI ALTERNATE BUDGET—Continued

[Dollar amounts in millions]

	Fiscal year—				
	1984 appropriation	1985 appropriation	1986 request	1986 alternate budget	Percent over 1985
63311F Advanced Stat Miss Syst		98.0	173.9	196.0	100

UNITED STATES NEEDS TO BE "RIGHT AND STRONG"

Mr. PROXMIRE. Mr. President, on Wednesday, May 8, Israel bestowed posthumous citizenship on the 6 million Jews who died in the Holocaust. In addition, Israel granted honorary citizenship to gentiles who risked their own safety to hide Jews from the Nazis. Prime Minister Shimon Peres declared to those who had gathered to celebrate:

> Today we have our own land, our own sovereignty, our own freedom. We shall never repeat the crime of being right and weak. We want to be right and strong.

Ghetto fighters and partisans of all nations, gathered in Israel for an international symposium on resistance to the Third Reich, cheered Peres' words.

Mr. Peres' statement is especially meaningful to Americans concerned with international human rights. How can or great Nation allow itself to be "right and weak"? The failure to ratify the Genocide Convention Treaty is indeed a crime; it is a crime of omission which negates our claims of moral righteousness. As I have said before, "We cannot do moral battle against genocide with one hand tied behind our back." In order to be both "right and strong" we must utilize every diplomatic tool at our disposal.

What better time to act then this years, on the 40th anniversary of the liberation of Europe from Nazi terror? Just as Reagan remembered the suffering at Bergen-Belsen, so the United States must keep its promise to the victims of death camps to never again allow organized murder. One important way to show our commitment to this promise is to add America's name to the 96 nations that have already signed the treaty our Nation helped draft.

The treaty is far more than a statement owed to past generations. It is a promise to future generations of Jews, Cambodians, Armenians, and Miskito Indians of Nicaragua that the United States of America will do everything in its power to prevent and punish the heinous crime of genocide.

Let us not miss the critical moment of remembrance and seize the opportunity to be strong as well as right, by ratifying the Genocide Convention Treaty.

S. 1148—ELECTRONIC BANKING COMPETITIVE EQUALITY ACT OF 1985

Mr. PROXMIRE. Mr. President, today I am introducing the Electronic Banking Competitive Equality Act. The purpose of the act is to clarify the scope of the McFadden Act vis-a-vis developments in the field of electronic funds transfer so as to facilitate the convenient utilization of ATM's and similar devices by bank customers, while preserving competitive equality between State and national banks and respecting the dual banking system.

The case of IBANYS versus Marine Midland has demonstrated the need for such clarification. At the district court level, a functional test of branching was applied to determine whether an ATM not owned or rented by a national bank was a branch of that bank. The court determined that an ATM performing any of the functions enumerated in the McFadden Act—receipt of deposits, payment of checks, or lending of money—was a branch under Federal law. As a result, the ruling implied that a national bank would be able to utilize ATM's and similar devices to a lesser extent than State banks, in a State which had restrictive branching laws but which exempted ATM's from its branch definition; and that a national bank could not participate in any shared interstate EFT system, since McFadden constitutes an absolute prohibition to interstate branching.

The appeals court reversed, focusing on whether the ATM had been established by the national bank, rather than on the functions performed through the machine. The court held that an ATM or similar device not owned or rented by a national bank was not its branch; and, further, that transaction fees levied for the use of such devices would not be considered rent. As a result of this ruling, State banks could be placed in a position of competitive inequality vis-a-vis national banks as to the intrastate utilization of ATM's owned by third parties. Further, the States would be left powerless to regulate or control interstate deposit taking by national banks through such third-party machines.

Plaintiffs have now sought certiorari from the Supreme Court. Regardless of whether that request is granted, it is clear that congressional intervention is required because, when the McFadden Act is applied to electronic banking equipment, an emphasis on a functional test appears to place national banks at a competitive disadvantage; while an emphasis on proprietary control places State banks at a disadvantage, and undermines the ability of the States to exercise the control over interstate deposit taking which both McFadden and the Douglas amendment seek to delegate.

In the absence of Federal legislation, it would be entirely possible for a group of national banks to establish a shared network of automated teller machines on a nationwide basis totally outside the framework of State law. Thus even though a State may restrict or limit deposit taking by out-of-State institutions, a group of large national banks headquartered in New York or other financial centers could claim immunity on the grounds that national banks are not subject to State ATM laws. According to a recent survey by the Conference of State Bank Supervisors, 23 States have explicit restrictions in their ATM laws on deposit taking by out-of-State banks. Many of the other States rely on other provisions of State law or the McFadden Act to restrict deposit taking by out-of-State banks.

It is true that up to now, national banks have more or less decided to voluntarily comply with State ATM laws, perhaps with the idea of not rocking the boat while these ATM networks are being established and the law was somewhat unclear. However, if the second circuit decision stands on the Midland case, national banks will be in a strong legal position to begin challenging the right of the States to regulate ATM terminals, at least as they apply to national banks. Thus the fundamental principles of the dual banking system are in jeopardy unless Congress updates the McFadden Act in the light of today's financial technology.

My bill seeks to redress the situation in the following manner:

A national bank is permitted to utilize third-party electronic equipment to the same extent as is permitted to State banks in the State in which the equipment is located. Put simply, if a State bank can connect to a particular ATM or similar device, a national bank can too.

This automatic parity between national and State banks does not, however, apply to the deposit-taking function. For that function alone, a national bank may connect to a shared ATM located outside the State in which it is situated only if the law of that State specifically authorizes interstate deposit taking through electronic means.

Transaction fees are exempted from being considered as rent provided that they are levied against all banks utilizing the electronic equipment pursuant to a uniform fee schedule. Also, constructive ownership may not be found provided that the national bank and its parent, and subsidiaries and affiliates thereof, do not control either the equipment, or the shared electronic system connecting banks to the equipment, so as to gain a competitive advantage over other banks. These requirements will assure that shared systems operate in a nondiscriminatory manner, without favoring a particular bank; and that a de facto proprietary EFT/ATM system is not established by a national bank through the legal subterfuge.

Finally, the bill defines shared electronic banking equipment to encompass ATM's, CBCT's, cash dispensers, POS terminals, and any similar devices which facilitate customer access to bank products and services, are accessible by the general public, and which can be utilized by any bank on a nondiscriminatory basis.

This bill is a fair and balanced approach which enhances the establishment and utilization of electronic devices by bank customers by lifting a legal cloud; but which also preserves the values of competitive equality, a dual banking system, and State control over interstate deposit taking, which are all fundamental foundations of our banking statutes.

Mr. President, I ask unanimous consent that a copy of a survey of ATM placement and restrictions on deposit taking conducted by the Conference of State Bank Supervisors be placed in the RECORD, as well as the full text of my bill, following my remarks.

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

SURVEY BY CONFERENCE OF STATE BANK SUPERVISORS

Placement of Automatic Teller Machines (ATMs) by Out-of-State Institutions and ATM Law Restrictions on Acceptance of Deposits in ATMs for Accounts of Out-of State Institutions:

By a March 1985 review of state statutes and by telephone survey of State banking department personnel, 41 responses to the below questions were received:

A. Does state ATM law permit direct placement of ATMs by out-of-state entities?

B. Does the state ATM law limit or restrict deposit-taking by out-of-state institutions?

The results in summary form are as follows:

A. Permit placement of ATMs: Yes, 7;[1] No, 34.

B. Limit or restrict out-of-state deposit-taking: Yes, 23; No, 18.[1]

[1] Includes 5 states that require reciprocity or other specific restrictions on functions.

[2] A "No" response includes states relying on other provision of state law or the McFadden Act, rather than inclusion of such a prohibition in state ATM statute.

	A. Permit placement of ATMs	B. Limit or restrict out-of-State deposit-taking by ATM statute [1]
State:		
Alabama	Yes [2]	No.
Arkansas	No	Yes.
California	No	Yes.
Colorado	No	Yes.
Connecticut	No	Yes.
Delaware	No	No.
Florida	No	Yes.
Georgia	No	Yes.
Hawaii	No	No.
Idaho	No	Yes.
Illinois	No	Yes.
Indiana	No	Yes.
Iowa	No	Yes.
Kansas	No	No.
Kentucky	No	Yes.
Maine	No	Yes.
Maryland	Yes [2]	No.
Massachusetts	Yes [2]	Yes.
Michigan	No	Yes.
Minnesota	No	Yes.
Mississippi	No	No.
Montana	No	Yes.
Nebraska	No	No.
New Hampshire	No	Yes.
New Jersey	No	No.
New York	No	Yes.
North Carolina	No	No.
North Dakota	No	Yes.
Ohio	No	Yes.
Oklahoma	Yes	No.
Oregon	Yes [2]	No.
Rhode Island	No	No.
South Carolina	No	No.
South Dakota	No	No.
Tennessee	No	No.
Texas	No	Yes.
Utah	No	No.
Virginia	No	Yes.
Washington	Yes [2]	Yes.
West Virginia	Yes	No.
Wisconsin	No	No.

[1] A "No" response may merely indicate reliance on other provision of state law or the McFadden Act, rather than inclusion of such a prohibition in state ATM statute.

[2] Require reciprocity or contain other specific restrictions on functions.

Note.—A permit placement of ATMs: yes, 7; no, 34. B. Limit or restrict out-of-State deposit-taking by ATM statute: yes, 23; no, 18.

S. 1148

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Electronic Banking Competitive Equality Act of 1985".

SEC. 2. Section 5155 of the Revised Statutes (12 U.S.C. 36) is amended by adding at the end thereof the following:

"(l)(1) Except as provided in paragraph (2), a national bank may connect to, and permit its customers to use, shared electronic banking equipment which such bank does not own or rent to the same extent as, and subject to the same restrictions, conditions, regulations, rulings, and interpretations, as are imposed upon foreign or domestic State banks by the law of the State in which such electronic banking equipment is located, as enforced by such State's banking regulatory authority.

"(2) A national bank may not receive, accept, or otherwise credit the account of its customers for, any deposit made at or through the medium of shared electronic banking equipment located in a State other than the State in which such bank is situated, unless the statute law of the State in which such equipment is located authorizes such interstate transmission of deposits via shared electronic banking equipment by language specifically and affirmatively to this effect and not merely by implication or recognition.

"(3) For the purposes of this subsection, the term—

"(A) 'own' includes the exercise of constructive control over shared electronic banking equipment, or the transmission network connecting such equipment to banks, by a national bank, its parent holding company, and subsidiaries and affiliates thereof, where such control results in a competitive advantage over other banks;

"(B) 'rent' does not include transactional fees or similar charges assessed for the use of electronic banking equipment, provided that such fees are assessed in accordance with a uniform fee schedule upon all banks which share, or permit their customers to use, such equipment and

"(C) 'shared electronic banking equipment' shall include automated teller ma-

chines, customer bank communication terminals, point-of-sale terminals, cash dispensing equipment, and similar publicly accessible transmission devices facilitating the utilization of bank products and services by customers, provided that such equipment, and the transmission network or networks connecting such equipment to banks, may be utilized by any bank wishing to do so on a nondiscriminatory basis.

"(4) The connection of a national bank to any publicly accessible electronic banking equipment other than shared electronic banking equipment shall constitute the establishment and operation of a branch.".

Mr. PROXMIRE. Mr. President, I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

RECOGNITION OF SENATOR BUMPERS

The PRESIDING OFFICER. Under the previous order, the Senator from Arkansas is recognized for not to exceed 15 minutes.

S. 1149—RATEPAYER PROTECTION ACT OF 1985

Mr. BUMPERS. Mr. President, I am today introducing, along with Senator PRYOR, the "Ratepayer Protection Act of 1985," legislation that has one simple premise: Consumers of electricity should not be forced by the Federal bureaucracy, over the objection of a State public service commission, to suffer a 50-percent rate increase in order to pay for electricity they don't want, don't need and can't use.

Yet, Mr. President, that is what is about to happen as a result of two cases currently before the Federal Energy Regulatory Commission [FERC] involving the construction of the $3.5 billion Grand Gulf Nuclear Powerplant in Mississippi. Although the decision to build the plant was never subject to approval by the Arkansas Public Service Commission, the Louisiana Public Service Commission or New Orleans Public Service Commission, and although none of them want or need the power that will be generated, they may be forced by FERC to pay for up to 75 percent of the power from Grand Gulf.

Mr. President, if this strikes you as tremendously unfair and completely unjust to Arkansas ratepayers, that is because it is. I cannot overemphasize the depth of the feeling of opposition to this in Arkansas. All across the State, thousands of farmers, small businesses, and working men and women struggling just to get by, have been appalled and grossly offended by the news that their rates may go up by as much as 50 percent to pay for electricity they don't need and never agreed to purchase.

Our bill would amend the Federal Power Act to give State regulatory bodies more authority in this and similar situations; and since the Grand Gulf cases could very well become precedent for similar cases in many other States, other Senators will be interested in this legislation. Of course, I still have hope that the full Federal Energy Regulatory Commission will reverse the decisions of the two administrative law judges that have ruled adversely to Arkansas, but if they do not, the consequences will be so harmful to Arkansas that I have no choice but to attempt to reverse FERC legislatively.

The Ratepayer Protection Act of 1985 would restore to the State regulatory commissions the authority to determine whether a State-regulated utility may flow through to its retail customers the rates approved by FERC. Under our bill, the State commission would be granted this authority in cases involving rates arising from electricity purchases between utility companies within a public utility holding company system and only where the State commission had not approved the construction upon which those rates are based.

Arkansas Power and Light Co. [AP&L] is a subsidiary of the Middle South Utilities, Inc., a public utility holding company with three other utility operating companies, Mississippi Power and Light Co. [MP&L], Louisiana Power and Light Co. [LP&L], and New Orleans Public Service, Inc. [NOPSI].

Since the early 1950's, each of these four companies has operated and planned its plant construction in coordination with the others, so that each would enjoy the economic benefits of a larger overall grid. A company with temporary excess capacity sold it at market rates to a fellow subsidiary which temporarily needed power. Each utility built new capacity when its load projections dictated the need. These projections naturally took into consideration the availability of whatever temporary capacity would be available from the other utilities in the system. This situation was dictated only by economics, not by the parent holding company. Each company retained its independence.

In the 1970's, AP&L undertook an ambitious construction program, building two nuclear powerplants and a large coal-burning plant. It has recently completed a second coal-burning plant. These plants produce electricity at rates that are now regarded as low, but which were very expensive at the time. In fact, AP&L's rates rose 200 percent in 10 years. AP&L's customers assumed that heavy burden, conserving wherever they could.

Although AP&L rates are still high by historic standards, they now compare favorably with others throughout the Nation, because the increased rates have already amortized a substantial portion of the recent construction. According to the staff of the Arkansas Public Service Commission, AP&L has capacity sufficient to meet demand for the next decade and a half. Arkansans have paid the price, and they should be facing a bright future.

Instead, the Grand Gulf proceeding threatens to rob Arkansans of this bright energy future and impose instead an era of unacceptably high energy costs.

These cases are the outgrowth of two other, less successful construction programs. The first is Mississippi Power & Light's disastrous attempt to build a 1,250 nuclear powerplant, the largest in the country, at Grand Gulf, MS. This plant was begun in the early 1970's and was initially projected to cost $600 to $700 million. It has only recently received its full power operating license, and the final cost is a staggering $3.5 billion. This would have easily bankrupted MP&L, so its fellow operating subsidiaries rescued it by agreeing to help finance its cost overruns.

AP&L originally agreed to guarantee 17.1 percent of the indebtedness in exchange for receiving power from the plant. However, when AP&L began planning its second coal plant, it was obvious AP&L would not need power from Grand Gulf, so in 1981 it was released from that agreement voluntarily by the other Middle South utility subsidiaries.

The circumstances surrounding this release demonstrate why our legislation is necessary. The release was signed when AP&L was seeking permission from the Arkansas Public Service Commission to build its second large coal-burning plant. The precise connection is subject to dispute, but it is clear that the Arkansas commission began to question the need for the coal plant if AP&L also intended to purchase electricity from the Grand Gulf plant.

AP&L responded that its agreements with its fellow subsidiaries would not require it to take Grand Gulf power if it had sufficient power on its own system. Because the coal plant would assure AP&L of sufficient capacity, it would not be using Grand Gulf power. As further emphasis, the other Middle South subsidiaries released AP&L from its financial obligations for Grand Gulf. The agreement was clear—AP&L would take no power from Grand Gulf and would pay for none. With this very important assurance, the Arkansas Public Service

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Commission approved the second large coal plant.

This careful planning is now threatened, because an administrative law judge of the Federal Energy Regulatory Commission has now decided that AP&L should be required to pay for 36 percent of the Grand Gulf plant, and share the benefit of AP&L's own construction program with the other subsidiaries. It is as if the ant were forced not only to share the benefits of his labor with the grasshopper, but also to pay the grasshopper's debts. This travesty would increase AP&L's rates by 25 percent, and, under current law, the Arkansas PSC would be forced to flow-through this increase to thousands of individuals, many very poor, and thousands more small businesses and farmers who are already struggling just to avoid bankruptcy.

In the second FERC case, intervenors are seeking to apply the same principle to the entire Middle South system. It principally involves reallocation of the costs of AP&L's Waterford Nuclear Powerplant which is the second of the two construction programs that I mentioned. This case would increase AP&L's rates by 50 percent.

Obviously, such increases would be devastating to Arkansas, but the real impact can only be seen by examining its effect upon individuals. I held an invaluable hearing in Little Rock on this subject and the testimony was astonishing. Every sector of the State would be prostrated by a 50-percent rate increase rippling through the economy.

For example, John Amos, the general manager for energy resources of Reynolds Metals, emphasized how essential electricity is in producing aluminum at its Arkansas plants, representing 30 percent of the production cost. A 50-percent rate increase would thus increase total production costs for Reynolds in Arkansas by 15-percent. Few manufacturers are flexible enough to absorb a 15-percent increase, and Reynolds certainly cannot. A 50-percent rate increase would force Reynolds to take its jobs, payroll and tax base elsewhere.

Equally important, Reynolds is AP&L's largest customer, purchasing over $100 million of power annually, which is 25 percent of AP&L's total sales. If Reynolds left, the fixed costs now supported by its purchases would be imposed on existing customers, raising their rates even more. This threat to Reynolds is enormous, but it is small when compared to other Arkansas businesses, large and small, because at least Reynolds has the option of leaving the State. Other Arkansas businesses cannot. They would have to stay and try to absorb these increases. Most of them are not in a position to do that, nor can they increase their prices to pass the cost to their customers.

Certainly, electric-intensive businesses cannot do so. Consider rice producers. Depending on the depth of their irrigation wells, rice farmers allocate 10 to 20 percent of their production costs to irrigation alone. That proportion is far above the 7-percent benchmark that the FERC uses to define an electricity-intensive energy user. A deep well already costs $80 per acre to operate each year, so a 50-percent increase would raise that to $120. Because 400 acres is considered a sound economic unit, that would mean a $16,000 annual increase in operating costs.

There is no way to pass these costs to consumers. Rice farmers operate in a world market. The strong dollar has already eroded the Arkansas farmers' competitive position there. They cannot take another blow like this one.

Moreover, they cannot reduce their purchases of electricity. They must pump water, and the cost of converting to diesel pumps is prohibitive, not to mention the fact that all competing fuels would probably rise in price to match electric rate increases.

In addition, these figures do not consider the secondary costs of processing. Both Riceland Foods, the State's largest cooperative, and Producers' Rice Mill, another large rice mill, testified that 5 to 7 percent of their costs are attributable to electricity. Both of them are already trying to reduce that amount through conservation. For example, Riceland is pioneering a machine to burn its rice hulls to produce power. Both have already shifted their electricity use as much as possible to take advantage of lower, off-peak rates. They continue to look for other methods of conservation, but it is still obvious that they would be devastated by a 50-percent rate increase. The same is true of the smaller rice mills.

Arkansas produces more rice than any other State. If rice farmers and millers are badly damaged, then the State is badly damaged.

The hearing showed that all farmers, large and small, would be badly damaged by a large rate increase. Hays Sullivan, a wise and careful farmer and seed processor, pointed out that, in addition to rice growers, growers of soybeans, wheat and milo would be hurt. Handling costs for these commodities now include 1.27 cents per bushel, so a 50-percent increase would add more than one-half cent per bushel at minimum, and a wet year would require more drying, increasing those costs by 4 to 5 cents per bushel and making them virtually unmarketable on the world market.

Mr. Sullivan went on to discuss the impact upon cotton growers. The cost of electricity for ginning a bale of cotton has increased over 300 percent since 1974, from $2.56 per bale to $10.13 per bale. A 50-percent increase, $5.06 per bale, would alone be 100 percent more than the total ginning cost in 1973, while the price of cotton is virtually the same as it was then.

Nicky Hargrove, the president of the Arkansas Farm Bureau, pointed out how the poultry growers would be hurt. Any operation with 50,000 laying hens would pay nearly $8,000 per year more. These businessmen are in a very competitive market, which permits very narrow margins. A dozen eggs, for example, brings one-half cent in profit. A 50-percent increase in electric rates would virtually eliminate that narrow margin.

Arkansas is by far the biggest broiler producing State in the Nation, and a normal unit is 30,000 chicks.

A broiler grower with 30,000 birds would face a $1,300 per year increase in electricity. It was clear from the hearing testimony that the growers would have to absorb that increase because wholesale purchasers would not. In fact, Gene Newmen, appearing for a large broiler processor, testified that it would have to consider leaving the State, because, of the six electric companies serving his company, AP&L already has the highest rates.

Arkansas produces more broilers than any other State. It is fourth in the production of turkeys and fifth in the production of eggs. Poultry growing and processing provide 65,000 jobs, making that the second largest source of employment in the State.

Arkansas clearly cannot afford to lose that industry, but that is what could happen. Just as with rice growers, poultry growers compete in a world market, sometimes against subsidized competition. With margins of less than 1 cent per pound for each chicken or turkey, they cannot absorb a 50-percent rate increase. Yet, they cannot reduce their use of electricity. They have already insulated their buildings, and they are undertaking whatever other conservation measures that they can. In fact, a new conservation service industry has developed to serve those demands, but it is a case of running as hard as you can just to keep up.

The same is true of the remainder of the agricultural sector, as testimony from cattlemen and milk producers showed at the hearing.

The nonagricultural sectors of Arkansas are already being squeezed. Small manufacturers would be badly hurt, and some would divert work from the State. For example, Orbit Valve, which makes valves for oil equipment, has operations in both Arkansas and England. Since 1980, its cost of electricity has risen from 3.9 percent of total costs to 7 percent. Given the strength of the dollar, the weakness of the pound sterling, and

ever-present Japanese competition, a 50-percent rate increase would certainly compel the company to rely more on its foreign facilities, thus reducing jobs in Little Rock.

The Monark Boat Co. competes for Government contracts—and does so very well—but it would be severely, if not fatally, harmed by a 50-percent rate increase. Last year it faced tough competition, for example losing one sizable contract by 0.4 percent and winning another by 3.9 percent. Since 1980, its electric rates have risen 50 percent. It is electric-intensive, with 7 percent of its costs devoted to electricity, and if there had been a 50-percent increase in rates last year, it would have lost $10 million in sales, half of its annual sales. Also, such an increase would make unprofitable many of its existing, multiyear contracts.

Both Monark and Orbit have invested in labor-saving equipment to boost their productivity, just as Congress intended when it passed the Economic Recovery Tax Act of 1981. A rate increase would completely upset the economies of those careful investments, robbing the companies of the intended benefits.

Another small Arkansas manufacturer, the American Transportation Co., makes buses. It already pays power bills equivalent to its competitors. An increase as low as 17 percent would force it to direct its future growth outside Arkansas.

The list goes on. Consider the Koehler Bakery Co., a family owned business begun in 1919. It has done everything it can do to conserve energy, even planting large flotinas to shade its freezers, but Federal regulations limit its ability to conserve more, because they require certain minimum temperatures. Therefore, it is not likely to reduce its energy costs much below the current high level of 30 to 35 percent of all costs.

The timber industry would be similarly squeezed. In 1982, lumber mills received $198 per thousand board-feet of lumber, but in 1984 they faced more competition from Canada and a recession, so they received only $184. Yet, from 1978 to 1984, electric rates rose 163 percent. A 50-percent rate increase would add another $4 per board-foot to the cost of producing lumber. A moderate size operation, such as Deltic Farms, would have to absorb an annual increase of nearly $500,000. A small operation, such as Charles Shields' one-man proprietorship, might not be able to absorb it at all. With daily sales averaging $4,200, he has an average daily margin of $228. A 50 percent rate increase would reduce that by $40. He is typical of many small mill owners who have already reduced electric costs to the bone, for example, by operating from 2 a.m. until 11 a.m. to take advantage of off-peak rates. They would soon begin to question whether their effort and investment were worth the reduced return.

Other small businesses would face the same question. Stant, Inc., of Pine Bluff, started 4 years ago to make gasoline, radiator, and oil caps. It then had 17 employees and it has grown to 250, but electricity now accounts for 7.1 percent of its overhead. A further rate increase of 50 percent would certainly reduce its operations and its work force.

Consider Donald Munro's Shoe Co. which spent $350,000 in energy-saving equipment between 1980 and 1984, only to see his electric bill go from $432,000 per year to $570,000 per year. He cannot continue to receive such increases and still battle fierce competition. And I don't need to remind Members of this body about the plight of our domestic shoe industry, which has already lost 73 percent of the U.S. market to imports.

Finally, consider Jane Adcox, who started the American Restaurant in Batesville in 1979. She immediately saw the necessity to conserve, so she installed insulation and purchased new, energy-efficient equipment. Yet in 1979 her utility bills were 3.1 percent of her gross, but they are now 6.1 percent, and her volume has not changed that much. If there is a 50-percent rate increase, there will be no room for more Jane Adcoxes in this world of fast-food franchises. In Jane's words, "We'd just have to close."

Mr. President, no one can doubt the magnitude of these electricity rate increases and their immediate effect, but it is even more important to assess the indirect effect as these increases ripple through Arkansas' economy and become magnified. The direct purchasers of the electricity will either pass the new costs on to their customers, absorb them, or cease operating, but none of the alternatives is desirable, as the testimony showed.

For example, Bill Scrimshire is the able mayor of Malvern, a city near a Reynolds' plant. As the owner of a restaurant he knows how dependent Malvern is on Reynolds' success. If Reynolds lays off people, he lays off people. If Reynolds closes, he closes. As a home owner, he knows how expensive a 50-percent rate increase would be to him and to other citizens. As mayor, he is aware of the increased demands made upon the city's budget by Federal water quality standards, and he must recognize the impossibility of meeting them if a 50-percent rate increase hits Reynolds and ripples through the city's economy.

It is clear by this example alone that Arkansas' quality of life would be dramatically harmed.

If AP&L's customers are able to pass along part of the increase to their customers, the results are no better. As James Caplinger, an auto dealer in the small town of England, pointed out, that would merely raise prices throughout town, absorbing disposable income and reducing sales by other retailers.

This effect would be most telling in areas which are heavily dependent upon electricity-intensive industries. State Senator Jim Scott, who represents a district in southern Arkansas, testified that, in five counties, 80 percent is forested. The district has 36 forest industry plants which employ 17 percent of its work force. Most of the rest of the population is indirectly dependent upon the forest industry.

If the plant's workers have to take pay cuts, the effect would be felt throughout five counties.

Another example is Lee County, a rural county that is the 10th poorest in the Nation. Its unemployment ranged from 13.2 to 25 percent in 1984, and 40 percent of the population is on food stamps. If farmers absorb the rate increase, there will be even less money circulating in the county. If they pass it on, food prices will rise, accentuating the rate increases experienced by grocery stores, which operate on narrow margins and use large amounts of electricity.

Increases in food prices would be especially devastating. Cheryl Maxwell, a nutritionist, testified that when faced with new expenses, most families reduce their food purchases. She also pointed out that this change would especially harm low-income families, producing low birthweight babies and various nutritional problems.

Mr. President, the full day of hearings we had on the potential impact of Grand Gulf demonstrated repeatedly that the effects would be devastating and pervasive. We are talking about a commodity, electricity, which has become a necessity, not just to live our lives but to improve them. Each witness brought the value of his or her expertise and experience to the hearing, but perhaps most valuable of all was the simple eloquence of James Duncan who spoke for the Arkansas Cattlemen's Association. He recalled life without electricity and the revolution it produced on farms throughout the county. He remembered how it first meant only a bare light in the kitchen and how they cherished it. He explained how they soon learned to use it as a tool, expanding their efforts, enhancing their strength and multiplying their productivity. All that and more is threatened.

The legislation which we are introducing would simply allow the Arkansas Public Service Commission, as well as other State commissions that are similarly situated, to decide whether rates approved by the FERC should be flowed through to consumers. It would only be allowed to make that decision

for rates based upon construction of generating facilities that it had not approved.

Mr. President, all the illustrations I have used are from the Small Business Committee's hearing in Little Rock, but I promise you there are numerous illustrations, equally dramatic, in Louisiana and other States similarly situated.

This proposal is completely consistent with the original intent of the Federal Power Act. That act was created with the very limited purpose of filling the so-called Attleboro gap, the interstate sales of electricity which were placed beyond State regulatory jurisdiction by the Supreme Court in its 1927 decision in PUC of Rhode Island against Attleboro. The Attleboro decision created a gap in utility regulation which some utilities were able to exploit. Holding companies in particular were able to load their nonoperating costs onto their intrastate utilities, thus increasing those rates. At the same time, they were able to charge whatever the traffic would bear for interstate rates, reaping greater profits because fewer of their costs were associated with those rates.

To close the Attleboro gap Congress passed the Federal Power Act which conferred jurisdiction over interstate sales upon the Federal Power Commission, which is now the FERC. It specifically reserved all other matters to the States, but that reservation has been weakened by subsequent judicial decisions until it is virtually meaningless.

Despite this erosion, the courts have consistently preserved the authority of States to approve or disapprove construction of new facilties. That authority has guaranteed the States a certain minimum authority over a utility's operations, even when it operates in interstate commerce, but even that minimum authority is endangered by the Grand Gulf situation, which could easily be repeated throughout the country.

As I have mentioned, the record shows that before approving AP&L's second large coal plant, the Arkansas Public Service Commission first asked about AP&L's participation in the Grand Gulf plant, over which it had no jurisdiction. It's decision to approve the coal plant was clearly premised upon AP&L's nonparticipation in the Grand Gulf Nuclear Plant. If the FERC forces AP&L to participate in Grand Gulf, it will be undermining the Arkansas commission's decision. More importantly, such a collateral attack by a Federal agency upon a State agency's decision undermines our Federal system, a very troubling result.

My proposal would redress this problem by empowering the State agency to determine the end result of the FERC's order in those circumstances when it has not had the opportunity to consider the initial decision to build electric generating facilities. It would not be a review or potential reversal of a decision issued by the FERC, because FERC's decisions are limited to determining wholesale rates, not the retail rates to be paid by consumers.

This legislation would not interfere with whatever final decision is made by the FERC. It would merely allow the Arkansas Public Service Commission—or the Louisiana Public Service Commission in the Grand Gulf case for that matter—to consider what portion of those rates, if any, should be flowed through to consumers and under what circumstances. The State commission's decision would still be subject to constitutional prohibitions against confiscatory rates, but our bill would allow the State commission the opportunity to make an independent determination whether the utility's costs should be passed on to ratepayers and, if so, to what extent.

It would not produce sudden or unexpected results if the affected utility voluntarily submits the question of plant construction to the affected State commission before irrevocable commitments are made. Consequently, it is a very sensible solution to what could otherwise be a very serious nationwide problem.

In brief, the bill applies whenever there is a transmission or sale of power between associate companies of a public utility holding company system such as Middle South Utilities. In such cases, if FERC sets a rate or charge based in whole or in part on an allocation of electric energy from a generating unit, and a State commission having jurisdiction over the associate company purchasing the power had not approved the construction of the generating unit, then that State commission—or those State commissions—will have the jurisdiction to make a determination, in the words of the bill, "not to take into account all or part of any such federally approved rate or charge in establishing a just and reasonable rate or charge for sales by the associate company."

I want to make clear that within the limits I have described, this bill would give a State commission the authority to determine whether to pass through to retail customers a rate or charge set by the FERC. For example, in the two Grand Gulf cases before the Commission right now, if the Commission were to adopt a rate or charge based in part on a system average cost concept, or other system-wide equalization of cost concept, then a State commission which had not approved the construction of any of the plants on which the application of the system average cost concept was based would have jurisdiction under this bill not to take into account all or part of the federally approved rate or charge. I say this to make clear that, in the context of the two Grand Gulf cases I have mentioned, this bill is not limited just to the Grand Gulf plant that has been completed. The words of the bill make clear that is has much broader application than that.

Mr. President, I commend this bill to my colleagues. My primary motivation for pressing this legislation is to protect 2.3 million Arkansans from a patently unfair ruling that may be handed down by the Federal bureaucracy. But aside from the Grand Gulf cases, this bill makes eminent good sense. States should have more say so in cases like this. This should not simply be a Federal issue, and my bill will restore a more reasonable balance between State and Federal jurisdiction in setting rates involving interstate sales of electricity. I urge my colleagues to give this bill their immediate attention and most serious consideration.

I ask unanimous consent that this bill be printed in the RECORD immediately following my statement.

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

S. 1149

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Ratepayer Protection Act of 1985".

SEC. 2. Subsection (a) of section 206 of the Federal Power Act (16 U.S.C. 824e(a)) is amended by—

(1) inserting "(1)" after "(a)"; and

(2) inserting after paragraph (1) as so designated by this section the following:

"(2)(A) Notwithstanding any other provision of this Act, if—

"(i) a rate or charge fixed or permitted to take effect by the Commission is—

"(I) applicable to the transmission or sale of electric energy subject to the jurisdiction of the Commission by an associate company of a public utility holding company system to any other associate company of such system; and

"(II) based in whole or in part upon an allocation of electric energy or costs of production of electric energy from a generating unit; and

"(ii) the associate company receiving or purchasing the electric energy or being allocated such production costs is subject to the jurisdiction of a State commission which had not approved the construction of such generating unit.

then each such State commission which had not approved the construction shall have jurisdiction to make a determination not to take into account all or part of any such federally approved rate or charge in establishing a just and reasonable rate or charge for sales by the associate company.

"(B) The terms 'holding company system' and 'associate company' as used in this paragraph shall have the meanings provided by section 2 of the Public Utility Holding Company Act of 1935.".

SEC. 3. The amendments made by this Act shall apply to any rate or charge fixed or permitted to take effect pursuant to a final order issued by the Federal Energy Regulatory Commission on or after May 1, 1985.

The PRESIDING OFFICER. Under the previous order, the Senator from Arkansas [Mr. PRYOR] is recognized for not to exceed 15 minutes.

Mr. PRYOR. Mr. President, today I join my colleague from Arkansas, Senator BUMPERS, in introducing a bill that would, in certain limited situations, give the public service commission [PSC] or public utility commission in each State jurisdiction to review electric rates based on the costs of construction of new generating facilities. Under the bill, the jurisdiction of the State regulatory agency would only attach when an associate company of a public utility holding company is involved, and the associate company is subject to regulation by a State commission which had not approved the construction of the new generating facility.

This bill will address a situation currently facing Arkansas ratepayers. They are being asked to pay for a portion of the costs of the construction of a nuclear facility in another State, and Arkansans neither need nor want any of the power produced by the plant. While this bill is designed to deal with this problem, Mr. President, other States could find themselves in similar situations. As I will explain in a moment, the State regulatory process—which protects the ratepayers in that particular State—can be sidestepped, and that is exactly what happened in the State of Arkansas.

Let me briefly explain to my colleagues the situation now facing the ratepayers of the State of Arkansas.

In the early 1970's Middle South Energy, Inc.—a subsidiary of Middle South Utility established solely for the construction of nuclear plants—began construction of two nuclear plants—Grand Gulf I and Grand Gulf II. Middle South Utility is the parent and has four operating companies—Arkansas Power & Light [AP&L], Mississippi Power & Light [MP&L], Louisiana Power & Light [LP&L], and New Orleans Public Service, Inc. [NOPSI].

The two nuclear powerplants were to be constructed in Port Gibson, MS. At the time construction was begun, both plants were estimated to cost $1.2 billion. Today, $3.6 billion has been spent. Grand Gulf I is now completed, although not in full operation, and Grand Gulf II is about one-third complete. Under the original plan, Middle South Energy would sell the energy produced to each of the operating companies. Since the power would be sold across State lines, Mr. President, rates would be determined by the Federal Energy Regulatory Commission [FERC], and not by the State utility regulatory commission.

When the decision was made to construct these two nuclear plants, Mr. President, agreements were made by the Middle South operating companies on how to share in the costs in the event the plants never became operational. AP&L was assigned a relatively small percentage.

If, however, the plants became operational it was assumed that each of the operating companies would pay a floating percentage depending upon the amount of power used. In fact, in 1977 officials of Middle South testified before the Arkansas Public Service Commission and stated that Arkansas ratepayers wouldn't have to share in the costs of the plant if we didn't use any of the power generated. It was then assumed by AP&L, and State authorities, that unless Arkansas energy needs required it, no power or cost allocation would accrue to the citizens of Arkansas. In keeping with this arrangement and later estimates, Middle South Utility in 1981 assigned a fixed percentage of the power from the Grand Gulf units to its four operating companies. Under this agreement, however, AP&L wasn't given any portion since Arkansas didn't need any of the power, but the percentage allocations were made to the other three companies. It's important to keep in mind, Mr. President, that during this time when the parent company, MSU, and its construction subsidiary, MSE, were entering into agreements with the four operating companies on how to allocate costs and power, the utility regulatory commissions had no jurisdiction to review the rates based on these costs.

The fixed allocations—under which AP&L was given a zero share in Grand Gulf—were held invalid by an administrative law judge of the FERC in 1984. His ruling was that AP&L, and ultimately the ratepayers of the State of Arkansas, were responsible for about one-third of the cost of the Grand Gulf unit. This decision, if it finally goes into effect, Mr. President, will have a devastating effect on the entire economy of the State of Arkansas, and it will have gone into effect without the public service commission of the State of Arkansas from ever having passed on the rates to be imposed on the citizens of the State.

Mr. President, late last year my colleague from Arkansas, Mr. BUMPERS, held a hearing in Little Rock, AR, on how this decision would affect businesses and farmers in our State. The overwhelming sentiment of those who testified or submitted statements for the record was that such a precipitous increase in utility costs would have an utterly devastating impact on the total Arkansas economy. The timber industry, cattlemen, milk producers, independent grocers, rice, soybean and cotton farmers, and manufacturers of all sizes testified that their operations would be severely hurt if AP&L is forced to take an allocation of Grand Gulf.

During the last Congress, Senator BUMPERS and I introduced legislation that would have amended the Federal Power Act by prohibiting the FERC's authority to order public utilities to purchase power or share in the construction costs for an generating facfility the title of which is held by some other entity.

The bill we are introducing today, Mr. President, is different in this respect—it does not prohibit the FERC from ordering an associate company of a public utility holding company to purchase power from another associate company. But, it does require that if such a purchase occurs, and if the rates are based in any way on the allocation of costs for a new generating unit, these rates will be subject to the jurisdiction of any State's utility regulatory agency, which has not approved construction of the new generating unit. It seems only fair, Mr. President, that State utility regulatory agencies, who had no say over the decision to construct the facility, should have some authority to review rates that will be imposed on the ratepayers of that State as a result of the costs of construction of the new unit.

This is not an overly complex bill, Mr. President, but it is one that should prevent the circumvention of a regulatory commission established to ensure fair and reasonable utility rates. The Grand Gulf case shows very clearly why this bill is needed. Arkansas ratepayers could be saddled with much higher electric rates based on the costs of the construction of a nuclear facility in another State, without the Arkansas regulators ever having had any authority to review the rates. The bill we are introducing today would give the States some authority in this area, and would restore some balance between State and Federal regulation to this very critical and important area.

I commend my colleague, Mr. BUMPERS, for his efforts, and I urge my colleagues to carefully review this very important measure.

RECOGNITION OF SENATOR DIXON

The PRESIDING OFFICER. Under the previous order, the Senator from Illinois is recognized for not to exceed 15 minutes.

Mr. DIXON. I thank the Chair.

S. 1151—FARM CREDIT RELIEF ACT OF 1985

Mr. DIXON. Mr. President, the first thing I wish to do is to introduce a very novel and I think ingenious response to the credit problem in American agriculture. It is a bill cosponsored by Senator BENNETT JOHNSTON of Louisiana, Senator DAVID PRYOR of Arkansas, Senator JIM SASSER of Tennessee,

Senator DON RIEGLE of Michigan, and myself.

Mr. President, as the Senate knows only too well, American agriculture is in trouble. I will not take time this morning to outline the reasons behind the agricultural crisis; I've spoken on that subject numerous times before.

One of the most troubling aspects of the farm crisis is the explosion of farm debt. Farmers now owe more than $215 billion, and the simple truth is that too-low prices for agricultural products means that it is more and more difficult for farmers to service that debt.

Farm prices are down, and the value of farm land has dropped by as much as a third or even more. Bankruptcies, however, are way up, and unless we are able to provide some desperately needed assistance, the current appalling bankruptcy rate is likely to go much, much higher.

Unless we act, many of our Nation's full-time farmers will be wiped out. The shakiest of these mid-sized farmers owes nearly a third of total farm debt—over $73 billion—an amount that dwarfs the troubled Latin American debt held by the Nation's largest banks.

Farm debt, however, unlike foreign debt, is not held largely by money center banks. It is held by the Nation's more than 4,200 agricultural banks. These banks are small in size, but they are of vital importance to their communities.

While they do not hold the bulk of long-term debt, agricultural banks are a major source of operating loans and other short-term loans. According to the Comptroller of the Currency, banks hold about only $9 billion of the $112 billion in long-term debt, or about 8 percent, but they hold almost 40 percent of the $103 billion in short-term debt, or almost $40 billion. This is a serious problem because while most farmers do have the resources to service their long-term debt, many can no longer also meet their short-term debt obligations.

The farm crisis is therefore having a major effect on agricultural banks. The number of banks on the problem list is at an all-time high, and the number of bank failures is increasing, even though we are in the third year of economic recovery. More than 1,700 banks have more than 50 percent of their portfolios in agricultural loans. They are literally being crushed by the depression in the agricultural economy.

In order to address the terrible problems affecting both farmers and agricultural banks, I am joining my distinguished colleagues, Senators JOHNSTON, PRYOR, RIEGLE, and SASSER in introducing the Farm Credit Relief Act of 1985. This legislation does not pretend to be a complete answer to the farm crisis, but it will provide needed breathing room for both farmers and bankers. It can help farmers to move back toward profitability, and it can help take the pressure off the capital of agricultural banks, allowing the banks to continue to provide needed agricultural financing.

The heart of the legislation is a provision that permits agricultural banks to write down loans from their book value to their fair market value. Banks can do this now, but under current law they must deduct the amount written off from their capital all at once. Even though agricultural banks are well-capitalized, they cannot withstand losses of this magnitude, so banks are forced to foreclose rather than write down loans. This benefits neither the banks nor the farmers.

Under the Farm Credit Relief Act, on the other hand, the amount written down could be amortized over a period of up to 30 years. Banks could renegotiate with the borrowers for repayment of the remaining portion of the loans eligible for this assistance. However, if a farmer defaulted on the remaining portion of the loan or sold his land, the farmer would be responsible for repaying not only the unpaid portion of the remaining loan, but also the portion of the written-down amount that had not yet been amortized. Any loan made to finance agricultural production, including the unguaranteed portion of FmHA or SBA guaranteed loans, made by an eligible bank, is qualified for this favorable amortization treatment.

I know this sounds complicated, but I think an example illustrates the benefits this provides for both farmers and banks. Assume a farmer owes his bank $1.5 million, but that the collateral securing that debt is only worth $600,000. Under this proposal, rather than the farmer defaulting on the loan and losing his farm, the farmer and the bank could renegotiate a new payment schedule and a smaller, written down loan.

The farmer and the bank could agree to write down the loan to $600,000, and create a repayment schedule that the farmer's cash flow could support. The bank would write off the remaining $900,000, over 30 years—$30,000 per year—which is much better for the bank than taking the writeoff all the first year, which is what happens if it has to foreclose on the loan. Further, the bank doesn't have to acquire the property, or manage it, and continues its relationship with the farmer.

If the farmer were to default or sell the land, say 10 years later, then the farmer would owe any unpaid amount on the $600,000 loan plus the amount of the $900,000 that had not yet been amortized. In this case, at the end of 10 years, $300,000 would have been amortized—$30,000 per year times 10 years—leaving $600,000 of the $900,000 that the farmer would have to repay, along with, as I stated before, any unpaid portion of the written-down original loan.

All banks with assets of less than $200 million, and which have at least 25 percent of their assets in agricultural loans would be eligible for this renegotiation and amortization treatment with the approval of the Federal Deposit Insurance Corporation. In addition, the FDIC could permit banks with somewhat less than 25 percent of their portfolios in agricultural loans to take advantage of the benefits of this bill. All eligible banks, in order to remain eligible, would have to agree to maintain a presence in agricultural lending, so that their aggegate level of agricultural loans would not fall below the level of such loans in its portfolio on January 1, 1985.

Additional provisions in the bill would permit eligible banks to:

Make use of regulatory accounting methods, in a manner similar to that used in the thrift industry, and which was specifically approved by Congress in the 1982 Garn-St Germain Act;

Reappraise the bank building and show any increase between fair market value and the book value of the building in the capital accounts of the bank;

Mark to market the value of real estate or other property owned by the bank on January 1, 1985, or acquired within the succeeding 10 years, and charge off any loss over a 30-year period;

Amortize the expenses incurred in operating and managing real property on its books—such as a foreclosed farm—over a 20 year period; and

Mark to market and sell eligible securities in its portfolio and charge off any loss recognized over a 30 year period.

Mr. President, I believe this bill can provide real help to both farmers and banks that need and deserve that help. It is, as I stated earlier, in no sense a complete answer to the problems facing the agricultural economy. It does, however, represent a real step forward. We have provided assistance for the savings and loan industry, and for troubled foreign loans in the past. I think American farmers are at least as deserving of help as Mexico, Argentina, and Brazil.

We are currently facing a real budget crisis. That means the Federal Government does not have the financial resources to directly provide all the financial resources that are needed, and that means that we should pay particular attention to suggestions, such as this one, which provide assistance without direct cost to the Federal Treasury.

The Farm Credit Relief Act can work. It will work. I urge the Senate, therefore, to give this bill its most

careful consideration, and to enact it as quickly as is possible.

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

Mr. President, I ask unanimous consent that a copy of the bill be printed at this point in the RECORD. The bill is in the possession of the Parliamentarian.

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

S. 1151

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farm Credit Relief Act of 1985".

SEC. 2. (a) Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended by adding at the end thereof the following:

"(j)(1) With the consent of the Corporation, which shall not be unreasonably withheld, and upon the recommendation of the appropriate Federal banking agency or a State bank commissioner or on its own motion, the Corporation may by order, regulation, or otherwise authorize one or more of the actions referred to in paragraph (2) to be taken by an agricultural bank. The Corporation may not authorize any such action unless—

"(A) such action will enable the agricultural bank to survive, remain viable, and show a net profit; and

"(B) there is no evidence of fraud or gross mismanagement by the management of the agricultural bank.

"(2) The actions which may be authorized under this subsection are as follows:

"(A) The agricultural bank may file financial reports in accordance with regulatory accounting practices, and use push down or purchase method accounting principles.

"(B) The agricultural bank may reappraise its buildings and other tangible property, real or personal, and any increase between fair market value and the book value of such property may be credited to the capital accounts of the agricultural bank.

"(C) The agricultural bank may renegotiate and reamortize on an amortization schedule not to exceed 30 years qualifed problem loans owned by the agricultural bank as of January 1, 1985, and additional qualified problem loans renewed or made by the agricultural bank after January 1, 1985, but prior to January 1, 1995. In the event a renegotiated loan is prepaid or at the maturity of the renegotiated loan, or in the event of default by the borrower in the repayment of the renegotiated loan, or in the event any collateral securing the renegotiated loan is sold without the prior written consent of the agricultural bank, the borrower, at the option of the bank, shall be obligated to repay the principal balance due on the renegotiated loan, plus accrued interest, plus that portion of the difference between the principal of and accrued interest on the qualified problem loan and the beginning principal balance of the renegotiated loan which has not been charged off by the agricultural bank. The terms of the renegotiation and reamortization of the renegotiated loan, including, by way of illustration only, the rate of interest to be charged, shall be at the sole discretion of the agricultural bank. The agricultural bank may charge off the difference between the principal of and accrued interest on the qualifed problem loan or loans and the beginning principal balance of the renegotiated loan or loans over a 30-year period.

"(D) The agricultural bank may mark to market the value of any real estate or other property, real or personal, owned by the agricultural bank on January 1, 1985, and any additional property subsequently acquired by the agricultural bank prior to January 1, 1985, and charge off any loss recognized over a 30-year period. Market value may be determined by income approach to value, cost approach, comparable sales approach, or such other acceptable method of valuation.

"(E) With respect to the expenses incurred by the agricultural bank related to the ownership of the real estate or other property referred to in subparagraph (D) above, including, by way of illustration only, the payment of real estate taxes, personal property taxes, insurance premiums, and payments to senior lien holders, the agricultural bank may write off such expenses over a 20-year period.

"(F) The agricultural bank may mark to market and sell any securities held in its investment portfolio as of January 1, 1985, and any additional securities subsequently acquired by the agricultural bank prior to January 1, 1995, and charge off any loss recognized over a 30-year period.

"(3) As a condition of eligibility under this subsection, the agricultural bank must agree to maintain in its loan portfolio a percentage of agricultural loans which is not lower than the percentage of such loans in its loan portfolio on January 1, 1985.

"(4) As used in this subsection—

"(A) the term 'agricultural bank' means—

"(i) a bank which is located in an agricultural area whose economy is dependent on agriculture;

"(ii) a bank which has assets of $200,000,000, or less; and

"(iii)(I) a bank which has at least 25 percent or more of its total loans in agricultural loans which were made to finance the acquisition of farm real estate or farm equipment and the production of agricultural products or livestock in the United States; or

"(II) a bank which has fewer than 25 percent of its total loans in agricultural loans but which the appropriate Federal banking agency or State bank commissioner may recommend to the Corporation as eligible, or the Corporation, on its own motion, may deem eligible;

"(B) the term 'qualified problem loan' means a loan made to finance the production of agricultural products or livestock in the United States, a loan secured by farm land or farm machinery, or the uninsured or unguaranteed portion of any Farmers' Home Administration or Small Business Administration loan serviced by the agricultural bank, or such other category of loans as the appropriate Federal banking agency or State bank commissioner may recommend to the Corporation as eligible, or the Corporation, on its own motion, may deem eligible in order to allow the agricultural bank to remain viable.".

(b) Paragraph (1) of section 172(b) of the Internal Revenue Code of 1954 (relating to net operating loss carrybacks and carryovers) is amended—

(1) by adding at the end thereof the following new subparagraph:

"(L) In the case of a financial institution, a net operating loss for any taxable year beginning after December 31, 1984, with respect to any loan or security which is subject to the provisions of section 13(j) of the Federal Deposit Insurance Act, shall be a net operating loss carryover to each of the 30 taxable years following the taxable year of such loss.",

(2) by striking out "and (k)" in subparagraph (A) and inserting in lieu thereof "(K), and (L)"; and

(3) by striking out "and (J)" in subparagraph (B) and inserting in lieu thereof "(J), and (L)".

Mr. DIXON. Mr. President, may I ask unanimous consent that the RECORD on this question be left open throughout this day so that additional cosponsors may join us in respect to this legislation.

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

Mr. DIXON. Mr. President, I thank the Chair.

THE SECOND MIRACLE

Mr. DIXON. Mr. President, now I shall address a problem concerning what took place yesterday in the Armed Services Committee, a matter that the President himself is familiar with as well, particularly in view of the fact that we served together on the Preparedness Subcommittee which he chairs and upon which I am the ranking member.

I congratulate the Department of Defense for making known to us unexpended moneys held by the Department of Defense which can be viewed as "savings" to help us in connection with the serious problems we face as we try to reduce the budgetary deficit, and address questions involving expenditures for the military that some of us think have gotten out of line in the last several years, so I would not want anything I say here to be interpreted as a criticism of the Department of Defense for saving this money. To the extent that they are making available to us unexpended funds I thank them for doing that and encourage them to do it in the future.

But I know that I express the shock generally felt by members of the Armed Services Committee on both sides of the aisle when the Department of Defense appeared before us yesterday and said that they had found over $4 billion. I am advised that at first it was indicated to some on the committee that they had found almost $5 billion in savings.

I thank the Department of Defense for finding the money and I am delighted to have participated, Mr. President, in a real true observation of the second miracle.

The first miracle was 2,000 years ago. None of us had the pleasure of being there at that time. But yesterday in the Armed Services Committee, after the work of the Senate, after the earlier work of the Armed Services Committee which took weeks, after

the labor of the Senate which took weeks, and exhausted the membership, a miracle took place, Mr. President, a miracle.

All along the Department of Defense had the money. Is that not wonderful? Why did we work all those weeks in committee? Why did we mark to zero, 3 and 4 percent growth? Why did we work all those interminable hours here on the floor well into the morning and exhaust our membership when all the time the money was there? All the time the Department of Defense had that money? A miracle, Mr. President.

As the President knows in the Preparedness Subcommittee upon which I serve with him and which he serves this Nation so diligently, as the ranking minority member I asked questions of everyone who came before us, asking them about the savings that might be derived contractually, that could be derived by virtue of the inflationary amounts we permit for fuel for our ships, aircraft, and the military generally.

No one knew, Mr. President. It was confusing. Everyone was evasive.

Then on March 15 I sent a letter to the Honorable Robert W. Helm who was before us yesterday, the Assistant Secretary of Defense, the Comptroller, at the Pentagon. On March 22 he advised me by return letter and answered my questions and I ask unanimous consent, Mr. President, that this exchange of communications be printed in the RECORD at this point.

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

COMMITTEE ON ARMED SERVICES,
Washington, DC, March 15, 1985.

Hon. ROBERT W. HELM,
Assistant Secretary of Defense (Comptroller), The Pentagon, Washington, DC.

DEAR MR. SECRETARY: At a recent hearing of the Preparedness Subcommittee of the Committee on Armed Services, I questioned military witnesses on the extent to which price savings were being achieved in the execution of their FY1985 Stock Fund and Operation and Maintenance programs above the level anticipated in final Congressional Authorization and Appropriation and Appropriation action on the FY1985 Defense budget. The answers of these witnesses suggested that such price savings were in fact occurring in FY1985.

As Congress continues to review the FY1986 Defense budget, it is important that we take advantage of every opportunity to achieve savings based on lower than anticipated inflation or contract prices. Rather than pursue this issue individually with each of the military services, I have posed a series of questions on this matter which are enclosed.

Since our Committee plans to begin marking up the FY1986 Defense Authorization bill shortly, I would appreciate your written response to these questions no later than March 22, 1985.

Thank you for your attention to this matter.

Sincerely,

ALAN J. DIXON,
Ranking Minority Member, Subcommittee on Preparedness.

QUESTIONS FROM SENATOR ALAN J. DIXON

1. Last year during the Conference on the FY1985 Defense Authorization Bill your office informed the Committee that over $1 billion in unanticipated savings due to lower inflation and better contract prices were available in the accounts under the Preparedness Subcommittee's jurisdiction that could be used to meet the Congressional reduction target.

Did Congress remove all of these price savings in the Operation and Maintenance and Stock Fund accounts in the final FY1985 authorization and appropriation bills?

How much in price savings was left in these accounts in FY1985 after final Congressional action last year?

2. Are additional price savings, either through lower inflation, better contract prices, or any other reason, being experienced in the execution of the FY1985 program that were not anticipated either in final Congressional action on the FY1985 Operation and Maintenance or Stock Fund requests, or in the FY1986 budget request submitted to the Congress?

How much is involved in these price savings, and what accounts are affected?

3. What would be the impact of reducing the FY1986 Operation and Maintenance or Stock Fund requests to reflect these more favorable prices in the execution of the FY1985 program?

ASSISTANT SECRETARY OF DEFENSE,
Washington, DC, March 22, 1985.

Hon. ALAN J. DIXON,
Subcommittee on Preparedness, Committee on Armed Services, Washington, DC.

DEAR SENATOR: This responds to your letter dated March 15, 1985 which requested answers to several questions you posed regarding FY 1985 and FY 1986 savings in the O&M and Stock Fund accounts from revised inflation estimates. The answers to your questions are enclosed. I hope this information will be helpful during your deliberations on authorization. If I can be of further assistance, please let me know.

Sincerely,

ROBERT W. HELM,
Assistant Secretary of Defense.

Enclosure.

Question: Last year during the Conference on the FY 1985 Defense Authorization Bill your office informed the Committee that over $1 billion in unanticipated savings due to lower inflation and better contract prices were available in the accounts under the Preparedness Subcommittee's jurisdiction that could be used to meet the congressional reduction target.

Did Congress remove all of these price savings in the Operation and Maintenance and Stock Fund accounts in the final FY 1985 authorization and appropriation bills? How much in price savings was left in these accounts in FY 1985 after final congressional action last year?

Answer: Congress removed a total of $2.6 billion from the Service O&M appropriations for working capital fund inflation and price adjustments and foreign currency rate improvements in the FY 1985 appropriation act. A breakdown of these adjustments is attached hereto.

These reductions covered all of the FY 1985 changes known at the time authorization/appropriations actions were being completed. Subsequent to the close of FY 1984, in part as a result of an OMB change in the inflation indices for FY 1985, additional savings became identified. For the Stock Funds, approximately $150 million in unanticipated FY 1984 savings and $850 million in projected FY 1985 savings, due to lower than anticipated costs and the inflation rate change, were not reflected in the congressional reductions for FY 1985. However, these savings have included in determining the FY 1986 Stock Fund prices for the O&M customers, which reflect an average reduction of 12 percent. This practice of adjusting Stock Fund prices in the budget year for current year cost variances is in keeping with the stabilized rate policy of the department which guarantees customers a set budgeted price that remains unchanged during the year of execution.

Similarly, $260 million for O&M purchases related to the other purchases rate change from 4.8 to 3.9 percent made by OMB in December 1984 was not reflected. This price change has been fully reflected in the FY 1985 column of the FY 1986 President's budget and the FY 1986 budget baseline has also been reduced to reflect these savings.

Question: Are additional price savings either through lower inflation, better contract prices, or any other reason being experienced in the execution of the FY 1985 program that were not anticipated either in final congressional action on the FY 1985 Operation and Maintenance or Stock Fund requests, or in the FY 1986 budget request submitted to the Congress? How much is involved in these price savings, and what accounts are affected?

Answer: For Stock Fund nonfuel and general O&M purchases, experience to date indicates that costs have been essentially as projected. We do not have sufficient cost data at this time to cause us to project a change in the inflation rate affecting such purchases. However, cumulative Stock Fund fuel costs through February are $35.79 per barrel vice the $36.12 price projected. Should this experience hold, a savings of $63 million in the O&M accounts would result. We believe it would be premature to identify this as excess to requirements at the present time since available March data indicates the current rise in spot market prices may eliminate the savings achieved to date.

The O&M accounts have experienced FY 1985 savings so far in overseas purchases resulting from the strength of the dollar in relation to foreign currencies. If the average conversion rates for the year turn out to equal the March 8, 1985 rates, a savings of $120 million in the O&M accounts would accrue.

Question: What would be the impact of reducing the FY 1986 Operation and Maintenance or Stock Fund requests to reflect these more favorable prices in the execution of the FY 1985 program?

Answer: If reductions are made and more favorable prices do not materialize, adverse impacts would occur in the O&M program and/or in the operation of the Stock Funds as a result of inadequate cash balances. As indicated in the previous answers, known savings of $1 billion from FY 1984 and FY 1985 cost changes not considered in the FY 1985 appropriated amounts have already been reflected in reduced FY 1986 Stock Fund prices.

Mr. DIXON. I leave it to the country to read what transpired and to see whether the Department of Defense told this Senator, who was involved in his responsibilities as a member of the Armed Services Committee and as the ranking minority member of the Preparedness Subcommittee, much of anything. In my view, they did not.

Now, Mr. President, all of this again addresses the integrity of the military establishment and the Pentagon and the people in this country who come to us saying how desperately we need these additional funds. The $700 toilet seats, the $7,500 coffee urns and all those things damage that integrity. And then when those people come to us and cry for more money and evade our questions and make defense budgeting an adversary proceeding.

Congress is trying to work with them in the interest of our national defense, and when they do that they again damage their integrity in the eyes of the Nation and I think it should be questioned. Their integrity should be questioned in the eyes of the Nation.

I say why is this an adversary proceeding? Why do we not have the right to know? We are Congress and it is our responsibility to know because we serve the people we represent and yet they do not treat us in that fashion, Mr. President. They treat us as the adversary. They treat us as the enemy. The enemy is overseas, Mr. President, not here in the Senate.

Now, they have had their day and they have won, but let me say that what they have done is contrary to the best interests of this country and I want to say this so the Nation knows.

They come to us and they say that we have damaged them by the cuts that have been made. Let me put the facts on the record.

The Pentagon requested in missiles and torpedoes, let the record show, 120,130 missiles and torpedoes requested. And with zero growth, what have they received? Why they have received—maybe this is the third miracle—120,280. They ended up getting 150 missiles more than they even asked for.

Mr. President, in every single line item concerning the military obligations of this great Nation of ours, I am here to state on the record so there can never be any doubt about it, and I ask that those who would take issue with me to come here and argue against what I say, they have done perfectly. Combat aircraft, Mr. President—the Department of Defense requested 807 combat aircraft and after we met and we labored in the committees and after we worked to reduce spending to zero real growth, and after we fought on the floor for 2 weeks late into the nights to get zero real growth, instead of 807 they are going to get 804. I do not know how they will live with it but they must. Instead of 807 they will unfortunately receive only 804.

And so I am here to say what a member of the Department of Defense said—and one of my friends witnessed it being said, and I assert on this floor that it is true—that at zero growth they have gotten what they sought at 3 percent growth. They have gotten the 3 percent requests because they found that $4 billion.

And so I want to say this in conclusion, Mr. President, because I realize that time is short and that we are going on to other business, I intend to introduce legislation, Mr. President, that requires in the future the Department of Defense must come to the Armed Services Committees of the Senate and the House and be forthright and honest and revealing and above board and show us every month exactly what the account is in their savings under inflationary experience, under contractual relationships, under lapsed contracts, and other things so that we can truly know what the situation is when we try to mark up a defense authorization bill in the future.

In all my time in government, which spans over three decades, Mr. President, I have never in my lifetime seen a more contrived, artful, deliberate, planned attempt to use the Congress—to use it—to let us seem to work our will and when our laborious work was done, to win in one fell swoop, with one move of the pencil, every battle fought. It is a dark day for truth in government, a sad one for the country, and one that ought not be permitted to again take place in future sessions of the Congress.

Mr. President, I ask unanimous consent to have printed in the RECORD four pages of figures indicating the requests of the Department of Defense and the amounts allowed on missiles, torpedoes, aircraft, shims, and other things at the zero growth rate.

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

COMPARISON OF RECOMMENDATIONS AT 3 PERCENT AND 0 PERCENT BUDGET LEVELS VERSUS THE BUDGET REQUEST

	Fiscal year 1986			
	Request	3 percent	0 percent	3 to 0 percent
Aircraft:				
EH-60	18	18	18	0
AH-64	144	144	144	0
UH-60	78	78	78	0
A-6E	6	6	6	0
EA-6B	12	12	12	0
AV-8B	46	43	43	0
F-14	18	15	15	0
F/A-18	84	84	84	0
CH-53	14	14	14	0
AH-1T	22	22	22	0
SH-60	18	24	24	0
P-3C	9	9	9	0
E-2	6	6	6	0
SH-2F	6	6	0	−6
C-2	8	8	8	0
E-6	2	2	2	0
B-1B	48	48	48	0
F-15	48	48	48	0

COMPARISON OF RECOMMENDATIONS AT 3 PERCENT AND 0 PERCENT BUDGET LEVELS VERSUS THE BUDGET REQUEST—Continued

	Fiscal year 1986			
	Request	3 percent	0 percent	3 to 0 percent
F-16	180	180	180	0
KC-10	12	12	12	0
MC-130	1	1	1	0
C-5B	16	16	16	0
C-130	0	8	8	0
HH-60	3	3	0	−3
TR-1	8	8	6	−2
Trainers/administrative:				
UC-12B	12	0	0	0
VH-60	9	9	9	0
T-34	38	0	0	0
F-16 (adversary)	12	12	12	0
C-20	8	8	8	0
T-46	33	33	33	0
Total aircraft	919	877	866	−11
Total combat aircraft (net trainers/admin.)	807	815	804	−11
Missiles/torpedoes:				
Chaparral	300	300	300	0
Patriot	585	585	585	0
Stinger	3,439	3,439	3,439	0
Hellfire:				
Army	6,576	6,576	6,576	0
Navy	1,304	1,304	1,304	0
TOW II	20,100	20,100	20,100	0
MLRS	72,000	72,000	72,000	0
Tomahawk	249	249	249	0
Sparrow:				
Navy	1,872	1,872	1,872	0
Air Force	425	425	425	0
Sidewinder:				
Navy	1,220	1,220	1,220	0
Air Force	800	800	800	0
Phoenix	265	265	265	0
Harpoon:				
Navy	395	395	395	0
Air Force				
HARM:				
Navy	904	904	904	0
Air Force	1,715	1,715	1,715	0
SM 1 MR				
SM 2 MR	846	846	846	0
SM 2 ER	470	470	470	0
RAM	117	117	117	0
Sidearm	168	168	168	0
Laser Maverick	1,500	1,500	1,500	0
IIR Maverick:				
Navy	195	195	195	0
Air Force	3,500	3,500	3,500	0
AGM-130	97	97	97	0
AMRAAM	90	90	90	0
GLCM	95	95	95	0
MK 48 Torpedo	123	123	123	0
MK 46 Torpedo	500	500	500	0
Captor Mine	0	150	150	0
MK 67 Mobile Mine	280	280	280	0
Total missiles/torpedoes	120,130	120,280	120,280	0
Shipbuilding/conversions:				
Trident	1	1	1	0
SSN-688	4	4	4	0
CV SLEP				
CG-47	3	3	3	0
DDG-51				
LSD-41	2	2	2	0
LHD-1	1	1	1	0
MCM	4	2	2	0
MSH	4	4	4	0
TAO	2	2	2	0
TAGOS	2	2	2	0
AG Sound Barge	1	1	1	0
TAGS surveying ships:				
LCAC	12	12	12	0
Conversions				
TACS	3	3	3	0
TAVB	1	1	1	0
Total shipbuilding and conversions	40	38	38	0
Weapons, tracked combat vehicles:				
M577 CP Carrier	115	115	115	0
M113 APC	325	325	325	0
Bradley FVS	716	716	716	0
M109 Howitzer	0	0	0	0
Field Arty Supt Veh	197	197	0	−197
M88 Recov Veh	240	240	240	0
M1 Tank	840	840	840	0
DIVAD	117	37	37	0

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. EVANS). Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 11:30 a.m. with statements therein limited to 5 minutes each.

1140—AMENDMENTS TO THE PETROLEUM MARKETING PRACTICES ACT

Mr. DECONCINI. I am pleased to join as a cosponsor and strong supporter of this bill making amendments to the Petroleum Marketing Practices Act. The original act, enacted 6 years ago, was designed to enhance fair and open competition in the oil marketing industry by preventing unreasonable termination of marketers' franchise agreements with their suppliers. Experience has shown that more legislative action is needed if the original goals are to be met.

Independent distributors and retailers of motor fuel occupy a key position in the competitive structure of the petroleum industry. There are approximately 135,000 retail service station dealers in the United States; they supply the Nation with 75 percent of its motor fuel needs. However, over the past several years, their numbers have declined drastically. It is the opinion of many observers of this industry that predatory marketing practices by large refiners has been the prime cause for this decline.

The bill introduced today will hopefully stop this trend by adding a number of safeguards to the rights of independent retail dealers. Among these rights guaranteed by the bill are: Prohibition against franchisors from engaging in anticompetitive pricing practices in instances where they are in competition with their own franchisees; changes in renewal of the franchise agreement must be fair and reasonable; arbitrary conversions of full-service stations to pumper stations is prohibited; gives franchisees a right of first refusal to purchase their stations; and prohibits franchisors from discriminating in price and allocation policies between its classes of franchisees.

Experience in several States such as Maryland, Delaware, and Washington, DC show that competition at the retail level is intensified by preserving independent competition. It is no coincidence that recent studies have shown these three entities also have lowest prices on self-service unleaded regular on the east coast and are among the lowest in the country.

This bill is not protectionist; it is proconsumer. It does not set up a new regulatory bureaucracy for enforcement. Its purpose is to guarantee healthy and vigorous competition among retailers, distributors, and refiners in the petroleum industry. This bill has been the subject of several days of hearings before the Judiciary Committee in previous Congresses and I hope that its processing can be expedited this year. We have as complete a record as we'll ever get; the time to act is now.

AAB ADMINISTRATOR HONORED

Mr. EAGLETON. Mr. President, later this month the American Association of Bioanalysts, headquartered in St. Louis, will present its highest award to long-time AAB Administrator David Birenbaum. Mr. Birenbaum, AAB Administrator since 1965, will receive the fourth Lucien Dean Hertert Memorial Award on May 24 during the 1985 Educational Conference and Annual Meeting of AAB.

The Lucien Dean Hertert Memorial Award was established in 1980 at the Silver Anniversary of the founding of the American Association of Bioanalysts [AAB]. The award is given, at the discretion of the AAB Board of Directors, to an individual who exemplifies the dedication, loyalty, and service that Lucien Hertert, a founding member of AAB and its first Executive Secretary from 1951 to 1962, gave to the profession of Bioanalysis.

Certainly Mr. Birenbaum is a most worthy recipient of this honor. Mr. Birenbaum directed AAB through the initial phase of Medicare reimbursement and was instrumental in establishing the community laboratory as an integral part of the health care network. He led the AAB in developing both proficiency testing for laboratories and proficiency exams as an alternate route of advancement for laboratory professionals.

In addition to his work with the AAB, Mr. Birenbaum has also served as chairman of the National Council for Health Laboratory Services; chairman of the Task Force on Role Delineation for the American Society for Allied Health Professions; Founding Board Member of PRIDE, a St. Louis Labor/Management Construction Industry organization; and as trustee of several union health and welfare, and pension funds.

I am pleased to join Mr. Birenbaum's many friends and colleagues in congratulating him on receiving this honor.

DOMESTIC SUGAR INDUSTRY

Mr. INOUYE. Mr. President, it is my privilege today to make the third in an ongoing series of statements on behalf of our domestic sugar industry. In past remarks, I have emphasized the disastrous economic consequences that would result from doing away with the current sugar program; I have also analyzed why the world sugar market and certain trade practices by our allies compel us to protect American farmers from unfair foreign competition, and how the sugar program benefits countries who export to the United States under the current quota system.

Today, I would like to highlight one of the direct benefits of the sugar program: the revenue it has generated for the Treasury over the last 3 years.

I have often made the point that the sugar price support program operates at no cost to the American taxpayer. The Hawaiian Sugar Planters Association, in its Sugar News of May 8, 1985, points out that in fact, the Federal Government has earned $355.2 million from the sugar provisions of the Agriculture and Food Act of 1981 since its enactment; $350.3 million of these revenues came from duties and fees imposed on imported sugar, while $4.9 million represents income from interest earned that exceeded the cost of the Government's loans to sugar producers. No sugar has been forfeited to the Commodity Credit Corporation, and all of the bills currently before the Senate Agriculture Committee contain sugar titles that assume no net cost to the Government over the life of the next farm bill.

Mr. President, the Senate Agriculture Committee is currently marking up legislation that will carry this Nation's agricultural sector and food programs into the 1990's. At this very moment, the people of Hawaii are celebrating the 150th anniversary of our State's sugar industry. As part of this celebration, the First Hawaiian Bank has published an article entitled "150 Years of Sugar in Hawaii." This article points out that while Federal deficits are a critical national problem, they should not be used as an excuse for cutting all agricultural programs—certainly not those such as sugar that have benefited our economy, reduced our trade deficit, and operated at no cost to the American taxpayer. The First Hawaiian Bank suggests that it is crucial for our Nation to retain a domestic sugar industry, and I concur. To this end, I have introduced legislation, S. 884, to increase the sugar loan rate by 2 cents a pound over the next 4 years—a rate that does not even match inflation.

As our colleagues on the Agriculture Committee deliberate over the next farm bill, I would hope that every Senator has the opportunity to read the First Hawaiian Bank's analysis of the sugar program and the need to include an adequate loan rate in the next farm bill. Mr. President, I ask unanimous consent that the full text of the First Hawaiian Bank's Economic Indicators article for March/April 1985, entitled "150 Years of Sugar in Hawaii," be printed in the RECORD.

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

150 YEARS OF SUGAR IN HAWAII

As we recognize the 150th sesquicentennial anniversary of the sugar industry in Hawaii, the industry is facing the greatest threat to its existence in its history. If the proposed modifications to the U.S. Agriculture and Food Act of 1981 (the Farm Act) are enacted by the U.S. Congress, the Hawaiian sugar industry could be devastated.

According to the Department of Planning and Economic Development, total sugar-related employment comes to around 19,200 jobs or 4 percent of all jobs in the state. However, on the Neighbor Island, sugar-related employment accounts for 29 percent of jobs on Kauai, 17 percent on Hawaii, and 13 percent on Maui, compared to 1 percent on Oahu. Likewise, income from sugar in 1982 came to 21 percent of total income on Kauai, 13 percent on Hawaii, 12 percent on Maui, compared to 1 percent on Oahu. Sugar occupies 188,395 acres or 71 percent of all the agricultural land in Hawaii, accounting for 97 percent of all cultivated lands on Kauai, 75 percent on Hawaii, 65 percent on Oahu, and 57 percent on Maui. Sugar also contributes around 10 percent of total state tax revenues. Loss of the industry to Hawaii would be an economic disaster of unprecedented magnitude.

The Hawaii sugar industry is not protected by Title IX of the Farm Act. The provisions include a sugar loan fund where a producer unable to sell his crop is eligible for a loan using his crop as collateral. The loan rate is based on an estimated average cost of production, and was set at 17.75 cents per pound in 1984. Congress also specified that the government should avoid accumulating stocks of sugar by establishing a Market Stabilization Price (MSP). The MSP estimates the actual price that producers must receive to sell their crop, and is composed of the loan rate plus transportation costs, interest, and a producers incentive margin. The MSP is currently at 21.57 cents a pound, 3.82 cents a pound over the loan rate of 17.75 cents a pound. To assure that the actual market price of sugar reflects the MSP, and producers sell their crops, a system of country-by-country import quotas controls the supply and, ultimately, the price of sugar in the U.S. That is possible because about a third of the sugar consumed in the United States is imported.

The need for such a system reflects the realities of the world sugar market. At present, over 40 countries around the world produce around 100 million tons of sugar. Surplus sugar not domestically consumed or traded, roughly 20 million tons a year, is dumped on the so-called "world market." Prices in this market bear no relation to production costs, and fluctuate according to available supply. In 1980, the price was 40 cents a pound. In 1984 it fell to less than 4 cents a pound. Thus, the current price-support system protects our sugar industry from the volatile world surplus market, while maintaining stable prices to insure a steady supply of domestically produced sugar.

The proposed changes in the Farm Bill would cut the loan rate for sugar to 12 cents a pound. Sugar import quotas would be terminated, thereby allowing the domestic market price to fall to world levels. In expectation of industry losses as a result of falling prices, a contingency program of direct payments would subsidize producers based on the difference between the market price and a predetermined target price set to decline to 12 cents in 1990. The payments, however, would be meaningless to Hawaii's large corporate growers because of a limitation of $10,000 per operator set for 1988.

Proponents of the changes argue that easing import restrictions would reduce the domestic price of sugar, and cut back federal dollars needed to support the industry. However, under the proposed changes neither market prices, target prices, or loan rates will bear any relation to the costs of production. Producers may not be able to either sell or borrow, and will ultimately be forced to accept government payments. Opening the American market, which is roughly 9 million tons annually, to foreign sugar would eliminate any surplus and erase any price advantage the world price seemed to offer. Erratic price fluctuations would eventually drive American producers out of business, creating a total dependency on an unreliable supply of imported foreign sugar. The result would be lost jobs, increasing welfare costs, and an increase in the balance-of-trade deficit by an estimated $2 billion a year.

The Farm Act has cost nothing because whatever support the program extends is in loans. Domestic producers borrowed $650 million on 1,312,500 tons of sugar in the 1983/84 sugar season. But, all loans were repaid at market interest rates, and the government did not accumulate any forfeited sugar.

True, federal deficits demand a serious examination of government expenditures. But, eliminating programs that have been costless for economic benefits which are illusory, while at the same time destroying a major portion of Hawaii's economy, is no solution to the problem.

Our responsibilities as a community are clear in supporting the work of our leadership to defeat the changes to the Farm Bill. Hawaii needs the existing support system. Recent developments in Congress appear encouraging. But, let it not be said in retrospect that 1985, the 150th anniversary of sugar's birth in Hawaii, was the year of sugar's demise as an industry.

A TRIBUTE TO BOB ATWOOD

Mr. MURKOWSKI. Mr. President, a very special individual is being honored in Alaska this week for his invaluable contributions to the great State of Alaska.

For five decades, Robert A. Atwood has served Alaska as its premier journalist, editor and newspaper publisher. Over these 50 years, he and his newspaper, The Anchorage Times, have led the way toward development and maturity in the last frontier.

There are few people who remain dedicated to one profession for such a long time. As a young reporter way back in 1935, Bob Atwood began writing about Alaska and about its untapped potential.

Little by little, he encouraged Alaskans to strive to make themselves and the State the best both could possibly become.

Perhaps his most enduring accomplishment came in 1959 when Alaska became the 49th star added to our flag. Bob Atwood took the lead in rallying Alaskans to statehood, and he was a key fighter in that long uphill struggle, giving national support for the Alaska effort. Hundreds of editorials were written by Bob, outlining the advantage of statehood for territorial residents and for our Nation.

Bob took many long trips back then to Washington, DC, to help the cause of statehood through the administration and Congress, garnering interest and support of newspapers along the way. The paper touted Alaska's cause in its quest for full membership in the Union. Bob finally saw his dream become a reality just 25 years ago last year, when Alaskans filled their streets in celebration of their statehood.

Today, at the age of 78, Bob Atwood continues his work as president and publisher of The Anchorage Times and shows no sign of slowing down. Frankly, those of us who have enjoyed the privilege of his friendship would be surprised indeed if he did.

It is for the quality of his work over the past half century, and not merely his longevity, that the Allied Daily Newspapers are honoring Robert Atwood this week. I, too, would like to take this opportunity to recognize the accomplishments of Robert Atwood—accomplishments of which all Alaskans are the grateful chief beneficiaries.

I'm sure Evangeline Atwood, Bob's lovely wife and Alaskan historian, feels extremely proud of her husband and honored for the recognition that he is receiving this week. I know that Evangeline, along with their daughters Elaine and Marilyn, who are also in the newspaper business, are all the more wiser for their close relationship with Bob Atwood. And I know that many Alaskans across the State feel the same way.

I would like to congratulate Bob Atwood and offer my best wishes for many more years of public service.

Mr. STEVENS. Mr. President, Alaskans and journalists across the Nation this week are honoring Robert B. Atwood, publisher of The Anchorage Times, for 50 continuous years on a major U.S. newspaper.

As a young reporter, a product of the great Midwest, educated in New England, Bob Atwood came to Alaska more than 50 years ago. His bride, Evangeline, was the daughter of Alaska pioneers, so it's possible Bob's first reason to come to the great land was to see for himself the beauty and the vast grandeur of the territory, then only an exotic land to most U.S. residents.

But it didn't take long for the young newspaperman to see that Alaska was on the move, and a newspaper in its largest city could be a significant factor in chronicling history as it was being made.

What he also found out, and what Alaskans have learned, is that a newspaper can also be a significant force in shaping the destiny of a land and its people.

Today there is no question that Bob Atwood, an Alaska pioneer in his own right, has made contributions beyond measure toward the settlement, development, and growth of my home, Alaska.

Without his untiring efforts, Alaska might not have added the 49th star to our flag. He was a leader of the long battle for statehood. In literally hundreds of editorials he outlined the advantages of statehood for territorial residents and for our Nation.

Early on, Bob Atwood saw that development of Alaska's vast natural resources was the key to economic growth and development. With a far-seeing group he was responsible for the exploration for oil on the Kenai Peninsula, not far from Anchorage. That successful effort led to interest from major corporations, and ultimately, to the exploration and discovery of oil at Prudhoe Bay. Today, the Alaska pipeline carries 1.7 million barrels of crude oil daily, providing for almost 20 percent of the Nation's crude oil production.

Bob Atwood has long been a strong supporter of the presence of military forces in Alaska. His understanding of Alaska's strategic military position in the Nation's safety has been one factor in assuring the protection of all our citizens through the placement of Army, Navy, and Air Force installations not far from the shores of the U.S.S.R.

Appreciating Alaska's natural beauty, from its 3 million lakes to the highest mountain in North America, Bob Atwood has been one of those who helped make the State a mecca for travelers, for tourists to see that it indeed could be an air crossroads of the world. Planes from every continent fly Alaska's skies, and carriers from every corner of the Earth stop over in Alaska today. Only a few years ago the brave Alaska bush pilots were the only fast link to Alaska's remote areas, and long steamship voyages were the only link to the world outside the region.

Bob Atwood, in a half-century of 10-hour days, 6 days a week on The Anchorage Times, has never forgotten that he is first and always a newspaperman. Through the Atwood chair he has endowed at the University of Alaska, great journalists have come to the Great Land. They shared their talents and their viewpoints with the citizens of the State as well as the students at the university.

Through 50 years, literally hundreds of young newspapermen and newspaperwomen have received their first professional boost on The Anchorage Times. They have gone on to become fine and respected journalists on newspapers and publications across the Nation.

Bob Atwood's untiring efforts on behalf of Alaska have made a mark that historians will note as long as histories are written. His love and concern for Alaska, my home and his, have taken him into some long battles and some uncharted seas. He has fought for his convictions, mapped his way through often turbulent waters and watched Alaska grow from an almost forgotten stepchild to a State important to the well-being of all our Nation.

Today we salute Bob Atwood for his efforts and his concern through 50 short and productive years behind the publisher's desk at The Anchorage Times. As journalists from across the United States gather in Anchorage to applaud his half-century of reporting and editing the news for Alaskans, we add our thanks for a reporter, a publisher, an editor, and a great Alaskan.

For his wife, Evangeline, a historian and Alaskan of great note, and his daughters Elaine and Marilyn, newspaperwomen like their dad, we send our congratulations for having the good fortune to have worked at the side of Bob Atwood, a consummate journalist and a consummate Alaskan.

ORPHAN DRUG AMENDMENTS OF 1985

Mr. HATCH. Mr. President, I ask for immediate consideration of my bill, S. 1147, the Orphan Drug Amendments of 1985, and urge my colleagues to immediately adopt this legislation. I am delighted that 26 Senators—over one-quarter of the Senate—are now sponsors of this important legislation to amend the Orphan Drug Act. The significance of this bill, and the strong support of the Senate for research in orphan diseases and research and development of orphan drugs, are illustrated well by the fact that 15 members of the Labor and Human Resources Committee are cosponsoring this legislation.

I want to recognize in particular the cosponsorship of Senator KENNEDY, the ranking minority member of the Labor and Resources Committee, and the cosponsorship of Senator KASSEBAUM, a long-time champion of this cause. It was Senator KASSEBAUM who introduced the early orphan drug legislation in the 97th Congress, and I am proud that she has joined me in sponsoring this bill as well.

Mr. President, reauthorization of the program to provide grants and contracts for the development of orphan drugs sends a clear signal that Congress encourages such activity and recognizes a winner.

The Orphan Drug Act provides several incentives for sponsors of orphan drugs. These incentives have worked. The act has worked. Since 1983, 55 drugs have been designated "orphan drugs" by the Food and Drug Administration. This is truly remarkable progress for the many Americans who are affected by any of a large number of rare diseases. Increasingly, pharmaceutical companies are agreeing to sponsor orphan drugs—to do the testing required to get these drugs to market so that they will be available to the patients whose lives will be markedly improved by them.

You may be as surprised as I was to learn that there are several thousand orphan diseases, which together afflict several million Americans. Some of these diseases are familiar to us because we have read about a well-known individual who suffers from a rare disease or we have seen a television show or a play about one of these diseases. This is the case, for example, for Amyotrophic Lateral Sclerosis, Lou Gehrig's Disease, against which our distinguished former colleague, Senator Jacob Javits, continues his valiant struggle; for Tourette Syndrome, which was featured a few years ago on the TV show "Quincy," for neurofibromatosis, the affliction recently discussed on the TV show "St. Elsewhere;" and for Huntington's Disease, which afflicted the folksinger Woody Guthrie. For each of these diseases there are hundreds more that virtually no one has heard of. We cannot imagine what it would be like to have something wrong that no one knows about and, worse yet, that no one seems to care about.

The Orphans Drug Act was an enormous positive signal to victims of orphan diseases and their families. Its enactment was a great victory and the only hopeful event in many of their lives. The fact that the Government would be able to support research and development of orphan drugs, and the fact that the pharmaceutical industry would be willing to participate in developing orphan drugs, seeking FDA approval, and marketing those drugs, even though there was no opportunity for profit, were landmark signs of commitment and caring.

The authority for the grant and contract program established in the Orphan Drug Act expires at the end of fiscal year 1985. This bill reauthorizes that program for 3 more years, at $4 million per year. This is the same as the authority in current law. In addition, the bill extends the grant and contract authority by authorizing the award of funds for both preclinical and human clinical testing of orphan drugs. This provision will mean that some of the very costly drug testing, that must be completed before human tests are begun, could be supported under a grant or contract awarded with this authority. I believe this will serve as an additional incentive and

encouragement for the development of orphan drugs.

Another small change in current law made by this bill is the removal of the stipulation that in order to receive the designation as an orphan drug, a drug must be one for which a Letter of Patent may not be issued. This stipulation has caused some administrative difficulty because it is not clear as to the type of patent referred to.

There has been some discussion over the last 6 months about inclusion of "medical devices" in the Orphan Drug Act. I know I speak for my colleagues when I say that the Senate is receptive to consideration of this issue. However, my discussions with FDA and with the orphan disease groups make clear that the concepts involved are complex and that all involved parties agree that we should not delay this legislation while the issue is discussed further.

This bill establishes a National Commission on Orphan Diseases to assess both Government and private sector activities related to research in rare diseases, including research into the cause and prevention as well as the treatment of those diseases. The Commission is required to submit a report to the Congress in 2 years and will terminate 90 days after the submission of the report. I believe there is a need for the kind of evaluation envisioned by this Commission, and that the results of this evaluation can provide useful guidance in planning future research in this important area.

Finally, the bill contains a provision that will correct a drafting error in the fiscal year 1985 appropriations language for the Department of Education. This provision will require no additional funds. It will simply allow already appropriated funds to be expended on June 1, instead of on July 1, 1985. If this seemingly minor error is not corrected, there will be over 700 training programs for teachers of handicapped children that will be delayed and disrupted.

The House Energy and Commerce Committee has ordered reported a bill almost identical to the one we are considering now. This is due in large measure, as was passage of the act in the 97th Congress, to the dedicated efforts in the House of the distinguished chairman and ranking minority member of the House Subcommittee on Health and the Environment, Representative WAXMAN and Representative MADIGAN. My hat is off to them. I am confident that speedy passage of this bill in the Senate will result in its speedy enactment, as I am sure that our House colleagues will be able to quickly agree with us on the final language. There are no substantive differences in our provisions or in our priorities related to orphan drugs.

In closing, Mr. President, let me again express my appreciation to Senators who joined me in sponsoring this important bill. I look forward to its expeditious passage.

AFGHANISTAN REPORT

Mr. BYRD. Mr. President, the West Virginia Intelligencer of April 24, 1985, includes an editorial entitled "Afghanistan." It comments upon my efforts to keep this issue before the American public, and it reports on the atrocities committed by Soviet troops in that brave, sad country.

I continue to share my concern for the freedom-loving people of Afghanistan with my colleagues in the Senate and with the American people because we have a responsibility to the people of Afghanistan to keep their brave struggle on the stage of world opinion. The Soviet occupation army has done its best to stifle news about its brutality. The Soviets pursue an "out of sight, out of mind" philosophy in Afghanistan. But free people everywhere have a duty to hold the situation in Afghanistan up to the light of world opinion. When we examine events in that country, we are much better equipped to understand the hateful nature of Soviet occupation, and what Soviet subjugation means.

For this reason, I will continue to offer reports and worthwhile articles that describe the struggle of the Afghan people in the face of the cruel repression of their Soviet captors. And I will continue to support appropriate assistance for the Afghan people in their struggle against this lawless occupation.

I ask unanimous consent that the article from the Intelligencer be inserted in the RECORD at the close of my remarks.

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

AFGHANISTAN

Sen. Robert Byrd of West Virginia recently warned his colleagues against letting Afghanistan degenerate into, "just another occassional continuing feature on the evening news." The Democrat leader is doing his best not to let Afghanistan become a victim of world apathy and historical amnesia through attempting to bring to national attention the terrible consequences of Soviet occupation of that land.

One of these, Byrd noted, happened in March of this year when death in a Red Army uniform came to the little village of Chinar in southern Afghanistan. At 8 a.m. on March 17, according to an escaped refugee, Soviet troops attacked the villiage "killing every living thing" unable to escape. Muhammad Gul said that in one incident 52 women and children tried to hide on a rooftop. Soviet troops spotted them and set fire to the building, burning those 52 innocent people to death when the flames reached the roof.

In a recent study prepared for the United Nations Human Rights Commission, Byrd noted, Austrian law professor Felix Ermacora accused the Soviet Union of massacring Afghan civilians, executing guerrilla fighters, and in some instances using poison gas against them. When the Soviets attacked Ermacora's report as a fake, the Austrian professor retorted, "Every word in it is true. And to anyone who says I am falsifying the record, I reply: 'If 4 million people leave their country, Afghanistan, then there must be a good reason.'"

What has been going on in Afghanistan since the brutal invasion of that little country by the Soviet Union doesn't seem to qualify very often as "news" in this country, now that the Soviet occupation has dragged on into its fifth year. As Byrd points out, we live in a century long on inhumanity and short on memory. Many millions of combatants have died in the hideous wars of our time. But even more millions of innocent civilians, men, women and children have been slain in acts of official barbarism.

Far too often the world's reaction to such bloody deeds is a shoulder-shrugging, "So what?" One of the duties of civilized people is to keep alive the memory of such atrocities as Buchenwald, Dachau, Auschwitz—not from notice of hatred or vengeance, but that democracy's creed may reverberate: "Never again."

In the same vein, Americans must remember today that real men and women are suffering and dying in the rugged mountains of Central Asia. Soviet bombs and bullets are mutilating Afghan children. Flesh and blood human beings are struggling there to save their country, their culture, their way of life, their freedom.

Byrd is performing a valuable service in the defense of suffering humanity by keeping the agony of Afghanistan before the American people. Our attention span is short. But we never should become so blase as to relegate the strangling of a nation's freedom to the status of a filler on the 6 o'clock news.

One reason why there is legitimate concern that this may occur in this situation is the secrecy which veils Afghanistan. A French doctor who directs Medecins sans Frontieres, Dr. Claude Malheuret, writes as one who has first-hand knowledge of the tragedy-knowledge which is extremely hard to come by.

The organization which Malheuret directs is apolitical, hence its reports possess a special quality of reliability and authenticity. When M.S.F. speaks of a Soviet war against Afghan children, it is because the physicians have had to treat ghastly wounds inflicted by booby-trapped toys.

"International public opinion would never accept such enormities if it were informed daily on the developments in Afghanistan. The need for secrecy explains why borders are systematically closed and why journalists are not allowed to enter the country," declares Malheuret.

The French physician believes that the Afghans can't be defeated in the short or medium term, but Soviet strategy involves two aspects that may make the outcome in Afghanistan differ from Western experience. One is the use of mass terror. The second is that the Soviets can afford a protracted war in the short term for the sake of a long-term victory.

"The Russians do not need smashing victories to announce to their citizenry, as Soviet public influence does not influence Soviet policy. Catastrophies such as that in the Salang tunnel where several hundred Soviet and communist-regime troops (and civilians) were killed do not incite an outcry in Moscow for Soviet 'boys' to come home. The Soviet army can wait it out . . .

"The Afghan resistance will hold out for a long time, but in the end, it probably will be beaten," is the gloomy first-hand assessment given by Malheuret.

This need not occur, should in coming years a profound change in the reactions of Westerners to Soviet totalitarianism occur. However, concludes the M.S.F. director, in a statement with which no one can argue:

"Only a very wise person would dare predict the future of Afghanistan.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

BUDGET RESCISSIONS AND DEFERRALS—MESSAGE FROM THE PRESIDENT—PM 46

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which, pursuant to the order of January 30, 1975, was referred jointly to the Committee on Appropriations, the Committee on the Budget, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, and the Committee on Environment and Public Works:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report two new rescission proposals totaling $37,401,818, two new deferrals totaling $24,000,000, and a revised deferral now totaling $32,300,000. The rescissions affect programs in the Department of Energy and the Corporation for Public Broadcasting. The deferrals affect programs in the Department of Energy and the Tennessee Valley Authority.

The details of these rescissions and deferrals are contained in the attached report.

RONALD REAGAN.

THE WHITE HOUSE, *May 16, 1985.*

CONSERVATION OF PETROLEUM AND NATURAL GAS AT FEDERAL FACILITIES—MESSAGE FROM THE PRESIDENT—PM 47

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Energy and Natural Resources:

To the Congress of the United States:

As required by Section 403(c) of the Powerplant and Industrial Fuel Use Act of 1978, I hereby transmit the sixth annual report describing Federal actions with respect to the conservation and use of petroleum and natural gas in Federal facilities.

RONALD REAGAN.

THE WHITE HOUSE, *May 16, 1985.*

MESSAGES FROM THE HOUSE

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 12:05 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolution:

S. 484. An act to amend the Saccharin Study and Labeling Act;

S. 661. An act entitled the "George Milligan Control Tower; and

S.J. Res. 61. Joint resolution to designate the week of May 20, 1985, through May 26, 1985, as "National Osteoporosis Awareness Week".

The enrolled bills and joint resolution were subsequently signed by the President pro tempore (Mr. THURMOND).

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, May 16, 1985, she had presented to the President of the United States the following enrolled bills and joint resolution:

S. 484. An Act to amend the Saccharin Study and Labeling Act:

S. 661. An Act entitled the "George Milligan Control Tower"; and

S.J. Res. 61. Joint resolution to designate the week of May 20, 1985, through May 26, 1985, as "National Osteoporosis Awareness Week".

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-212. A joint resolution adopted by the Legislature of the State of California; to the Committee on Energy and Natural Resources.

"ASSEMBLY JOINT RESOLUTION NO. 42

"Whereas, The United States Department of the Interior has announced a five-year program to open all California's offshore waters for oil and gas leasing; and

"Whereas, Under this program, lease sales for areas previously closed to oil and gas development would occur for southern California in April 1987 and 1990, for central California in May 1989, and for northern California in December 1987 and 1990; and

"Whereas, No national energy development plan exists to provide for the orderly development of energy resources to match national needs; and

"Whereas, No national need has been demonstrated for additional offshore oil and gas leasing in California; and

"Whereas, The abundant sea life and beauty of California's coast and ocean waters provide unique recreational and fishing opportunities for the citizens of the state and nation; and

"Whereas, In 1983 tourism contributed approximately 28.5 billion dollars to the economy of the state while the value of oil and gas extracted from California and areas offshore totaled only approximately 10.5 billion dollars; and

"Whereas, Oil platforms, oil spills, interference with fishing activities, and other actual and potential adverse effects from oil development are likely to cause irreparable harm to the resources of the coast; and

"Whereas, The federal government has not yet satisfactorily addressed impacts to California from present offshore oil and gas production through revenue sharing as required by Section 8(g) of the federal Outer Continental Shelf Lands Act, as amended by Section 205 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. Sec. 133(g)); and

"Whereas, The United States Congress, in adopting the federal Outer Continental Shelf Lands Act Amendments of 1978, directed the Department of the Interior to prepare and maintain the leasing program in a manner consistent with the principle that "(m)anagement of the Outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the Outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the Outer Continental Shelf and the marine, coastal, and human environments" (43 U.S.C. Sec. 1344(a)(1)); and

"Whereas, For the past four years the United States Congress has expressed its concern over oil and gas development off California by adopting lease moratoria for the areas now included in the proposed lease program of the Department of the Interior; and

"Whereas, California's citizens and local government have repeatedly stated that leasing of many of the areas proposed by the Department of the Interior presents unacceptable risks to economic, social, human, and natural environments far in excess of the value of projected oil resources; and

"Whereas, The Legislature of the State of California has consistently expressed its opposition to leasing of the areas proposed in the Department of the Interior's program through passage of resolutions such as Assembly Joint Resolution 19 in 1981 and Assembly Joint Resolutions 86 and 95 in 1984; and

"Whereas, The Federal Outer Continental Shelf Lands Act permits the Governor to respond within 60 days with comments and suggestions on proposed lease programs; and

"Whereas, California has prohibited offshore oil leases in most state waters adjacent to the areas proposed for leasing by the Secretary of the Interior; and

"Whereas, California is likely to lose potential revenues from state-owned oil through drainage to federal leasees under the Secretary of the Interior's proposal; now, therefore, be it

"Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California memorializes the President of the United States and the Secretary of the Interior to delete from the proposed oil and gas leasing program all offshore areas adjacent to state-owned tide and submerged lands where oil leases are currently prohibited and all areas offshore California north of the seaward extension of the Mendocino-Sonoma County line; and be it further

"Resolved, That the Legislature of the State of California hereby respectfully re-

quests that the Governor recommend to the Secretary of the Interior that the federal offshore areas adjacent to state-owned tide and submerged lands where oil leases are currently prohibited and all areas offshore California north of the seaward extension of the Mendocino-Sonoma County line be deleted from the proposed oil and gas leasing program; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the Interior, to each Senator and Representative from California in the Congress of the United States, and to the Governor."

POM-213. A resolution adopted by the House of Representatives of the State of Indiana; to the Committee on Energy and Natural Resources.

"HOUSE RESOLUTION No. 23

"Whereas, There never has been an energy crisis except as it has been perpetrated by the Federal Government for the purpose of controlling the American people; and

"Whereas, A large pool of crude oil and natural gas was discovered on Gull Island, located approximately 5 miles north of the Alaska shoreline in the Arctic Ocean, which is as large as the Prudhoe Bay pool of crude oil and gas, and also, large pools of crude oil and gas at the Duck Island and Kuparuk locations; and

"Whereas, The Gull Island crude oil find was ordered to be kept secret and closed down by the United States Government in order to force high oil prices on United States citizens; and

"Whereas, Seismographic testing has indicated that there is as much crude oil on the north slope of Alaska as in Saudi Arabia; and

"Whereas, Government ecologists forced the oil companies to spend $2,000,000 to bypass a falcon's nest, $375 for the replacement of a toilet paper holder and $10,000 for each toilet; small examples of waste, which resulted in approximately $10,000,000,000 in cost overruns, and in turn caused higher gas prices for United States citizens; and

"Whereas, The Alaskan Pipeline Corridor was originally built to accommodate two crude oil pipelines and one natural gas line; and

"Whereas, As seventy-four percent (74%) of the cost of a barrel of Alaska crude oil is federal and state taxes; and

"Whereas, There is enough natural gas in Alaska to last the United States citizens for 200 years: Therefore,

"Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:

"SECTION 1. That the United States government allow the oil companies to build an additional crude oil pipeline and a natural gas line so as to allow the United States citizens an abundance of fuel at a reasonable cost.

"SEC. 2. That the Clerk of the House of Representatives is hereby directed to deliver copies of this Resolution to each member of the United States Congress, The President of the United States and the Vice President of the United States."

POM-214. A resolution adopted by the Legislature of the Territory of Guam; to the Committee on Finance.

"RESOLUTION No. 57 (LS)

"Be it resolved by the Legislature of the Territory of Guam:

"Whereas, Sections 301 and 303 of U.S. Public Law 92-603 amended Title XIV of the Social Security Act in its entirety under the Title "Supplemental Security Income (SSI) Program for the Aged, Blind, and Disabled", and repealed Title XIV of the Social Security Act, effective January 1, 1974; and

"Whereas, Section 303(b) of U.S. Public Law 92-603 did not repeal Title XIV of the Social Security Act, and therefore, did not extend the benefits to the territories of Guam, Puerto Rico, and the Virgin Islands; and

"Whereas, all the eligible residents of the fifty states of the United States who have applied successfully for this assistance under the Supplemental Security Income Program for the Aged, Blind, and Disabled are now enjoying its full benefits; and

"Whereas, the residents of Guam's neighboring islands of the Commonwealth of the Northern Marianas are now enjoying the full benefits of the Supplemental Security Income (SSI) Program as a result of their present political status; and

"Whereas, the people of Guam firmly believe in the right to equal treatment of any resident or citizen of the United States to the benefits available to them from the United States Federal Government without regard to race, color, creed, or geographical remoteness or boundaries; and

"Whereas, there are presently 930 residents of Guam receiving public assistance under the Aged, Blind and Disabled Programs, and there are other potentially eligible residents of this territory who would definitely prefer to receive the more expanded benefits of the Supplemental Security Income Program; now, therefore, be it

"Resolved, That the Eighteenth Guam Legislature respectfully request the Honorable Ben Blaz to introduce legislation to amend the appropriate sections of the Social Security Act to extend the benefits of the Supplemental Security Income Program to the Territory of Guam; and be it further

"Resolved, That the Eighteenth Guam Legislature request the Governor and Lieutenant Governor of Guam, through their Washington, D.C. Office, and the Director of Public Health and Social Services, to seek the support of the Federal Government, specifically the Department of Health and Human Services, to aid in the passage of this legislation; and be it further

"Resolved, That the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies of the same be thereafter transmitted to the Speaker of the U.S. House of Representatives; to the President of the U.S. Senate; to the Secretary of Health and Human Services, to Guam's Delegate to Congress; to the Director of Public Health and Social Services; to the Governor's Special Assistant in Washington, D.C.; to the Lieutenant Governor of Guam, and to the Governor of Guam."

POM-215. A resolution adopted by the House of Representatives of the State of Hawaii; to the Committee on Foreign Relations.

"HOUSE RESOLUTION No. 236

"Whereas, in August 1984, South Africa instituted constitutional "reforms", extending minority representation to the so-called "Colored" people (i.e., of mixed racial origins) and the Indian peoples in the segregated South African parliament, but omitting any representation for the Black majority of South Africa; and

"Whereas, these so-called "reforms" have, in fact, retained the traditional White domination in the South African parliament, leading the Black opposition to organize a boycott of the Colored and Indian elections; and

"Whereas, resulting uprisings have occurred in which at least 160 people have been killed and more than 4,000 arrested since August 1984; and

"Whereas, although 17 of South Africa's political prisoners were released, as of December 12, 1984, still, in that same week, 22 more people were charged with "high treason" and face death; another 5 face long prison terms for "subversion"; and well over 200 remain in detention, without charge, as a result of the recent uprisings; and

"Whereas, in addition, Black students, protesting the segregated, inequitable education system, have refused to take high-school matriculation examinations; and

"Whereas, in South Africa's "Black only" townships, rents have been increased and new taxation measures have brought more millions of protestors into the streets; and

"Whereas, Bishop Desmond Tutu, 1984 Nobel Peace Laureate, has said "It is up to the international community to exert pressure on the South African government . . . If that does not happen . . . the bloodbath will be inevitable; now, therefore,

"Be it resolved by the House of Representatives of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1985, That the South African government is respectfully urged to put an end to apartheid, as well as the current wave of repression, and the detention, without charge, of its Black citizens; and

"Be it further resolved, That certified copies of this Resolution be transmitted to the South African government, through its Embassy in Washington, D.C.; as well as to the President of the United States, the U.S. Secretary of State, the President of the United States Senate, the Speaker of the United States House of Representatives, and members of Hawaii's congressional delegation."

POM-216. A resolution adopted by the House of Representatives of the State of Hawaii; to the Committee on Foreign Relations.

"HOUSE RESOLUTION No. 109

"Whereas, the United States government, in October 1984, adopted a Congressional Resolution to support peaceful uses of space, and

"Whereas, there are many current and potential uses of space, including planetary exploration, as well as Earth resources surveys, search and rescue surveillance, weather surveillance, military surveillance, communications, energy production for use on Earth and other types of systems that would be endangered by the development and operation of systems for space warfare, and

"Whereas, space defense systems that would use laser beams, nuclear explosions, or other means, could also be used for offensive warfare purposes that might also endanger the civilian population on Earth, and would violate the 1972 Antiballistic Missile (ABM) Treaty, and

"Whereas, many military experts are of the opinion that complex space defense systems, designed to be used against enemy ballistic missile attacks, would be extremely

costly, could never be tested under realistic conditions, and would be unlikely to ever lead to reductions in offensive nuclear weapon arsenals, and

"Whereas, in addition, space defense systems would not be effective against cruise missiles and other low-trajectory missiles nor against manned-bombers or most tactical nuclear weapons that might be used in conventional warfare, and

"Whereas, in 1981 and 1983, the Soviet Union submitted to the United Nations a draft treaty that would 'prohibit the stationing of weapons of any kind in outer space'; however, the Reagan Administration has not responded to this initiative but, instead, has proceeded with research and development on space defense systems, as well as the development and testing of a U.S. anti-satellite weapon system which is clearly a first step in the development of a space-based, ballistic-missile-boost phase defense system.

"Whereas, in July 1983, the U.S. Senate Foreign Relations Committee approved a bipartisan resolution calling for negotiations on anti-satellite systems and adoption of an anti-satellite test moratorium, now, therefore,

"Be it resolved, That this body urges the United States and the Soviet Union to reaffirm their commitments to the 1972 ABM Treaty and to undertake serious negotiations to immediately ban the further development of anti-satellite systems, restrict research and development on space defense and space offense systems, and, instead, promote cooperative ventures in peaceful uses of space.

"Be it further resolved, That certified copies of this Resolution be transmitted to the President of the United States, the President of the Soviet Union, the U.S. Secretary of State, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and members of Hawaii's congressional delegation."

POM-217. A resolution adopted by the House of Representatives of the State of Hawaii; to the Committee on Foreign Relations.

HOUSE RESOLUTION NO. 135

"Whereas, media polls continue to indicate that over 80 per cent of the American public favors a mutual and verifiable nuclear freeze; and

"Whereas, in June 1983, the Soviet Union proposed to accept such a freeze on nuclear weapons, if the United States did likewise; and

"Whereas, the Reagan administration refuses to accept such a freeze on the basis that it would prevent the development and testing of new nuclear weapon systems and, therefor, undermine U.S. security; and

"Whereas, our two countries already possess a combined nuclear firepower of about 6000 times all of the firepower of World War II, in which 50 million people were killed; and

"Whereas, even the use of a small amount of this firepower could not only kill hundreds of millions of people by direct effects, but could also create disastrous side effects, such as a "nuclear winter", ozone depletion, radioactive poisoning of our food chain, and epidemics of fatal diseases; and

"Whereas, the present arms race is increasing the numbers of multi-warhead, vulnerable land-based weapons, such as the U.S. MX missiles and the USSR SS-series of missiles, which are highly subject to preemptive enemy attacks, as well as forward land-based, vulnerable Pershing 3, SS-20, and cruise missiles that would leave very little time for warning of an attack, and therefore force the adoption of dangerous launch-on-warning techniques that depend on unreliable Soviet and American computers; and

"Whereas, the Reagan administration is planning, under Presidential Directive 59, to provide forces for fighting and winning a "limited nuclear war"; and

"Whereas, it appears to be impossible to fight any type of "limited nuclear war" since any use of tactical or other types of nuclear weapons would be expected to create a situation that would escalate rapidly into an all-out nuclear holocaust; and

"Whereas, there is, therefore, an urgent need to immediately suspend the production, testing, and deployment of all tactical nuclear weapons, as well as all medium- and long-range missiles, bombers, and submarines; and

"Whereas, there is also an immediate need to pull-back all battlefield, tactical nuclear weapons in Europe, to create a nuclear-free buffer-zone between NATO and Warsaw Pact forces; and

"Whereas, to make such actions viable, there is an urgent need to complete, sign, and ratify a Comprehensive Test-Ban Treaty, and to develop a schedule for rapid, mutual, and verifiable reductions in both U.S. and USSR stockpiles of nuclear warheads and delivery systems; now, therefore,

"Be it resolved by the House of Representatives of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1985, That the House of Representatives urges the United States and the Soviet Union to establish an immediate, mutual, and verifiable moratorium on the production, testing, and deployment of nuclear weapons, complete a Comprehensive Test-Ban Treaty, and agree on a schedule for rapid, mutual, and verifiable reductions in nuclear warheads and delivery systems; and

"Be it further resolved, That certified copies of this Resolution be transmitted to the President of the United States, the Chairman of the Presidium of the U.S.S.R. Supreme Soviet, the U.S. Secretary of State, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and members of the Hawaii congressional delegation."

POM-218. A resolution adopted by House of Representatives of the State of Arizona; to the Committee on Governmental Affairs.

"HOUSE MEMORIAL 2001

"Whereas, federally funded programs that may be eliminated under the federal deficit reduction plan include various subsidies for United States postal service; and

"Whereas, organizations for the blind and other handicapped persons are currently granted free mailing privileges for braille books, cassette recordings, talking books and similar materials; and

"Whereas, in the system of compromise over the federal budget, postal subsidies may be reduced even further; and

"Whereas, without postal subsidies, organizations for the blind and handicapped will have to pay for costly mailings and thereby reduce their services to those in need; and

"Whereas, it is estimated that eliminating the subsidies would cost the Arizona Library for the Blind and the Foundation for Blind Children over seven hundred thousand dollars.

Wherefore your memorialist, the House of Representatives of the State of

"Arizona, prays:

"1. That the President and the Congress give their most earnest consideration to retaining all existing postal service subsidies for the blind and handicapped.

"2. That the Secretary of State of the State of Arizona transmit copies of this Memorial to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives of the United States and to each Member of the Arizona Congressional Delegation."

POM-219. A resolution adopted by the Senate of the Commonwealth of Pennsylvania; to the Committee on Governmental Affairs.

RESOLUTION—IN THE SENATE, APRIL 24, 1985

"Whereas, The Polish Falcons of America will be celebrating its 100th Anniversary in the United States in 1987; and

"Whereas, This organization has contributed immensely to American life since its founding in Chicago in 1887 through the promotion of gymnastic training, Polish culture, and fraternal life; and

"Whereas, The United States Postal Service has honored numerous Americans for their contribution to our country; therefore be it

"Resolved, That the Senate of Pennsylvania urge the Citizen Stamp Advisory Committee of the United States Postal Service to issue a stamp commemorating the centennial of the Polish Falcons of America; and be if further

"Resolved, That copies of this resolution be transmitted to Mr. Belmont Faries, Chairman, Citizen Stamp Advisory Committee of the United States Postal Service, to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania."

POM-220. A concurrent resolution adopted by the Legislature of the State of New Hampshire; to the Committee on Labor, and Human Resources.

"RESOLUTION SUPPORTING LIMITED HEROIN PRESCRIPTIONS FOR TERMINAL CANCER PATIENTS

"Whereas, scientific and medical studies show parenteral diacetylmorphine, named heroin, to be of medical value because of its analgesic qualities for relieving the general pain suffered by terminal cancer patients; and

"Whereas, heroin acts more quickly than morphine and gives relief of pain and a sense of well-being sooner; and

"Whereas, it is particularly effective in the terminal phase of cancer, when patients frequently cannot take medication by mouth and have little body tissue into which to give large injections; and

"Whereas, patients who are given limited heroin prescriptions are able to remain alert and are able to communicate with their families; and

"Whereas, without this highly effective pain killer, as many as 8,000 Americans may die in unnecessary agony this year; and

"Whereas, S. 70, introduced in the United States Congress by Senator Daniel K. Inouye of Hawaii, provides for limited prescriptions of heroin by physicians for terminal cancer patients in hospitals for a 5 year trial period; now, therefore, be it

Resolved by the Senate, the House of Representatives concurring: That the general court of New Hampshire supports S. 70 and

urges the members of the New Hampshire congressional delegation to do so also; and

"That copies of this resolution be transmitted to the President of the United States, the President of the United States Senate, and Speaker of the United States House of Representatives and the members of the New Hampshire congressional delegation."

POM-221. A petition from a citizen of El Cajon, CA, supporting the President's appeal to the American people for taxpayer's protection plan and his efforts to reduce the deficit spending and to balance the budget; ordered to lie on the table.

POM-222. A petition from the Vietnamese Association of Central Florida regarding Communist regime take over of the Republic of Vietnam; to the Committee on Foreign Relations.

POM-223. A concurrent resolution adopted by the Legislature of the State of New Hampshire; to the Committee on Governmental Affairs.

"RESOLUTION REQUESTING THE UNITED STATES POSTAL SERVICE TO ISSUE A COMMEMORATIVE BICENTENNIAL STAMP

"Whereas, the United States will celebrate the bicentennial of the preparations and adoption of its Constitution in 1987 and 1988; and

"Whereas, New Hampshire endorsed the Constitution on June 21, 1788, thus becoming the ninth and key state to approve it, and by this action the Constitution became the basic law of these United States; and

"Whereas, a suitable memorial to the success of the Constitution and New Hampshire's involvement in its adoption would be a commemorative stamp issued by the United States; now, therefore, be it

"Resolved by the House of Representatives, the Senate concurring: That the United States Postal Service be petitioned to issue a commemorative stamp, using the logo of the New Hampshire Commission on the Bicentennial of the United States Constitution, to be issued in the spring of 1988; and

"That a copy of this resolution be transmitted to the United States Postal Service, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the New Hampshire congressional delegation."

POM-224. A concurrent resolution adopted by the Legislature of the State of Arizona; to the Committee on Labor and Human Resources.

"HOUSE CONCURRENT MEMORIAL 2001

"Whereas, section 11(d) of the fair labor standards act, 29 United States Code section 211(d), empowers the Secretary of Labor or the administrator of the wage and hour division of the department of labor to issue orders for the regulation of commercial homework; and

"Whereas, these officials, acting pursuant to this authority, have issued orders categorically prohibiting homeworkers from engaging in broad categories of commercial activity; and

"Whereas, the effect of this prohibition has been to deprive untold numbers of individuals who prefer to work at home, such as mothers with young children, of the opportunity to be gainfully employed; and

"Whereas, those who support the prohibition of homework seek to justify that infringement of the individual's right to work by arguing that homework presents the opportunity for abuse; and

"Whereas, that argument is without merit since there is no instrumentality known to man that cannot be misused, a fact that does not warrant the indiscriminate circumscribing of individual liberty; and

"Whereas, no rational legislative objective is served by, in effect, forcing employees out of the home and into the factory or office; and

"Whereas, the American economy has entered a new phase characterized by the widespread use of computers and the electronic processing of information; and

"Whereas, this burgeoning electronic age promises to dramatically alter the traditional workplace by enabling many to earn a livelihood in the home through the use of computer terminals; and

"Whereas, this change in the commerical landscape has introduced a new category of employee, the telecommuter, who, armed with a personal computer terminal, is gainfully employed in the comfort and convenience of the home; and

"Whereas, those who seek to prohibit homework are already endeavoring, through federal regulation, to stifle this new field of opportunity.

"Wherefore, your memorialist, the House of Representatives of the State of Arizona, the Senate concurring, prays:

"1. That the President, the Congress and the Secretary of Labor of the United States take any action necessary to rescind existing orders and regulations prohibiting commercial homework and refrain from extending these prohibitions to additional categories of activities to guarantee to those individuals who choose to pursue gainful employment in the home the freedom to do so.

"2. That the Secretary of State of the State of Arizona transmit copies of this Memorial to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives of the United States, the Secretary of Labor of the United States and to each Member of the Arizona Congressional Delegation."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DANFORTH, from the Committee on Commerce, Science and Transportation, with an amendment:

S. 1077: A bill to amend the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) to provide authorization of appropriations, and for other purposes (Rept. No. 99-60).

By Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 1084: A bill to authorize appropriations of funds for activities of the Corporation for Public Broadcasting, and for other purposes (Rept. No. 99-61).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 277: A bill to reauthorize the Indian Health Care Improvement Act, and for other purposes (Rept. No. 99-62).

By Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 999: A bill to amend the Communications Act of 1934 to provide authorization of appropriations for the Federal Communications Commission, and for other purposes (Rept. No. 99-63).

By Mr. THURMOND, from the Committee on the Judiciary, without amendment and with a preamble:

S. Res. 144: A resolution to give special recognition to the achievements of John James Audubon.

By Mr. GOLDWATER, from the Committee on Armed Services, without amendment:

S. Res. 168: An original resolution waiving section 303(a) of the Congressional Budget Act of 1974 with respect to consideration of S. 1160. Referred to the Committee on the budget.

S. 1160: An original bill to authorize appropriations for the military functions of the Department of Defense and to prescribe personnel levels for the Department of Defense for fiscal year 1986, to authorize certain construction at military installations for such fiscal year, to authorize appropriations for the Department of Energy for national security programs for such fiscal year, and for other purposes.

By Mr. THURMOND, from the Committee on the Judiciary, without amendment and with a preamble:

S.J. Res. 131: A joint resolution to designate the week of June 2, 1985, through June 8, 1985, as "Future Problem Solving Program Week."

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary: D. Lowell Jensen, of Virginia, to be Deputy Attorney General.

(The above nomination was reported from the Committee on the Judiciary with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PROXMIRE:

S. 1148. A bill to amend section 5155 of the Revised Statutes with respect to shared electronic banking equipment; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BUMPERS (for himself and Mr. PRYOR):

S. 1149. A bill to amend the Federal Power Act to allow State commissions to determine whether to exclude all or part of a rate set by the Federal Energy Regulatory Commission based on construction cost; to the Committee on Energy and Natural Resources.

By Mr. SIMON (for himself and Mr. EAGLETON):

S. 1150. A bill to revise the minimum service requirements for retired and retainer pay under titles 10 and 14 for members of the uniformed services who first become members of the uniformed services on or after the date of the enactment of this Act, to revise the manner for computing retired and retainer pay under such titles for such members, and for other purposes; to the Committee on Armed Services.

By Mr. DIXON (for himself, Mr. JOHNSTON, Mr. PRYOR, Mr. RIEGLE, and Mr. SASSER):

S. 1151. A bill to amend the Federal Deposit Insurance Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KERRY:

S. 1152. A bill to amend the Internal Revenue Code of 1954 to increase all civil and criminal tax penalties for taxpayers who avoid their fair share of Federal taxes, to increase voluntary compliance of the Federal tax laws, and for other purposes; to the Committee on Finance.

By Mr. D'AMATO:

S. 1153. A bill to provide for the distribution within the United States of the United States Information Agency film entitled "Hal David: Expressing a Feeling"; to the Committee on Foreign Relations.

By Mr. MATSUNAGA (for himself, Mr. PRESSLER, Mr. INOUYE, Mr. SARBANES, Mr. MELCHER, Mr. BURDICK, Mr. PELL, Mr. LEAHY, and Mr. HUMPHREY):

S. 1154. A bill to amend title XVIII of the Social Security Act to provide direct Medicare reimbursement for services performed by registered nurse anesthetists; to the Committee on Finance.

By Mr. CHAFEE:

S. 1155. A bill to authorize the disposal of silver from the national stockpile; to the Committee on Armed Services.

By Mr. DENTON:

S. 1156. A bill to amend chapter XIV of the Comprehensive Crime Control Act of 1984, relating to victims of crime, to provide funds to encourage States to implement protective reforms regarding the investigation and adjudication of child abuse cases which minimize the additional trauma to the child victim and improve the chances of successful criminal prosecution or legal action; to the Committee on the Judiciary.

By Mr. McCLURE (by request):

S. 1157. A bill to authorize the Secretary of the Interior to perform studies relating to disposal of drain water and to construct interim corrective measures deemed necessary for the San Luis intercepter drain; to the Committee on Energy and Natural Resources.

By Mr. DOLE (for himself, Mr. DURENBERGER, and Mr. BENTSEN):

S. 1158. A bill to amend title XVIII of the Social Security Act with respect to Medicare payments for direct costs of approved educational activities; to the Committee on Finance.

By Mr. ANDREWS (for himself, Mr. GOLDWATER, Mr. MELCHER, Mr. BURDICK, Mr. ABDNOR, Mr. DECONCINI, Mr. BINGAMAN, Mr. BAUCUS, Mr. STEVENS, Mr. HATFIELD, Mr. WEICKER, Mr. NICKLES, Mr. BOREN, and Mr. COCHRAN):

S. 1159. A bill to amend section 8(a) of the Small Business Act to clarify the eligibility of small business concerns owned by Indian tribes; to the Committee on Small Business.

By Mr. GOLDWATER, from the Committee on Armed Services:

S. 1160. An original bill to authorize appropriations for the military functions of the Department of Defense and to prescribe personnel levels for the Department of Defense for fiscal year 1986, to authorize certain construction at military installations for such fiscal year, to authorize appropriations for the Department of Energy for national security programs for such fiscal year, and for other purposes; placed on the calendar.

By Mr. DODD:

S. 1161. A bill to provide for the protection of United States security interests in the Central American region; to the Committee on Foreign Relations.

By Mr. HART:

S. 1162. A bill to amend the Nuclear Waste Policy Act of 1982 to require the Secretary of Energy to incorporate transportation impacts into the selection process for repositories of high-level radioactive wastes; to the Committee on Environment and Public Works.

By Mr. KENNEDY:

S. 1163. A bill entitled "The Military Family Act of 1985"; to the Committee on Armed Services.

By Mr. HUMPHREY (for himself, Mr. THURMOND, Mr. LAXALT, Mr. SARBANES, Mr. GORTON, Mr. BURDICK, Mr. DECONCINI, Mr. COHEN, Mr. DOMENICI, Mr. MATTINGLY, Mrs. HAWKINS, Mr. ANDREWS, Mr. HATCH, Mr. RUDMAN, Mr. CHAFEE, Mr. DOLE, Mr. PELL, Mr. PROXMIRE, Mr. EXON, Mr. EAST, Mr. MATSUNAGA, Mr. HOLLINGS, Mr. LUGAR, Mr. METZENBAUM, Mr. NUNN, Mr. QUAYLE, Mr. GARN, Mr. BRADLEY, Mr. DENTON, Mr. NICKLES, Mr. HATFIELD, Mr. BOSCHWITZ, Mr. MATHIAS, and Mr. PRESSLER):

S.J. Res. 137. Joint resolution to designate the week of December 15, 1985, through December 21, 1985, as "National Drunk and Drugged Driving Awareness Week"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SPECTER:

S. Res. 166. Resolution regarding a superpower summit; to the Committee on Foreign Relations.

By Mr. DOLE:

S. Res. 167. Resolution electing Ernest E. Garcia as the Sergeant at Arms and Doorkeeper of the Senate; considered and agreed to.

By Mr. GOLDWATER, from the Committee on Armed Services:

S. Res. 168. Original resolution waiving section 303(a) of the Congressional Budget Act of 1974 with respect to consideration of S. 1160; to the Committee on the Budget.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PROXMIRE:

S. 1148. A bill to amend section 5155 of the Revised Statutes with respect to shared electronic banking equipment; to the Committee on Banking, Housing, and Urban Affairs.

(The remarks of Mr. PROXMIRE and the text of the legislation appear earlier in today's RECORD.)

By Mr. BUMPERS (for himself and Mr. PRYOR):

S. 1149. A bill to amend the Federal Power Act to allow State commissions to determine whether to exclude all or part of a rate set by the Federal Energy Regulatory Commission based on construction costs; to the Committee on Energy and Natural Resources.

(The remarks of Mr. BUMPERS and Mr. PRYOR, and the text of the legislation appear earlier in today's RECORD.)

By Mr. SIMON (for himself and Mr. EAGLETON):

S. 1150. A bill to revise the minimum service requirements for retired and retainer pay under titles 10 and 14 for members of the uniformed services who first become members of the uniformed services on or after the date of enactment of this act, to revise the manner for computing retired and retainer pay under such titles for such members, and for other purposes; to the Committee on Armed Services.

UNIFORMED SERVICES RETIREMENT ACT

Mr. SIMON. Mr. President, I am today introducing legislation to amend the nondisability military retirement system. We have been talking for some days now in this body about how we are going to save money. I have a proposal in—and Senator EAGLETON of Missouri is a cosponsor, and I assume we will have other cosponsors as it moves ahead—to change the military retirement system. What I propose is to change the military retirement system so that no one who is presently in the military retirement system is disadvantaged, but to say starting on January 1, 1986, anyone who goes into the service at that point would have to serve 25 years rather than 20 years. That is the first point of my proposal. We now have a situation where you can go in for 20 years, serve, and then retire, and average retirement is around 41—about 39 for people who are not officers, about 45 for those who are officers—and then you have this very, very lengthy period of retirement pay. It is the second costliest entitlement program of the Federal Government that we have coming out of general revenue funds, second only to the Medicaid Program.

I am also suggesting at that point that the amount of retirement pay be reduced from 75 to 50 percent for those serving 25 years and to 60 percent for those serving 30 years.

The second point that we make—and I think it is extremely important—and that deals with this indexation matter; that is, that those who retire would receive their full cost of living but that it not be compounded. The compounding of the cost-of-living increase is frankly an inflationary thing no matter what the retirement system is. It is particularly devastating on the military side of it because retirees on the average are retirees for more than 30 years. So that there is no misunderstanding on this, what I am talking about is that if someone retires, let us say gets $10,000 a year in retirement, there is a 4-percent cost-of-living increase, then you get that next year, $10,400. If the following year there is another 4-percent cost-of-living in-

crease, you would get the full 4 percent but it would be calculated on the base rather than $10,400. So you would grant the full cost-of-living increase, as 95 percent of the private retirement systems do not. You would continue to provide that benefit, but you would not compound it. Compounding that in the case of military retirement results ultimately in some extremely high costs.

Now, you are not going to save any money tomorrow, you are not going to save any money next year; but the Congressional Budget Office estimates that come 30 years from now, we will be saving approximately $10.7 billion a year doing this. And I suggest if we can do that, we ought to be doing it.

I ask unanimous consent, Mr. President, to insert in the RECORD some details of this.

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

Estimated outlays under current law for retired pay: 1985 to 2020

[In millions of 1985 dollars] [1]

1985	17,515
1986	17,922
1987	18,125
1988	18,327
1989	18,531
1990	18,720
1995	19,575
2000	20,373
2010	21,170
2020	21,510

[1] Numbers from CBO.

THE SIMON AMENDMENT

What will it do?

A. LENGTH OF ACTIVE DUTY

Current system	Simon proposal
Minimum:	
20 years	25 years.
50 percent of last 3 years' average salary.	50 percent of last 3 years' average salary.
Retirement pay equal 2½ percent per year of active duty.	Retirement pay equal 2 percent per year of active duty.
Maximum:	
30 years	30 years
2½ percent year up to	2 percent per year.
30 years or 75 percent	up to 30 years or 60 percent.

B. COLA RECALCULATION

For future recruits, COLA's will be calculated on the basis of the retirees last salary and will be cumulative, not compounded.

Current system				Simon proposal			
Base pay	Amount of Percent COLA	Amount of COLA	Total pay	Base pay	Amount of Percent COLA	Amount of COLA	Total pay
$10,000.00	5	$500.00	$10,500.00	$10,000	5	$500	$10,500
$10,500.00	5	500.00	11,025.00	10,000	5	500	11,000
$11,025.00	5	551.25	11,576.25	10,000	5	500	11,500
$11,576.25	5	578.81	12,155.06	10,000	5	500	12,000
$12,155.06	5	607.75	12,763.81	10,000	5	500	12,500
$12,763.81	5	638.14	13,402.00	10,000	5	500	13,000
$13,402.00	5	670.10	14,072.10	10,000	5	500	13,500
$14,072.10	5	703.60	14,775.70	10,000	5	500	14,000
$14,775.70	5	738.78	15,514.48	10,000	5	500	14,500
$15,514.48	5	775.72	16,290.20	10,000	5	500	15,000
$16,290.20	5	814.51	17,104.71	10,000	5	500	15,500
$17,104.71	5	855.23	17,959.95	10,000	5	500	16,000
$17,959.95	5	897.99	18,857.95	10,000	5	500	16,500
$18,857.95	5	942.89	19,800.85	10,000	5	500	17,000
$19,800.85	5	990.04	20,790.89	10,000	5	500	17,500
$20,790.89	5	1,039.54	21,830.43	10,000	5	500	18,000
$21,830.43	5	1,091.52	22,921.95	10,000	5	500	18,500
$22,921.95	5	1,146.09	24,068.05	10,000	5	500	19,000
$24,068.05	5	1,203.40	25,271.45	10,000	5	500	19,500
$25,271.45	5	1,263.57	26,535.02	10,000	5	500	20,000
$26,535.02	5	1,326.75	27,861.77	10,000	5	500	20,500
$27,861.77	5	1,393.08	29,254.86	10,000	5	500	21,000
$29,254.86	5	1,462.74	30,717.60	10,000	5	500	21,500
$30,717.60	5	1,535.88	32,253.48	10,000	5	500	22,000
$32,253.48	5	1,612.67	33,866.15	10,000	5	500	22,500
$33,866.15	5	1,693.30	35,559.46	10,000	5	500	23,000
$35,559.46	5	1,777.97	37,337.43	10,000	5	500	23,500
$37,337.43	5	1,866.87	39,204.30	10,000	5	500	24,000
$39,204.30	5	1,960.21	41,164.51	10,000	5	500	24,500
$41,164.51	5	2,058.22	43,222.73	10,000	5	500	25,000

TOTAL SAVINGS

Below is CBO's estimate of how much the Simon plan would save over a period of years.

EFFECTS OF SIMON MILITARY RETIREMENT PLAN [1]

[In fiscal year 1986 dollars]

	Fiscal year— 1986	1987	1988	1989	1990	Steady state
FULL SIMON PLAN [2]						
Savings in mil pers cost:						
Retirement as outlays (change in deficit)		−10	−25	−55	−70	
Retirement as accrual	455	1,305	2,135	2,880	3,475	10,700

[1] Vesting at 25 YOS; 2.0 percent multipliers to 30 YOS; COLAs paid only on amount of initial annuity.

[2] COLA provisions simulated by 75 percent COLA.

[Section Analysis]

THE UNIFORMED SERVICES RETIREMENT ACT OF 1985

TITLE I—GENERAL

Section 101. Authority to order members of the retired reserve to active duty:

This section amends current law affecting members eligible to be called back to active duty after retirement. Recruits after the date of enactment will be eligible under this statute after 25 years of active duty instead of 20.

Section 102. Retention of officers after completion of prescribed years of service:

Most services have stringent "up or out" promotion policies which are designed to eliminate members who fail to be promoted after two attempts. Since a member is not eligible for retirement benefits until late in his career, the "up or out" policy is relaxed during the last 2 years of his career. Current law contains a "kindness clause" which prohibits the services from discharging a member who has at least 18 years of active duty. Since members would now be required to serve 25 rather than 20 years, the "kindness clause" would apply to recruits after the date of enactment with 23 years of active duty.

Section 103. Separation pay upon involuntary discharge or release from active duty:

Currently, a member of the services who is discharged after more than 5, but less than 20 years of active duty is entitled to separation pay. This section would require the services to provide separation pay for new recruits with more than 5, but less than 25, years of active duty.

Section 106. Computation of retired pay:

This section changes current law to provide 50% of base pay after 25 years of service and 60% after 30 years of service for those entering after the date of enactment.

Section 107. Adjustment of retired pay and retainer pay to reflect changes in CPI:

This provison will grant cost of living allowances (COLAs) to recruits after the date of enactment. Any calculations will use a static base to increase the retiree's annuity which will make the calculations cumulative, not compounded. The following table illustrates the difference between the method currently being used and the proposed method over a 30 year period for an annuity of $10,000.

TABLE I

Current system				Simon proposal			
Base pay	Amount of		Total pay	Base pay	Amount of		Total pay
	Percent COLA	COLA			Percent COLA	COLA	
$10,000.00	5	$500.00	$10,500.00	$10,000	5	$500	$10,500
$10,500.00	5	525.00	11,025.00	10,000	5	500	11,000
$11,025.00	5	551.25	11,576.25	10,000	5	500	11,500
$11,576.25	5	578.81	12,155.06	10,000	5	500	12,000
$12,155.06	5	607.75	12,763.81	10,000	5	500	12,500
$12,763.81	5	638.14	13,402.00	10,000	5	500	13,000
$13,402.00	5	670.10	14,072.10	10,000	5	500	13,500
$14,072.10	5	703.60	14,775.70	10,000	5	500	14,000
$14,775.70	5	738.78	15,514.48	10,000	5	500	14,500
$15,514.48	5	775.72	16,290.20	10,000	5	500	15,000
$16,290.20	5	814.51	17,104.71	10,000	5	500	15,500
$17,104.71	5	855.23	17,959.95	10,000	5	500	16,000
$17,959.95	5	897.99	18,857.95	10,000	5	500	16,500
$18,857.95	5	942.89	19,800.00	10,000	5	500	17,000
$19,800.85	5	990.04	20,790.89	10,000	5	500	17,500
$20,790.89	5	1,039.54	21,830.43	10,000	5	500	18,000
$21,830.43	5	1,091.52	22,921.95	10,000	5	500	18,500
$22,921.95	5	1,146.09	24,068.05	10,000	5	500	19,000
$24,068.05	5	1,203.40	25,271.45	10,000	5	500	19,500
$25,271.45	5	1,263.57	26,535.02	10,000	5	500	20,000
$26,535.02	5	1,326.75	27,861.77	10,000	5	500	20,500
$27,861.77	5	1,393.08	29,254.86	10,000	5	500	21,000
$29,254.86	5	1,462.74	30,717.60	10,000	5	500	21,500
$30,717.60	5	1,535.88	32,253.48	10,000	5	500	22,000
$32,253.48	5	1,612.67	33,866.15	10,000	5	500	22,500
$33,866.15	5	1,693.30	34,559.46	10,000	5	500	23,000
$35,559.46	5	1,777.97	37,337.43	10,000	5	500	23,500
$37,337.43	5	1,866.87	39,204.30	10,000	5	500	24,000
$39,204.30	5	1,960.21	41,164.51	10,000	5	500	24,500
$41,164.51	5	2,058.22	43,222.73	10,000	5	500	25,000

TITLE II—ARMY

Section 201. Separation or transfer to retired reserve:

The Secretary of the Army has the authority to transfer officers from active to retired reserve status if there is an overabundance of commissioned officers. Currently, only officers with more than 20 years can be considered for this type of transfer. This section would make officers with more than 25 years eligible for this type of transfer. Others sections in this title make existing statutes pertaining to the Army consistent with the general guidelines set out in the first title of this act.

TITLE III—NAVY AND MARINE CORPS

Sections in this title make existing statutes pertaining to the Navy and Marine Corps consistent with the general guidelines set out in the first title of this act.

TITLE IV—AIR FORCE

Sections in this title make existing statutes pertaining to the Air Force consistent with the general guidelines set out in the first title of this act.

TITLE V—COAST GUARD

Sections in this title make existing statutes pertaining to the Coast Guard consistent with the general guidelines set out in the first title of this act.

Mr. SIMON. When the Department of Defense authorization bill reaches the Senate floor, I will offer this legislation as an amendment to that bill.

Mr. President, the military retirement system has been the subject of nine studies in the past decade, none of which has resulted in long-term, structural improvements. We should realize that some change in the current system is inevitable. But I want to make sure that the change is fair to members of our armed services. I would like to propose two simple changes which would result in long-term, continuous improvements to the current system.

Today, a member of the armed services is eligible to receive 50 percent of his or her base pay after 20 years of service and 75 percent of base pay after 30 years. The first of my proposals would require members enlisting after January 1, 1986, to serve a minimum of 25 years of active duty to receive 50 percent of base pay and 30 years to receive 60 percent. Mr. President, what we have today is a system which allows a member with 20 years of service to retire and draw 50 percent of his base pay for the rest of his or her life. Assuming that the average retiree is 43 years old at retirement and that the average life expectancy in the United States is 73, most retirees are able to draw 50 percent of base pay for the next 30 years. My first proposal is a modest attempt to correct what is, to me, an illogical and overly expensive system, but at the same time be fair to those who have already enlisted, to whom a commitment has been made.

The second of my proposals would grant recruits after the date of enactment a full cost-of-living allowance [COLA] based on their most recent annuity, but not compound it when they retire. Currently, retirees are granted COLA's on a base figure that is compounded annually. Under the present system, a person who starts with an annuity of $10,000 the first year and is given a 5-percent cost-of-living allowance the next year, acquires a new base of $10,500. If that same person is given a COLA the following year, he or she will then receive 5 percent of $10,500, or $525, because the compounded base figure is used to calculate the new COLA amount.

According to analysts at Cornell University, almost 95 percent of pension plans in the private sector have no provisions for cost-of-living allowances. While widely discussed in Washington and in the public sector, COLA's are not part of most pension plans in the private sector. I am not willing to say that our retirement systems should not grant cost-of-living allowances. For those relying on pensions as a sole source of income, COLA's are important. Compounding COLA's, however, increases costs too dramatically. What I propose is fair to those in the service, but less costly to the Federal Government.

Mr. President, the two elements of my plan would save the Federal Government several billion dollars over the next three decades and would be $10.7 billion less expensive per year when everyone is under the system.

The material I have included for the RECORD presents some startling facts. For example, military retirement is the second most expensive of all Federal entitlement programs funded exclusively from general tax revenues. Only Medicaid is more expensive. Yet Medicaid covers more than 20 million beneficiaries, while military retirement covers about 1.4 million.

People who serve our country are dedicated Americans and are not interested exclusively in their own financial gain. They also understand that some changes will be made. The proposals I've submitted will not cause hardship and are not unreasonable alterations to the system. Most military personnel and others who have studied the retirement system agree it needs reform.

This is not meant to be a quick-fix solution to the problem. It will not bring substantial reductions in expenditures or present an immediate

cure to our current deficit problems. It will, however, provide long-term structural changes which will save billions of dollars and make the system more equitable.

Critics of this plan will charge that this proposal will present the services with manpower and recruiting problems. I have asked the Congressional Budget Office to study both the savings this plan would realize and its effect on manpower. They reported that there would be a 7.8-percent reduction at the officer level and a 4-percent reduction in the enlisted force.

Mr. President, I have always been a strong proponent of conventional defense and believe this is an area to which we should pay a great deal more attention. If there are manpower effects as a result of this legislation, it would be wise for us to use a portion of the money saved from this legislation for improving retention and recruitment in the form of cash incentives, higher salaries, improved educational benefits or other methods which would address the manpower needs of our forces. And we would still save billions of dollars.

As a veteran, I understand the difficulties of military life. The men and women who defend this country are dedicated and decent people. We should revise the military pension system in a way that protects them and my proposal does that.

Through my 10 years in the House, I have seen this issue debated and studied. Now, more than 10 years later, no substantial changes have been made. If we do not accept my proposal for moderate change, the danger is that we will swing to the opposite extreme and those serving in the military will be hurt. We now have a program which will cost the Federal Government nearly $18 billion in fiscal year 1986. This number will grow. Instead of resisting change when we most need it, Mr. President, I hope that my colleagues will join me in providing a reasonable solution. This action will take some courage. But this issue should be faced squarely, candidly, and soon.

This is not a cure-all for our problems. It is a way of simply saying we want to see a little more common sense used in this budget. Here is a practical way of saving a great deal of money. And I have to believe this is the direction that we ought to go.

Let me add that I served in the Armed Forces myself, and I served overseas. I want to see a good, sound, healthy armed services for this country, but the studies that have been made indicate that, for example, the COLA has virtually no impact on whether people enlist or not and whether you compound the COLA or have the full COLA is not a major factor in anyone's decision on whether or not they go into the service.

In my 10 years in the House and now a few months in the Senate, I have heard a great deal of talk and periodically there are a few dance steps made toward doing something about this. But we do not get anything done. I think here is a chance to really do something.

I repeat that this does not have any impact on those who are now serving. My own position candidly is that we ought to knock the COLA off for those who are now serving and for those who are now retired. But I recognize that is not going to pass this body. So I am suggesting we do everything prospectively; that starting January 1, 1986, those who enlist must serve 25 years. I would point out that the Grace Commission that we have been hearing a lot about lately recommended that we make a 30-year minimum retirement. I am not suggesting that. I am suggesting a 25-year minimum, and that we provide the full cost of living then to those retiring after January 1, 1986, but that we not compound the cost-of-living increases.

I repeat under Congressional Budget Office estimates we will save roughly—this is their minimum estimate—$10.7 billion. They did it with a sliding scale on the cost of living. If the cost of living should average 5 percent or a little better, the savings will be roughly $14 billion. But at a minimum, we will be saving $10.7 billion a year. That, it seems to me, Mr. President, is an effort that is well worthwhile. I hope my colleagues will join in this effort.

I am introducing a bill today. I will be introducing this as an amendment to the Department of Defense bill, the authorization that we will be discussing today and presumably all next week.

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

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

S. 1150

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniformed Services Retirement Act of 1985".

TITLE I—GENERAL

AUTHORITY TO ORDER MEMBERS OF THE RETIRED RESERVE TO ACTIVE DUTY

SEC. 101. The first sentence of section 688(a) of title 10, United States Code, is amended by striking out "has completed at least 20 years active service" and inserting in lieu thereof "first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has completed at least 20 years of active service or who first became a member of a uniformed service after the date of the enactment of such Act and has completed at least 25 years of active service".

RETENTION OF OFFICERS AFTER COMPLETION OF PRESCRIBED YEARS OF SERVICE

SEC. 102. (a) Subsection (a) of section 1006 of title 10, United States Code, is amended—

(1) by striking out "If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he" and inserting in lieu thereof "(1) If on the date prescribed or his discharge or transfer from an active status as a reserve commissioned officer, such officer is an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and such officer"; and

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

"(2) If on the date prescribed for his discharge or transfer from an active status as a reserve commissioned officer, such officer is an officer who first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and such officer is entitled to be credited with at least 24, but less than 25, years of service computed under section 1332 of this title, he may not be discharged or transferred from an active status under chapter 337, 361, 363, 573, 837, 861, or 863 of this title or chapter 21 of title 14, without his consent before the earlier of the following dates—

"(A) the date on which he is entitled to be credited with 25 years of service computed under section 1332 of this title; or

"(B) the third anniversary of the date on which he would otherwise be discharged or transferred from an active status.".

(b) Subsection (b) of such section is amended—

(1) by striking out "If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he" and inserting in lieu thereof "(1) If on the date prescribed for his discharge or transfer from an active status as a reserve commissioned officer, such officer is an officer who first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985 and such officer"; and

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

"(2) If on the date prescribed for his discharge or transfer from an active status as a reserve commissioned officer, such officer is an officer who first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and such officer is entitled to be credited with at least 23, but less than 24, years of service computed under section 1332 of this title, he may not be discharged or transferred from an active status under chapter 337, 361, 363, 573, 837, 861, or 863 of this title or chapter 21 of title 14, without his consent before the earlier of the following dates—

"(A) the date on which he is entitled to be credited with 25 years of service computed under section 1332 of this title; or

"(B) the second anniversary of the date on which he would otherwise be discharged or transferred from an active status.".

SEPARATION PAY UPON INVOLUNTARY DISCHARGE OR RELEASE FROM ACTIVE DUTY

SEC. 103. Section 1174 of title 10, United States Code, is amended—

(1) in subsection (a), by striking out "who has completed five or more, but less than twenty, years of active service immediately

before that discharge or release" and inserting in lieu thereof "who (1) first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has completed 5 or more, but less than 20, years of active service immediately before that discharge or release, or (2) first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and has completed 5 or more, but less than 25, years of active service immediately before that discharge or release";

(2) in subsection (b), by striking out "who has completed five or more, but less than twenty, years of active service immediately before that discharge or separation" and inserting in lieu thereof "who (1) first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has completed 5 or more, but less than 20, years of active service immediately before that discharge or separation, or (2) first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and has completed 5 or more, but less than 25, years of active service immediately before that discharge or separation"; and

(3) in subsection (c), by striking out "who has completed five or more, but fewer than 20, years of active service immediately before that discharge or release" and inserting in lieu thereof "who (1) first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has completed 5 or more, but less than 20, years of active service immediately before that discharge or release, or (2) first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and has completed 5 or more, but less than 25, years of active service immediately before that discharge or release".

RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

SEC. 104. (a) Clause (3) of section 1201 of title 10, United States Code, is amended—

(1) by striking out subclause (A) and inserting in lieu thereof the following:

"(A) the member first became a member of a uniformed service (as defined in section 1207(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has at least 20 years of service computed under section 1208 of this title;";

(2) by redesignating subclause (B) as subclause (C); and

(3) by inserting after subclause (A) the following new subclause (B):

"(B) the member first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and has at least 25 years of service computed under section 1208 of this title; or".

(b) Clause (1) of section 1203 of such title is amended to read as follows:

"(1) the member first became a member of a uniformed service (as defined in section 1207(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has less than 20 years of service computed under section 1208 of this title or first became a member of a uniformed service on or after the date of the enactment of such Act and has less than 25 years of service computed under section 1208 of this title;".

(c) Clause (4) of section 1204 of such title is amended—

(1) by striking out subclause (A) and inserting in lieu thereof the following:

"(A) the member first became a member of a uniformed service (as defined in section 1207(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has at least 20 years of service computed under section 1208 of this title;";

(2) by redesignating subclause (B) as subclause (C); and

(3) by inserting after subclause (A) the following new subclause (B):

"(B) the member first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and has at least 25 years of service computed under section 1208 of this title; or".

(d) Clause (1) of section 1206 of such title is amended to read as follows:

"(1) the member first became a member of a uniformed service (as defined in section 1207(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has less than 20 years of service computed under section 1208 of this title or first became a member of a uniformed service on or after the date of the enactment of such Act and has less than 25 years of service computed under section 1208 of this title;".

(e) Section 1209 of such title is amended by striking out "has at least 20 years of service computed under section 1332 of this title" and inserting in lieu thereof "first became a member of a uniformed service (as defined in section 1207(a)(2) of this title) and has at least 20 years of service computed under section 1332 of this title or first became a member of a uniformed service on or after such date and has at least 25 years of service computed under section 1332 of this title".

(f)(1) Subsection (d) of section 1210 of such title is amended by striking out "if he has at least 20 years of service computed under section 1208 of this title" and inserting in lieu thereof "if he first became a member of a uniformed service (as defined in section 1207(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has at least 20 years of service computed under section 1208 of this title or if he first became a member of a uniformed service on or after the date of the enactment of such Act and has at least 25 years of service computed under section 1208 of this title".

(2) Subsection (e) of such section is amended by striking out "if he has less than 20 years of service computed under section 1208 of this title" and inserting in lieu thereof "if he first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has less than 20 years of service computed under section 1208 of this title or if he first became a member of a uniformed service on or after the date of the enactment of such Act and has less than 25 years of service computed under section 1208 of this title".

MINIMUM SERVICE REQUIREMENTS FOR NONREGULAR SERVICE RETIREMENT PAY

SEC. 105. Clause (2) of section 1331(a) of title 10, United States Code, is amended to read as follows:

"(2) he first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has performed at least 20 years of service computed under section 1332 of this title or he first became a member of a uniformed service on or after such date and has performed at least 25 years of service computed under section 1332 of this title;".

COMPUTATION OF RETIRED PAY

SEC. 106. Section 1401 of title 10, United States Code, is amended—

(1) by striking out the first sentence and inserting in lieu thereof the following: "(a) The monthly retired pay of a person entitled thereto under this subtitle who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 is computed according to the following table.";

(2) by inserting "but before the date of the enactment of the Uniformed Services Retirement Act of 1985," after "1980," in column 1 of the table contained in such section; and

(3) by adding at the end the following new subsection:

"(b)(1) Except as provided in paragraph (2), the monthly retired pay of a person entitled thereto under this subtitle who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 is an amount determined by multiplying the monthly retired pay base of the person (as computed under section 1407(b) of this title) by 2 percent for each year of service, but not more than 30, credited to him under section 1333 of this title (if retired under section 1331 of this title) or under section 1405 of this title (if retired under a section referred to in the table in subsection (a) under the heading 'For sections' opposite formulas numbered 4 and 5).

"(2) The monthly retired pay of a person described in paragraph (1) who is retired under section 1201, 1202, 1204, or 1205 of this title is computed, as the member elects, as follows: Multiply the monthly retired pay base (as computed under section 1407(b) of this title) by—

"(A) 2 percent for each year of service, but not more than 30, credited to the member under section 1208 of this title; or

"(B) the percentage of disability of the member on the date on which he retired, but not more than 60 percent.

"(3) Before applying the percentage factor under paragraph (1) or (2), credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.".

ADJUSTMENT OF RETIRED PAY AND RETAINER PAY TO REFLECT CHANGES IN CONSUMER PRICE INDEX

SEC. 107. Subsection (b) of section 1401a of title 10, United States Code, is amended to read as follows:

"(b) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, the Secretary of Defense shall at the same time—

"(1) in the case of a person who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985,

increase the retired or retainer pay of such member or former member of the armed forces by the same percent as the percentage by which annuities are increased under such section; and

"(2) in the case of a person who first became a member of a uniformed service on or after the date of the enactment of such Act, increase the retired or retainer pay of such member or former member by applying the same percentage referred to in clause (1) to the retired pay base (as provided for in section 1407(b) of this title) of such member or former member.

Increases in the retired or retainer pay of a person referred to in clause (2) of the preceding sentence shall be cumulative and may not be compounded.".

RECOMPUTATION OF RETIRED OR RETAINER PAY TO REFLECT LATER ACTIVE DUTY

SEC. 108. (a)(1) Section 1402a of title 10, United States Code, is amended by inserting "but before the date of the enactment of the Uniformed Services Retirement Act of 1985," after "September 7, 1980," each place it appears.

(2)(A) The section heading for such section is amended by adding at the end thereof the following: ", but before the date of the enactment of the Uniformed Services Retirement Act of 1985".

(B) The table of sections at the beginning of chapter 71 of such title is amended by striking out the period at the end of the item relating to section 1402a and inserting in lieu thereof the following: ", but before the date of the enactment of the Uniformed Services Retirement Act of 1985.".

(b)(1) Chapter 71 of title 10, United States Code, is further amended by inserting after section 1402a the following new section:

"§ 1402b. Recomputation of retired or retainer pay to reflect later active duty of members who first became members on or after the date of the enactment of the Uniformed Services Retirement Act of 1985

"(a) A member of an armed force who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after the date of the enactment of the Uniformed Services Retirement Act of 1985, who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty on the basis of the monthly retired or retainer pay base under section 1407 of this title which he would be entitled to use if (1) he were retiring upon release from that active duty, or (2) he were transferring to the Fleet Reserve or the Fleet Marine Corps Reserve upon that release from active duty multiplied by 2 percent for each year of service, but not more than 30, that may be credited to him in computing his retired or retainer pay.

"(b) A member of an armed force who first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985, who has been retired other than for physical disability, and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay computed under subsection (d).

"(c) A member of an armed force who first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and who—

"(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

"(2) incurs, while on active duty after retirement or after his name was placed on the temporary disability retired list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on that list; and

"(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled upon his release from active duty, to retired pay under subsection (d).

"(d) A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed, as the member elects, as follows: Multiply the monthly retired base pay of the member under section 1407(b) of this title by—

"(A) 2 percent for each year of service, but not more than 30, credited to the member under section 1208 of this title; or

"(B) the highest percentage of disability attained while on active duty after retirement or after the date when his name was placed on the temporary disability retired list, as the case may be, but not more than 60 percent.

"(e) Before applying the percentage factor in subsection (a) or (d), credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month. The amount computed under such subsection, if not a multiple of $1, shall be rounded to the next lower multiple of $1.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1402a the following new item:

"1402b. Recomputation of retired or retainer pay to reflect later active duty of members who first became members on or after the date of the enactment of the Uniformed Services Retirement Act of 1985.".

ANNUITIES BASED ON RETIRED OR RETAINER PAY

SEC. 109. Section 1431 of title 10, United States Code, is amended—

(1) in subsection (b)—

(A) by striking out "nineteen years of service" and inserting in lieu thereof "19 years of service, in the case of a person who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985, or 24 years of service, in the case of a person who first became a member of a uniformed service on or after the date of the enactment of such Act,"; and

(B) by striking out "nineteen years of that service" and inserting in lieu thereof "19 years of that service, in the case of a person who first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985, or 24 years of that service, in the case of a person who first became a member of a uniformed service on or after the date of the enactment of such Act"; and

(2) in subsection (c), by striking out "nineteen years of service" and inserting in lieu thereof "19 years of service, in the case of a person who first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985, or 24 years of service, in the case of a person who first became a member of a uniformed service on or after the date of the enactment of such Act".

MISCELLANEOUS CONFORMING AMENDMENTS

SEC. 110. (a) Section 1403 of title 10, United States Code, is amended by striking out "1401" and inserting in lieu thereof "1401(a)".

(b) The matter before clause (1) in section 1405 of such title is amended to read as follows: "For the purposes of section 1401(a) (formulas 4 and 5), 1401(b)(1), 3991(a) (formula A), 3991(b), 3992 (formula (B)), 6151(b), 6323(e), 6325 (a)(2), (b)(2), and (d), 6330(c)(1)(B), 6383 (c)(1)(B) and (c)(2), 8991(a) (formula A), 8991(b), or 8992 (formula B) of this title, the years of service of a member of the armed forces are computed by adding—".

TITLE II—ARMY

SEPARATION OR TRANSFER TO RETIRED RESERVE

SEC. 201. Section 3850 of title 10, United States Code, is amended by inserting ", in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985, or 25 years of service, in the case of an officer who first became a member of a uniformed service on or after the date of the enactment of such Act," after "20 years of service".

MINIMUM YEARS OF SERVICE FOR RETIREMENT

SEC. 202. (a)(1) Section 3911 of title 10, United States Code, is amended to read as follows:

"§ 3911. Minimum years of service for retirement

"The Secretary of the Army may, upon the officer's request, retire a regular or reserve commissioned officer of the Army who—

"(1) first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has at least 20 years of service computed under section 3926 of this title, at least 10 years of which have been active service as a commissioned officer; or

"(2) first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and has at least 25 years of service computed under section 3926 of this title, at least 10 years of which have been active service as a commissioned officer.".

(2) The table of sections at the beginning of chapter 367 of such title is amended by striking out the item relating to section 3911 and inserting in lieu thereof the following:

"3911. Minimum years of service for retirement.".

(b) The first sentence of section 3914 of such title is amended to read as follows: "Under regulations to be prescribed by the Secretary of the Army, an enlisted member of the Army who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and who has at least 20, but less than 30, years of service computed under section 3925 of this title, or an enlisted member of the Army who first

became a member of the armed forces on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and who has at least 25, but less than 30, years of service computed under section 3925 of this title, may, upon his request, be retired.".

(c)(1) The first sentence of section 3991 of such title is amended to read as follows:

"(a) The monthly retired pay of a person entitled thereto under this subtitle who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 is computed according to the following table.".

(2) The table contained in such section is amended by inserting "but after the date of the enactment of the Uniformed Services Retirement Act of 1985," after "1980," in column 1.

(3) Such section is further amended by adding at the end thereof the following new subsections:

"(b)(1) The monthly retired pay of a person entitled thereto under this subtitle who first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 is an amount determined by multiplying the monthly retired pay base of the person (as computed under section 1407(b) of this title) by 2 percent for each year of service, but not more than 30, credited to him under section 1405 of this title (if retired under a section referred to in the table in subsection (a) under the heading 'For sections' opposite formula A) or section 3917 of this title (if retired under section 3914 or 3917 of this title).

"(2) The Secretary of the Army may increase the monthly retired pay of a person described in paragraph (1) who is retired under section 3914 of this title by 10 percent for extraordinary heroism in line of duty. The Secretary's determination as to extraordinary heroism is conclusive for all purposes.

"(c) The amount computed under this section, if not a multiple of $1, shall be rounded to the next lower multiple of $1.".

(d)(1) The first sentence of section 3992 of such title is amended to read as follows: "An enlisted member of the Army who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and who is advanced on the retired list under section 3964 of this title is entitled to recompute his retired pay under formula A of the following table, and a warrant officer of the Army so advanced who first became a member of a uniformed service before such date is entitled to recompute his retired pay under formula B of that table.".

(2) The table contained in such section is amended by inserting "but before the date of the enactment of the Uniformed Services Retirement Act of 1985," after "1980," in column 1.

TITLE III—NAVY AND MARINE CORPS

MINIMUM YEARS OF SERVICE FOR RETIREMENT

SEC. 301. (a) Subsection (c) of section 6322 of title 10, United States Code, is amended by inserting "first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and" after "who" in the material preceding clause (1).

(b) Section 6322 of such title is further amended by adding at the end thereof the following new subsection:

"(d) The monthly retired pay of an officer referred to in subsection (a) who first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 is an amount equal to 60 percent of the monthly retired pay base of the officer (as computed under section 1407(b) of this title).".

MINIMUM YEARS REQUIRED FOR RETIREMENT

SEC. 302. (a) Subsection (a) of section 6323 of title 10, United States Code, is amended to read as follows:

"(a)(1) In the case of an officer of the Navy or Marine Corps who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and who applies for retirement after completing more than 20 years of active service, of which at least 10 years was service as a commissioned officer, may, in the discretion of the President, be retired on the first day of any month designated by the President.

"(2) In the case of an officer of the Navy or Marine Corps who first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and who applies for retirement after completing more than 25 years of active service, of which at least 10 years was service as a commissioned officer, may, in the discretion of the President, be retired on the first day of any month designated by the President.".

(b) Subsection (e) of such section is amended—

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

(2) by inserting "who first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985" after "this section" in the material preceding clause (1);

(3) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively; and

(4) by adding at the end the following new paragraph:

"(2) Unless otherwise entitled to higher pay, an officer retired under this section who first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 is entitled to monthly retired pay in an amount determined by multiplying the monthly retired pay base of the officer (as computed under section 1407(b) of this title) by 2 percent for each year of service, but not more than 30, that may be credited to him under section 1405 of this title.".

RETIRED GRADE AND PAY OF OFFICERS

SEC. 303. (a) Subsection (a) of section 6325 of title 10, United States Code, is amended by striking out "subsection (b) or" in the text preceding clause (1) and inserting in lieu thereof "subsections (b) and (d) and".

(b) Subsection (b) of such section is amended by striking out "Each" at the beginning of such subsection and inserting in lieu thereof "Except as provided in subsection (d), an".

(c) Such section is further amended by adding at the end thereof the following new subsection:

"(d) An officer referred to in subsection (a) or (b) who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 is entitled to monthly retired pay at the rate of 2 percent of the monthly retired pay base of the officer (as computed under section 1407(b) of this title) multiplied by the number of years of service that may be credited to him under section 1405 of this title, but the monthly retired pay so computed may not be more than 60 percent of the monthly retired pay base.".

COMPUTATION OF RETIRED PAY FOR ENLISTED MEMBER WITH 30 OR MORE YEARS OF SERVICE

SEC. 304. Section 6326 of title 10, United States Code, is amended—

(1) in subsection (c), by striking out "Each" and inserting in lieu thereof "Except as provided in subsection (d), a"; and

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

"(d) The monthly retired pay of an enlisted member referred to in subsection (a) who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 is an amount equal to 60 percent of the monthly retired pay base of the member (as computed under section 1407(b) of this title).".

MINIMUM SERVICE TO QUALIFY FOR TRANSFER TO THE FLEET RESERVE OR THE FLEET MARINE CORPS RESERVE

SEC. 305. (a) Subsection (b) of section 6330 of title 10, United States Code, is amended to read as follows:

"(b)(1) An enlisted member of the Regular Navy or the Naval Reserve who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Corps Reserve who first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985 and who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.

"(2) An enlisted member of the Regular Navy or the Naval Reserve who first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and who has completed 25 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Corps Reserve who first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and who has completed 25 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.".

(b) Subsection (c)(1) of such section is amended—

(1) by striking out "Each" at the beginning of such subsection and inserting in lieu thereof "(A) Except as provided in subparagraph (B), a";

(2) by redesignating clauses (A) and (B) of paragraph (1) as clauses (i) and (ii), respectively; and

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

"(B) A member who first became a member of a uniformed service on or after

the date of the enactment of the Uniformed Services Retirement Act of 1985 and who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section is entitled, when not on active duty, to monthly retainer pay in an amount determined by multiplying the monthly retired pay base of the member (as computed under section 1407(b) of this title) by 2 percent for each year of active service in the armed forces, but not more than 30.".

COMPUTATION OF PAY OF CERTAIN MEMBERS INVOLUNTARILY RETIRED

SEC. 306. (a) Subsection (c) of section 6383 of title 10, United States Code, is amended—

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

(2) by redesignating subclauses (A) and (B) of clause (2) as subclauses (i) and (ii), respectively;

(3) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively;

(4) by inserting "but before the date of the enactment of the Uniformed Services Retirement Act of 1985," after "1980," in subclause (ii) of clause (B), as redesignated by clause (2) of this section; and

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

"(2) An officer retired under subsection (a) or (b) who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 is entitled to monthly retired pay in an amount determined by multiplying the monthly retired pay base of the member (as computed under section 1407(b) of this title) by 2 percent for each year of service, but not more than 30, that may be credited to him under section 1405 of this title.".

(b) Subsection (i) of such section is amended by inserting "in the case of an officer who first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985, or beyond 28 years, in the case of an officer who first became a member of a uniformed service on or after the date of the enactment of such Act," after "24 years of commissioned active service," in the second sentence.

ELIMINATION FROM ACTIVE SERVICE OF CERTAIN OFFICERS WHO HAVE TWICE FAILED OF SELECTION FOR PROMOTION.

SEC. 307. Subsection (c) of section 6389 (c) of title 10, United States Code, is amended—

(1) by striking out "20 years" in the table under the heading "Total commissioned service" and inserting in lieu thereof "20 years (in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985) or 25 years (in the case of an officer who first became a member of a uniformed service on or after such date)"; and

(2) by striking out the period at the end of the fourth sentence and inserting in lieu thereof ", in the case of an officer who first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985, or if the officer can complete at least 25 years of service as computed under section 1332 of this title during the period of such deferment, in the case of an officer who first became a member of a uniformed service on or after the date of the enactment of such Act."

TITLE IV—AIR FORCE

SEPARATION OR TRANSFER TO RETIRED RESERVE

SEC. 401. Section 8850 of title 10, United States Code, is amended by inserting ", in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985, or 25 years of service, in the case of an officer who first became a member of a uniformed service on or after the date of the enactment of such Act," after "20 years of service".

MINIMUM YEARS OF SERVICE FOR RETIREMENT

SEC. 402. (a)(1) Section 8911 of title 10, United States Code, is amended to read as follows:

"§ 8911. Minimum years of service for retirement

"The Secretary of the Air Force may, upon the officer's request, retire a regular or reserve commissioned officer of the Air Force who—

"(1) first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has at least 20 years of service computed under section 8926 of this title, at least 10 years of which have been active service as a commissioned officer; or

"(2) first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and has at least 25 years of service computed under section 8926 of this title, at least 10 years of which have been active service as a commissioned officer.".

(2) The table of sections at the beginning of chapter 867 of such title is amended by striking out the item relating to section 8911 and inserting in lieu thereof the following:

"8911. Minimum years of service for retirement.".

(b) The first sentence of section 8914 of such title is amended to read as follows: "Under regulations to be prescribed by the Secretary of the Air Force, an enlisted member of the Air Force who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and who has at least 20, but less than 30, years of service computed under section 8925 of this title, or an enlisted member of the Air Force who first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 and who has at least 25, but less than 30, years of service computed under section 8925 of this title, may, upon his request, be retired.".

(c)(1) The first sentence of the text preceding the table in section 8991 of such title is amended to read as follows:

"(a) The monthly retired pay of a person entitled thereto under this subtitle who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 is computed according to the following table.".

(2) The table contained in such section is amended by inserting "but after the date of the enactment of the Uniformed Services Retirement Act of 1985," after "1980," in column 1.

(3) Such section is further amended by adding at the end thereof the following new subsections:

"(b)(1) The monthly retired pay of a person entitled thereto under this subtitle who first became a member of a uniformed service on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 is an amount determined by multiplying the monthly retired pay base of the person (as computed under section 1407(b) of this title) by 2 percent for each year of service, but not more than 30, credited to him under section 1405 of this title (if retired under a section referred to in the table in subsection (a) under the heading 'For sections' opposite formula A) or section 8925 of this title (if retired under section 8914 or 8917 of this title).

"(2) The Secretary of the Air Force may increase the monthly retired pay of a person described in the preceding sentence who is retired under section 8914 of this title by 10 percent for extraordinary heroism in line of duty. The Secretary's determination as to extraordinary heroism is conclusive for all purposes.

"(c) The amount computed under this section, if not a multiple of $1, shall be rounded to the next lower multiple of $1.".

(d)(1) The first sentence of section 8992 of such title is amended to read as follows: "An enlisted member of the Air Force who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and who is advanced on the retired list under section 8964 of this title is entitled to recompute his retired pay under formula A of the following table, and a warrant officer of the Air Force so advanced who first became a member of a uniformed service before such date is entitled to recompute his retired pay under formula B of that table.".

(2) The table contained in such section is amended by inserting "but before the date of the enactment of the Uniformed Services Retirement Act of 1985," after "1980," in column 1.

TITLE V—COAST GUARD

RETIREMENT UPON FAILURE FOR SELECTION FOR PROMOTION

SEC. 501. (a) Clauses (3) and (4) of section 283(a) of title 14, United States Code, are amended to read as follows:

"(3) if, on the date specified for his discharge in this section, the officer has completed at least 20 years of active service (in the case of a member who first became a member of a uniformed service (as defined in section 1407(a)(2) of title 10) before the date of the enactment of the Uniformed Services Retirement Act of 1985) or at least 25 years of active service (in the case of a member who first became a member of a uniformed service on or after the date of the enactment of such Act) or is eligible for retirement under any law, be retired on that date; or

"(4) if, on the date specified for his discharge in clause (1), the officer has completed at least 18 years of active service (in the case of an officer who first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985) or at least 23 years (in the case of an officer who first became a member of a uniformed service on or before the date of the enactment of such Act), be retained on active duty and retired on the last day of the month in which he completes 20 years of active service (in the

case of a member who first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985) or 25 years of active service (in the case of a member who first became a member of a uniformed service on or after the date of the enactment of such Act), unless earlier removed under another provision of law.".

(b) Clauses (1) and (2) of section 285 of such title are amended to read as follows:

"(1) if the officer—

"(A) has completed at least 20 years of active service, in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of title 10) before the date of the enactment of the Uniformed Services Retirement Act of 1985, or at least 25 years of active service, in the case of an officer who first became a member of a uniformed service on or after the date of the enactment of such Act, or

"(B) is eligible for retirement under any law on June 30 of the promotion year in which his second failure of selection occurs;

be retired on that date; or

"(2) if ineligible for retirement on the date specified in clause (1), be retained on active duty and retired on the last day of the month in which he completes 20 years of active service, in the case of an officer who first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985, or 25 years of active service, in the case of an officer who first became a member of a uniformed service on or after the date of the enactment of such Act, unless earlier removed under another provision of law.".

(c) Section 289(g) of such title is amended by striking out "twenty years of active service" and inserting in lieu thereof "20 years of active service, in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of title 10) before the date of the enactment of the Uniformed Services Retirement Act of 1985, or 25 years of active service, in the case of an officer who first became a member of a uniformed service on or after the date of the enactment of such Act".

MINIMUM YEARS OF SERVICE FOR VOLUNTARY RETIREMENT

SEC. 502. (a) Section 291 of title 14, United States Code, is amended by striking out "twenty years' active service" and inserting in lieu thereof "20 years of active service (in the case of an officer who first became a member of a uniformed service (as defined in section 1407(a)(2) of title 10) before the date of the enactment of the Uniformed Services Retirement Act of 1985) or 25 years of active service (in the case of an officer who first became a member of a uniformed service on or after the date of the enactment of such Act)".

(b)(1) The section heading of such section is amended to read as follows:

"§ 291. Minimum years of service for voluntary retirement".

(2) The table of sections at the beginning of chapter 11 of such title is amended by striking out the item relating to section 291 and inserting in lieu thereof the following:

"291. Minimum years of service for voluntary retirement.".

VOLUNTARY RETIREMENT

SEC. 503. Section 355 of title 14, United States Code, is amended by striking out "has completed twenty years' service" and inserting in lieu thereof "first became a member of a uniformed service (as defined in section 1407(a)(2) of title 10) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has completed 20 years of service or who first became a member of a uniformed service on or after the date of the enactment of such Act and has completed 25 years of service".

RETIREMENT OF ENLISTED PERSONNEL

SEC. 504. Section 357 of title 14, United States Code, is amended—

(1) in subsection (a), by striking out "have twenty years service," in the first sentence and inserting in lieu thereof "first became members of a uniformed service (as defined in section 1407(a)(2) of title 10) before the date of the enactment of the Uniformed Services Retirement Act of 1985 and have 20 years of service or who first became members of a uniformed service on or after the date of the enactment of such Act and have completed 25 years of service,";

(2) in subsection (b), by striking out "has completed twenty years' service" and inserting in lieu thereof "first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has completed 20 years of service or who first became a member of a uniformed service on or after the date of the enactment of such Act and has completed 25 years of service,"; and

(3) in subsection (c), by striking out "retired by reason of twenty years' service," and inserting in lieu thereof "who first became a member of a uniformed service before the date of the enactment of the Uniformed Services Retirement Act of 1985 and has 20 years of service, or who first became a member of a uniformed service on or after such date and has completed 25 years of service,".

COMPUTATION OF RETIRED PAY

SEC. 505. Subsection (b) of section 423 of title 14, United States Code, is amended —

(1) by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (c)"; and

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

"(c) The monthly retired pay of a person entitled to retired pay under this title who first became a member of a uniformed service (as defined in section 1407(a)(2) of title 10) on or after the date of the enactment of the Uniformed Services Retirement Act of 1985 is 2 percent of the monthly retired pay base of the person (as computed under section 1407(f) of title 10) multiplied by the number of years of service that may be credited to him under section 1405 of title 10, but the retired pay so computed may not be more than 60 percent of such monthly retired base.".

By Mr. DIXON (for himself, Mr. JOHNSTON, Mr. PRYOR, Mr. RIEGLE, and Mr. SASSER):

S. 1151. A bill to amend the Federal Deposit Insurance Act; to the Committee on Banking, Housing, and Urban Affairs.

(The remarks of Mr. DIXON and the text of the legislation appear earlier in today's RECORD.)

By Mr. KERRY:

S. 1152. A bill to amend the Internal Revenue Code of 1954 to increase all civil and criminal tax penalties for taxpayers who avoid their fair share of Federal taxes, to increase the voluntary compliance of the Federal tax laws, and for other purposes; to the Committee on Finance.

TAXPAYER AWARENESS AND ENFORCEMENT ACT

● Mr. KERRY. Mr. President, during the debate last week on the budget, I proposed a tax enforcement amendment which endorses measures which would accomplish substantial deficit reduction and address the growing problem of income tax evasion. Due to the overwhelmingly positive support we received on the amendment, I am today introducing a bill entitled the "Federal Taxpayer Awareness and Enforcement Act of 1985." The bill represents a fundamental improvement in fiscal fairness because it will help eliminate the pressure for painful budget cuts, while at the same time insuring that all Americans meet their obligation to comply with existing tax laws.

All of us are aware of the magnitude of the Federal budget deficit, and the serious economic challenge we face as the result. Unfortunately, we have another problem that is nearly as large, and has received much less attention: approximately $100 billion in revenues is lost each year to tax cheaters. This is a grave problem, and it's rapidly growing worse. According to the General Accounting Office, the "tax gap" of uncollected revenues has grown by 300 percent over the last decade.

Recent studies show an astonishing number of Americans see tax cheating—nonfiling, under-reporting, or overstating deductions—as a common and accepted practice. A 1984 Yankelovich survey for the IRS found that a majority of Americans believe that over 25 percent of the public cheat on their taxes, and that such cheating is becoming more prevalent. Even more alarming is the perception by 41 percent of the taxpayers, that cheaters are unlikely or certain not to be caught. Our fundamental aim is to reverse this perception and the underlying trend on which it is based. This bill is not designed to increase or substantially alter withholding requirements or recordkeeping on the 80 percent of the individuals in this country who are honest taxpayers. The basic intent of this act is to ensure that IRS has the resources and the means to effectively use the information which is already in the system to obtain compliance from the 20 percent of the taxpayers who are evading their taxes.

The strategy proposed in this bill is twofold. First, a period of taxpayer awareness would be offered so that all Americans will be fully aware of the effects that tax cheaters have on honest individuals, the deficit of this country, and the new programs that will go into effect to identify and collect taxes from those taxpayers who don't pay their fair share. The second phase of the initiative is a significant

enforcement program designed to crack down on tax shelter promoters, and individuals and corporations in flagrant violation of tax laws. The explicit aim of this enforcement effort is to make an example of those who violate the law, and thereby demonstrate that tax evaders will be swiftly brought to justice and pay the penalty for violating the law.

The initiative in this act will increase taxpayer compliance and raise billions of dollars. Both approaches have already been put to a test on the State level. Over the last couple of years, several States have increased their revenues through some of the same measures in this act. Hundreds of millions of dollars in previously uncollectable revenues were raised, and the success of these efforts exceeded even the most optimistic assumptions. By raising Federal taxpayer compliance by 5 percent over 5 years as stated in the bill, estimated revenue collections will increase by about $30 billion a year.

Mr. President, I ask unanimous consent that a factsheet on this legislation be printed in the RECORD.

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

THE FEDERAL TAXPAYER AWARENESS AND ENFORCEMENT ACT OF 1985—FACTS ON TAX COMPLIANCE

IRS estimates that the "tax gap" is now approaching $100 billion a year, and growing every day. GAO says this estimate is conservative.

Legal sector tax gap has tripled in the last decade.

The compliance gap can be accounted for chiefly as follows: Individual underreporting of legal income, 69%; overstated deductions or credits, 13%; unreported illegal income, 8%; corporate underreporting or overstating, 4%; and other, 6%.

Delinquent payments of approximately $30 billion are owed.

IRS has shown conclusively that using existing examination or audit techniques, every $1 spent results in a return of $5 or $6. For every $1 spent on accounts receivable, $18 to $20 is returned.

IRS staff has only increased by approximately 3% in the last 10 years while tax returns have increased by about 46%.

IRS will only be able to examine about 1.2% of the returns in 1986 compared to 2.6% in 1976.

1984 Yankelovich study found that: One in 5 persons admitted to tax cheating; a majority believed that over 25% of the public is cheating on their taxes and 1 in 4 felt that more than half of the public is cheating to some extent; a majority perceived that it was certain or unlikley that tax cheaters would be caught (a taxpayer has a 1 in 43,000 chance of being subject to a criminal investigation); and a majority of the public believe that tax cheating is becoming more prevalent.

"The National Governors' Association has urged the Administration and Congress to strengthen federal tax enforcement tools, powers, or other resources for the Internal Revenue Service as integral to any tax reform proposal and integral to initiatives designed to tackle the deficit crisis. They estimate that as much as $20 billion annually could be saved by the Treasury through an intensive effort to tighten federal enforcement."

ELEMENTS OF THE FEDERAL TAXPAYER AWARENESS AND ENFORCEMENT ACT OF 1985

A taxpayer awareness program that through the extensive use of media will inform taxpayers of: the effect tax cheaters have on the honest taxpayers; the effect tax cheaters have on the national deficit; and the efforts IRS will undertake to find these cheaters.

Tax Compliance certification required from federal contractors, borrowers, employees and licensees.

Aggressive public disclosure of flagrant tax violators along with an aggressive public relations campaign to build support and confidence in the tax administration system.

Greater sharing of data among different levels of government.

Contracting collection of uncollectables to private collection agencies.

Require local government units to report real property capital gains.

Resources to raise voluntary compliance by 5% within 5 years.

5% increase in voluntary compliance would raise approximately $30 billion a year.

Increased Penalties of 50% or more.●

By Mr. D'AMATO:

S. 1153. A bill to provide for the distribution within the United States of the U.S. Information Agency film entitled "Hal David: Expressing a Feeling"; to the Committee on Foreign relations.

PROVIDING FOR DISTRIBUTION AND SHOWING OF "HAL DAVID: EXPRESSING A FEELING"

● Mr. D'AMATO. Mr. President, I rise today to introduce legislation to allow the U.S. Information Agency [USIA] to release for distribution and use in the United States the film, "Hal David: Expressing a Feeling." This film is the first in a series of USIA documentaries on American songwriters.

By some quirk of law, materials produced by USIA using taxpayers' moneys cannot be shown domestically. It becomes necessary, therefore, to pass special legislation to allow the viewing of such films in the United States.

"Hal David: Expressing a Feeling" is a profile of one of the most talented and prolific songwriters in our Nation. It is ironic that Americans need an act of Congress to enjoy a film about one of the treasures of our own culture. I hope this body will act quickly on this bill so this film can be made available to the American people as soon as possible.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1153

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a)(1) notwithstanding the second sentence of section 501 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1461)—

(A) the Director of the United States Information Agency shall make available to the Administrator of General Services a master copy of the film entitled "Hal David: Expressing a Feeling"; and

(B) subject to paragraph (2), the Administrator shall reimburse the Director for any expenses of the agency in making that master copy available, shall deposit that film in the National Archieves of the United States, and shall make copies of that film available for purchase and public viewing within the United States.

(2) The Administrator shall carry out his duties under clause (B) of paragraph (1) only after the United States Government has acquired, after the date of enactment of this Act, any remaining license or other rights which are not Government-held before such date and which are required for distribution within the United States of the film entitled "Hal David: Expressing a Feeling" without use of funds appropriated or otherwise made available to any department, agency, instrumentality, or office of the United States.

(b) Any reimbursement to the Director pursuant to this section shall be credited to the applicable appropriation of the United States Information Agency.●

By Mr. MATSUNAGA (for himself, Mr. PRESSLER, Mr. INOUYE, Mr. SARBANES, Mr. MELCHER, Mr. BURDICK, Mr. PELL, Mr. LEAHY and Mr. HUMPHREY):

S. 1154. A bill to amend title XVIII of the Social Security Act to provide for direct Medicare reimbursement for services performed by registered nurse anesthetists; to the Committee on Finance.

DIRECT MEDICARE REIMBURSEMENT FOR SERVICES OF REGISTERED NURSE ANESTHETISTS

Mr. MATSUNAGA. Mr. President, in the unceasing battle against ever-escalating health care costs, I am today introducing with Mr. PRESSLER, Mr. INOUYE, Mr. SARBANES, Mr. MELCHER, Mr. HUMPHREY, Mr. BURDICK, Mr. PELL, and Mr. LEAHY, as cosponsors, legislation to modify the Medicare reimbursement system with regard to anesthesia services in order to provide for more affordable care, cost efficiencies for the Medicare system, and improved access to care in many parts of the country.

Our bill S. 1154 would provide for direct Medicare part B reimbursement to certified registered nurse anesthetists [CRNA's]. Unlike determinations of physician reimbursements, this legislation would permit the Secretary of Health and Human Services to set the rates at which CRNA's would be paid under part B. These rates could be prospectively determined based on groupings of costs similar to the hospital diagnosis related grouping [DRG] payment. The costs of such a system of direct reimbursement would be limited so as not to exceed comparable

costs of utilizing CRNA's under the current Medicare reimbursement structure. Our bill will not create a new benefit. Rather, it would effect a simple shifting of the payment mechanism from part A and B of Medicare under current law to part B.

S. 1154 would do nothing to change the current Medicare requirements of physician supervision under the Medicare conditions of participation for CRNA's. It would, however, provide an alternative method of Medicare reimbursement for nurse anesthetist services that would not discourage the use of nurse anesthetists. It would provide an incentive to hospitals to employ or contract with CRNA's, which would help to dampen spiraling health costs while maintaining the quality of health care.

Mr. President, the Deficit Reduction Act of 1984 (Public Law 98-369) contained a "passthrough" amendment for CRNA's. This amendment provided for the costs of CRNA's to be paid or "passedthrough" outside the current prospectively fixed payment made to hospitals. Under this system, hospitals are being reimbursed under part A for reasonable costs they incurred for anesthesia services provided by a CRNA. This provision applies to cost reporting periods that began on or after October 1, 1984, and will last for only 3 years for hospitals utilizing it. This provision is a temporary solution adopted by Congress to rectify an unintended effect of the DRG law. Under the original medicare prospective payment statute, disincentives for the use of CRNA's were created. S-1154 proposes a long-term solution to the problem.

Mr. President, CRNA's are highly educated, qualified and licensed health professionals who have been providing much of the anesthesia services in this country for about 100 years. There are approximately 18,000 active practicing CRNA's who provide 70 percent of the anesthesia care in rural areas and 50 percent of such services nationwide. Their practice is legally sanctioned through State laws and regulations in all 50 States and U.S. territories. Thirty-four States have recognized CRNA's in an expanded role for professional nurses practicing in collaboration with physicians, dentists, and other health professionals who are themselves legally authorized to render anesthesia services.

By any norms, this is a profession with rigorous standards. A CRNA is a professional nurse who has subsequently graduated from a nurse anesthesia educational program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs and Schools, and who has passed a national examination for certification in the specialty, administered by the Council on Certification of Nurse Anesthetists. The recertification process requires that every 2 years, each CRNA demonstrate evidence of current licensure as a registered nurse, active practice as a nurse anesthetist, and appropriate continuing education within the specialty.

CRNA's can practice in one of three ways: (1) as a hospital employee, (2) as a physician employee, or (3) as a self-employed professional. The self-employed CRNA bills directly under such private insurance and medicaid programs which permit it and contracts with hospitals when direct billing is not permissible. Currently, 50 percent of CRNA's are hospital employees, 35 percent are employed by physicians, 11 percent are self-employed and four are in an "other" category of employment. Their median annual earnings amount to about $35,000.

By recognizing CRNA's as directly reimbursable health professionals, we would be taking advantage of a tested, cost-effective option in providing high quality anesthesia services at reduced costs. In fact, such recognition would inject the crucial element of economic competition into the delivery of anesthesia services, with resulting lower costs.

Presently, over 30 percent of Blue Cross-Blue Shield plans directly reimburse CRNA's for their services. There are eight States which directly reimburse CRNA's under the medicaid programs. Of the private insurance plans surveyed, 57 percent indicate they can provide direct reimbursement to CRNA's for anesthesia services. Such reimbursement also is available under the CHAMPUS Program covering active and retired military personnel and their dependents.

Medicare reimbursement was originally designed to conform with existing private, nongovernmental insurance plans. Since the enactment of Medicare, those plans have changed dramatically in that many private insurers make direct payments to a number of licensed health professionals on a charge basis for services they deliver. Medicare has been amended with respect to hospital cost reimbursement to reflect current needs. It also should be changed to provide medicare reimbursement to health professionals to reflect subsequent changes in non-Medicare programs such as in Blue Shield and CHAMPUS.

Supporting this concept is a 1981 research report entitled "Competition Among Health Practitioners" which was submitted to the Federal Trade Commission by Lewin and Associates. This report shows that current reimbursement practices regarding health professionals tend to limit innovation and promote inefficiency. Reimbursement policies that place CRNA's or other nonphysician health professionals at a competitive disadvantage interfere with innovation in health care delivery and severely limit consumer choice. Where CRNA's are used only as physician complements rather than, in appropriate cases, substitutes, costs are likely to go up and productivity decline.

Medicare part B reimbursement policy clearly creates these problems of inefficiency and costliness and is probably the greatest offender of all health care payors in this particular area. Trends in other insurance programs such as Blue Shield reflect the recognition by other insurors that it is efficient and sensible to provide for direct reimbursement to CRNA's.

The major arguments made against nonphysician direct reimbursement, such as the contention that direct reimbursement is hard to administer and that it results in poor quality care and is costly, cannot be made against CRNA's for the following reasons:

First CRNA's provide a discrete, easily identifiable item of service which is presently listed separately as an item of charge under private plans and appears separately as a part of a physician's service under part B of medicare. Therefore, to administer a direct reimuburseement plan for CRNA's is simple.

Second, CRNA's must practice always in a setting where a physician is present and supervising. In addition, hospitals exercise quality control by virtue of their ability to grant or withhold hospital privileges to CRNA's.

Third, the services of CRNA's are not subject to limitless demand which the CRNA can stimulate since physicians control whether there will be a medical intervention requiring anesthesia services.

I would like to emphasize that the bill, S. 1154, specifically ensures that State laws relating to the practice of medicine or nursing or State law requirements, with regard to the administration of anesthesia and its medical direction or supervision, will not be affected by its passage in any way.

Furthermore, it has been estimated that the cost of the direct reimbursement provisions would be the same as if the current reimbursement system is retained. Some savings are expected in fiscal year 1987 and thereafter relative to the costs for CRNA services that would be incurred when the passthrough provision is scheduled to terminate.

Given the current atmosphere of hospital reimbursement constraints, anesthesia services may become less accessible in sparsely populated areas of the country. Already there are serious problems in some regions where anesthesologists do not practice and where hospitals are too small to employ CRNA's full time and remain cost-efficient.

Prior to the "passthrough" provision, contracting with CRNA's for this

service often placed a prohibitive cost on a hospital's budget under the hospital payment limits. Contracting entails administrative costs which some hospitals indicate are much less acceptable. Direct reimbursement is, in these situations, the only method by which anesthesia services could be furnished by a CRNA and paid for by medicare.

Direct reimbursement to CRNA's would enable medicare to generate complete, accurate and current data related to anesthesia care providers, the consumers they serve, and the costs associated with that care.

As previously noted, the vast majority of CRNA services are provided in hospital in-patient settings. Therefore, the case for allowing direct reimbursement to CRNA's is a special one. Such a professional service presents an opportunity to link professional service reimbursement to the DRG-related prospective payment systems. Such reimbursement could be a model for relating part B professional service reimbursement to part A prospective payment. Reimbursement rates to CRNA's could be developed by utilizing related factors such as patient risk, complexity of medical intervention, and essential anesthesia resource requirements, in a manner allowing easier verification of the appropriateness of charge or cost-based billings.

Mr. President, I urge my colleagues to join me in supporting the innovative move in health care proposed by S. 1154.

Mr. President, I ask unanimous consent that a cost estimate for this bill, prepared recently by the American Association of Nurse Anesthetists, be printed in the RECORD at this point, and that the text of the bill, S. 1154, be printed immediately following it.

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

DESCRIPTION OF BILL AND COSTING METHODS

This bill provides for direct reimbursement for anesthesia services to CRNA's under Medicare Part B. The bill does not specify the payment method. It specifically provides HHS with authority to fix the payment rate at amounts consistent with considerations of quality and efficiency, taking into account prevailing rates paid for CRNA services. The bill specifically is not a fee for service approach based only on actual, customary or prevailing charges. The prevailing CRNA system, which shall be considered as part of establishing a rate, is generally not a fee for service, charge system. Only 8% of CRNA's or about 1,500 practice in a CRNA group which bills payors directly for services on a charge basis. The remainder are hospital employees (50-55%) and physician employees (35-40%) whose services are paid as part of the hospital payment or physician fee. (Some CRNA's are in the military or VA and are not counted.)

In establishing a fixed payment for a CRNA service, we assume HCFA may follow one of two approaches that are related. It will either seek to relate CRNA costs to surgical DRG's and fix a price that way or it will establish a price per unit of service based more generally on the average annual compensation plus overhead allowance attributable to CRNA's divided by an annual average number of procedures. Under either approach an economic updating factor should be used, but would function as a rate of increase ceiling. In no case, under either approach, should a CRNA receive less than presently received from Medicare as compensation per unit of service, whether the CRNA is hospital employed, physician employed or self employed with a hospital contract.

In no case will the total payments by Medicare necessarily exceed the prior years total payments for CRNA services except for the inflation adjustment. If a CRNA were hosptial-employed or a hosptial contractor, HCFA will have data on costs per case or total costs under the "pass through" provisions of the Deficit Reduction Act § 2312. Under this approach either a cost based rate per surgical DRG case can be established or a standard rate per case for each CRNA by hospital.

The CRNA employed by the physician is in a different situation. Physician fees include the CRNA charge and have not been separated out by HCFA. There has been no reporting as to that part of the physician fee which is attributable to the CRNA. We urge that HCFA be based on a sample basis to do this data collection. The physician fee including the CRNA will be DRG related, however. We can estimate the amount of salary plus fringe benefits and overhead of average physician employed CRNA. It is also possible to develop, from CRNA's and by estimation, the current compensation per unit of service. From this a CRNA profile of cost related rates per unit of service can be constructed.

Our current fiscal year 1985 estimate of costs related to CRNA services on Medicare cases is about $280 million. This estimate is based on HCFA's estimated cost of the pass through provision of $160 million plus an estimated cost of $120 million for CRNA services billed under Part B.

This is also our estimate of the cost of the direct reimbursement provisions since the costs under current law will be used to construct the payment rate. The provision is not a new benefit, but simply a shifting of the payment mechanism from Parts A and B of Medicare under current law to Part B under the bill. There is no net cost since $280 million is being spent under Parts A and B now. The net cost would increase above $280 million only if the number of cases is increased. The unit cost per case would remain the same except for an inflator. It is not expected that the number of CRNA's in practice will increase, however, given present trends. While the number of cases may increase, the increase is not expected to be significant and would have occurred in any event.

Some savings are expected from this provision relative to costs Medicare would incur in fiscal year 1987 and thereafter when the current Part A and B exceptions for CRNA services end. With CRNA's paid from the hospital DRG payment, as will be the case in fiscal year 1987 and thereafter, hospitals will have an incentive to over-utilize physician services at the expense of CRNA services since they can be billed and paid directly under Part B. The cost of a service is conservatively 3 to 4 times as great when a physician performs the service as a CRNA based upon earning differentials as reflected in recent HCFA data. If substitution occurs in only 20% of the cases, the excess cost to Medicare would be about $150 million. This bill can therefore be estimated to save about $150 million in fiscal year 1987 and thereafter assuming a 20% substitution factor. This seems a reasonable assumption based on hospital actions prior to fiscal year 1984 and fiscal year 1985 when the pass through and unbundling exceptions for CRNA's were created.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a)(1) section 1861(s) of the Social Security Act is amended—

(A) by redesignating paragraphs (11) through (14) as paragraphs (12) through (15), respectively;

(B) by striking out "and" at the end of paragraph (9);

(C) by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; and"; and

(D) by inserting after paragraph (10) the following new paragraph:

"(11) anesthesia services and related care provided by a registered nurse anesthetist.".

(2) Section 1864(a) of such Act is amended by striking out "paragraphs (11) and (12)" and inserting in lieu thereof "paragraphs (12) and (13)".

(b) Section 1861 of such Act is amended by adding after subsection (aa) the following new subsection:

"ANESTHESIA SERVICES PROVIDED BY A REGISTERED NURSE ANESTHETIST

"(bb)(1) The term 'anesthesia services and related care provided by a registered nurse anesthetist' means those services provided by a registered nurse anesthetist (as defined in paragraph (2)) which such nurse anesthetist is legally authorized to perform as such by the State in which such services are performed.

"(2) The term 'registered nurse anesthetist' means a registered nurse licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. In prescribing such requirements the Secretary may use the same requirements as those established by a national organization for the certification of nurse anesthetists.".

(c) Section 1832(a)(2)(B) of such Act is amended by striking out "and" at the end of clause (i), by striking out "; and" at the end of clause (ii) and inserting ", and", and by adding at the end thereof the following new clause:

"(iii) anesthesia services and related care provided by a registered nurse anesthetist; and".

(d)(1) Section 1833(a)(1) of such Act is amended by striking out "and" at the end of subparagraph (E), and by adding at the end thereof the following: "(G) in the case of anesthesia services and related care provided pursuant to section 1861(s)(11), the amounts paid shall be 80 percent of the reasonable charge for such services established by the Secretary in accordance with subsection (l);".

(2) Section 1833 of such Act is amended by adding at the end thereof the following new subsection:

"(l)(1) With respect to anesthesia services and related care provided pursuant to section 1861(s)(11), the reasonable charge shall be an amount determined by the Secretary to be consistent with efficient and high quality anesthesia services, taking into ac-

count the prevailing rate for such services, but modified to the extent necessary to comply with the requirements of paragraph (2).

"(2) In establishing the reasonable charge for anesthesia services and related care provided pursuant to section 1861(s)(11), the Secretary shall adjust such reasonable charge to the extent necessary to ensure that the total amount which will be paid under this title for such services in any fiscal year (as estimated by the Secretary) will not exceed the total amount which would be paid under this title for such services in such fiscal year if such services were included as inpatient hospital services and payment for such services was made under part A in the same manner as payment was made in the fiscal year ending on September 30, 1986, adjusted to take into account changes in prices and technology relating to the administration of anesthesia.".

(e) Section 1861(b)(4) of such Act is amended by inserting before the semicolon the following: ", and anesthesia and related care provided by a registered nurse anesthetist".

(f)(1) Section 1886(a)(4) of such Act is amended by striking out ", costs of anesthesia services provided by a certified registered nurse anesthetist".

(2) Section 1886(d)(5) of such Act is amended by striking out subparagraph (E).

(g)(1) Section 1862(a)(14) of such Act is amended by inserting before the period at the end thereof the following: ", or are anesthesia services and related care provided by a registered nurse anesthetist".

(2) Section 1866(a)(1)(H) of such Act is amended by inserting ", and other than anesthesia services and related care provided by a registered nurse anesthetist" after "1862(a)(14)".

Sec. 2. The amendments made by this Act shall apply to items and services furnished on or after Janury 1, 1987.

Sec. 3. Nothing in this Act or the amendments made by this Act shall contravene provisions of State laws relating to the practice of medicine or nursing or State law requirements regarding the administration of anesthesia and its medical direction or supervision.

By Mr. CHAFEE:

S. 1155. A bill to authorize the disposal of silver from the national stockpile; to the Committee on Armed Services.

SILVER STOCKPILE REFORM ACT

● Mr. CHAFEE. Mr. President, I am today introducing a bill which would authorize the General Services Administration to dispose of 10 million troy ounces of the silver now held in the national defense stockpile.

The U.S. Government is the largest single holder of silver in the world. In addition to substantial amounts of silver held by the mint and the Defense Department, there are 136.5 million ounces stored in the strategic stockpile. The National Security Council has determined that there is no strategic need to stockpile silver, and every administration since 1974 has declared surplus all or a portion of the silver in the stockpile. One Presidential commission—The National Commission on Supplies and Shortages—found no need to stockpile any silver.

The silver currently held in the strategic stockpile is costly to maintain and, as the last four administrations have determined, serves no useful purpose. The Federal Emergency Management Agency's latest report to Congress, issued last month, declares the entire supply of stockpile silver as excess. Valued at the average price for last year, this silver is worth $1.1 billion. If sold by GSA at current market prices, the sale of the stockpile silver would result in a $687,500 profit for the Government.

Some have argued that a sale of the entire 136.5 million ounces would effectively "dump" an unnecessarily large amount of silver on the market and depress the silver-producing industry. This may be true, which is why this bill proposes disposal of only 10 million ounces, a relatively small sale that would serve as a test method for disposing of the remainder of the surplus silver.

Mr. President, the impetus for this measure comes from the Defense Authorization Act of 1985, which officially declared 10 million ounces of silver as excess to the requirements of the stockpile. The sale of this excess silver would solve a problem currently facing the Department of Defense: According to the FEMA report, there is a shortage of many other materials considered important to the stockpile. Disposal of 10 million ounces of silver would provide funds for the purchase of these materials, which include aluminum, cobalt, copper and zinc. Thus, this bill would not only bring revenues to the Government, but would also enhance the strategic preparedness by providing to the defense stockpile materials that FEMA has determined are in short supply.

It is worth noting that the creation of the strategic silver stockpile was simply a by-product of the decision in 1967 to cease minting silver coins. It was not the result of a considered determination that such stocks were essential to the national defense.

Before 1967, the United States consumed vast amounts of silver for coinage purposes. In 1965, for example, this country used 320 million ounces for coinage. From 1961 to 1965 more than 700 million ounces were used in the same way. Clearly, there was at one time a need for large amounts of silver to be stockpiled for national purposes, but this is no longer the case. The great bulk of the current stockpile was transferred from the Treasury to the stockpile as a result of the 1967 act. There is no strategic purpose served by this huge hoard of silver, and should a strategic need for silver ever arise, vast amounts of silver are held by the Government in stores other than the stockpile and by private citizens. In any case, 10 million ounces is only a fraction of the stockpile amount, and its disposal can only serve the national interest; that is, it would test one orderly way of ridding the Government of this costly, unnecessary burden.

The United States has depended on substantial amounts of imported silver to meet its industrial needs. In 1982, net imports were 92 million ounces or $736 million. Imports account for a large percentage of U.S. consumption. Obviously, it would serve the national interest to begin disposing of the stockpile silver in an orderly fashion and thereby reduce our dependence on imports.

Rather than let this supply of silver simply lie fallow and soak up the taxpayers' dollars, let us allow the market to put it to good use. Industry sources predict a rise in the future demand for silver, which probably will have to be met through imports unless we move to dispose of excess Government supplies. The stockpile silver costs $20 million yearly to maintain, and lost opportunity costs amount to more than $225,000 per day, or more than $80 million per year. My legislation would allow us to begin replacing the silver in the stockpile with the materials FEMA has determined to be in short supply. It would also free up for commercial use surplus silver that has needlessly remained in storage for too long.

I hope my colleagues will join in supporting this legislation. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1155

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Silver Stockpile Reform Act of 1985".

Sec. 2. The President is hereby authorized to dispose of 10 million troy ounces of silver currently held in the National Defense Stockpile established by section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h). Any disposal under the authority of this Act shall be carried out in accordance with the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.).●

By Mr. DENTON:

S. 1156. A bill to amend chapter XIV of the Comprehensive Crime Control Act of 1984, relating to victims of crime, to provide funds to encourage States to implement protective reforms regarding the investigation and adjudication of child abuse cases which minimize the additional trauma to the child victim and improve the chances of successful criminal prosecution or legal action; to the Committee on the Judiciary.

CHILD VICTIM WITNESS PROTECTION ACT

Mr. DENTON. Mr. President, I rise today to introduce the "Child Victim Witness Protection Act of 1985." The

bill would amend chapter XIV of the Comprehensive Crime Control Act of 1984 as it relates to victims of crime, by providing funds to encourage the States to implement protective reforms for the investigation and adjudication of child abuse cases. Those reforms should minimize the additional trauma to the child victim and improve the chances of successful criminal prosecution or legal action.

Mr. President, the issue of child abuse has exploded into public view during the past several years. One need only to read the newspapers or to watch television news to realize that child abuse is a problem of immense proportions. The National Center for Missing and Exploited Children projects that, on a national basis, one out of three minor girls and one out of every seven minor boys will be sexually abused. Reports from the Children's Trust Fund of Montgomery, AL, indicate that 28,407 young Alabamians were abused in 1984.

Children who have been abused or sexually molested have suffered an extreme trauma. Often, however, the abused children suffer additional trauma from the justice system and other community agencies because of insensitive investigative and adjudicative procedures.

A most disturbing example of an insensitive procedure is the practice in some jurisdictions of repeated interrogation on the child victim. In many cases, the abused child is subjected to countless grueling and detailed investigative interviews. Not only do duplicative and insensitive interview procedures lead to greater trauma to the child victims and his or her family, but they frequently result in less effective intervention and prosecution. Rather than providing the child victim with necessary respect, understanding and compassion, the procedures reduce the child victim to an automaton, caught in the adult drama of the courtroom.

Mr. President, as the U.S. Supreme Court noted in the famous case of New York against Ferber, "the prevention of sexual exploitation and abuse of children constitutes a Government objective of surpassing importance." It is with that objective in mind that I introduce the "Child Victim Witness Protection Act of 1985." By encouraging the States to implement protective reforms for the investigation and adjudication of child abuse cases to minimize the additional trauma to the child victim and improve the chances of successful criminal prosecution or legal action, we will meet the objective of preventing sexual exploitation and abuse of children, or at least preclude additional trauma for the child victim.

The bill is based on recommendations from the September 1984 Final Report of the Attorney General's Task Force on Family Violence, and on the October 1982 report from the National Legal Resource Center for Child Advocacy and Protection of the American Bar Association entitled "Recommendations for Improving Legal Intervention in Intrafamily Child Sexual Abuse Cases." Under the proposed legislation, the level of the Crime Victim's Fund would be increased by $10 million to allow the Attorney General to provide modest Federal financial assistance to the States to implement programs and procedures established by previously enacted statutes which minimize additional trauma to the child victim and improve the chances of successful criminal prosecution or lgeal action.

The "Child Victim Witness Protection Act" will not impose any additional burden on the taxpayer. As a part of the Crime Victim's fund, the "Child Victim Witness Protection Act" would be financed from first, fines collected by the Federal Government, second, penalty assessments levied upon convicted Federal dependants, third, forfeited bail bonds and collateral in Federal criminal cases, and fourth, certain profits made by criminals from publishing their misdeeds in literary, visual, and audio productions. In other words, the bill would impose a type of "users' fee" on criminals in order to protect child abuse victims.

Under the bill the Attorney General would allot to each eligible State $200,000 plus an amount that bears the same ratio to the remainder as the population in the State bears to the population in all eligible States. To assist the States in meeting the eligibility requirements, the bill sets, forth suggested guidelines for statutes to minimize additional trauma to the child victim and improve to the chances of successful criminal prosecution or legal action.

Mr. President, I believe that the "Child Victim Witness Protection Act" would allow the special needs of physically and sexually abused children to be addressed effectively. I would encourage my colleagues to support it.

I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1156

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

SHORT TITLE

SECTION. 1. This Act may be cited as the "Child Victim Witness Protection Act of 1985".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds and declares that—

(1) child abuse may result in serious and severe physical and psychological trauma to the child victim;

(2) in the investigation and adjudication of child abuse cases, the child victim may be subjected to such demanding procedures as repeated interrogation and direct intense confrontation with the offender which may be tantamount to a second victimization;

(3) some evidentiary procedures, such as the hearsay rule, in effect require the child victim to testify in court, thereby forcing the child to relive in a public setting and in the presence of the offender the episode of exploitation or abuse;

(4) various legal reforms such as coordinated legal proceedings, videotaped depositions, and closed-circuit television have been introduced in a number of States and offer protection to the child victim from additional trauma resulting from the investigation and adjudication of the child abuse case;

(5) in enacting the Victims of Crime Act of 1984, chapter XIV of title II of Public Law 98-473, the Congress mandated that priority be given to eligible crime victim assistance programs which provide assistance to victims of child abuse;

(6) in defining the term "services to victims of crime" the Congress expressly included "assistance in participating in criminal justice proceedings"; and

(7) while this language was designed to provide assistance to individual victims of crime, there is a great need for broad-based intervention at the State and local levels through legal reforms and procedures specifically to address the needs of victims of child abuse.

(b) The Congress declares that the purpose of this Act is to provide funds to encourage States to implement protective reforms regarding the investigation and adjudication of child abuse cases which minimize the additional trauma to the child and improve the chances of successful criminal prosecution or legal action.

ESTABLISHMENT OF FUND

SEC. 3. Chapter XIV of the Comprehensive Crime Control Act of 1984 (title II, Public Law 98-473), relating to victims of crime, is amended by adding between section 1404 and section 1405 the following new section:

"CHILD VICTIM WITNESS PROTECTION GRANT

"SEC. 1404A. (a) The Attorney General is authorized to make additional annual grants and other payments from the Crime Victims Fund under section 1402 to the States for the protection of victims of child abuse in accordance with the eligibility requirements of this section.

"(b)(1) A State is eligible for assistance under this section if the Attorney General determines that the State has enacted statutes with respect to the investigation and adjudication of child abuse cases which—

"(A) minimize the additional trauma to the child victims; and

"(B) improve the chances of successful criminal prosecution or legal action.

Any assistance received by the State under this section shall be used to implement the programs and procedures established by the statutes enacted pursuant to this section.

"(2) From the amounts in the fund, the Attorney General shall allot to each State meeting the eligibility requirements of paragraph (1)—

"(A) $200,000, plus,

"(B) an amount which bears the same ratio to such remainder as the population in the State bears to the population in all States meeting the eligibility requirements of paragraph (1).

"(c)(1) For purposes of subsection (b)(1)(A), procedures to minimize additional trauma to the child victim may include—

"(A) establishing interdisciplinary teams of child abuse professionals such as law enforcement officers, child protective service workers, prosecutors, child advocates, mental health professionals, family counselors, and medical personnel for handling child abuse cases;

"(B) coordination of civil and criminal court proceedings involving intrafamilial child abuse;

"(C) providing for special units and training relating to child development, legal issues, and the dynamics of child abuse for law enforcement, legal, judicial, child welfare, family counseling, and mental health personnel to deal with the child victim;

"(D) providing for a support person to the child victim prior to and during the course of any legal or administrative proceeding to protect the interests of that child; or

"(E) granting courts the authority to enter protective orders to protect the child victim from additional abuse.

"(2) For purposes of subsection (b)(1)(B), reforms designed to improve the chances of successful criminal prosecution or legal action in child abuse cases may include—

"(A) establishing a specific definition of child sexual abuse;

"(B) extending the statute of limitations in criminal cases of child abuse;

"(C) modifying certain rules of evidence to allow for the admission of the child victim's hearsay statement of abuse, to permit leading questions to be asked of the child victim, to permit the use of anatomically correct dolls and drawings to describe the abuse, and to establish a presumption that children are competent to testify; or

"(D) establishing procedures for the videotaping of the child victim's statement and testimony or the use of closed-circuit television to protect the child victim from additional trauma.

"(3) Each State is encouraged to develop innovative approaches not described in paragraphs (1) and (2) to achieve the objectives of minimizing the additional trauma to the child victim and improving the chances of successful criminal prosecution or legal action in child abuse cases.

"(d) As soon as practicable after the date of enactment of this section, the Attorney General shall issue such regulations as may be necessary to implement this section. In establishing regulations, the Attorney General shall consider the purposes of this section.

"(e) The Attorney General is hereby authorized to use up to $10,000,000 from the Crime Victim's Fund each fiscal year for the purposes of this title.".

INCREASE IN CRIME VICTIM'S FUND LEVEL

SEC. 4. (a) Subsection (c)(1) of section 1402 of the Victims of Crime Act of 1984 is amended by striking out "the sum of $100 million" and inserting in lieu thereof "the sum of $110,000,000".

(b) Paragraph (2) of subsection (2) of section 1402 is amended to read as follows:

"(2) Of the total deposited in the Fund during a particular fiscal year—

"(A) out of the first $100,000,000 deposited in the Fund, fifty percent shall be available for grants under section 1403 and fifty percent shall be available for grants under section 1404; and

"(B) any amounts deposited in the Fund in excess of $100,000,000 but not exceeding $110,000,000 shall be available for grants under section 1404A.".

By Mr. McCLURE (by request):

S. 1157. A bill to authorize the Secretary of the Interior to perform studies relating to disposal of drain water and to construct interim corrective measures deemed necessary for the San Luis interceptor drain; to the Committee on Energy and Natural Resources.

SAN LUIS INTERCEPTOR DRAIN

● Mr. McCLURE. Mr. President, at the request of the administration, I send to the desk for appropriate reference a bill to authorize the Secretary of the Interior to perform studies relating to disposal of drain water and to construct interim corrective measures deemed necessary for the San Luis interceptor drain.

Mr. President, this draft legislation was submitted and recommended by the Department of the Interior, and I ask unanimous consent that the bill, and the executive communication which accompanied the proposal from the Assistant Secretary be printed in the RECORD.

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

S. 1157

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

SEC. 1. That there is authorized to be appropriated to the Secretary of the Interior for studies and interim corrective measures relating to distribution and drainage and to the disposal of drainage water in the west side of San Joaquin Valley of the Central Valley Project up to $12,600,000 for fiscal year 1986.

SEC. 2. The Secretary shall use his best efforts to obtain repayment contracts pursuant to section 9(d) of the Reclamation Project Act of August 4, 1939 (53 Stat. 1195) with respect to the expenditure of any funds authorized to be appropriated by this Act, said contracts to be with those water districts which benefit from such expenditure and to provide for the repayment of such funds within a period, not to exceed 50 years, determined by the Secretary. Any funds expended which are not made the subject of a repayment contract within 2 years of expenditure shall be added to the costs of the construction of works of the San Luis Unit, Central Valley Project, California or the Central Valley Project as a whole allocated to irrigation and shall be repaid pursuant to section 9(e) of 1939 Act.

SEC. 3. The Secretary is authorized to receive additional funds from non-Federal entities to assist in the studies and/or construction authorized pursuant to this Act.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, April 24, 1985.

Hon. GEORGE BUSH,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: There is enclosed a draft bill "To authorize the Secretary of the Interior to perform studies relating to disposal of drain water and to construct interim corrective measures deemed necessary for interceptor drains for the San Luis Unit, Central Valley Project."

We recommend that the draft bill be introduced, referred to the appropriate committee for consideration, and enacted.

The Central Valley Project, California is a large multibillion dollar, multipurpose project that has been under construction since the early 1940's. The San Luis Unit, authorized in 1960, is about 25 percent of the overall project, and it has an estimated total Federal obligation of $1.2 billion. Based on dollars it is slightly less than one half complete although many features are in operation. It is now common knowledge that the west side of the San Joaquin Valley has serious drainage and salt management problems which are having negative impacts on the area's waterfowl and farm production. In addition, the irrigation drainage disposal issue has created both a public health and environmental concern which requires both immediate and long term actions.

An intradepartmental effort is continuing to develop and evaluate economically viable and environmentally sound alternative solutions. Resources from the Bureau of Reclamation, U.S. Geological Survey and the U.S. Fish and Wildlife Service have been mobilized to analyze both the source and origin of trace elements and the loading of mineral contaminants in the drainage effluent, and to define safe levels and treatment technologies necessary to protect human health and fish and wildlife resources. In addition, studies are needed to develop alternative long-term methods for environmentally sound disposal of contaminants and to address the long term problems of their disposal.

It was originally believed that sufficient funds could be appropriated pursuant to Public Law 95-46, as amended, to finance all studies to analyze the contaminant problem in the subsurface drainage effluent, develop alternative solutions, and to implement any required interim corrective action. Further study has revealed that the magnitude of the requisite studies and the possible alternative interim corrective measures will require funds in excess of those available under the authorization. The magnitude of the problem and its resolution are estimated to be significantly in excess of the funds that can be appropriated under the authorization of Public Law 95-46.

The Department recognizes the need for additional funding in FY 1986 and beyond to continue the studies as well as implementation of appropriate corrective measures. The FY 1986 budget request includes $12.6 million for continuing the studies and for related activities. The first section of the draft bill would provide this authority to continue these studies.

We would like to make it clear that the draft bill may be only the first part of a larger package. Through these authorized studies we will be able to identify the most economical and environmentally effective method to address the entire issue. Additional authority will be needed for a permanent solution at Kesterson. We will submit legislation at a future date for such authorization.

The Office of Management and Budget has advised that there is no objection to the submission of this proposed legislation from the standpoint of the Administration's program.

Sincerely,

ROBERT N. BROADBENT,
Assistant Secretary.●

By Mr. DOLE (for himself, Mr. DURENBERGER, and Mr. BENTSEN):

S. 1158. A bill to amend title XVIII of the Social Security Act with respect to Medicare payments for direct costs

of approved educational activities; to the Committee on Finance.

MEDICARE PAYMENTS FOR DIRECT COSTS OF APPROVED EDUCATIONAL ACTIVITIES

Mr. DOLE. Mr. President, today I am joined by my distinguished colleagues, Senators DURENBERGER and BENTSEN, in introducing a bill that reaffirms the Medicare Program's commitment to the education of this Nation's health care professionals but imposes important fiscal restraints that are in line with our effort to reduce the Federal deficit and enhance the stability of the Hospital Insurance Trust Fund. We welcome comments and suggestions on the bill we have introduced.

MEDICARE'S ROLE IN GRADUATE MEDICAL EDUCATION

Let me note at the outset that our commitment to graduate medical education support has proven to be a valuable investment. More than 1,300 hospitals presently offer teaching programs that train physicians, nurses, and other allied health care personnel. Of these, by far the largest investment on behalf of the Medicare Program has been made in the area of the residency training of physicians, which includes support for 3 to 7 years of postgraduate study after the completion of medical school. In 1984, approximately 75,000 residents were trained in 4,800 approved residency training programs. As a result, Medicare's financial contribution to graduate medical education is considerable. In fiscal year 1985, subsidies for direct medical education costs for resident training alone will likely total approximately $925 million. The total amount spent for all the professions covered, including physicians, nurses, and allied health care personnel, will be in the area of $1.3 billion.

OPEN-ENDED SUBSIDIES

It has long been recognized that the presence of teaching programs in our hospitals has a direct and positive impact on quality of care. Medicare's support of graduate medical education has played a significant role in sustaining high levels of quality of care for Medicare beneficiaries. I firmly believe that our Nation's teaching hospitals are in large part the guardians of the high standards we demand from our health care system. It is for this reason, I am willing to continue our support.

However, open-ended funding of graduate medical education cannot continue. Medicare currently provides a cost-based "passthrough" to teaching hospitals to support their so-called direct teaching costs. Medicare also provides a substantial adjustment to each DRG payment to cover factors including indirect teaching costs that are not directly identifiable, but presumably result from the presence of a teaching program in the institution. Historically, Medicare has not made any requirements on this training in return for the funding it has provided. There have been no restraints on the length of the programs, numbers, or types of residents to be trained. However, the current Federal budget deficit and pressures to reduce expenditures by the Medicare Hospital Insurance Trust Fund necessitate some reductions or constraint. It is our hope that this can be done in an orderly and thoughtful manner.

My colleagues from Minnesota and Texas join me in putting before you a plan that we believe to be both fair and timely. We have endeavoured to impose fiscal restraint without causing undue and potentially harmful disruption in graduate medical education. In addition, we have identified some important areas of inquiry that must be pursued so that we can intelligently evaluate what our appropriate role should be with respect to expenditures for these purposes over the long term.

SUMMARY OF BILL

Our bill consists of four major provisions:

First, we provide for a freeze on Medicare payments for direct medical education for 1 year. The 1-year freeze, in addition to providing short term savings, will also provide sufficient time for hospitals to plan for the changes we propose for subsequent years. We have tried to accommodate the fact that institutions have different accounting periods and that the freeze should really be based on the most current information available.

Second, beginning with fiscal year 1987, a limit will be placed on the number of years of a residency program we will help finance. The limit will be the lesser of the formal training required—as detailed in the 1985-86 directory of residency training programs published by the Accreditation Council on Graduate Medical Education—for initial board eligibility, or 5 years.

This 5-year limitation covers the board eligibility requirements for the primary care specialties and general surgery in full. This particular 5-year or board eligibility requirement restriction remains in effect for a period of 3 years. After that time, we provide for a reevaluation of the training period to be financed, recognizing that the academic medical community and specialty organizations may well find reason to alter the requirements.

Third, beginning with fiscal year 1987, we will no longer share in the costs of training for those non-U.S. citizens who are graduates of foreign medical schools. Graduates of foreign medical schools currently participate in U.S. graduate medical education programs and, as a result, have a portion of their residency funded by Medicare. This group consists of both U.S. citizens who attended foreign medical schools [USFMG's] and those that are non-U.S. citizens or alien foreign medical graduates [AFMG's]. It does not appear to continue to make sense to use Medicare Trust Fund dollars to underwrite AFMG training. If, in fact, this Nation believes we should continue to assist in the training of foreign physicians, whose homelands count on their return to care for their countrymen, such funding might more appropriately come from nonpatient care revenue sources.

Fourth, we have directed the Department of Health and Human Services to conduct studies to improve our understanding of educational activities relating to nursing and other health professions to determine the types and numbers of such programs and to describe the fiscal and administrative relationships between hospitals and the schools with which the programs and students are affiliated.

We have also directed the General Accounting Office to conduct a second study that would examine the difference between costs in teaching and nonteaching hospitals. This study would take into account differences in severity of illness levels, area wage levels, and differences in physician reasonable charges, as well as other factors that might affect patient comparability.

BROAD RANGE OF ISSUES

As was recently outlined in a document prepared by the Congressional Research Service, there are a broad range of important issues that must be addressed about the effects which Medicare payment policies for health professions have on patient care, on the supply and distribution of physicians and other health professionals, on the institutions providing such education, and on the costs of the program. Similar questions need to be addressed in considering any changes in current Medicare and Medicaid policies. One of the most critical will certainly be issues related to physician reimbursement.

The physician reimbursement methods adopted by various third-party payers and the costs for physician services are intertwined with issues related to health professions education in hospitals. The patient care services that residents provide in the course of their graduate medical education to some degree substitute for the services of physicians and the hospital staff. How much does a hospital save by having relatively low-cost residents providing these services? Do the residents thus help pay for their graduate medical education? Would it be more costly to the hospital—and ultimately to the third-party payer—if someone other than a resident were performing the services? For example, if hospitals were to reduce the size of their teaching programs in response to reductions in payment under Medicare's prospec-

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tive payment system, would costs increase under part B of the Medicare Program as physicians began billing for the services formerly provided by residents?

Another issue concerning payment for graduate medical education in hospitals is whether the whole variety of payments for physician services to hospital inpatients needs to be examined, including payments for physicians employed by the hospital, for attending physicians who bill separately for their services, for the teaching services provided by the physicians, and for the services of residents in training.

The other major area of interest will, of course, be the present Medicare indirect teaching adjustment. While this bill only addresses direct medical education expenses, it is also our intention to pursue changes with respect to the indirect teaching adjustment.

CONCLUSION

I believe this bill represents a major step forward in our ongoing commitment to both medical education and the Medicare Program. It is certain to encourage a continuing debate that must utlimately benefit those who depend on the present and future availability of high quality health care services. I thank Senator DURENBERGER and Senator BENTSEN and their able staffs, Chip Kahn, Kerry Kilpatrick, and Marina Weiss, for their assistance in the preparation of this bill. In particular, I would like to compliment Senator DURENBERGER, the distinguished chairman of the Finance Committee's Health Subcommittee. Senator DURENBERGER introduced one of the first major pieces of legislation to address this subject and has forced us all to consider carefully what ought to be done in the future. I look forward to our continued collaboration as we explore other aspects of the Medicare Program and graduate medical education.

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

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

S. 1158

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1861(v)(1) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(P) Payments relating to the direct costs of approved educational activities at hospitals shall be made in accordance with the regulations in effect on January 1, 1985, except as follows:

"(i) For a hospital's first cost accounting period which begins on or after July 1, 1985 (the freeze accounting period), the amount of such costs recognized as reasonable by the Secretary shall not exceed the amount so recognized with respect to such hospital for such hospital's most recent cost accounting period ending prior to July 1, 1985 (the base accounting period), disregarding any salary or wage increases, and any cost center shifting or reallocation, implemented after May 1, 1985. If a hospital's cost accounting periods do not begin on July 1, the Secretary shall increase the limit established under the preceding sentence by an appropriate factor to reflect general increases in the costs of approved educational activities which took place between the end of the hospital's base accounting period and the beginning of its freeze accounting period, disregarding any increases in salaries or wages after May 1, 1985.

"(ii) Effective on and after July 1, 1986, the Secretary shall not recognize as reasonable any such costs incurred with respect to any intern or resident-in-training for years in training which exceed the lesser of—

"(I) five years, or

"(II) the minimum number of years of formal training necessary to satisfy the requirements (as specified in the 1985-1986 Directory of Residency Training Programs published by the Accreditation Council on Graduate Medical Education) for initial board eligibility in the particular specialty for which such intern or resident-in-training is preparing, or, after July 1, 1989, in the event that the required number of years in training increases, the number of years which the Secretary may specify, after consultation with the Accreditation Council on Graduate Medical Education.

"(iii) Effective on and after July 1, 1986, the Secretary shall not recognize as reasonable any such costs incurred with respect to any intern or resident-in-training who is neither a graduate of an accredited school of medicine (or accredited school of osteopathy, dentistry, or podiatry) located in the United States or Canada nor a citizen of the United States or Canada.".

(b)(1) The Secretary of Health and Human Services shall conduct a study with respect to approved educational activities relating to nursing and other health professions for which reimbursement is made to hospitals under title XVIII of the Social Security Act. The study shall address—

(A) the types and numbers of such programs, and number of students supported or trained under each program;

(B) the fiscal and administrative relationships between the hospitals involved and the schools with which the programs and students are affiliated; and

(C) the types and amounts of expenses of such programs for which reimbursement is made, and the financial and other contributions which accrue to the hospital as a consequence of having such programs.

(2) The Secretary shall report the results of the study to the Congress prior to December 31, 1986.

(c)(1) The Comptroller General shall conduct a study of the difference between the amounts of payments made under title XVIII of the Social Security Act with respect to inpatients in teaching hospital settings and the amounts of such payments which are made with respect to comparable patients who are treated in a nonteaching hospital settings. Such study shall identify the components of such payments (including payments with respect to inpatient hospital services, physicians' services, and capital costs, and, in the case of teaching hospital patients, payments with respect to direct and indirect teaching costs) and shall account, to the extent feasible, for any differences between the amounts of the payment components in teaching and nonteaching settings.

(2) In carrying out such study, the Comptroller General may utilize a sample of teaching hospital patients and any other data sources which he deems appropriate, and shall, to the extent feasible, control for differences in severity of illiness levels, area wage levels, levels of physician reasonable charges for like services and procedures, and for other factors which could affect the comparability of patients and of payments between teaching and nonteaching settings. The information obtained in the study shall be coordinated with the information obtained in conducting the study of teaching physicians' services under section 2307(c) of the Deficit Reduction Act of 1984.

(3) The Comptroller General shall report the results of the study to the Congress prior to December 31, 1986.

Mr. DURENBERGER. Mr. President, I am pleased to join my colleagues the distinguished majority leader, Mr. DOLE, and the distinguished Senator from Texas, Mr. BENTSEN, in introducing S. 1158, a bill to reform Medicare payment for clinical training.

Since, its inception in 1965, Medicare has reimbursed hospitals for its share of the direct educational costs. The direct education costs recognized as reimbursable are defined as the salaries and fringe benefits for residents, and interns and nurses and other health professions in hospital training programs. The allocated costs of conference and classroom space within the hospital, as well as additional supervision, administrative and equipment costs are also paid.

Medicare support for this activity has been deemed appropriate in the past because:

First, the physicians, nurses, and health professionals in these programs provide service to Medicare patients.

Second, virtually all other payers had traditionally been willing to pay their share of these education costs.

Third, it was felt that these educational activities enhanced the quality of care in hospitals, and

Fourth, in the 1960's and early 1970's, the view was widely held that there existed a shortage of quality trained physicians, nurses, and other health professionals.

But times have changed since 1965. The Nation now faces a growing surplus of physicians, estimated to reach 35,000 by 1990 by conservative projections. At the same time there are 73,000 residents in the training pipeline. Many of these are training in specialties already in oversupply.

The medical schools in this country have acted responsibly to reduce their class sizes to bring their outputs more in line with the requirements for physicians. In 1984 the medical schools in the U.S. reduced their class sizes to 16,997, down 323 students from the enrollment in 1981. The University of Minnesota Medical School has reduced

its class size from 239 in 1981 to 223 in 1984 and plans to continue to reduce class size until it reaches 200 in 1987. On the other hand, the number of foreign medical school graduates seeking residency training in this country has increased three fold since 1981. In 1984, over 10,000 foreign medical graduates participated in the match for placement in U.S. hospital resident positions.

The system needs better control and management. This is why my colleagues and I have joined together to not only reaffirm but to reform Medicare's role in subsidizing the direct costs of clinical training in hospitals. The bill we introduce today continues the Medicare commitment to funding clinical training in hospitals from the Medicare trust fund. It begins a process of defining more explicitly the direct expense Medicare will reimburse. S. 1158 would freeze all payments for the direct costs of approved educational activities for fiscal year 1986 at the level of the costs obtaining in the hospitals for their accounting period ending prior to July 1, 1985. However, if the hospitals accounting period does not begin on July 1, the limit may be increased by a factor to reflect the general cost increases that occurred during the freeze period.

After July 1, 1986, the number of years that will be recognized as reasonable for Medicare payments for graduate medical education would be constrained to the lesser of first, 5 years or two, the number of years of formal residency training required for initial board eligibility in the particular specialty for which a resident is preparing.

The bill, for example, would continue Medicare funding for its share of 3 years of training for family practice, general internal medicine, general pediatrics, and emergency medicine. Four years of funding would be provided for such specialties as radiology, psychiatry, and pathology. Five years of support would be provided for general surgery.

The number of years under which payment is allowable for each specialty will remain fixed until 1988. At that point if speciality boards determine that changes in practice and technology require more years of speciality training, the Secretary of Health and Human Services may extend the years of Medicare payment—but not beyond 5 years for any specialty.

These restrictions are especially appropriate in the case of surgical subspecialties and medicine and pediatric fellowship programs which include a specified time for organized research rather than patient services. These research activities are important to the development of clinical investigators and academic physicians, but it was not the purpose of Medicare to fund nonservice-related research activities.

The reform my colleagues and I propose would not dictate specific requirements for the distribution of training programs to hospitals and affiliated medical schools. It would provide financial constraint, instead, which would require them to be much more sensitive to the economics of the training decisions they made for their institutions. The combination of these financial signals and market forces should lead to more constraint in institutional training policies, particularly as regards the number of subspecialty slots made available.

The contraction of subspecialty slots likely to result should shift emphasis more to primary care training. In this way, more physicians in training will choose to end their graduate medical training at the still needed first-contact specialties. This should contribute both to cost containment and increased access generally. It is good Medicare policy and good physician manpower policy to produce more first-contact physicians.

Further, under the bill, Medicare would only contribute to the residency training of persons who are graduates of accredited schools in the United States or Canada or who are citizens of the United States or Canada. We need to do a better job of specifying who we will support for clinical training with Medicare funds. With the phyisician surplus and the fact that the number of residency positions for U.S. citizens are becoming in short supply, it is inappropriate to spend Medicare patient service dollars on the training of 6,000 alien foreign medical graduates. As many as 90 percent of these residents do not return to their home countries so residency training for most FMG's is not a matter of foreign policy. The Aliens who train here frequently plan to stay and ultimately also contribute to this Nation's over supply of physicians.

Finally, the bill requires that two studies be conducted to provide information for further reforms. The Secretary of Health and Human Services is instructed to conduct a study of the approved programs for nursing and other health professions currently receiving funding for direct Medicare costs incurred in hospitals. Information on the types of health professionals trained in these programs, the number of such trainees, the costs incurred and reimbursed, and the contributions of the trainees to patient care is so sparce it is not now possible to make informed Medicare policy with respect to nonphysician hospital training. The study should fill this void.

The bill also instructs the Comptroller General to conduct a study to determine the difference between Medicare costs paid for services for patients in teaching hospitals and for patients with comparable conditions treated in nonteaching hospitals. The study will examine elements as inpatient hospital services, physicians' services, capital costs and, for teaching hospitals, payments made for direct and indirect costs of clinical training.

The study would be based on a sample of hospital patient data and other sources which controls statistically for differences in case severity, area wage levels, differences in physician reasonable charges and other factors that might affect patient comparability. The study is to be coordinated with ongoing studies being conducted through the Department of Health and Human Services to avoid duplication of effort.

The reforms in the bill are partially driven by budget pressures. The freeze on direct medical education payments projected for fiscal year 1986 reflects this notion. However, even more importantly, the bill will help focus attention on the basic problems facing the hospital training of physicians, nurses, and other health professionals in this country.

A year ago, in a speech at the annual meeting of the Council of Teaching Hospitals, I highlighted the effect that the evolution toward consumer choice in health care is having on teaching hospitals. As the health care marketplace becomes increasingly price competitive, the hospitals which have clinical training programs are finding that they are less able to pass on in patient service dollars the costs of such "societal contributions" as graduate medical education, unsponsored research and technology development, standby tertiary care resources, and even care for the uninsured poor.

These competitive pressures are having a positive effect on the management of health care services. The system is becoming more efficient. But, the cross-subsidies are also becoming exposed and vulnerable.

I can see this happening in the Twin Cities in my home State of Minnesota. The pressures of health plan competition are having a profound effect on the University of Minnesota Hospital. I have been told, for example, the hospital is having to negotiate for business with physician groups and HMO's at prices frequently below amounts the institution received for the same services in a cost-based reimbursement environment. The volume these agreements provide will be helpful but clearly a teaching institution will have to change its commitments and structure in this kind of environment without outside subsidy. The HMO's and other purchasers are just not willing any more to pay for the costs incurred in a teaching hospital which do not directly benefit their sick subscribers, and price competition will mean that teaching hospitals will not be able to incorporate these costs in their prices.

Some will argue, I am sure, that the Twin Cities' health care market is an anomaly. This may have been true 5 years ago, but it is not today. I have been traveling all over this country, and I have seen competition between providers and health plans sprouting up in every major city. The medical school deans, hospital administrators, and physicians I talk to give me the sense that teaching hospitals, even the foremost in the Nation, are beginning to feel the stress of price competition.

In this context last October, I introduced S. 3073, "Medicare Clinical Training Amendments of 1984." This proposal was designed to make a number of points. It used Medicare as a vehicle to begin a payment reform for clinical training in hospitals. The bill would have placed a lid on Medicare's contribution to training. Thus, it made the statement that with a pending physicians surplus and Federal budget crisis, Medicare should fund the service provided by residents and nurses, and other health professionals in training, but that the open-ended funding of such programs would not continue.

The proposal used a block grant to the States as a means to allocate the capped Medicare funding. This approach argued for a better rationalization of training financing, better to meet true manpower needs. And, it provides explicit recognition of the role the States will have to assume in financing clinical training in teaching hospitals in the new health care market environment.

Clearly, teaching hospitals are public resources which are national, regional, State, and local in nature. Most of the residents trained in Chicago or New York go elsewhere to practice. Nevertheless, it is the communities of Chicago, New York, Boston, and the other major teaching enclaves which gain the most from having the teaching institutions.

The health services industry is the third largest employer—after retail and wholesale trades—in Chicago, New York, and Boston. In these three cities alone a total of over 500,000 people are employed in health care. The dominant health care institutions in these cities are the large teaching hospitals.

These same institutions also provide the lion's share of the health services to the poor in the cities. These teaching hospitals enhance the cities' quality of life and stature by providing a broad range of tertiary care services and by engaging in biomedical research. When considered in these terms, State and local governments need to realize it is in their best interest and the interest of their communities to see the academic medical centers sustained.

Currently, Medicare pays about 30 percent of the direct costs of clinical training through its patient services dollars. S. 3073, as well as the bill I am introducing today with my colleagues, affirms Medicare's commitment to pay for its share of these direct costs. Most of the other 70 percent comes from the payment of hospitals billing non-Medicare patients. As the non-Medicare purchasers begin to negotiate with hospitals based on prices which do not include the subsidies such as clinical training, State and local governments will find it necessary to set explicit policies and probably subsidize at least part of these activities.

I believe S. 3073 served its purposes well. It touched off a nationwide debate on the future financing of clinical training.

The discussion by institutions and professional organizations led to task forces, committees, special studies, and forums and colloquies to study this broad and complex issue. The need to move deliberately in formulating approaches to the problem has been widely recognized, but the varied interest of the institution and medical disciplines has made consensus difficult to reach. The contributions to this process of such bodies as the Commonwealth Task Force on Academic Health Centers, the Committee on Financing Graduate Medical Education of the Association of American Medical Colleges, the Association of Academic Health Centers, the American Medical Association and a host of other organizations has been exceedingly valuable.

As I have explored the complex problems surrounding clinical training in hospitals personally and in my capacity as chairman of the Finance Committee's Health Subcommittee, I have learned a great deal. I discuss what I have learned and the principles which underlie my approach to these issues in an article published in Business and Health in April 1985. Mr. President, I ask that the article be printed in the RECORD following my remarks.

The proposal we are introducing today builds upon the principles present in this article. It keeps the momentum for reform moving ahead. At the same time, it preserves the basic structure of the Medicare financing mechanisms that have supported a share of the graduate education process in the past. I view this present proposal as a step in the right direction. It forms a solid foundation for the future reforms and it achieves budgetary savings in a manner which is fair and moderate. Though, I should point out, it only begins a process of developing more comprehensive policy for financing clinical training in an emerging competitive environment.

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

WHO, HOW AND WHEN TO PAY FOR PHYSICIANS' TRAINING

(By David F. Durenberger)

During the last decade, all aspects of the medical profession have been the subject of intensive inquiry. Because physicians directly or indirectly affect 70 percent of all health care expenditures, the focus of public interest and professional introspection has been on the forces influencing physicians' decisions in the consumption of health care resources. With health care costs continuing to grow at a rate of $70,000 every minute, the structure of medical practice, the financing of health care and the consequences of the physician training system all are being closely examined.

LESS WISDOM, CHARACTER

Studies by the Josiah Macy Jr. Foundation, the Institute of Medicine, and the Association of American Medical Colleges have called for sweeping changes in medical education programs in terms of the knowledge base, skills and attitudes physicians of the future will need to possess. Harvard University President Derek Bok notes that, in the beginning years of medical education, students spend a large percentage of their time passively sitting through basic scientists' lectures that bear "little relation to the patient care that attracted most * * * students to medical school in the first place." Bok observes that even the clinical exposure that occurs in the last two years of medical school often is loosely organized and taught by residents with only slightly more experience than the medical students. This forces students to act as passive observers, and provides insufficient opportunity to hone information gathering and diagnostic skills.

Likewise, in an address to the advisory board of Duke University Hospital, internist and cardiologist Don Warren observed that the physicians emerging from the medical education system in this country are "coming out with more facts and less understanding, more knowledge and less maturity with which to handle the knowledge, more education as measured by hours of courses and less wisdom." Warren is concerned that the selection and training of medical students and residents places too much emphasis on intellect and too little on character and compassion.

Whether it comes from educators, physicians or patients, the message is the same. Whatever changes are made in the structure and process of medical education, their potential effects must be evaluated not only in terms of costs and access to care but also in their ultimate impact on the character of the physician-patient relationship.

THE MEDICAL EDUCATION CONTINUUM

Medical education can be viewed as a continuum that begins when a college student chooses a premedical curriculum, with its heavy emphasis on required math and science courses, continues through graduation from college and another four years of medical school, and ends after the completion of a residency.

The four years of medical school ending with graduation and a Doctor of Medicine (M.D.) degree are referred to as undergraduate medical education. During these years, students pay tuition and fees as with any other graduate program.

Graduate medical education is the formal training of a physician that occurs after receiving an M.D. degree. This training takes place under the auspices of a residency program (so called because the student typical-

ly is a resident of the hospital in which the training occurs). The term intern in reference to general postgraduate training has fallen into disuse. Interns and residents now are referred to by year of post-M.D., such as "PMD-1," "PMD-5" and so forth.

Postgraduate training differs markedly from undergraduate medical education. Very little graduate medical education time is spent in classroom, laboratory instruction or research. The resident physician spends the majority of his or her time delivering services under the supervision of an experienced attending physician, much like apprenticeship training in other professions.

The salary of the resident physician is a routine business expense and is absorbed in the pricing structure of the hospital, like in any other firm. For their services residents receive annual stipends, which increase with their seniority, and nearly 70 percent of which are paid for out of the patient care revenues of their hospital employers.

Residency programs range from three to seven years in duration. The primary care specialties (family practice, general internal medicine, pediatrics and emergency medicine) require three years. The surgical specialties generally require four or five years. Neurosurgery takes six years and thoracic surgery, seven.

In 1983 these stipends ranged from $20,800 for the first-year post-M.D. to $27,867 for the sixth year. There were 72,397 residents in training in the U.S. that year, so their total compensation (including fringes) was nearly $2 billion (see chart). When these other allocated cost and indirect costs are added, it has been estimated that the total cost of graduate medical education exceeds $4 billion annually.

PAYING FOR GRADUATE TRAINING

Historically, the inclusion of the costs of graduate medical education in patient charges has been an accepted practice. Today, however, in an era which the health care market is becoming increasingly price sensitive, subsidizing the cost of this training by raising the bills of sick people is becoming less acceptable to insurers, and the businesses and individuals who ultimately pay.

One side effect of a competitive, consumer choice model of health care delivery is to force providers to recognize and deal with the cost-subsidies in their prices. Thus, unless the extra costs for clinical education, technological innovation and uncompensated care incurred by teaching hospitals are explicitly accounted and paid for, these tertiary care institutions simply cannot hope to compete on price.

Further, at a time of mounting federal deficits and budget cuts and freezes, Medicare support of graduate medical education needs to be reassessed.

Under cost based reimbursement, Medicare used to pay a proportionate share of the net educational costs including allocated hospital expenses and supervision costs as determined by retrospective cost reporting.

Established in 1983, Medicare's diagnosis related group (DRG) based prospective payment system maintains special treatment of clinical education costs by paying for direct costs on a reasonable costs basis. Further, an indirect adjustment was preserved as a multiplier added to the DRG rate and increased to 11.59 percent to recognize the higher case severity, expensive medical technology and costlier practice patterns of residents in many teaching hospitals.

There are only three ways to reduce total Medicare costs to the U.S. Treasury: cut back benefits; increase beneficiary cost sharing; or decrease payments to providers. Graduate medical education support is publicly perceived as an upper- and middle-class subsidy. Before going to the elderly and disabled and asking them to accept reduced benefits, fairness requires that medical education take its share of the budget reductions.

Assuming current services, by 1986 the direct and indirect costs of clinical education supported by Medicare will approach $3 billion. President Reagan's budget proposal for 1986 freezes the direct payments at the 1985 level for an anticipated savings of $150 million and cuts the indirect add-on percentage in half—to 5.79 percent—for an expected savings of $695 million. This approach is problematic for a couple of reasons.

First, capping the direct payments does not resolve the potential for undesirable consequences of the present method of support such as the geographic and specialty maldistribution of training positions.

Second, the President's budget rationale fails to address congressional intent in increasing the indirect payment adjustment. The President only recognizes the increased costs in teaching hospital due to the practice styles of interns and residents. Congress intended that the indirect adjustment also compensate for the greater case severity and intensity in teaching hospitals. Until a better means of adjusting the DRG rate for case severity is found, the use of a multiplier to the resident-to-bed ratio as a proxy for severity must be maintained at a reasonable level. To be effective, legislation changing the way Medicare pays for clinical training will have to be more imaginative than a cut in or freeze of the current system.

The evidence also is inescapable that the present system of financing graduate medical education primarily by open-ended support through patient care revenues has encouraged the production of too many specialists. They are trained to deliver a brand of high-technology medical care that can perform medical miracles but is ill-equipped to handle the routine illnesses faced by a majority of patients.

If Americans are going to rely on payroll taxes to support the training of physicians who will, on average, earn four to five times the income of the wage earners paying the taxes, then a graduate medical education financing mechanism will have to be developed that encourages the training of the numbers and types of physicians needed at the lowest possible cost to the taxpayers.

There is a direct relationship between a physician's time spent in training and his or her subsequent income. For example, a family practitioner who spent three years in residency training had a medium income of $76,200 in 1983, whereas a thoracic surgeon, with seven years residency training, earned a median income of $163,580. For graduate medical education, the real rates of return on the investment including foregone income range from 9 percent for pediatrics to 22 percent for anesthesiology, according to health economist Frank Sloan of Vanderbilt University.

For these reasons, I introduced the Medicare Clinical Training Amendments of 1984 last October. This legislation, which has stimulated much thoughtful discussion of the graduate medical education issue, contained two important principles. First, it placed a cap on direct Medicare expenditures for this training. Second, it encouraged states through a federal sharing formula to increase their support of clinical training. While it is true that, to an extent, the production of health professionals is a national resource, states also reap enormous benefits from both the existence of the teaching hospitals and the professionals trained in them. In places like Boston and Chicago, medical education is a major industry. The Ohio legislature decided to have seven state supported medical schools not because of a shortage of physicians, but because the schools provide opportunities for the state's students to pursue medical education and act as magnets for federal funds and the medical technology industry.

CONSEQUENCES OF A PHYSICIAN SURPLUS

In its May 1984 Report to the President and Congress, the U.S. Health and Human Services Department's (HHS) Bureau of Health Professions, employing a model based on utilization of health services, predicted an aggregate surplus of 35,300 physicians in 1990 and a surplus of 51,800 in 2000. These estimates are considerably below the 1980 projections of the Graduate Medical Education National Advisory Committee (GMENAC) for a 70,000 physician surplus in 1990 and a 145,000 surplus in 2000. While estimates of the precise magnitude differ, there is no longer much debate over the likelihood of a growing physician surplus. Moreover, there is general agreement on the specialties in which the surpluses are occurring—all surgical specialties, most subspecialties in internal medicine and obstetrics and gynecology.

There also are still too many physicians in large urban areas and too few in rural and inner-city regions. California, Texas and New York comprise about one-fourth of the U.S. population but have nearly one-third of the physicians. Approximately 90 percent of all physicians are located in metropolitan statistical areas. The physicians who locate in the rural areas are much more likely to be general and family practitioners. Rand Corporation studies have shown there is some diffusion of specialty physicians to rural areas occurring as the number of specialists in cities increases. But the dominant pattern will continue to be one of a high physician-to-population ratio in the urban areas.

For most products, a surplus of supply leads to falling prices and producer incomes. But for physician services this has not proven to be the case. Fueled by a health insurance system that has made purchasers largely insensitive to cost, the demand for medical care has continued to outstrip the availability of services. In some markets, physicians also have been able to enhance their effective utilization by increasing service intensity as an offset to decreased patient volume due to keener competition. San Francisco provides one example of a market area in which medical incomes have been maintained in spite of a growing concentration of physicians in the bay area.

This phenomenon is reflected in national data as well. Between 1975 and 1983, the supply of physicians increased by nearly one-third, while the total costs of physician services increased almost three-fold to almost $70 billion. Part of that dollar increase was due to an increase in fees by two-thirds over 1975 levels, but the remainder was the result of increases in volume and intensity of services. Physicians did more during each patient visit. This partly relates to a perceived need to practice defensive medicine in today's malpractice climate. In response to increased pressure on visit volume, physicians also are doing more

office based testing, including laboratory screens, pulmonary function testing and even computer tomographic scans, to increase profitability.

The concentration of medical specialists in a given geographic area also encourages more resource intense practice styles. Janet Mitchell, president of the Center for Health Economics Research in Chestnut Hill, Mass., found in a recent study that attending physicians in New Jersey ordered consultations from specialists two to three times more often than their counterparts in North Carolina. New Jersey physicians also used assistant surgeons more frequently and had a greater number of paid visits per hospitalization. It seems unlikely that these physicians were treating sicker patients or providing higher quality care. The explanation for such large differences in practice style probably has more to do with the fact that New Jersey has 30 percent more physicians per person than North Carolina.

PATIENTS BENEFIT, BUT AT A COST

Some of the consequences of the increased supply of physicians have been positive from the patient's perspective. With an increased diffusion of board certified specialists to rural areas, many small towns now are enjoying their services for the first time.

Patients are reaping other benefits of the physician surplus. Surveys have shown visits to physicians' offices have fallen by 20 percent in the last eight years. Research conducted by John Drabek of the HHS Bureau of Health Professions shows that patients spend less time waiting for appointments and more time with physicians during visits. Physicians are keeping evening and weekend office hours and some are making house calls again. Thus, except for lowering prices, the growing supply of physicians under the fee-for-service system is bringing a number of benefits to the consumer.

The increased supply of physicians also may be a factor in the rapidly changing style of medical practice with more and more physicians choosing to practice in health maintenance organizations (HMOs), single and multispecialty groups. Group practice is becoming the dominant choice of young physicians completing residencies. While physicians who join groups gain in such advantages as regular working hours and a ready-made patient pool, they have had to give up income.

In the Twin Cities, some HMOs are offering starting salaries as low as $36,000 to physicians just completing their residencies. By way of comparison, *Medical Economics* reports that the median income for all physicians in their first five years of practice was $82,690 in 1983. One large HMO in the Washington, D.C. area reports it has 10 to 15 qualified applicants for every opening and it has never advertised for physicians.

Prepaid group practice arrangements will further exacerbate the problems associated with a physician surplus because HMOs use far fewer physicians, especially specialists, per capita than fee-for-service arrangements. The growth of HMOs and other prepaid plans has been phenomenal and is expected to continue. From June 1983 to June 1984, enrollment grew at an annual rate of 21 percent. While there may be some beneficial selection occurring, if the ratio of about 100 physicians per 100,000 population achieved by the nation's largest HMOs were applied to the entire country, by 1990 there would be a surplus of 240,000 physicians or 80 percent more than are required.

The nonprice benefits to patients notwithstanding, the fact remains that as the number of physicians grows, the pressures on fee-for-service physicians to enhance income by increasing the volume of unnecessary return office visits, tests and procedures, and surgery will intensify. Thus, the structure of the medical education process must account for the new requirements of the prepaid medical care system.

TEACHING HOSPITALS STRUGGLE

Meanwhile, HMOs and other alternative health care delivery systems, along with employers and consumers, are placing the squeeze on teaching hospitals. Faced with mounting costs of health care benefit packages, employers are increasing coinsurance and deductibles. This trend is likely to accelerate if Congress caps employer paid health benefits. As more of the costs of care are borne by individuals, physicians and their patients will avoid the expensive teaching hospitals, creating additional problems with financing graduate medical education through patient revenues.

There also is a growing concern about equity and fairness of the health care system across the country. This is particularly relevant in the high cost states that have locked in the support for graduate medical education and uncompensated care in their all-payer rate systems under Medicare waivers. It is unfair for these subsidies to be maintained in the states having Medicare waivers when competitive pressures are prohibiting such cross-subsidization in other states. Instead, explicit, uniform policies should be adopted to fund separately the costs of physician training and uncompensated care.

However, from a cost accounting perspective, graduate medical education payment methods are troublesome. The multiple outputs and societal benefits produced in connection with these teaching programs make explicit accounting for the use of the funds from the direct payments to teaching hospitals very difficult. Nonetheless, some members of Congress have grown weary with the longstanding argument that residents produce joint products (patient care, education and research) that are inseparable. Therefore, to pay for one product is to pay for them all. If the health care industry cannot find a way to account accurately for the specific costs of these joint products, Congress may be forced to do it arbitrarily, to separate out the patient care component Medicare originally was designed to pay for.

There are further problems in determining what the indirect payments to teaching hospitals really buy. These hospitals provide more than their proportionate share of uncompensated care, treat more severely ill patients and develop many new clinical technologies. A better job must be done of differentiating between these sources of higher-than-average costs in teaching hospitals and the costs of the graduate medical education function, and developing a means of paying for the former that do not depend on a count of interns and residents as a proxy for other societal contributions.

TOWARD A NEW FUNDING STRATEGY

Reform of the current method of paying for graduate medical education through Medicare should stop the open-ended support of as many residents as the traffic will bear for whatever program duration medical specialty groups desire. It should address the distributional questions of the number, types and locations of residency positions. It should pay principally for primary care since the first three years of residency training equip the physician for independent practice; advanced specialization would not be covered in hospital payments. As this approach does not address the problems of uncompensated care, the development of new medical technologies and the case mix severity issue, additional legislation will be required to deal adequately with these problems. This is a tall order and will not be accomplished all at once.

Likewise, whatever approach is taken to graduate medical education financing under Medicare makes sense for the other payers too. In today's climate, no one will pay for a service for which the benefits are not clear and direct. Changes made in graduate medical education funding have to be both fair and efficient. The following approach, as outlined, will bring that goal closer.

A determination first must be made as to what should be funded under the rubric of graduate medical education. Medicare expenditures should benefit Medicare patients. And, if this fund is to be only for direct and allocated costs of graduate medical education, then mechanisms must be found to account for and fund each of these societal contributions, separately, on its own merits.

Second, it must be determined prospectively just how much should be spent on physician training. There are two parts to this problem. One deals with the requirement for an explicit identification of the volume of graduate medical education output it is reasonable to support with Medicare dollars. In addition, the impact of changes in graduate medical education funding levels on the institutions in which the programs are housed must be considered.

There is no question that teaching hospitals represent an essential community resource that should be preserved. No community will want to forego the special care provided by neonatal intensive care, burn and trauma units. Teaching hospitals also provide a greater proportional share of uncompensated care. Any change in funding mechanisms must be sensitive to these conditions. But we cannot afford to continue to provide a blank check to the teaching hospitals for these functions in this time of fiscal restraint.

Third, it needs to be determined where the support for graduate medical education should be directed. If the current system provides incentives for the proliferation of too many subspecialists in already crowded fields, consideration should be given to changing the reimbursement system to produce more primary care physicians. Paying only for the first three years of graduate medical education would be one approach to achieving this goal. Training in community hospitals and ambulatory care environments should be encouraged. The Mayo Clinic in Rochester, Minn., operates a graduate medical education program acknowledged to be one of the finest in the world, and it produces a practice style that is much less expensive than those in univeristy based teaching hospitals. Savings are achieved not by paying lower stipends but through emphasis on the efficient use of diagnostic tests and ancillary services.

Fourth, the appropriate source of funding for graduate medical education needs to be specified. The 1982 Advisory Council on Social Security recommended searching for another source of funding for the training of prospective health Professionals than Medicare. These sentiments are shared by a

number of members of Congress. Other sources that have been mentioned include: taxes on employer and employee contributions to health insurance premiums or health plan premiums; a tax on physician fees; or general revenue taxes.

As alternative sources of funding are considered, the effects on funding stability and distribution of the burden must be evaluated carefully. While there are some problems with financing graduate medical education from the Medicare trust fund, they are not as great as those that would arise from the vagaries of annual appropriations from some other source.

Fifth, it should be made explicit about whose medical training is being funded. Medicare dollars, in part, support the graduate medical training of more than 6,000 alien graduates of foreign medical schools. Given the physician surplus, it does not make much sense to use Medicare funds to subsidize the education of foreign physicians.

Finally, consideration must be given to how best to distribute funds to education programs. One alternative would be to fund programs through special project grants competitively awarded and administered from a central agency. Alternatively, funds could be made available directly to a resident through a voucher mechanism. Available funding might be limited in duration and targeted at specialties determined to be in short supply. Another choice would be to maintain the current system of funding the training institution, which would be the least disruptive approach. With this latter approach, the indirect funding would be allocated to the institutions as it is now but with a smaller permissible count of residents.

The system of graduate medical education in this country is producing the finest physicians in the world. A way must be found to do the job less extravagantly without harming it. The issue of funding graduate medical education cannot be avoided simply because it is inherently complicated. This current Congress intends to pursue this issue vigorously through hearings and new legislative initiatives.

Mr. BENTSEN. Mr. President, I am pleased to join my distinguished colleagues from Kansas and Minnesota in introducing S. 1158, a bill to amend the direct medical education [GME] provisions of the Medicare Program.

Several features of this bill deserve special mention as do the circumstances surrounding its genesis. I am especially gratified that we were able to come to agreement that no policy changes in GME be implemented until a full year after introduction of the bill. It is our intent to ensure that no institution or affiliated hospital suffer damage to its teaching program because of an unreasonable requirement that changes be immediately incorporated into a budget or class year. In short, we are committed to reasonable and timely notice to ensure a smooth transition.

Second, I should like to stress the fairness of this approach with respect to the so-called freeze of domestic programs. As most of our colleagues are aware, the administration proposed a freeze in direct medical education founding for the full 3-year budget horizon, with no indication that such a policy would be revoked after 1988. Further, that freeze included a rollback to 1983-84 funding levels—a net reduction in support of medical training. The bill we are introducing today includes a 1-year freeze based on 1984-85 expenditures, a policy far more fair and budgetarily sound in that it acknowledges the desirability of continued Federal support of medical education. For teaching institutions in growth areas of the United States, this reaffirmation of support should be especially welcome, for without Federal assistance, a number of programs would be curtailed just as they are beginning to reach their full potential. Failure to continue such support would be devastating to States such as Texas where the ratio of physicians to population is significantly below the national average, where 52 counties have been designated medically underserved, and 11 counties have no physicians at all.

Third, for almost all residents, this bill ensures that Medicare will bear its fair share of responsibility for providing financial assistance during training for practice in their chosen field of medicine. Unlike many proposals, S. 1158 does not attempt to control manpower decisions by limiting support to the years needed to qualify for only a handful of specialties. We are mindful that the residents themselves are perhaps the most competent judges of how best their talents may be applied. Therefore, we have consciously chosen to set the outside limit on Medicare financing at 5 years, the period now needed to qualify for board certification in one of the most lengthy specialties—surgery.

Perhaps the most controversial component of this bill involves termination of financial support to those residents who are of foreign nationality and who trained outside the United States or Canada. It would be a grave error to conclude that the exclusion of FFMG's from direct medical education funding was an easy decision. Extensive analysis of demographic data and many hours of arduous discussion brought us to the recommendation embodied in the bill. While sound arguments can be made on both sides of this difficult issue, I am forced to conclude that in a time of budgetary restraint and significant pressure on the trust funds, it makes little policy sense to expend Medicare dollars to train physicians who come to this country to learn a profession they expect to practice, not on Medicare participants or other U.S. patients, but in their countries. I recognize current law has served as a form of foreign policy, and I am well aware that some institutions have come to rely on this pool of residents for staffing. Accordingly, I would encourage those who testify before the Congress on the various provisions of this bill to offer suggestions about alternative funding approaches—perhaps a requirement that the foreign student's government share in the cost of his or her education; coupled with a special funding adjustment for public and other not-for-profit hospitals that provide a disporportionate share of charity care.

I want to take this opportunity to commend my colleagues, Senators DOLE and DURENBERGER, and their exceptional staffs on the care they have taken in developing this legislation. Evidence of that tempered approach can be seen in the two studies commissioned by the bill.

In the Health and Human Services directed study, training programs for nurses and allied health personnel will be evaluated. The results of that review will, in turn, serve as a guide to clarify the Federal role in continuing support of training programs.

Further, because there remain many unanswered questions about the so-called "indirect" teaching adjustment and its appropriate funding level, the General Accounting Office is directed to conduct a study of expenditures at teaching and nonteaching facilities. When the Congress is ready to proceed with what could be a major policy change regarding Federal support keyed to the special missions of teaching institutions, this information will be invaluable.

Though I am pleased to be an original cosponsor of the pending bill, I am not yet satisfied that the question of funding graduate fellowships has been properly addressed, particularly as it relates to internal medicine residencies. The failure to clarify supervising physician/attending physician responsibilities for purposes of billing also leaves a major financial question unresolved. Furthermore, I continue to believe that modifications in direct medical education assistance should be coordinated with proposed changes in the indirect adjustment because of the interactive relationship of these two sources of funding.

Notwithstanding these reservations, my hope is that this legislation will serve as a working document and that it will generate responsible policy and budgetary discussions in the area of medical education. I look forward to working with individuals and organizations with an interest in these issues to ensure continuation of a strong Federal presence in the training of health personnel.

By Mr. ANDREWS (for himself, Mr. GOLDWATER, Mr. MELCHER, Mr. BURDICK, Mr. ABDNOR, Mr. DECONCINI, Mr. BINGAMAN, Mr. BAUCUS, Mr. STEVENS, Mr. HATFIELD, Mr. WEICKER, Mr. NICKLES, Mr. BOREN, and Mr. COCHRAN):

S. 1159. A bill to amend section 8(a) of the Small Business Act to clarify the eligibility of small business concerns owned by Indian tribes; to the Committee on Small Business.

CONCERNING SMALL BUSINESS CONCERNS OWNED BY INDIAN TRIBES

● Mr. ANDREWS. Mr. President, I rise today to introduce a bill that will amend and clarify section 8(a) of the Small Business Act. This amendment will benefit a group in our country, the Native Americans, who have experienced dramatic economic and social improvement because of the 8(a) Program, and who, above all others, are economically and socially disadvantaged due to the Federal Government's failure to provide real economic development opportunities out in Indian country.

Some of you may recall that I introduced similar bills in past Congresses. Due to a number of factors, none of which concerned the intent or language of the bills, they did not make it to the Senate floor for our consideration. I am hopeful that this bill, which is identical to that reported out of the Senate Small Business Committee last Congress, will soon be before us for our favorable consideration.

Although the Small Business Administration has permitted tribally owned business to participate in the 8(a) Program, by administrative practice, this has been done on a very small scale. However, tribal eligibility for the 8(a) Program has never been clear because there is no clear expression of Congress in the Small Business Act or in the legislative history of the 8(a) Program that tribes, as an entity, are eligible. As a result, some Indian tribes have been informed by local SBA offices that they are ineligible for the program, while other local offices state that tribes are eligible. While some of this inconsistency was corrected in October 1982, by an SBA general counsel's opinion affirming the administrative practice allowing tribal participation in 8(a), there are still instances of tribes being denied access to the program, by misinformed local offices.

Therefore, I feel, that once and for all, there should be a clear expression to lay the issue to rest and ensure tribes access to this program.

The tribes participating in the 8(a) program are doing an excellent job. These businesses know the meaning of minority economic development. They employ a good number of people, the majority of whom are tribal members, and are forming the base for the beginning of a stable economy in otherwise economically isolated and disadvantaged areas.

While the concept of tribal ownership of a business is foreign to many of us in Washington, I, personally, know the success that such businesses can achieve. In my home State of North Dakota there are two tribes in the 8(a) Program—both providing a good, solid product to the U.S. Government and incentives and opportunities for their members.

The Devils Lake Sioux Tribe owns the Devils Lake Sioux Manufacturing Corp. in Fort Totten, ND. DLSMC has consistently been honored by the Defense Department for its outstanding work product. But its success is not only in the production line. DLSMC has given its members an opportunity for good, steady employment and the incentive to go off to college to learn business and marketing skills. Many of their college graduates return, now, to the reservation, and work for the company in the management area. Ten years ago, there were no jobs on the reservation for these young, college graduates. As the economy has grown, other small businesses, owned by Indians have sprung up, where before, if there were any businesses they were solely owned and run by non-Indians. DLSMC is a success story and one the tribe is very, and justifiably, proud of.

The Turtle Mountain Band of Chippewa also participate in the 8(a) Program through their Turtle Mountain Manufacturing Co., located in Belcourt, ND. The company currently employs over 130 people, producing cargo trailers for the Department of Defense. Due to its success in the program, the company is anticipating an expansion of the plant and contracts with the private sector. Young tribal members are gearing up their business skills to move into positions with the company, while other members, due to the company's contribution to the local economy, are starting small businesses, such as cafes, in the area. Again, 8(a) has helped an Indian tribe build an enterprise worthy of pride.

I can best sum up the effect of the 8(a) Program on Indian tribes and reservation economy by paraphrasing a tribal elder from one of the 8(a) tribes when he said that the difference between the 8(a) Program and prior Federal economic development programs was that the latter was a "make-work for awhile" program while 8(a) was a "work to make something forever program."

I urge my colleagues to support this bill and support building economies in Indian country.●

By Mr. HART:

S. 1162. A bill to amend the Nuclear Waste Policy Act of 1982 to require the Secretary of Energy to incorporate transportation impacts into the selection process for repositories of high-level radioactive wastes; to the Committee on Environment and Public Works.

NUCLEAR WASTE POLICY IMPROVEMENTS ACT

● Mr. HART. Mr. President, today I am introducing legislation to amend the Nuclear Waste Policy Act of 1982. This legislation will direct the Secretary of the Department of Energy to incorporate in the ongoing waste repository site selection process the impacts associated with the transportation of high-level radioactive nuclear wastes.

With passage of the Nuclear Waste Policy Act in December 1982, Congress for the first time established in law a comprehensive Federal policy for the management of the Nation's commercial high-level radioactive wastes. This was watershed legislation in the development of a national waste management policy and our efforts to address one of the most difficult and troubling aspects of the nuclear age. It addressed many of the issues debated for several Congresses and committed the Nation to a schedule for the development of permanent geologic repositories, granted private utilities primary responsibility for interim storage of wastes, and more clearly defined the roles and authority of both States and Indian tribes in the site selection process.

The act contains mandatory schedules for the selection, siting, and licensing of two separate, permanent repositories for nuclear waste and spent nuclear fuels. Nine locations are now under active consideration by the DOE, including several in the Western States of Utah and Nevada.

In passing the act, Congress left a great many technical questions unresolved. This did not include, however, concern about the costs and risks associated with the transportation of nuclear wastes and spent nuclear fuels. Transportation impacts were clearly not left to DOE discretion. Though the act makes explicit reference to transportation in section 112, indicating Congress' interest in having these impacts evaluated in the site selection process, the DOE has largely ignored this concern. In both its overall guidelines for the selection process and its draft environmental assessments for the nine potential sites, the DOE has given transportation only cursory and passing reference.

For example, the DOE analysis of transportation impacts at the two sites under consideration in Utah has been limited to a 125-mile radius. Regrettably, this study area barely includes the junction at Interstate 70, the major east-west corridor to be used by trucks traveling to and from the site. Further, this limited scope largely excludes all but highway access to the site, and completely excludes both Denver and Salt Lake City, two major urban population centers which will surely be affected by shipments to a potential Western site. Finally, where the DOE has focused on the transportation impacts, it appears to have been more concerned with the costs and impacts associated with heavy traffic

during the construction phase than the shipment of dangerous cargo during the operational phase.

Needless to say, this raises some very serious and troubling issues for every State which will potentially become a corridor for waste shipments. And, given the geographic distribution of the nine sites under construction by the DOE, this issue will hardly be limited to Western States.

Mr. President, it is conservatively estimated that by the turn of the century nearly 120 shipments of radioactive cargo will be transported daily on the Nation's highways and railroads. Undoubtedly, this aspect of the waste management process affects the greatest number of States and localities nationwide. Although only two sites will ultimately be selected, many more States and communities will have to prepare and plan for transportation of wastes through their jurisdictions. It is also this step of the process which poses the greatest risk of accidential spill or release of radioactive materials. Yet this is precisely the area which the DOE has devoted least attention to thus far in the site selection process.

Should the DOE select one of the sites in Utah or Nevada, several States including Colorado, Nebraska, Texas, and Kansas will, by necessity, play host to daily shipments of nuclear waste. In fact, it is estimated that if spent fuel were transported by truck to the Davis Canyon site in Utah, 5,917 shipments annually, or 16 shipments per day, will pass through Colorado alone. Given the special nature of the most likely routes through Colorado, this will have profound implications for the State. Unfortunately, none of these hazards has been adequately considered by the DOE.

A primary east-west route to the potential sites in Utah or Nevada will be Interstate 70, a highway which bisects Colorado and serves hundreds of thousands of commuters daily as it passes through the State's largest metropolitan area. Through much of east Denver this highway is elevated and passes literally over both residential neighborhoods and businesses. During foul weather this portion of I-70 often becomes dangerously icy; and during the daily morning and afternoon rush hours it is routinely clogged with commuter traffic.

West of the city I-70 winds through some of the most dramatic and difficult-to-navigate mountains in the Nation as it rises in elevation and eventually crosses the Continental Divide. In the Rocky Mountains, this highway is known for its steep grades, sharp turns, and unpredictable mountain weather which often reduces visibility to zero. Weather conditions alone closed the highway for more than 300 hours or 12 days in 1984.

This stretch of the Interstate System presents at least two other very special problems. First, all hazardous cargo is prohibited from the Eisenhower Tunnel, forcing trucks to use Loveland Pass—a very narrow, twisting, two-lane State highway which rises in elevation to nearly 12,000 feet. Second, in far western Colorado I-70 parallels the Colorado River along yet another narrow winding stretch. As we all know, this river is the lifeblood for seven Western States and Mexico.

A very good illustration of the problems presented by this stretch of I-70 was recently given by a Colorado State trooper in a Denver newspaper noting that Loveland Pass is hardly an ideal road for dangerous cargoes, and was closed 16 times last winter, once for 9 days. He said,

> My question is, are the drivers prepared to spend nine days in the truck with the radioactive waste, and where are they going to park while they wait out the storms? The prospect of permitting trucks to use the Eisenhower Tunnel is no more comforting. Runaway truck ramps were used 34 times last year. Each time, it took one to two hours to get them off the ramps. Once last year two trucks went off one ramp at the same time. The second entered the ramp at 80 to 90 m.p.h. and collided with the first one. Summit County, where Loveland Pass and the Eisenhower Tunnel are located, has no full-time fire department. Obviously the level of training of volunteer fire departments is not up to the standards necessary to respond to nuclear waste incidents.

Although the chances of a serious accident involving nuclear cargo are somewhat remote, the consequences of such an accident in any of the locations would surely be catastrophic.

Officials throughout Colorado have expressed deep concern about the potential shipment of radioactive cargo on routes near their homes and communities. They are concerned about continued inadequate assessment and planning for shipments associated with the national permanent waste management program. In recent months, more than 10 communities have adopted resolutions restricting or prohibiting these shipments within their city limits. And, in March of this year, the State of Colorado intervened in a suit brought by the State of Washington to require judicial review of the DOE site selection process in order to require consideration of the impacts on corridor States like Colorado.

The residents of these communities and of communities throughout the Nation raise very legitimate concerns. Their resolutions emphasize the need for an expanded assessment program by the DOE, incorporating and evaluating the transportation routes and modes to potential sites. This will assist in determining the risks shipments of nuclear waste to these sites pose to public health, the environment, communities and highways in so-called corridor and adjacent States. This alone can help the DOE, the President, and ultimately the Congress make a much more informed decision on the selection of high-level waste repositories.

The Nuclear Waste Policy Improvements Act I am introducing today will address this issue in several ways: First, it will require the DOE to assess the public health and environmental impacts associated with radioactive waste shipments through the region surrounding all potential sites. Second, it will require the DOE to identify the most likely routes and modes of transport, evaluate the conditions and terrain on such routes, analyze and characterize the mileage traveled and by what types of vehicles, describe significant human activities and population density occurring within 10 miles of such routes, and estimate the cost of upgrading and maintaining such routes in a manner minimizing the risk to public health and the environment. Most important, this legislation will make available to States the additional Federal assistance necessary to upgrade and maintain such routes to ensure protection of public health and the environment in the event of an accident or spill involving high-level nuclear wastes.

Mr. President, the Congress has taken a necessary and important step with passage of the Nuclear Waste Policy Act. I urge my colleagues to join us in modifying this important act to ensure that communities and States affected by the shipments of nuclear waste are incorporated in the site selection process, and the DOE provides assistance necessary to plan for and prevent unexpected and possibly deadly accidents involving radioactive waste transportation.

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

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

S. 1162

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Nuclear Waste Policy Improvements Act of 1985".

TITLE I

SEC. 101. (a) Section 112 of the Nuclear Waste Policy Act of 1982 (Public Law 97-425) is amended by striking out the period at the end of paragraph (1)(E)(vi) of subsection (b) and inserting in lieu thereof ", including the environmental impact of transporting high-level radioactive waste and spent nuclear fuel through the region surrounding such site.".

SEC. 102. (a) Section 114(a)(1) of the Nuclear Waste Policy Act of 1982 is amended by striking out "and" after "regional distribution of repositories" and inserting ";".

(b) Section 114(a)(1) is further amended by inserting the following after "solidified high-level radioactive waste": ", and the

effect of transportation of high-level waste on States containing possible transportation routes, particularly States that are adjacent to the State in which a high-level waste site is being recommended pursuant to this section".

SEC. 103. Section 114(a)(1) is further amended by inserting the following after subparagraph (D) and relettering subsequent paragraphs accordingly:

"(E) the effect of transportation of high-level nuclear waste on States containing possible transportation routes, including, but not limited to—

"(i) identification of likely routes within each State,

"(ii) the condition of such routes,

"(iii) the terrain on which such transportation routes are located,

"(iv) an estimate of the cost of upgrading and maintaining such routes in a manner that minimizes risk to public health and the environment from transportation accidents or spills,

"(v) an analysis of the vehicle miles traveled (annually and seasonally) on such routes,

"(vi) a characterization of the types of vehicles that utilize such routes, and

"(vii) a description of significant human activities and population density that occur within 10 miles adjacent to such routes."

SEC. 104. Section 114(f) of the Nuclear Waste Policy Act is amended by inserting the following after the fifth sentence of such section: "The Secretary shall take into consideration the routes for the transportation of high-level nuclear waste, and the impact of such transportation on routes that are in States adjacent to the State in which a repository has been selected."

TITLE II

SEC. 201. Section 116(c) (2) (A) of the Nuclear Waste Policy Act of 1982 (Public Law. 97-425) is amended by adding the following at the end of the subparagraph:

"The Secretary shall also provide assistance to any State that contains likely routes for the transportation of high-level nuclear waste to the repository if such State, in its application for assistance pursuant to this paragraph, demonstrates such assistance is needed to upgrade or maintain such routes in a manner that provides adequate protection to the public health and safety from accidents or spills involving high-level nuclear waste."●

By Mr. KENNEDY:

S. 1163. A bill entitled the "Military Family Act of 1985"; to the Committee on Armed Services.

MILITARY FAMILY ACT

● Mr. KENNEDY. Mr. President, I am pleased to introduce the Military Family Act of 1985, a bill to address a number of issues that affect our military personnel and the families. We all know that our service men and women form the backbone of our national security. But the contribution comes not simply from the individual in uniform—but equally from all the members of the family who share the sacrifice that comes with military service. There are 3.7 million Americans who are members of military families and they deserve our recognition and support. The readiness and morale of our troops is critically dependent on the well-being of their family members, an issue which deserves as much attention as any of the more traditional components of military preparedness.

As a member of the Armed Services Committee, I have had the opportunity to visit with our military personnel and their families, both in the United States and abroad. Everywhere I go I find family issues on the top of the agenda—housing, permanent change of station, day care, spouse employment, education for the children—the list goes on and on. For too long these concerns have not received the attention they deserve—and yet they are among the most important factors in recruiting and retaining the skilled, dedicated individuals that our modern military requires.

The legislative package I am introducing today is based on legislation introduced by Representative PATRICIA SCHROEDER who has been a vocal and articulate force in working to meet the needs of the military family. The specific provisions I am offering today are drawn from the bill, H.R. 1681, and have been adopted by the full House Armed Services Committee as part of the Defense authorization bill for fiscal year 1986. I am hopeful that with the support of my Senate colleagues, we will see these provisions enacted into law as a part of the final Defense authorization for this upcoming year.

Mr. President, I ask unanimous consent that a brief summary of the bill appear in the RECORD at this point.

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

SUMMARY

To summarize briefly, the bill contains 11 provisions.

Sec. 101 establishes an Office of Family Policy within the Office of Secretary of Defense, reporting to the Assistant Secretary for Manpower, Installations and Logistics to oversee existing military family programs and make program and policy recommendations.

Sec. 102 would transfer the Military Family Resource Center from the Office of Assistant Secretary for Health Affairs to the Assistant Secretary for Manpower Installations and Legislation.

Sec. 201 would reimburse members of the military for costs associated with travel in privately owned vehicles at the same rate that civilians are reimbursed.

Sec. 202 provides that military personnel and their families will be reimbursed for up to four days of temporary lodging expenses at $110/day.

Sec. 203 permits dependent students who are enrolled in a school within the continental U.S. to a round trip ticket once a year from a point of entry in the U.S. to their parents duty stations if their parents are stationed in Alaska and Hawaii.

Sec. 301 gives spouses preference in hiring for DOD civilian position at grades of GS 8 or above, if they are on the list of best qualified candidates, after veterans preference is satisfied.

Sec. 401 provides that DOD child care facilities on military installation be operated on a 24-hour a day basis when necessary to meet mission requirements.

Sec. 402 provides for a report from DOD on ways to improve employment opportunities for military spouses at child care facilities.

Sec. 501 establishes a youth sponsorship program at all military installations.

Sec. 502 requires DOD to make recommendations to assist children in secondary schools who must transfer with their parents to an area with different graduation requirements.

Sec. 601 establishes a voluntary dental insurance plan for spouses and dependents, with families paying not less that 40%, nor more than 60% of the premium.●

By Mr. HUMPHREY (for himself, Mr. THURMOND, Mr. LAXALT, Mr. SARBANES, Mr. GORTON, Mr. BURDICK, Mr. DECONCINI, Mr. COHEN, Mr. DOMENICI, Mr. MATTINGLY, Mrs. HAWKINS, Mr. ANDREWS, Mr. HATCH, Mr. RUDMAN, Mr. CHAFEE, Mr. DOLE, Mr. PELL, Mr. PROXMIRE, Mr. EXON, Mr. EAST, Mr. MATSUNAGA, Mr. HOLLINGS, Mr. LUGAR, Mr. METZENBAUM, Mr. NUNN, Mr. QUAYLE, Mr. GARN, Mr. BRADLEY, Mr. DENTON, Mr. NICKLES, Mr. HATFIELD, Mr. BOSCHWITZ, Mr. MATHIAS, and Mr. PRESSLER):

S.J. Res. 137. Joint resolution to designate the week of December 15, 1985, through December 21, 1985, as "National Drunk and Drugged Driving Awareness Week"; to the Committee on the Judiciary.

NATIONAL DRUNK AND DRUGGED DRIVING AWARENESS WEEK

● Mr. HUMPHREY. Mr. President, I am pleased to once again introduce a joint resolution designating "National Drunk and Drugged Driving Awareness Week." For the past 3 years, many of my colleagues have joined me in introducing similar joint resolutions. The weeks, which have taken place right before the Christmas and New Year holiday season, have proven enormously successful in increasing public awareness of the dangers of driving while impaired from drugs or alcohol.

Over the past 3 years, hundreds of volunteers throughout the Nation have participated in the programs and activities of National Drunk and Drugged Driving Awareness Week. Activities during the week have included the issuance of parallel proclamations by many Governors, mayors, and local officials; introduction of new drunk driving legislation in various States; the appointment of task forces, and issuance of task force reports; roadblocks and other increased enforcement efforts; candlelight vigils; a "Speak Out for Safety" campaign; and voluntary efforts to provide rides from holiday parties. All of the groups involved in this effort have asked that

once again we designate such a week right before the holidays this year.

Traffic accidents result in more violent deaths each year than any other cause, over 44,000 in 1984. According to the National Highway Traffic Safety Administration, 45 percent of all drivers killed in 1984 were legally drunk and this figure rises to over 60 percent for single vehicle crashes. The cost to society of drunk driving has been estimated to be over $24 billion a year, which does not include the needless pain and suffering caused by drinking and driving.

In addition, we are continuing to hear reports of driving after drug use and accidents involving drivers who have used marijuana or other illegal drugs. Scientists are just beginning to collect data on the concentrations of various drugs in the blood of fatally injured drivers and to conduct studies of the effects of drugs on driving ability.

Of increasing concern is the combination of drugs and alcohol and its impact on the incidence of traffic accidents. Surveys of our young people show that drinking and driving often accompany marijuana use. We have also been made aware that driving after the use of therapeutic drugs, either alone or in combination with alcohol, counter to the advice of physician, pharmacist, or manufacturer, may create safety hazards on the roads. Clearly we need more research to determine the effect of drugs, both alone and in combination with alcohol, on the incidence of traffic accidents and we must alert the public to the risks of combining alcohol and drugs with driving.

In large part due to the volunteer efforts of citizens such as Mothers Against Drunk Drivers [MADD] and Remove Intoxicated Drivers [RID], the public has been demanding changes in the Nation's approach to drunk driving. It is important that we press forward with current efforts to develop new and creative approaches, by combining the expertise of Government, community groups, and voluntary organizations, and bringing the unique talents of each to bear on this devastating national problem.

I believe we should designate 1 week annually as National Drunk and Drugged Driving Awareness Week, to ensure that the momentum does not slip away as society turns its attention to other pressing problems. It is my hope that each year, this week will be marked by radio and TV programs, articles in the print media, and local initiatives such as dial-a-ride, candlelight vigils, and roadblocks, all aimed at increasing the public awareness of the risks of drunk and drugged driving. This will provide an annual opportunity to focus attention on the problem, assess our progress, and address the question of further measures needed. It will guarantee we do not forget the enormous costs in human suffering and dollars caused by the deadly combination of alcohol, drugs and driving.

I urge all my colleagues to join me in sponsoring this Senate joint resolution to designate the week beginning December 15, 1985, as "National Drunk and Drugged Driving Awareness Week."

Mr. President, I ask unanimous consent that the text of the legislation I have introduced today be printed in the RECORD.

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

S.J. RES. 137

Whereas traffic accidents cause more violent deaths in the United States than any other cause, approximately forty-four thousand in 1984;

Whereas traffic accidents cause thousands of serious injuries in the United States each year;

Whereas more than 60 per centum of drivers killed in single vehicle collisions and 45 per centum of all drivers fatally injured in 1984 had blood alcohol concentrations above the legal limit;

Whereas the United States Surgeon General has reported that life expectancy has risen for every age group over the past seventy-five years except for Americans fifteen to twenty-four years old, whose death rate, the leading cause of which is drunk driving, its higher now than it was twenty years ago;

Whereas the total societal cost of drunk driving has been estimated at over $24,000,000,000 per year, which does not include the human suffering that can never be measured;

Whereas there are increasing reports of driving after drug use and accidents involving drivers who have used marijuana or other illegal drugs;

Whereas driving after the use of therapeutic drugs, either alone or in combination with alcohol, contrary to the advice of physician, pharmacist, or manufacturer, may create a safety hazard on the roads;

Whereas more research is needed on the effect of drugs either alone or in combination with alcohol, on driving ability and the incidence of traffic accidents;

Whereas an increased public awareness of the gravity of the problem of drugged driving may warn drug users to refrain from driving and may stimulate interest in increasing necessary research on the effect of drugs on driving ability and the incidence of traffic accidents;

Whereas the public, particularly through the work of citizens groups, is demanding a solution to the problem of drunk and drugged driving;

Whereas the Presidential Commission on Drunk Driving, appointed to heighten public awareness and stimulate the pursuit of solutions, provided vital recommendations for remedies for the problem of drunk driving;

Whereas most States have appointed task forces to examine existing drunk driving programs and make recommendations for a renewed, comprehensive approach, and in many cases their recommendations are leading to enactment of new laws, along with stricter enforcement;

Whereas the best defense against the drunk or drugged driver is the use of safety belts and greater safety belt usage would increase the number of survivors of traffic accidents;

Whereas an increase in the public awareness of the problem of drunk and drugged driving may contribute to a change in society's attitude toward the drunk or drugged driver and help to sustain current efforts to develop comprehensive solutions at the State and local levels;

Whereas the Christmas and New Year holiday period, with more drivers on the roads and an increased number of social functions, is a particularly appropriate time to focus national attention on this critical problem;

Whereas designation of National Drunk and Drugged Driving Awareness Week in each of the last three years stimulated many activities and programs by groups in both the private and public sectors aimed at curbing drunk and drugged driving in the high-risk Christmas and New Year holiday period and thereafter;

Whereas the activities and programs during National Drunk and Drugged Driving Awareness Week have heightened the awareness of the American public to the danger of drunk and drugged driving: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of December 15, 1985, through December 21, 1985, is designated as "National Drunk and Drugged Driving Awareness Week" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate activities.●

● Mr. CHAFEE. Mr. President, I am pleased to join my distinguished colleague, Senator HUMPHREY, in sponsoring the Senate joint resolution to designate the week before the Christmas and New Year's holidays as National Drunk and Drugged Driving Awareness Week.

This joint resolution raises public awareness about the serious problem of drunk and drugged driving which exists in America today. The National Transportation Safety Board's statistics display with horrifying clarity the role of alcohol in auto accident fatalities and injuries. In 1982, there were 38,899 accidents, which killed 43,945 people. Alcohol was involved in 25,000 deaths, nearly 57 percent of the fatalities. This figure is even more disturbing when one considers that many of these alcohol-related fatalities could be prevented.

Drunk or drugged driving is a broad social problem. Federal and State transportation and law enforcement officials have worked diligently in recent years to keep alcohol or drug-impaired people off the road. Continued public education is an essential ingredient in the fight against drunk or drugged driving.

National Drunk and Drugged Driving Awareness Week will establish an intensive campaign aimed at its prevention. Local initiatives, such as dial-a-ride, combined with media attention will increase public awareness of the

problem. Awareness will lead to prevention.

Alcohol and drug abuse are a leading cause of tragedy on our highways today. Congress has the opportunity to take an initiative in preventing such tragedies from occurring. I urge my colleagues to join in supporting this important joint resolution●

ADDITIONAL COSPONSORS

S. 84

At the request of Mr. INOUYE, the names of the Senator from North Carolina [Mr. HELMS], the Senator from Illinois [Mr. SIMON], and the Senator from Kentucky [Mr. FORD] were added as cosponsors of S. 84, a bill to incorporate the Pearl Harbor Survivors Association.

S. 664

At the request of Mr. NICKLES, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of S. 664, a bill to facilitate the competitiveness of exports of U.S. agricultural commodities.

S. 670

At the request of Mr. PELL, the names of the Senator from West Virginia [Mr. BYRD], the Senator from California [Mr. CRANSTON], and the Senator from Connecticut [Mr. DODD] were added as cosponsors of S. 670, a bill to amend the National Labor Relations Act to give employers and performers in the performing arts rights given by section 8(e) of such act to employers and employees in similarly situated industries, and to give to employers and performers in the performing arts the same rights given by section 8(f) of such act to employers and employees in the construction industry, and for other purposes.

S. 725

At the request of Mr. CHAFEE, the name of the Senator from Missouri [Mr. EAGLETON] was added as a cosponsor of S. 725, a bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1986, 1987, 1988, 1989, and 1990.

S. 729

At the request of Mr. DURENBERGER, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 729, a bill to amend the Internal Revenue Code of 1954 to make permanent the rules relating to imputed interest and assumption of loans, and for other purposes.

S. 787

At the request of Mr. NUNN, the names of the Senator from Florida [Mr. CHILES], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of S. 787, a bill to authorize the Secretary of the Army to accept and to operate a National Science Center for Communications and Electronics in order to enhance military training and to share technology development in the communications, electronics, and computer industries, and for other purposes.

S. 873

At the request of Mr. CHAFEE, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 873, a bill to amend title XIX of the Social Security Act to assist severely disabled individuals to attain or maintain their maximum potential for independence and capacity to participate in community and family life.

S. 896

At the request of Mr. SASSER, his name was added as a cosponsor of S. 896, a bill to amend the Internal Revenue Code of 1954 to apply rural electric cooperative plans to the provisions relating to cash or deferred arrangements.

S. 930

At the request of Mr. NICKLES, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of S. 930, a bill to amend the Commodity Credit Corporation charter to exempt all agricultural exports from cargo preference requirements.

S. 1025

At the request of Mr. PRESSLER, the name of the Senator from Georgia [Mr. MATTINGLY] was added as a cosponsor of S. 1025, a bill to require the United States International Trade Commission to investigate and report on the effects of honey imports and to require the President under certain conditions to take action based on such report.

S. 1147

At the request of Mr. HATCH, the name of the Senator from Georgia [Mr. DURENBERGER], the Senator from Iowa [Mr. GRASSLEY], and the Senator from Maine [Mr. MITCHELL] were added as cosponsors of S. 1147, a bill to amend the orphan drug provisions of the Federal Food, Drug, and Cosmetic Act and related laws.

SENATE JOINT RESOLUTION 88

At the request of Mr. LEVIN, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of Senate Joint Resolution 88, a joint resolution to designate the week beginning September 8, 1985, as "National Osteopathic Medicine Week."

SENATE JOINT RESOLUTION 92

At the request of Mr. DENTON, the name of the Senator from Vermont [Mr. LEAHY] and the Senator from Illinois [Mr. SIMON] were added as cosponsors of Senate Joint Resolution 92, a joint resolution to designate October 1985 as "National Foster Grandparents Month."

SENATE JOINT RESOLUTION 108

At the request of Mr. WARNER, the names of the Senator from Ohio (Mr. GLENN) and the Senator from Nebraska (Mr. ZORINSKY) were added as cosponsors of Senate Joint Resolution 108, a joint resolution authorizing the Secretary of Defense to provide to the Soviet Union on a reimbursable basis, equipment and services necessary for an improved United States/Soviet direct communication link for crisis control.

SENATE JOINT RESOLUTION 122

At the request of Mr. BRADLEY, the name of the Senator from New Hampshire [Mr. HUMPHREY] was added as a cosponsor of Senate Joint Resolution 122, a joint resolution to authorize the President to proclaim the last Friday of April each year as "National Arbor Day."

SENATE JOINT RESOLUTION 126

At the request of Mr. PRESSLER, the name of the Senator from Wisconsin [Mr. PROXMIRE] was added as a cosponsor of Senate Joint Resolution 126, a joint resolution to condemn Bulgarian brutality toward their Turkish minority.

SENATE JOINT RESOLUTION 133

At the request of Mr. DOLE, the name of the Senator from Idaho [Mr. MCCLURE] was added as a cosponsor of Senate Joint Resolution 133, a joint resolution to designate May 25, 1985, as "National Holstein Day."

SENATE RESOLUTION 148

At the request of Mr. SASSER, his name was added as a cosponsor of Senate Resolution 148, a resolution commemorating the 50th anniversary of the Rural Electrification Administration.

SENATE RESOLUTION 165

At the request of Mr. HEINZ, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of Senate Resolution 165, a resolution to urge the President of the United States and the Secretary of the Treasury to reject any tax reform proposal which would impose a tax on the annual increase in the value of permanent life insurance.

SENATE RESOLUTION 166—REGARDING A SUPERPOWER SUMMIT

Mr. SPECTER submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 166

Whereas relations between the United States and the Union of Soviet Socialist Republics are currently characterized by considerable tension;

Whereas on-going nuclear arms negotiations being conducted by the duly appointed representatives to the respective parleys have not achieved satisfactory results to date;

Whereas a carefully prepared summit could facilitate the accomplishment of the objectives of these negotiations and lead to a reduction in the risk of nuclear war;

Whereas a carefully prepared summit could also lead to progress in resolving

other major issues troubling relations between the two superpowers;

Whereas both President Reagan and Soviet General Secretary Gorbachev have indicated their willingness in principle to participate in such a carefully prepared summit;

Resolved, That it is the sense of the Senate that the President of the United States and the President of the Union of Soviet Socialist Republics should meet at the earliest practical time following thorough preparation to discuss major issues in United States-Soviet relations and to work for the realization of mutual equities and verifiable reductions in nuclear arms.

Mr. SPECTER. Mr. President, I am today submitting a resolution expressing the sense of the Senate that President Reagan and Soviet leader Mikhail Gorbachev should hold a summit meeting as soon as possible.

I have submitted virtually this same resolution three times prior to this, as an amendment to the defense authorization bills in 1982, 1983, and 1984. It has been passed by my colleagues overwhelmingly each time. In 1982 my sense-of-the-Senate resolution calling for a summit passed by a vote of 92 to 6 and in 1983 by a vote of 82 to 7. In 1984, I again offered the resolution as an amendment to the Defense authorization bill. As it happened, my amendment came up very late at night after a long day of debate, and at the request of the majority leader I withdrew my request for a rollcall vote. The amendment passed without objection by a voice vote.

I would like to think our voices have been heard on Pennsylvania Avenue and that we have played some role in the President's invitation to Soviet leader Gorbachev for a summit.

Yet, I feel compelled to offer this resolution once more. Despite each leader's expression of a willingness to meet, conflicting pressures and longstanding distrust have resulted in virtually no progress being made toward such a meeting.

With growing signs that the talks in Geneva may already be approaching a stalemate, it is imperative that these two world leaders meet face to face; not for "marking progress," but to encourage and stimulate progress.

This summit cannot wait for the talks to produce agreement. It must propel the process toward peace.

This is consistent with the two-track approach which President Reagan has long advocated: That we should be strong, knowing the proclivities of the Soviets, but at the same time we should be willing to talk arms reduction.

Mr. President, I think that it is especially appropriate in the constitutional setting for this sense of the Senate resolution to be offered, given the constitutional responsibility and authority in the Senate for advice and consent on treaties.

The SALT II Treaty was never ratified by the U.S. Senate. It seems to this Senator most appropriate for this body to express itself on such an important matter and to lend encouragement to our President and to his Soviet counterpart that the Senate considers such negotiations in arms reduction to be a matter of paramount importance, that this body is interested in having such arms reduction agreements and, obviously depending upon the specifics of any such treaty, would be inclined to consider it favorably if, as, and when the matter came before the Senate for ratification.

An expression of congressional support for a summit is even more timely now than before because the United States has proceeded with the President's strategic modernization programs, including deployment of Pershing and cruise missiles in Europe, production of the B-1 bomber, and further production of the MX missile.

Consequently, the United States can now bargain from a position at least of parity. Indeed, the President has affirmed that he is satisfied with a position of parity and that efforts to achieve superiority are neither necessary nor helpful to arms control.

I believe, Mr. President, that in this day and age, there is no such thing as superiority. In a very real sense, the United States is inferior to the Soviet Union because the Soviet Union has the power to destroy the United States. And similarly, in a very real sense, the Soviet Union is inferior to the United States because the United States could destroy the Soviet Union. And both major powers may be inferior if the likes of Qadhafi or Khomeini ever obtains nuclear arms.

Mr. President, in my judgment there is worldwide fear of nuclear destruction, and there is the corollary of a worldwide wish for nuclear disarmament. In November-December 1983, I personally observed the location of the Pershing II's in West Germany, the location of the cruise missiles in England, and had occasion to talk to West Germans and British where the cruise missiles were deployed. Those missile systems were received by those two nations but in the context of great concern by the citizenry of those nations.

During the course of the past 4 years I have had occasion to have several hundred open house/town meetings throughout my State of Pennsylvania; and have found great concern and fear about the possibility of nuclear destruction, and great wish for nuclear disarmament. Wherever I have traveled in Pennsylvania at these open house/town meetings, there have been concerns about the MX, and a general sense in favor of a mutually verifiable nuclear freeze. There is a real sense in this country today about wanting to have arms reduction talks at the highest level.

It is my view, Mr. President, that the Congress and the Senate have a leadership role to push for such summit. As President Reagan himself has articulated his view of the relationship between the executive and legislative branch, there is a partnership. In seeking this sense-of-the-Senate resolution, I do little more than press for a formal statement by this body on what the President has already said that he finds to be acceptable.

I believe it is important that this body lend its collective voice to encourage our President, and encourage the leader of the Soviet Union, to meet, to have talks on these matters of the utmost urgency, and of the utmost importance.

The sense-of-the-Senate resolution which I am submitting does not lay out any detailed blueprint as to how President Reagan may wish to proceed, or how his Soviet counterpart may wish to proceed in terms of the adequacy of preparation or the nature of an agenda, but simply that there not be preconditions or assurances of success which means that the summit meeting ought not to be delayed until all of the items have been agreed upon by the subordinates and it is merely an event where documents are signed.

Mr. President, there have been relatively few summits during the course of the last 25 years—in 1959, 1961, 1967, 1972, 1973, 1974, in June 1974, November 1977, and June 1979. There has not been a summit meeting since June 1979.

In President Reagan, the United States has a superb negotiator and leader. His signal accomplishments at economic summits in Ottawa, Versailles, Williamsburg, and London and his bold proposals in the areas of nuclear, chemical, and conventional arms demonstrate his potential to achieve a breakthrough on arms control and other vital subjects in a summit with Chairman Gorbachev.

Of course, President Reagan, as an advocate on military strength and anticommunism, has unique credibility with important sectors of American political opinion on reaching an arms control agreement just as President Nixon did on recognizing Red China. With the accumulated knowledge from nearly 5 years of studying and deciding a range of arms control issues, the President also now has the requisite expertise.

Soviet leaders know, however, that, unlike their system of Government, in our country the system of checks and balance involves Congress in critical foreign policy decisions such as funding new weapons and ratifying new treaties. Therefore, there is a great need to demostrate national unity to them on critical issues like holding a summit and negotiating arms control.

In submitting this resolution, my intention is to give the President encouragement from the Senate's renewal of

support for his suggestion for a summit, and I fully expect it will be backed by my colleagues as before.

I am submitting this resolution now so that people can consider it, and I expect to reintroduce it, as in the past, as an amendment to the Department of Defense authorization bill when it comes to the floor.

There is no more important issue facing the world today than the possibility of nuclear destruction, and there is no more vital effort that can be made by the leaders of the United States and the Soviet Union than for the two superpowers to meet and talk about these issues in an effort to achieve arms reduction, and to relieve international tension.

SENATE RESOLUTION 167—ELECTING ERNEST E. GARCIA AS SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE

Mr. DOLE submitted the following resolution; which was considered and agreed to:

Resolved, That Ernest E. Garcia, of Kansas, be, and he is hereby, elected Sergeant at Arms and Doorkeeper of the Senate, beginning June 3, 1985.

SENATE RESOLUTION 168—AN ORIGINAL RESOLUTION WAIVING SECTION 303(a) OF THE BUDGET ACT WITH RESPECT TO THE CONSIDERATION OF S. 1160

Mr. GOLDWATER, from the Committee on Armed Services, reported the following original resolution; which was referred to the Committee on the Budget:

S. RES. 168

Resolved, That pursuant to section 303(c) of the Congressional Budget Act of 1974, the provisions of section 303(a) of such Act are waived with respect to the consideration of S. 1160, a bill to authorize appropriations for the military functions of the Department of Defense and to prescribe personnel levels for the Department of Defense for fiscal year 1986, and for other purposes.

Such a waiver is necessary because section 303(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) which provides new spending authority described in section 401(c)(2)(C) of such Act to become effective during a fiscal year until the first concurrent resolution on the budget for such year has been agreed to pursuant to section 301 of such Act.

For the foregoing reasons, pursuant to section 303(c) of the Congressional Budget Act of 1974, the provisions of section 303(a) of such Act are waived with respect to the consideration of S. 1160.

AMENDMENTS SUBMITTED

ETHNIC AMERICAN DAY

PRESSLER AMENDMENT NO. 146

Mr. DOLE (for Mr. PRESSLER) proposed an amendment to the joint resolution (S.J. Res. 32) to authorize and request the President to designate September 15, 1985, as "Ethnic American Day"; as follows:

On page 2, line 4, strike out "15, 1985" and insert in lieu thereof "21, 1986".

NOTICES OF HEARINGS

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

Mr. DURENBERGER. Mr. President, I wish to announce that the Senate Subcommittee on Intergovernmental Relations will hold a hearing on S. 765, the Great Lakes Management Act, on Wednesday, May 22, at 2 p.m. in room 342 of the Dirksen Senate Office Building.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Thursday, May 16, to conduct an executive session to consider pending legislative business.

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

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet until 12:30 p.m., during the session of the Senate on Thursday, May 16, to mark up the 1985 farm bill.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DOLE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, May 16, 1985, in closed executive session, to hold a briefing on intelligence matters.

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

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

Mr. DOLE. Mr. President, I ask unanimous consent that the Subcommittee on Energy Research and Development of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, May 16, to hold an oversight hearing on the Department of Energy's report to Congress on emerging clean-coal technologies.

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

ADDITIONAL STATEMENTS

DOD AUTHORIZATION

● Mr. GOLDWATER. Mr. President, late yesterday afternoon the committee completed action on its second markup of the fiscal year 1986 defense authorization bill. In the first markup, which occurred in early April, the committee reduced the administration's defense budget request by approximately $10 billion in budget authority. The amount reported in April represented 3 percent real growth over the defense funding level approved in fiscal year 1985. Yesterday's committee action resulted in a further reduction of $10 billion in budget authority in order to conform the fiscal year 1986 defense funding authorization to amounts approved by the Senate late last week.

In my view, the committee did an excellent job in establishing specific national security priorities and program funding reduction guidelines, and then making program funding reductions consistent with those priorities and guidelines. To the committee's credit, it did not try to artificially dramatize the serious long-term consequences of these budget reductions on our national defense posture by terminating several high-visibility major weapon systems. Cost and performance discipline for these and all other programs continues to be one of my highest priorities as chairman of the Armed Services Committee. I believe it was the committee's view that even those systems which have been controversial do, in fact, meet essential military requirements and contribute importantly to national defense.

It ought to be clear to the American public that our potential adversaries in the world are not standing still and thus our national security cannot be preserved if we are merely willing to stand still. These additional required reductions make this a stand-still budget. If we continue on such a path for the next few years, we will never reach the force level goals that are necessary to ensure our ability to deter and counter aggression and to support our foreign policy objectives.

For those of my colleagues in the Senate and the House of Representatives who have been clamoring for a reduction in defense spending and decrying the procurement practices of the Pentagon which they believe to be wasteful, this bill will test their sincerity. The bill provides $1 billion to be used in conjunction with statutory language authorizing the Secretary of

Defense to close some of the least essential military installations which have remained open largely, in many cases, for political reasons. The upfront costs associated with closing these military installations will, in a very short time, be exceeded substantially by the savings which will result. In addition, this bill proposes to eliminate certain congressionally imposed waste by modifying the Davis-Bacon Act, the Walsh-Healey Act, the Contract Work Hours and Safety Standards Act, and in addition, proposes to remove the congressionally imposed restrictions on the authority of the Secretary of Defense to compete in the private sector certain services required by the Department when the Secretary determines such action would be cost effective and consistent with the interests of national security.

I hope that as the committee takes its bill to the Senate floor, Members will restrain their desire to have their individual authorship on an arms control amendment and recognize that such amendments more often than not impair the ability of our negotiators in Geneva, who are experiencing enough problems getting the Soviet negotiators to bargain in good faith. It has always been a curious phenomena to me, that faced with clear and convincing evidence of existing Soviet treaty violations, certain of my colleagues feel the desire to hold the United States to a stricter standard of compliance than they do the Soviet Union.

Following are the highlights resulting from yesterday's committee markup:

MANPOWER AND PERSONNEL

In manpower and personnel, the committee recommended a reduction of 10,730 active duty personnel from the request. This decision was a result of the substantial congressionally mandated defense budget reductions, coupled with a desire to permit increased manning in combat units as opposed to support forces. The committee agreed to increase the average strengths of the Selected Reserve by 30,272 which amounts to approximately 70 percent of the administration's request. A Defense Department civilian end strength of approximately 1.1 million personnel was approved, also as a result of congressionally mandated budget reductions. This figure represents a freeze on civilian manning levels in those program areas where growth was requested in fiscal year 1986 and a reduction in those functional areas where such a reduction was estimated in the budget.

In addition, the committee agreed to provisions which could lead to a substantial restructuring of the military compensation system. These provisions include a 10-percent reduction in the funding level for the military retirement system along with approval of several hundred million dollars for special and incentive pays and improved permanent change of station allowances. As part of this package, which involves reducing the share of military compensation dollars to be utilized for military retirement so as to provide more compensation to personnel during their careers, the committee approved on across-the-board pay raise of 3 percent for all military personnel to become effective on October 1, 1985. The committee further directed that the Secretary of Defense submit proposed legislation to the Congress, not later than September 1, 1985, which if enacted would alter the military retirement structure in such a manner that the costs of the system could be met under the reduced funding authorized by the committee. The committee specifically directed that the proposed legislation to be submitted by the Secretary of Defense would not apply to any person on active duty or already retired at the time such legislation is enacted.

STRATEGIC AND THEATER NUCLEAR FORCES

In view of the need to satisfy the constraints of a no real growth defense budget, the committee was compelled to reduce funding for strategic programs by an additional $1.3 billion. This amounts to a total reduction of $3.4 billion from the administration's request of $47 billion for strategic programs.

There was no change in the committee's recommendation on the Peacekeeper [MX] Program, with 21 missiles authorized for procurement. The committee also fully funded the small missile program.

Due to budgetary constraints, the committee recommended an authorization of $2.97 billion for the President's strategic defense initiative. This was a reduction of $450 million beyond that recommended at 3 percent real growth, for a total reduction of $750 million from the administration's request.

The committee recommended full funding for the 48 B-1B bombers requested by the administration, and it fully funded the advanced technology bomber and advanced cruise missile programs.

The committee fully funded the Trident II (D-5) missile program, and it recommended the authorization of $1.43 billion for one Trident submarine. This amounts to a reduction of $100 million from the administration's request.

SEA POWER AND FORCE PROJECTION

The committee approved $23.9 billion for sea power and force projection programs, a reduction of $3.3 billion from the administration's request. The committee approved $9.9 billion to procure 21 new ships in the 1986 Navy shipbuilding account. The committee's reductions in the shipbuilding program totaled $1.5 billion and included two MCM-1 class mine countermeasures ships. In the Navy aircraft procurement account, as an economy measure, the committee denied funding for six LAMPS Mark—1 helicopters, an action which would close this production line 1 year earlier than planned. For Air Force airlift, the committee approved the procurement of 12 KC-10A tanker/airlift aircraft and 16 C-5B airlift aircraft. The committee also approved $383.7 million for continued development of the C-17 airlifter, a reduction of $70 million.

MILITARY CONSTRUCTION

The committee authorized $8.8 billion for military construction out of a budget request of $10.3 billion. As in the committee's previous action, $36 million was authorized for the Navy to initiate land acquisition and construction to homeport a battleship group at Staten Island, NY and a carrier battle group at Everett, WA. However, the funds cannot be used until the Navy justifies to the Congress the military necessity and cost effectiveness of homeporting ships at these locations. The committee, due to budget constraints, deferred funds requested by the Army to begin stationing of the 10th Mountain Division at Fort Drum, NY. No funds were denied for troop or family housing as a result of the defense freeze. The committee also authorized $1 billion to be appropriated specifically for base closures along with a statutory provision which would supercede certain existing statutes which have impaired the ability of the Secretary of Defense from closing such bases.

TACTICAL ISSUES

The committee's program funding recommendations will continue the essential modernization of our conventional forces. The committee rejected the past practice of reducing production lines of the more essential weapons programs to inefficient production rates and instead recommended approval of the administration's request for the AH-64 Apache attack helicopter, UH-60 Blackhawk helicopter, Bradley Fighting Vehicle, M-1 Abrams main battle tank, the Navy's A-6E attack aircraft, F/A-18 Strike Fighter, and the Air Force's F-15 and F-16 fighters with only minor funding reductions. The committee recommended approval of the R&D for the JVX tilt-rotor aircraft, now designated the V-22 Osprey, but recommended reductions for the LHX, the Army's proposed family of light helicopters, and the Air Force's Advanced Tactical Fighter [ATF]. The committee also recommended that the Army's Aquila Remotely Piloted Vehicle [RPV] program be restructured at a funding level one half of that requested by the administration.

The committee recommended approval of the administration's request for air-to-air, surface-to-air, and air-to-

surface missiles with the exception of the Air Force's AMRAAM [advanced medium range air-to-air missile] for which the committee recommended approval of only $200 million of the $366.5 million requested by the administration for missile production.

The committee recommended no funds be provided for the Army's field artillery ammunition support vehicle [FAASV], the Army's robotic obstacle breaching assault tank [ROBAT], Navy UC-12B aircraft, Navy T-34C trainer aircraft, Marine M-198 Howitzers, Air Force HH-60 Nighthawk helicopters, and Air Force low level laser guided bomb [LLLGB] kits.

PREPAREDNESS

With regard to preparedness issues, the committee recommended $83.5 billion, approximately $3.5 billion less than requested by the administration in this area.

In going from the original 3 percent markup contained in the committee report to the zero percent growth level, an additional $800 million was reduced from the request. The additional reductions were made in financing adjustments of $200 million; O&M program reductions of nearly $250 million; a reduction of $200 million in the stock fund requests from all services; and almost $100 million in additional procurement reductions.

DEFENSE ACQUISITION POLICY

TITLE VI

Because Members of the Senate have expressed an interest in addressing the issue of defense procurement reform when the authorization bill comes to the Senate floor, the committee has removed the Defense Procurement Improvement Act of 1985 from the legislation. It will be offered as a committee amendment during Senate consideration of the authorization bill.

TITLE VII

The committee agreed to language clarifying the application of civil and criminal penalties levied against contractors submitting consistent unallowable claims. The section relating to the applicability of the Davis-Bacon Act contains codification of Department of Labor regulations on wage computation. The Walsh-Healey provision was modified by the committee to require overtime for hours worked over 40 hours per week, with no reference to daily overtime requirements. Finally, the committee has added language to set specific evaluation for the Secretary of Defense to use in closing or realigning bases, as well as to set restrictions on the authority to use appropriated funds for this purpose.●

NATIONAL TOURISM WEEK 1985

● Mr. SASSER. Mr. President, as cochairman of the Senate tourism caucus, I want to direct attention to National Tourism Week 1985, which begins on Sunday, May 19. National Tourism Week will kick off the great American summer vacation season, a season in which 105 million Americans are expected to make vacation trips this summer.

Instituted last year as a result of a joint resolution unanimously supported by both the House and Senate, National Tourism Week proved to be an enormous success in promoting the importance of travel and tourism—the second largest business in the United States.

So successful was National Tourism Week in 1984, in fact, that the resolution designating a 1985 National Tourism Week became a public law only 3 months after it was introduced simultaneously in both the House and Senate.

"Tourism Works for America" is the theme of this year's National Tourism Week. And certainly, tourism does work for America.

The travel and tourism industry is our Nation's second largest employer, providing 6.8 million jobs. And in 1983, the most recent year for complete data are available, the industry was responsible for 43 percent of all new jobs.

It represented 6.4 percent of the U.S. gross national product in 1983, with expenditures totaling $210 billion. One-eighth of every dollar spent on travel and tourism is tax revenue. In 1983, the industry generated $13.8 billion in taxes for the Federal Government, $8.7 billion for our States and $2.8 billion in taxes for local governments.

As the second largest industry in Tennessee, travel and tourism are key to the economy of the State. Data provided by the U.S. Travel Data Center and the U.S. Travel and Tourism Government Affairs Council amply illustrate this, and I ask that this data be printed in the RECORD at this point.

The data follows:

TENNESSEE FACT SHEET: ECONOMIC IMPACT OF TRAVEL AND TOURISM IN 1982

Travel and tourism was the second largest employer in the state in 1982.

In 1982, travel and tourism generated: 82,900 jobs; 4.9 percent of all jobs in Tennessee; $645 million in payroll. Over $3.1 billion expenditures in the state.[1] Tourists spent nearly $8.7 million per day in Tennessee in 1982; $3,168 million total domestic traveler expenditures; $292 million total tax revenues;[1] $139 million federal tax revenues; $114 million state tax revenues. Tourism contributed more than $312,000 per day to Tennessee in state taxes in 1982. Tennessee received $27.14 in tourism generated state taxes for each dollar the state budgeted for tourism in 1982; $39 million local tax revenues.

Tennessee ranked 8th in the U.S. in terms of state tourism budgets in 1982-83.

[1] Totals do not include foreign visitor contributions.

Source: U.S. Travel Data Center and Travel and Tourism Government Affairs Council.

Note: 1982 is the latest data available. 1983 data will be released in late summer 1985.

Mr. SASSER. Mr. President, as favorable as the data on travel and tourism are, all of us who are concerned with the vitality of the industry can do even more to strengthen its role in our national economy, and National Tourism Week is an ideal time in which to undertake this effort.

Specifically, more Americans should be aware of the importance of tourism to our international balance of trade. The foreign visitor to the United States is part of a major export industry. Yet, the administration seems intent on deauthorizing and dismantling the U.S. Travel and Tourism Administration [USTTA], the agency charged with coordinating our Nation's policies regarding tourism, especially international tourism.

With the strong American dollar making travel from abroad less attractive, it is more important than ever that we have a strong, aggressive national policies in this regard. I am confident that the Congress will see to it that the life and funding of the USTTA are extended so that this agency can do the job that needs to be done in promoting international tourism in the United States.

There are many other themes about tourism that one could emphasize during National Tourism Week 1985, but I believe that the industry has adopted a most fitting one for the week that begins shortly: "Tourism Works for America." Let us take the occasion of this special week both to appreciate and to promote this important economic fact.●

ANNUAL FINANCIAL DISCLOSURE OF SENATOR STAFFORD

● Mr. STAFFORD. Mr. President, in each of the last 11 years, I have made public disclosures of my financial holdings, along with summaries of my Federal income tax return.

I have pledged that I would issue a similar report to the citizens of Vermont each year for the remainder of my time in public office.

In keeping with that promise, I am once again issuing a public statement of financial disclosure.

The financial statement shows that my wife, Helen, and I had net assets of $760,000 as of May 8, 1985, when the evaluation was made.

The statement I am making public details our holdings, including bank accounts, cash value of life insurance and Federal retirement fund, real and personal property we own, and stocks and bonds.

The majority of the stocks and bonds listed were owned by us before I entered public office in Vermont 30 years ago.

The summary of our joint Federal income tax return shows that Mrs. Stafford and I had an adjusted gross

income of $123,000 last year. Of that total, $72,300 came from my salary as a U.S. Senator.

Our total tax bill for the year was more than $46,000, of which $36,000 was in Federal income taxes and $10,000 in Vermont State income taxes.

I shall ask that details of our financial statement be printed in the CONGRESSIONAL RECORD, as in the past. And, as I have done in each of the last 11 years, I am making copies of the statement available to newspapers, radio and television stations and other news services in Vermont.

This information is being made public because I remain convinced that those who serve in government, as well as government itself, must be as open and candid as possible with the public.

The net assets of the Staffords increased by $110,000 last year, a gain of nearly 17 percent. A major portion of our assets continues to consist of homes in Virginia and Vermont whose estimated total fair market value is $310,000.

One of the best ways Americans have to judge whether their government and their officials are acting properly is to provide full disclosure of all interests of government and of those who make decisions in government.

Thus, I invite all Vermonters—and all other Americans—to examine my financial interests and to match those interests with my record as a public official.

We have made some progress in providing the public with more information about the interests and activities of public officials, but we have a long way to go in providing full public disclosure.

I shall continue to support legislation that provides greater ventilation of the way we do business in our Government. In the meantime, I shall continue to make my own full disclosure to my fellow Vermonters.

The material follows:

Summary of 1984 joint Federal income tax return Robert T. and Helen K. Stafford

Income:	
Salary	$72,342.96
Interest	8,577.79
Dividends	5,414.01
Honoraria	20,500.00
Other	20,399.79
Total income	127,234.55
Adjustments to income allowable congressional expenses not reimbused	3,849.26
Total adjustments to income	3,849.26
Adjusted gross income	123,385.29
Deductions	11,270.89
Exemptions	4,000.00
Taxable income	108,114.40
Federal income tax due and paid	36,006.48

Statement of financial condition Senator and Mrs. Robert T. Stafford, May 15, 1984

Certificates of deposit:	
Chittenden Trust Company	$10,000
First Vermont Bank	10,000
Howard Bank	10,000
Howard Bank	10,000
Marble Savings Bank	10,000
Proctor Bank	10,000
Proctor Bank	10,000
Vermont National Bank	10,000
Vermont National Bank	10,000
Vermont Federal Bank	10,000
Total	100,000
Checking accounts:	
First Virginia Bank	600
Howard Bank	300
Riggs National Bank	18,000
Total	18,900
Life insurance:	
Connecticut General	
MONY	
NYLIC	
NSLI	
Travelers	
Total	20,000
Real estate (estimated market value):	
3541 Devon Drive, Falls Church, VA	150,000
27 Howard Avenue, Rutland, VT	60,000
64 Litchfield Avenue, Rutland, VT	100,000
Total	310,000
Additional assets:	
Contributions to Federal retirement (Dec. 31, 1984)	$82,055.83
Law library and office furniture	2,000.00
Boat and cars (two)	110,000.00
Personal property	35,000.00
Total	229,055.83
Stocks:	
Names and Shares	*Value*
NYNEX Corp.—77 at 82⅞	$6,381.36
AT&T—100 at 21½	2,150.00
Bellows Falls Trust Co—120 at 60	7,200.00
Cluett Peabody—20 at 30½	610.00
Con Edison of N.Y.—common 200 at 32⅜	6,475.00
Gillette Co.—20 at 60¼	1,205.00
Greyhound Corp.—20 at 28¼	565.00
Howard Bank—1425 at 22¾	32,418.75
International Harvester—20 at 9	180.00
Monsanto—80 at 46⅞	3,750.00
N. L. Industries—common 40 at 11⅞	475.00
National Distillers—40 at 29⅝	1,185.00
Outboard Marine—40 at 22⅞	915.00
Security Pacific Corp.—19 at 27¾	527.25
Time, Inc—75 at 54¼	4,068.75
Vendo—10 at 7⅜	73.75
Total	68,179.86
Keough account (Howard Bank)	13,983.28
Recapitulation: Total assets	760,118.97

PAN AMERICAN HEALTH ORGANIZATION'S CAMPAIGN AGAINST POLIO

● Mr. KENNEDY. Mr. President, earlier this week I had the privilege to attend the Pan American Health Organization's meeting to launch its 5-year campaign to eradicate polio from the Americas by 1990.

It was a remarkable meeting, not the least because of the attendance of all the scientists whose work has led to the possibility of eradicating this dreaded disease from our planet. All Nobel laureates for their pioneering work—Dr. Jonas Salk, Dr. Albert Sabin, Dr. Fredericak Robbins, and Dr. Thomas Weller—were given a standing ovation as the Pan American Health Organization announced that their life-saving vaccines would be mobilized to eliminate the scourage of polio in the Western hemisphere.

In announcing the program, the director of PAHO, Dr. Carlyle Guerra de Macedo, said it best: Despite dramatic advances that have been made with polio immunization, the disease has not been conquered here in our own hemisphere. He said:

> By 1990, if nothing new is done and if the number of new victims reported in 1984 is repeated year by year, there will be at least 2,500 more children paralyzed, crippled or dead because of this acute viral disease. We must put an end, once and for all, to that spectre of crippling disease which still looms before the children of the Americas.

As the regional office of the U.N. World Health Organization, this campaign by PAHO reflects the larger goals of WHO to immunize the children of this world against the preventable diseases that yearly kill 5 million children under the age of 5.

Mr. President, this is the work of the United Nations that we should commend and support—not denigrate, as some did just yesterday on the Senate floor during the debate on the foreign assistance bill. The work of WHO, and through it the Pan American Health Organization, deserves our praise and our active support.

Their work is also being recognized by the private sector, and I am delighted to learn that Rotary International has pledge to promote and assist in polio immunization of all children, worldwide, by the year 2005—Rotary's 100th anniversary.

Just in support of PAHO's campaign in the Western Hemisphere, Rotary has already contributed $6 million—with a commitment to do much more.

Other U.N. agencies, particularly, UNICEF, with its "Child Survival" initiative, are also supporting the campaign.

Mr. President, I commend to the attention of the Senate the outstanding work of PAHO as it launches a major program to eradicate polio from the Americas. I ask that the announce-

ment by Dr. Macedo, director of PAHO, as well as Rotary International's program statement, be printed in the RECORD.

The material follows:

ANNOUNCEMENT BY DR. CARLYLE GUERRA DE MACEDO, DIRECTOR, PAN AMERICAN HEALTH ORGANIZATION

I am pleased to welcome so many distinguished scientific, political, and diplomatic leaders this morning to the Pan American Health Organization. Your presence here at PAHO demonstrates once more the combined commitment of the countries of the hemisphere to the struggle against disease in the Americas.

As the Regional Office of the World Health Organization in this hemisphere, PAHO has a permanent task of working with its member countries in pursuit of Health For All by the Year 2000. That responsibility is even greater when it touches our children.

Throughout the world, some 5 million children under five years of age die each year from diseases which we can prevent with medicines and relatively common technology available to us today. They die mainly of poor perinatal care, of hunger or of some infection. In the countries of the Americas, 800,000 children die each year from preventable diseases, as many children as the number of people who live in this city. It is as if an entire city the size of Washington, its inhabitants only children, were to be destroyed every year.

The tragedy is that those lives are lost not because we do not know how to prevent or control those diseases, but because we have failed to assure all children access to the benefits of the knowledge we possess.

Perhaps the most effective and efficient of all the health technologies know to man is immunization. The geniuses of science, and many are here today, have developed effective vaccines which protect against most of the childhood infectious diseases. Yet, 80 per cent of the world's children do not receive that protection. Even here in the Americas, 4 million children born every year do not yet have access to vaccination against those childhood killer diseases.

Around the world, every six seconds, one child dies and another is disabled because of the failure to immunize against those diseases. . . . In that space of time, a child has died because of the lack of immunization.

A decade ago, the World Health Organization sought to counter this threat to the children of the world by establishing the Expanded Program on Immunization. In 1977, it was begun here at PAHO with the aim of preventing six diseases—measles, diphtheria, tetanus, whooping cough, tuberculosis and poliomyelitis.

We created a revolving fund, financed by special contributions of several donor countries. Last year, PAHO received a special grant from the U.S. to complete that fund. PAHO now can purchase vaccines for the participating countries at the lowest possible cost. Reducing the cost means reaching more children.

Much has been achieved since 1977. A vast number of health workers have been trained. Cold chain systems that keep the vaccines viable have been organized and are being maintained in country after country. Immunization is one of the top priorities in the national health plans of every country of this region.

In 1977, immunization reached between 25-30% of the children. By 1984, we say the countries double that coverage, extending that fundamental life-saving technology to 60 percent of the children at risk. The gap is still enormous: too many children still suffer needless illnesses and too many still die.

The most dramatic advances have been made with polio immunization where we have boosted coverage nearly three-fold to 75% of those under one year of age since 1977. But the disease has not been conquered: by 1990, if nothing new is done and if the number of new victims reported in 1984 is repeated year by year, there will be at least 2,500 more children paralyzed, crippled or dead because of this acute viral disease.

We must put an end, once and for all, to that spectre of crippling disease which still looms before the children of the Americas. Without the eradication of the polio virus, the chances of a sudden outbreak of polio still exists. Eradicating the virus from the hemisphere is the only sure way to protect our children from the threat of that disease.

We have the means available to accomplish that goal, thanks to many of the men who are with us today. These remarkable scientists have given us the tools to put an end to the sight of children in wheel chairs or hospital beds because of polio. Drs. Frederick Robbins, and Thomas Weller, along with Dr. John Enders, received the Nobel Prize for their pioneering work with tissue culture which made a vaccine possible.

The final developers of the vaccines also are with us today, and their great contribution to the well-being of children has made their names household words—Dr. Jonas Salk and Dr. Albert Sabin.

They have made it possible. But there are others who have helped to make it feasible. The many multilateral, bilateral and nongovernmental agencies—most of which are represented here today—helped create the necessary network of external support for the countries of the world.

UNICEF, through its strong advocacy of child survival, has raised international awareness, motivated governments and provided important resources for immunization. UNICEF and PAHO have developed an unprecedented and extraordinary cooperative relationship. Throughout the Americas, we are working side by side sharing goals, projects and resources.

UNDP and UNFPA have promoted vaccine quality programs and strengthened maternal and child health services.

The Inter-American Development and the World Bank have emphasized immunization in financing development and health projects in the Americas.

USAID and other bilateral cooperation agencies, have given substantial priority to programs in child health, especially immunization and oral rehydration.

Rotary International is a stellar example of the spirit of voluntary action by citizens around the world. It has dedicated itself to make the elimination of polio its highest priority.

Some of these organizations are part of the Group which met under international auspices at Bellagio to commit themselves to protect the world's children through immunization.

The work of the individuals whom I have cited, the collaborative actions of the various agencies I have mentioned and above all, the progress of the countries themselves, have convinced us that it is feasible today to interrupt the transmission of wild polio virus in the hemisphere by 1990. We are convinced that it is possible to reduce the number of cases from 500 annually to zero.

We are proposing that the member countries of PAHO be supported by all of us to achieve the eradication of polio from the Americas in a massive final five year effort. The time has come for us to say that it is unacceptable for any child in the Americas to suffer from polio.

We saw nearly 200 years elapse between Jenner's vaccination experiments and the elimination of smallpox from the Americas and the world. The genius of man has made it possible for us to consider a time much shorter between the first vaccinations for polio and its elimination from our hemisphere. The Americas was the first Region to eliminate smallpox; we can be the first to eliminate polio.

It will not be an easy task, but we are convinced that our plan of action can work. It will focus on the accelaration of the Expanded Program of Immunization with special vaccination strategies in each country, supported by effective disease surveillance and control and training of health workers. It will strengthen the countries' maternal and child health services which are so vital for the health of our children.

We will be tapping the voluntary organizations in every country, inviting the participation of the mass media and mobilizing individual families and communities. We will promote a nationwide effort in every country, dedicated to a common strategy, committed to a common goal.

The drive to eliminate polio will be the vehicle that will carry the nations of the hemisphere toward the EPI goals of universal immunization against the childhood diseases by 1990.

We estimate that the cost of halting the transmission of wild poliovirus from the Americas will be approximately $100 million over the next five years. We believe that we will obtain one-third of that amount from donor countries and institutions and part of that amount already is included in their current and future budget plans. The remainder will come from the countries themselves, in spite of the financial crisis which currently pervades this Region. For most of them, it will mean the reprogramming and more efficient utilization of resources which are already being spent in health.

I am convinced that this commitment by the nations of the Americas to eradicate polio will not fail because of the lack of financial resources. The long-term economic return will far outweigh the actual costs of the effort, although my personal conviction is that it is time to stop using economic indicators alone to measure the development and well being of children.

Although individual countries have shown that it can be done, skeptics will say this is too ambitious an undertaking. I say it is the least that we can do. For I dream of a time when we have not only rid this hemisphere of the curse of polio, but of a time when, for every child, the future is, as the poet wrote, "a world to be born under your footsteps." We can build a better world for our children. We can make a revolution in health. We need only to decide to work together to do it.

Let us now take this first step toward that future by eradicating polio from the Americas by 1990: I trust that we or others like us will meet here at that time to rejoice in our having achieved the goal we have set today.

Once more, in this special struggle to eradicate polio, health must and will be a

bridge for solidarity and understanding between the peoples and countries of the Americas, a bridge for peace and well-being.

ROTARY ESCALATES WORLD WAR AGAINST POLIO WITH MASSIVE 20-YEAR PROGRAM

POLIO 2005 PLAN

Rotary International has pledged to promote and assist polio immunization of all children worldwide by 2005, Rotary's 100th anniversary. It has already launched or approved immunization projects in 19 countries to protect more than 46 million children.

By adding its efforts to those of WHO's Expanded Immunization Program (EPI), UNICEF, and other organizations, Rotary—through The Rotary Foundation of Rotary International—contributes to making a polio-free world a reality through its work in developing nations.

Rotary will provide all the polio vaccines necessary for up to five consecutive years for any approved city, state, country, or regional immunization program—either as part of annual national days of immunization against polio or through other delivery tactics, in overall support of the EPI.

Rotary will make available to any less-developed country, upon invitation, a team of experts to help assess, plan, implement, and evaluate a plan for annual national days of immunization against polio. In each country targeted for such campaigns, a committee of Rotarians, in conjunction with Rotary's expert team and national and local health officials, will seek to motivate and utilize resources of the private business and professional sectors. Recently, the World Health Organization (WHO/PAHO) established official relations with Rotary International as a non-governmental agency.

ROTARY ACTION TO CONTROL POLIO IN THE AMERICAS

In the Americas, The Rotary Foundation currently is conducting or planning five-year immunization projects in nine countries. In addition, as part of Rotary's new Polio 2005 Program, Rotary Foundation immunization expert Mejico Alfredo Angeles, vice minister of health for the Dominican Republic, is now in Paraguay working with a Pan American Health Organization team to determine if a mass immunization program is feasible in that country.

ROTARY IMMUNIZATION PROJECTS IN THE AMERICAS

Belize: A U.S. $51,200 grant is approved for a national program due to begin in May or June, 1985. The grant will be used to purchase equipment and provide training for both health workers and maintenance personnel as part of a national effort to protect 35,000 children.

Bolivia: Now in its third year, the U.S. $104,000 Rotary Foundation project provides both polio vaccine and cold chain equipment for a national effort to protect 425,000 children. A national immunization day was held October, 1984.

Costa Rica: Polio vaccine for 500,000 children is being provided through a U.S. $50,000 Rotary Foundation grant. The second shipment, comprising 600,000 doses, was purchased November, 1984.

El Salvador: Local Rotarians donated 3,000 vaccine thermoses for El Salvador's first three national immunization days this year and actively participated in implementing the program. Polio vaccine for the next five years of the project, designed to protect 1,454,000 children, will be purchased through a U.S. $274,000 Rotary Foundation grant.

Haiti: To launch Rotary's immunization project to protect 540,000 children, local Rotarians enlisted 1,000 volunteers in an inaugural event held in Port au Prince in April, 1982. Now in its third year, the project is funded by a U.S. $196,000 Rotary Foundation grant.

Guatemala: The first one million doses of polio vaccine to be purchased through The Rotary Foundation's U.S. $378,600 grant was ordered in February, 1985. Local Rotarians are actively promoting that nation's efforts to protect 1,920,000 children.

Panama: In support of Panama's efforts to protect 400,000 children from childhood diseases, The Rotary Foundation has awarded U.S. $537,000 for a massive public information campaign to be supported by local Rotarians' work to enlist the participation of the entire population.

St. Lucia: A U.S. $66,000 Rotary Foundation grant will supply a variety of needed vaccine for this island nation, including polio vaccine to protect 20,000 children.

OTHER ROTARY FOUNDATION IMMUNIZATION PROJECTS

Country	Children to be immunized	Foundation grant
Gambia	200,000	50,500
Ghana	1,875,000	374,000
Liberia	268,865	56,800
Morocco	5,000,000	734,600
Nigeria	21,150,000	2,810,000
Philippines	6,000,000	760,000
Senegal	1,250,000	219,000
Sierra Leone	1,000,000	165,000
Sudan	1,200,000	236,000
Zambia	2,200,000	367,000

SUPPORT OF NOMINATION OF WILLIAM H. OPEL FOR U.S. MARSHAL FOR ALASKA

● Mr. MURKOWSKI. Mr. President, I am honored to support the nomination of an outstanding Alaskan, Mr. William H. Opel of Anchorage, to be the U.S. marshal for the State of Alaska. Mr. Opel's nomination for this important position was confirmed late last evening by the Senate.

Bill Opel is extremely well-qualified and deserving of this appointment. He has been with the U.S. Marshal Service in Alaska for over 15 years and has been the court-appointed marshal since 1977.

In addition to his dedication as a member of the U.S. Marshal Service, Bill has also demonstrated his service and dedication to our country through a distinguished military career.

After graduating from high school in 1943, Bill joined the U.S. Army, first serving in Europe during World War II. During the war he was awarded nine decorations and five battle stars before receiving an honorable discharge on December 9, 1945.

At the outbreak of the Korean war, Bill, reenlisted in the Army and volunteered for combat duty. During his assignment in Korea, Bill received six additional decorations.

After his tour of duty in Korea, Bill continued to serve in the Army for the following 12 years in Germany and Taiwan. In 1964, he became the first American to be awarded the Chinese Police Medal by the Taiwanese Government.

In 1967, at the height of the Vietnam war, Bill again volunteered for combat duty. During the 13 months he served in Vietnam, he was awarded the Purple Heart, two Bronze Stars, one of which was for heroism, the Vietnamese Medal of Honor and the Vietnamese Cross for Gallantry. Bill Opel has the distinction of being recognized as the most highly decorated enlisted man in Alaska.

Upon his retirement from the Army in 1970 at Fort Richardson, AK, Bill joined the U.S. Marshal Service.

Bill's career with the U.S. Marshal Service has been as illustrious as his military one. After entering the U.S. Marshal Service as a deputy marshal, he was promoted through the ranks to the position of chief deputy U.S. marshal, before being appointed as U.S. marshal for the State of Alaska. During his career in the Marshal Service he has accumulated almost as many awards and honors as he did in the Army. In fact, Bill has received 22 letters of commendation and is the first member of the Alaska Marshal Service to be awarded the Outstanding Performance Award by the U.S. Marshal Service.

There is one more honor that has been bestowed upon Bill, although it may be a dubious one. Because of bureaucratic problems, he has served as the longest court-appointed U.S. marshal in the history of the U.S. Marshal Service.

Mr. President, I know of no other person more worthy of becoming the U.S. marshal for Alaska.

It is a distinct honor for me to support the nomination of Mr. William H. Opel of Anchorage, AK, to be U.S. marshal for the State of Alaska, and I commend my colleagues for having confirmed his nomination.

Mr. President, I ask that a letter in support of Mr. Opel's nomination, written by Judge James Fitzgerald, chief judge of the U.S. District Court for the State of Alaska, be printed in the RECORD.

The letter follows:

U.S. DISTRICT COURT,
DISTRICT OF ALASKA,
Anchorage, AK, March 28, 1985.

MR. STANLEY E. MORRIS,
Director,
U.S. Marshals Service,
McLean, VA.

DEAR MR. MORRIS: A few months ago a story broke in the local press concerning misfeasance involving millions of dollars in the affairs of the North Slope Borough, an Alaskan municipality. This initial report has been followed by many wide-ranging news articles, T.V., and radio broadcasts throughout Alaska. It was recently reported in the media that federal officials, including the Federal Bureau of Investigation and the Internal Revenue Service agents are involved

in ongoing investigations into the affairs of the North Slope Borough.

Within the past two weeks a second Grand Jury was empanelled at the request of the United States Attorney, Mr. Michael Spaan. I was informed by Mr. Spann and by certain agents of the Federal Bureau of Investigation of the necessity of protecting the identity of several confidential informants who would be appearing before the Grand Jury. I was satisfied, on the basis of information made available to me, that not only was it essential and necessary to protect the identity of the confidential informants but the identity of members of the Grand Jury as well.

Acting United States Marshal William Opel was assigned full responsibility by this court to ensure the secrecy of all Grand Jury proceedings, as well as the protection of the identity of Grand Jurors and confidential informants.

I have now received a letter from the United States Attorney commending Marshal Opel for achieving full security of the Grand Jury and the witnesses who appeared during recent sessions of that body. Mr. Spaan reports that the Grand Jury was able to conduct its business without interference by interested defense lawyers and the media. According to Mr. Spaan, Marshal Opel performed an outstanding job.

This is only the latest instance in which Marshal Opel has performed his duties in a most commendable manner. From time to time, he has had to provide courtroom security for the trial of criminal cases in which a substantial threat of disruptive behavior existed. In every instance, Marshal Opel has carried out his duties and has appropriately instructed and supervised his deputies. At no time have I ever heard a single complaint that either he or his deputies acted in any manner offensive or officious to the public in performing these sensitive responsibilities. I believe his nomination as United States Marshal in this district is now pending before the Senate Judiciary Committee. For that reason, I am also sending copies of my letter to our United States Senators, Senator Ted Stevens and Senator Frank Murkowski. I, and the other judges of this court, believe we are fortunate to have the services of a dedicated and worthy officer of the United States Marshals Service.

Very truly yours,

JAMES M. FITZGERALD,
Chief Judge.●

REPRESENTATIVE ROBERT TORRICELLI

● Mr. HART. Mr. President, I am privileged to be working with one of the young Democratic leaders in the House of Representatives on a proposal about which I care deeply.

Congressman ROBERT TORRICELLI a Democrat from New Jersey, is the House sponsor of legislation I introduced in the Senate on the subject on national service. Our bill, the Select Commission on National Service Opportunities Act of 1985, calls for the establishment of a panel to investigate the issues associated with national service.

The activities of the Commission—which is empowered under our bill to hold hearings on national service—will focus the attention of the country and the Congress on how we can establish incentives and opportunities for our young people to provide service to the Nation.

On May 12, the Bergen Record, a distinguished daily newspaper in northern New Jersey, ran an editorial titled "At Your Service." In it, the Record recognizes that some form of national service would help this Nation meet a catalog of needs which need to be filled—problems in our cities, the elderly who need companionship, restoration of housing, and others.

The Record also paid tribute to the House sponsor of the legislation, saying: "At a time when the currency of patriotism is debased by sloganeering, it is bracing to hear Representative ROBERT TORRICELLI talk about asking Americans to repay some of the benefits of citizenship."

I think this editorial makes an important contribution to the debate on national service by correctly identifying the core value of this proposal, and by saluting Congressman TORRICELLI for his leadership on this issue.

I ask that the full text of the editorial appear in the RECORD.

The editorial follows:

AT YOUR SERVICE

At a time when the currency of patriotism is debased by sloganeering, it is bracing to hear Rep. Robert Torricelli talk about asking Americans to repay some of the benefits of citizenship. Mr. Torricelli, of Hackensack, and Sen. Gary Hart of Colorado are cosponsoring legislation that will open the debate on a system of universal national service.

Their bill would establish a Select Commission on National Service Opportunities to come up with practical proposals for a mandatory period of military, volunteer, or government service by every man and woman aged 18 to 25.

It's not a new idea, Franklin Roosevelt recruited 3 million youths to build dams and rehabilitate parks in the Depression. John Kennedy's Peace Corps, created as an embodiment of his ideals of public service, has sent 35,000 volunteers overseas. Robert Kennedy talked about some kind of obligatory national service for everyone.

It is a question of opportunities. We seem to be at a juncture in our history, said Mr. Torricelli, where young people yearn to make a contribution to their society. National service would give them an opportunity to do so. At the same time, it would give a more fundamental kind of opportunity to the large number of youths who've never had decent housing, decent diets, decent schooling—and who thus enter adulthood with no hope of finding a productive job. Here the opportunity is society's to help these youngsters overcome educational and economic deficits and enter the mainstream.

There is a long catalog of national needs to be filled—an enormous amount of work to do. Our cities are marred with blasted neighborhoods. Salvageable housing is ceded to junkies and their dealers. Parks are trashed. Many children should have tutoring to help them catch up in school—or someone to play ball with after school. Lonesome old people need errands run, windows washed, someone to talk to. A million social needs go unanswered because most of us are so busy pursuing livelihoods.

Universal national service is a promising answer. There are a host of practical problems. How much would it cost to place millions of young people in military, public, and social services? How would we choose the work for them to do? Would they be paid according to present military pay scales, for instance, or on a sliding scale controlled by the difficulty of their assignments? How would a tour of duty mesh with ongoing educational or career or family goals? How would the government match its needs with the preferences of individual recruits for, say, the military, the Job Corps, the Peace Corps, or local government service?

The questions are legion but not imponderable. Fiscal and administrative obstacles must be overcome. But it's hard to think of an endeavor that would better suit the physical and psychic needs of this nation and its people.●

FRATERNAL ORDER OF POLICE

● Mrs. HAWKINS. Mr. President, I rise today to recognize the Fraternal Order of Police for their active participation in protecting our Nation's children. We find in this organization, activities vital to success in combating child abuse and kidnapping.

Robert Spiegel, chairman of public relations, has taken a strong interest in this issue. He was instrumental in getting the national lodge to adopt the Ident-A-Child Program and has consistently supported child safety programs throughout the years.

The Fraternal Order of Police was involved with action in putting together a number of publications on children, such as the Child Safety Program Handbook. It also undertook the task of fingerprinting children across America. They concentrated one program on Dade County, FL, in which they took fingerprints and photographs of children. They gave parents identification cards with vital information, excluding names and addresses to prevent possible misuse by child abusers.

The organization has also been active in legislation concerning child safety. They were instrumental in getting the first joint resolution for National Missing Children Day passed, and they actively supported juvenile justice legislation and the President's criminal justice legislation. Most recently, the Fraternal Order of Police was asked to aid in the President's national partnership on child safety, and, with their active involvement, they hope to comprise a portion of the task force.

We must pull in all of America in this protection of our Nation's most valuable resource. The Fraternal Order of Police serves as a model to all public organizations to involve themselves in protecting our children.●

SOVIET STRATEGY IN GENEVA

● Mr. NUNN. Mr. President, when the Soviet Union agreed to return to Geneva for new negotiations on nuclear and space arms, there was hope that the Soviets would come to the negotiating table with serious proposals and a new spirit of flexibility and compromise.

Instead, they devoted the first 6 weeks of the talks to propaganda, posturing, and public diplomacy. Round one of the negotiations demonstrated that the Soviets are prepared, at least for now, to defend totally unacceptable proposals that have actually regressed from earlier Soviet offers in START and INF. If, in Soviet eyes, the raison d'etre of these talks is to achieve a negotiated agreement that prohibits the deployment of new strategic defenses, then round one certainly moved them no closer to this goal.

On May 1, Ambassador Paul Nitze gave a speech at the National Press Club in which he offered a possible explanation for Soviet behavior in round one. According to Ambassador Nitze, the Soviet Union is "pleased with the current strategic situation" and is therefore trying to freeze its perceived advantage in several key elements of strategic power, including prompt counterforce capability, longer-range INF missiles, ABM's and ASAT's. In short, Ambassador Nitze argues that, rather than negotiate an accord that would provide for strategic parity, the Soviets are "devoting their efforts to countering any change."

Mr. President, I ask that the entire text of Ambassador Nitze's speech be inserted in the RECORD.

The text follows:

THE FIRST ROUND IN GENEVA

(Paul H. Nitze)

INTRODUCTION

On April 23, U.S. and Soviet negotiators completed their first round of talks on nuclear and space arms in Geneva. On that same day, in his speech at the Central Committee Plenum, Soviet General Secretary Gorbachev criticized the United States for blocking progress in the negotiations. He alleged that we had refused to discuss the question of preventing an arms race in space. He charged us with violating the agreement reached in January by Secretary Shultz and Foreign Minister Gromyko to address the complex of issues in their interrelationship. Finally, he extolled the moratorium proposal introduced by the Soviets in the first round as providing a basis for progress.

Mr. Gorbachev's claims are without merit. The U.S. approach to the negotiations is specifically designed to pursue all of the agreed objectives of the talks, including preventing an arms race in space. It is the Soviets who, by focusing their energies on an attempt to derail SDI research, are contradicting the January agreement to deal with all the issues in their interrelationship. The Soviet moratorium proposal does not provide a useful basis for progress. And it is the Soviet approach as a whole that is blocking U.S. efforts to facilitate movement in the negotiations.

Let me review the results of the first round and explain the basis for these conclusions.

BACKGROUND

As you remember, the Shultz-Gromyko agreement in January established the parameters of the negotiations. They agreed that the subject is the complex of questions concerning space and nuclear arms—both strategic and intermediate-range—to be considered and resolved in their interrelationship. The agreed objective is to seek effective agreements aimed at reducing strategic and intermediate-range nuclear arsenals, at strengthening strategic stability, and at preventing an arms race in space. The detailed work of the talks is being conducted in three negotiating groups, addressing strategic nuclear arms, intermediate-range nuclear forces, and defense and space arms.

U.S. APPROACH

The United States approached the first round of the negotiations with four primary objectives in mind. The first of these is to seek equitable and verifiable agreements leading to deep reductions in offensive nuclear arsenals. These are the weapons that exist today and which thus pose the most immediate threat to our mutual security.

Our second goal is to resolve our concerns about the erosion of the ABM Treaty regime that has resulted from Soviet actions over the past decade, and about Soviet noncompliance with that and other existing agreements. We are determined to seek corrective action where violations have occurred.

Our third objective is to lay out the US strategic concept and engage the Soviets in a general discussion of the offense-defense relationship. Specifically, we want to explain how, over the long term—should new defensive technologies prove feasible—we hope to make a transition from the current situation, in which deterrence rests on the ultimate threat of devastating nuclear retaliation, to one in which nuclear arms are greatly reduced and increasing reliance is placed on defenses which threaten no one. We intend, when the Soviets are ready to join us in doing so, to begin discussions with them on our ideas as to how our two sides might jointly manage such a transition.

Our final objective is to impress on the Soviets that our ultimate goal, as the President has repeatedly stated, is the elimination of all nuclear weapons. The Soviet Union has long stated this to be its goal as well. We have no illusions that our two sides can quickly or easily agree on the practical steps necessary to reach this goal, but its importance makes it imperative that we persist. Were nuclear weapons to be eliminated, we would have to devote particular attention to how, together with our allies, we might counter and diminish the threat posed by conventional arms imbalances, through both arms improvements and arms control efforts.

At the beginning of the round, in meetings of the full delegations, the US negotiators presented our assessment of the current strategic situation and our ideas on how we could pursue the agreed objectives of the talks. After two weeks, the delegations broke into the separate negotiating groups and the detailed work began.

In the negotiating group on strategic offensive arms, the US laid out its conceptual approach to achieving significant, equitable, and verifiable reductions, in a manner that would improve stability. This approach includes substantial reductions in the number of warheads on, and the destructive capacity of, ballistic missiles, as well as limits on heavy bombers and the number of ALCMs they carry below the levels set by SALT II. US negotiators emphasized the broad authority they had been given by the President for working out means to reach that goal. They made it clear that it is the substantive outcome more than the method of achieving it that is of primary importance.

The US side also stressed that the US is not trying to dictate the character of the Soviet force structure. We recognize that there are substantial differences between our respective nuclear arsenals, and have therefore urged the Soviets to explore with us possible trade-offs between areas of US and Soviet advantage and interest. An example of such a trade-off would be a provision allowing a Soviet advantage in ballistic missile capability in return for a US advantage in bomber capability.

In the negotiating group on intermediate-range nuclear forces, the US reaffirmed its preference for the complete elimination of all US and Soviet longer-range INF missile systems. We reiterated our willingness to agree, as an interm measure, to reduce LRINF missiles to the lowest possible equal global limits on warheads. Finally, in order to take account of previously expressed Soviet concerns, we renewed our willingness to consider a commitment not to deploy in Europe all of the LRINF missiles to which we would be entitled under equal global ceilings, to apportion reductions to be made in LRINF missiles between Pershing IIs and GLCMs in an appropriate manner, and to discuss LRINF aircraft limitations. As in the strategic arms group, the US negotiators emphasized their flexibility.

In the defense and space negotiating forum, we pointed out the instability that exists in the current strategic situation and the need for our two sides to address the problem. We stressed the importance we attach to reversing the erosion of the ABM Treaty regime. In that regard, we underlined the premium we place on treaty compliance in the arms control process and our concern about Soviet actions that violate the ABM Treaty and other existing agreements. Notable in this regard is their construction of a large phased-array ballistic missile tracking radar at Krasnoyarsk that, because of its interior location, orientation, and early warning capability, violates ABM Treaty constraints. We also explained to the Soviets our view on the relationship between offensive and defensive forces, the potential contribution of defensive forces to our mutual security, and how—if new defensive technologies prove feasible—we might manage a stable transition over time toward increased reliance on defenses.

In sum, the United States carried out its planned agenda in the first round. We explained our concerns created by the existing array of nuclear arsenals and put forth sound proposals to redress those problems. We outlined our vision of a safer and more stable future and explained our ideas on how such a future could be realized.

SOVIET APPROACH

The Soviet approach to the first round contrasted sharply with ours. Where we sought deep reductions in existing nuclear arsenals, they proposed to freeze the current situation—with its existing imbalances—and address largely unspecified reductions later. Where we sought to explain our ideas on how increased reliance on defenses, should they prove feasible, might en-

hance strategic stability, they insisted on banning any new effort—even research—in the defense area.

The strategy underlying the Soviet approach seems clear. The Soviet Union is pleased with the current strategic situation. They possess substantial advantages in several key measures of strategic offensive nuclear power, especially in prompt counterforce capability. They hold a large advantage in the area of intermediate-range nuclear forces, particularly in longer-range INF missile systems. Moreover, they have the only operational ABM system and have until recently enjoyed a virtual monopoly in research into advanced ballistic missile defense technologies. Finally, they have the only operational anti-satellite system. They want to maintain this situation, and thus are devoting their efforts to countering any change. Their most important objective in this regard is to stop the US SDI research program, which threatens to find counters which would negate many of their advantages, both offensive and defensive. Similarly, they wish to abort our strategic modernization program and roll back NATO's INF deployments. To this end, they attack and thereby seek to undermine support for these programs by characterizing them as exacerbating the "arms race," all the while remaining silent on the strategic buildup of the Soviet Union.

The centerpiece thus far of the Soviet strategy is their moratorium proposal, tabled early in the round in Geneva and publicized three weeks later by General Secretary Gorbachev.

With regard to offensive weapons, the Soviets propose a quantitative freeze on strategic arms and a moratorium on further deployments of "medium-range" missiles. These are the same old discredited proposals the Soviets surfaced in the past. They first raised a moratorium over three years ago in the INF negotiations, though, after supposedly invoking it on a unilateral basis in 1982, they continued construction of SS-20 bases already begun in the European USSR and deployed new missiles at those bases. Interestingly enough, we see construction of SS-20 bases continuing again today, after Mr. Gorbachev's declaration of a new unilateral moratorium.

The Soviets subsequently proposed a moratorium in START. As we noted on those occasions, a moratorium would lock in the advantages the Soviets have gained in both strategic and intermediate-range nuclear arms as a result of their deployment of many modern systems during a period in which the US has exercised restraint. Negotiating it would divert considerable time and attention from the more important goal of achieving deep reductions, and would also directly undercut the prospects for achieving reductions, instead giving the Soviets incentives to preserve their advantages by perpetuating the freeze.

With respect to strategic defense, the Soviets propose a comprehensive ban on research and development, as well as on testing and deployment, of what they call "space-strike arms."

It is difficult to see how one could effectively or verifiably ban research. The Soviets have in the past agreed with this view, not only at the time of the negotiation of the ABM Treaty but also in January in Geneva.

How could one decide what research would lead to "space-strike arms," and thus cross over the line into the restricted category, and what research would not? It would be impossible to monitor the actions and thoughts of all the scientists and technicians in the research institutes and laboratories in every country of both alliances.

Moreover, SDI research holds open the one possibility of providing the means for a move to a more defense-reliant relationship, one that would be more stable and reliable for both sides. It makes no sense to foreclose such a possibility. Furthermore, such research is a powerful deterrent to a Soviet breakout from the ABM Treaty.

The Soviets themselves have clearly seen the value of researching new defensive technologies. They have devoted considerable time and resources to such an effort. This includes high-energy lasers—for example, at the Sary Shagan test center—and particle beam weapons.

Why, then, do the Soviets propose to ban such research? The answer is simple. The Soviets are ahead in research on, and deployment potential for, nuclear-armed ground-based ABM interceptors, and they seek to preserve and enhance these advantages. At the same time, the Soviets fear that the West's superior technological base could give us an advantage in the more exotic defensive technologies, and they want to prevent this. At worst, a mutually observed ban would leave them where they are today. Moreover, given the unverifiability of a research ban and the closed nature of their scientific community compared to ours, they very well might be able unilaterally to continue research on advanced defense systems on a clandestine basis. From Moscow's point of view, such a monopoly in the area of strategic defense research would certainly be the most desirable outcome.

As for development, testing and deployment of so-called "space-strike" arms, most of this is already covered by provisions of existing treaties. The Outer Space Treaty prohibits the placing of weapons of mass destruction, including nuclear weapons, in space. The Limited Test Ban Treaty forbids the testing of nuclear arms in space.

Additionally, all systems—whether nuclear or otherwise—which have a capability to counter strategic ballistic missiles or their warheads at any point in their trajectory are subject to the ABM Treaty. That agreement prohibits the deployment of ABM systems in space or on the earth, except for precisely limited, fixed, land-based systems. Its provisions also cover testing and engineering development of such systems or their major components.

It thus appears that the sole space activity that is not covered by existing agreements is that of a narrow class of anti-satellite or ASAT systems. This class is restricted to non-nuclear systems capable of attacking satellites, but not capable of countering strategic ballistic missiles or strategic ballistic missile warheads. Were they capable of the latter, they would be subject to terms of the ABM Treaty.

In essence, we are talking about the Soviet co-orbital interceptor—the world's only operational ASAT system—and the aircraft-launched miniature vehicle system now under development by the United States.

Banning ASAT-capable systems presents difficulties. Once an ASAT weapon, such as the Soviet co-orbital ASAT, has reached operational status, it is questionable that one could assure that all such systems had been destroyed. Even were we to find a way to ban the declared US and Soviet ASAT systems, most satellites would still be vulnerable to attack, especially by nuclear weapons. The existing Soviet Galosh ABM interceptors deployed around Moscow are capable of attacking low-orbiting satellites, which pose much easier targets than do ballistic missile warheads. In fact, any ballistic missile capable of lofting a nuclear weapon to orbital altitudes has some inherent ASAT capability.

Thus, we concluded, after carefully studying the Soviet moratorium proposal in the aftermath of its presentation in Geneva, that it does not provide a useful basis for progress in the Geneva talks.

SOVIET ALLEGATIONS

In an attempt to buttress their position, the Soviets during the first round, and Mr. Gorbachev in his Central Committee Plenum speech, accused us of violating the Shultz-Gromyko agreement in two respects. First, they charged us with failing to honor the commitment to address the complex of space and nuclear issues in their interrelationship, based on their novel definition of that term. The Soviets asserted that progress on the issues in the two groups dealing with offensive arms would be impossible unless the US agreed to the Soviet proposal to ban "space-strike arms," and that, by failing to accept that ban, the US was denying the interrelationship.

This charge is, of course, without merit. The US is addressing all issues in their interrelationship. In fact, as I explained earlier, the offense-defense relationship is one of the principal elements on which our position focuses. Rather, it is the Soviet approach which violates the interrelationship agreement by insisting that the space issue be considered in isolation and by setting resolution of that issue—on the basis of their demands—as a precondition to serious negotiation on the other issues.

The second Soviet charge is that, by failing to agree to their proposal for a "space-strike arms" ban, the US is reneging on its commitment to prevent an arms race in space. This charge is also groundless; preventing an arms race in space is exactly what our strategic concept envisages. The term "arms race" connotes a runaway competition between two sides, with each piling weapon upon weapon in an unbridled manner. What we propose is just the opposite—a stable transition to greater reliance on defensive systems, should new technologies prove feasible, managed jointly by the United States and the Soviet Union. Defenses would be introduced at a measured pace, in conjunction with progressively stricter limitations and reductions in offensive nuclear arms. The result would be that the two sides would have far fewer weapons which would use space as a medium for delivering nuclear destruction. The approach we foresee would be designed to maintain at all times control over the mix of offensive and defensive systems on both sides, and thereby increase the confidence of the sides in the effectiveness and stability of the deterrent balance.

STEPS BACKWARD

Beyond pressing these baseless charges, pushing their moratorium proposal, and showing little interest in exploring US proposals, the Soviets provided little of substance and few specifics during the round. Of the specifics that were offered, many represent steps backward from previous Soviet positions.

For example, in the START negotiations in 1983, the Soviets expressed willingness to consider permitting some deployment of air-launched cruise missiles. Their current position calls for a ban on all cruise missiles

with range exceeding 600 km, regardless of basing mode.

In the INF talks in 1983, the Soviets offered a freeze on SS-20 deployments in Asia; now they insist on having no constraints on these systems, which, due to their range and mobility, are capable of striking Europe in addition to threatening US friends and allies in Asia. Similarly, in 1983, the Soviets showed considerable flexibility regarding the US aircraft on which they would require limits; now they have returned to their earlier and far more strident demands.

In the January meeting in Geneva, Gromyko acknowledged that limits on strategic defense research would not be verifiable; the Soviets nonetheless now propose banning such research.

Also in the January meeting, Gromyko included the Moscow ABM system in the Soviet definition of "space-strike arms;" at the negotiating table, the Soviets specifically excluded that system from their definition and thus from their proposed ban.

Finally, in the anti-satellite talks of 1978-79, the Soviets acknowledged that neither limits on ASAT research nor a comprehensive ASAT ban would be verifiable; in Geneva, they called for a ban on such research and for a total ASAT ban, again despite the lack of verifiability.

In sum, the Soviets took a predictably hard line in the first round. Their principal objectives were clearly to discredit the US SDI research program and to put maximum pressure on it by holding progress in all other aspects of the negotiations hostage to US acceptance of the Soviet proposal on "space-strike arms."

GORBACHEV'S WARSAW SPEECH

In his speech last Friday in Warsaw, Mr. Gorbachev stated that the Soviet Union has "already suggested that both sides reduce strategic offensive arms by one-quarter by way of an opening move." He also held out the possibility of deeper mutual cuts.

Mr. Gorbachev was apparently referring to the Soviet proposal in the START negotiations of 1982-83. That proposal would have reduced strategic nuclear delivery vehicles by one-quarter from the initial level permitted under SALT II, from 2400 to 1800. However, the Soviets did not accompany it with a proposal for reductions in those measures of strategic capability which would, in fact, enhance strategic stability, the number of ballistic missile warheads and ballistic missile destructive capacity.

Contrary to the public impression created by Mr. Gorbachev, the Soviet Union has made no proposal for reductions in strategic forces in the new negotiations, nor has it even gone so far as to resubmit its old START proposal. In fact, during the first round, the Soviets refused to respond to efforts by US negotiators to ascertain details of their position on this subject.

We would, of course, welcome and examine seriously any concrete Soviet proposals for substantial, balanced, and stabilizing reductions in strategic forces. As I said earlier, US negotiators have broad authority to negotiate approaches that meet the interests and concerns of both sides. We encourage the Soviet Union to substantiate Mr. Gorbachev's claim by introducing a proposal in the next round at Geneva.

FUTURE PROSPECTS

The Soviet behavior in the first round was consistent with their historical approach to arms control negotiations. That strategy is to combine tough bargaining at the negotiating table with a hard-nose public propaganda campaign designed to undercut support for US and NATO positions and force unilateral concessions. Until they realize that their propaganda campaign is not working—that is, that US concessions will not be made unilaterally—the Soviets will not be prepared to negotiate seriously.

Accordingly, in the near term, we can expect the Soviets to continue to protest publicly about the SDI program and alleged US designs to accelerate the arms race, especially by spreading it into space. We can also expect them to sustain their efforts to drive a wedge between the US and its allies, particularly by exploiting any perceived signs of weakening in allied unity on defense or arms control issues.

What we in the West must do to bring the Soviets to a more serious tack is, in parallel with our efforts at the negotiating table in Geneva, demonstrate the political will and ability to maintain the necessary capabilities effectively to deter them. When the Soviets recognize that they will attain no exploitable military or political advantages from their military buildup, and that unilateral concessions will not be forthcoming, they may then welcome a serious discussion of how we could take practical steps toward our agreed objectives of preventing an arms race in space and terminating it on earth, limiting and reducing nuclear arms, and strengthening strategic stability.

When the Soviets are ready for such discussions, we believe those talks can be productive. Although the issues in Geneva are many and complex, we are convinced that we have formulated good proposals that provide a sound basis for mutually beneficial agreements. Moreover, the President has provided our negotiators unprecedented flexibility to explore various avenues toward the equitable outcomes we seek. Accordingly, despite our realization of the difficulties ahead, we are hopeful that, with patience and persistence, we can achieve a result that will benefit all mankind.●

RECREATION USER FEES

● Mr. McCLURE. Mr. President, the various administration proposals for the budget resolution made some rather elaborate assumptions as to the amount of additional revenues which can be obtained from an increase in recreation user fees. I do agree that some increase in such fees is possible and, in fact, should be obtained. The resolution, however, assumed an overly simplistic formula that the Federal Government should recover 25 percent of administrative costs. That assumption fails to consider the varieties of public lands, the purposes for which such lands are managed, or the real impact of an increase across the board. The assumption also is defective in that it asserts that visitor use would remain constant regardless of the size of the fee when in fact revenues are a product of the fee times the number of people paying the fee.

Anyone familiar with the Metro system here in Washington should realize that ridership is a function of the price and the convenience and that, at a certain point, as the cost increases, the ridership declines—the net revenue results seem always to be less than the projections. The resolution assumption also fails to consider the increase in costs associated with collections. It conveniently ignores how we are going to police one-third of this Nation so that citizens pay their fair share for watching the Sun go down across the public domain.

There are certain areas where the Federal Government has invested funds to provide recreational facilities, and it would be rational to expect those who take advantage of those facilities to pay a reasonable fee for their use. I do object to any suggestion that we are going to start charging fees to cross Federal land, hunt or fish, walk or hike, or watch the clouds. We are not going to institute a sliding scale in the Tetons where people pay 10 cents for every elk they happen to see nor are we about to deputize the Florida panther population to begin a pay-or-be eaten campaign. The Federal Government does a variety of things for the American people as a whole, for this and future generations, and those obligations should be borne by the people as a whole.

I am certain that by now everyone has seen the April 15 gray covered document entitled Senate/Administration Deficit Reduction Plan. It compares the National Park System with Disneyland and the San Diego Zoo. That would certainly come as a surprise to Teddy Roosevelt, John Muir, and Stephen Mather. OMB will probably next propose that we put golden arches in Canyonlands. The truth is that we do not encourage the Federal Government to provide significant services in the national parks, but rather use concessionaires.

The Federal Government through the National Park Service has one mission only for the National Park System and that is:

> To conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

Indiana Dunes, Zion, the Grand Canyon, Gates of the Arctic, Yellowstone, Yosemite, Redwoods, Vicksburg, Gettysburg, Shiloh, Shenandoah and Great Smokies, Haleakala, Canyonlands, Crater Lake, North Cascades, and the list goes on. These are not Disneyland nor are they the San Diego Zoo.

It is true that some increase in the entrance fees can and probably should be obtained over a period of time and based on careful studies. Those fees, however, should be based on park management, not on some gnome's magical formula based on administrative costs. We are not about to recover 25 percent of the salary of the Secretary of the Interior from visitors to the national parks, nor are we about

to take pennies from schoolchildren visiting Independence Hall to cover 25 percent of the costs of OMB analysts.

Aside from the national parks, the Federal Government does provide some recreational facilities at places such as Corps of Engineers and Bureau of Reclamation sites, and I agree that, where the Federal Government has invested in more than minimal facilities or health and safety, the user should be expected to pay a fair share of the cost of such facilities. There is no administrative cost, however, to the Federal Government to have the Sun daily set in the West, nor should we charge people to watch it. We are not going to start metering homes in Jackson Hole and charge them for a sunset.

Mr. President, given the problems with the budget, I do not have a problem with the Committee on Energy and Natural Resources being asked to consider and report legislation addressing recreation user fees. I wish that a full and comprehensive study could be initiated first rather than developing revenue estimates first, but this is not the only area of the budget where numbers dictate over sound policy.

It would be nice to have the results of the newly created Outdoor Recreation Resources Review Commission, but it may be possible to achieve some increase in revenues over a period of time without turning our natural heritage into Disneyland and without dramatically increasing personnel and costs to enforce and collect those fees. I want to make it clear that we are not going to initiate hunting or fishing fees, but intend to focus clearly and specifically on those sites and areas where the Federal Government has actually made an investment for the direct benefit of visitors.

Although the Committee on Energy and Natural Resources and its predecessor, the Committee on Interior and Insular Affairs, has carefully considered the questions surrounding fees over the years before OMB lifted the veil from our eyes, we will need considerable help in achieving anything which is remotely rational. We will need far more if we must actually achieve the OMB assumptions underlying the resolution. We will need considerable help in determining how the citizens of Massachusetts can best contribute to the administration of Cape Cod National Seashore, short of borrowing a shark from the San Diego Zoo to collect entrance fees. It will be difficult to patrol the entire beach, but perhaps we will be able to make suntans circumstantial evidence of failure to pay the fee. I look forward to the wise suggestions from the senior Senator from Alaska on the proper level for fees to use the transportation system at Denali, and of course Gateway, Golden Gate, Cuyahoga, and Jean Laffite, not to mention Chattahoochee, should all make their contribution. I am certain that the delegations from those States which have Corps of Engineer reservoirs will be lining up to cosponsor the legislation to impose user fees on those sites, so I am optimistic that the committee will have no problem in implementing the assumption underlying the resolution.

It probably is only fair to mention some of the present limitations of existing law which will have to be reexamined. Out of the many years of legislation dealing with fees, we have agreed that fees should not be charged to the blind or permanently disabled.

We have also agreed that there should not be a charge for drinking water, wayside exhibits, roads, overlook sights, visitors' centers, scenic drives, toilet facilities, picnic tables, or boat ramps where specialized services such as lifts are not provided. Turning the George Washington Memorial Parkway and Beach Drive into toll roads should help us considerably, and we can probably expect to see that proposal emerging in the near future since it would be in the finest traditions of the Office of Management and Budget.

Present law also requires the Corps of Engineers to provide at least one primitive campground without fee at sites where camping is permitted. Fees are also prohibited at campgrounds if there are no toilet facilities and drinking water as well as reasonable visitor protection. I have not heard anyone offering an amendment to fund improvements in these campgrounds so that fees could be collected under existing law.

I think it is also fair to mention that user fees are annually adjusted to reflect the fair value of such services based on similar services in the area offered by either private or public entities. That does not portend a very elastic demand for Federal facilities to radically increase fees.

Had it been possible, I would have offered an amendment which would have decreased the amount of revenues which would have been achieved. My intent would not have been to eliminate the subject from serious consideration, but rather to set a mark which would have had some chance of enactment. We do a considerable disservice not only to the American people but also to ourselves and this institution when we make promises which we are unable to keep or when we set goals which are unreachable.

I would be willing to attempt to achieve approximately half of the assumption over 3 years. I do not know if that would be possible until we have had hearings. I do not know whether a simple increase in fees would result in any additional revenues at all. Perhaps if we eliminated concession operations and directly collected fees we would, at least on paper, show some increase, but I wonder what the cost would be for the Federal Government to provide the kind and level of services which concessions now provide.

In offering my amendment I would be simply attempting to inject some sense of reason into this process. I do not hold out any great hope that we would be able to accomplish what my amendment would have proposed. I can assure you that the assumptions in the resolution are impossible. I am willing to try to accomplish some revenue enhancement, I am not prepared to tilt at windmills.

In addition to the setting of fees, there is the problem of collections. I assume that no one is proposing to hire thousands of new Federal employees to collect the fees, so we will need to consider alternatives. One alternative, of course, is that, since almost everyone in the United States at some time or another uses Federal areas, we could annually collect a fee of about $1 which would entitle everyone to use the facilities as provided by current law, paying an additional amount at those areas where significant services are provided.

To make it easy, and to avoid needless paperwork, we could take advantage of existing Federal agency support and collect the $1 from families on or about April 15 of each year. That approach would allow American people to not only contribute to the direct-use benefits but also to the indirect benefits which accrue to all generations from the preservation of our natural heritage. I realize that would be a radical suggestion, completely at variance with current practice, but it does have some appeal to those of us who have dealt with this issue over the years.

I do have one question which I almost fear to ask and, that is, If we plan to recover 100 percent of the salary of the Secretary of the Interior as administrative costs on the mineral leasing receipts returned to the States, and also recover 100 percent from timber receipts, and 25 percent from recreation fees, will we need to increase the salary of the Secretary to cover our savings? Or maybe if he takes a pay cut we will not be able to balance the budget—this is all very confusing.

I do look forward to the overwhelming support which the implementing legislation for the amendment is certain to elicit. I would like to encourage my colleagues to carefully consider the various sites within their States which have no national significance, or which at best are only junior varsity versions of Disneyland, and let me know their names so that we can expeditiously report our legislation.●

NOMINATION OF JOHN NORTON

● Mr. DECONCINI. Mr. President, last night, the Senate finally confirmed the nomination of John Norton to be Deputy Secretary of Agriculture. Frankly, it was about time. It is a discredit to this body when a very few isolated Senators hold up a nomination, rather than debate its merits on the floor and proceed through regular channels. John Norton will be an outstanding Deputy Secretary of Agriculture.

John is more than familiar with the problems farmers face today. He is a graduate of the University of Arizona's School of Agriculture and has practical experience in the field as president and chief executive officer of J.R. Norton Co., which farms over 25,000 acres in Arizona and California. He is also past chairman of the United Fresh Fruit and Vegetable Association which is illustrative of the confidence his colleagues in the industry have in him. In addition, John and his wife, Doris, have devoted their time and efforts to numerous civic and charitable causes in Arizona, the West, and nationwide.

The Senate has a responsibility to advise and consent on Presidential nominees, and it is a responsibility we should not take lightly. When one Senator seeks to hold up a nomination for petty reasons, completely unrelated to the nominee, then that Senator is abusing Senate procedures. Recently, the Washington Post carried an article in which they detailed the problems surrounding the Norton nomination. The opening paragraph of that article states: "The failure of John R. Norton III, a wealthy conservative farmer from Arizona, to win Senate confirmation as Deputy Secretary of Agriculture is becoming one of the political mysteries of the year." But the article goes on to say it is not really a mystery and it has nothing to do with Mr. Norton.

Mr. President, I wish to commend this body for finally confirming John R. Norton III to be Deputy Secretary of Agriculture. I hope that in the future, qualified nominees such as Mr. Norton will not be subject to this sort of petty politics. I would also like to commend John Norton on his staying power and his commitment. It is not often you find someone as qualified as John Norton who is willing to leave his prosperous business to work for the Government. John is making a great sacrifice and I believe he will make an enormous contribution in resolving the difficult problems confronting the agricultural sector today.●

MEMORIAL SERVICES FOR THE 16,500 ABORTED BABIES TO BE HELD ON MAY 19, 1985 IN MONROVIA, CA

● Mr. HUMPHREY. Mr. President, there will finally be a memorial service for the 16,500 aborted babies, whose bodies were discovered more than 3 years ago in a repossessed shipping container in Woodland Hills, CA.

It is fitting that we set-aside time to mourn these unborn children and so on May 19 at 1:30 p.m., the American Holocaust Memorial Committee will hold a nondenominational memorial service and will dedicate a plaque on a site at Live Oak Memorial Park in Monrovia, CA as a permanent reminder not only of the 16,500 but of all the more than 17 million innocent unborn human beings killed since the 1973 Roe versus Wade decision.

This memorial will carry no names; these children died nameless, but each will be remembered by our spiritual adoption.

The memorial simply reads:

In memory of all who were deprived of human love and robbed of life through abortion.

It might be noted that 16,500 is approximately 4 days worth of abortions performed in the United States, and about 28 percent of the 58,022 Vietnam war dead and missing who are memorialized here in Washington. In the time that it took to read this short speech three more of the unborn have lost their lives to abortion.

I ask that we remember these innocent unborn children on May 19 and offer a silent prayer on their behalf. It's the least we can do for so many who have lost so much. It is in this spirit that I ask that my message to the mourners of these 16,500 unborn children be entered into the RECORD.

WASHINGTON, DC, *May 16, 1985.*

My Fellow Friends Of The Unborn,

It is through prayer that I join you in this memorial service held in honor of these 16,500 unborn children who were victims of our nation's abortion nightmare. I share your concern and love for each and all of the little ones who died so tragically.

We can only hope that somehow this event will contribute to an awakening of our nation's moral consciousness so that we may reflect on the inhumanity of abortion. When we rid this nation of this horror, which I am certain will occur, we will truly breathe life into the meaning of all human beings' right to life, whether they be born or unborn. My thoughts and prayers are with you and those we mourn, today and always.

Sincerely,

GORDON J. HUMPHREY.●

FINANCIAL STATEMENT OF SENATOR DOMENICI

● Mr. DOMENICI. Mr. President, I would like to submit for the RECORD my personal financial statement for 1984. While such is not required by law, and the financial disclosure statements that all Senators must file are not as detailed as the one I submit, this release of my financial statement is something I started with my election to the Senate in 1972 and is a tradition I intend to continue as long as I serve in this Chamber. Therefore, I submit for the RECORD the following statement:

SENATOR PETE V. DOMENICI'S 1984 PERSONAL FINANCIAL STATEMENT

FEDERAL INCOME TAX INFORMATION FOR 1984

Income: $109,923—$72,675 Senate salary; $75 wife's salary; $14,319 Income from family partnership of D&V Investments (one-half inherited on death of my mother); $360 Capital gains on sale of stock; $21,780 Honoraria.

Itemized deductions and taxes: Total taxes of $34,000 (including $25,273 federal taxes, $8,727 in New Mexico state, local and property taxes.) Deductions include $7,630 in interest expenses, $1,475 in contributions, and $8,727 in state, local and property taxes.

PERSONAL NET WORTH STATEMENT

Gross assets: $4,000 cash on hand; $8,000 household goods (no change from last year); $7,000 automobiles (1984 Ford Tiempo, 1981 Oldsmobile, 1973 Plymouth Duster); $455,000 real estate and family holdings ($225,000 [1] home in Rockville, Maryland; $35,000 interest in Kent Investment Company's real estate in Rio Puerco, NM; $195,000 [2] family partnership of D&V Investments; $1,490 mausoleum crypt, $4,508 IRA account with Senate Employees Credit Union).

Liabilities: $80,000 real estate mortgage on Rockville, Maryland home; $5,000 unsecured loan at Sunwest Bank of New Mexico; $12,100 liability on real estate contract for vacant lot adjoining family partnership property at 4th and Lomas NW in Albuquerque. $479,908, assets; $97,100, liabilities; $382,808, total net worth.●

SECURITIES SAFETY AND SOUNDNESS ACT OF 1985

● Mr. DOMENICI. Mr. President, I would like to place in the RECORD part III of "The Roaring Eighties." The past two episodes of our true-to-life saga by Steven Brill in the American Lawyer left us wondering what would happen to Icahn's magic offer to take over Phillips Petroleum.

The answer to this and other questions will be revealed in the conclusion to our sequel. How much money is really made by investors in dummy corporations? How much money is made by investment bankers cutting the deals? Why is the SEC taking no action. Will the dreaded Drexel agree not to bother Phillips in return for a hefty payment? And how effective is the pill in fending off a takeover?

[1] I have increased the estimated value of the Rockville home without a formal appraisal based upon sales in the neighborhood of similar homes.

[2] I have increased the estimated value of the family partnership without a formal appraisal based upon value of additional lot purchased and my estimated evaluation of enhanced value of partnership.

Unlike other soap operas, the ending to this dream is not altogether a happy one. And it is becoming more and more familiar as other firms become targets. The morale is: What gets leveraged up today with lightning speed could crash just as fast tomorrow. I hope we will learn our lesson from "The Roaring Eighties."

I ask that the final pages of "The Roaring Eighties" be printed in the RECORD.

The material follows:

[From the American Lawyer, May 1985]

THE JUNKMEN SELLETH

How can a man who's prepared to spend only $350 million in cash (the cost of his original stock purchases] bid more than $8 billion for a company? Enter Drexel Burnham, the investment banking house where in *The Roaring Eighties* people seem to be having the best time of all. Drexel has led the way in promoting the current darling of *The Roaring Eighties*, the high-risk, high-yield, "junk" bond. The firm's clients include what one top lawyer calls "a murderers' row of takeover raiders"—Saul Steinberg, Carl Lindner, Victor Posner, the Bass brothers, the Canadian Belzberg family, Irwin Jacobs, Sir James Goldsmith, Pickens Icahn. When a raider is stalking prey, he forms a dummy corporation or partnership, for which Drexel sells these high-yield bonds, which will ultimately be secured by the assets of the company to be taken over. In other words, it's a mechanism for a hostile leveraged buyout: The raiders buy the company with the company's anticipated cash flow.

If the takeover doesn't go foward, the subscribers to the bond still get a commitment fee (paid by the raider) for having pledged their money. In the Icahn-Phillips deal these fees were three-eighths of one percent, or $37,500 for each $10 million pledged.

Drexel's take in these deals is high, even by investment bankers' porcine standards. In the Icahn-Phillips deal, Drexel's retainer letter calls for the firm to be paid $1 million the moment Icahn uses its feared name in any public statement, then 2 percent of all the financing it arranges—or more than $80 million—if the deal goes through. Moreover, if the deal does not go through, Drexel is to get as much as 20 percent of the incremental profit Icahn makes from selling his stock to anyone else, plus one-eighth of one percent in its own commitment fees for the money it has lined up, which would be as much as $5 million.

The question of whether Drexel can in fact peddle $4.05 billion in junk bonds for Icahn's deal, let alone whether Icahn really wants to raise the money and take over the company or is just bluffing to force a higher bid from the company or from someone else, is high drama—and the subject of Phillip's newspaper ads attacking the Icahn offer under the headline "Is Icahn For Real?"

The issue is sharpened on February 15. With just a week to go before the vote on management's recapitalization plan, which Icahn has declared the shareholders must reject in order to take his plan. Icahn announces that in just 48 hours Drexel has lined up $1.5 billion. Where have these communications come from? The very people who have done other Drexel junk-bond raids (such as Steinberg and Lindner), a host of arbitrageurs (though not Boesky) with an obvious interest in seeing Icahn's deal or some new deal go through, plus the kind of high-flying insurance companies or savings and loan institutions that have been Drexel's base in selling these junk bonds.

To explain why these people signed on for junk bonds in a company that was going to be neck-high, or higher, in debt, our camera takes us to Drexel's Beverly Hills sales floor (its West Coast office is the center of junk-bond financings), where eager young bankers under the tutelage of junk-bond impresario Michael Milken, 38, are pushing $1.5 billion worth of bonds in units as small as $3 million.

We then cut to their various customers across the country. Several tell us they're in it because they believe in Icahn's stated plan to liquidate $3.7 billion in assets to slash some debt and to pay down the remaining debt through better management of the remaining assets. They like the yield on their junk bonds—it ranges as high as 16 percent a year, depending on the seniority of the debt—and they're confident Icahn can run the company in a way that will see the debt paid. Can they really believe that Carl Icahn—whose management experience consists of running a staff of 30 and supervising two partially liquidated midsized companies he's taken over in recent years—is going to run a corporation larger than Xerox, Boeing, Westinghouse, or ABC? Can they really believe he's going to get into Bartlesville (where he has promised to keep the company headquarters but where prayer vigils and other demonstrations have been organized against him by fearful, resentful townspeople), let alone know what to do when he gets there?

Others aren't as sure as that about how Icahn will fare, but they feel good about Drexel's assurances, all oral, that there will be a good secondary market in the bonds, or perhaps a fast payoff because Icahn just might liquidate the whole company if he gets control. Still others want to support Icahn's bid because they like the commitment fee and have shares in Phillips that will rise if the recapitalization plan is defeated, and, they're being told by Drexel, a show of support for Icahn will help defeat the plan. At least one whom I interviewed seems to be in it just for the easy commitment fee; he claims he's received tacit assurances from Drexel that the deal is not likely to go through, and therefore he's not likely to have to put the money up. (A Drexel spokesman declines all comment "on our solicitation activities, although you can assume we conduct ourselves in a responsible manner.") Finally, there are Icahn's compatriots—such as Steinberg, who according to a deposition had bought Phillips stock; they apparently have signed on for some variety of the above reasons, along with a desire to help someone who will help them with their next deal.

How can Drexel's people be on the phone offering these securities with no written material? We cut to the SEC, where everyone is sleeping. "These are sophisticated investors" a source in the enforcement division at the SEC says, when roused by our question. "They know what they're doing."

We cut to lines of customers waiting for Ohio savings and loans to open in the wake of the chain reaction that savaged their confidence in the banks after Home State Savings Bank—controlled by Icahn's sometime partner Marvin Warner—was so unsophisticated that it went under investing in the E.S.M. treasury securities Ponzi scheme that erupted in March. Then we cut to crowds outside the Financial Corporation of America's savings and loan branches in California; until it almost went under, Financial Corporation was controlled by Charles Knapp, who is now committing $100 million through a second entity he controls, to Drexel's Phillips-Icahn junk bonds. The point is perhaps a bit indirect, but it is real. There are more than a dozen savings and loans, insurance companies, and other financial institutions on whose health millions of Americans depend signed up for Drexel's Phillip-Icahn junk bonds. How sophisticated are the people who run them about gauging risk? Are they so high on the everything-works euphoria of *The Roaring Eighties* that risk evaluation has for them become a sissy's game?

Watching it all, a cynic in the audience might even conclude that, as one lawyer puts it, "it's all just a ring that lines up bluff money with Drexel at the center. Today they go in for a bluff for Phillips, with Icahn as the front guy. Last year it was Disney with Steinberg"—indeed, many of the same investors drew the same type of commitment fees in Steinberg's Disney greenmail deal—"and next month it'll be Lindner. And then it'll be Charlie Knapp," he adds.

But why hasn't Icahn gotten the full $4.05 billion? Because, he says, he doesn't want to pay the additional commitment fees until he knows that management's recapitalization plan has been defeated. As it is, he has already paid $7.5 million in commitment fees—three-eights of one percent to the junk subscribers, plus one-eighth of one percent to Drexel. His proxy solicitors are now urging him to up the ante and show more strength; so is Boesky, who is "calling every day," Icahn later testified. But Icahn sticks at $1.5 billion. Is he bluffing? Is Drexel bluffing?

While we're on the subject of bluffing, the camera shifts to the SEC, where once again we find everyone asleep. How else can one explain why this fiasco is being allowed to continue, with Icahn calling this whatever-it-is of his a tender offer? That in itself seems like fraud worthy of an immediate SEC move to enjoin Icahn from proceeding. This isn't a tender offer; it's a request for a gratuitous option. For Icahn has conditioned his offer on obtaining financing, yet he has not obtained the financing, nor is he out there trying to get it, or even promising to try to get if. He's basically saying, "Let me hold your stock for a while and use it to get credibility, while I decide whether to gather financing and go ahead with this."

Wachtell, Lipton has sent letters to the SEC arguing this point, but to no avail. "We figured the people involved in this deal are sophisticated people and can make that decision," our SEC source later explains, ignoring the clear case law that says that a tender offer, to be called such, must be a contractual offer that is binding on the party making the tender offer to buy the shares if the shareholder tenders them, subject only to conditions that are not within the offerer's control.

DEFENDING THE ADVERSARY SYSTEM

In these and other legal battles, Icahn is defended not only by his lawyers at New York's 41-lawyer Gordon, Hurwitz, Butowsky, Weitzen, Shalov & Wein (plus Oklahoma and Delaware counsel), but also by 280-lawyer Paul, Weiss, Ritkind, Wharton & Garrison. "You go after a company and Marty Lipton starts throwing all kinds of chairs at you, which offends me," says Gordon, Hurwitz partner Marc Weitzen, re-

ferring to Wachtell, Lipton's host of efforts at injunctions, as well as the poison pill gambit. "It also makes the litigation heavier than a firm our size can sustain." Weitzen adds.

"Once it was clear that the thing started to get messy and we'd need a lot of litigators. I knew we needed a large firm." explains Icahn. "Paul, Weiss had already been retained by Drexel Burnham, so since they were up to speed I figured I'd use them instead of Weil, Gotshal [& Manges], whom I usually use when I need a big firm. And they were very eager to do it for me so it worked out fine."

In motions seeking temporary restraining orders against Icahn. Wachtell, Lipton and local counsel Crowe & Dunlevy of Oklahoma City and Boone, Smith, Davis & Hurst of Tulsa attack him as a "fast-buck" takeover entrepreneur and greenmailer. Paul, Weiss answers that Icahn's plan represents the best interests of all shareholders, that all the things Phillips is doing to stop him are tricks intended to "rig the forthcoming vote [on the recapitalization plan] with false, misleading, and deliberately confusing proxy material," and that Phillips's "ad hominem attacks [on Icahn] are still another effort to disrupt the proxy process." The camera pans in on the Paul, Weiss letterhead affixed to these arguments.

Then the camera flashes back three years, to another Paul, Weiss brief in another Icahn takeover fight, this one involving Dan River, Inc. But the picture is confusing. For in this brief the firm is accusing Carl Icahn of racketeering and market manipulation, and comparing his announcing his intention to purchase Dan River stock to his buying an "ad in a Danville newspaper . . . stating that he is about to enter Dan River's mill and break the windows . . . unless he is paid $1,000." The brief goes on to argue that Icahn's "entire pattern of buying into companies and threatening a liquidation or a fight for control unless the company pays defendants a premium for their stock (or obtains a white knight to do so), is extortionate or manipulative, and thus constitutes a pattern of predicate RICO acts, from which profits were derived that now are being invested in Dan River. In short, defendants are using tainted money to 'infiltrate' Dan River and should be enjoined from further so doing."

Another flashback shows Paul Weiss partner Max Gitter tearing into Icahn at a Dan River deposition and, as four different sources remember it, being nearly obsessed with what in his view was the dire threat to lawful business affairs that Icahn represented. As one of the four puts it, "Max was emotionally involved in this case and in what a bad guy Icahn was. I swear to you he was foaming at the mouth at one point, ranting and raving about Carl."

Gitter declines comment on his work against Icahn, except to say that he acted as an advocate for client Dan River "ethically and in ways consistent with the Code of Professional Responsibility's requirements" that a lawyer not make frivolous claims, and that he was not "emotionally involved."

Gitter is not involved in his firm's current efforts on Icahn's behalf, but two other Paul Weiss partners active in the Dan River defense against Icahn are now working for Icahn on the Phillips deal. The camera now comes back to them. The first, Moses Silverman, tells us that "other than to acknowledge that I went both ways, I don't want to comment." The second, Arthur Liman, says that these kinds of shifts are "routine aspects of the adversary system." Asked how the firm can argue for the bona fides of Icahn's investment today when in the past it took the position that the money he had amassed was gathered by extortion and, therefore, tainted and forfeitable under the racketeering statute, Liman replies. "Our willingness to argue on behalf of any client is what strengthens the adversary system. We do it because it contributes to the system."

Asked if he minds having lawyers on his payroll who have called him an extortion artist and racketeer, Icahn shrugs and says, "Frankly, I wasn't aware of any of those charges. Who cares? Lawyers H— say whatever they're paid to say. You can't let it bother you. It's all part of this game."

THE MONEY MEN

It is February 21, a day before the vote is scheduled on the recapitalization plan. The rules are that Phillips must get a majority to vote *for* its plan; a non-vote, therefore, will effectively count for Icahn's side.

Remember, Icahn is not only soliciting proxy votes from shareholders against the plan, he also has a tender offer pending, which he has now changed to $60 in cash, financed by those junk-bound buyers, for about 45 percent of the shares, and what he says amounts to $50 in notes (which will be lower than even the junk bonds in payment priority) for the rest of the shares. But his tender offer is conditioned on the recapitalization plan being defeated. As for Lipton's poison pill, Icahn has come up with a relatively simple antidote. When soliciting for the tender offer, he's also soliciting for the shareholders' consent to remove the board of directors and replace it with his own board without holding a shareholders' meeting. In other words, if he gathers a majority of the consents, he can have a meeting with himself and install his own board. And, he promises, his new board will immediately abolish the poison pill, enabling his tender offer to go forward.

With Phillips saying its recapitalization offer is worth $53 and Icahn saying it's worth $42, and Icahn saying his offer is worth $55 and Phillips saying it isn't worth anything close to that, and with outside people saying both sides are stretching the truth, where's the SEC?

While we're at it, why hasn't the SEC come down in Phillips for claiming that Icahn intends to "bust up" Phillips and move the corporate headquarters, when for the record he has promised not to move out of Bartlesville, and said he'll sell $3.6 billion in assets as compared to the Phillips plan to sell $2 billion? And why hasn't the SEC made Drexel Burnham file as part of Icahn's group? Drexel, after all will share heavily in Icahn's profits if he resells the stock. Drexel is responsible for formulating the plan in the first place, and is wholly responsible for financing it. Drexel is wholly responsible for gathering the group who will buy not only all the junk bonds, but also most of the small amount of stock there will be in the company, and who already own enough of the stock to constitute a group for SEC filing purposes. Besides, Drexel, like Icahn, has two representatives on the slate of directors Icahn proposed in his proxy fight.

We cut back to SEC headquarters. The lights are out.

Now we cut to the electorate who unaided by any apparent SEC policing will decide the Icahn-Phillips fight. We learn that by now, with all the arb activity, some 60 percent of Phillips shares are controlled by institutions. (The latest studies indicate that institutions now have about 50 percent of all the voting power of shares traded on the New York Stock Exchange.)

Who are these "institutions"? Some are the arbs, who have probably accumulated or been stuck with about 5 percent that they are ready to vote unquestionably for Icahn. The rest, says one exasperated Phillips lawyer, are "a bunch of brainless thirty-year-old kids who will do anything for the quick buck because their goddamn jobs depend on beating the Standard and Poors every month or every week or every hour."

Actually, some are in their forties and fifties. Other than that, the assessment isn't far off. In random interviews of a dozen institutional money managers who own Phillips stock, I find by and large a surprisingly uninformed and just plain dumb group of voters. Most don't understand the basics of Icahn's offer or Phillips's recapitalization plan, let alone the poison pill or the consent process that would overturn it. But the real point is that they don't care. They just want the company "kept in play," as the phrase goes, meaning they want all options kept open. So they're voting againt the recapitalization plan.

In fact, they're voting against the plan on the proxy cards that Phillips is sending out asking for a vote for the management plan, rather than waiting for Icahn's cards to arrive. (An injunction had briefly delayed his solicitation.)

The Phillips lawyers and bankers had figured they had the vote locked up, for with the poison pill in place the shareholders had only one alternative—the recapitalization plan. If they voted it down, the pill would seemingly protect Phillips from other offers, and the stock would sink back into the $30s.

Yet as the Phillips people are counting their own proxy cards and seeing all the surprising negative votes—it's unprecedented for one side to have so many of its own cards cast against it—they begin to see that they have misread the electorate. Sure, some public pension funds had announced that they had banded together as a kind of new shareholder rights group and vowed to fight poison pills, implying they'd vote against the recap plan. But would private institutions do it, too? Would the establishment help Carl Icahn at the expense of the Phillips management?

"I didn't care about that poison pill. I didn't even understand it," one 33-year-old private pension fund manager will recall after the vote. "And I didn't believe Icahn's bid. What I cared about was that I have a meeting twice a month with my boss and he goes over my portfolio. I needed to keep that company in play to get money out of it."

Others do vote on principle—against Phillips. "We just have a policy here, plain and simple," one California money manager will later explain, in remarks echoed by several others. "We now vote against any types of poison pills or other such devices. We believe shareholders ought to have the right to vote on all offers. And we also saw the part of the recap plan that would put the company in control of the employees' trust as a total management entrenchment device. You know, we're not going to take that stuff anymore, and those investment bankers and lawyers who get millions of dollars to come up with this garbage ought to be thrown out on their asses."

Even pension funds whose own managements have come under attack by raiders

now find themselves voting against the recap plan on this basis. "It's just not in keeping with any concept of fiduciary duty to allow a poison pill or anything else that stops an offer," one such manager will later say. (This man thought Phillips was seeking consents with the recap plan to enact the poison pill, and that Icahn had already raised all $4.05 billion.) What if an offer isn't in the long-term interests of the shareholders? "I'll define the long term," he will reply. "That's my job. And I define it as jumping to the best opportunities I find every day."

THE SETTLEMENT

It is now Sunday evening, March 3, 1985. Phillips, having adjourned the shareholders meeting several times since the February 22 zero hour—ostensibly to count the vote but really to come up with a new strategy—has just announced a) that it lost the recap vote by about 9 million shares and b) that, contrary to its prior vows that its first offer was its final offer, and that its second, sweetened offer was its really final offer, the company is now offering another sweetener to the recap plan. The market will later decide that this plan—which excludes the scheme to put the controlling interest in the company in the hands of an employees' trust—may really be worth $53.

Now Icahn, accompanied by Liman of Paul, Weiss and just a few others, is locked in negotiations at Morgan Stanley with Lipton, lots of other lawyers, and the Morgan Stanley and First Boston bankers. Phillips has vowed not to pay Icahn greenmail, but paying his expenses is another matter. Icahn claims his expenses are $30 million. Phillips will only pay $25 million, because that's the most its people estimate Icahn really will have to spend for lawyers, for Drexel (about $15 million), for investment bankers at Donaldson, Lufkin ($1.3 million), and for commitment fees ($7.5 million). Icahn won't budget. True to form, he's happy to sit there for eight hours, until 3:00 a.m. Yet he leaves with only $25 million.

"It was one of those moments of truth that make this a tough game." Icahn will later recall. "I thought hard about pressing ahead with my offer. But I was looking at a thirty-seven-million-dollar risk"—$12.5 million in the commitment fees necessary to draw down the remaining $2.55 billion in junk-bond commitments, plus the $25 million on the table for expenses—"and I just didn't see it. So I walked away with the twenty-five million."

Assuming Icahn had bought $7.5 million shares at an average price of $46, and could now cash in on a Phillips offer that really was worth $53, he also walks away with a ten-week trading profit of $52.5 million.

There is one other item on the bargaining table besides Icahn's expenses: standstill agreements. In the days before *The Roaring Eighties*, these agreements involved people like Icahn promising not to bother the company again for five or ten years. Now there's a new twist: The target wants the same promise from the dreaded Drexel. But Drexel doesn't want to give it. That separate negotiation also goes on into the morning. In the end, Icahn agrees to an eight-year standstill. Drexel agrees to three years.

"Drexel is in one sense the most powerful financial institution in the country today," says Lipton a few weeks later, acknowledging that he now believes Drexel could indeed have raised all $4.05 billion for Icahn's offer. "So these standstills are very important."

EPILOGUE

"Lipton lost the vote by putting in the poison pill." Icahn asserts, sitting in his office a week after the settlement. "That turned everybody off. He doesn't understand that the country is now controlled by money managers who aren't going to put up with that."

"Lipton seems to agree. "Carl's right," he says. "We just completely misread this. We didn't appreciate how these institutional voters just cared about keeping the company in play. They don't understand that the pill can be a legitimate protection device.

"What we saw in Phillips was the Woodstock of shareholder rights," says head Drexel M&A man David Kay. "It's the first time the shareholders stood up and really said, 'Don't tell us what you're gonna do and what it's worth. The marketplace is telling us what it's worth and we're not gonna do it. Ten years ago," Kay continues, "if the institutions didn't like the company, it sold the stock. They didn't say, 'I challenge you.' This is an evolution no different than all sorts of other evolutions." Kay concludes, "with an activist role being taken by people who used to be pussycats."

As for the preventive effect of the poison pill, "I never even thought about that," says Icahn "It was always clear I could do a proxy fight or a consent to get a new board to remove it, and I think everyone understood that. The pill didn't mean a damn thing to me."

Is Icahn right about the pill being ineffective in a fight like this? "Oh sure," says Lipton. "I've been saying and writing that all along—that the pill doesn't stop takeovers and does nothing to stop a guy who wants to hang in more than thirty days with a consent or proxy fight. That's why I could never understand what all the fuss was about the pill. It can only be used to stop shareholders from being stampeded quickly by a front-end loaded offer."

In fact, Lipton points out, the emergence of Drexel Burnham in the Phillips deal and the firm's apparent ability to raise billions within days make the pill virtually irrelevant, because with Drexel a raider can bid for all the shares rather than do a front-end deal that offers cash to some shareholders and debt to others. The raider can finance an all-cash offer with Drexel's junk-bond debt.

Is Drexel virtually unlimited in what it can raise in junk bonds? "The size of the transaction isn't the issue," agrees Kay. "The key variable is the disparity between the real value of a company and its market price. That's what drives these transactions."

What we have, then, in *The Roaring Eighties* is a world in which companies' fates are controlled by Drexel Burnham and the institutional money managers. "That's right," says Lipton. "And that's what I'm worried about."

Nonsense, says Icahn. "A company that keeps its stock up and is managed well doesn't have any problem. . . . If it's really making long-term investments that are worthwhile, then it should be out there explaining that to stock analysts, and the stock will stay up. . . . When you offer a company a premium for control," he explains, "it's an insult to management. You're saying the stock is worth more in your hands than in theirs."

In one sense that seems to ignore the obvious: that the value of one share of a company is always worth less than the value per share of gaining control of a company. Still, Icahn has a point. What does indeed drive transactions like his—which typically involve stock price premiums far higher than the normal premium paid for control—is the perception that someone else can manage the assets of a Phillips better than Douce and company can, be it by improving asset deployment, improving productivity, or selling off all or some of its parts. That's also what drives more traditional mergers and acquisitions, such as the recent Capital Cities Communications—ABC deal: Capital Cities management (and Wall Street, too, given the stock market reaction to the deal) believes it can make more of a ABC than current management has.

It's also true, though, that a large share of such acquisitions haven't worked out that way—such a large share that the word "synergy" ought to be banned from the business vocabulary by the SEC as prima facie deception. Many of these deals are simply monuments to the egos of the acquirers. But here, too, Icahn and his friends, who claim to personify the marketplace at work, are ready to step in and help: They'll bust up the merged company.

In doing so, they find support from free market academics and economists, including those on the President's Council of Economic Advisers. The council's latest report to the President contained a section on takeover fights, which said in part:

The best assurance an incumbent management has against a successful takeover attempt is a stock price that is high relative to outsiders' estimates of . . . potential value. . . . Managements that allocate capital to higher valued uses, operate efficiently, and adopt capitalization structures responsive to prevailing financial market conditions are less likely to be subject to takeovers. . . . Contests for corporate control are part of a larger merger and acquisition process that plays an important role in the economy's adjustment to changing market circumstances. . . . [T]here is no economic basis for regulations that would further restrict the . . . process. Indeed, the economic evidence suggests that existing regulations impose restraints that may deter potentially beneficial transactions. . . . The evidence also suggests that abusive practices in the market for corporate control are limited largely to tactics employed by target managements who, in opposing takeover bids, defeat or deter tender offers at the expense of their shareholders and the economy. . . .

Lipton now so passionately takes the opposite view that his firm, he says, has recently decided not to accept business from takeover raiders (including previous client Jimmy Goldsmith) who specialize in what Lipton calls "the two-tiered, bust-up, junk-bond takeover." Sure, Lipton's position could simply be a cagey marketing strategy (like Goldman Sach's decision two decades ago never to work for a hostile acquirer) that gives his firm a new leg up on the loyalty and business of Fortune 500 CEOs. But that's beside the point. Whatever the reason, Lipton has become a prime advocate on one side of what should become a fascinating, important public policy debate, and he has articulated perhaps the most cogent arguments against the laissez faire attitude toward Icahn-like forays that seems to be prevailing in The Roaring Eighties.

In a recent letter to Senator William Proxmire, Lipton spelled it out this way:

These takeovers move assets into hands that profit by cutting off the allocation of part of the revenues produced by the assets to research and development and capital im-

provements and instead divert those revenues to paying the debt incurred to acquire the assets. One can analogize the situation to a farmer who does not rotate his crops, does not periodically let his land lie fallow, does not fertilize his land and does not protect his land by planting cover and creating wind breaks. In the early years he will maximize his return from the land. It is a very profitable short-term use. But inevitably it leads to a dust bowl and economic disaster. . . . Day after day the takeover entrepreneurs are maximizing their returns at the expense of future generations that will not benefit from the research and development and capital investments that takeover entrepreneurs are forcing businesses to forego. . . .

Today institutional investment managers . . . will accept any premium over the current stock market price rather than hold a portfolio investment for appreciation in the future. . . . Since most of the large publicly held companies are effectively controlled by institutional investors, the coordinated activity of takeover entrepreneurs and institutional investors now presents an immediate threat of takeover and liquidation to every large public company that sells in the stock market for less than its liquidation breakup value. . . .

Lipton was arguing in his letter against legislative proposals mandating that shareholders get a right to vote on any takeover offer, free from management's interference. But, again, if a company is worth more broken up, why shouldn't the shareholders be able to break it up by voting for a proposal from an Icahn? And why shouldn't they be able to decide if their long-term interest is better served by sticking with the company because its R&D program is so promising? And how is it that some companies, such as IBM, are selling at high multiples of earnings because, presumably, the stock market sees its long-term value?

"Research and development," huffs Icahn. "These companies that are so desperate for protection aren't doing that. Their idea of research and development is buying businesses they don't know how to run that will add to their power and their egos. Why should their shareholders have management be a depository of funds for something like that?"

"I'm telling you, these raids are the best thing that's happened to corporate America that I can remember," echoes Pickens. "It's bringing an awareness and accountability into the system," he adds, noting that managements of other oil companies who, like Douce, own only small portions of their company's stock are now starting to "worry about the shareholders more than they ever did."

But it should be remembered that both well run and poorly run companies are susceptible to raids, for when the supporters of the laissez faire approach argue that the neutral marketplace ought to decide who gets taken over and how, they seem to forget that the country's tax and accounting rules are such that the market isn't exactly neutral. To take two obvious examples:

First, corporations that invest in research and development have to account for that expense in the year they spend it, thereby depressing earnings. The same corporation that pays a premium to take over another company can amortize the premium over 40 years, thereby depressing earnings only minimally.

Second, the fact that corporate income is taxed to corporations and dividends are taxed to shareholders creates a double tax. This makes payment of interest (on junk bonds, for example), which is tax deductible to the corporation, roughly twice as easy (assume a 50 percent tax rate) for a corporation as paying dividends. Thus, a company that can pay shareholders a rate of return of 7 percent on dividends can just as easily pay 14 percent interest; and an investor, who will have to pay taxes on either the interest or the dividend, will prefer a debenture at that higher rate to a dividend at the lower rate. In that sense even an Exxon (which has been buying its stock vigorously on the open market, reportedly at least in part to lessen takeover dangers) or an IBM could be vulnerable. "Take the vigorish out by stopping double taxation," says Joe Flom, "and you end one of the major encouragements for these leveraged deals."

Others, like Flom, don't buy Lipton's client-pleasing answer that the solution is to let all managements, good and bad, use any and all tactics in Lipton's medicine bag to keep shareholders from deciding on tender offers. But they don't think that tinkering with tax and accounting regulations is enough, either. Martin Davis, the chairman of Gulf & Western Industries, a company Icahn attacked in 1983 just days after founder Charles Bluhdorn died of a heart attack, points out that with so many other markets—from antiques, to money funds, to new forms of corporate debt instruments, to options, to options on options—now competing for funds that might otherwise be invested in the stock market, "most stocks sell below their market value and certainly below their control value and bust-up book value." In Davis's view this makes almost any company susceptible to a raid and forces every management to worry about its current stock price, often at the sacrifice of long-term investments. "Carl's right about a lot of managements, but the fact is he can go after almost any company and make a profit by putting it into play," Davis maintains. "Something fundamental has to be done, but I'm not sure what, because I believe in the free market. I just also believe the country can't survive if the stock market is just a casino full of short-term players."

Icahn, who was bought out of his Gulf & Western position in an open-market transaction arranged by Davis at the market price, credits Davis (whom he recalls as "one guy willing to negotiate with me one on one") with boosting his company's stock. He says Davis has in fact, made the company far less susceptible to a raid, though not immune, by doing "exactly the kinds of things managers should be doing. . . ."

Flom, who is one of Davis's lawyers, doesn't agree that more basic reforms are necessary. He "generally believes," he says, in the conservative Chicago School view that after "some turmoil with some of these raids by people like Carl," the market will adjust, and stock prices will go up, because assets will have been redeployed more efficiently, and companies that haven't been raided will have a prospective-takeover premium added to their price that will deter more raids.

"It seems to me that turmoil is what you want to avoid in an economic system." counters investment banker Felix Rohatyn of Lazard Freres. "And what these Chicago School people don't understand is that turmoil is very destructive for everyone. When you have an environment like we seem to have now where those rolls of the dice can be so wild because there is so much leverage with so little proper evaluation of the risk behind that leverage, because everyone seems to think that any type of leverage works, you're creating a very dangerous situation."

Leverage, indeed, seems to be the culprit. It's leverage, after all, that seemingly allows anyone to tally up the control value or the bust-up value versus the stock market value of a company the size of Phillips and then offer a stupendous premium. Some people, especially greedy people, will almost compulsively take just about any risk that opportunity—in the form of the credit markets—allows, and they'll find others to follow along. In the Roaring Eighties everyone seems to be having a terrific time offering and accepting any and all such opportunities. And they're not terribly interested in listening to anyone who wants to spoil the party with homilies about proper risk evaluation or the fact that risk really does increase with reward.

Yet what seems eminently do-able, even magically wonderful today, looks quite the opposite when the economy turns down and the corporations that are supposed to throw off the cash to service these junk bonds dry up. What today gets leveraged up with lightning speed could unravel just as fast. We can see it in the E.S.M. government bond failure which revealed a classic Roaring Eighties get-rich-quick leverage scheme; and we ought to be able now to see how it could happen tomorrow on a much larger scale if one of these Icahn-type deals goes through and the target company fails.

"What bothers me most about what's happening today." adds Rohatyn, "is that there's this mutually reenforcing cycle of everyone telling everyone else that anything will work. That this is a foolproof way to get rich. There just shouldn't be so many rolls of the dice. . . .

"It's contagious now," Rohatyn continues. People like Pickens are on the covers of national magazines. And when I go to colleges to lecture on municipal finance or public policy, the kids all want to hear about how investment bankers are creating all this wealth. . . . We have to put the brakes on this go-go mania. We have to take a look at controlling all of this from the credit and tax side."

Who won the Phillips fight?

Douce and the target management seem to have won; they became the first oil company management under attack to preserve their independence. But who's to say the company can't be raided again." Icahn, for one, thinks this is entirely likely.

The shareholders seem to have won, in that in exchange for their old stock they got a package that seems to be worth $53, or close to it, whereas last fall their old stock was trading in the $30s. But a few years ago that stock was over $60; and studies show that many companies that successfully resist tender offers at extremely high premiums later see their prices rise higher than the premiums that were offered. Moreover, as Rohatyn puts it, "It's not so clear that the (new) Phillips stock will be worth what they said it would be worth," meaning that the package may not be worth $53 after all.

Icahn clearly won; he made $52.5 million in ten weeks. *And for his victory there are no qualifiers.*

True, there may have been a few "moments of truth," as he likes to describe his poker game. Yet like the man who made those mysterious late-night phone calls—who, if not for the fact that Icahn testified under oath that he really exists, could be a

metaphor for the ethic of *The Roaring Eighties*—Icahn didn't have to do much or show much of his hand.

"I'm fervently against poison pills and believe that shareholders have a right to control their destinies, but what especially bothers me about Icahn is that he did this with mirrors," says Rohatyn. "No one really could believe he intended to run Philips Petroleum. . . . And when you have too many people getting rich on mirrors, you have to stop and take a look at where we're going. Because it could all unravel."●

FARMERS' DAY PRAYER

● Mr. BOREN. Mr. President, the letters and phone calls continue to pour into my office expressing my constituents' concerns over the persistent farm crisis. A day never goes by that I am not reminded of the many struggles of keeping the family farms going day after day, obtaining credit in time to plant seasonal crops, and for the first time for some farmers, juggling a full-time job in town with farming in the wee morning hours and late in the evening.

As the Agriculture Committee this week begins marking up the farm bill, I think it is particularly fitting to share with all of you a beautiful prayer that I received in the mail several weeks ago. The prayer was written by Dr. Jene Miller for a farmer's day banquet in Altus, OK, several years ago and is entitled, "A Seed-Time and Harvest-Time Prayer." This composition is so revealing of the necessity of the farmers' own survival to ensure that the rest of the world never has to go without. It is the farmers' unfailing faithfulness and commitment to tilling the land that assures us that we, as Americans, will never have to go hungry. Now, we remain hopeful of finding more workable means of distributing this wealth. I ask that the prayer be inserted in the RECORD at this point.

The prayer follows:

God of galaxies and atoms, we come to this hour to confess our need. However fair the skies or rich the soil, without farmers to mediate between the dirt of our fields and the protein of our bread, we will starve. Without their faithfulness in storm and drought, in labor and indebtedness, we will not eat. For all their silent sacrifices and vigilent labors we give thanks to Thee and for them. In the name of all the hungry world, we implore Thy blessings on them that they may continue to enable us to obey our Lord's own command to feed the hungry, clothe the naked, and heal the sick. In Jesus' name, Amen.●

GROUND-BREAKING FOR A NEW MUSEUM OF AFRICAN AMERICAN HISTORY

● Mr. LEVIN. Mr. President, on Tuesday, May 21, there will be a ground-breaking for the new Museum of African American History in Detroit, MI. This is an important event for Detroit and for the Nation because since its founding, the Museum of African American History has provided national leadership in the field of African American museum affairs as well as having given more than 3 million people the opportunity to visit its exhibits and participate in its activities.

The Museum of African American History has had as its goal the preserving, restoring, and publishing of materials related to the black experience. Through these efforts, the museum has provided young and old alike with the opportunity to learn more about their community, their heritage, and themselves. By doing so, we are all better aware of the contributions of African Americans to our national life and share in the sense of pride that we all feel at the achievements of our fellow citizens.

The success of the museum has given rise to the need for additional space. That is the reason for the ground-breaking ceremony next Tuesday. The new museum will have five times as much space as the current facility. This expansion will allow the museum to increase its potential for preserving and promoting a greater awareness of African American history.

Current plans also call for a mobile studio, including audio, photo, and video facilities, which will travel throughout the country gathering artifacts and personal life stories for the museum. In turn, the museum will be the national repository for this memorabilia.

I would also like to commend the efforts of so many in the Detroit community who have made the construction of a new site for the museum a real possibility. In particular, the students, teachers, and administration of Detroit's public schools should be congratulated on their successful buy-a-brick campaign. The Museum's Million-Dollar Club has also already raised more than $100,000, and the city administration has contributed $2.3 million. These represent the kinds of community based efforts of which we as a nation can be proud.

There is nothing quite like this project happening anywhere else in our Nation. This project represents a total commitment from the entire community and I commend the effort put forth by so many to enrich and enhance Detroit's cultural resources.●

PROPOSED ARMS SALES

● Mr. LUGAR. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $50 million or, in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is available to the full Senate, I ask to have printed in the RECORD at this point the notifications which have been received. The classified annexes referred to in two of the covering letters are available to Senators in the office of the Foreign Relations Committee, SD-423.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC, May 10, 1985.

Hon. RICHARD C. LUGAR,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 85-10 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter of Offer to Spain for defense articles and services estimated to cost $20 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

PHILIP C. GAST,
Lieutenant General, USAF,
Director.

Attachments.

TRANSMITTAL NO. 85-10

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

(i) Prospective purchaser: Spain.

(ii) Total estimated value:

	Millions
Major defense equipment [1]	$16
Other	4
Total	20

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of articles or services offered: A quantity of 60 MK 46 MOD 5 torpedoes, 12 exercise heads and associated spare parts.

(iv) Military department: Navy (AHN).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date report delivered to Congress: 10 May 1985.

POLICY JUSTIFICATION

SPAIN—MK 46 MOD 5 TORPEDOES

The Government of Spain has requested the purchase of a quantity of 60 MK 46 MOD 5 Torpedoes, 12 Exercise Heads and associated spare parts at an estimated cost of $20 million

This sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Spain and enhancing the defense of the Western Alliance.

The sale of these torpedoes and continuing support to the Government of Spain is

part of the close cooperation in defense and other matters under the 1976 Treaty of Friendship and Cooperation between Spain and the United States. The Spanish Navy intends to utilize these torpedoes on frigates and shipboard helicopters as an anti-submarine deterrent.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Honeywell, Incorporated of Hopkins, Minnesota.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Spain.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

TRANSMITAL No. 85-10

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

3. (U) Release of this technology is within the classification guidelines for disclosure to Spain as stipulated in National Disclosure Policy (NDP-1).

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC, May 13, 1985.

Hon. RICHARD C. LUGAR,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN. Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 85-31 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Army's proposed Letter of Offer to Switzerland for defense articles and services estimated to cost $209 million. Shortly after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

PHILIP C. GAST,
Lieutenant General, USAF,
Director.

Attachments.

TRANSMITTAL No. 85-31

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) of the Arms Export Control Act

(i) Prospective purchaser: Switzerland.

(ii) Total estimated value:

	Millions
Major defense equipment [1]	$168
Other	$41
Total	$209

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of articles or services offered: A quantity of 12,000 BGM-71D TOW II missiles, 3,000 (inert) practice missile rounds, 400 AN/TAS-4A night vision sights, 400 components to assemble TOW II launchers, and ancillary equipment. The sale may involve co-production of selected releasable components of the TOW II weapon system by the Swiss.

(iv) Military department: Army (VEY).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date report delivered to Congress: 13 May 1985.

POLICY JUSTIFICATION

SWITZERLAND—TOW II MISSILES

The Government of Switzerland has requested the purchase of a quantity of 12,000 BGM-71D TOW II missiles, 3,000 (inert) practice missile rounds, 400 AN/TAS-4A night vision sights, 400 components to assemble TOW II launchers, and ancillary equipment at an estimated cost of $209 million.

This sale will further the foreign policy goals of the United States by helping to assure the defense of a friendly country whose avowed neutrality has long contributed to the security of Western Europe. It is consistent with the U.S. policy of assisting other nations to provide for their own defense and security. Switzerland has traditionally based its independence on a strong and ready military establishment.

This weapons system is required by the Government of Switzerland to replace its 30 year plus weaponry and to improve its Army and Militia Military. Switzerland will have no difficulty absorbing this system and this sale will increase the military defense capability of Switzerland. The sale of this equipment and support will not affect the basic military balance in the region since comparable or identical weapons already exist there.

The sale may involve partial co-production of selected releasable components of the TOW II weapon system by the Swiss. The exact components and the degree of co-production will not be known until some time in 1985 since the Swiss are currently conducting production feasibility studies for this effort. During co-production, the Swiss may release technical data and drawings to the Eichweber Company of the Federal Republic of Germany for the sole purpose of integration of the Talissi system to the modified day sight and launch tube. Some launch tube shells and modified day sight shells may also be transferred to the Eichweber Company on a temporary basis. The total value of the transfers is estimated to be not more than $50,000.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractors will be the Hughes Aircraft Company of Tucson, Arizona and the Emerson Company of St. Louis, Missouri.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Switzerland.

There will be no adverse impact on U.S. defense readiness as a result of this sale.●

HEAD START'S 20TH ANNIVERSARY

● Mr. GLENN. Mr. President, this year marks the 20th anniversary of Project Head Start—a program that provides America's children the change to overcome the obstacles of poverty. In 1965, President Lyndon Johnson launched Head Start with the hope and dream to alleviate the tragedies of disadvantaged children who face a lack of medical, emotional, nutritional, and educational services that many take for granted.

Today there is a Head Start center in nearly every county in the United States. Although performance standards are set at the Federal level, it is the local community that actually molds the program to enhance its own particular cultural and ethnic characteristics.

Few would dare dispute Head Start's success. Since its inception, some 9 million children and their families have benefited from this project. We all know that the early years of childhood are critical to a child's development and it is essential that we reach out and give these youngsters a helping hand at a time when they need it most. The very existence of Head Start illustrates our commitment to the well-being of our greatest investment—our greatest hope—our children.

It is imperative that we reach out and encourage them to explore, to create, and to dream. Most importantly, though, the Head Start children are surrounded by parents and teachers who believe in them and love them.

Twenty years of Head Start success stories could fill volumes of books and these successes cannot be measured merely in dollars alone. Rather, they must be judged by the mental, physical, and educational development of those children who might otherwise have fallen short of their potential through no fault of their own.

On behalf of the 9 million children who have received assistance from Head Start and those children who have yet to benefit, I want to congratulate those who have contributed to the creation and development of this outstanding program. When many today are quick to remind us of the shortcomings of Federal programs, let us recall that this program sought to serve and did. It is my hope that Congress will continue to support one of our Nation's most valuable programs so that disadvantaged children can truly get a "head start" in life.●

A TRIBUTE TO DONALD P. EDSON

● Mr. BOREN. Mr. President, it is with a great deal of sadness that I note the tragic death of Donald P. Edson, vice president for legislative services for the Farm Credit Banks of Wichita, KS, in a three-wheel recreational vehicle accident near Mulvane, KS, on April 28, 1985.

In writing about his death, Hurst Laviana, staff writer for the Wichita Eagle-Beacon, commented that "Whether his audience was a group of Congressmen in Washington, DC, office building or a farmer in the middle of a Kansas wheatfield, Donald P. Edson was at his best when he was talking agriculture."

As one who discussed agriculture with him many times, I can attest to that. Edson spent many hours in my office discussing the problems of agri-

culture and attempting to find answers to the problems facing farmers. He was concerned not only about farmers' financial problems but also their other problems. He was always open to any idea and carefully considered differing points of view.

In the Eagle-Beacon article mentioned above, Mrs. Edson, his widow, pointed out that "He could talk to anyone. He could listen to anyone and understand. He could go through a whole room full of people and just light up." One of his former employers was quoted as saying, "He was the type of person you felt you knew all of your life—whether it was a high-ranking Federal official or a farmer out on his land. He had the ability to communicate with all types of people. He never met a stranger." Monte Reese, a vice president of public affairs for Farm Credit Banks, is quoted as saying that what made Mr. Edson unique was his ability to combine extensive knowledge of agriculture with a strong ability to communicate. "He could really talk their language and they could understand him," Reese said. "Don had a very solid understanding of agriculture. He was a very energetic and dynamic leader in Kansas agriculture. He was a very popular speaker at agricultural meetings—in Kansas and around the country."

Edson was raised on a livestock and grain farm south of Topeka and received a degree in agricultural education from Kansas State University. He was a farm director at WIBW Radio and TV in Topeka for 10 years, joining the Federal intermediate Credit Bank in January 1970. He took the position of vice-president for legislative services at a time when most would have shunned the responsibility. With tremendous pressure facing the Farm Credit System as a result of record farm foreclosures, he rose to the challenge of finding a solution which would keep the system solvent.

Surviving Edson are his wife, Lynne; two sons, David and Doug, and a daughter Darla; his parents, Burton and Elma Rene; a brother, Dean; and two sisters, Jan Haun and Karen Edson. To them and his other relatives we extend our deepest sympathy. All of us have lost a good friend and a fighter for our farmers.●

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

REPEAL OF CONTEMPORANEOUS RECORDKEEPING REQUIREMENTS—CONFERENCE REPORT

The PRESIDING OFFICER. The hour of 11:30 a.m. having arrived, the Senate will now return to the consideration of the conference report on H.R. 1869, which the clerk will report.

The legislative clerk read as follows:

The conference report on H.R. 1869, an act to repeal the contemporaneous recordkeeping requirements and the Tax Reform Act of 1984, and for other purposes.

The PRESIDING OFFICER. The time on this conference report is limited to 40 minutes, with 30 minutes under the control of the Senator from Ohio [Mr. METZENBAUM] and 10 minutes under the control of the Senator from Oregon [Mr. PACKWOOD] or his designee.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise to address myself not only to the conference report but to an issue that is not in the conference report but that was in the report language of the Senate Finance Committee.

Before doing so, however, I think we ought to make the record clear as to what this conference report does and does not do. According to the conference report, the measure before the Senate will reduce revenues by $107 million between fiscal year 1985 and fiscal year 1987. It is, therefore, subject to a point of order under section 311 and another point of order under section 303 of the Budget Act.

Mr. President, I do not intend to make the parliamentary point of order because I feel confident that it would be overruled by a vote of the Senate, but in order to make it clear to one and all that, indeed, the point that the Senator from Ohio is making is correct and that we are taking away $107 million in revenues, I will pose a parliamentary inquiry: First, would the Chair sustain a point of order raised under section 311 and, second, would the Chair sustain a point of order raised under section 303 of the Budget Act?

The PRESIDING OFFICER. This conference report does result in a loss of revenues for fiscal year 1985, and because the Congress is below the revenue floor for this fiscal year, the conference report would give rise to a point of order under section 311 of the Budget Act. Because the conference report raises revenues for the fiscal year 1986, a year for which there is no first concurrent resolution on the budget, the report would violate section 303(a) of the Budget Act.

Mr. METZENBAUM. And, therefore, be subject to a point of order under section 303 as well?

The PRESIDING OFFICER. That is correct.

Mr. METZENBAUM. Mr. President, I do not intend to raise those points of order, but I want to emphasize that while everybody is out making speeches about balancing the budget, the U.S. Senate is going to pass this conference report by unanimous consent this morning, probably without a rollcall, and we are going to increase the Federal budget deficit by $107 million over 3 years.

Now, that $107 million I want to point out is over and above the amount that we do not even know the facts about, and that is the reduction in revenues that will be produced by those corporate executives who will not have to pay much in taxes on their corporate aircraft travel.

It is a fact—and I will get into that soon—that they will still pay something, but the amount they will pay, according to my calculations, is probably closer to one-fifth to one-eighth of what they would otherwise be paying.

Now, the matter of aircraft used by corporate executives is not technically part of the conference report before the Senate. It has to do with the report language the Finance Committee wrote. It was not possible for us to deal with the issue on the floor because it is not in the bill. But it was one of those arrangements that you make around here where in the committee report the Finance Committee tells the Treasury Department to do what they want, and the Treasury Department, always ready to accommodate, particularly when it has to do with the loss of revenue from corporate executives who do not have to pay their fair share of the taxes, went even further than the Finance Committee had asked.

Now, to explain the issue, in the Deficit Reduction Act of 1984, there was an effort to increase revenues by closing some tax loopholes. Now, that was significant. The Congress indicated its willingness to close some tax loopholes, an area some of us had been addressing ourselves to for some time but our arguments pretty much fell on deaf ears. Even though David Stockman and the President and others said they should be closed, every time we attempted to close them, some lobbyist came along and was pretty much able to talk them out of it.

One area of the 1984 bill had to do with the taxation of fringe benefits that are not statutorily tax exempt.

The 1984 Tax Act amended the Tax Code to provide that fringe benefits are among the items specifically included in gross income. According to the "General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984" put out by the Joint Committee on Taxation, the Tax Code was amended "as a clarification that the fair market value of any fringe benefit not covered by an express statutory exclusion is included in the recipient's gross income."

Now, existing regulations provide that corporate executives who use corporate aircraft for personal purposes

must include in their taxable income the fair market value of such use.

Now, is that not a reasonable thing to do? If you are using it for your personal benefit, should not that corporate executive be required to report that as a part of his or her income?

Fair market value is determined under all the facts and circumstances, or, alternatively, by using a safe harbor test, which is the cost of chartering a similar aircraft. That certainly is fair.

How does it work under the present law? If, for example, an executive were to travel on vacation from Washington to Miami and back on a corporate Lear-35 jet, current regulations would require that $8,150, the cost of a charter for that same flight, be added to his or her taxable income.

That seems simple as such. But the National Business Aircraft Association believes that the new regulations were too complex for the average chief executive officer to comprehend. That according to a bulletin "Is This Tax Simplification?" by Mr. Joseph Burnside, manager of Government relations. Mr. Burnside wrote:

> But the granddaddy of them all, when it comes to considering the various uses of business aircraft and value to the employee, is when the boss uses the plane for personal transportation. Now, admittedly, this is the sort of fringe benefit which should result in the imputation of addition income but, at the same time, is not something which occurs every day. Indeed, most aircraft are used strictly for business reasons. However, the IRS has seen fit to address this subject also.

The article went on to say:

> Further, the time spent by the IRS auditor in ascertaining whether the regulation is complied with will certainly divert the agent from more productive pursuits, such as looking for abusive shelters or, indeed, dreaming up new ways to "simplify" the tax code. Is this tax simplication?

To him, I answer, yes, indeed, that is tax simplification. As a matter of fact, it is more than tax simplification. It is a matter of what is right and what is wrong. But the lobby is pretty good. The lobbyists did their work on the committee, and the big business executives made their point.

Lo and behold, who came to the rescue? That sturdy defender of Government income, our Senate Finance Committee, came to the rescue.

The committee adopted report language in reporting S. 245 that directed the IRS to revise its regulations for valuing trips on corporate aircraft. You have to understand that there was nothing in the bill having to do with corporate aircraft. It was totally blank on that subject. It was as though they included something in the bill having to do with the WIC Program or something having to do with some totally unrelated program. But they wanted to take care of their friends, the corporate executives who fly planes for personal use.

After all, is it not important to the Nation's interests that we permit corporate executives to use the planes to go to the World Series or to some important football game, or to take their families on a vacation to some warm climate?

So the language of the report reads:

> The committee also intends that the Treasury is to substitute the following safe-harbor valuation rules with respect to employee flights on employer-provided, noncommercial aircraft that constitute taxable fringe benefits, for the valuation rules with respect to such benefits that are currently set forth in temporary regulations.

It then went on to say that if the plane weighs more than 10,000 pounds, the value for a control employee—those are the executives—would be the first-class fare that would have to be reported; and the value for other employees would be the value imputed to the parents of an airline employee, which would be half the coach value. If the plane weighed more than 6,000 pounds but not more than 10,000 pounds, the value that would have to be included so far as the executive is concerned would be the coach fare, and the value for other employees would be three-fourths the value imputed to the parents of airline employees.

If some within the hearing range of my voice want to know why the language is "parents of airline employees," or if some who read the RECORD want to know why that language is used, they will have to go back to the Finance Committee and ask them; because, frankly, I do not understand the meaning of that language.

If the plane weighed 6,000 pounds or less, the control employees—the executives—would have to pay taxes on one-half the coach fare; and for those who are not executive employees, the amount that would have to be included would be half the value imputed to the parents of the present employee.

I must say that it probably is unimportant what "parents of employees" means, because, in the last analysis, you can count on the Treasury Department. They got the message. The message was clear and simple: "See to it that the corporate executives and others who use private aircraft do not have to pay anything in taxes, or see to it that they have to pay very little in taxes, when they use the corporate planes."

I am aware that it is unusual for me to be standing here to debate an issue that is not before the Senate. As a matter of fact, I am not even debating it, because it is obvious that the chairman of the Finance Committee and the majority leader are not on the floor—and I have no fault to find with that. But I believe it is so shocking, so indecent, so inappropriate, and so wrong for the Finance Committee and the U.S. Senate to be telling the Treasury Department to reduce taxes of corporate executives who use private planes, that unless I raise the issue in this manner—and I cannot get it to a vote, because there is not a parliamentary procedure to do so—unless the issue is made, unless the matter is at least brought out into the open, it will slide through, as many other issues slide through in Congress.

However, although it is unusual to debate an issue that is not before the Senate, it is just as unusual for the proponents of a tax cut to avoid placing it before the Senate. What wonderful speeches my colleagues make about trying to balance the budget! There is nothing more important, they say on the television programs and the radio programs and to the newspaper editors and before the crowds to whom they speak. But the fact is that everybody is going along with what the Finance Committee did; and the Treasury Department, which is so anxious to find a new tax bill for the President, is going along, losing revenue, for no reason whatsoever.

Instead of making it possible for this issue to come before the Senate, the proponents inserted in the committee report language that was never before the Senate and insisted that the Treasury provide favorable treatment.

When I raised this issue on April 3 on the floor of the Senate, the chairman of the Finance Committee said:

> This issue is not before us in any way, shape, or form—it is not before us in any report language in the House bill, it is not in the House bill, it is not in the amendment before us—it is not in any report language that is before us. There is nothing that we have done or are going to do that has any effect, at the moment, on the Treasury regulations that impute the value of flying on airplanes. The committee report that contains that language is not part of the pending committee amendment.

I offered an amendment to H.R. 1869—that is this particular legislation—that would have expressed the sense of Congress that existing regulations regarding the valuation of personal travel on private aircraft by corporate executives should not be changed. That measure failed on a 46 to 47 vote, with eight members of the Finance Committee supporting the amendment.

However, the Treasury Department got the message. They understood what some Members of Congress wanted. They did not worry about the 46 who said, "We don't want it." They were going to take care of the 47 who did. Besides, the business lobbyists were doing their job, and doing it well, at the Treasury Department.

So the Treasury Department did not heed the concerns that 46 Members of the Senate expressed. Treasury caved. They caved so fast that they fell over themselves to be sure that they took care of the corporate executives.

51-059 O-86-36 (Pt. 9)

So, when the measure reached the conference committee, the Treasury had in hand a letter addressed to Majority Leader DOLE:

To confirm our discussions regarding the establishment, by Treasury regulation, of a revised safe harbor method of valuing personal flights * * *.

I ask unanimous consent that a copy of that letter be printed at this point in the RECORD.

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

HON. ROBERT DOLE,
Senate Majority Leader,
Washington, DC.

DEAR MR. LEADER: This letter is to confirm our discussions regarding establishment, by Treasury regulation, of a revised safe harbor method of valuing personal flights by employees, their families and their guests on company aircraft.

The safe habor values would be as follows.

Maximum certified takeoff weight of the aircraft	Includible value for a control employee	Includible value for a non-control employee
25,000 lb or more	200 percent of first class.	Safe harbor value for airline parents.
10,001 to 25,000 lb.	150 pecent of first class.	Safe harbor value for airline parents.
6,001 to 10,000 lb	Coach	75 percent of safe harbor value for airline parents.
6,000 lb or less	50 percent of coach.	50 percent of safe harbor value for airline parents.

In approximating first class fare or coach fare, we would use the Standard Industry Fare Level (SIFL) rates or another appropriate method.

The term "control employee" in the content of private employment shall be defined to mean the following:

1. Board-elected or shareholder-elected officers. However, the number of employees who are control employees under this test shall be limited to the lesser of (a) 1 percent of all employees or (b) 10 employees.

2. The top 1% in terms of compensation, based on the prior year. The number of employees who are control employees under this test shall not exceed 25 employees. In addition, no employee earning under $50,000 shall be a control employee under this test.

3. All employees owning an equity interest of 10% or more of the employer, with appropriate attribution rules.

4. Guest and family members of the employees listed above.

In addition, we will, by regulation, create a special rule which applies where 50% or more of the regular passenger seating capacity of that plane as used by the company is occupied by individuals whose flights are primarily for the employer's business and whose flights are thus excludable from income. In such circumstances, a personal flight by an employee, his spouse, or dependent children (generally, as such terms are defined under section 132 of the Code) in any of any of the remaining seats is deemed to have no value. This special rule is not based on general valuation principles but rather on legislative intent. Thus, if other guests of an employee (such as an employee's parent) fly in the remaining seats for personal purposes, the employee would have income. In these situations, if the safe harbor is used, the employee would be taxed at the non-control employee rate. For purposes of determining passenger seating capacity, any seat occupied by the flight crew shall not be counted except when an employee is flying the plane in which case his seat shall be deemed a passenger seat.

We believe this fairly represents our discussions and provides a workable regulatory framework for taxing personal use of company planes.

Sincerely,

RONALD A. PEARLMAN,
Assistant Secretary (Tax Policy).

Mr. METZENBAUM. Now, Mr. President, you have to understand what I am saying. What I am saying is that the chairman of the Finance Committee told this body that there is nothing before us in any report language in the House bill, not in the Senate bill, not in the amendment and it is not in any report language, there is nothing we have done or going to do that has any effect at the moment on the Treasury regulations, and yet the Treasury did not read that part of the remarks of the distinguished chairman of the Finance Committee on the floor. What they did is they acted promptly, so promptly that they had a letter in hand. They were busy with the President's tax revision program, but they had time to get out this letter and that letter indicated:

DEAR MR. LEADER: This letter is to confirm our discussions regarding the establishment, by Treasury regulation, of a revised safe harbor method of valuing personal flights by employees, their families and their guests on company aircraft. The safe harbor values would be as follows:

And then it proceeds to indicate that.

Then the letter goes on to say:

In addition, we will, by regulation, create a special rule which applies where 50 percent or more of the regular passenger seating capacity of that plane as used by the company is occupied by individuals whose flights are primarily for the employer's business and whose flights are thus excludable from income.

I will not read the balance of that paragraph which is included in the letter that I put into the RECORD.

But I will point out that the Treasury Department was so anxious to be accommodating that they actually went even further than the Finance Committee requested.

Under the proposed new regulations, excutives flying on planes weighing more than 25,000 pounds will pay taxes on twice the value of a first-class ticket and on planes weighing between 10,000 and 25,000 pounds 150 percent of a first-class ticket.

In computing the first-class and second-class fares, the IRS will use the standard industry fare-level rates published by the Department of Transportation.

How do these coach rates compare to actual fare-market costs of domestic coach air travel? The Treasury Department was very anxious to be accommodating, and if you look at the facts, you will see that the SIFL rates, the standard industry fare-level rates, would provide that on a New York to Chicago trip that figure would be $129 instead of the actual coach rate of $258. The New York to Miami rate would be $168 instead of the actual fare of $280. And the Chicago-San Francisco rate would be $251 as compared to $398.

Mr. President, I know that my time is getting close to running out, and I know there seems to be no one fighting for the floor. I ask unanimous consent that the Senator from Ohio may be accorded an extra 5 minutes.

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

Mr. METZENBAUM. What does this mean for the corporate executive traveling round trip on vacation trips between Washington and Miami? Instead of paying taxes on $8,150, he or she would pay taxes on $1,128, about one-eighth of the $8,150 figure. In addition the corporation is allowed to deduct its cost for providing this special perk for the executive, a total that in this case would come to $2,679.

So while we are standing here making our speeches about balancing the budget and doing all the press work that we do about balancing the budget, we are making it possible for an executive who may be making $300,000 or $400,000 or $3 million or $4 million, not to pay taxes on $8,150 which is what is provided for under the present law, but only pay taxes on $1,128.

What a great effort on our part to balance the budget.

When we made an effort to find out what this would actually cost, we were not able to determine whether the loss to the Treasury would be $10 million, $25 million, or $100 million.

Let me point out this is just the week after the Senate indicated it was prepared to eliminate 17 programs, cut back on food for people who need food, and cannot put it on their table, cut back on educational benefits, cut back on social security increases, cut back on so many other programs that means so much to so many. The Secretary of Health and Human Resources is even cutting back on research centers for Alzheimer's disease. There are five research facilities and they are cutting it back to three, with total savings of $2 million.

Mr. President, is it really more important to take care of our corporate executives and see that they do not pay fair taxes than it is to have two more research facilities in the area of Alzheimer's disease?

We spend $1 million a year total to research the whole area of child suicide, $1 million total. And yet once every minute a child in this country attempts to commit suicide and once every 90 minutes a child in this country is successful. So $1 million does not sound like much money. But that is all we spend on that area of research.

Maybe if we did not take care of the corporate executives and paid a little more attention to our kids, paid a little more attention to the older people of this country, maybe the people of this country would have a little more respect for Congress. They think that we are a giveaway operation. They think we take care of only those who have lobbyists around Washington. They think that the defense contractors can constantly and consistently rip us off. They think anyone who has some political moxie or political power is able to get away with anything and everything, and unfortunately what they think is 100 percent correct.

This is a raw, raw deal that we are involved in in that committee report.

Mr. President, when I raised this issue on the floor last month, the majority leader was very frank about his position. He stated:

> There are a number of aircraft companies in rather deep recession at this time, including several in Wichita, Kansas, that this Senator has some interest in. They are very concerned about this. They think that without some clarification, the overvaluations required by the regulations can have a potential impact on the entire industry.

I only wish that the Treasury had been as frank and open about its decision to revise the regulations.

On May 3, I delivered a letter to Assistant Secretary Ron Pearlman, asking several questions about the proposed regulations.

I asked for:

First, a detailed explanation of the method by which the IRS determines fair market value for valuing fringe benefits; second, a description of actual out-of-pocket costs of a typical roundtrip flight between Washington and Miami; third, an explanation of why existing regulations do not reflect fair market value; fourth, an explanation of the tax treatment accorded businesses providing aircraft for personal travel to its employees.

I ask unanimous consent that the copy of the letter and the Treasury response be printed at this point in the RECORD.

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

COMMITTEE ON ENERGY
AND NATURAL RESOURCES,
Washington, DC, May 3, 1985.

Hon. RONALD PEARLMAN,
Assistant Secretary, U.S. Department of the Treasury, Washington, DC.

DEAR RON: As part of the Senate-House conference agreement on legislation to repeal the contemporaneous record keeping requirement, you agreed to amend existing regulations to ease the fringe benefit valuation rules for corporate aircraft. I believe that your decision to provide a tax cut for corporate executives who use corporate aircraft for personal use is outrageous. In addition, I believe that your decision is not supported by existing statute or Congressional intent.

Last year as part of the Deficit Reduction Act, Congress terminated the moratorium on fringe benefit regulations and amended Section 61(a) of the Internal Revenue Code to provide that fringe benefits are among the items specifically listed in that section as gross income. According to the "General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984," by the Joint Committee on Taxation, Section 61 was amended "as a clarification that the *fair market value* of any fringe benefit not covered by an express statutory exclusion is included in the recipient's gross income * * *." (emphasis added).

Existing regulations provide that key employees (executives) who use corporate aircraft for personal purposes must impute into income the cost of chartering a similar aircraft. I believe that the charter cost represents a reasonable measure of fair market value for vacation and other personal uses. However, you have announced that the IRS will issue amended regulations that limit the amount imputed to executives to twice the first class fare for the trip. This new regulation means that an executive who takes a round-trip flight from Washington, D.C. to Miami on a Lear Jet will only have to include $1,128 of income, instead of $6,470,00 as provided under existing regulations. If the trip is on a C-90 King Air, the amount imputed is $218 instead of $6,070. And if it is on a smaller aircraft, such as a Beechcraft Baron, the amount imputed will be $109 instead of $3,110. These examples clearly indicate that the new regulations will provide a substantial tax cut for corporate executives who use their company's private aircraft.

Please provide me with:

(1) a detailed explanation of the method by which the IRS has determined the fair market value of personal trips taken by executives on their company's planes, and a detailed description of the methodology used by the Treasury in valuating other fringe benefits.

(2) a description of the actual out-of-pocket costs (fuel, landing charges, pilot wages, etc.) that are incurred in a typical round-trip flight from Washington to Miami;

(3) a description of what has transpired in terms of statutory changes or information brought to the Department's attention that leads you to believe that existing regulations do not properly measure the value of flights taken by executives, and why your proposed regulations will reflect the accurate fair market value;

(4) an explanation of the tax treatment accorded a company that provides an aircraft for the personal use of an executive—specifically I want to know whether a company will ever be entitled to deductions that exceed the amount the executive must include in income; and

(5) a detailed description of the legislative history of the 1984 tax bill that leads you to the conclusion that the proposed regulations conform to congressional intent.

Because the conference report on H.R. 1869 will reach the Senate floor next week, I would appreciate receiving a response to my questions by the close of business on Monday, May 6.

Sincerely,

HOWARD M. METZENBAUM,
U.S. Senator.

DEPARTMENT OF THE TREASURY,
Washington, DC, May 9, 1985.

Hon. HOWARD M. METZENBAUM,
U.S. Senate,
Washington, DC.

DEAR SENATOR METZENBAUM: I received your letter of May 3, 1985, regarding the valuation of personal flights on company aircraft. I welcome this opportunity to respond to your concerns about our decision to revise the safe harbor values for such flights.

Your letter questions the appropriateness of the planned revision to the safe harbor values as applied to executives who use the company airplane for personal purposes. Under the planned revisions (which are not addressed in the pending legislation), all employees, including executives, would be able to use a safe harbor method of valuing a personal flight on a company aircraft. Under the safe harbor, aircraft are divided into 4 classes with different safe harbor values. For example, the value of a flight by a control employee (a term which includes certain executives) on an aircraft weighing more than 25,000 pounds would generally be double the first class fare for a trip of that distance on a commercial airline.

The legislative history of the Tax Reform Act of 1984 provides Treasury with the power to "issue regulations setting forth appropriate and helpful rules for the valuation of taxable fringe benefits." House Report 98-432, at 1609. Pursuant to this legislative history, on January 2, 1985, the Treasury Department issued regulations which, in addition to articulating certain general rules for valuing fringe benefits, established safe harbor valuations for the availability of an employer-provided automobile, for the use of an employer-provided automobile for commuting, for a flight on an employer-provided airplane, and for a free or discounted flight on a commercial airline. The purpose of these safe harbors was to make the taxation of fringe benefits more certain and administrable. Instead of determining fair market value based on all the facts and circumstances, taxpayers could simply use these safe harbor values. Such use would relieve both taxpayers and the Internal Revenue Service of a significant administrative burden and reduce tax controversies. We believe that administrative simplicity is very important in the taxation of fringe benefits; much of the past failure by taxpayers to report fringe benefits can be attributed to uncertainties regarding valuation.

For the safe harbors to be effective, the values should not exceed a value perceived as fair by taxpayers. If the safe harbor values are set too high, the safe harbors will not be used and thus will not accomplish the purpose for which they were established, namely, reduction of the administrative burden. Determination of a value perceived as fair cannot, of course, be accomplished with any degree of certainty. Nevertheless, in establishing our safe harbors, that is what we have attempted to do based in part on extensive review of public comments.

The company aircraft safe harbors are based on the price of commercial airline seats. Since the overwhelming majority of air travel is by commercial airline, this is an appropriate reference for establishing safe harbor values for similar air travel on company aircraft. The use of a double first class safe harbor value for control employees flying on the largest aircraft reflects a substantial premium for the convenience of a

company aircraft. At the same time, we believe that this value will be perceived as fair by taxpayers.

We do not suggest that outside the safe harbors a value based on charter costs would be inappropriate. Where the value of a personal flight on a company aircraft is determined outside of the safe harbors, all the facts and circumstances must be considered and, in certain instances, a value based on charter could be appropriate.

I appreciate this opportunity to share my views with you.

Sincerely,

RONALD A. PEARLMAN,
ASSISTANT SECRETARY
(Tax Policy).

Mr. METZENBAUM. Mr. President, Treasury has refused to answer any of these questions.

In his response, Secretary Pearlman wrote:

For the safe harbors to be effective, the value should not exceed a value perceived as fair by taxpayers.

We do not suggest that outside the safe harbors a value based on charter costs would be inappropriate.

Imagine, if all taxpayers were given the opportunity to decide what is fair and what is not and then to pay only what he or she thinks is fair—would that not be wonderful? And would it not have an unbelievable negative impact upon the budget?

I venture to guess that our budget deficits would be even higher than they are today.

It is outrageous that the Treasury Department has turned over the regulation writing process to those who are supposed to pay the tax.

Here we have a tax cut, a tax cut going not to middle-income people, not to poor people, but going to some of this country's most privileged corporate executives.

As a matter of fact, I am told that some corporate executives have been heard from and even they have said, "It is a stupid act on the part of the Treasury and we cannot understand why the Finance Committee of the Senate took the action that they did."

What kind of brains gives away Treasury dollars to the people who have the highest salaries in the country? There is no statutory language before us. There is not conference report language. There has been no legislative action whatsoever. And when a Member of the U.S. Senate attempts to ask the administration to explain its actions and to provide factual data, what happens? The Treasury Department refuses to answer the question and says, "We are too busy to give you those answers. We are working on the President's tax programs."

Mr. President, we hear a lot about budget deficits. We hear a lot about tax reform. We hear a lot about tax fairness and tax simplification. It is easy to talk about these objectives in glowing terms. It is as American as baseball and apple pie.

But when it comes time to act to achieve these objectives, it is a different story. We ought to be ashamed of ourselves and the Treasury Department ought to be doubly ashamed. The Treasury Department, on one hand, is preparing to release a tax reform package that is supposed to make our tax laws fair and simple. On the other hand, it is promulgating new regulations to provide tax cuts for the wealthy.

Mr. President, I do not blame any particular Member of this Congress. I blame all of us. I do not blame my friend from Kansas, the majority leader, for wanting to help Kansas companies. I do not blame the chairman of the Finance Committee. I do not criticize those who opposed my earlier amendment to prevent corporate executives from gaining this tax concession. I blame all of us.

We ought to face up to the realities of what we are doing and quit kidding the American people. We ought to go public and say, "Yes, today we took care of corporate executives in this country in this whole conference committee report which is going to cost the Federal Treasury $107 million over a 3-year period." Why? Because nobody wanted to keep written records.

But as soon as the recordkeeping issue came before Congress there were Members of this body that wanted to go further. Everybody wants to make speeches about balancing the budget, but everybody also wants to take care of the privileged few in this country.

I do not believe it does much for the public perception of how we legislate when back-room deals are struck for the benefit of the privileged few. And I think there is no excuse whatsoever for refusal by the Treasury Department to take responsibility for its own actions and to answer inquiries from a Member of Congress.

Mr. President, what I am saying I know will not change reality. It is not going to change the facts. It is not going to cause Treasury to do that which they should do. And it is not going to cause the Finance Committee of the U.S. Senate to repent and to look at themselves in the mirror and to say, "Why did we really do this? What earthly reason could we have had for doing it?"

None of that is going to occur, but the Senator from Ohio is going to feel a little bit better, at least, that he raised the issue on the floor of the Senate.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBUAM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HEINZ. Mr. President, I would like to clarify a question I have in regard to the contemporaneous recordkeeping, H.R. 1869, and conference report. The bill listed types of vehicles that were exempted from the substantiation rules and from treatment as a taxable fringe benefit.

First, I want to clarify that this list was not meant to be all inclusive, and that Treasury has the authority to expand this list.

In addition, I want to inquire if Treasury has the authority to include certain pickup trucks and vans in the list of vehicles not susceptible to personal use and excluded from income tax if it is shown that the design, such as permanent shelving or heavy equipment that cannot easily be removed, makes the particular vehicle not susceptible to personal use.

Mr. PACKWOOD. The answer to both of the Senator's questions is yes. The list included in the conference report was not intended to be all inclusive—Treasury definitely has the authority to expand the list.

This is a facts and circumstances test and you have listed some of the relevant facts that Treasury should consider.

Mr. HEINZ. I thank the Senator from Oregon for his forthright and helpful answers to my questions.

Mr. D'AMATO. Mr. President, I rise today in support of the conference report on H.R. 1869, which repeals the ridiculous contemporaneous recordkeeping under which we are currently operating. These IRS regulations are imposing a tremendous burden on America's businesses.

These rules required that the use of cars, trucks, airplanes, personal computers, and even photographic equipment be recorded contemporaneously in a log. These onerous regulations were mandated by the Deficit Reduction Act of 1984, which I opposed.

Such contemporaneous recordkeeping imposes a massive burden on businesses and is a gross intrusion by the IRS into even the smallest economic transaction. As a result, there has been a great outcry against the IRS regulations. Legislation was introduced, which I was proud to cosponsor, to repeal the logging requirements. This bill, S. 245, required that the recordkeeping regulations be completely repealed. I am pleased that the Senate Finance Committee took quick action on this vital legislation.

The bill before us today would repeal contemporaneous recordkeeping for cars, trucks, airplanes, photographic equipment, personal comput-

ers, emergency vehicles, and unmarked police cars. The conferees were careful to require that adequate records on the use of business vehicles still be kept for tax purposes. However, these records need not be kept contemporaneously. By crafting the legislation in this manner, honest taxpayers can get on with the business of doing business. By requiring adequate records a loophole is not created allowing dishonest individuals to abuse the Tax Code.

Mr. President, I am proud to support H.R. 1869 and I urge my colleagues to join me in voting for this vital legislation.

Mr. ANDREWS. Mr. President, I rise in support of the conference report to repeal these onerous recordkeeping requirements.

It is rare that a Federal regulation should cause such an overwhelmingly negative public response as the regulations we are repealing today. Naturally, no one wants to spend their time detailing minutiae or business transportation when the Federal tax law could be fairly appealed in a broader manner. But in this case, the issue is far more serious than merely keeping business records. I believe that this law represented a breach of faith by the Government.

If there is a line to be crossed where the Government no longer serves the best interests of the people, we have just seen it crossed. This is why we have repealed these rules by such a lopsided vote. But it was not simply these specific rules. It was these rules on top of hundreds of other intrusions into the daily lives of average Americans. It is small business men and women filling out form after form so that they must devote 18 hours a day to their business just to stay above water. It is middle income Americans who must hire someone else at tax time to understand how to avoid paying more than their fair share of taxes. It is the American farmer who gets told when to plant, what to plant, where to sell, and to whom to sell in order for that farmer to make a decent livelihood. In short, in the spirit of this repeal bill, we must also use the moment to consider other ways to get the Government off the backs of the American people.

Mr. ABDNOR. Mr. President, today the Senate is taking final legislative action on legislation to repeal the ridiculous IRS rules which require detailed mileage logs for business vehicles. Since the opening day of Congress, I've been fighting to abolish these rules and solve what has been a 6-month-long paperwork nightmare for millions of ordinary Americans. I'm pleased that we are finally sending this bill to the President and that the nightmare will soon be over.

Although it was my bill which passed the Senate by a 92-to-1 vote, I was not a member of the conference committee since I'm not a member of the Finance Committee. However, I would like to commend the Senate conferees for their wisdom in refusing to accept a catch-22 provision included in the House version of this legislation. By including a reference to written evidence, the House bill would have permitted the IRS to again impose burdensome recordkeeping requirements.

It's ironic that in a bill which was supposed to get rid of this bureaucratic boondoggle, the House wanted to include a provision permitting the IRS to impose the same ridiculous requirements all over again. A move like that doesn't make much sense unless you're more interested in playing politics than solving this massive paperwork burden. The Senate conferees are to be commended for holding the line against the House provision.

The Government seems to forget that farmers, ranchers and businessmen have more important things to do than needless paperwork. For months now, they've been tied down to their odometers. It's time we unleash them so they can get on with more important and productive work. I've received literally hundreds of letters from South Dakotans who have been attempting to keep detailed logs. If they were honest in their recordkeeping, they just weren't getting their work done. It is not unusual for a day's log on a single vehicle to cover an entire legal size page with upwards of 20 detailed entries.

I am disappointed, however, that the final version of this bill went even further than the House in reducing limits for investment tax credits and depreciation on business vehicles. While I'm all for going after those who take abusive tax deductions on luxury-type cars, I'm afraid this provision is going to amount to a tax hike on many small business men and farmers. I had made it a point to keep hidden tax increases out of my bill.

While I may not be entirely satisfied with this legislation, the important thing is that we've gotten the Federal bureaucracy off the backs of millions of honest, hard-working Americans. At a time when the Federal bureaucratic monster seems out of control, it is encouraging to see that it is possible to rein it in. I am proud to have been able to play an instrumental role, and I hope this action will serve as an impetus for other needed regulatory reforms.

Mrs. HAWKINS. Mr. President, I am pleased to rise in support of this conference report to repeal the contemporaneous recordkeeping requirements imposed on American businesses when the deficit reduction package was passed last year.

Everyone in this Chamber is very much aware of the severe problems this requirement created for businesses who work in a fast-paced environment and were losing thousands of dollars and valuable time each week because of this draconian requirement. One Florida businessman reported that his company estimated that each employee was losing at least 1 hour per day to complete the required information for their records.

As a Member of this body, I want to work to encourage efficiency and productivity in the marketplace, not stifle it. Efforts should be made to clamp down on those who cheat this country by evading their tax liability. However, stringent rules that broadly sweep across every sector of the population and impose severe burdens on honest taxpayers is not the answer. The result of the contemporaneous requirements was simply to frustrate taxpayers and, therefore, almost encouraged additional noncompliance out of that frustration.

The outcry for relief in my State came from the farming community, the real estate industry, every type of small business, bankers, and others. Essentially, it came from honest, hard-working Floridians who were outraged that the Government would deprive them of valuable work time to excessively substantiate legitimate and lawful business deductions.

Mr. President, the businesses of our communities are waiting for final passage of this legislation. I am grateful to the Finance Committee members for their expedient action and I urge each of my colleagues today to support this conference report so that we can finally put this onerous requirement to rest.

● Mr. NICKLES. Mr. President. The passing of the conference report for H.R. 1869, which repeals the so-called automobile log rule, ends one of the most punitive tax laws ever imposed. As an original cosponsor of the legislation to repeal this, I am glad to see this long road come to an end. I have already spoken several times on this subject before the Senate; therefore, my remarks will be brief.

There are thousands upon thousands of Oklahomans who will be relieved that this rule no longer exists. It was clear that this requirement was too broad and imposed excessive recordkeeping on the taxpayer. Comments from businesses and individuals while the rule was in effect showed that the cost of taxpayer compliance in both time and money far outweighed any added revenue benefit to the Federal Treasury.

Mr. President, I urge my colleagues, and I know they will, to support the conference report which repeals the auto log rule.●

Mr. DOLE. Mr. President, this Senator strongly recommends that the Senate agree to the conference report

on H.R. 1869. It represents a responsible compromise between compliance and complexity and does so in a revenue-neutral fashion.

The conference report repeals the requirement that taxpayers keep contemporaneous records and also follows the Senate position that written records will not be necessary to corroborate a taxpayer's position that a deduction is justified, although some evidence in addition to the taxpayer's own statement will still be required.

The conference report also exempts from the otherwise applicable substantiation rules certain vehicles which have been of particular concern to a number of Members. Among these are schoolbuses, certain police, fire vehicles, and specialized utility repair trucks other than pickups and vans.

On a related issue, this Senator is particularly pleased that the Treasury Department decided that it would revise its regulations concerning the value of personal travel on corporate aircraft. This has made unnecessary any further legislative action.

In his letter to me explaining the regulatory changes Treasury would adopt, Assistant Secretary Pearlman outlined guidelines which follow the conceptual framework of the Finance Committee report language and provide a fair valuation for personal travel on company aircraft.

Perhaps the most important change is that the amount included in an employee's income will depend upon the type of plane as well as on whether the plane is carrying a substantial number of persons flying for business reasons. The original version of the Treasury regulations did not distinguish between a flight on the most luxurious corporate jet and a four seat, single-engine plane with a maximum speed of barely a hundred miles per hour. That certainly made no sense in the real world.

A second important change is that the revised regulations will treat corporate hitchhikers in a manner similar to airline employees. If half the passenger seats on a company plane are occupied by employees traveling primarily for business, then no amount will be includable in the income of an employee who hitchhikes for personal reasons. This rule, like the rule applicable to airline employees, applies to active and retired employees, as well as their spouses and dependent children.

I should clarify one point. The seats that should be counted in determining whether half the seats are occupied are passenger seats and pilot seats if a nonprofessional pilot employee, such as the company president, flies the plane. However, if the company employs a professional pilot to fly the plane, his seat is not counted for these purposes.

The changes outlined by Assistant Secretary Pearlman differ from the Finance Committee report language in certain areas. First, the regulations set a higher value for personal flights on aircraft weighing over 10,000 pounds if the employee is of a class likely to be able to control the aircraft's destination and time of departure. For planes between 10,000 and 25,000 pounds, the amount imputed to an employee who takes a personal trip is one and a half times first class commercial fare. For personal travel on aircraft over 25,000 pounds, the amount to be included in income is twice first class fare.

The over 10,000 pound classes include all corporate jets and the largest turbo-props. The over 25,000 pound class includes the largest corporate jets, those that are most like commercial airliners.

The valuations have been criticized as too high by some members of the corporate community and have been criticized as too low by some individuals. I guess that means that we have a good compromise.

However, I would like to point out that the economic impact of a rule requiring inclusion in income at twice first class is the same for a corporate executive in the 50-percent bracket as if he had used his after-tax income to purchase a first-class ticket. It seems to me that placing corporate executives in the same position, whether they use a large corporate jet or fly first class on a large commercial jet, makes a lot of sense.

I understand that some might argue that the correct valuation should be charter or some other higher value, but I would venture that most people would think that first class is a sufficient amount to exact for a flight on a large corporate jet. The last point is important from a compliance standpoint. Undoubtedly, there is use of company aircraft for personal trips. If we were to force these trips to be valued at the highest conceivable value, we would simply cause individuals to go to greater lengths to find some arguable business purpose for the trip or, simply to play the audit lottery and not report the income without even making an effort to document a business purpose. On the other hand, if we impose a fair and reasonable value for these trips, employees will be more likely to report their income accurately to avoid any question if they are subsequently audited.

From comments I have received, these rules may have the impact of reducing the number of trips where a corporate executive's spouse accompanies him/her on a business trip. The reason for this is that the spouse would cause a control employee to have an income inclusion of up to twice first class unless at least half the passenger seats are occupied by business travelers. I can understand that some would prefer that the IRS look only to seats actually occupied, rather than seating capacity, but I can also see Treasury's position that they wanted a strict, objective test as to whether the flight was primarily for business purposes, and that it is more difficult to be sure that the primary purpose of the trip is business when only one of two passengers is arguably flying for business and most of the passenger seats are empty.

The other major difference between the proposed regulatory changes and the Finance Committee report language is the definition of control employee. The Finance Committee language suggested a facts and circumstances test—did the employee, in fact control the destination or departure times of the aircraft? The Treasury approach, once again, is to provide an objective test.

A select few elected officers, highly compensated employees, and shareholder employees will be deemed to have control over the use of the corporate aircraft. They will thus be subject to income inclusion of up to twice first class, depending on the weight of the aircraft. Of course, if half the pasenger seats are occupied by employees traveling primarily for business, even those control employees will be treated the same as airline employees and have no income inclusion.

Mr. President, the new aircraft fringe benefit rules are a reasonable compromise. They are fair both to the Treasury and to employees. They address the empty seat problem and provide adequate, but not punitive, valuations for employee travel that ought to improve compliance.

Mr. President, I yield back the remainder of the time on this side.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, it is my hope now that those who have an interest in the following bills would indicate a willingness to take up those bills: Calendar No. 47, S. 408, Small Business authorization; Calendar No. 111, H.R. 47, the coin bill; Calendar No. 131, S. 124, safe drinking water; Executive Calendar nomination of Vernon Walters; Executive Calendar nomination of Richard Hughes; and we are looking for other Legislative or

Executive Calendar items that we can clear for action.

It may be that the prime candidate of the ones referred to would be Calendar No. 111, H.R. 47, the coin bill. There is considerable interest on both sides in bringing that to the floor. I would just indicate that we are prepared to do that. I hope those who have an interest in that legislation would indicate to me or the distinguished minority leader if they have problems or if they are prepared to move on that legislation.

Mr. METZENBAUM. Mr. President, will the distinguished majority leader be good enough to give us some advice as to whether he intends to work on Friday?

Mr. DOLE. Mr. President, it is my understanding that the defense bill will be laid down. There will be opening statements. I am not certain whether or not there will be amendments, but I should have that information no later than 3:30 today.

Mr. METZENBAUM. I thank the Senator.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

RECESS UNTIL 1:15 P.M.

Mr. DOLE. Mr. President, we are trying to see what we can schedule in about an hour from now. Until I am certain, it seems to me the best course to follow would be to stand in recess until the hour of 1:15 p.m. Therefore, I ask unanimous consent that the Senate stand in recess until 1:15 p.m.

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

Thereupon, at 12:17 p.m., the Senate recessed until 1:15 p.m.; whereupon the Senate reassembled when called to order by the Presiding Officer [Mr. MATTINGLY].

The PRESIDING OFFICER. The Chair in his capacity as a Senator from Georgia suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ROUTINE MORNING BUSINESS

Mr. MATTINGLY. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business under the same terms and conditions as previously ordered.

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

Mr. MATTINGLY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BYRD. Mr. President, I have cleared this request with the distinguished majority leader. I ask unanimous consent that I may speak for as long as I require during morning business.

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

Mr. BYRD. May I say that if any Senator wishes to have the floor, I will be very glad to yield to him or her.

THE UNITED STATES SENATEI63

THE SENATE AND THE SECOND WORLD WAR, 1941-1945

Mr. BYRD. Mr. President, those interested in the history of the United States Senate can always find rewarding information in the *Congressional Directory,* that great catch-all of congressional facts and figures. I call your attention to the "Statistical" section, which among other things lists the number of days that every session of Congress lasted, going back to the First Congress in 1789. That first session lasted for 210 days, and second session for 221 days, both surprisingly high. Their length reflected the problems of inaugurating a new government, and perhaps also the practice of paying members of Congress for the number of days they served, rather than by the year. After the First Congress the length of each session declined. Generally, during each two-year Congess, there were two sessions. The "long session" lasted between 150 and 200 days, and the "short session" between 50 and 90 days. thus, nineteenth century senators and representatives often spent less than half their time in Washington—a practice which many of our members today may look back upon wistfully.

Not until the first session of the 31st Congress, from 1849 to 1850, did a session of Congess extend longer than 300 days. This was the time when Congress debated the great issues leading to the Compromise of 1850, about which I have spoken earlier. Only four times between 1850 and 1940 did a session of Congress last longer than 300 days. But all of that changed with the third session of the 76th Congress, which ran from January 3, 1940 to January 3, 1941, or 366 days—it being a leap year. Since then, year-round sessions have become commonplace in the congressional routine.[1]

The 76th and 77th Congresses were great pivotal points in our history, as both this institution and the Nation as a whole plunged into the maelstrom of world war and took on the responsibilities of world leadership. In my last address in this continuing series on the history of the United States Senate I discussed the "great debate" over foreign policy between the so-called isolationists and internationalists. Although the isolationists had predominated during the two decades following the Senate's rejection of the treaty of Versailles, world events began to erode their position, and public opinion began to shift away from them. During 1940 and 1941 Congress enacted such critical legislation as the extension of the Selective Service Act and Lend Lease. But the debate raged on until Sunday morning, December 7, 1941, when the Japanese attack on Pearl Harbor brought the Congress, the presidency, and the Nation together as one.

Ten minutes after noon on Monday, December 8, the Senate marched in procession to the House chamber to hear President Franklin Roosevelt deliver a stirring and eloquent war message. "No matter how long it may take us to overcome this premeditated invasion," said the president, "the American people in their righteous might will win through to absolute victory. . . . Hostilities exist. There is no blinking at the fact that our people, our territory, and our interests are in grave danger . . . I ask that the Congress declare that, since the unprovoked and dastardly attack by Japan on Sunday, December 7, a state of war has existed between the United States and the Japanese Empire." Immediately following the president's address, the Senate returned to its chamber, where Tom Connally of Texas, chairman of the Foreign Relations Committee, introduced a joint resolution declaring war. Connally called for the yeas and nays, but Senator Arthur Vandenberg (R-MI) rose to speak. Connally tried to hold him off. "Mr. President, those of us on this side of the chamber are withholding remarks," said Connally. "I was hoping that there would be no comment." But Vandenberg persisted, and Connally gruffly observed that "of course, the senator has a right to speak if he insists." [2]

One can imagine the scene as the Michigan senator began to speak. All eyes in the crowded chamber were focused upon this leading spokesman for

[1] Footnotes at end of article.

isolationism. Everyone quieted to hear his words. Since four o'clock on the previous afternoon, when he received a telephone call at his Washington apartment telling him of the Japanese attack, Vandenberg had been preparing this speech. The news profoundly affected the senator and changed his perceptions of international cooperation and collective security. "That day ended isolationism," he later commented.[3] Now on the Senate floor, after denouncing the Japanese attack and declaring the American people united in defense of their Nation, he said:

> Mr. President, I am constrained to make this brief statement on my own account, lest there be any lingering misapprehension in any furtive mind that previous internal disagreements regarding the wisdom of our policies may encourage the despicable hope that we may weaken from within. I have fought every trend which I thought would lead to needless war; but when war comes to us—and particularly when it comes like a thug in the night—I stand with my Commander in Chief for the swiftest and most invincible reply of which our total strength may be capable.[4]

The Senate then voted unanimously for the war resolution. (In the House, one lone vote was cast against the resolution, and that by Representative Jeanette Rankin of Montana, who had also voted against American entry into World War I, and who end her long career as a pacifist in opposition to the Vietnam war.) With that vote, and with Vandenberg's pronouncement, the isolationists' influence in the Senate evaporated. Their trust in an invulnerable "fortress America," protected by two oceans, as Senator William E. Borah and others had reiterated, had been proven misplaced.

Some isolationists had not yet gotten the message. On December 11, Senator Charles Tobey (R-NH) complained in the Senate that exact American losses at Pearl Harbor were still unknown, and demanded a congressional investigation. Senator Scott Lucas (D-IL) furiously lashed into the isolationist. "I say to the senator from New Hampshire, in so far as negligence is concerned, look at your own record from the standpoint of national defense." [5]

Attention, of course, was no longer focused on the issue of isolationism versus internationalism. What mattered now was winning the war, and the Senate quickly began to address the problem, passing War Powers acts in December 1941 and March 1942 that granted vast discretionary powers to President Roosevelt. The president could create and abolish war agencies, control foreign commerce, ration goods, and enforce priorities. The president could also order government seizure of private property if needed for the war effort. Instrumental in passing these bills, and other critical wartime legislation was the Democratic majority leader, Alben Barkley of Kentucky.

Mr. President, an imposing marble bust of Alben Barkley stands immediately outside of the center entrance to this chamber, and it most appropriately occupies that prominent place. Many politicians claimed to have been born in a log cabin, but Barkley really was, on his father's tobacco farm in Kentucky in 1877. As a young man he worked as a janitor to earn his way through Marvin College and then he attended Emory University and the University of Virginia Law School. Returning to Kentucky, Barkley practiced law in Paducah, and campaigned on horseback in the hills of McCracken County for the office of prosecuting attorney. He then served as a county circuit court judge, before his election to the United States House of Representatives in 1912. In Congress, he won a reputation as "a regular among regulars, a party workhorse of the old school." He supported the administration of Woodrow Wilson and took a leading part in the passage of Wilson's "New Freedom" legislation. In 1926, he sponsored the Howell-Barkley Act, which set up the Federal Board of Mediation and Conciliation for labor disputes. That same year he was elected to the United States Senate.

"A good story," Barkley liked to say, "is like fine Kentucky bourbon. It improves with age and, if you don't use it too much, it will never hurt anyone." Senator Barkley, with his booming baritone and endless repertoire of anecdotes, quickly became a popular member of the Senate. In 1932, Barkley was called upon to deliver the keynote speech at the Democratic convention, an honor which was repeated again and again during his long career, attesting to his rousing speech-making ability. At that convention, Barkley was also the first of the favorite son candidates to withdraw his name in favor of Franklin D. Roosevelt. This marked the start of a long and close relationship between the two men.

In 1937, following the death of Senate majority leader Joseph Robinson, President Roosevelt sent a letter addressed to "Dear Alben" encouraging Barkley to take up Robinson's fight for the controversial Supreme Court "packing" plan, and, by implication, to take over as majority leader. Roosevelt's endorsement helped Barkley win the Democratic leadership post by a narrow one-vote victory over Mississippi Senator Pat Harrison. It was a costly victory for Barkley, however, and for some years he was looked upon more as Roosevelt's messenger to the Senate than as a true leader in his own right. Nevertheless, during his early years as majority leader, Barkley effectively marshalled support for Roosevelt's program. He helped lead the fights to repeal the Neutrality Act and the Arms Embargo Act, and to extend the reciprocal trade agreements acts. In January 1941, he was Senate sponsor of the Lend Lease Act and maneuvered it skillfully around numerous crippling amendments. With the war came even greater assignments.[6]

Senator Barkley and Senator Prentiss Brown of Michigan took the lead in sponsoring price control and anti-inflation legislation, both of which demonstrated Congress' need to focus on domestic issues, not in spite of, but because of the war effort. Although Congress had delegated vast powers to the president in the two War Powers acts, it did not concede to the administration the sole power to run the war and the wartime economy. Roland Young, in his study of *Congressional Politics in the Second World War*, points out how Congress repeatedly attempted to influence wartime policies. "Congress was perhaps less concerned with broad principles of administrative organization," Professor Young wrote, "than with the manner in which the economic position of certain groups and commodities was being affected by the war." With the federal goverment attempting to regulate, and even dictate American production, many groups turned to Congress for help. For example, there were the farmers who needed more agricultural equipment, and the small businesses that feared they would not get a fair allocation of raw materials and supplies. In 1942, after a Senate committee reported that small businesses faced "bankruptcy and chaos along a wide front," Congress set up a Smaller War Plants Corporation to oversee their needs. Congress also passed legislation to provide loans to automobile dealers, who faced ruin as the automobile industry converted from producing passenger cars to making tanks and war planes.[7]

Another domestic issue which the Senate faced, but did not resolve, was the poll tax. It may seem strange that as the Nation faced war across both the Atlantic and Pacific, the Senate should be debating the poll taxes that were charged in seven Southern states. But the Roosevelt administration and many liberal Democrats and Republicans believed it was contradictory to fight a war for democracy abroad while denying it to some people at home. The poll taxes, which amounted to about $1.50, discriminated against poor white and black voters in these states. In October 1942, the House passed an anti-poll tax bill, and on November 13, 1942, Majority Leader Barkley brought the bill before the Senate with an undebatable motion for its immediate consideration. In response to his outraged Southern colleagues, Barkley explained that he followed the precepts of Thomas Jefferson and believed in equality for all

people. Despite Barkley's attempts to stave off a Southern filibuster, one began over the parliamentary question as to whether the Judiciary Committee had a quorum present when it reported the bill. One senator had been absent and voted by proxy [8] —which, of course, would be a violation of the rules today which require that a quorum of the Senators on a committee be present at the moment that it reports a bill or other matter from the committee.

Those engaged in the filibuster, led by Mississippi's Senator Theodore Bilbo, encouraged senators to go home so that an adjournment could be forced in the absence of a quorum. Senator Barkley, however, instructed the sergeant-at-arms to "arrest" those senators who were still in the city, but had absented themselves from the floor.

Incidentally, Mr. President, I am the last majority leader to have offered a motion to have Senators arrested and brought into the Chamber for the purpose of establishing a quorum. In that instance, Mr. Mansfield, who was then majority leader, was in the Far East. I, as the assistant majority leader, was acting leader at that time. Almost immediately after passage of that motion, Senators began coming in the doors and answering to their names. As a matter of fact, no Senator had to be arrested but those who were outside resting on the couches on that particular night found it convenient to come into the Senate quickly and answer to their names.

At that time, J. Mark Trice (who later became secretary of the Senate) was the deputy sergeant-at-arms, and to Mr. Trice fell the unpleasant duty of "arresting" the Senate's president pro tempore, the doughty Senator Kenneth McKellar of Tennessee. What follows was delightfully recorded by Richard Riedel, who worked in the Senate press gallery and who published this account in his memoir, *Halls of the Mighty, My 47 Years at the Senate*:

> Senate Majority Leader Alben Barkley was determined to get a quorum come what may. "Do you mean Senator McKellar, too?" asked Mark /Trice/. "I mean *everyone*!" answered Barkley. With more than a few misgivings, Mark
>
> —whom we all, in my early days in the Senate, knew very well and respected very much—
>
> set out for the Mayflower Hotel to seek the volatile bachelor from Tennessee. When Senator McKellar did not answer the house telephone, Mark enlisted the aid of a hotel official who suggested they get a maid to knock on the door. Obviously the hotel man knew McKellar well! The senator opened the door at the maid's request to discover Mark Trice outside. McKellar welcomed him and seemed surprised to learn that he was needed at the Senate. Though Mark carried a subpoena in his pocket, it never became necessary to mention it.
>
> The old senator came along in a friendly spirit, chatting with Mark as though they were on a normal trip together. Then suddenly, as the car climbed Capitol Hill, the light in the dome made McKellar put two and two together. He realized that he was about to help the leadership to get a quorum that would foil his fellow Southerners. He stopped talking to Mark. His face grew redder and redder. By the time the car reached the Senate entrance, McKellar shot out and barrelled through the corridors to find the source of his summons to the Capitol in the middle of the night. He was so mad at Barkley that he would not speak to him for months, though as senior Democrat, Senator McKellar sat beside the majority leader in the front row.[9]

As the little story illustrates, Mr. President, majority leaders often stand in the kitchen and feel the heat! Senator Barkley—and Mr. Trice, I might add—both made their amends with Senator McKellar, after he had cooled down a bit, some fifteen months later—and how that occurred I will mention later in this address. Ultimately, Barkley proved unsuccessful in the poll-tax fight, as he could not persuade the Senate to vote cloture against the filibuster. It was not until 1964 that the 24th amendment to the Constitution was ratified, prohibiting the charging of a poll tax in presidential or congressional elections.

Senator Barkley's strength as majority leader, as his biographer, Polly Ann Davis, has noted, was his ability to compromise. "All legislation is a matter of compromise," Barkley once wrote. "I never liked that word 'compromise' because it has a connotation that is not really fair. But I mean by it that all legislation must be by the process of adjustment." A majority leader is never guaranteed a majority of votes, but must build a majority, issue by issue, vote by vote. Senator Barkley succeeded in building majorities because "he had an uncanny sense of the possible, knowing when to be adamant on a point and when to yield." He excelled in cloakroom maneuvering and in face-to-face dealings with other senators. He had a reputation for keeping his word.[10]

And by the way, having served in this body now for going on 27 years, I have found that to be an absolute cardinal principle here. If one breaks his word once, he may never be fully believed again. It is like the old poem about the bird with the broken pinion: It never flies as high again.

The Democrats held their majorities in both houses after the elections of 1942, although by reduced margins. When Senator Barkley returned to Washington for the start of the new Congress in January 1943, he found his leadership challenged in the Democratic Conference by a still angry Senator Kenneth McKellar. The first question concerned the election of a secretary. Senator Josh Lee had been defeated in the recent election, and to replace him as conference secretary, Barkley nominated Senator Monrad Wallgren of Washington. Senator McKellar nominated Senator Francis Maloney of Connecticut. By a secret ballot, McKellar's candidate won by a vote of 31 to 22. Senator Joseph O'Mahoney of Wyoming then moved that the chairman of the conference—that is, Majority Leader Barkley—assign members to fill the vacancies on the Democratic Steering Committee. Senator McKellar moved that the members of the conference as a whole should vote to fill the vacancies. Here Barkley drew the line. He reminded his Democratic colleagues that filling vacancies on the Steering Committee had always been the prerogative of the majority leader—and by the way, it still is—and announced that he would resign immediately as leader if he were stripped of this power. This brought the McKellar revolt to a halt. Again by a secret ballot, the Democrats defeated McKellar's motion by a vote of 33 to 20 (Senator Maloney, the new secretary, had left the room before the vote was taken).[11]

Back in the saddle, Alben Barkley continued pressing the president's program. He fought against the Smith-Connally Anti-Strike bill, which made it illegal to strike against a plant that had been seized by the government. The bill passed and was vetoed by President Roosevelt, but was eventually enacted over the president's veto. No matter what the issue, Barkley was there—at the desk from which I speak now—fighting the good fight for the president's program. Reporter Allen Drury, who came to cover the Senate in November 1943, and who has left us a fascinating diary of those years (*A Senate Journal, 1943-1945*, a worthy companion to his popular novel *Advise and Consent*), looked down at Barkley from the galleries and described him as acting "like a man who is working awfully hard and awfully earnestly at a job he doesn't particularly like. Sweat almost visibly stands out at times on the man the president once addressed as 'Dear Alben.' "[12]

Few would have suspected that a fissure was about to open between President Roosevelt and his loyal lieutenant, but a mighty one was in the making. In his State of the Union message in January 1944, the president requested a ten billion dollar tax bill to pay for the war. The Senate Finance Committee produced instead a two billion dollar tax bill. Senator Barkley had been a member of the Finance Committee, and while not entirely satisfied with the bill, concluded that it was the best that could be gotten at that time. In two meetings with President Roosevelt, Barkley strongly urged him not to veto the tax bill. After meeting with the seemingly unmovable president, a glum Barkley

rode back to the Capitol with Vice President Henry Wallace. "What's the use?" Barkley complained. "I can't get the votes in the Senate under the methods that are being followed." Wallace noted that this was the first time he had ever seen Barkley "look on the dark side of the picture." It was clear that the chief executive had no intention of signing the tax bill, but Barkley still hoped Roosevelt would let the bill become law without his signature. But on February 22, 1944, Roosevelt returned the bill with his veto message.[13]

Immediately following the traditional reading of George Washington's farewell address, the Senate received the president's message and was shocked by its tone. Essentially the president rejected the legislation for providing insufficient revenue, but he did so in language which Alben Barkley and other senators found offensive. This bill provided "relief not for the needy but for the greedy," Roosevelt wrote.

It has been suggested by some that I should give my approval to this bill on the ground that having asked the Congress for a loaf of bread to take care of this war for the sake of this and succeeding generations, I should be content with a small piece of crust. I might have done so if I had not noted that the small piece of crust contained so many extraneous and inedible materials.

The president went on to accuse Congress of:

using language in drafting the law which not even a dictionary or thesaurus can make clear. . . . I trust, therefore, that the Congress, after all these delays will act as quickly as possible for simplification of the tax laws which will make possible the simplification of the forms and computations now demanded of the individual taxpayer. These taxpayers, now engaged in an effort to win the greatest war this Nation has ever faced, are not in a mood to study higher mathematics.

After the Senate adjourned that day, Senator Barkley met with the press and recounted for them, "in a cold fury," as one reporter described it, how he had argued with the president against the veto. He told them that he intended to make a speech in the Senate the next day "without regard for the political consequences." That night he went home to discuss his decision with his invalid wife, and then sat before a battered typewriter in his bedroom drafting his speech. The next morning he dictated another draft to his secretary and then marched to the Senate floor at noon.

As Allen Drury has recorded, every reporter who could possibly attend was in the gallery. "All the bureau chiefs rushed up from downtown; most of the special correspondents were there. As Barkley sat at his desk waiting for the quorum call to be completed, he glanced up from time to time with an almost questioning look at the Press Gallery. He saw it more crowded than he had seen it in many months." Word began to spread among the senators that Alben Barkley intended to resign as majority leader. Almost the full membership of the Senate was in the chamber. Kenneth McKellar, Barkley's old adversary, headed for Barkley's desk and shook his hand, urging him to reconsider. At the end of the quorum call, Barkley rose and was recognized by Vice President Wallace.[14]

For the next forty-five minutes, Barkley denounced both the president and his veto message. Barkley denied Roosevelt's charge that Congress was responsible for the tax complexities. "No man could have made that extraordinary statement who had sat in tax committees in the Capitol of the United States," he said.

If it was made by anybody who ever sat in a tax committee, it was a deliberate and unjustified misstatement in order to place upon Congress the blame for universal dissatisfaction with tax complexities, and in order to produce the illusion that the executive departments have in vain protested against this complexity.

But what truly raised Senator Barkley's dander was the president's characterization of the bill as tax relief for the greedy. This, the senator said, was a "calculated and deliberate assault upon the legislative integrity of every member of Congress." He did not intend to take such an insult lying down. He had carried the flag for the Roosevelt administration for seven years as majority leader, but there was something more precious to him than that position and honor, said the senator. "And that is the approval of my own conscience and my own self-respect." He announced that he had called a meeting of the Democratic Conference for the next morning, at which time he would submit his resignation as majority leader. He then concluded that "if the Congress of the United States has any self-respect yet left it will override the veto of the president and enact this tax bill into law."[15]

When Barkley took his seat the rest of the Senate and the galleries jumped from theirs and gave him a standing ovation, lasting "a good three minutes." Senators rushed to his desk and stood in line to shake his hand. Senators were on their feet, as Allen Drury observed, "to honor a man who had finally, after many years and many humiliations, reasserted his own dignity and his own self-respect and gained thereby an increased stature among the men with whom he works."

The next morning more than a hundred reporters and cameramen packed the hall outside of room 201 in the Senate Office Building, surging around senators for a quick statement and photo before they entered the conference. At 10:30, Barkley walked the short distance from his office to the conference room. A half hour later he stepped out, and with tears in his eyes announced that he had resigned as majority leader and turned the chair over to Senator McKellar. Surrounded by the press, Barkley walked back to his office. Then minutes later, Tom Connally burst out of the conference room, booming in a loud voice: "Make way for liberty! Make way for liberty!" as he led a delegation of Democratic senators to Barkley's office to tell him they had unanimously reelected him majority leader.

I can remember reading that story in the newspapers away back when.

Soon they emerged again, this time with Barkley with them. He returned to the conference room to the cheers and applause of the other senators. "By his one-vote margin in the 1937 contest when he was first elected leader," Senator Elbert Thomas later commented, "the impression was given, and it has been the impression ever since, that he spoke to us for the president. Now that he has been unanimously elected, he speaks for us to the president."[16]

Needless to say, President Roosevelt was taken aback by his turn of events. When first informed of Barkley's speech in the Senate denouncing the tax veto, the president had commented, "Alben must be suffering from shell shock." The president was genuinely puzzled over Barkley's emotional response, but he immediately sent a conciliatory message to the senator, denying that he had meant to attack the integrity of the Senate. "You and I may differ," Roosevelt wrote, "but that does not mean we question one another's good faith." The president concluded by urging Barkley not to resign, and stating that if he did, he hoped the conference would unanimously reelect him. Senator Barkley responded in kind, telling the press that he had "the deepest personal affection and regard for the president."[17]

There were several results of this remarkable incident. First, the Senate and House decisively overrode the president's veto of the tax bill. Second, President Roosevelt was never more estranged from Congress, a consequence due in part to his long years in the White House and his preoccupation with the war effort. Third, Senator Barkley gained new stature as majority leader. And finally, Senator Barkley lost his chance to be nominated for vice president in 1944, and of becoming president of the United States after Roosevelt's death in April 1945. In the movement at the Democratic convention in 1944 to replace Vice President Wallace, Democrats turned not to their majority leader but to another border state senator, Missouri's Harry S. Truman. And in one of those special twists of fate in history, four years later President Harry Truman

would choose Alben Barkley for his vice president.

Alben Barkley, let me say, served as an extremely popular vice president, or "Veep" as he was affectionately called, and then returned to service in the United States Senate in 1954, defeating a popular incumbent, John Sherman Cooper.

Mr. LONG. Mr. President, will the Senator yield?

Mr. BYRD. I yield.

Mr. LONG. I would just add one footnote to what the Senator said.

At the time Senator Barkley returned to the Senate, the Senator from Louisiana was on the Finance Committee, and he did not know what other committee he wanted. But he saw Alben Barkley ask for those two committees, and the Senator from Louisiana asked to go on the Foreign Relations Committee, of which I subsequently became a member of couple of years later. Having been on both committees, I do not think it is a very good assortment of committees.

I thought that inasmuch as Alben Barkley had been majority leader longer than any other Senator, he would make a wise decision as to the committees he asked for. I must say, looking back on it, that I did not regard the decision as being all that wise.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Louisiana.

The Senator from Louisiana, as I have said before in this series of speeches, is one who has served in the Senate longer than I have served. When I came in here in January 1959, there were 96 Senators and 48 States. Today, there are only four Senators who were here when I came here. One of those four is my delightful and able friend from Louisiana, Mr. LONG. Senator STENNIS, Senator LONG, Senator THURMOND, and Senator PROXMIRE were here when I came to the Senate. So I am glad that Senator LONG has made the observation regarding Senator Alben Barkley.

Mr. LONG. Mr. President, if the Senator will yield at that point, Senator Barkley was known for his sense of humor—a great impromptu speaker. When someone would tell him a joke, he would make it a point to repeat it as promptly as possible, in order to keep it in his mind and add it to his repertoire.

He told one story that might be appropriate and might be good for the minority leader. He might want to use it on a future occasion.

Senator Barkley's first wife died, and it created a lot of conversation around the city when he then married a younger woman. She had a family of her own. She was a charming and lovely person, much younger than the Vice President. People asked him how the marriage was coming along. He said it was coming along just great. Have they had an argument?

He said: "No difference whatever. My wife and I had an agreement when we married that she would make all the small decisions and I would make all the big ones. So far, we haven't had any big decisions to make."

Mr. BYRD. I again thank the distinguished Senator from Louisiana. That is about the way my marriage is. I call my wife the general superintendent around the house. I am just a lowly private in the ranks.

Mr. LONG. Yes.

Mr. BYRD. While his Senate colleagues gave him back his assignments on the Foreign Relations and Finance Committees, Alben Barkley would not accept their offer of a front-row seat in the chamber, preferring to join the other freshmen in the back. "Now I am back again as a junior senator and I am willing to be a junior," he said in his last keynote speech, before a mock "convention" at Washington and Lee University in 1956. "I'm glad to sit in the back row. For I would rather be a servant in the House of the Lord than to sit in the seats of the mighty." With those words, Alben Barkley collapsed and died—as dramatic a conclusion as any orator could offer. As one of his friends commented, "It is the way he would have wanted to go. He never could turn down a crowd."[18]

By the way, two years ago I was pleased to support the bill when established, as a National Historic Site, Senator Barkley's beautiful home, known as "Angles," located near Paducah, Kentucky. The house has been left the way it was when he lived there and contains the many mementos of his long career.

Mr. President, having concentrated so much attention on Alben Barkley today, let me turn to another notable senator with whom Barkley's name will forever be linked and who also played a significant role in the Senate during World War II. That is the name of Harry Truman. Nineteen eighty-four was the centennial of Harry Truman's birth—he was born on May 8, 1884—and there was a joint meeting of Congress to commemorate that event. The freshman Senator Truman who first arrived in this chamber on January 3, 1935 certainly had not the slightest idea that he would be so honored by Congress and by history. The former haberdasher and Jackson County, Missouri judge was nearly fifty-one when he came to this chamber, but he described himself "as timid as a country boy arriving on the campus of a great university for his first year." With his customary thoroughness, he had read the biographies of every member of the Senate before he arrived and had studied everything he could get about Congress. He was quite awed by his new position. Old J. Hamilton Lewis, the Democratic whip, welcomed the newcomer to the Senate. "Don't start out with an inferiority complex," Lewis advised him. "For the first six months you'll wonder how you got here, and after that you'll wonder how the rest of us got here."[19]

Truman's colleagues found him an amiable fellow but did not take him all that seriously at first. He was often referred to, snidely, as the "Senator from Pendergast," meaning that he was a product of the Kansas City Democratic machine run by Tom Pendergast, who later went to prison for corruption. Truman remained loyal to Pendergast, who had given him his start in politics, and supported the Pendergast organization on patronage matters but insisted that he did not follow Pendergast's advice on legislation. "I vote the way I believe Missourians as a whole would want me to vote." Truman's voting in the Senate was generally in line with the New Deal, and roll call analyses have shown that the longer he served in the Senate the closer he came to President Roosevelt's position on all of the issues.[20]

Senator Harry Truman was a student of the legislative process. "I found out very soon after I had settled down to a study of my duties that the business of a good legislator is not to get things done quickly and efficiently, as a good administrator has to do," he said, "but to prevent, if possible, the enactment into the law of the land many crazy and crackpot measures." From his associations with Arizona's Senator Carl Hayden, Truman learned to be a "work horse" rather than a "show horse" in the Senate. He soon found that, as he expressed it, "the real business of the Senate was carried on by unassuming and conscientious men, not by those who managed to get the most publicity." Truman also associated himself closely with Montana's Senator Burton K. Wheeler, chairman of the Interstate Commerce Committee, on which Truman served. There he devoted his attention and study to matters of railroads, aviation, communication, and federal trade. It was out of Truman's subcommittee, for instance, that the Civil Aeronautics Act emerged, which set up our current Civil Aeronautics Board and Federal Aviation Administration.[21]

Harry Truman might have remained a quiet, hardworking, and essentially obscure member of the Senate had it not been for World War II. Even before the United States entered the war, Truman was concerned about the problems of defense mobilization and production. He had received many letters from his constituents criticizing defense spending in Missouri, and on an inspection trip to Fort Leonard Wood and other camps he had uncovered examples of waste, extravagance,

and theft. Individuals and corporations, he suspected, were bleeding the national defense program for their own profit. On February 10, 1941, Truman rose in the Senate to submit a resolution calling for an investigation of the national defense program and the handling of federal contracts. He expressed concern that defense spending was being concentrated in large corporations in the East. "The little manufacturer, the little contractor, and the little machine shop have been left entirely out in the cold. The policy seems to be to make the big man bigger and to put the little man completely out of business."[22]

On March 1, Truman's resolution was reported out of committee and unanimously adopted. Eight members were appointed, with Truman as chairman. But the Senate cut the proposed budget for the committee from $25,000 to $15,000, indicating it didn't expect much from this special investigation. The Roosevelt administration lent its support, largely because it believed Senator Truman was not a headline hunter and would not use the committee to embarrass or harrass its conduct of defense policy. So the Special Committee to Investigate the National Defense Program—better known as the Truman Committee—was born. Its members were noticeable primarily for their "unspectacular competence," according to one account, and several of them proved to be excellent interrogators of witnesses, from defense contractors to high government officials. One of the best of these interrogators, by the way, was Senator Harley Kilgore from West Virginia, who chaired eight of its investigations and earned a reputation as a critic of military waste and inefficiency.[23]

The Truman Committee first directed its attention to nearby Fort George Meade in Maryland. There they found spiraling camp construction costs, which led them to recommend that future construction be transferred from the Quartermaster Corps to the Corps of Engineers, and that was done at a multimillion dollar savings to the government. The Committee also began to oversee the activities of the new agencies the president was appointing to handle defense mobilization. When the Japanese attack on Pearl Harbor plunged the Nation into war, some government officials hoped that the Truman committee might be disbanded, but soon came to change their opinions. Under Secretary of War Robert Patterson commended the committee's work. "Some of the very best features of our war program have their origin from the investigations made by this committee."

Mr. President, congressional investigations have a considerably mixed history. Some of them have been castigated as partisan fishing expeditions and glory hunts. After the McCarthy investigations of the 1950's, such congressional hearings developed a decidedly bad name. But there have been many more constructive investigations than destructive witchhunts in the Senate's history. We recall the Teapot Dome hearings in the 1920's and the Pecora stock market investigations in the 1930's, about which I have spoken earlier, or in our own times the Watergate investigation chaired by Senator Sam Ervin. The Truman committee ranked high among these constructive and meaningful investigations. In its seven years of existence, the committee held 432 public hearings and 300 executive sessions (the transcripts of which, by the way, have been carefully preserved at the National Archives and are completely open for research). They heard testimony from 1,798 witnesses, made hundreds of field trips, and issued thousands of press releases.[24] Here, for example, is a brief account of the committee written by two journalists in 1945:

> Through the door of Room 449 in the Senate Office Building, the committee headquarters, flowed a strange assortment of mail and people. A typical day might bring an eccentric inventor with a gadget; he said the Army and Navy had given him the brush-off. He would be followed by a manufacturer who thought his product had been discriminated against by the Quartermaster General. A maker of mouthwash for the Army couldn't get priorities for alcohol; a dry kiln owner couldn't get a government contract for his lumber; or an industrialist accused a competitor, now holding a dollar-a-year job in WPB [the War Production Board], of using his official position for private ends. And every day there was an assortment of government officials, labor representatives, lobbyists, and occasionally a plain citizen with an idea he hoped might help the war effort. Some came in search of a new shoulder to cry on; others looked to Truman as a court of last resort. None was turned away coldly.[25]

The Truman committee investigated and prodded industry, labor, and the executive branch to work more harmoniously and efficiently for the war effort. It investigated the aluminum monopoly that seemed unresponsive to military needs. It looked into a bitter dispute between the United Mine Workers and the coal operators. It encouraged President Roosevelt to reorganize the poorly-run Office of Production Management. The committee pointedly did not meddle in military strategy, but it carefully examined the relations between the military and the civil government. The committee demanded full cooperation from the military in supplying the information it sought, and in only one instance did Senator Truman back down on a request. Committee staff investigators discovered some unexplained expenditures for something called the "Manhattan Project." Truman telephoned Secretary of War Henry Stimson to demand an explanation, but the Secretary responded: "I am only one of a group of two or three men in the whole world who know about that. . . . It's part of a very important secret development." Senator Truman replied: "I herewith see the situation, Mr. Secretary, and you won't have to say another word to me." It was not until after he became president that Harry Truman learned the purpose of the Manhattan Project: to develop the first atomic bomb.[26]

Mr. President, it is no exaggeration to say that Harry Truman's work on the Special Committee to Investigate the National Defense Program not only made him president, but prepared him for the presidency. By the time he had completed his four years as chairman of the committee he had dealt with nearly every one of the groups, in business, labor, agriculture, and the bureaucracy that he would deal with as president during the next eight years. He had learned how to deal with the press—although that relationship was never a smooth one, or can it ever be for a political figure?—and the press in turn had made Truman a household name. Service on the Truman Committee changed his image from the "Senator From Pendergast" to a fair, tough, hard-working, diligent, persistent, patriotic senator. When the Democrats sought a replacement for their controversial vice president, Henry Wallace, in 1944, Senator Harry Truman filled the bill. He was a compromise candidate, because unlike Wallace, or Alben Barkley, or James F. Byrnes, he had no major groups opposed to his candidacy. So it was Harry Truman who ran with Franklin Roosevelt in the president's bid for a fourth term in 1944. Roosevelt and Truman easily beat the Republican ticket of Thomas E. Dewey and John Bricker, and Harry Truman settled in for what he expected would be four years of presiding over the Senate.[27]

The United States Senate was presented with a myriad of problems during the Second World War, so complex and extensive that I can but list them here. They included supervising the conversion of a peacetime domestic economy to a war economy, establishing controls over military and industrial production, regulating the draft, and deciding who were the essential workers needed for the domestic economy (farmers and defense workers, for example), who should be exempt from the draft, appropriating money both for the war effort and the homefront, tackling the issue of labor strikes during the war, deciding how soldiers on the field should be able to vote, controlling wages and prices to prevent spiraling inflation, distributing scarce resources to the civilian population through rationing and other formulas, and raising taxes to pay for the great needs of the war.[28]

In the case of taxes, it was during the Second World War that much of our current structure of revenue raising developed. After ratification of the income tax amendment in 1913, taxes were levied only on the highest incomes, and the average citizen paid little or no federal taxes. Due to the great demands of the war, this situation changed in 1942 and taxes were levied on nearly all levels of income. The problem was that the average citizen had not put aside sufficient funds and was simply unable to pay his or her taxes. The rate of default was so high that the government eventually had to "forgive" the 1942 taxes, but the next year income tax withholdings from salaries were established and have become a way of life ever since.[29]

Mr. President, I have focused this address largely on the domestic side of World War II. Of course, the Senate as a whole and through its appropriate committees followed, assisted, oversaw, and criticized both the military and diplomatic sides of the war. Beginning in January 1942, Senator Tom Connally, chairman of the Foreign Relations Committee, initiated the practice of having a State Department official brief members of the committee on a weekly basis. Senators also expressed their concerns over the principles for which this Nation fought in this global conflict, and on the type of world order that would emerge from the war. In March 1943, Senators Joseph Ball, Theodore Burton, Carl Hatch, and Lister Hill—two Republicans and two Democrats—introduced a Senate resolution commiting the United States to five peace objectives: to assist in coordinating the military and economic resources of all member nations in prosecuting the war against the Axis; to establish temporary administrations over Axis-controlled territories once they were captured; to administer relief and economic rehabilitation to both Allied and captured enemy territories; to establish procedures and machinery for peaceful settlement of disputes and disagreements between nations; and to provide for a United Nations military force to suppress future acts of military aggression. This resolution, foretelling the postwar United Nations, was referred to a subcommittee of the Foreign Relations Committee chaired by Walter George of Georgia.

Time and events had changed many minds in the United States Senate about the proper role of this Nation in the world. Arthur Vandenberg, a leading isolationist before the war, became a member of the George subcommittee, and noted in his diary in March 1943 that he took the position "that the United States obviously must be a far greater international co-operator after this war than ever before." The Roosevelt administration, through Secretary of State Cordell Hull, urged the subcommittee to "go slow," however, to avoid an acrimonious debate on the Senate floor. There were still a number of articulate isolationists left in the Senate who worried them, and the administration did not want to disrupt the war unity of the Nation. Of course, there were also many uncertainties involved in the postwar future that this resolution did not address. The Soviet Union had become one of our allies when the United States entered the war, and while we provided that nation with military and economic aid, and counted heavily upon its military forces to withstand the German onslaught, many senators were suspicious of Joseph Stalin's territorial expectations after the war. But the sponsors of the resolution argued that the first priority was to assure America's allies that this Nation would not withdraw into isolation after the Second World War as it had done after the First World War.

In May 1943, British Prime Minister Winston Churchill addressed a joint meeting of Congress and delivered yet another magnificent address, pleading with Congress to avoid any needless arguments between the Allies until the war was won. Later, Churchill met with the members of the Foreign Relations Committee to answer their questions. When asked by Senator Vandenberg if it would disrupt Allied unity by "trying prematurely to settle peace objectives," Churchill replied emphatically: "Yes!" Similarly, when asked if any Senate debate over possible Soviet territorial aggrandizement might be a hazard to the war partnership, Churchill responded: "Yes!" Later, however, Churchill took Vandenberg aside to assure that he did not oppose the general resolution then before the George subcommittee.

In July 1943, Senator Vandenberg, and Senator Wallace White of Maine, introduced a "Republican foreign policy" resolution in the Senate, as an alternative to the Ball-Burton-Hatch-Hill resolution. It called for postwar cooperation between sovereign nations, in opposition to the designs of "One Worlders" and "World Staters" who dreamed of a common international government, and it called for "faithful recognition of American interests" in all postwar planning. Senators Ball, Burton, and Hill responded in Senate speeches demanding that the George subcommittee act on their resolution, and act quickly. In a private letter that August, Vandenberg explained that he was "hunting for the middle ground" between those "who would cheerfully give America away," and those "who would attempt a total isolation." When it came to determining Republican foreign policy issues, no senator was more influential than Arthur Vandenberg, and it was clear that how he made up his mind, and where he found that "middle ground" would influence many other members of his party. Fortunately for those interested in how historical decisions are made, Senator Vandenberg faithfully kept a diary which was published after his death, and from which I have drawn this account.[30]

At last in October 1943, the George subcommittee completed its work. Into the original Ball-Burton-Hatch-Hill resolution it incorporated some of the concerns of the Vandenberg-White resolution, pledging the use of the "constitutional process" and concern for "American sovereignty." The debate was as acrimonious as the State Department had feared, but the opponents remained a decided minority, and the resolution was adopted by an 85 to 5 vote. When the dust had settled, Senator Connally stood to thank Senator Vandenberg for his valuable contributions to the drafting and passage of the resolution. "Being of the minority party," said Connally, "it was probably more difficult for him than for some of the rest of us to go along with the main purpose we had in view, but at all times he manifested a very earnest desire to cooperate, and he gave to the committee wholeheartedly of his talents and leadership in achieving agreement and unity on the resolution."

Senator Vandenberg's public conversion from isolationism to internationalism was a slow, deliberate, and exceedingly important one. From his call for national unity immediately following the Japanese attack on Pearl Harbor, through his support for the Senate resolution which pledged American support for a future United Nations, Vandenberg was moving toward a position of bipartisan internationalism. In foreign policy even more than domestic policy some degree of bipartisanship is always essential, not only to unify the Nation but to secure the necessary two-thirds of the Senate needed to ratify a treaty. Rarely can a majority party do that without help from the minority. Vandenberg stood as the bellwether for a substantial number of the Republican minority.

Senator Vandenberg, as his son later commented, was about to make "the biggest decision of his life." In January 1945, the magazine *United States News* (forerunner of *U.S. News and World Report*) reported that Republican leadership in the Senate was "virtually powerless on postwar foreign policy." The Republicans were still too divided between isolationism and internationalism and, therefore, had "little effect on the foreign policy." Arthur Vandenberg sat down at his typewriter to draft a response. He wrote several versions of the speech, and accepted revisions from such prominent journalists as James Reston and Walter Lippmann, inciden-

tally insuring the speech prominent attention in the press.

On January 10, 1945, Senator Vandenberg rose in this chamber to deliver a "speech heard round the world." "Mr. President," he began, "there are critical moments in the life of every nation which call for the straightest, the plainest, and the most courageous thinking of which we are capable. We confront such a moment now." After describing the way American war policy and post war policy ought to be directed, Vandenberg delivered a personal "confession." He admitted that he had once stood for the Nation's complete self-reliance. "But I do not believe that any nation hereafter can immunize itself by its own exclusive action. Since Pearl Harbor, World War II has put the gory science of mass murder into new and sinister perspective. Our oceans have ceased to be moats which automatically protect our ramparts. . . . If World War III ever unhappily arrives, it will open new laboratories of death too horrible to contemplate. I propose to do everything within my power to keep those laboratories closed for keeps." Vandenberg went on to pledge his support for "maximum American cooperation" with other nations in building the postwar world.

The specific proposals of Senator Vandenberg's address proved less important than its general impact and reception. It attracted newspaper headlines everywhere in this country and around the world. His speech symbolized a new national unity on foreign policy, a bipartisan approach, a belief that politics would henceforth stop at the water's edge. What he said was not particularly new, but coming from a leader of the prewar isolationist bloc it represented a major turning point in American political and diplomatic history.[31] I will discuss the full implications of this turning point for bipartisanship in a later address on the Senate and the Cold War, but for now let me quote the words of Allen Drury, who from the press gallery that day heard Vandenberg's address: "This placed the Republicans' most powerful spokesman on foreign affairs far out in front of both his own party and the leaders of the opposition. It augured well for the future of the peace treaty." [32]

Mr. President, when Arthur Vandenberg delivered that significant address, Harry S Truman sat in the chamber as a United States senator. Ten days later he was sworn in as vice president, in a wartime inauguration held not at the Capitol but on the South Portico of the White House. Truman enjoyed his new position as vice president, although he admitted that it took him a while to get used to the fact that he had no voting or speaking privileges in the Senate. In his eighty-two days as vice president he had the opportunity to vote only once, on an amendment to limit the Lend-Lease extension bill. The vote was tied, and Truman voted no, which in a sense was unnecessary, since the bill would have died even without his vote. Truman was not given many tasks by the Roosevelt administration and saw little of the president, who in February attended the Yalta Conference, and in April traveled to his retreat in Warm Springs, Georgia. On April 12, 1945, Truman sat at the presiding officer's desk, listening to "a windy senator" delivering a long address, and writing a letter to his mother and sister back in Missouri. "I have to sit up here and make parliamentary rulings," he wrote, "—some of which are common sense and some of which are not.[33]

Near 5:00 p.m., Truman adjourned the Senate and strolled through the Capitol Building to the "Board of Education" room on the first floor beneath the House chamber. There he planned to enjoy a glass of bourbon and chat with his old friend, House Speaker Sam Rayburn, and other congressmen. Before Truman arrived, Speaker Rayburn received a call from the president's press secretary, Steve Early, asking the vice president to call back as soon as he got there. Moments later, Truman walked in the door. Matter-of-factly, Rayburn told him of the call, which he made. As Truman spoke on the phone, the House parliamentarian saw the vice president's face turn pale. "Steve Early wants me at the White House immediately," Truman said. "Something must have happened." Not yet realizing his fate, Truman rushed out, eluding his Secret Service guard, and ran the length of the Capitol back to his office. As instructed by the press secretary he told his chauffeur to drive him not to the east entrance of the White House as usual, but through the main entrance on Pennsylvania Avenue.

Ushered into the family quarters at the White House, Truman met Mrs. Roosevelt. "Harry," she said quietly, "the president is dead." Stunned into speechlessness, Truman finally found his voice and asked, "Is there anything I can do for you?" "Is there anything *we* can do for *you*?" she responded. "For you are the one in trouble now." [34]

So Harry Truman, who arrived in the United States Senate ten year earlier feeling like a country boy attending a famous university, was president of the United States. The next day, Truman returned to the Senate to lunch with congressional leaders in the office of the secretary of the Senate, just off this floor. When he left the luncheon, Truman walked into the Democratic cloakroom. "I looked into the empty Senate chamber," he later wrote. "These were the surroundings in which I had spent ten active, happy years. In a way it had been my political home, and here I had experienced the most exciting adventure I had ever expected to have. Less than twenty-four hours before, I had been presiding over the Senate. But now I was president of the United States and had to return to the White House." [35]

For Senators Harry Truman, Alben Barkley, and Arthur Vandenberg, their colleagues, and their Nation, the years of the Second World War were dramatic turning points. But I think it is safe to say that none of them anticipated how harrowing would be the years to come. Before dealing with the Senate and the Cold War, however, I intend to address, in my next speech in this series, a structural reform. It was perhaps the most important reform in the history of this institution, and for that I believe it deserves special attention. This was the Legislative Reorganization Act of 1946, which created the modern United States Senate.

NOTES TO "THE SENATE AND THE SECOND WORLD WAR"

[1] U.S., Congress, Joint Committee on Printing, *1983-1984 Official Congressional Directory, 98th Congress* (Washington, 1983), 418-425.

[2] *Congressional Record*, 77th Congress, 1st sess. (1941), 9504-9505.

[3] Arthur H. Vandenberg, Jr., ed., *The Private Papers of Senator Vandenberg* (Boston, 1952), 1.

[4] *Congressional Record*, 77th Congress, 1st sess. (1941), 9505.

[5] Richard E. Darilek, *A Loyal Opposition in Time of War: The Republican Party and the Politics of Foreign Policy From Pearl Harbor to Yalta* (Westport, Connecticut, 1976), 18-37; *Congressional Record*, 77th Congress, 1st sess., (1941), 9659.

[6] For Barkley's career, see Polly Ann Davis, *Alben W. Barkley: Senate Majority Leader and Vice President* (New York, 1979); *Current Biography 1949* (New York, 1949), 27-29; and the *Dictionary of American Biography* (New York,), Vol. , 34-36.

[7] Roland Young, *Congressional Politics in the Second World War* (New York, 1956), 34-36.

[8] Davis, *Alben W. Barkley*, 114-117.

[9] Richard Riedel, *Halls of the Mighty, My 47 Years at the Senate* (Washington, 1969), 89-90.

[10] Davis, *Alben W. Barkley*, 124-129.

[11] Democratic Party Conference Minutes, January 7, 1943.

[12] Allen Drury, *A Senate Journal, 1943-1946* (New York, 1972 /1963/), 11.

[13] Davis, *Alben W. Barkley*, 137-141.

[14] Drury, *A Senate Journal*, 85-88; Davis, *Alben W. Barkley*, 141.

[15] *Congressional Record*, 78th Congress, 2nd sess. (1944), 1964-1966.

[16] Drury, *A Senate Journal*, 88-93.

[17] Davis, *Alben W. Barkley*, 147-153.

[18] U.S., Congress, *Memorial Services Held in the Senate and House of Representatives of the United States, Together With Remarks Presented in Eulogy of Alben William Barkley*, 84th Congress, 2nd sess. (Washington, 1956), 101-106.

[19] Harry S Truman, *Memoirs by Harry S Truman: Year of Decisions* (New York, 1955), vol. I, 142-144.

[20] Gary Fink and James Hilty, "Prologue: The Senate Voting Record of Harry S Truman," *Journal of Interdisciplinary History* 4 (Autumn 1973), 207-235.

[21] Harold F. Gosnell, *Truman's Crises: A Political Biography of Harry S Truman* (Westport, Connecticut, 1980), 112-137.

[22] Ibid., 154-155; *Congressional Record*, 77th Congress, 1st sess., 830-838.

[23] Wesley McCune and John R. Beal, "The Job That Made Truman President," *Harper's Magazine* (June 1945), included in Arthur Schlesinger and Roger Bruns, eds., *Congress Investigates, A Documented History, 1794-1974* (New York 1975), 3254-3261. See also Robert Franklin Maddox, *The Senatorial Career of Harley Martin Kilgore* (New York 1981), 111-135.

[24] Theodore Wilson, "The Truman Committee, 1941" in Schlesinger and Bruns, *Congress Investigates*, 3115-3124.

[25] McCune and Beal, "The Job That Made Truman President," 3257-3258.

[26] Wilson, "The Truman Committee," 3128-3135.

[27] Gosnell, *Truman's Crises*, 154-168, 178-195.

[28] See in general Roland Young, *Congressional Politics in the Second World War*.

[29] Richard Polenberg, *War and Society: The United States, 1941-1945* (Philadelphia, 1972).

[30] Vandenberg, *The Private Papers of Senator Vandenberg*, 25-60.

[31] Ibid., 61-145.

[32] Drury, *A Senate Journal, 334-335*.

[33] Truman, *Year of Decisions*, 6, 194-198.

[34] Ibid., 4-5; Robert Donovan, *Conflict and Crisis: The Presidency of Harry S Truman, 1945-1948* (New York, 1977), 3-7.

[35] Truman, *Year of Decisions*, 18-19.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RECESS UNTIL 4 P.M.

Mr. DOLE. Mr. President, we are in the process of a conference on the defense authorization bill, where we have 30 to 45 Senators involved. I think rather than to just keep the quorum call going, we would be better served if we had a recess while we complete that conference.

So I ask unanimous consent that the Senate stand in recess until 4 p.m.

There being no objection, the Senate, at 3:08 p.m., recessed until 4 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. QUAYLE).

SCHEDULE

Mr. DOLE. Mr. President, it is my hope that we can dispose of the safe drinking water bill yet this afternoon, perhaps H.R. 47, a coin bill, and then I understand the disaster relief bill has been cleared or is in the process of clearance. So we hope to dispose of those three measures.

We have just completed a Republican conference on the DOD authorization bill. It is our intention to call up that bill tomorrow, lay the bill down, have opening statements, which I assume will consume most of the day, and then there will be a committee amendment offered on procurement which will be the pending business when we recess tomorrow and will be pending on Monday.

Next week it would be my hope that we could get consent to have final passage of the defense bill no later than 6 p.m. on Thursday next. I will discuss that with the distinguished minority leader.

If the bill comes up, and it will come up, I will advise Members now that there will be votes on Monday, no votes until 5 o'clock Monday, but there will be votes starting at 5 o'clock, probably a number of votes at 5 o'clock, and we will have extensive sessions all next week. So it is our intention to try to finish the bill before Memorial Day.

Mr. President, I understand the distinguished Senator from Connecticut wishes to speak, so I yield the floor.

U.S. POLICY TOWARD CENTRAL AMERICA

Mr. DODD. Mr. President, I would like to take a few minutes here this afternoon. I appreciate the willingness of the majority leader to give me a couple of minutes to share some random thoughts with my colleagues.

Mr. President, over the last 4 years we have spent countless hours in this Chamber and elsewhere debating the policies of Central America. And over the last several weeks and up to now, and including what will more than likely occur in the coming weeks, we find ourselves again and again in this Chamber and this Congress knotted in the debate on Central American policy.

Mr. President, I have given this issue a great deal of thought over the last several weeks as to what our policy ought to be, and how we ought to deal with the present situation, particularly in Nicaragua. I have come to the conclusion, Mr. President, that the time has come for us to recast and rethink our policy entirely and to try to fashion a policy that not only makes sense for the region of Central America but, far more importantly, a policy that will first and foremost take into consideration the interests of the United States.

Over the past several years we have spent a great deal of time in this Chamber and elsewhere debating and discussing what ought to occur in the Central American region as a whole and more specifically what ought to occur within those countries, including El Salvador and Nicaragua; debating whether or not we thought the Contras deserved support in Nicaragua; whether or not the Sandinistas were a legitimate government deserving of support. We have talked at length about the situation in El Salvador and, to a lesser extent the situations in Costa Rica and Guatemala. And certainly all of those issues deserve a great deal of attention and we have, I think, properly brought to the attention of the American public the various views of Members of this body and the other body.

But too often Mr. President, I think the attention on Central America and the specific countries and the various groups that are part of that region have caused us to neglect what are our interests, the national security interests of the United States, and how important those security interests are to ourselves and to our allies throughout the region.

As a result of that neglect, Mr. President, and especially the international reaction to the President's decision to place a trade embargo on Nicaragua, I have come to the conclusion that we have to come up with something vastly different than what we have been proposing over the last several years. Whether one agrees or disagrees with the President's trade embargo policy on Nicaragua is not the point I want to make here. What was totally alarming to me was the fact that not only single country—not one single nation, including some of our closest allies—anywhere in the world would even rhetorically give any support to the embargo.

What I think has occurred, Mr. President, is that not only do we have a conflict with Nicaragua, but that we find ourselves, in the middle of May of 1985, 4 year after the initiation of the contra operation, in a situation where we are confronted with two-front conflict, a conflict not only with the Nicaraguans but also now we find ourselves in conflict with our European and Latin American allies.

After 4 years and $100 million-plus in aid to the contra operation, which the President has noted and others have noted over and over again as the centerprice of our effort to effect changes within Nicaragua domestically and to change their foreign policy, we find that Nicaragua's military strength has increased, domestic reforms have deteriorated, and the ruling government of Nicaragua is enjoying a popularity in excess of what they possessed in the winter of 1981.

While it has never been concisely stated over the last 4 years where our objectives were with the contras operation, I think no one will argue with the fact that we have basically been trying to encourage the Nicaraguans not to build a massive military machine in their country. We have been trying with the contra operation to

convince them that they ought to change their present domestic policies and live up to the promises they made in 1979 prior to overthrowing the Somoza government. And, third, we have been trying to convince our allies in this hemisphere and elsewhere that the Sandinista government does not deserve the support of democracies.

The result, after 4 years and $100 million plus, of that centerpiece of this administration's policy is that the stated goals have not only not been achieved, but that in fact, in each and every one of those categories, there has been a deterioration for U.S. interests. The military buildup, the deterioration of reforms, and the fact that Daniel Ortega, the President of Nicaragua, and members of his government are today enjoying a popularity throughout western Europe and this hemisphere that exceeds in many places the popularity of our own administration proves my point.

Our policy, Mr. President, is just not working. It is not working at all militarily, it is not working politically, and it is not working economically. It is painful to say, it is difficult to admit, but I think the sooner we do admit it and the sooner we seek a different course, the better off we are all going to be.

As I see It, Mr. President, there are presently three options before us. Option 1 is to pursue the present policy. This Chamber and this body will be asked in the not-too-distant future to support a figure of roughly $14 million in so-called humanitarian aid to the Contras. We will argue over what constitutes humanitarian aid. Does it mean nonlethal aid? Does it mean jeeps and tractors, or only syringes, band-aids, and stretchers? Who will deliver that aid? Will it be the Agency for International Development, the CIA, the Red Cross, or the United Nations? Where will it be delivered—inside Nicaragua, in Honduras, at some neutral delivery point? Who will supervise it? Who will see to it that we get an adequate accounting of whether or not this aid is actually reaching the people we intend it to reach, and so forth and so on?

We will in fact, Mr. President, be arguing about a nonpolicy. Following the present policy of providing what I would call almost meaningless humanitarian so-called assistance to the Contras is tantamount to rearranging the deck chairs on the Titanic, and waiting for this policy to work is tantamount to leaving the airport landing lights on for Amelia Earhart. The policy is just not getting us anywhere.

The second option would be to say that the only way we are going to effectuate change in Nicaragua is to overthrow the Government. We either decide to do it with direct U.S. military intervention or by giving the Contras the kind of military assistance that would make it possible for them to achieve that goal for us. Obviously, $14 million in humanitarian aid is not likely to contribute in a meaningful way to the overthrow of the Government. We are told by the President and others that we are not interested in overthrowing the Sandinista government, that what we are trying to do is convince the Sandinistas that they ought to change their policies both at home and abroad.

Mr. President, waiting for that to occur is also a pipe dream. One would be terribly naive to assume that the Sandinista government is going to fundamentally change its policy. It may make some cosmetic changes in order to satisfy international concerns, but on the fundamental issues the Sandinista Nicaraguan Government is not going to change unless they are ousted from power. And the only way they are going to be ousted from power is if we give the Contras meaningful assistance militarily or decide to take on that job ourselves. Obviously, we need to ask ourselves, if we decide to pursue option 2, is what the repercussions will be of all-out war in Nicaragua, how will we line up in terms of international public opinion, what the American people want us to do, and how long are they going to be willing to sustain a conflict if we become, as I think we would have to be, directly involved in such an effort? All are very important questions that one should address before you decide to take dramatic step of deciding that you are going to directly try to overthrow a government. But I want to emphasize, Mr. President, for those who believe that contra assistance is going to moderate Nicaraguan behavior, that they are waiting for something that is never going to occur.

The third option, Mr. President, is to refocus our attention in this country on the legitimate U.S. interests and concerns, to identify those interests and concerns, to make it absolutely as clear as possible to the Nicaraguans and others what our legitimate national security interests are in that region, and what we as a nation are prepared to do in order to defend those interests.

I hope there would not be any significant disagreement within this Chamber or elsewhere if we were to discover that the Nicaraguans were bringing in offensive missiles, sophisticated military hardware, or establishing Soviet or Cuban military bases in Nicaragua, that those actions would jeopardize our interests, the sea-lanes, the sovereignty of our allies, the Panama Canal, and a variety of other issues. If those events should occur, while I hope we would be able to convince the Nicaraguans, or anyone else who decided to do that, that those acts would cause serious difficulties here and abroad, we ought to make it clear—abundantly clear—to them that an option we would not exclude as a way of dealing with those problems would be the use of direct military force to eliminate those threats to our security. Those are our interests. Those are the interests that really do raise very serious questions about the security of the United States.

It seems to me that while we continue to focus our attention on the Contra operation, we are neglecting to pay far better attention to the interests of our national security, which I think are in far greater jeopardy today than they were 4 years ago.

What I happen to believe, Mr. President, is that the only two viable options that are available to us are the second and third options. Either we make a decision in this body to really give the Contras meaningful military assistance to assist them in the overthrow of the Sandinista government, or we admit to ourselves that is not likely to occur, and that there are other far more important interests which need to be addressed, or we shall continue making a serious mistake in terms of this country's interests in the months and years to come.

Mr. President, we can make that choice now or we can wait 6 months, or a year. We can spend another $100 million or $200 million or $300 million to provide humanitarian assistance or nonlethal assistance—call it what you will—to the Contras. But as each day, week, and month goes by the situation grows worse. The Nicaraguans grow stronger militarily, conditions deteriorate inside their own nation, and the United States continues to find itself in a more isloated position politically in this hemisphere and elsewhere.

We do not like to make hard choices. Human nature would prefer that we come up with so-called compromises—something that does a little bit of both; that provides the Contras with humanitarian assistance, but does not give them military assistance, that lets us play this one out as long as we can in hopes somehow that the situation might change, so that we can avoid having to make the difficult choices which I think we must.

The option of just providing an additional $14 million or $18 million or $20 million in jeeps, band-aids, and such nonlethal equipment is what I would call, Mr. President, a two-speech policy. That will allow Members to go back to their constituencies and speak to those groups who are opposed to military assistance to the Contras and say, "I only provided humanitarian aid."

You can then go to the next audience that is for the Contras and you can say, "But I provided assistance to the Contras."

So you can get away, and satisfy a domestic constituency. It is a compro-

mise in that regard. But it is certainly not a bona fide compromise when it comes to trying to deal with the serious problems that plague us in this hemisphere.

Mr. President, I am introducing legislation this afternoon which tries to lay out in a clear form and manner the third option that I have identified here this afternoon.

The legislation I am introducing states as clearly and as unequivocally as I can what some of our very legitimate security interests are in this hemisphere, and what we are prepared in this country to do to defend those interests should they be jeopardized by the Nicaraguans or others. I also, in this legislation, provide $10 million in financial support to the Contadora process, which I happen to believe is the most legitimate option and the most viable option of dealing with the broader Central American political and economic difficulties.

Third, Mr. President, I terminate all funding for the Contra operation except for relocation assistance for those individuals who are fighting with the Contras who decide to seek refuge in Central America. I believe we have an obligation to do that, because frankly, the Contra operation is our creation—or at least substantially our creation.

Mr. President, what I am offering here is not in any way to be interpreted as a choice between supporting the Contras or the Sandinistas. I hold no brief for the Sandinistas and I abhor what they are doing in their own country. What I am trying to do is to move onto center stage what I think is the more important debate and the far more important question; that is, the interests of the United States in this region. The longer we continue to focus our attention on the Contra policy, which was identified earlier as a policy that is not in fact improving or advancing the very goals we had stated at the outset, then it seems to me we jeopardize further the very legitimate U.S. interests within that region. We have been so totally consumed over the last 4 years by the Contra effort that I think we have hurt ourselves substantially in terms of ultimately dealing with the real issues.

Mr. President, I say once again in these random thoughts this afternoon that I do not think we have anything but the two choices I have identified. They are difficult choices, hard choices. But I think if we are honest with ourselves and honest with the American people, we shall finally have to come to terms and admit that there really are only those two choices. Just providing humanitarian assistance is not going to advance our cause at all. It may delay for a while the decision that I think we shall have to make sooner or later—and frankly, the longer we wait, the harder the decision will be.

In fact, over the last several days, I have heard a number of my colleagues suggest that, while they agree the policy of continued military support for the Contras does not make any sense, we have already spent $100 million, we have already been involved in this effort for the last 4 years, a number of good people have died, and that we cannot go back at this point; we are too committed to following this policy no matter how misguided it may be.

If that argument has any credibility in May 1985, think how much more credibility it will have 6 months, or a year, or 2 years from now, after we have expended more money for a longer period of time where more lives have been lost. Mr. President, we can make the choice now or we can make it later, but there is no question in this Senator's mind that we are going to have to make that choice.

The better choice, I believe, is one that admits that the present policy is not working, that we are not contributing to peace and stability in the region, we are not advancing the interests of the United States; that in fact, they are in far greater jeopardy. And the sooner we admit that to ourselves, to the American people, and to our allies, the better chance we will have of contributing to the peaceful resolution of the problems of the area and to some stability in this hemisphere.

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

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

S. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress finds and declares that a direct threat to the security interests of the United States in the Central American region would arise from several developments including, but not limited to, the following:

(1) The stationing, installation, or other deployment of nuclear weapons or the delivery systems for such weapons in the Central American region.

(2) The establishment of a foreign military base in the Central American region by the government of a Communist country.

(3) The introduction into the Central American region of any advanced offensive weapons system by the government of a Communist country if such system is more sophisticated that such systems currently in the region.

(b) If any development described in paragraphs (1) through (3) of subsection (a) arises, the Congress intends to act promptly, in accordance with the constitutional processes and treaty commitments of the United States, to protect and defend United States security interests in the Central American region and to approve the use of military force, if necessary, for that purpose.

(c) Notwithstanding any other provision of law, the prohibition contained in section 8066(a) of the Department of Defense Appropriation Act, 1985, as enacted by the Act of October 12, 1984 (Public Law 98-473), which applies to funds available during the fiscal year 1985 to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities shall apply to the same extent and in the same manner with respect to any such funds available during any fiscal year beginning on or after October 1, 1985. For purposes of the application of this subsection, the reference in such section 8066(a) to the fiscal year 1985 shall be deemed to be a reference to the fiscal year in which such funds are available.

(d) There are authorized to be appropriated to the President $14,000,000 for the fiscal year 1985 to be available only to achieve—

(1) the safe and orderly withdrawal from Nicaragua of all military and paramilitary forces which were supported by the United States before October 12, 1984; and

(2) the relocation of such forces, including members of the immediate families of individuals serving in such forces.

(e)(1) There are authorized to be appropriated to the Secretary of State $10,000,000 which shall be used only as may be necessary to assist the negotiations sponsored by the Contadora group and to support through peacekeeping and verification activities the implementation of any agreement reached pursuant to such negotiations.

(2) For purposes of paragraph (1), the term "Contadora group" refers to the governments of Colombia, Mexico, Panama, and Venezuela.

(f) Nothing in this Act shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this Act.

(g) For purposes of this Act—

(1) the term "Central American region" refers to the geographic region containing Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua; and

(2) the term "Communist country" has the same meaning as is given to it by section 620(f) of the Foreign Assistance Act of 1961.

Mr. President, I send the bill to the desk and ask for its appropriate referral.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. DODD. Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

CHEMICAL WARFARE

Mr. PRYOR. Mr. President, I sincerely thank the distinguished minority leader for yielding to me for just a few moments.

I think it is very, very appropriate that the minority leader this afternoon has talked about the late Harry Truman, because the late Harry Truman—Senator Truman and then President Truman—was one Senator and one President who did not mind questioning expenditures by the Department of Defense. He, himself, knew very well that his patriotism was not measured by the amount of the profits of defense contractors.

This next week, Mr. President, we shall be considering the Defense Department authorization bill. We all know the importance of a strong national security, and during next week's debate period, we shall once again, for example, be faced with the issue of whether or not the United States will reverse a policy it has had since 1969 that we would go out of the business of producing chemical weapons, or nerve gas. This debate has been heated, it has been emotional. The votes in this Chamber have been close.

As I recall, on two occasions in the past 2 years, the Vice President of the United States, occupying the chair, has had to break the tie in favor of resuming nerve gas production. I find it very, very strange indeed that the Pentagon publicity machine is once again swarming the halls, writing letters, and even going out to the State Adjutants General in our National Guards and having those fine individuals help the lobbying efforts of the Department of Defense to promote the resumption of nerve gas production. I think this activity is a bit ironic in view of the recent General Accounting Office report that shows that the Department of Defense has fallen far short in the area of defending our troops defensively—with better masks, better clothing, training in how to survive a chemical warfare attack or exposure. DOD has consistently played down the defensive aspects of our nerve gas deterrent and consistently played up the need to go back into full-scale production to add to our stockpile.

(Mr. DOLE assumed the chair.)

Mr. PRYOR. Down in Pine Bluff, AR, I say to the distinguished President and to my friend the Democratic leader, there is now sitting a new $27 million building awaiting our decision next week as to whether or not, in that facility, we will resume the production of nerve gas.

We have all heard about the $6,000 coffeepots and the Allen wrenches for $9,600, and the stool caps and the hammers and all of that. There is one additional item on the list that I would like to mention this afternoon. That is that under a sole-source contract, our Defense Department is now purchasing gas masks at $6,500 each. It is my understanding, Mr. President, that in France, you can buy a good gas mask for less than $100. Ours are $6,500.

That brings me to another matter. That is the issue of a major procurement decision due next week when several in this Chamber will gather whatever forces we might have to attempt not only to put teeth, but add some fangs, to the procurement laws that prevent such overpriced items.

Next week will be a critical week for the Senate, Mr. President. It will be a critical week for the country. I am very hopeful that we will no longer continue this idea that we can create the illusion of strength by throwing dollars at problems.

Next week, during the nerve gas debate, I think we must keep in mind that should we go forward once again with the production of nerve gas we will have no place to store the weapons in Europe. We have not seen one ally anywhere in the world, to the best of this Senator's knowledge, which says that it is now willing to store that supply of nerve gas on its soil.

So, what are we going to do? We appropriate another $63 million—billions of dollars down the line—to go back into the production of chemical warfare, when overwhelming testimony today is against the need for production to be resumed.

So, I would say in the area of defense procurement and the decision of nerve gas production, we will be making major decisions—major decisions that will affect our national security. I hope that those decisions will be made with wisdom and in the spirit of common sense and cooperation. Certainly, we will make our appeals to both sides of the aisle to listen to the arguments on the need for tighter procurement laws and the lack of the need to resume the production of chemical weapons.

Mr. President, I yield back the remainder of my time.

(Mr. SIMPSON assumed the chair.)

DOD AUTHORIZATION

Mr. PRYOR. Mr. President, I see both leaders on the floor. I would like, if I may, to ask the majority leader a question about the schedule. Is that permissible at this point? There is a lot of uncertainty, I say to my friend the majority leader, about the schedule for Monday. Tomorrow—Friday—as I understand it, we will have only general debate. Is that correct, on the Defense Department authorization bill?

Mr. DOLE. That is correct. If the distinguished Senator will yield, it is my understanding that the DOD authorization bill will be laid down sometime around noon, maybe a bit later. There will be rather extensive opening statements on both sides. There will be no votes.

It is my hope that we can agree that any votes that were ordered for Monday will be postponed until the hour of 5 p.m. on Monday, but I am quite certain there will be votes.

I guess the first amendment is a committee amendment. It deals with procurement. We do not want to spend all day Monday on one amendment if we can move onto other amendments. But there will be no votes tomorrow, and if we can make out some arrangement, no votes until 5 p.m. on Monday.

I assume then there will be a number of votes. Maybe not. We will be in early Tuesday, Wednesday, Thursday, and Friday. We have every intention to finish the bill next week.

Mr. PRYOR. I know the majority leader is trying to accommodate the respective schedules of Members of the Senate. Is it mandatory to finish the bill next week before the Memorial Day recess?

Mr. DOLE. I was reminded today that there are only about 50-some legislative days remaining, if we adjourn when we indicate we will this year. Everybody wants to delay and delay. I hope that we will finish it next week. Unless Members feel constrained to talk and talk, we might be able to finish. We finished foreign aid authorization in a day and a half. Normally that has taken several days.

Mr. PRYOR. I noticed in the press where the Department of Defense in a matter of a couple of hours found another $4 billion. My suggestion is we could drag this out a little longer if they did that every few hours. If we could simply think about maybe early votes on Tuesday and eliminate votes on Monday, that is my suggestion.

Mr. DOLE. There will be votes on Monday.

Mr. PRYOR. There will be votes on Monday?

Mr. DOLE. There will be votes on Monday. I have had Members on my side say, "No votes until Wednesday. Why vote Monday or Tuesday? Why not vote Wednesday?"

Well, why vote at all? As far as this Senator is concerned, there will be votes Monday. There would be votes tomorrow if we could arrange votes tomorrow, but we cannot arrange votes tomorrow.

I think this is a very important bill. We can characterize how the money comes from the Defense Department, gas masks and all those things, but the bottom line is it is rather important to our country that we act on this legislation rather than try to accommodate Senators.

Mr. PRYOR. I appreciate the concern of the majority leader. If we wait until 5 o'clock before votes occur, my

presumption is that we will be involved with the procurement amendment then most of Monday afternoon. I can only assume.

Mr. DOLE. We hope to start early Monday morning, and we can set that aside, obviously, if other amendments would be taken up.

Mr. PRYOR. I thank the majority leader.

ORDER TO REPORT DOD AUTHORIZATION

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Armed Services have until 8 p.m. this evening to report a bill on DOD authorization.

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

ELECTION OF ERNEST E. GARCIA AS THE SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE

Mr. DOLE. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The bill clerk read as follows:

A resolution (S. Res. 167) electing Ernest E. Garcia as the Sergeant at Arms and Doorkeeper of the Senate.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. DOLE. Mr. President, it is a pleasure for me to offer this resolution with respect to the election of our new Sergeant at Arms, Ernest Garcia of Garden City, KS.

Ernie Garcia has been, and I know will continue to be, a fine public servant.

Since February, he has ably served as the Deputy Sergeant at Arms and has demonstrated a excellent understanding of the responsibilities of that important office.

Before becoming Deputy Sergeant at Arms, Ernie was a Deputy Assistant Secretary of Defense, where he was a valued and trusted aide to Secretary Caspar Weinberger. In fact, he was awarded the DOD Medal for Distinguished Public Service. At the presentation, Secretary Weinberger said:

Mr. Garcia's overall performance of duty has consistently been of the highest caliber. His dedication, patriotism, loyalty, and integrity, are in keeping with the highest standards of the Department of Defense and reflect great credit on himself, the Department, and the United States.

The Senator from Kansas wholeheartedly agrees with my good friend Cap. I have worked closely with Ernie for many years, both in Washington and Kansas—on the campaign trail, on the road in Kansas, and here on Capitol Hill. He has been a valuable asset to my staff, and has never forgotten his Garden City, KS, roots.

I know that the Hispanic community has taken great pride in Ernie's accomplishments, and I am proud to nominate him as the Senate Sergeant at Arms.

In his new role, I am sure Ernie will continue to build upon his enviable record of public service and dedication. He has proven worthy of the responsibility this body will entrust in him. I know Ernie will live up to that trust.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution was agreed to, as follows:

Resolved, That Ernest E. Garcia, of Kansas, be, and he is hereby, elected Sergeant at Arms and Doorkeeper of the Senate, beginning June 3, 1985.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DOD AUTHORIZATION BILL

Mr. DOLE. Mr. President, I have indicated that the DOD authorization bill would be laid down and there would be votes Monday evening. I have now been requested to see if the votes could be delayed until Tuesday morning. I will make that inquiry of the chairman of the Armed Services Committee and try to report back before we recess this evening.

I ask unanimous consent that no amendments to the DOD authorization bill be in order during Friday's session and prior to 5 p.m. on Monday which have not been authorized by the majority leader and the minority leader.

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

ORDER FOR AMENDMENT NO. 100 TO BE PRINTED

Mr. DOLE. Mr. President, I ask unanimous consent that amendment No. 100 be printed.

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

CRISIS LINK BETWEEN THE UNITED STATES AND THE SOVIET UNION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 123 (S.J. Res. 108), upgrading the United States-Soviet hotline.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The bill clerk read as follows:

A joint resolution (S.J. Res. 108) authorizing the Secretary of Defense to provide to the Soviet Union on a reimbursable basis, equipment, and services necessary for an improved United States/Soviet Direct Communication Link for crisis control.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. WARNER. Mr. President, I am delighted to have joined Senator NUNN in sponsoring this important legislation, which was unanimously approved by the Armed Services Committee on May 2 and now has 39 cosponsors. The purpose of this joint resolution is to authorize the Secretary of Defense to provide to the Soviet Union, on a reimbursable basis, equipment and services needed to implement the July 17, 1984, agreement between the United States and the Soviet Union to expand and improve the operation of the United States/Soviet direct communications link, commonly known as the hotline.

Mr. President, let me briefly review the history of the hotline. In June 1963, the United States and the Soviet Union agreed in a memorandum of understanding to establish a direct communications link [DCL] for use in time of emergency. Each agreed to ensure prompt delivery to its head of government any communications received over the DCL from the other head of government. The memorandum of understanding was negotiated and signed by the heads of the United States and Soviet delegations to the 18 Nation Disarmament Conference in Geneva and the DCL was activated in August 1963.

Eight years later, the DCL was updated by a September 30, 1971, agreement negotiated by a special working group of the two SALT delegations and signed by the United States Secretary of State and the Soviet Foreign Minister. This agreement provided for the addition of two satellite circuits to the DCL, one using the Soviet Molniya II satellite system and the other the United States Intelsat system. Those two circuits became operational in January 1978.

A second special working group of the two SALT delegations simultaneously negotiated a related agreement on measures to reduce the risk of outbreak of Nuclear war between the United States and U.S.S.R., which was signed on the same day, to notify the other in advance of any planned missile launch extending beyond its national territory in the direction of the other, and for each to notify the other immediately in the event of certain situations which could create a risk of nuclear war. The parties agreed that they would use the DCL to transmit urgent information in situations requiring prompt clarification.

In May 1983, President Reagan proposed to the Soviet Union three measures to improve the bilateral communications network between the two countries: the addition of a high-speed facsimile capability to the hotline; the establishment of a joint military communications link [JCML]; and the establishment of high-speed data links between each government and its embassy in the other's capital.

The Secretary of Defense had recommended those proposals to the President following a full and complete study of possible initiatives for enhancing international stability and reducing the risk of nuclear war. That examination, which involved all concerned U.S. Government agencies, was mandated by an amendment to the fiscal year 1983 DOD Authorization Act introduced by Senators Jackson, Nunn, and I, directing the Secretary to study a number of crisis control measures, including an improved Hotline. The Secretary of Defense transmitted its results and recommendations in his April 1983 Report to the Congress on Direct Communications Links and Other Measures to Enhance Stability.

United States/Soviet negotiations on improving bilateral communications links opened in Moscow in August 1983, and subsequent rounds were held in Washington in January 1984, in Moscow in April 1984, and in Washington in July 1984. On July 17, 1984 President Reagan announced that an agreement had been reached.

Mr. President, I ask unanimous consent that a copy of the President's remarks on this occasion be printed in the RECORD at the conclusion of my remarks.

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

(See Exhibit 1.)

Mr. WARNER. Mr. President, under this agreement, a facsimile capability will be added to the hotline, enabling each country for the first time to transmit and receive graphic materials. In addition, the planned improvements will allow the United States and Soviet heads of government to exchange messages more rapidly than they can with the existing teletype. The increase in the speed of communication and the ability to send pictures and maps could be especially critical in future crises.

The direct communications link will now consist of: Three circuits (two satellite circuits plus one wire telegraph circuit); one Earth station in each country for each satellite circuit; terminals in each country linked to the three circuits and equipped with teletype and facsimile equipment.

The agreement specifies that the U.S. Government will sell the Soviet Union at cost the equipment necessary to install and maintain the improved hotline. This transaction, which is expected to cost less than $1 million, will include facsimile equipment, personal computer [PC] equipment, modem equipment, and microprocessor systems to ensure the privacy of these very sensitive communications. Most of this transaction will be completed in the initial sale of the specified equipment to the Soviet Union. However, sales of services and additional equipment, including consumable items, will recur periodically throughout the life of the improved hotline.

Mr. President, under the timetable envisioned by the two governments, the initial items of equipment are to be delivered to the Soviet Union no later than June 30. Accordingly, it is imperative that the Congress act quickly on this legislation to ensure that there is no unnecessary delay in the implementation of this agreement.

Mr. President, I ask unanimous consent that Senators GLENN and ZORINSKY be added as cosponsors of Senate Joint Resolution 108.

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

EXHIBIT 1

STATEMENT BY THE PRESIDENT

I am happy to be able to announce today that we and the Soviet Union have reached agreement to expand and improve the operation of the direct communications link, or the "Hotline."

This agreement is a modest but positive step toward enhancing international stability and reducing the risk that accident, miscalculation, or misinterpretation could lead to confrontation or conflict between the United States and the Soviet Union.

With the addition of a facsimile capability, we will not only be able to exchange messages faster, but for the first time we will be able to send graphic material such as maps or pictures which would play a crucial role in helping to resolve certain types of crises or misunderstandings.

The negotiations which led to this agreement began about 1 year ago, August 1983, based upon a series of proposals that we first made in May 1983.

In developing this and other initiatives designed to reduce the risk of war due to accident, misunderstanding or miscalculation, we had the benefit of excellent advice from a number of key congressional leaders, including Senators WARNER and NUNN and the late Senator Jackson.

I see this agreement as both an appropriate technical improvement to the "Hotline," which has served both our governments well for over 20 years, and as a good example of how we can, working together, find approaches which can move us toward a reduction in the risks of war.

Mr. WARNER. Mr. President, I now yield to my distinguished colleague from Georgia, Senator NUNN.

Mr. NUNN. Mr. President, I join Senator WARNER in expressing my strong support for this legislation.

One year ago, when Senator WARNER and I testified before the Foreign Relations Committee on our nuclear risk reduction resolution (S. Res. 329), I noted that although the United States and the Soviet Union had in large measure been able to avoid confrontations entailing the risk of nuclear war over the past three decades, there were compelling reasons to be concerned about their ability to continue this into the future. Indeed, there are an increasing number of circumstances that could precipitate the outbreak of nuclear war that neither side anticipated or intended, possibly involving terrorist groups or the growing number of nuclear-armed states that will likely exist by the end of the century.

If anything, I am more convinced today than I was then that the establishment of new risk reduction measures is a crucial, indeed imperative, step. Over the past year, we have witnessed three different Soviet military accidents that could easily have been misinterpreted by one side or the other: the errant Soviet cruise missile incident in January and two major explosions in the Soviet Union last year, one at the naval munitions depot at Severomorsk, the other at a munitions factory in western Siberia.

Even more compelling, though, is the shift that both sides are now undertaking in their strategic posture toward a much prompter launch of land-based systems. I will not get into a discussion here as to whether we are talking about launch on confirmed warning of attack or launch under attack. But suffice it to say that as increasingly accurate, MIRV'ed ICBM's like the MX, the SS-18, and the SS-19 make each side more and more vulnerable to a first strike, we are moving inexorably toward a hair trigger retaliatory posture. In these conditions, there is an extraordinary premium placed on avoiding any misinterpretation of nuclear incidents or military activities, and this is precisely the role the upgraded "Hotline" or nuclear risk reduction centers could perform.

In this regard, I also pay tribute to President Reagan for the four part proposal for reducing military tensions which he announced in his May 8 speech to the European Parliament in Strasbourg, France. I hope the Soviet Union will give serious consideration to these proposals.

Mr. President, in its report on Senate Joint Resolution 108, the Armed Services Committee stated that it agrees with President Reagan that the July 17, 1984 agreement will make a "modest but positive" contribution toward improving crisis stability and decreasing the risk that a confronta-

tion or conflict between the United States and the Soviet Union could ever occur as a result of accident, miscalculation or misinterpretation. In accordance with the principle of confidentiality concerning communications between heads of state, the precise number of times that the United States and the Soviet Union have used the system has not been disclosed. However, it is evident that the Hotline has provided invaluable in major crises, including the 1967 and 1973 Arab-Israeli wars. The addition of a fascimile capability and the increase in the speed of communication will further enhance the value of this communications link.

The committee also reviewed this need for new legislative authority. At the request of Senator WARNER and me, the General Counsel of the Department of Defense prepared a memo outlining the legal reasons why new legislation was needed to implement the July 1984 agreement. The General Counsel determined that use of the Arms Export Control Act as authority for providing the specified equipment to the Soviet Union would not appear to be either viable or appropriate. The memo also notes that use of the Secretary of Defense's contingency fund is intended to meet only "emergency or extraordinary expenses which cannot be anticipated or classified," whereas procurement by DOD of equipment needed to maintain the improved Hotline is expected to recur over the lifetime of the system. I ask unanimous consent that this memo be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. NUNN. Mr. President, a final issue considered by the committee concerned the transfer of technology. On March 22, Senator WARNER and I wrote Assistant Secretary of Defense Richard Perle to request his assessment of the technology transfer aspects of the proposed sale. In a March 25 reply, Assistant Secretary Perle advised the Senators that prior to deciding the final configuration of the proposed upgrade:

> The Department of Defense examined each component proposed for that system in the context of applicable transfer of technology regulations.

Assistant Secretary Perle stated that based on this review, DOD determined that:

> The sale of those components for this purpose is entirely consistent with current U.S. law and policy regarding trade with the Soviet Union.

I ask unanimous consent that this letter be printed in the RECORD at the end of my remarks.

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

(See exhibit 3.)

Mr. NUNN. Mr. President, in closing let me say that I am especially gratified that over the past several years, Congress has been in the forefront of efforts to devise practical measures to reduce the risk that these weapons might ever be useful as a result of accident or miscalculation. I believe that this legislation moves us closer toward realizing these goals, and I hope that it might provide an impetus for more comprehensive measures, such as the nuclear risk reduction center concept which the Senate endorsed 82 to 0 last summer.

EXHIBIT 2

GENERAL COUNSEL OF THE
DEPARTMENT OF DEFENSE,
Washington, DC, April 3, 1985.

LEGAL MEMORANDUM

Subject: Sale of DCL Equipment to the USSR.

The U.S. Government proposes to sell DCL equipment to the Soviet Union. Attached is a memorandum outlining three alternatives approached to achieving the requisite legal authority for the proposed transaction.

The first approach (a security assistance sale) does not now appear to be viable because it is conditioned upon our obtaining from the Soviets certain non-retransfer and security assurances, and because use of the Arms Export Control Act as authority for providing equipment to the USSR would not appear to be appropriate.

The second approach (use of the Secretary's contingency fund authorized by 10 USC § 140) is feasible. The commitment of an amount from this fund sufficient to cover the cost of the equipment and services to be provided to the Soviets has been made. A disadvantage of this approach is that a limited amount is appropriated for the contingency fund. Therefore, to the extent the fund is used for DCL purposes, it will not be available for other critical needs. This disadvantage cannot be avoided by reprogramming other funds into the contingency fund. 10 USC § 140 limits the total amount that can be expended from the contingency fund in any year to the amount appropriated for this purpose in the DoD Appropriation Act.

Accordingly, the third approach (a Joint Resolution authorizing the use of any DoD funds) is strongly preferred. This approach would involve virtually no cost to the Treasury since the Soviet Union will reimburse the U.S. Moreover, the Joint Resolution would have the great advantage of permitting DoD to avoid depletion of the contingency fund. In addition, this approach is more appropriate for funding foreseeable expenditures that may well be necessary in the future to maintain the system, since the contingency fund is designed to meet only "emergency or extraordinarly expenses which cannot be anticipated or classified."

CHAPMAN B. COX.

DEPARTMENT OF DEFENSE,
OFFICE OF GENERAL COUNSEL,
Washington, DC, September 21, 1984.

MEMORANDUM

Subject: Legal Authority for the Sale of DCL Equipment to the USSR (U).

You have requested the opinion of this office regarding the legal implications of various possible funding approaches for a US-Government sale of equipment and spare parts to the USSR in exchange for Soviet payment. The following approaches appear available to carry out such a transaction.

1. A security assistance sale. Although Section 620(f) of the Foreign Assistance Act (FAA) prohibits furnishing any assistance under the FAA to the USSR, that prohibition does not extend to transactions undertaken under other statutory authority such as the Arms Export Control Act (AECA). Section 3 of the AECA provides four conditions of eligibility for a country to purchase defense articles or defense services under the AECA:

(1) The President must find that the furnishing of defense articles (and defense services) to such country will strengthen the security of the United States and promote world peace;

(2) The country must have agreed not to transfer title to, or possession of, any defense article or related training or other defense service so furnished to it to anyone not an officer, employee or agent of that country and not to use or permit the use of such defense article or related training or other defense service unless the consent of the President has first been obtained;

(3) The country shall have agreed that it will maintain the security of such article and will provide substantially the same degree of security protection afforded to such article by the United States Government;

(4) The country is otherwise eligible to purchase or lease defense articles or defense services.

Accordingly, in order for the United States Government to sell DCL equipment to the USSR as a security assistance sale, the President must sign a finding that the furnishing of DCL equipment to the USSR will strengthen the security of the United States and promote world peace. It is possible for such a finding to be limited to declaring a country eligible for just one sale. The U.S.S.R. must commit to the non-retransfer and security assurances detailed in paragraphs (2) and (3) above.

The U.S.S.R. must also be "otherwise eligible" to purchase this equipment. This requirement means that there must be no other statutory prohibition on such a sale (e.g., such a provision as the Congressional cutoff of sales to Chile) and that the proposed sale must fall within the scope of the Arms Export Control Act. The objectives of the AECA include encouraging regional arms control and disarmament agreements and discouraging arms races. The purposes for which sales under the AECA are authorized are limited to: internal security; legitimate self defense; permitting the recipient country to participate in regional or collective arrangements of measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security; and enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the social and economic development of such friendly countries. It would appear that participation in the DCL is a measure consistent with the Charter of the United Nations.

In order to obtain the required Presidential Determination making a country eligible under the AECA, the Secretary of State prepares a Memorandum for the President justifying the proposed Determination. Copies of a Presidential Determination and

the State Department's justification Memorandum for that determination are attached to this memorandum for your information.

2. Use of the Secretary of Defense's discretionary funds. 10 U.S.C. § 140 authorizes the Secretary of Defense to provide, within the limitation of appropriations made for the purpose, for any emergency or extraordinary expense which cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may be spent on approval or authority of the Secretary for any purpose he deems proper. Expenditures made under this authority must be reported on a quarterly basis to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives. There is no provision for reimbursement in 10 U.S.C. § 140, since this authority was not originally designed for a purpose such as that under consideration. However, it would be possible, if sufficient funds remain in the appropriation, for the Secretary to direct that DCL equipment be purchased using those funds and provided to the U.S.S.R., although any reimbursement from the U.S.S.R. for such equipment would have to be returned to Miscellaneous Receipts in the U.S. Treasury.

3. A specific Congressional authorization. Instead of using either of the procedures described above, it would be possible to seek new law authorizing the United States to sell the requisite equipment to the USSR. This approach would allow the US to tailor the statutory authorization to the terms of the proposed sale, instead of having to tailor the sale to the statute, as in (1) above. It could also allow the US Government agency purchasing the equipment to be sold to the USSR to put the receipts from the sale back into its own appropriations, which would not be possible under (2) above. The drawback to this approach is the time required to obtain new law. Congress is due to adjourn on October 5, 1984 and probably will not reconvene until the new Congress is sworn in in January 1985. Your decision concerning adoption of this approach will therefore turn, in part, on the necessary schedule for the sale of this equipment to the USSR.

JOHN H. MCNEILL,
Assistant General Counsel (International).

EXHIBIT 3

ASSISTANT SECRETARY OF DEFENSE,
Washington, DC, March 25, 1985.

In reply refer to: I-85/07907.

Hon. SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: Thank you for your letter of March 22, 1985, requesting my comments on the legislation which you propose to introduce to facilitate the upgrade of the Direct Communications Link, which the United States and the Soviet Union agreed to undertake in an Exchange of Notes, dated July 17, 1984.

As President Reagan indicated at the time of signature of this agreement, the upgrade of the Hotline by the addition of a facsimile capability is a modest, but positive step toward enhancing international stability and reducing the risk that accident, miscalculation or misinterpretation could lead to confrontation or conflict between the United States and the Soviet Union. The success of this initiative is due in no small measure to your continued support and advice. Your efforts now, to ensure the smooth and efficient implementation of the agreement, are welcomed by all who believe that it is critical that our leaders be able to communicate rapidly and comprehensively in the event of crisis. I heartily endorse your proposed legislation for this purpose.

I want as well to assure you that the sale of the facsimile system to the Soviet Union is consistent with US technology transfer policies. Prior to the United States' proposing the configuration for the addition of a facsimile capability to the Direct Communications Link, the Department of Defense examined each component proposed for that system in the context of applicable transfer of technology regulations. We determined that the sale of those components for this purpose is entirely consistent with current U.S. law and policy regarding trade with the USSR. Sale of the quantity of equipment necessary to maintain the reliability of the Soviet part of the Hotline requires COCOM approval, which the U.S. will seek.

I want to underscore for the Congress that there is a great deal of difference between selling the USSR equipment for the specific purpose of improving the Direct Communications Link and allowing the Soviet Union unfettered access to U.S. and Allied high technology products. We will continue to ensure that sales to the Soviet Union are closely scrutinized and seek to ensure that only those which are consistent with our COCOM obligations and strategic trade controls are permitted to go forward.

RICHARD PERLE.

Mr. BOSCHWITZ. Mr. President, I rise as a cosponsor and strong supporter of this very important resolution to upgrade the direct communications link between Washington and Moscow. I believe that communications—good, clear communications—is a key to crisis control and an important confidence-building measure between the superpowers.

The so-called hotline, born out of the Cuban missile crisis, was the result of an effort to improve crisis management. It was an essential first step toward reducing the risk of nuclear war. Since 1963, the hotline has been used to prevent any number of crisis from becoming runaway confrontations. It has served us well; however, now the hotline is a crude device compared to today's sophisticated communications. The need to increase the speed of communications and rapidly exchange graphic data over state-of-the-art equipment is very important, and an upgrade that is long overdue. William Ury tells us in his recent book, "Beyond the Hotline," that the time available for United States-Soviet leaders to respond to a crisis is shrinking as the flight times of missiles grow shorter. If this means selling the required equipment in order to get the Russians up to speed, let's waste no more time doing it.

With today's hi-tech computers setting on the desks of many of our grade school students, I am sure the American public would fail to understand why a vital communications link such as the hotline, consists essentially of 1960 teletype technology. Technological improvements to this important tool for bilateral crisis prevention need to be undertaken now.

I am very pleased to join in this effort and I wish to commend my colleagues, Senators WARNER and NUNN for their distinguished leadership in proposing practical measures to reduce the risk of nuclear war. Moreover, this legislation will clearly lend practical support to President Reagan's new four-part proposal, recently announced in Strasbourg, for reducing military tensions between the United States and the Soviet Union. I strongly support these confidence-building measures. Furthermore, I hope that this legislation and the President's proposal receive broad, bipartisan support. Surely, enhanced communications between adversaries is the first step toward improved understanding and reducing conflict.

The PRESIDING OFFICER. The joint resolution is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading, was read the third time, and passed.

The preamble was agreed to.

The joint resolution (S.J. Res. 108) with its preamble, reads as follows:

S.J. RES. 108

Whereas section 1123(a) of the Department of Defense Authorization Act, 1983 (Public Law 97-252), directed the Secretary of Defense "to conduct a full and complete study and evaluation of possible initiatives for improving the containment and control of the use of nuclear weapons, particularly during crises";

Whereas the Congress directed that the same study should address several specific measures for building confidence between the United States and the Soviet Union, including an improved Direct Communications Link for crisis control;

Whereas the Secretary of Defense responded to that congressional mandate with a report entitled "Report to the Congress on Direct Communications Links and Other Measures to Enhance Stability" in which the Secretary proposed several improvements to existing United States-Soviet mechanisms for the prevention and resolution of crises, including the addition of a facsimile capability to the United States/Soviet Union Direct Communications Link;

Whereas the President of the United States presented the recommendations of the Secretary of Defense to the Government of the Soviet Union in May 1983;

Whereas the United States and the Soviet Union commenced negotiations on bilateral communications improvements in August 1983, and on July 17, 1984, concluded the Exchange of Notes Between the United States of America and the Union of Soviet Socialist Republics Concerning the Direct Communications Link Upgrade in which the two governments agreed to add a facsimile capability to the Direct Communications Link;

Whereas the Congress endorses that agreement and remains committed to all possible measures to facilitate the resolu-

tion of international crises and to limit the danger of conflict;

Whereas the Secretary of Defense is responsible for the installation, maintenance, and operation of the Direct Communications Link equipment for the United States; and

Whereas the Exchange of Notes Between the United States of America and the Union of Soviet Socialist Republics Concerning the Direct Communications Link Upgrade provides that the United States Government will provide to the Union of Soviet Socialist Republics, at cost, the equipment and services necessary for the Soviet Union part of the improved Direct Communications Link: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Defense may provide to the Soviet Union, as provided in the Exchange of Notes Between the United States of America and the Union of Soviet Socialist Republics Concerning the Direct Communications Link Upgrade, concluded on July 17, 1984, such equipment and services as may be necessary to upgrade or maintain the Soviet Union part of the Direct Communications Link agreed to in the Memorandum of Understanding between the United States and the Soviet Union signed June 20, 1963. The Secretary shall provide such equipment and services to the Soviet Union at the cost thereof to the United States.

SEC. 2. (a) The Secretary of Defense may use any funds available to the Department of Defense for the procurement of the equipment and providing the services referred to in the first section.

(b) Funds received from the Soviet Union as payment for such equipment and services shall be credited to the appropriate account of Department of Defense.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DISASTER RELIEF ACT AUTHORIZATION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 120, S. 1023, Disaster Relief Act Authorization.

The PRESIDING OFFICER. The bill will be stated by title.

The bill clerk read as follows:

A bill (S. 1023) to extend authorizations for appropriations for the Disaster Relief Act of 1974, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1023

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 606 of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5202), is amended by striking out all after "501," and inserting in lieu thereof "$194,000,000 is authorized to be appropriated to the President to carry out this Act for fiscal year 1986 and $6,400,000 is authorized to be appropriated to the Federal Emergency Management Agency for administrative expenses in fiscal year 1986.".

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ETHNIC AMERICAN DAY

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 112, Senate Joint Resolution 32.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The bill clerk read as follows:

A joint resolution (S.J. Res. 32) to authorize and request the President to designate September 15, 1985, as "Ethnic American Day".

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

AMENDMENT NO. 146

(Purpose: To change the date of Ethnic American Day from September 15, 1985, to September 21, 1986)

Mr. DOLE. Mr. President, I send to the desk an amendment on behalf of Senator PRESSLER.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. Pressler, proposes an amendment numbered 146:

On page 2, line 4, strike out "15, 1985" and insert in lieu thereof "21, 1986".

Mr. PRESSLER. Mr. President, this amendment merely changes the date of Ethnic American Day to September 21, 1986. The reason for this change is to give national ethnic organizations more time to organize events for this occasion.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 146) was agreed to.

The PRESIDING OFFICER. The joint resolution is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The preamble was agreed to.

The joint resolution (S.J. Res. 32), with its preamble, reads as follows:

S.J. RES. 32

Whereas the United States of America is a haven for victims of religious and political persecution and for those who seek freedom and opportunity;

Whereas the United States of America has welcomed oppressed and deprived persons and granted them refuge and citizenship;

Whereas ethnic Americans love the United States of America and have shed their blood in defense of America and its freedoms;

Whereas ethnic Americans have made outstanding contributions in the fields of agriculture, labor, arts, science, medicine, business, and government, and to the quality of life in these United States; and

Whereas designation of an "Ethnic American Day" would contribute to a greater appreciation of the rich ethnic heritage of this Nation and to the unity of all its people: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to designate September 21, 1986, as "Ethnic American Day" and to call upon the people of the United States to acknowledge and advance mutual understanding and friendship among all Americans regardless of their ethnicity.

AMENDMENT

(Purpose: Amendment to the title)

Mr. DOLE. Mr. President, I send an amendment to the title to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

Amend the title so as to read joint resolution to authorize and request the President to designate September 21, 1986, as Ethnic American Day.

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

Without objection, the amendment to the title is agreed to and the title, as amended, is agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the resolution was passed and the title, as amended, was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate go into executive session to consider numerous calendar items.

There being no objection, the Senate proceeded to the consideration of executive business.

Mr. DOLE. The calendar items are Nos. 118, 119, 144, 164, 177, 178, 179, 180, 181, 182, 183, and 184.

Mr. BYRD. Mr. President, reserving the right to object, may I say to the distinguished majority leader on this side among those calendar orders which he has stated are the following which have been cleared and concerning which we are ready to proceed:

Calendar Order Nos. 144, 164, 177, 178, 179, 180, 181, 182, 183, and 184.

Mr. DOLE. But not 118 or 119?

Mr. BYRD. Yes; I think, if I may say to the distinguished majority leader, I would hope to have those cleared by tomorrow.

Mr. DOLE. Fine.

Mr. BYRD. I, myself, had a hold on each of them and there may be other holds, but I am ready to clear the one now and probably will be ready on the second one tomorrow.

Mr. DOLE. All right.

The PRESIDING OFFICER. The nominations will be stated.

EXPORT-IMPORT BANK OF THE UNITED STATES

The legislative clerk read the nomination of Richard H. Hughes, of Oklahoma, to be a member of the Board of Directors of the Export-Import Bank of the United States.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

DEPARTMENT OF STATE

The legislative clerk read the nomination of Vernon A. Walters, of Florida, to be the Representative of the United States of America to the United Nations with the rank and status of Ambassador Extraordinary and Plenipotentiary, and the Representative of the United States of America in the Security Council of the United Nations.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

The legislative clerk read the nominations of Pauline Crowe Naftzger, of California, and George S. Rosborough, Jr., of Missouri, to be Members of the National Museum Services Board.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed.

NATIONAL SCIENCE FOUNDATION

The legislative clerk read the nomination of John H. Moore, of California, to be Deputy Director of the National Science Foundation.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

NATIONAL COUNCIL ON THE HANDICAPPED

The legislative clerk read the nominations of Jeremiah Milbank, of Connecticut; Justin W. Dart, Jr., of Texas; and Roxanne S. Vierra, of Colorado, to be members of the National Council on the Handicapped.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed.

ARMY

The legislative clerk read the nominations of Lt. Gen. Alexander M. Weyand to be lieutenant general (retired), and Maj. Gen. Charles W. Dyke to be lieutenant general.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed.

NAVY

The legislative clerk read the nominations of Vice Adm. James A. Sagerholm to be vice admiral (retired), and Rear Adm. Kendall E. Moranville to be vice admiral.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed.

Mr. DOLE. Mr. President, I move to reconsider the votes by which the nominations were confirmed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

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

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

SAFE DRINKING WATER AMENDMENTS OF 1985

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar Order No. 131, S. 124, the safe drinking water amendments of 1985.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 124) entitled the "Safe Drinking Water Amendments of 1985".

The PRESIDING OFFICER. Is there objection to the request of the Senator from Minnesota?

Mr. BYRD. Mr. President, there is no objection on this side.

There being no objection, the Senate proceeded to consider the bill (S. 124) entitled the "Safe Drinking Water Amendments of 1985," which had been reported from the Committee on Environment and Public Works, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

S. 124

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Safe Drinking Water Act Amendments of 1985".

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Sec. 1. Short title.

PUBLIC WATER SYSTEMS

Sec. 2. National primary drinking water regulations.
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PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

Sec. 10. Restrictions on underground injection of hazardous waste and regulation of State programs.
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Sec. 12. Critical aquifer protection area demonstration program.

GENERAL PROVISIONS

Sec. 13. Authorization of appropriations.

PUBLIC WATER SYSTEMS

NATIONAL PRIMARY DRINKING WATER REGULATIONS

SEC. 2. (a) Section 1412(a) of the Safe Drinking Water Act is amended to read as follows:

"(a) Effective on the date of enactment of the Safe Drinking Water Act Amendments of 1985, each national interim primary drinking water regulation promulgated under this section before such date of enactment shall be deemed to be a national primary drinking water regulation under subsection (b). No such regulation shall be required to comply with the standards set forth in subsection (b)(2) unless such regulation is amended to establish a different maximum contaminant level after the date of enactment of such amendments.".

(b) Section 1412(b) of the Safe Drinking Water Act is amended by striking paragraphs (1), (2), and (3), and inserting in lieu thereof the following:

[**"(b)(1)(A) In the case of the 14 contaminants listed in the Advance Notice of Proposed Rulemaking published in volume 47, Federal Register, page 9352, not later than 15 months after the date of enactment of the Safe Drinking Water Act Amendments of 1985, the Administrator shall—**

[**"(i) simultaneously propose maximum contaminant level goals and national primary drinking water regulations and, after opportunity for public comment, simultaneously publish maximum contaminant level goals and promulgate national primary drinking water regulations for those contaminants which may have any adverse effect on the health of persons; or**

[**"(ii) make and publish in the Federal Register a determination that promulgation of a national primary drinking water regulation is not justified under the criterion in**

clause (i). Such determination by the Administrator shall be considered a final agency action for purposes of judicial review under chapter VII of title V of the United States Code.

[“(B) In the case of each of the contaminants listed in the Advance Notice of Proposed Rulemaking published in volume 48, Federal Register, page 45502, not later than 36 months after the date of enactment of the Safe Drinking Water Act Amendments of 1985, the Administrator shall—

[“(i) simultaneously propose maximum contaminant level goals and national primary drinking water regulations and, after opportunity for public comment, simultaneously publish maximum contaminant level goals and promulgate national primary drinking water regulations for those contaminants which may have any adverse effect on the health of persons; or

[“(ii) make and publish in the Federal Register a determination that promulgation of a national primary drinking water regulation is not justified under the criterion in clause (i). Such determination by the Administrator shall be considered a final agency action for purposes of judicial review under chapter VII of title V of the United States Code.

[“(C)(i) The Administrator shall publish maximum contaminant level goals and simultaneously promulgate national primary drinking water regulations for each substance (other than a substance referred to in subparagraph (A) or (B) for which a national primary drinking water regulation was promulgated) which, in the judgment of the Administrator, may have any adverse effect on the health of persons. On January 1, 1988, and at annual intervals thereafter, the Administrator shall publish a list establishing priorities for the review of substances (other than substances referred to in subparagraph (A) or (B)) which may require regulation under this Act in order to prevent known or anticipated adverse effects on the health of persons. Such priorities shall be based upon the extent to which such contaminant occurs in public water systems throughout the United States or on the known or anticipated adverse effects of such substance on the health of persons. In establishing such priorities the Administrator's consideration shall include, but not be limited to, substances regulated as toxic water pollutants under section 307 of the Clean Water Act and substances registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act.

[“(ii) For each contaminant listed on the priority list, the Administrator shall, within 3 years of listing—

[“(I) simultaneously propose a maximum contaminant level goal and a national primary drinking water regulation and, after opportunity for public comment, simultaneously publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for those contaminants which may have any adverse effect on the health of persons; or

[“(II) make and publish in the Federal Register a determination that promulgation of a national primary drinking water regulation is not justified under the criterion in subclause (I). Such determination by the Administrator shall be considered a final agency action for purposes of judicial review under chapter VII of title V of the United States Code.]

“(b)(1) In the case of those contaminants listed in the Advance Notice of Proposed Rulemaking published in volume 47, Federal Register, page 9352, and in volume 48, Federal Register, page 45502, the Administrator shall simultaneously publish maximum contaminant level goals and promulgate national primary drinking water regulations—

“(A) not later than 12 months after the date of enactment of the Safe Drinking Water Act Amendments of 1985 for not less than 9 of those listed contaminants;

“(B) not later than 24 months after the date of enactment for not less than 40 of those listed contaminants; and

“(C) not later than 36 months after the date of enactment for the remainder of such listed contaminants.

“(2)(A) Not later than January 1, 1988, and at three year intervals thereafter, the Administrator shall publish a list of contaminants which, in the judgment of the Administrator, may have an adverse effect on the health of persons and are known or anticipated to occur in public water systems.

“(B) For the purpose of establishing such list, the Administrator shall form an advisory working group including members from the National Toxicology Program and the Environmental Protection Agency's Offices of Drinking Water, Pesticides, Toxic Substances, Ground Water, Solid Waste and Emergency Response and any others the Administrator deems appropriate. The Administrator's consideration of priorities shall include, but not be limited to, substances referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act, and substances registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act.

“(C) Not later than 24 months after listing, the Administrator shall simultaneously propose a maximum contaminant level goal and a national primary drinking water regulation for not less than 25 contaminants from the priority list established under paragraph (2).

“(D) Not later than 36 months after listing, the Administrator shall simultaneously publish a maximum contaminant goal and promulgate a national primary drinking water regulation for those contaminants identified under subparagraph (C).

[“(2)] *“(3)* Each maximum contaminant level goal established under this subsection shall be set at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. Each national primary drinking water regulation for a contaminant for which a maximum contaminant level goal is established under this subsection shall specify a maximum level for such contaminant which is as close to the maximum contaminant level goal as is feasible.

[“(3) The Administrator may, after opportunity for public comment, change maximum contaminant level goals, or the list established under paragraph (C), and shall simultaneously with such change, amend the national primary drinking water regulations concerned accordingly.]

“(4) For the purposes of this subsection, the term ‘feasible’ means feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purpose of paragraph (2), the use of granular activated carbon is available (taking costs into consideration) for the control of synthetic organic chemicals, and any technology, treatment technique, or other means found to be the best available for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as the use of granular activated carbon.

“(5) Each national primary drinking water regulation which establishes a maximum contaminant level shall list the technology, treatment techniques, and other means which the Administrator finds to be feasible for purposes of meeting such maximum contaminant level, but a primary drinking water regulation under this paragraph shall not require that a specified technology, treatment technique, or other means be used for purposes of meeting such *maximum* contaminant level.

“(6)(A) The Administrator is authorized to promulgate a national primary drinking water regulation that requires the use of a treatment technique in lieu of establishing a maximum contaminant level, if the Administrator makes a finding that it is not economically or technologically feasible to ascertain the level of the contaminant. In such case, the Administrator shall identify those treatment techniques which, in the Administrator's judgment, would prevent known or anticipated adverse effects on the health of persons to the extent feasible. Such regulations shall specify each treatment technique known to the Administrator which meets the requirements of this paragraph, but the Administrator may grant a variance from any such specified treatment technique in accordance with section 1415(a)(3).

“(B) If any contaminant referred to in paragraphs (b)(1) (A) or (B) is listed under this paragraph (and a national primary drinking water regulation requiring the use of treatment techniques is simultaneously promulgated under this paragraph for such contaminant), the listing and promulgation under this paragraph shall be made on the date referred to in paragraphs (b)(1) (A) or (B) for the establishment of primary drinking water regulations.

“(C)(i) Not later than [12] *18* months after the enactment of the Safe Drinking Water Act Amendments of 1985, the Administrator shall propose and promulgate national primary drinking water regulations specifying criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems supplied by surface water sources. In promulgating such rules, the Administrator shall consider the quality of source waters, protection afforded by watershed management, treatment practices (such as disinfection and length of water storage) and other factors relevant to protection of health.

“(ii) In lieu of the provisions of section 1415 the Administrator shall specify procedures by which the State determines which public water systems within its jurisdiction shall adopt filtration under the criteria of clause (i). The State may require the public water system to provide studies or other information, to assist in this determination. The procedures shall provide notice and opportunity for public hearing on this determination. If the State determines that filtration is required, the State shall prescribe a schedule for compliance by the public water system with the filtration requirement. A schedule shall require compliance [as expeditiously as practicable (as the State may reasonably determine.)] *within 18 months of a determination made under clause (iii).*

“(iii) Within 18 months from the time that the Administrator establishes the crite-

ria and procedures in this subparagraph, a State with primary enforcement responsibility shall adopt any necessary regulations to implement this subparagraph. Within [2 years] *12 months* of adoption of such regulations the State shall make determinations regarding filtration for all the public water systems within its jurisdiction supplied by surface waters.

"(iv) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to make the determination in clause (ii) in such State as the State would have under that clause.

"(v) Any filtration requirement or schedule under this subparagraph shall be treated as if it were a requirement of a national primary drinking water regulation.

"(D) *Not later than 36 months after the enactment of the Safe Drinking Water Act Amendments of 1985,* [The] *the* Administrator shall propose and promulgate regulations requiring disinfection as a treatment technique for all public water systems[. The] *and the* Administrator shall *simultaneously* promulgate a rule specifying criteria that will be used by the Administrator or delegated State authorities to grant variances from this requirement according to the provisions of sections 1415(a)(1)(B) and 1415(a)(3)[, prior to implementation of this paragraph]. The Administrator or the delegated State authority shall, to the extent feasible, provide technical assistance to small public water systems in complying with this [subsection] *subparagraph.".*

(c) Paragraphs (4) and (5) of section 1412(b) of the Safe Drinking Water Act are amended by striking "Revised national" both times the words occur and inserting both times in lieu thereof "National". Paragraphs (4), (5), and (6) of section 1412(b) of the Safe Drinking Water Act are redesignated as paragraph (7), (8), and (9) respectively.

(d) Paragraph (7) of the Safe Drinking Water Act as redesignated by subsection (c), is amended by adding at the end thereof the following: "Such review shall include an analysis of innovations or changes in technology, treatment techniques or other activities that have occurred over the previous three-year period and that may provide for greater protection of the health of persons and the findings of such review shall be published in the Federal Register. If, after opportunity for public comment, the Administrator concludes that changes in technology, treatment techniques or other means are not available to permit greater protection of the health of persons than that afforded by the existing regulations, an explanation of such conclusion, shall be published in the Federal Register.".

[(d)] *(e)* Section 1412(e) of the Safe Drinking Water Act is amended to read as follows:

"(e) The Administrator shall provide the Science Advisory Board, established under the Environmental Research, Development and Demonstration Act of 1978, an opportunity to comment prior to proposal *or during the public comment period* [of] *on* a maximum contaminant level goal and national primary drinking water regulation.".

ENFORCEMENT

SEC. 3. (a) Section 1414(a)(1)(A) of the Safe Drinking Water Act is amended by inserting "and such public water system" after the words "notify the State".

(b) Section 1414(a)(1)(B) of the Safe Drinking Water Act is amended to read as follows:

"(B) If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (g) requiring the public water system to comply with such regulation or requirement or shall commence a civil action under subsection (b).".

(c) Section 1414(a)(2) of the Safe Drinking Water Act is amended by striking the words "he may commence a civil action under subsection (b)" and inserting the following: ["he"] *"the Administrator* shall issue an order under subsection (g) requiring the public water system to comply with such regulation or requirement or shall commence a civil action under subsection (b)".

(d) Section 1414(b) of the Safe Drinking Water Act is amended by—

(1) adding "or with an order issued under subsection (g)" after "drinking water regulation" in the first sentence;

(2) deleting "willful" immediately after "there has been a" in the second sentence; and

(3) striking "$5,000" and substituting "$25,000".

[(d)] *(e)* Section 1414 of the Safe Drinking Water Act is amended by adding at the end thereof the following new subsection:

"(g)(1) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation, schedule, or other requirement, the Administrator also may issue an order to require compliance with such regulation, schedule, or other requirement.

"(2) An order issued under this subsection shall not take effect until after notice and opportunity for public hearing and, in the case of a State having primary enforcement responsibility, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the proposed order. A copy of any order proposed to be issued under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

"(3)(A) Any person who violates, fails, or refuses to comply with an order under paragraph (2) shall be liable to the United States for a civil penalty of not more than $25,000 per day of violation.

"(B) Whenever any civil penalty sought by the Administrator under this paragraph does not exceed a total of $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5 of the United States Code. [The Administrator shall have the discretion to compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection against any person.]

"(C) Whenever a civil penalty sought by the Administrator exceeds $5,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court (as determined under the provisions of title 28 of the United States Code).

"(D) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Administrator, the Attorney General shall recover the amount for which such person is liable in any appropriate district court of the United States. In any such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.".

(e) Section 1414 of the Safe Drinking Water Act is amended by striking the words "Failure by State to Assure" from the title.

PUBLIC NOTIFICATION

SEC. 4. (a) Section 1414(c) of the Safe Drinking Water Act is amended by striking everything after the sentence "The Administrator shall by regulation prescribe the form, manner, and frequency for giving notice under this subsection." to the sentence beginning "The Administrator may also require" and inserting the following: "Within [12] *18* months after the date of enactment of the Safe Drinking Water Act Amendments of 1985, the Administrator shall amend such regulations to provide for different types and frequencies of notice based on the differences between violations which are intermittent or infrequent and violations which are continuous or frequent. Such regulations shall also take into account the seriousness of any potential adverse health effects which may be involved. [Notice of any violation of a maximum contaminant level and any other notice of a violation designated by the Administrator as continuous or posing a serious potential adverse health effect shall be given no less frequently than every three months and in no case shall notice be given less frequently than annually. Such notice shall include notification in a newspaper of general circulation serving the area served by the public water system. Notice under this subsection shall provide a clear and readily understandable explanation of the violation, the steps that the system is taking to] *Notice of any violation of a maximum contaminant level or any other violation designated by the Administrator as posing a serious potential adverse health effect shall be given as soon as possible, but in no case later than 14 days after the violation. Notice of a continuous violation of a regulation other than a maximum contaminant level shall be given no less frequently than every three months. Notice of violations judged to be less serious shall be given no less frequently than annually. Notification of such violations to affected persons shall be as prompt as possible and shall include notification by newspaper and shall include, unless inappropriate, a press release to electronic media and individual mailings. Notice under this subsection shall provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the steps that the system is taking to* correct such violation, and the necessity for seeking alternative water supplies, if any, until the violation is corrected. Until such amended regulations are promulgated, the regulations in effect on the date of the enactment of the Safe Drinking Water Act Amendments of 1985 shall remain in effect.".

VARIANCES

SEC. 5. (a) Section 1415(a)(1)(A) of the Safe Drinking Water Act is amended by striking the word "despite" and inserting in lieu thereof the following: ". A variance may only be issued to a system after the system's".

(b) Section 1415(a)(1)(A) of the Safe Drinking Water Act is amended by striking the word "best" before technology; by striking the word "generally" before the word

"available" and inserting in lieu thereof the [word "best";] *words "the best"*; and by adding after "(taking costs into consideration)." the following: "The Administrator shall propose and promulgate his finding of the best available technology, treatment techniques or other means available for each contaminant for purposes of this subsection at the time he proposes and promulgates a maximum contaminant level for each such contaminant. The Administrator's finding of best available technology, treatment techniques or other means for purposes of this subsection may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator.".

(c) Section 1415(a)(1)(A) of the Safe Drinking Water Act is amended by striking the words "within one year of the date" and inserting in lieu thereof "at the time".

(d) Section 1415(a)(1)(A)(ii) of the Safe Drinking Water Act is amended by adding after the words "water system of such" the word "additional".

EXEMPTIONS

SEC. 6. (a) Section 1416(b)(1) of the Safe Drinking Water Act is amended by striking the words "within one year of the date" and inserting in lieu thereof "at the time".

(b) Section 1416(b)(2)(A)(i) of the Safe Drinking Water Act is amended by striking the word "interim" and striking the words "not later than January 1, 1984" and inserting in lieu thereof "not later than 12 months after the date of enactment of the Safe Drinking Water Act Amendments of 1985".

(c) Section 1416(b)(2)(A)(ii) of the Safe Drinking Water Act is amended by striking the word "revised"; and by striking the words "not later than seven years after the date such requirement takes effect" and inserting in lieu thereof "other than a regulation referred to in section 1412(a), 12 months after the date of the issuance of the exemption".

(d) Section 1416(b)(2)(B) of the Safe Drinking Water Act is amended to read as follows:

"(B) The final date for compliance provided in any schedule in the case of any exemption may be extended by the State (in the case of a State which has primary enforcement responsibility) or by the Administrator (in any other case) for a period not to exceed 3 years after the date of the issuance of the exemption if the public water system establishes that—

"(i) the system cannot meet the standard without capital improvements which cannot be completed within the period of such exemption;

"(ii) in the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance; or

"(iii) the system has entered into an enforceable agreement to become a part of a regional public water system; and

the system is taking all practicable steps to meet the standard.

"(C) In the case of a system which does not serve more than 500 service connections and which needs financial assistance for the necessary improvements, an exemption granted under subsection (b)(2)(A) (i) or (ii) may be renewed for one or more additional 2-year periods if the system establishes that it continues to meet the requirements of subsection (B).".

MONITORING FOR UNREGULATED CONTAMINANTS

SEC. 7. (a) Section 1445(a) of the Safe Drinking Water Act is amended by adding at the end thereof the following: "In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system's drinking water.".

(b) Section 1445(a) of the Safe Drinking Water Act is amended by adding "(1)" after "(a)" and adding the following at the end thereof:

"(2) Not later than 18 months after date of enactment of the Safe Drinking Water Act Amendments of 1985, the Administrator shall promulgate regulations for every public water system to conduct a monitoring program for unregulated contaminants. Such regulations shall require monitoring of drinking water supplied by the system, and shall vary the frequency and schedule of monitoring requirements for systems based on the number of persons served by the system, the source of supply, and the contaminants likely to be found. Each system shall be required to monitor at least once within 5 years of the effective date of such regulations unless the Administrator requires more frequent monitoring.".

"(3) Regulations under paragraph (2) shall list unregulated contaminants for which systems may be required to monitor, and shall include criteria by which the primary enforcement authority in each State could show cause for deletion of a contaminant from the designated list. The primary State enforcement authority may delete contaminants for an individual system, in accordance with these criteria, with an approved assessment of the contaminants potentially to be found in the system. [Any such State must submit an assessment to the Administrator which shall be regarded as approved 60 days after its submission unless the Administrator disapproves the assessment.] *The Administrator shall approve or disapprove such an assessment submitted by a State within 90 days.*

"(4) Public water systems conducting monitoring of unregulated contaminants pursuant to this section shall provide the results of such monitoring to the primary enforcement authority.

["(4)] *"(5)* Notification of the availability of the results of such monitoring program required under paragraph (2), and notification of the availability of the results of the monitoring program referred to in paragraph (5), shall be given to the persons served by the system and the Administrator.

["(5)] *"(6)* The Administrator may waive the monitoring requirement of this subsection for a system which has conducted a monitoring program after January 1, 1983, if the Administrator determines the program to have been consistent with the regulations promulgated under this section.

["(6)] *"(7)* Any system supplying less than 150 service connections shall be regarded as complying with this subsection if such system provides water samples *or the opportunity for sampling* according to the rules established by the Administrator. There are authorized to be appropriated $30,000,000 in the fiscal year ending September 30, 1986 to remain available until expended to carry out the provisions of this subsection.".

TECHNICAL ASSISTANCE

SEC. 8. (a) Section 1442 of the Safe Drinking Water Act is amended by adding the following new subsection:

"(g) The Administrator is authorized to provide technical assistance to small public water systems *or water systems of Indian tribal organizations* to enable such systems to achieve and maintain compliance with national drinking water regulations. Such assistance may include 'circuit-rider' programs, training, and preliminary engineering studies. There are authorized to be appropriated to carry out this subsection $10,000,000 for each of the fiscal years 1986 through [1989.] *1990. Of this sum, at least 5 per centum shall be utilized for technical assistance to Indian tribal organizations.*".

TAMPERING WITH PUBLIC WATER SYSTEMS

SEC. 9. Part D of the Safe Drinking Water Act is amended by adding the following new section at the end thereof:

"TAMPERING WITH PUBLIC WATER SYSTEMS

"SEC. 1432. (a) Any person who tampers with a public water system shall be fined not more than $50,000, or imprisoned for not more than 5 years, or both.

"(b) Any person who attempts to tamper, or makes a threat to tamper, with a public drinking water system shall be fined not more than $20,000, or imprisoned for not more than 3 years, or both.

"(c) The Administrator may bring a civil action in the appropriate United States district court (as determined under the provisions of title 28 of the United States Code) against any person who tampers, attempts to tamper, or makes a threat to tamper with a public water system. The court may impose on such person a civil penalty of not more than $50,000 for such tampering or not more than $20,000 for such attempt or threat.

"(d) For the purposes of this section, the term 'tamper' means—

"(1) to introduce a contaminant into a public water system with the intention of harming persons; or

"(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.".

PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

RESTRICTIONS ON UNDERGROUND INJECTION OF HAZARDOUS WASTE AND REGULATION OF STATE PROGRAMS

SEC. 10. (a) Section 1421(b)(2)(A), section 1422(c)(1), and section 1425(a)(1) of the Safe Drinking Water Act are each amended by inserting "or natural gas storage operations" after "production".

(b) Part C of the Safe Drinking Water Act is amended by adding at the end thereof the following new [sections] *section*:

["PROHIBITION ON HAZARDOUS WASTE INJECTION

["SEC. 1426. (a) No hazardous waste may be disposed of by underground injection—

["(1) into a formation which contains (within one-quarter mile of the well used for such underground injection) an underground source of drinking water; or

["(2) above such a formation.

The prohibitions established under this section shall take effect 6 months after the enactment of the Hazardous and Solid Waste Amendments of 1984 except in the case of any State in which identical or more stringent prohibitions are in effect before such date. The prohibition established under this subsection shall be treated for purposes of this Act as a prohibition established pursuant to an applicable underground injection program.

[“(b) Subsection (a) shall not apply to the injection of contaminated ground water into the aquifer from which it was withdrawn, if—

[“(1) such injection is—

[“(A) a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or

[“(B) part of corrective action required under the Solid Waste Disposal Act intended to clean up such contamination;

[“(2) such contaminated ground water is treated to substantially reduce hazardous constituents prior to such injection; and

[“(3) such response action or corrective action will, upon completion, be sufficient to protect human health and the environment.

[“(c)(1) Each State which assumes primary enforcement responsibility under this Act shall adopt a program to carry out the prohibition established under paragraphs (1) and (2) of subsection (a) (unless such State has adopted and is carrying out a more stringent prohibition).

[“(2) The Administrator shall promulgate regulations to carry out the prohibitions established under paragraphs (1) and (2) of subsection (a) for each State which is not exercising primary enforcement responsibility under this Act for enforcement of such prohibitions.

[“(d) The term ‘hazardous waste’ as used in this section means any hazardous waste, as defined in the Solid Waste Disposal Act, which is listed or identified under section 3001 of that Act.”.]

“REGULATION OF STATE PROGRAMS

“SEC. [1427] *1426.* (a) No later than 18 months after enactment of the Safe Drinking Water Act Amendments of 1985, the Administrator shall revise regulations issued under this Act to require ground water monitoring at locations and in such a way that would provide the earliest possible detection of fluid migration into, or in the direction of, underground drinking water sources from a class I injection well unless the Administrator or delegated State authority concludes, on the basis of the applicant's demonstration, that such monitoring is not necessary because no potential exists for migration from the injection zone that may be harmful to human health or the environment.

“(b) The Administrator shall submit a report to Congress no later than September 1987, summarizing the results of State surveys, currently required by the Administrator, 3 years after the delegation of the program, under this section to a primary State enforcement authority. The report shall include the following information:

“(1) the numbers and categories of class V wells which discharge nonhazardous waste into or above an underground source of drinking water,

“(2) the primary contamination problems associated with different categories of these disposal wells, and

“(3) recommendations for minimum design, construction, installation, and siting requirements that should be applied to protect [ground water] *underground sources of drinking water* from such contamination wherever necessary.”.

(c)(1) Section 7010(c) of the Solid Waste Disposal Act is amended by striking “sections 7002 and 7003 of this Act” and inserting in lieu thereof “the provisions of this Act”.

(2) Section 7010 of the Solid Waste Disposal Act is renumbered as section 3020 and inserted after section 3019 of such Act.

ENFORCEMENT

SEC. 11. (a)(1) Section 1423(a)(1) of the Safe Drinking Water Act is amended by striking out all after the first sentence and substituting the following: “If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (d) requiring the person to comply with such requirement or shall commence a civil action under subsection [(b)(1).”] *(b).”.*

(2) Section 1423(a)(2) of the Safe Drinking Water Act is amended by striking the words “he may commence a civil action under subsection (b)(1)” and substituting the following: [“he] *the Administrator* shall issue an order under subsection (d) requiring the person to comply with such requirement or shall commence a civil action under subsection [(b)(1).”] *(b).”.*

[(3) Section 1423(b)(1) of the Safe Drinking Water Act is amended by striking out the first sentence thereof and substituting the following: “Civil actions referred to in paragraphs (1) and (2), subsection (a) shall be brought in the appropriate United States district court and such court shall have jurisdiction to require compliance with any requirement of an applicable underground injection program.”.

[(b) Section 1423(b)(1) of the Safe Drinking Water Act is amended by striking in the last sentence “$5,000” and substituting “$25,000” and striking “60” and substituting “30”.

[(c) Section 1423 of the Safe Drinking Water Act is amended by adding the following new subsection at the end thereof:

[“(d)(1) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any requirement of an applicable underground injection control program, the Administrator may also issue an order to require compliance with such requirement.

[“(2) An order issued under this subsection shall not take effect until after notice and opportunity for public hearing and, in the case of a State having primary enforcement responsibility for underground water sources (within the meaning of section 1422(b)(3) or 1425(c)) until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the proposed order. A copy of any order proposed to be issued under this subsection shall be sent to the appropriate State agency involved if the State has primary enforcement responsibility. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

[“(3)(A) Any person who violates, or fails or refuses to comply with an order under paragraph (2) shall be liable to the United States for a civil penalty of not more than $25,000 per day of violation.

[“(B) Whenever the civil penalty sought by the Administrator under this paragraph does not exceed $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5 of the United States Code. The Administrator shall have the discretion to compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection against any person.

[“(C) Whenever the civil penalty sought by the Administrator under this paragraph exceeds $5,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court (as determined under the provisions of title 28 of the United States Code).

[“(D) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Administrator, the Attorney General shall recover the amount for which such person is liable in any appropriate district court of the United States. In any such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.”.]

(b) Section 1423(b) of the Safe Drinking Water Act is amended to read as follows:

“(b) Civil actions referred to in paragraphs (1) and (2) of subsection (a) shall be brought in the appropriate United States district court and such court shall have jurisdiction to require compliance with any requirement of an applicable underground injection program or an order issued under subsection (c). The court may enter such judgment as protection of public health may require. Any person who violates any requirement of an applicable underground injection control program (A) shall be subject to a civil penalty of not more than $25,000 for each day of such violation, and (B) if such violation is willful, such person may, in addition to or in lieu of the civil penalty authorized by clause (A), be fined not more than $25,000 for each day of such violation, or imprisoned for not more than three years, or both.”.

(c) Section 1423 of the Safe Drinking Water Act is amended by inserting the following new subsection immediately after subsection (b) and redesignating the succeeding subsection accordingly:

“(c)(1) ADMINISTRATIVE ORDERS FOR OTHER THAN OIL OR NATURAL GAS INJECTION WELL OPERATORS.—In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation or other requirement of this part other than those relating to (A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or (B) any underground injection for the secondary or tertiary recovery of oil or natural gas, the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $25,000 per day for each violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

“(2) ADMINISTRATIVE ORDERS FOR OIL OR NATURAL GAS INJECTION WELL OPERATORS.—In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation, or other requirement of this part relating to (A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or (B) any underground injection for the secondary or tertiary recovery of oil or natural gas, the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $5,000 per day for each violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

"(3) PROCEDURE.—(A) An order under this subsection shall be issued by the Administrator after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator shall give to the person to whom it is directed written notice of the Administrator's proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the order. Such hearing shall not be subject to sections 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

"(B) The Administrator shall provide public notice of, and reasonable opportunity to comment on, any proposed order.

"(C) Any citizen who comments on any proposed order under subparagraph (B) shall be given notice of any hearing held under this subsection and of any order. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held prior to issuance of the order, then upon presentation by such citizen, within 30 days of issuance of the order, of evidence that such order was inadequate or improper, the Administrator shall set aside such order immediately and provide a hearing in accordance with subparagraph (A) on the proposed order.

"(D) Any order issued under this subsection shall become effective 30 days following its issuance unless an appeal is taken pursuant to paragraph (6) or the order is set aside pursuant to subparagraph (C). If a hearing request made pursuant to subparagraph (C) is denied, an order issued under this subsection shall become effective thirty days following such denial.

"(4) CONTENT OF ORDER.—(A) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and may specify a reasonable time for compliance.

"(B) In assessing any civil penalty under this subsection, the Administrator shall take into account appropriate factors, including (i) the seriousness of the violation; (ii) the economic benefit (if any) resulting from the violation; (iii) any history of such violations; (iv) any good-faith efforts to comply with the applicable requirements; (v) the economic impact of the penalty on the violator; and (vi) such other matters as justice may require.

"(5) EFFECT OF ORDER.—Any violation with respect to which the Administrator has commenced and is diligently prosecuting an action, or has issued an order, under this subsection shall not be subject to an action under subsection (b) of this section or section 1424(c) or 1449 of this Act: PROVIDED, That the foregoing limitation on civil actions under section 1449 of this Act shall not apply with respect to any violation for which (i) a civil action under section 1449(a)(1) of this Act has been filed prior to commencement of an action under this subsection or, (ii) a notice of violation under section 1449(b)(1) of this Act has been given prior to commencement of an action under this subsection and an action under section 1449(a)(1) of this Act is filed prior to 120 days after such notice is given.

"(6) JUDICIAL REVIEW.—Any person against whom an order is issued or who commented on a proposed order pursuant to paragraph (3) may file an appeal of such order with the United States District Court for the District of Columbia or the district in which the violation is alleged to have occurred. Such an appeal may only be filed within the 30 day period beginning on the date the order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator and to the Attorney General. The Administrator shall promptly file in such court a certified copy of the record on which such order was imposed. The district court shall not set aside or remand such order unless there is not substantial evidence on the record, taken as a whole, to support the finding of a violation or, unless the Administrator's assessment of penalty or requirement for compliance constitutes an abuse of discretion. The district court shall not impose additional civil penalties for the same violation unless the Administrator's assessment of a penalty constitutes an abuse of discretion.

"(7) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

"(A) after the order becomes effective under paragraph (3), or

"(B) after a court, in an action brought under paragraph (6), has entered a final judgment in favor of the Administrator, the Administrator may request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date the order is effective or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(8) SUBPOENA.—The Administrator may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanction.".

(d) Section 1423 of the Safe Drinking Water Act is amended by striking the words "FAILURE OF STATE TO ASSURE" from the title.

[CRITICAL AQUIFER PROTECTION AREA DEMONSTRATION PROGRAM]

SOLE SOURCE AQUIFER DEMONSTRATION PROGRAM

SEC. 12. Part C of the Safe Drinking Water Act is amended by adding the following new section:

["CRITICAL AQUIFER PROTECTION AREA] *SOLE SOURCE AQUIFER* DEMONSTRATION PROGRAM

"SEC. [1428] *1427.* (a) The purpose of this section is to establish procedures for development, implementation, and assessment of demonstration programs designed to protect critical aquifer protection areas located within areas designated as sole or principal source aquifers under section 1424(e) of the Safe Drinking Water Act.

"(b) For purposes of this section, critical aquifer protection area means *all or part of* an area located within an area for which an application for designation as a sole or principal source aquifer pursuant to section 1424(e) has been submitted to or approved by the Administrator as of the date of enactment of this section and which satisfies the criteria established by the Administrator under subsection (d).

"(c)*(1)* Any State, municipal, or local government or political subdivision thereof or any planning entity (including any interstate regional planning entity) that identifies a critical aquifer protection area over which it has authority or jurisdiction may apply to the Administrator for the selection of such area for a demonstration program under subsection (e). Any applicant shall consult with other [appropriate] government or planning entities with authority or jurisdiction in such area prior to application. The application shall include a certification by the Governor that the plan is consistent with State laws, regulations, and policies.

"(2) Applicants, other than the Governor, in any State in which any Federal funds under section 208 of the Clean Water Act have been expended prior to the date of enactment of this section for planning to protect a sole source aquifer designated under section 1424(e) of this Act shall: (A) submit the application for a demonstration program jointly with the Governor and (B) shall obtain the approval of any plan developed or implemented under subsection (g) of this section from the Governor prior to submission to the Administrator.

"(d) Within [12] *16* months of the date of enactment of this section, the Administrator shall, by rule, establish criteria for identifying critical aquifer protection areas under this section. In establishing such criteria, the Administrator shall consider the following:

["(1) the existence of one or more recharge zones through which significant volumes of ground water flow to an underground source of drinking water;]

"(1) the vulnerability of the aquifer to contamination due to hydrogeologic characteristics;

"(2) the number of persons or the proportion of population using the ground water as a drinking water source;

["(3) the availability of alternative supplies of drinking water;

["(4) the vulnerability of the aquifer to contamination due to hydrogeologic characteristics;]

"[(5)] *(3)* the economic, social and [ecological] *environmental* benefits that would result to the area from maintenance of [high quality] *ground* water [recharging the aquifer] *of high quality;* and

"[(6)] *(4)* the economic, social, and [ecological] *environmental* costs that would result from degradation of the quality of [recharging water] *the ground water.*

"(e) An application submitted to the Administrator by any applicant shall propose boundaries for the critical aquifer protection area within their jurisdiction and [may] *shall* include a *plan proposal or a* comprehensive management plan for the proposed protection area. [Such plan shall be designed to maintain the quality of the ground water in the critical protection area through maintenance, to the maximum extent possible, of the natural vegetative and hydrogeological conditions.] *A plan approved prior to the date of enactment under section 208 of the Clean Water Act to protect a sole source aquifer designated under section 1424(e) of this Act shall be considered a comprehensive management plan for the purposes of this section. The objectives of such plan shall be to maintain the quality of the ground water in the critical aquifer protection area in a manner reasonably expected to protect human health, the environment, and the ground water resources.* The following elements [may] *shall* be included in such a protection plan:

"(A) a map showing the detailed boundary of the critical protection area;

["(B) a determination of the quality and quantity of the ground water recharged within the critical protection area;]

"(B) a hydrogeologic assessment of surface and ground water resources within the critical protection area;

"(C) an identification of existing and potential point and nonpoint sources of ground water degradation; [, ground water flow patterns, and the relationship between surface water management and ground water quality and recharge;

["(D) a resource assessment of the amount, location, and type of human development and activity which the ecosystem can sustain while still maintaining existing ground and surface water quality and protecting unique ecological features related to maintenance of water quality;]

"(D) an assessment of the relationship between activities on the land surface and ground water quality;

"(E) specific actions and management practices to be implemented in the critical protection area to prevent adverse impacts on *ground* water quality [and recharge capabilities];

["(F) a program for State and/or local implementation of the plan in a manner that will insure the continued, uniform, consistent protection of the critical protection area in accord with the purposes of this section;]

"(F) identification of authority adequate to implement the plan, estimates of program costs, and sources of State matching funds.

["(G) adequate personnel, funding, and authority to carry out the plan;

["(H) proposed limits on activities and projects financially assisted by Federal, State, or local government which may contribute to degradation of such ground water or any loss of natural surface and subsurface infiltration or purification capability of the critical protection area watershed;

["(I) consideration of specific techniques, which may include clustering, transfer of development rights, and other innovative measures sufficient to achieve the objectives of this section;

["(J) consideration of the establishment of a State institution to facilitate and assist in funding a development transfer credit system.]

"(f) Within 120 days after receipt of an application under this section, the Administrator must approve or disapprove the application based on a determination that the critical protection area satisfies the criteria established under subsection (d) and that a demonstration program for the area would provide [a useful model for other ground water protection programs] *protection for ground water quality consistent with the objectives stated in subsection (e).* Any petitioner may modify and resubmit any application which is not approved. Upon approval of an application, the Administrator may enter into a cooperative agreement with the applicant to establish a demonstration program. Such program shall include the development and implementation of a plan for the protection of the ground water recharged through the critical aquifer protection area.

"(g) Upon entering a cooperative agreement under subsection (e), the Administrator may provide to the applicant, on a matching basis, a grant of 50 per centum of the costs of developing and implementing the plan established under this section. The total amount of grants under this section for any one aquifer, designated under section 1424(e), shall not exceed [$2,000,000] *$4,000,000* in any fiscal year.

"(h) No funds authorized under this subsection may be used to fund activities funded under other sections of this Act or the Clean Water Act, the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or other Federal statutes.

"(i) No funds authorized to be appropriated under this section may be used to clean up [individual] *any source of contamination or to bring any* [sources] *source* of contamination [or to bring such sources] into compliance with Federal, State, or local statutes.

"(j) No later than December 31, 1989, each State shall submit to the Administrator a report assessing the impact of the program on ground water quality and identifying those measures found to be effective in protecting groundwater resources. No later than September 30, 1990, the Administrator shall submit to Congress a report summarizing the State reports, and assessing the accomplishments of the sole source aquifer demonstration program including an identification of protection methods found to be most effective and recommendations for their application to protect ground water resources from contamination wherever necessary.

["(j)] *"(k)* Nothing under this section shall be construed to amend, supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws; or any requirement imposed or right provided under any Federal or State environmental or public health statute.

["(k)] *"(l)* There are authorized to be appropriated for the purposes of this section [$25,000,000] *$20,000,000* for each of the fiscal years [1986] *1987* through [1989.".] *1990.".*

GENERAL PROVISIONS

AUTHORIZATION OF APPROPRIATIONS

SEC. 13. (a) Section 1442(f) of the Safe Drinking Water Act is amended by inserting the following at the end thereof: "There are authorized to be appropriated to carry out subsection (a)(2)(B), [$9,600,000 for the fiscal year 1985,] $11,300,000 for the fiscal year 1986, $11,300,000 for the fiscal year 1987, $11,300,000 for the fiscal year 1988, and $11,300,000 for the fiscal year 1989 *and $11,300,000 for the fiscal year 1990.* There are authorized to be appropriated to carry out the provisions of this section (other than subsection (g), subsection (a)(2)(B), and provisions relating to research), [$42,000,000 for the fiscal year 1985,] $47,000,000 for the fiscal year 1986, $47,000,000 for the fiscal year 1987, $47,000,000 for the fiscal year 1988, [and] $47,000,000 for the fiscal year 1989 *and $47,000,000 for the fiscal year 1990.".*

(b) Section 1443(a)(7) of the Safe Drinking Water Act is amended by adding the following at the end thereof: "For the purposes of making grants under paragraph (1) there are authorized to be appropriated [$40,000,000 for the fiscal year 1985,] $45,000,000 for the fiscal year 1986, $45,000,000 for the fiscal year 1987, $45,000,000 for the fiscal year 1988, [and] $45,000,000 for the fiscal year 1989 *and $45,000,000 for the fiscal year 1990.".*

(c) Section 1443(b)(5) of the Safe Drinking Water Act is amended by adding the following at the end thereof: "For the purpose of making grants under paragraph (1) there are authorized to be appropriated [$25,000,000 for the fiscal year 1985,] $28,000,000 for the fiscal year 1986, $28,000,000 for the fiscal year 1987, $28,000,000 for the fiscal year 1988, [and] $28,000,000 for the fiscal year 1989 *and $28,000,000 for the fiscal year 1990.".*

(d) Section 1441(f) of the Safe Drinking Water Act is amended by striking out "in effect" and all that follows and substituting "in effect for more than one year.".

INDIAN TRIBAL ORGANIZATION

SEC. 14. (a) Section 1401 of the Safe Drinking Water Act is amended by inserting the following after subsection 13:

"(14) The term 'Indian tribal organization' means any Indian tribe, band, nation, or other organized group or community (including any Alaska Native village, but not including any Alaska Native regional or village corporation) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.".

(b) The Administrator, in cooperation with the Director of the Indian Health Service, shall, within 12 months of enactment, conduct a survey of drinking water on Indian reservations, identifying drinking water problems and the need, if any, for alternative drinking water supplies.

(c) The Administrator is authorized to make special provision for the treatment of Indian tribes under this Act, including the treatment of Indian tribes as States to the degree necessary to carry out the purposes of this Act. Such special provision may include the direct provision of funds to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator is authorized to reduce the non-Federal share otherwise required under section 1443 with respect to Indian tribes, as determined by the Administrator in cooperation with the Director of the Indian Health Service.

JUDICIAL REVIEW

SEC. 15. (a) Section 1448(a) of the Safe Drinking Water Act is amended to read as follows:

"JUDICIAL REVIEW

"SEC. 1448. (a)(1) A petition for review of—

"(A) action of the Administrator in promulgating any national primary drinking water regulation under section 1412, any regulation under section 1413(b), any regulation under section 1414(c), any regulation for State underground injection control programs under section 1421, or any general regulation for the administration of this title may be filed in the United States Court of Appeals for the District of Columbia, or in any United States court of appeals for a circuit in which the petitioner resides or transacts business which is directly affected by such action; and

"(B) action of the Administrator in promulgating any other regulation under this title, issuing any order under this title, or making any determination under this title may be filed only in the United States court of appeals for a circuit in which the petitioners resides or transacts business which is directly affected by such action.

Any such petition shall be filed within the 120-day period beginning on the date of the promulgation of the regulation or issuance of the order with respect to which review is sought or on the date of the determination with respect to which review is sought, or after such date only if the petition is based solely on grounds which arose after such one hundred and twentieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforce-

ment or in any civil action to enjoin enforcement.

"(2)(A) If petitions for review of the same agency action have been filed in two or more United States courts of appeals and the Administrator has received written notice of the filing of the first such petition more than 30 days before receiving written notice of the filing of the second petition, then the record shall be filed in that court in which the first petition was filed. If petitions for review of the same agency action have been filed in two or more United States courts of appeals and the Administrator has received written notice of the filing of one or more petitions within 30 days or less after receiving written notice of the filing of the first petition, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that petitions have been filed in two or more United States courts of appeals, and shall identify each court for which he has written notice that such petitions have been filed within 30 days or less of receiving written notice of the filing of the first such petition. Pursuant to a system of random selection devised for this purpose, and within three business days after receiving such notice from the Administrator the Administrative Office thereupon shall select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the court of appeals which remanded such action.

"(B) Where petitions have been filed in two or more United States courts of appeals with respect to the same agency action and the record has been filed in one of such courts pursuant to paragraph (1), the other courts in which such petitions have been filed shall promptly transfer such petitions to the United States court of appeals in which the record has been filed. Pending selection of a court pursuant to subsection (1), any court in which a petition has been filed may postpone the effective date of the agency action until 15 days after the Administrative Office has selected the court in which the record shall be filed.

"(C) Any court in which a petition with respect to any agency action has been filed, including any court selected pursuant to subparagraph (A), may transfer such petition to any other United States court of appeals for the convenience of the parties or otherwise in the interest of justice.".

(b) Section 1448(b) of the Safe Drinking Water Act is amended by deleting "45-day" in both places where it appears and inserting "120-days" in lieu thereof.

Mr. DURENBERGER. Mr. President, I move the adoption of the committee amendments.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

The committee amendments were agreed to en bloc.

Mr. DURENBERGER. Mr. President, today we are considering S. 124, the Safe Drinking Water Act Amendments of 1985.

This bill, which was developed with the able effort and support of our full committee chairman, BOB STAFFORD, the full committee ranking member, LLOYD BENTSEN, the subcommittee ranking member, MAX BAUCUS, and other members of the Environment and Public Works Committee, will help to assure that citizens in this country are provided high quality drinking water supplies.

The Safe Drinking Water Act was enacted in 1974 to provide public health protection from contaminants in drinking water. The detection of synthetic organic chemicals in the water supplies of a number of cities in the early 1970's served as the impetus behind the act's reforms. The act established a program to require compliance with national drinking water standards for contaminants that may have an adverse effect on the health of persons. As an addition to the Public Health Act, the Safe Drinking Water Act focused on the removal of contaminants found in water supplies as a preventive health measure.

The act also established programs intended to protect underground sources of drinking water from contamination. Provisions in the act established restrictions on the underground injection of hazardous and nonhazardous waste and provide authority for the protection of designated sole or principal source aquifers.

An evaluation of the accomplishments of the Safe Drinking Water Act yields both good news and bad news. The good news is that over the past decade there have been a number of improvements. The act has improved compliance with basic drinking water standards. It has increased monitoring of drinking water systems and heightened public awareness of the need to protect drinking water supplies.

However, there have been major deficiencies in the implementation of programs established under the act so that public health objectives have not been fulfilled. Only 22 drinking water standards have been established—a small fraction of the contaminants that are found in public water systems and that may have an adverse effect on human health. Monitoring is only required for those contaminants for which there are standards so that we do not know if our water supplies are contaminated with other potentially harmful substances.

The need for change in current practice and an effective program based on Federal drinking water standards is illustrated by figures from recent reports issued by the Environmental Protection Agency and others: As many as 700 different synthetic organic chemicals, heavy metals, pesticides, and other pollutants have been found in our Nation's drinking water supplies; 28 percent of the water supplies in a random survey of metropolitan systems were found to be contaminated by one or more toxic organic chemicals; 63 percent of the rural water supplies in a random survey were found to be contaminated; and all 50 States have reported cases of underground drinking water contamination. Taken collectively, these statistics speak clearly to the need for an effective program that will assure fundamental public health protection.

The amendments in S. 124 were developed to rectify deficiencies in the statutory requirements and implementation of the act. The bill establishes schedules and deadlines for drinking water standard setting, requires simultaneous promulgation of drinking water goals and standards, and requires that standards be set as close to health level goals as feasible with the use of best available technology. The bill also establishes a monitoring program for unregulated contaminants to provide a systematic check on the quality of each public water system's supply.

The problem of viral and bacterial contamination of drinking water supplies is addressed in the bill by the requirements that EPA issue criteria for filtration of surface water supplies and promulgate regulations requiring disinfection for all public water systems.

Other provisions in the bill require EPA to amend existing public notification requirements to make them more timely and informative and authorize $10 million per year to provide technical assistance to small systems which have had chronic noncompliance problems.

Amendments pertaining to the protection of underground sources of drinking water are intended to enhance existing protection. EPA is required to promulgate ground water monitoring regulations for hazardous waste injection operations and to issue a report on problems with existing class V wells. In addition, a sole source aquifer demonstration program is established for the purpose of providing protection for particularly critical ground water supplies and assessing the effectiveness of specific protection measures.

The bill also provides EPA new enforcement authority for public water systems and ground water protection programs established under the act to assure timely and effective enforcement of existing and new regulatory requirements.

The bill authorizes appropriations of $131,300,000 to be expended to fulfill existing responsibilities and new activities authorized in this bill for fiscal years 1986 through 1990. In addition, a total of $30 million is authorized for monitoring of unregulated contaminants and $20 million per year for fiscal years 1987-90 is authorized for the sole source aquifer demonstration program.

Mr. President, I urge my colleagues to vote for this bill which will help to assure that citizens throughout this

country will have safe drinking water supplies now and in the future.

Mr. BENTSEN. Mr. President, I would like to state my support of S. 124, the Safe Drinking Water Act Amendments of 1985. I would also like to express my appreciation to Senators STAFFORD, DURENBERGER, and BAUCUS for their efforts.

These amendments to the Safe Drinking Water Act are significant modifications that should enhance EPA's ability to improve the quality of our drinking water. While the quality of water has improved over the last decade due to this act and the Clear Water Act, there are many tasks yet undone. Enactment of this legislation will provide EPA with the mandate it apparently needs to accomplish these tasks.

Key among the provisions in S. 124 are the new enforcement provisions for underground injection wells. Previously, the Administrator of the EPA had recourse only through the courts to penalize violators—an inefficient and the time-consuming method for minor violations. S. 124 makes administrative order authority available to the Administrator so the Agency can more effectively enforce its regulations and the law.

Section 11 of the bill, which authorizes this administrative authority, also imposes fines of up to $5,000 per day for oil and gas injection well violators and up to $25,000 per day for hazardous waste well violators. The different penalties that may be assessed under this section are important and realistic: They promote compliance while recognizing that the threat to the environment from these two types of wells is not the same.

I hope my colleagues will join me in support of this legislation.

Mr. STAFFORD. Mr. President, I want to commend the distinguished Senator from Minnesota, the chairman of the Subcommittee on Toxic Substances and Environmental Oversight, for guiding S. 124 through the Environment and Public Works Committee and bringing it to the floor of the Senate.

The Safe Drinking Water Amendments of 1985 contain major improvements to the law that is intended to protect the Nation's drinking water supplies. The bill provides needed impetus to the Environmental Protection Agency to issue regulations for contaminants of drinking water, a needed prod as the Agency has been far too slow in its regulatory efforts.

The bill also takes a major step toward identifying the nature and scope of contamination of drinking water. It does this by greatly expanding the monitoring that is required of public water systems.

Finally, the bill will provide better regulation of underground injection operations that could affect drinking water supplies.

In short the bill is a major improvement of existing law and should be passed by the Senate.

Mr. SIMPSON. Mr. President, I would take this opportunity to heartily congratulate Senator DURENBERGER and his fine staff members, Heather Wicke and Jimmy Powell, for the fine work they have done on the Safe Drinking Water Act reauthorization. This public health measure is of critical importance to the American public. There is a continually and growing awareness in this country that contamination of drinking water supplies has occurred as a result of the inappropriate or erroneous siting of toxic waste dumps, various nonpoint pollution seepage and other contamination.

Many of the municipal water systems currently in service are using technology that is over 100 years old. Progress is needed in increasing the effectiveness of the methods that are used to remove pollutants from our drinking water supplies and the Safe Drinking Water Act reauthorization is a fine forward step in providing cleaner drinking water to all Americans.

Senator DURENBERGER is a fine friend and a pragmatic and considerate Senator. He is sensitively aware of the ground water contamination problems that we find in various regions of this country. I think all of us on the Environment and Public Works Committee recognize that ground water contamination is a growing problem that Congress must deal with. However, I believe it is prudent and reasonable to leave a full and comprehensive approach to ground water regulation for another day. The new requirements that will result from passage of this bill are very significant and will contribute significantly to protection of the environment and public health. I firmly believe that this bill is generally sound and that there is genuine flexibility for the proper administration of this act by the EPA Administrator.

This legislation also contains a judicial review provision which I authored and which I believe will facilitate the equitable and reasonable determination of venue. I remain concerned that the standard setting language may not have the desirable amount of flexibility for the EPA and I would anticipate that the Members of the House will consider the implications of any overly restrictive regulatory language in this regard.

I do look forward to seeing this bill signed into law during this session of Congress and I trust that most of my colleagues will lend their support to this important piece of public health legislation.

Mr. BENTSEN. I would like to raise a concern that has come to my attention only recently. It appears that the Environmental Protection Agency is not consistent in applying permit requirements for fluids brought to the surface in connection with oil or natural gas production. Several EPA regions with a majority of oil and gas production facilities treat these fluids as part of the class II injection well program. However, some exceptions to this policy have recently occurred, which has created some confusion with respect to certain fluids.

For example, in Colorado, the EPA region will not permit the injection of water produced along with carbon dioxide at the McElmo Dome Field into a class II disposal well. EPA has assigned a class I nonhazardous permit to such wells.

In California, region IX requires a class V permit for wells which inject produced water commingled with field scrubber waste waters. Texas, Louisiana, Kansas, Oklahoma, and other States, however, approve class II injection for multiple waste waters associated with oil and gas operations.

Mr. SIMPSON. I commend the Senator from Texas for raising this issue for I had intended to do so. In my judgment, it is appropriate that all the material described by my friend from Texas be handled with his State's class II program. However, at a minimum, the EPA should review its regulations in order to assure consistent application of permit requirements.

Mr. DURENBERGER. As I am not familiar with the specific technical issues involved in this case, I am not able to judge what action, if any, the Agency should take. However, I agree that EPA should strive to achieve consistency in the application of its regulations to injection well activities.

Mr. EVANS. Mr. President, I rise in support of this important piece of legislation. I commend my colleague, Mr. DURENBURGER, for a job well done. He has pursued legislation to protect our water resources for a number of years. Last year he produced a set of Safe Drinking Water Act amendments in the waning days of the 98th Congress. Unfortunately, the crush of pending legislation and time stole our opportunity to consider that bill. Through his continued efforts, we are able to consider that bill. Through his continued efforts, we are able to consider Safe Drinking Water Act amendments early in this Congress. I applaud his perseverance.

This is an important and timely bill. Its provisions strengthen the existing drinking water statute; additional protection cannot wait any longer. I am particularly pleased that this bill contains a new program to encourage the protection of sole source aquifers, the Sole Source Aquifer Demonstration Program. This program reflects our recognition of the delicate, often precarious, balance between the health of

an aquifer and the use of the lands surrounding it. Some communities have already acknowledged this relationship and have taken measures to protect their aquifers. I believe such communities deserve special consideration. At my urging, last year's bill contained language requiring that a community's previous efforts to protect its sole source aquifer be recognized. Similar recognition is provided for in this bill, and I thank my colleague for his response to my requests.

Water is our most precious resource. Life cannot exist without clean, safe drinking water. Ground water, and aquifers in particular, are marvels of the natural world. We must protect these treasures from pollution. By acting now to prevent further contamination of our ground water, we can avoid tragic problems in the future.

This bill is another step toward that goal. Yet there is much left to be done before our ground water resources are fully protected. I urge my colleagues to support this bill to protect our most vital resource—water.

Mr. MOYNIHAN. Mr. President, I would like to express my support for S. 124, the Safe Drinking Water Act Amendments of 1985. I commend Senator DURENBERGER for working so diligently to develop the legislation and steer it through committee consideration so early in this Congress. S. 124 would protect the Nation's drinking water supplies by establishing a more aggressive, systematic process for setting new maximum contaminant levels.

This bill would hasten the neglected effort to establish standards for harmful chemicals that contaminate drinking water supplies. The Environmental Protection Agency would be required to promulgate standards for a specific set of chemicals, and the bill provides strict deadlines. Equally important, the Agency would periodically review the need for regulating additional substances that could threaten the health of drinking water consumers. Maximum contaminant levels would be set as close as feasible to a goal at which no adverse health effects occur.

S. 124 has one major omission: it lacks a comprehensive program to address the serious problem of ground water contamination. I am, however, very pleased that the bill includes a sole source aquifer demonstration program. I first introduced the Sole Source Aquifer Protection Act in 1982 and reintroduced it on January 3, 1985. Although not as generous or far-reaching as my bill, the demonstration program in S. 124 would be the first significant federally assisted effort to prevent the degradation of our most critical underground water supplies.

The Environmental Protection Agency has to date designated 20 sole source aquifers, underground reserves that are the only source of drinking water for a region. One of these lies under Long Island. On Long Island, nearly 3 million people drink from one well. And this well is rapidly becoming polluted by toxic chemicals. In Nassau County alone 119 of the 389 public wells have detectable levels of synthetic organic chemicals. Throughout both Long Island counties, Nassau and Suffolk, chemicals from diverse sources have ended up in the water supply: Solvents from industries and residents' homes, pesticides from potato farms, nitrate from lawn fertilizers, and numerous chemicals from landfills.

The only way to prevent the problem from getting worse, on Long Island and elsewhere, is to plan. We now realize how much our activities on the land above an aquifer affect the quality of the ground water and its viability as a supply for future generations. As precipitation infiltrates the land surface and recharges the ground water, it carries with it substances that have leaked into the soil or been placed on the land. In many cases, water passing through a relatively small, well-defined land area recharges a large ground water reservoir. On Long Island, the prime recharge zone happens to be an area known as the Suffolk Pine Barrens, an area of 110,000 acres or 13 percent of the island. Careful protection of these recharge zones is one of the cheapest and most effective means of maintaining good ground water quality.

Under the voluntary demonstration program, local and State governments could cooperate with the EPA in the development and implementation of plans to protect sole source aquifers. The EPA would provide half the necessary funds, and $80 million is authorized for the purpose. The plans could include a variety of measures to control human activity in special protection areas and thereby prevent contamination of the sole source aquifer. Critical parcels of land could be acquired, while in other areas suitable zoning ordinances and regulations on siting and design of landfills, underground storage tanks, and other potential sources of pollution could be established. S. 124 requires the Governor's approval of the plan in States where federally funded "208 plans"—referring to section 208 of the Clean Water Act—have previously been prepared. This ensures consistency with earlier planning efforts, although I believe the Governor's approval should be required in all States.

The sole source aquifer designation provided by the Safe Drinking Water Act of 1974 was intended to control development activities of the Federal Government in regions entirely dependent on ground water for drinking supplies. However, experience has shown that the designation—lacking a broader planning and management context—is ineffective in controlling many activities which may adversely affect the quality of ground water. I am confident that section 12 of S. 124 will accomplish its purpose—to demonstrate the effectiveness of a preventive approach to protecting sole source aquifers. All my colleagues should support S. 124.

Mr. BAUCUS. Mr. President, I would like to express my support for S. 124, the Safe Drinking Water Act Amendments of 1985.

I would also like to thank my colleague, Senator DURENBERGER, the chairman of the Subcommittee on Toxic Substances and Environmental Oversight, for his efforts on this measure.

The bill effectively addresses some of the most serious problems plaguing EPA's drinking water office. EPA has failed to develop a vigorous program, so that a wide variety of contaminants are still regularly found in our drinking water and even regulated contaminants are permitted to remain in our water at levels that present a significant risk to public health.

This bill addresses these serious shortcomings in several ways. First, it requires EPA to set standards within 3 years for the 85 contaminants previously listed by EPA as contaminants of concern. Many of us are uncomfortable with denying an agency discretion in this manner, but the failure of the EPA to meet its responsibilities under the Safe Drinking Water Act leaves us no alternative. The provisions in section 2 of this bill are the only means we have of assuring that EPA will set standards for these contaminants found in our drinking water that present a risk to the public health.

The second major problem S. 124 addresses is the lack of information about what substances are found in our drinking water. The Safe Drinking Water Act, as enacted, required EPA to conduct a series of studies to find out more about the quality of our drinking water and our ability to remove contaminants. Unfortunately, practically none of these studies have been completed so we find we have very little reliable, national information about our drinking water. S. 124 requires EPA to publish a list of unregulated contaminants for which public water systems will be required to monitor. This will be the first nationwide effort to determine what contaminants are found in which systems and in what quantity.

A third significant aspect of this bill are amendments to the enforcement provisions in the act. S. 124 provides EPA with authority to issue administrative orders and increases penalties. These provisions provide EPA with the means to take action against violators of drinking water standards more swiftly and more effectively. To date,

EPA's enforcement of these standards can be most generously categorized as lax. S. 124 should prevent EPA from continuing its poor enforcement practices.

There is one last provision of particular interest to States like Montana that contain many small public water systems. Section 8 of S. 124 provides $10 million per fiscal year in technical assistance to these systems so their ability to comply with national drinking water standards is not impaired simply because of their size.

Mr. President, I support the Safe Drinking Water Act Amendments of 1985 because I believe enactment of this bill will improve the quality of our drinking water. I encourage my colleagues to lend their support to this measure as well.

Mr. MITCHELL. Mr. President, I strongly support the reauthorization of the Safe Drinking Water Act. The amendments before us today make two particularly important improvements to the act.

The most significant amendment to the act is the addition of specific deadlines for development of drinking water standards for 85 identified contaminants. The Agency will publish these much-needed standards over the next 36 months. The amendments to this portion of the act also provide for streamlining of the standard-setting process.

While these improvements to the standard-setting process are badly needed, I am pleased that members of the Environment and Public Works Committee have agreed to focus future attention on the degree of health protection provided by the current standards and those under development. It has been suggested that we consider adding to the existing standard-setting process a safety net to assure a minimum level of public health protection. I believe this proposal has merit and look forward to considering it more fully.

The second major amendment to the act is the provision for a sole source or critical aquifer protection demonstration program. This program is designed to identify workable approaches to the protection of ground water resources where these resources are a critical or sole source of drinking water supply. This demonstration program will provide valuable insights into effective methods of protecting ground water resources.

It is important to note, however, that the Safe Drinking Water Act is not designed to provide for the comprehensive protection of the ground water resource. We see increasing evidence that ground water quality is threatened from a wide range of pollution sources. Congress has provided for controls over some of the most obvious threats to ground water, such as leaking underground storage tanks, which have been identified as a serious problem in the State of Maine. But we have not yet begun the job of working with State and local governments to design a more comprehensive approach to protecting ground water resources. I am hopeful that hearings scheduled soon in the Subcommittee on Toxic Substances will be a step in that direction.

(At the request of Mr. DURENBERGER the following colloquy was ordered to be printed in the RECORD.)

● Mr. WILSON. I would ask my distinguished friend from Minnesota, the chairman of the Environment and Public Works Subcommittee on Toxic Substances and Environmental Oversight, to respond to several questions concerning the intent of the standard-setting amendments to the act. I realize that there has been a good deal of discussion on the issue of granular activited carbon as the basis for determining the best technology available for purposes of establishing the maximum contaminant level, and I don't want to repeat the full debate that has been covered so well in the Committee on Environment and Public Works. In fact I have read the report language and some if not all, of my particular concerns seem to be taken care of in that carefully constructed language. However, I would like to ask the chairman to restate for the record how cost will, in practice, be considered in the process of determining the maximum contaminant level.

It is my understanding from reading the statute and the report language that the Environmental Protection Agency Administrator would regard granular activated carbon as available technology, but in setting the maximum contaminant level, he would take into consideration cost and feasibility at different levels of treatment by granular activited carbon technology in arriving at the final maximum contaminant level. Once that level has been set a water agency could use another technology which is at least as effective at meeting the maximum contaminant level.

Can the chairman assure me that cost will be taken into account in establishing drinking water standards?

● Mr. DURENBERGER. That is correct.

● Mr. WILSON. The Senator's response is most welcome, and I feel that this process will not lead to unreasonable costs to local water agencies that will have to comply with this new legislation. My particular concern is with trihalomethane removal where a comparable or higher level may be achieved more cost effectively by using an alternative technology. Can the chairman tell me if these alternative technologies can be used by the Administrator as the basis for setting the drinking water standards?

● Mr. DURENBERGER. That is correct.

● Mr. WILSON. I thank the chairman for his cooperation.●

Mr. LAUTENBERG. Mr. President, I rise in strong support of the drinking water bill before us. The American public is demanding safe drinking water. They also want precious underground sources of drinking water protected. The bill before us will go far in meeting these goals, and I applaud the chairman of the Environment and Public Works Committee for the speed with which the committee took up this bill.

It will result in important improvements in EPA's current drinking water program. It puts EPA on a strict schedule for regulating 85 contaminants. It puts EPA on a schedule for developing an additional list of substances and regulating those. And of critical importance is the requirement that every major water supply system conduct a baseline inventory of unregulated contaminants in drinking water and then remonitor at least every 5 years.

Mr. President, I am particularly interested in the public notification provisions of the bill. It is widely recognized that the current notification requirements have failed. The bill revises these requirements by distinguishing between violations that pose a serious threat to public health—such as exceedences of maximum contaminant levels—and less serious violations. I thank the chairman of the subcommittee, Senator DURENBERGER, again for his willingness to accept my amendment requiring notification of serious violations within no longer than 14 days.

Mr. President, another issue of great interest to me is the provision establishing—for the first time—a program for protecting underground sources of drinking water. This provision sets up a demonstration program for land use planning in the area affecting aquifers. It provides for $20 million per year in matching grants for implementing management plans.

Aquifer protection is critically important in New Jersey. Over 60 percent of the drinking water in the State comes from groundwater supplies. The state of emergency due to drought conditions and reliance on our groundwater to pull us through the drought brings the point home. Unfortunately, the spreading contamination of this resource is sobering. Hundreds of wells in New Jersey have been restricted or closed because of chemical contamination.

The aquifer protection program we are approving today is an important step in recognizing the importance of preventing contamination. It is much harder, if not impossible, to clean up an aquifer after it becomes contami-

nated. I am hopeful that applications for the protection of our three federally designated sole source aquifers, the Buried Valley Aquifer, the Brunswick Shale and Sandstone Acquifer, and the Unconsolidated Quartenary acquifer of the Rockway River, will be submitted for the demonstration funds to make full use of this program.

The Committee on Environment and Public Works plans to hold hearings in the next month on a national groundwater protection strategy, and I look forward to working with members of the committee in fashioning legislation that is larger in scope than the proposal that we are approving today.

Mr. President, Senator BRADLEY and I planned to offer an amendment today to ban the use of lead and lead solder in drinking water pipes. This amendment would have been prospective. It was aimed at reducing the exposure of the public to lead in drinking water. Studies in New Jersey have indicated that this form of exposure ranks even higher than exposure to lead from automobile exhaust. The committee will hold a hearing on lead in drinking water before superfund is taken up on the floor. It is my understanding that the amendment will be considered when the Senate takes up superfund on the floor.

Mr. President, it is my hope that the House will soon pass their counterpart and that we will have the opportunity to send a strong safe drinking water act to the President's desk well before the summer recess.

Mr. President, I'd like to commend the chairman of the committee, Senator STAFFORD, and chairman of the subcommittee, Senator DURENBERGER. In addition, I'd like to commend the leadership for bringing this bill promptly to the floor. It is my hope that we can get the Clean Water Act and the superfund to the floor as rapidly.

Mr. President, 10 prominent environmental and health organizations and the water and wastewater equipment manufacturers associations sent a letter to the Senate today urging passage of this bill. Their support has been critical in passing a strong bill, and I ask unanimous consent that the complete text of their letter be printed in the RECORD.

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

SAFE DRINKING WATER AMENDMENTS—FLOOR VOTE TODAY

MAY 16, 1985.

DEAR SENATOR: The Safe Drinking Water Act is one of our most critical environmental and public health laws. Unfortunately, this Act has not functioned as intended in protecting the American public from toxic chemicals in drinking water.

Many sorely needed reforms to this law have been included in S. 124, the Safe Drinking Water Amendments of 1985. This legislation, sponsored by Senator David Durenberger and unanimously reported out of the Senate Environment and Public Works Committee, is scheduled for floor action this week. On behalf of a broad coalition of environmental, industry, public interest and public health organizations, we urge you to support this bill.

When over 700 contaminants were found in the drinking water supplies of New Orleans and these supplies were linked with high rates of cancer, Congress passed the original Safe Drinking Water Act. The 1974 law was intended to protect the public health by giving EPA the authority to set and enforce limits on toxic chemicals in drinking water.

Over the past decade, however, EPA has used this authority most reluctantly, setting standards for only 22 drinking water contaminants. This lack of standards means not only that treatment technologies are not applied but also that monitoring to determine the presence of chemicals such as dioxin, benzene, EDB, PCBs and trichloroethylene is sporadic or nonexistent in most states. In addition, the enforcement of these few standards has been lacking; for example, the General Accounting Office reported in 1982 that enforcement action "ranged from none to minimal, followed no particular pattern, and was not as timely as it could or should have been."

S. 124 addresses many of the failings of the existing drinking water program. The bill requires EPA to set standards for over 60 chemicals which threaten drinking water supplies across the country. It requires the Office of Drinking Water to consult with other appropriate offices within EPA and with the National Toxicological Program in order to set priorities for future standard-setting. It mandates the establishment of a much-needed program to monitor for unregulated but potentially harmful contaminants, and it enhances enforcement capabilities with new authorities for the use of administrative orders by EPA. Senator Durenberger's legislation assures that notification of violations of standards will be timely and widespread; at the same time, it allows for revisions of what some had considered a burdensome public notification system. S. 124 also provides a mechanism for federal, state and local cooperation to protect critically needed and highly vulnerable underground sources of drinking water.

The American public has waited too long for the basic protections embodied in S. 124. We urge you to support this important legislation.

Sincerely,

Velma, Smith, Environmental Policy Institute; Julia A. Holmes, League of Women Voters; Rich Miller, American Nurses Association; Dan Becker, Environmental Action; Reid Wilson, U.S. Public Interest Research Group; Dr. William H. McBeath, American Public Health Association; Fern Summer, Water and Wastewater Equipment Manufacturers Association; L. Geoffrey Webb, Friends of the Earth; Jacqueline M. Warren, National Resources Defense Council; Larry Williams, Sierra Club; Nancy Drabble, Public Citizen's Congress Watch.

Mr. DURENBERGER. Mr. President, I move the passage of the bill, as amended.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass?

The bill (S. 124), as amended, was passed.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DURENBERGER. Mr. President, I thank my colleague, the majority leader, and I thank the Democratic leader a great deal for the special courtesy and convenience that has been provided for all of us today in the waiver of the 3-day rule and many other considerations.

Mr. BYRD. Mr. President, I appreciate the kind remarks of the distinguished Senator.

HOUSE BUDGET PLAN

Mr. DOLE. Mr. President, I am not surprised but disappointed with the action by the House Budget Committee. I think the Democratic majority, which is rather large in that committee, has simply walked away from fiscal responsibility today. The partisan House budget package is a feeble attempt at best, and the smoke and mirrors demonstrate that the House Democrats still reflect the big government, antidefense views of its liberal Members. Under the House budget plan, not one Federal program is terminated. The spending path continues to go up—not down. The spending plan is about $40 billion short, and probably closer to $80 billion or $100 billion short if you take out some of the smoke and mirrors, and assumptions, than the plan passed by the Senate. Almost $9 billion in "savings" comes from technical adjustments and other sleights of hand.

The liberal Democrats have again made defense the "whipping boy." I think you will recall that the Senate action cut substantially the amount from the administration's defense requests over the next 3 years, but the House Democratic plan would lop off an additional $22 billion. If spending reductions of that magnitude were put into effect, it would certainly mean slashing programs that affect our national security here and abroad.

The House Democratic budget blueprint does not spread the burden fairly across the board. It exempts all retirement benefit programs from even a freeze in inflation adjustments. This is politics—pure and simple—designed for special interests, not deficit reduction.

Perhaps worst of all, a significant portion of the House proposed budget

savings comes from the assumption that growth in nondefense discretionary programs can be limited to one-half of the rate of inflation. but those savings are unrealistic since there is no way of knowing what the Congress will do in 1987 and 1988.

Mr. President, as we have learned in the Senate, there are no easy ways to cut the deficit and at the same time guarantee that the Federal Government fulfills its most fundamental responsibility—the responsibility to maintain a strong national defense. Sooner or later the Democratic-controlled House is going to have to face up to those hard realities.

Mr. President, I am still hopeful that maybe in the conference, and hopefully on the House floor, that there can be a coalition put together of reasonable Members of the House in both parties who will really make an effort to reduce Federal spending. Again, I repeat—not a single Federal program terminated, all their savings comes from defense and other smoke and mirrors adjustments, assumptions, and I guess when someone finally determines how much the savings is over a 3-year period it is going to fall far short of the budget passed by the Senate here on last Friday morning.

So I am disappointed—not surprised—that with the stacked committee of the margin of several Members, I assume, every Republican amendment was defeated. It is unfortunate because we have heard so much rhetoric from those who have the responsibility on the House side to deal with this issue. I just say as I have said before, this in the final analysis must be bipartisan. But even beyond that, it must be realistic. There is not much realism in the budget approved by the Democratic majority on the House Budget Committee.

That is unfortunate and it must be disappointing to the American people and others who really felt that this time the Congress would actually do something. But in one short week the House has demonstrated that they are not prepared to do anything but make speeches—talk about the deficit, tell you how bad it is, how we ought to do something, and then proceed to do as little as possible.

So as bad as it is, there is still some hope, hope that the American people and others will be able to encourage a bipartisan effort on the House floor next week to put something together that will mean real spending restraint, real spending reduction and not because we all enjoy that so much but because the situation demands it, and whether we are Democrats or Republicans is not really important.

ORDERS FOR FRIDAY, MAY 17, 1985

ORDER FOR RECESS UNTIL 11:30 A.M.

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 11:30 a.m. on Friday, May 17.

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

ORDER FOR RECOGNITION OF SENATOR PROXMIRE

Mr. DOLE. Mr. President, following the recognition of the two leaders under the standing order, I ask unanimous consent that there be a special order in favor of the Senator from Wisconsin [Mr. PROXMIRE], for not to exceed 15 minutes.

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

ORDER FOR ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, following the Proxmire special order, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond the hour of 12 noon, with statements therein limited to 5 minutes each.

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

Mr. DOLE. Mr. President, following routine morning business, the Senate will turn to the consideration of the DOD authorization bill.

PROGRAM

Mr. DOLE. I am advised by the distinguished chairman of the Armed Services Committee that he cannot agree or does not want me to agree that there be no votes until Tuesday morning. There may be a way to prevent votes from happening after 5 p.m. on Monday, but I am advised by the chairman that he has already instructed two Members on this side to cancel events on Monday evening, one in Detroit and one in New York. On that basis, I am not able to assure the distinguished Senator from California, Senator CRANSTON, that anybody can be protected beyond 5 p.m. on Monday. It is my understanding those visiting NATO will return no later than 4 p.m. on Monday, and those attending the Canadian conference will return by 10 or 11 a.m. on Monday. So I only say to my colleagues that I know it may be an inconvenience, but this is a very important piece of legislation. There is a real hope that we can finish it next week. Some say it is impossible. Maybe it will be impossible. But I do not know of any other way except to try.

So I regret that I cannot be the bearer of good news to the distinguished Senator from California, Senator CRANSTON.

RECESS UNTIL 11:30 A.M. TOMORROW

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 11:30 a.m., Friday, May 17, 1985.

The motion was agreed to; and, at 6:06 p.m., the Senate recessed until tomorrow, Friday, May 17, 1985, at 11:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 16, 1985:

EXPORT-IMPORT BANK OF THE UNITED STATES

Richard H. Hughes, of Oklahoma, to be a member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 1987.

DEPARTMENT OF STATE

Vernon A. Walters, of Florida, to be the representative of the United States of America to the United Nations with the rank and status of Ambassador Extraordinary and Plenipotentiary, and the representative of the United States of America in the Security Council of the United Nations.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Pauline Crowe Naftzger, of California, to be a member of the National Museum Services Board for a term expiring December 6, 1988.

George S. Rosborough, Jr., of Missouri, to be a member of the National Museum Services Board for a term expiring December 6, 1988.

NATIONAL SCIENCE FOUNDATION

John H. Moore, of California, to be Deputy Director of the National Science Foundation.

NATIONAL COUNCIL ON THE HANDICAPPED

The following-named persons to be members of the National Council on the Handicapped for the terms indicated:

For a term expiring September 17, 1986:

Jeremiah Milbank, of Connecticut, vice Carmine R. Lavieri, deceased.

For a term expiring September 17, 1987:

Justin W. Dart, Jr., of Texas, reappointment.

Roxanne S. Vierra, of Colorado, to be a member of the National Council on the Handicapped for a term expiring September 17, 1987.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

IN THE ARMY

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. Alexander M. Weyand, xxx-xx-... [redacted], age 56, U.S. Army.

The following-named officer under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Charles W. Dyke, [redacted] U.S. Army.

IN THE NAVY

The following-named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370.

To be vice admiral

Vice Adm. James A. Sagerholm, [redacted]/1120, U.S. Navy.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be vice admiral

Rear Adm. Kendall E. Moranville, [redacted]/1310, U.S. Navy.