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Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, FIRST SESSION

SENATE—*Wednesday, June 26, 1985*

The Senate met at 9 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Let us pray.

Almighty God, reveal Thyself to the Senate today. Manifest Thy wisdom, grace, and power. Help the Senators to work their way through these customary prerecess frustrations. Help them not to make idols of issues. Help them not to allow disagreement to become discord and discord become divisive. Help them to find a consensus. Resolve rancor or bitterness or vindictiveness before they can control actions. Let respect and love prevail and lead us into a profitable recess which will bless Senators, families, and staffs, and the people. Let Thy work be done, Lord. Amen.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. DOLE. Mr. President, it is my hope today that we can stay on H.R. 2745, the imputed interest bill. It is my understanding that there are a number of amendments—four, five or six—and I have discussed the procedure with the chairman of the committee [Mr. PACKWOOD]. He would like to complete action on the bill today if that is possible. Obviously, if there are some areas that cannot be resolved, that may not be possible. But it is my hope we can complete action on this bill today.

In addition, we have a number of other matters we hope we can dispose of, including a number of nominations, if not today, tomorrow. In the event we cannot resolve some of the differences, the outstanding cloture motion will be filed today. The vote on the cloture motion will come on Friday.

I suggest if we can resolve some of the outstanding matters that some Members have concerns about, then we shall be able to complete action today, complete action on a few other bills early tomorrow, and probably then go into recess.

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

RESERVATION OF MINORITY LEADER'S TIME

Mr. DOLE. Mr. President, I reserve the remainder of the time for the distinguished minority leader.

THE JOURNAL

Mr. DOLE. Mr. President, I ask that the Journal be read.

The PRESIDING OFFICER (Mr. D'AMATO). Is there objection?

Mr. METZENBAUM. Mr. President, to reserving the time of the majority leader?

Mr. DOLE. Yes, Mr. President.

Mr. METZENBAUM. I have no objection to that.

The PRESIDING OFFICER. Is there any objection to the reserving of the time of the minority leader?

Mr. METZENBAUM. I have no objection to that, with the understanding that the minority leader has assigned his time to me, if the majority leader has no objection to that.

The PRESIDING OFFICER. Without objection, all time is reserved.

Mr. METZENBAUM addressed the Chair.

Mr. DOLE. The clerk will read the Journal.

Mr. METZENBAUM addressed the Chair.

Mr. DOLE. Mr. President, as I understand it, it is now in order to read the Journal, is that correct?

The PRESIDING OFFICER. That is the next item.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

SIMPLIFICATION OF IMPUTED INTEREST RULES

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of H.R. 2475, the imputed interest bill.

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

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2475) to amend the Internal Revenue Code of 1954 to simplify the imputed interest rules of sections 1274 and 483, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Finance with an amendment to strike out all after the enacting clause, and insert the following:

SECTION 1. SIMPLIFICATION OF GENERAL IMPUTED INTEREST RULES.

(a) REDUCTION OF IMPUTATION RATE FROM 120 TO 100 PERCENT; ELIMINATION OF SEPARATE TESTING RATE.—

(1) AMENDMENTS OF SECTION 1274.—

(A) Subparagraph (B) of section 1274(b)(2) of the Internal Revenue Code of 1954 (defining imputed principal amount) is amended by striking out "120 percent of".

(B) Clause (ii) of section 1274(c)(1)(A) of such Code is amended to read as follows:

"(ii) in any other case, the imputed principal amount of such debt instrument determined under subsection (b), and".

(C) Paragraph (2) of section 1274(c) of such Code is amended by striking out "the testing amount" and inserting in lieu therof "the imputed principal amount of such debt instrument determined under subsection (b)".

(D) Subsection (c) of section 1274 of such Code is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(2) AMENDMENTS OF SECTION 483.—

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

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(A) The last sentence of section 483(b) of such Code (defining total unstated interest) is amended by striking out "120 percent of".

(B) Subparagraph (B) of section 483(c)(1) of such Code is amended to read as follows:

"(B) under which there is total unstated interest."

(b) INTEREST RATES REDETERMINED EACH MONTH.—

(1) IN GENERAL.—Paragraph (1) of section 1274(d) of such Code (defining applicable Federal rate) is amended by striking out subparagraphs (B), (C), and (D) and inserting in lieu thereof the following:

"(B) DETERMINATION OF RATES.—During each calendar month, the Secretary shall determine the Federal short-term rate, mid-term rate, and long-term rate which shall apply during the following calendar month.

"(C) FEDERAL RATE FOR ANY CALENDAR MONTH.—For purposes of this paragraph—

"(i) FEDERAL SHORT-TERM RATE.—The Federal short-term rate shall be the rate determined by the Secretary based on the average market yield (during any 1-month period selected by the Secretary and ending in the calendar month in which the determination is made) on outstanding marketable obligations of the United States with remaining periods to maturity of 3 years or less.

"(ii) FEDERAL MID-TERM AND LONG-TERM RATES.—The Federal mid-term and long-term rate shall be determined in accordance with the principles of clause (i).

"(D) LOWER RATE PERMITTED IN CERTAIN CASES.—The Secretary may by regulations permit a rate to be used with respect to any debt instrument which is lower than the applicable Federal rate if the taxpayer establishes to the satisfaction of the Secretary that such lower rate is based on the same principles as the applicable Federal rate and is appropriate for the term of such instrument."

(2) RATE APPLICABLE TO ANY SALE OR EXCHANGE.—Paragraph (2) of section 1274(d) of such Code (relating to rate applicable to any sale or exchange) is amended to read as follows:

"(2) LOWEST 3-MONTH RATE APPLICABLE TO ANY SALE OR EXCHANGE.—

"(A) IN GENERAL.—In the case of any sale or exchange, the applicable Federal rate shall be the lowest 3-month rate.

"(B) LOWEST 3-MONTH RATE.—For purposes of subparagraph (A), the term 'lowest 3-month rate' means the lowest of the applicable Federal rates in effect for any month in the 3-calendar-month period ending with the 1st calendar month in which there is a binding contract in writing for such sale or exchange."

(c) LIMITATION ON DISCOUNT RATE WHEN APPLICABLE FEDERAL RATE EXCEEDS 12 PERCENT.—Section 1274 of such Code (relating to determination of issue price in the case of certain debt instruments issued for property) is amended by adding at the end thereof the following new subsection:

"(e) LOWER DISCOUNT RATE WHEN APPLICABLE FEDERAL RATE EXCEEDS 12 PERCENT.—

"(1) IN GENERAL.—In the case of any debt instrument to which this subsection applies, if the applicable Federal rate exceeds 12 percent, the discount rate used under subsection (b)(2)(B) or section 483(b) shall be equal to the sum of—

"(A) 12 percent, plus

"(B) ⅓ of the excess of the applicable Federal rate over 12 percent.

"(2) DEBT INSTRUMENTS TO WHICH THIS SUBSECTION APPLIES.—Subject to the provisions of paragraph (3), this subsection shall apply to—

"(A) SALES AND EXCHANGES OF DEPRECIABLE PROPERTY.—Any debt instrument given in consideration for the sale or exchange of any property which, in the hands of the purchaser, is of a character which is subject to an allowance for depreciation or amortization if—

"(i) the stated principal amount of such debt instrument does not exceed 50 percent of the total sales price,

"(ii) the term of such debt instrument (determined with regard to any extension or renewal) is not greater than ⅔ of the statutory recovery period for such property, and

"(iii) the terms of such debt instrument require the unconditional payment at fixed periodic intervals of 1 year or less of at least 80 percent of the total interest allocable to the period to which the payment relates.

"(B) SALES AND EXCHANGES OF NONDEPRECIABLE PROPERTY.—Any debt instrument given in consideration for the sale or exchange of any property which, in the hands of the purchaser, is of a character which is not subject to an allowance for depreciation or amortization.

"(3) SPECIAL RULES FOR APPLICATION OF PARAGRAPH (2).—For purposes of paragraph (2)—

"(A) SEPARATE APPLICATION TO EACH PROPERTY.—Except as provided in regulations—

"(i) IN GENERAL.—In the case of a debt instrument given in consideration for more than 1 property, paragraph (2) shall be applied separately to each property.

"(ii) SPECIAL RULE FOR REAL PROPERTY.—In the case of a transaction which involves the sale or exchange of any 15-year, 18-year, or 19-year real property, and the sale or exchange of any land on which such property is located or any incidental personal property associated with the use of such real property—

"(I) the requirements of paragraph (2)(A) must be met for all debt instruments given in consideration for such real property, land, and personal property, and

"(II) the statutory recovery period for such land and personal property shall, for purposes of paragraph (2)(A), be treated as being equal to the statutory recovery period for such real property.

"(B) SPECIAL RULE FOR SALES OF STOCK AND PARTNERSHIP INTERESTS.—Except to the extent provided in regulations, any debt instrument given in consideration for the sale or exchange of—

"(i) any stock in a corporation if such sale or exchange is part of a transaction or series of transactions in which the purchaser acquires control (within the meaning of section 304(c)), or

"(ii) any interest in a partnership,

shall be treated as given in consideration for the assets of such corporation or partnership (rather than such stock or partnership interest).

"(C) COORDINATION WITH SECTION 1274A.—This subsection shall not apply to any debt instrument to which section 1274A applies.

"(D) STATUTORY RECOVERY PERIOD.—The term 'statutory recovery period' means—

"(i) in the case of property with respect to which a deduction is allowable under section 168, the recovery period under section 168, and

"(ii) in the case of any other property, the period for which the deduction for depreciation or amortization is allowable under this chapter.

"(4) TERMINATION.—This subsection shall not apply to any sale or exchange after June 30, 1988.".

SEC. 2. LOWER DISCOUNT RATE IN CASE OF CERTAIN SALES WHERE STATED PRINCIPAL AMOUNT DOES NOT EXCEED $4,000,000.

(a) GENERAL RULE.—Subpart A of part V of subchapter P of chapter 1 of the Internal Revenue Code of 1954 (relating to original issue discount) is amended by inserting after section 1274 the following new section:

"SEC. 1274A. SPECIAL RULES FOR CERTAIN TRANSACTIONS WHERE STATED PRINCIPAL AMOUNT DOES NOT EXCEED $4,000,000.

"(a) LOWER DISCOUNT RATE.—In the case of any qualified debt instrument—

"(1) if the stated principal amount of such instrument does not exceed $2,000,000, the discount rate used for purposes of sections 483 and 1274 shall not exceed 9 percent, compounded semiannually, and

"(2) if the stated principal amount of such instrument exceeds $2,000,000, the discount rate used for purposes of sections 483 and 1274 shall not exceed the blended rate determined under subsection (c), compounded semiannually.

"(b) QUALIFIED DEBT INSTRUMENT DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified debt instrument' means any debt instrument given in consideration for the sale or exchange of property (other than new section 38 property) if the stated principal amount of such instrument does not exceed $4,000,000.

"(2) NEW SECTION 38 PROPERTY.—The term 'new section 38 property' has the meaning given such term by section 48(b).

"(c) BLENDED RATE.—For purposes of this section—

"(1) IN GENERAL.—The blended rate determined under this subsection with respect to any qualified debt instrument is the weighted average of—

"(A) 9 percent with respect to the qualified amount of such debt instrument, and

"(B) the applicable Federal rate determined under section 1274(d) with respect to the stated principal amount in excess of the qualified amount.

In the case of any debt instrument described in section 1274(e)(2) (determined without regard to section 1274(e)(3)(C)), the discount rate under section 1274 shall be substituted for the applicable Federal rate for purposes of subparagraph (B).

"(2) QUALIFIED AMOUNT.—The term 'qualified amount' means $2,000,000 reduced by the excess of the stated principal amount over $2,000,000.

"(d) ELECTION TO USE CASH METHOD WHERE STATED PRINCIPAL AMOUNT DOES NOT EXCEED $2,000,000.—

"(1) IN GENERAL.—In the case of any cash method debt instrument—

"(A) section 1274 shall not apply, and

"(B) interest on such debt instrument shall be taken into account by both the borrower and the lender under the cash receipts and disbursements method of accounting.

"(2) CASH METHOD DEBT INSTRUMENT.—For purposes of paragraph (1), the term 'cash method debt instrument' means any qualified debt instrument if—

"(A) the stated principal amount does not exceed $2,000,000,

"(B) the lender does not use an accrual method of accounting and is not a dealer with respect to the property sold or exchanged,

"(C) section 1274 would have applied to such instrument but for an election under this subsection, and

"(D) an election under this subsection is jointly made with respect to such debt instrument by the borrower and lender.

"(3) SUCCESSORS BOUND BY ELECTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), paragraph (1) shall apply to any successor to the borrower or lender with respect to a cash method debt instrument.

"(B) EXCEPTION WHERE LENDER TRANSFERS DEBT INSTRUMENT TO ACCRUAL METHOD TAXPAYER.—If the lender (or any successor) transfers any cash method debt instrument to a taxpayer who uses an accrual method of accounting, this paragraph shall not apply with respect to such instrument for periods after such transfer.

"(4) FAIR MARKET VALUE RULE IN POTENTIALLY ABUSIVE SITUATIONS.—In the case of any cash method debt instrument, section 483 shall be applied as if it included provisions similar to the provisions of section 1274(b)(3).

"(e) Other Special Rules.—

"(1) AGGREGATION RULES.—For purposes of this section—

"(A) all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange, and

"(B) all debt instruments arising from the same transaction (or a series of related transactions) shall be treated as 1 debt instrument.

"(2) INFLATION ADJUSTMENTS.—

"(A) IN GENERAL.—In the case of any debt instrument arising out of a sale or exchange during any calendar year after 1988, each dollar amount contained in the preceding provisions of this section shall be increased by the inflation adjustment for such calendar year. Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or, if such increase is a multiple of $50, such increase shall be increased to the nearest multiple of $100).

"(B) INFLATION ADJUSTMENT.—For purposes of subparagraph (A), the inflation adjustment for any calendar year is the percentage (if any) by which—

"(i) the CPI for the preceding calendar year exceeds

"(ii) the CPI for calendar year 1987. For purposes of the preceding sentence, the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of such calendar year.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

"(1) regulations coordinating the provisions of this section with other provisions of this title,

"(2) regulations necessary to prevent the avoidance of tax through the abuse of the provisions of subsection (d), and

"(3) regulations relating to the treatment of transfers of cash method debt instruments."

(b) EXCEPTION FOR ASSUMPTIONS.—Subsection (c) of section 1274 of such Code is amended by adding at the end thereof the following new paragraph:

"(4) EXCEPTION FOR ASSUMPTIONS.—If any person—

"(A) in connection with the sale or exchange or property, assumes any debt instrument, or

"(B) acquires any property subject to any debt instrument,

this section and section 483 shall not apply to such debt instrument by reason of such assumption (or such acquisition) unless the terms and conditions of such debt instrument are modified (or the nature of the transaction is changed) in connection with the assumption (or acquisition)."

(c) TECHNICAL AMENDMENTS.—

(1) Section 483 of such Code is amended by striking out subsection (e) and by redesignating subsections (f), (g), and (h) as subsections (e), (f), and (g), respectively.

(2) Paragraph (1) of section 483(e) of such Code (as redesignated by paragraph (1)) is amended by striking out "7 percent" and inserting in lieu thereof "6 percent".

(3) Subsection (g) of section 483 of such Code (as redesignated by paragraph (1)) is amended to read as follows:

"(g) CROSS REFERENCES.—

"(1) For treatment of assumptions, see section 1274(c)(4).

"(2) For special rules for certain transactions where stated principal amount does not exceed $4,000,000, see section 1274A.

"(3) For special rules in case of the borrower under certain loans for personal use, see section 1275(b).

"(4) For lower discount rate for certain instruments, see section 1274(e)."

(d) CLERICAL AMENDMENT.—The table of sections for subpart A of part V of subchapter P of chapter 1 of such Code is amended by inserting after the item relating to section 1274 the following new item:

"Sec. 1274A. Special rules for certain transactions where stated principal amount does not exceed $4,000,000."

SEC. 3. RECOVERY PERIOD FOR 18-YEAR REAL PROPERTY EXTENDED TO 19 YEARS.

(a) IN GENERAL.—Clause (i) of section 168(b)(2)(A) of the Internal Revenue Code of 1954 (relating to amount of deduction for 18-year recovery period" and inserting in lieu thereof "19-year recovery period".

(b) TECHNICAL AMENDMENTS.—

(1) The following provisions of the Internal Revenue Code of 1954 are amended by striking out "18-year real property" each place it appears in the text and headings thereof and inserting in lieu thereof "19-year real property":

(A) Section 168 (relating to accelerated cost recovery system).

(B) Section 57(a)(12) (relating to preference for accelerated cost recovery deduction).

(C) Section 312(k)(3)(A) (relating to earnings and profits).

(D) Subparagraphs (A), (B), and (C) of section 1245(a)(5) (relating to gain from dispositions of certain depreciable property).

(2) The table contained in subparagraph (A) of section 168(b)(3) of such Code (relating to election of different recovery percentage) is amended by striking out "18, 35, or 45" and inserting in lieu thereof "19, 35, or 45 years".

(3)(A) Subparagraph (B) of section 168(f)(1) of such Code (relating to components of section 1250 class property) is amended by redesignating clause (iii) as clause (iv) and by inserting after clause (ii) the following new clause:

"(iii) BUILDINGS PLACED IN SERVICE BEFORE MAY 9, 1985.—In the case of any building placed in service by the taxpayer before May 9, 1985, for purposes of applying subparagraph (A) to components of such buildings placed in service after May 8, 1985, the deduction allowable under subsection (a) with respect to such components shall be computed in the same manner as the deduction allowable with respect to the first component placed in service after May 8, 1985."

(B) Clause (ii) of section 168(f)(1)(B) of such Code is amended by striking out "March 15, 1984, the" and inserting in lieu thereof "March 15, 1984, and before May 9, 1985, the".

(C) Clause (iv) of section 168(f)(1)(B) of such Code, as redesignated by subparagraph (A), is amended by striking out "or (ii)" and inserting in lieu thereof ", (ii), or (iii)".

(4) Clause (ii) of section 168(f)(12)(B) of such Code (relating to limitations for property financed with tax-exempt bonds) is amended—

(A) by striking out "15-year real property" each place it appears in the heading and the text and inserting in lieu thereof "19-year real property", and

(B) by striking out "15 years" and inserting in lieu thereof "19 years".

(5) Paragraph (2) of section 48(g) of such Code (relating to special rules for qualified rehabilitated buildings) is amended by striking out "18" in subparagraphs (A)(i) and (B)(v) thereof and inserting in lieu thereof "19".

(6) The table contained in subparagraph (B) of section 47(a)(5) of such Code (relating to special rules for recovery property) is amended by striking out "For 15-year, 10-year, and 5-year property" and inserting in lieu thereof For property other than 3-year property".

(7) Clause (i) of section 57(a)(12)(B) of such Code (relating to real property and low-income housing) is amended by striking out "18 years" and inserting in lieu thereof "19 years".

SEC. 4. CERTAIN LOANS TO QUALIFIED CONTINUING CARE FACILITIES EXEMPT FROM BELOW-MARKET INTEREST RATE RULES.

(a) IN GENERAL.—Section 7872 of the Internal Revenue Code of 1954 (relating to treatment of loans with below market interest rates) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) EXCEPTION FOR CERTAIN LOANS TO QUALIFIED CONTINUING CARE FACILITIES.—

"(1) IN GENERAL.—This section shall not apply for any calendar year to any below-market loan made by a lender to a qualified continuing care facility pursuant to a continuing care contract if the lender has attained the age of 65 before the close of such year.

"(2) $90,000 LIMIT.—Paragraph (1) shall apply only to the extent that the aggregate outstanding amount of any loan to which such paragraph applies (determined without regard to this paragraph), when added to the aggregate outstanding amount of all other previous loans between the lender (or if married, the lender and the lender's spouse) and any qualified continuing care facility to which paragraph (1) applies, does not exceed $90,000.

"(3) CONTINUING CARE CONTRACT.—For purposes of this section, the term 'continuing care contract' means a written contract between an individual and a qualified continuing care facility under which—

"(A) the individual or individual's spouse may use a qualified continuing care facility for their life or lives,

"(B) the individual or individual's spouse—

"(i) will first—

"(I) reside in a separate, independent living unit with facilities available for the providing of meals and other personal care, and

"(II) not require care other than the care referred to in subclause (I), and

"(ii) then will be provided long-term and skilled nursing care as the health of such individual or individual's spouse requires, and

"(C) no additional substantial payment is required if such individual or individual's spouse requires increased personal care services or long-term and skilled nursing care.

"(4) QUALIFIED CONTINUING CARE FACILITY.—

"(A) IN GENERAL.—For purposes of this section, the term 'qualified continuing care facility' means 1 or more facilities—

"(i) which are designed to provide services under continuing care contracts, and

"(ii) substantially all of the residents of which have entered into continuing care contracts.

"(B) SUBSTANTIALLY ALL FACILITIES MUST BE OWNED AND OPERATED BY BORROWER.—A facility shall not be treated as a qualified continuing care facility unless substantially all facilities which are used to provide services which are required to be provided under a continuing care contract are owned or operated by the borrower.

"(C) NURSING HOMES EXCLUDED.—The term 'qualified continuing care facility' shall not include any facility which is of a type which is traditionally considered a nursing home.

"(5) SPECIAL RULES.—

"(A) CONTINUING CARE CONTRACT BY MARRIED LENDER.—If—

"(i) a married lender makes a loan to a qualified continuing care facility pursuant to a continuing care contract which provides for the use of such facility by the lender or lender's spouse, and

"(ii) one spouse satisfies the age requirement of paragraph (1) with respect to such loan,

then both spouses shall be treated as satisfying the age requirement of paragraph (1) with respect to such loan.

"(B) ADJUSTMENT OF LIMIT FOR INFLATION.—

"(i) IN GENERAL.—In the case of any loan made during any calendar year after 1986 to which paragraph (1) applies, the dollar amount in paragraph (2) shall be increased by the inflation adjustment for such calendar year. Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or, if such increase is a multiple of $50, such increase shall be increased to the nearest multiple of $100).

"(ii) INFLATION ADJUSTMENT.—For purposes of clause (i), the inflation adjustment for any calendar year is the percentage (if any) by which—

"(I) the CPI for the preceding calendar year exceeds

"(II) the CPI for calendar year 1985.

For purposes of the preceding sentence, the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of such calendar year."

(b) CLARIFICATION OF APPLICATION OF BELOW-MARKET INTEREST RATE RULES TO LOANS TO QUALIFIED CONTINUING CARE FACILITIES.—Paragraph (1) of section 7872(c) of such Code (relating to below-market loans to which section applies) is amended by adding at the end thereof the following new subparagraph:

"(F) LOANS TO QUALIFIED CONTINUING CARE FACILITIES.—Any loan to any qualified continuing care facility pursuant to a continuing care contract."

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 7872(c) of such Code is amended by inserting "and subsection (g)" after "subsection".

(2) Subparagraph (E) of section 7872(c)(1) of such Code is amended by striking out "or (C)" and inserting in lieu thereof "(C), or (F)".

SEC. 5. TIME FOR DETERMINING RATE APPLICABLE TO EMPLOYEE RELOCATION LOANS.

Subsection (f) of section 7872 of the Internal Revenue Code of 1954 (relating to treatment of loans with below-market interest rates) is amended by adding at the end thereof the following new paragraph:

"(11) TIME FOR DETERMINING RATE APPLICABLE TO EMPLOYEE RELOCATION LOANS.—

"(A) IN GENERAL.—In the case of any term loan made by an employer to an employee the proceeds of which are used by the employee to purchase a principal residence (within the meaning of section 1034), the determination of the applicable Federal rate shall be made as of the date the written contract to purchase such residence was entered into.

"(B) PARAGRAPH ONLY TO APPLY TO CASES TO WHICH SECTION 217 APPLIES.—Subparagraph (A) shall only apply to the purchase of a principal residence in connection with the commencement of work by an employee or a change in the principal place of work of an employee to which section 217 applies."

SEC. 6. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in this section, the amendments made by this Act shall apply to sales and exchanges after June 30, 1985, in taxable years ending after such date.

(b) REGULATORY AUTHORITY TO ESTABLISH LOWER RATE.—Section 1274(d)(1)(D) of the Internal Revenue Code of 1954, as added by section 1(b), shall apply as if included in the amendments made by section 41 of the Tax Reform Act of 1984.

(c) SECTION 3.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by section 3 shall apply with respect to property placed in service by the taxpayer after May 8, 1985.

(2) EXCEPTION.—The amendments made by section 3 shall not apply to property placed in service by the taxpayer before January 1, 1987, if—

(A) the taxpayer or a qualified person entered into a binding contract to purchase or construct such property before May 9, 1985, or

(B) construction of such property was commenced by or for the taxpayer or a qualified person before May 9, 1985.

For purposes of this paragraph, the term "qualified person" means any person who transfers his rights in such a contract or such property to the taxpayer, but only if such property is not placed in service by such person before such rights are transferred to the taxpayer.

(3) SPECIAL RULE FOR COMPONENTS.—For purposes of applying section 168(f)(1)(B) of the Internal Revenue Code of 1954 (as amended by section 3) to components placed in service after December 31, 1986, property to which paragraph (2) of this subsection applies shall be treated as placed in service by the taxpayer before May 9, 1985.

(4) TECHNICAL CORRECTION.—The amendment made by paragraph (6) of section 3(b) shall apply as if included in the amendments made by section 111 of the Tax Reform Act of 1984.

(5) SPECIAL RULE FOR LEASING OF QUALIFIED REHABILITATED BUILDINGS.—The amendment made by paragraph (5) of section 3(b) to section 48(g)(2)(B)(v) of the Internal Revenue Code of 1954 shall not apply to leases entered into before May 22, 1985, but only if the lessee signed the lease before May 17, 1985.

(d) SECTION 4.—

(1) IN GENERAL.—The amendments made by section 4 shall apply with respect to loans made after the date of enactment of this Act.

(2) SECTION 7872 NOT TO APPLY TO CERTAIN LOANS.—Section 7872 of the Internal Revenue Code of 1954 shall not apply to loans made on or before the date of the enactment of this Act to any qualified continuing care facility pursuant to a continuing care contract. For purposes of this paragraph, the terms "qualified continuing care facility" and "continuing care contract" have the meanings given such terms by section 7872(g) of such Code (as added by section 4).

(e) SECTION 5.—The amendment made by section 5 shall apply to contracts entered into after June 30, 1985, in taxable years ending after such date.

Mr. PACKWOOD. Mr. President, for the benefit of those who are listening, this will be the procedure we will follow momentarily. The first amendment will be an amendment offered by Senator CHAFEE to strike a provision in the bill that was offered by Senator HEINZ in committee relating to life care. It was a close vote in committee, and I expect it will be a spirited debate on the floor. There will be no time agreement on that amendment, although I know of no one on either side who has any desire to filibuster this particular amendment. So I think we will have whatever debate it takes, and an up-or-down vote on the Chafee amendment. If the Chafee amendment passes, there are some other amendments relating to life care that will then be relevant.

Senator DANFORTH has one. Senator HEINZ has some to his own amendment. There is no point in worrying about these amendments right now until we see how the Chafee effort to strike the Heinz amendment is disposed of. Once we have that behind us, I suppose the debate on that will take an hour or so, and there will be a rollcall vote. We hope to have agreements on a number of other provisions that have been holding up the bill to date. I think we will be working on those agreements while we are debating the Chafee effort to strike the Heinz amendment.

I believe there is nothing else to be said right now. I have phoned both Senator CHAFEE and Senator HEINZ. They are on their way to the floor. I expect we will be on the Chafee amendment within 5 or 10 minutes.

So for the moment, I suggest the absence of a quorum until the Senators arrive.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. PACKWOOD. Mr. President, today I offer for Senate consideration H.R. 2475, a bill to simplify the so-called imputed interest rules for seller financed transactions. This issue has been difficult to resolve. When we tried to limit the tax advantages of low interest seller financing in the Tax Reform Act of 1984, we inadvertently hampered legitimate transactions. We now have a permanent solution.

IMPUTED INTEREST PROVISIONS

I want to emphasize four major points about the imputed interest portions of the bill.

First, this bill is a compromise. Its basic structure was the result of long and difficult discussions between the real estate industry and the House Ways and Means Committee. Then the Finance Committee took a good hard look at what the House did, and added some improvements to the bill. No one is completely satisfied—but that is the nature of compromise. We now have a permanent, workable solution to a very difficult problem.

Second, the bill is revenue neutral over 5 years. We all have gone through the painful process of budget cutting. We all have concerns about the growing deficit. This bill, over a 5-year period, includes provisions that liberalize the current law's imputed interest rules and, to pay for those changes, extends the recovery period for real property from 18 to 19 years.

Third, the bill protects the use of seller financing. When interest rates are high, making the cost of third-party borrowing prohibitive, seller financing is necessary to aid the transfer of property. Our bill meets the need to protect the use of seller financing at such times by putting a statutory limit on the rate at which interest rates must be imputed when interest rates go above 12 percent.

Finally, we need quick action. The temporary legislation expires this July 1. I for one sympathize with any industry that tries to conduct a business with temporary rules. I do not think it is good for business, and it is not good for Congress. Every time we revisit this area we have to worry about transition rules and rules governing transactions that take place over a period of time that is covered by two pieces of temporary legislation. We have here a solid, long-term, permanent solution. I urge my colleagues to pass this bill so we can turn our attention to other issues.

LIFE-CARE PROVISIONS

I want to address one other issue covered by this bill that was not dealt with in the House. This is the rule we have established for so-called continuing care facilities. As you may recall, last year there was some concern that entry fees paid to continuing care facilities would be subject to the low-interest loan rules of the Tax Reform Act. Thus, residents of the facilities would be deemed to have made a loan to the facility and would be taxed on the purported interest that they would have received if the transaction were an actual loan. We have attempted to resolve that issue in a limited manner in this bill.

First, our committee report makes it clear that entry fees that were not loans under prior law are not subject to the low-interest loan rules. Second, the bill provides that even if certain entry fees are loans, the first $90,000 of such fees paid to a continuing care facility is exempt from the low-interest loan rules.

We provide this exemption because continuing care facilities provide an important residential, social, and health services to the elderly. The life-care facilities, with their emphasis on preventative health care, are an important factor in reducing the governmental health costs of Medicare and Medicaid.

The exemption here was designed carefully to fulfill these important goals and to have a minimal revenue impact, and I urge its support.

I ask unanimous consent that a summary of the bill's provisions be printed in the RECORD.

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

DESCRIPTION OF THE PROVISIONS OF H.R. 2475 AS REPORTED BY THE SENATE COMMITTEE ON FINANCE

A. SIMPLIFICATION AND REDUCTION OF MINIMUM INTEREST RATES

1. Test rates for small transactions. When the amount of seller financing is less than $2 million, the test rate is the lesser of—a. 9 percent, or b. 100 percent of the applicable Federal rate ("AFR").

2. Test rate for large transactions. When the amount of seller financing is more than $4 million, the test rate is 100 percent of the AFR.

3. Limited test rate if AFR exceeds 12 percent. For a three-year period, the test rate of 100 percent of the applicable Federal rate (AFR) that is applied to certain transactions above $2 million is moderated by a "governor" when the AFR exceeds 12 percent. If the AFR is above 12 percent, the test rate is 12 percent plus one-third of the difference between the AFR and 12 percent. A transaction is entitled to use this governor if it meets either of the following two tests. a. the property is not depreciable by the purchaser, or b. all three of the following criteria are met.

1. the term of the loan does not exceed ⅔ of the property's depreciable life,

2. at least 80 percent of the interest is paid annually and

3. not more than 50 percent of the purchase price is financed by the seller.

4. Blending. When the amount of seller financing is between $2-$4 million, the test rate is blended between the rates in 1 and 2 above. The amount of seller financing that can use the test rate for small transactions is reduced by one dollar for each dollar that the amount of seller financing exceeds $2 million.

5. Indexing. The dollar amounts provided in 1 and 2 are indexed beginning after 1988.

6. Elimination of penalty rates. The dual test rate/imputation rate structure from pre-1984 and 1984 law is repealed.

7. Inapplicability to new investment tax credit property. As in the stopgap legislation enacted in October, 1984, the 9 percent test rate does not apply to new investment tax credit property.

8. Monthly interest determination for large seller financing transactions. H.R. 2475 eliminates the six months AFR computation rules from the 1984 Act, and adopts the substance of temporary Treasury regulations, which—a. provide for monthly determinations of the applicable federal rate, and b. allow the taxpayer to use the monthly rate for that month and the two following months.

9. Lower interest rates in appropriate circumstances. The Treasury Department is authorized to issue regulations under which taxpayers may show that in appropriate circumstances an interest rate less than 100 percent of the AFR may be used. Such authority will be effective as if included in the Tax Reform Act of 1984.

10. Aggregation rules. To prevent use of the small transactions rule in inappropriate cases, Treasury is given authority to issue regulations providing for aggregation of notes that are essentially part of a single transaction.

B. EXEMPTION OF ASSUMPTIONS FROM IMPUTED INTEREST RULES

Assumptions are exempted from the imputed interest rules. Issuance of wrap-around debt is not to be treated as an assumption, pending resolution of this issue for purposes of the installment sales rules.

C. ACCOUNTING FOR INTEREST IN SELLER FINANCING

1. Small transactions. For seller financing up to $2 million, the parties may elect cash accounting for interest on the note.

2. Limitations. This election is not available if the seller is—a. a dealer in the property, or b. an accrual method taxpayer.

3. Subsequent Transfers or Assumptions of the Note. Rules are provided to assure consistent accounting treatment by persons who assume obligations under a "cash-cash" note, and to authorize Treasury to issue anti-abuse regulations.

D. CONTINUING CARE FACILITIES

1. Refundable Entry Fees. The portion of a refundable entry fee paid by persons 65 or older to a continuing care facility that does not exceed $90,000 is not subject to the rules governing low interest loans.

2. Effective Date. The bill applies to loans made on or after the date of enactment. All loans made on or before the date of enactment are excepted from the below market loan rules.

E. EMPLOYEE RELOCATION LOANS

1. Loan rules. Home loans made by an employer or his agent pursuant to an employee relocation loan are tested by using the applicable Federal rate at the time the purchase contract for the employee's home is entered into.

2. Effective date. The provision applies to loans made pursuant to purchase contracts entered into after June 30, 1985.

F. REVENUE OFFSET—CAPITAL RECOVERY ALLOWANCES FOR REAL PROPERTY

1. Recovery period for real property. To offset the revenue loss resulting from simplification of the imputed interest rules, the recovery period for real property is raised from 18 to 19 years.

2. Effective date. This change generally applies to property placed in service after May 8, 1985. The requirement that real property have a remaining term of at least 19 years (instead of 18 under current law) to qualify under the rehabilitation tax credit rules applies to leases executed after May 21, if signed by the lessee before May 17.

3. Low income housing. H.R. 2475 does not raise the recovery period for low income housing from its current 15 years.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. LONG. Mr. President, the chairman of the committee has ably described the committee bill. I believe the bill represents a workable, permanent solution to the difficulties created by the original imputed interest legislation.

Under current law, special relief provisions for seller financing transactions under $2 million will expire June 30. The committee bill would provide permanent relief for these small transactions, and would also provide more workable and flexible rules for all seller financing transactions. The committee bill would, however, still retain tough and effective rules to prevent tax abuses.

I believe the committee bill provides a significant improvement in the tax laws, and I urge my colleagues to support the bill as reported.

● Mr. QUAYLE. Mr. President, I am pleased that the Senate is now addressing the imputed interest legislation after a delay that has been much too long. As you know, the Deficit Reduction Act of 1984 provided that the seller of a home, farm, or small business, be required to finance the sale at rate equivalent to 110 percent of a Treasury bill of similar maturity. I believe this to be an exaggerated response to perceived tax abuses in seller financed transactions and an unnecessary and ruinous regulatory intrusion in the marketplace.

At the close of the 98th Congress, we enacted legislation to delay under certain situations the effective date of these rules, until July 1, 1985, 6 days from today's date. Once again we are faced with this question on imputed interest rules, which clearly points toward the need to adopt a permanent solution which is mutually agreeable among all parties involved.

Seller financing is critical to the sale of many homes, farms, and small businesses. This type of financing proved a safety valve during recessionary periods when institutional interest rates became virtually prohibitive to real estate sales. In the case of small business, seller financing becomes an efficient economic mechanism that allows an entrepreneur to purchase a small business and enjoy a profit that permits him or her to continue to operate. The seller of such a business gains nothing from a default on the part of the purchaser where the property reverts back to the seller. Seller financing allows the buyer and seller to reach agreeable terms that reflect the true economic value of the risk involved for both parties.

Mr. President, as a cosponsor of S. 729, a bill which repeals the imputed interest penalty for transactions under $4 million, I urge my colleagues today to adopt a measure which allows a reasonable threshold under which no imputed interest penalty would be assesed in the sale of real estate.●

Mr. PACKWOOD. 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. MELCHER addressed the Chair.

The PRESIDING OFFICER (Mr. EVANS). The Senator from Montana.

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

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The bill clerk resumed the call of the roll.

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

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. PACKWOOD. Mr. President, I want to thank my good friend from Montana. He had an amendment to offer, but was not aware that we had reached an agreement for Mr. CHAFEE to proceed with his amendment first. The Senator from Montana indicated that he would withhold his amendment at this time. We appreciate that very much.

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

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

AMENDMENT NO. 423

(Purpose: To remove provisions relating to loans to qualified continuing care facilities)

Mr. CHAFEE. I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE] proposes an amendment numbered 423.

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

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

The amendment is as follows:

On page 34, beginning with line 3, strike out all through page 39, line 6.

On page 39, line 7, strike out "SEC. 5." and insert in lieu thereof "SEC. 4.".

On page 40, line 5, strike out "SEC. 6." and insert in lieu thereof "SEC. 5.".

On page 42, strike out lines 3 through 15.

On page 42, strike out line 16, and insert in lieu thereof the following:

(e) SEC. 4.—The amendment made by section 4

Mr. CHAFEE. Mr. President, I understand we are not operating under a time agreement. Am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. CHAFEE. Mr. President, what this amendment deals with is the so-called Heinz amendent which is better described as the Marriott Corporation Relief Act of 1985, which was inserted in the imputed interest bill that we dealt with in the Finance Committee last month. The Heinz amendment was adopted by a vote of 8 to 7. It had no hearings and, indeed, when the hearings were held on imputed interest, nobody came forward to testify from this industry that is affected by the Heinz amendment.

Now, what are we talking about? What is the Marriott Corp. relief bill of 1985 that we are discussing and that I wish to eliminate from the existing language of the bill? We are talking about the following situation: The Marriott Corp. establishes a series of continuing care facilities. There is no limit on the elaborateness of these facilities. They can have 18-hole golf courses, tennis courts, you name it. The only requirement under the legislation is that it provides personal care services designed to prolong the ability of retired persons to live independently as well as an insurance-like arrangement providing for the possible need for long-term nursing care.

Now, what I want to make clear, Mr. President, is that these facilities can be extremely elaborate. Indeed, a nursing home as we understand it cannot qualify for the type of break that is provided under the Heinz amendment.

Now, what does his amendment do? His amendment provides that if you deposit up to $90,000 with the Marriott Corp., which you can withdraw at your will, the interest earned on that deposit is not taxable. Now, how is that for an arrangement?

You can have an arrangement with the Marriott Corp. under this language that exists in the legislation where the requirement is you deposit $200,000 and you have to pay $1,000 a month for maintenance. Of that $200,000—it could be more—the interest on that $90,000 is not taxable to

the person who deposits it, even though the person can withdraw it any time that person wishes.

Now, furthermore, under the arrangement the income from that goes to the Marriott Corp. and the Marriott Corp. does not have to use that to reduce the expenses of the costs in any respect. They can use it to pay off their obligations, so they can go on and build another one.

Now, this is unique. Take two people side by side. One person does not have a lot of money, does not have enough to qualify for the Marriott Corp. Say that person has $50,000, is living in a rental apartment and deposits the $50,000 in some kind of interest bearing obligation, money market certificate, whatever it is. He has to pay income taxes on the income. The other person goes to the Marriott arrangement, deposits his or her money, and a lot more if he so chooses. That money is tax free, no income tax liability on the person.

Now, the question is, Is that fair? And furthermore, as you can easily see, Mr. President, this is an arrangement that benefits the person with the higher income more than the person with the lower income. You take the person who has a million dollars. He deposits $200,000 with the Marriott Corp. and pays $1,000 a month—$90,000 of that is tax free. Some other person, who is in the lower income bracket and does not have the outside income of that nature, obviously does not get anywhere near the benefit of the person with the large income who deposits the $90,000 tax free.

Now, Mr. President, this is a patently unfair arrangement. As you know, just a year ago, we dealt with this whole matter when we got into imputed interest. At that time it was pointed out that some people had these arrangements—it might be with a nonprofit organization—and so we grandfathered in those people. We said, "OK, it may be unfair but, nevertheless, you are grandfathered in." As of June 6, 1984, everybody who had those kinds of arrangements was grandfathered in. But, mind you, the Heinz amendment, which, as I say, was adopted with no hearings by an 8-to-7 vote, does not apply to nonprofit institutions only.

Clearly, it applies to the profit institutions, and indeed the Marriott Corp. is going to get into these types of arrangements.

Now, Mr. President, it may be that down the line sometime it will be in the interest of the United States in caring for the elderly in some fashion to permit them to put up these deposits with the income nontaxable in a limited amount. Perhaps we will go to that. But certainly it ought to be clearly defined. All the people ought to be able to enjoy the break. And indeed, in the Finance Committee, when this amendment was adopted 8 to 7, I moved that anybody who has a deposit of $90,000 in an institution, in the local bank, lives at hope, lives in rental quarters, lives with their children, is over 65, should get the same kind of benefit. And everybody backed away: "Oh, no, we can't get into anything like that. All that does is help everybody and we can't have that." And indeed it was extremely costly to the Federal Government. I think I got two votes.

However, Mr. President, if we are going to do something for the elderly, let us treat them all the same. Let us treat the person who does not have the amount to put into Marriott Corp., does not have that kind of money, cannot pay the monthly charges that go along with these arrangements—let that person have the same break. Have his or her deposit in the savings bank tax free. But let us not have it just for one group.

As I pointed out earlier, this does not apply to the average person in a nursing home. It has to be someplace where the personal care services are designed to prolong the ability of retired persons to live independently.

In other words, there seems to be a suggestion that you have to have an 18-hole golf course there in order to qualify. That may be reading something into it, but clearly that is a possibility. That helps the person live independently. I think golfers will all testify that it prolongs the ability of the retired person to live independently, to have an 18-hole golf course there, and perhaps some tennis courts as well.

So I hope that my colleagues will support the elimination of this amendment, which was barely adopted in the Finance Committee by a vote of 8 to 7, with no hearings, which is clearly designed to favor certain profit institutions which could well pay for them.

Let us take a look at it. We will have hearings, go into the whole situation, and see if we can devise something that will truly care for the elderly on an impartial basis, not just the rich who can go one of these establishments, but for all.

Mr. HEINZ. Mr. President, I rise in opposition to the Chafee amendment. Mr. President, life-care communities, also known as continuing care facilities, are residential communities which provide long-term housing accommodations, health-care, and other services to people of retirement age in a noninstitutional setting. Life-care communities have become increasingly popular because they offer services that permit older persons to live active, independent lives for as long as they are able, while assuring that health-care services will be provided for them if needed.

Mr. President, the provision for life-care facilities we are considering today became necessary because, under the imputed interest rules enacted in the Deficit Reduction Act of 1984, entrance fees paid by elderly persons to life-care communities in some cases, would have been treated as interest-free loans, and taxed accordingly. The unintended result would have been to work a severe hardship on many elderly Americans, as well as on the life-care communities already in existence, and on future facilities as well.

The purpose of this amendment is to correct this unfair result, and to ensure that life-care communities remain a viable option for the thousands of middle-income, elderly Americans who wish to take advantage of them. The vast majority of people living in life-care communities are not wealthy people, Mr. President, they are members of the middle class—retired teachers, social workers, and nurses—living on pensions. Their average income is $17,000 to $20,000 per year. The average age of all life-care residents is 80.

There are close to 500 life-care facilities in existence today in this country. Two types of fees are charged by all life-care facilities: a lump-sum endowment or entry fee paid upon entering the facility, and a monthly service fee.

The payment of an entry fee has long been considered a prepayment for services; not as a loan. The majority of communities in existence today have entry fees that are not refundable. In recent years, however, the trend has been to offer entry fees that remain refundable to residents if they leave the facility, or to their estates upon their death. This provision is designed to clarify the below-market loan provisions of section 7872 of the Internal Revenue Code and to exempt those facilities that meet certain strict guidelines.

As is spelled out in the committee report accompanying this bill, this amendment only applies to fully refundable entry fees determined to be loans by the Internal Revenue Service. It does not apply to those fee arrangements not considered to be loans where the balance of the entry fee which may be returned to the resident declines over a number of years due to consumer protection concerns, or to comply with requirements of State law. The majority of life-care communities use these declining fees, where the intent is that there will be no refund. For these facilities, the entry fee is not considered to be a loan and it, therefore, is not subject to the below market loan provisions of the code.

Also, the definition regarding continuing care contained in the statute will only apply to those refundable fee arrangements determined to be loans

by the IRS that are seeking the $90,000 exclusion, and those fee arrangements determined not to be loans would not be subject to those same requirements.

Mr. President, life-care is, and must continue to be, a viable retirement option for America's aging population. As chairman of the Special Committee on Aging, I urge support of this amendment to protect and assist older Americans who choose life-care communities to help them provide for a healthier, more secure future. I am grateful to my distinguished colleague from Oregon, the chairman of the Finance Committee, for his assistance in providing clarification on this important issue.

Mr. President, I oppose the amendment of the Senator from Rhode Island, and I do so because I should like to suggest to our colleagues that this amendment, which was adopted by the Finance Committee, could never have been adopted by the Finance Committee if it were in even one-tenth part accurately described by what the Senator from Rhode Island has said.

I wonder if the Senator from Rhode Island will respond to a couple of questions? Will he be willing to do so?

Mr. CHAFEE. Naturally.

Mr. HEINZ. Can the Senator from Rhode Island, who, as I recall, mentioned the Marriott Corp. about 387 times in his statement, tell me how many life-care facilities the Marriott Corp. owns or operates?

Mr. CHAFEE. The Marriott Corp. is getting into this business.

Mr. HEINZ. Will the Senator answer my question? How many do they now own or operate?

Mr. CHAFEE. I will respond to the question. Is this amendment of the Senator from Pennsylvania limited? Does it expire at the end of the year?

Mr. HEINZ. It is the amendment of the Senator from Rhode Island that I am opposing.

Mr. CHAFEE. The Heinz amendment, which was adopted in the committee, has an indefinite termination. It does not expire at the end of the year.

Mr. HEINZ. No.

Mr. CHAFEE. So we are talking about an indefinite future, not about today or tomorrow.

Mr. HEINZ. But I——

Mr. CHAFEE. I am answering the Senator's question.

Mr. HEINZ. Not yet.

Mr. CHAFEE. It is my hope that when we deal with legislation on this floor, we do not say, "It is now 10:34 on June 26, and therefore we will legislate for today." I believe we like to think of what is going to take place in the future.

Mr. HEINZ. There is no doubt about that.

Mr. CHAFEE. The Marriott Corp. has no facilities extant at the moment, but they are getting into this business, and they are cheered on by the Heinz language which was adopted in the committee, and I do not blame them.

For that reason, I call the amendment, which was adopted in the committee, the Marriott Corp. relief bill of 1985.

Mr. HEINZ. Does the Senator plan to answer my question, or does he plan to evade it for the rest of the day?

Mr. CHAFEE. Would the Senator like me to enter into the RECORD "The Art of Life Care, Marriott Life Care Retirement Communities"?

Mr. HEINZ. The Senator can speak as long on his amendment as he wishes, but I am asking a question.

Mr. CHAFEE. "An important new venture for Marriott Corporation."

Mr. HEINZ. Mr. President, the Senator from Rhode Island is not about to answer the question. He is talking all around it. My question is very simple, and I yielded to him for the purpose of responding to a specific question.

I understand why he wants to slip and slide all over the place on this, and he cannot deny it. The reason why he is talking around the issue is that the Marriott Corp. does not own and does not operate even one life-care facility—not one.

Mr. METZENBAUM. Mr. President, will the Senator——

Mr. HEINZ. No, the Senator is not going to yield at this point.

To the best of this Senator's knowledge, the Marriott Corp. plans at some future time to open a life-care facility, and it is my understanding that it is a rather interesting life-care facility which is aimed at assisting retired people from the military. It is for retired Army officers and their families. It will not open until 1987, and the ground has not even been broken yet.

However, the Senator from Rhode Island wants to ignore the fact that there are some 400 life-care facilities that now operate, 95 percent of which are nonprofit, and the vast majority of that nonprofit group, some 370 or 380, are actually sponsored by religious institutions. The Senator from Rhode Island wants to have you believe, I guess, that the Presbyterians, the Episcopalians, the Baptists, and the Methodists are all in league with the Marriott Corp.

Mr. President, I think we ought to have a factual discussion of this issue, and I want to point out to people exactly what the problem is with the amendment and the legislation it addresses.

The legislation that we have in the bill, which the Finance Committee adopted, is aimed at trying to solve a serious problem for the provision of life-care to senior citizens.

The problem is this: There are some organizations that believe that it is prudent to offer senior citizens who enroll in life-care facilities the opportunity to get a refund of their deposit—the average deposit is a good deal less than $90,000 limitation in the amendment—individuals should be entitled to a refund should they choose to leave the facility for whatever reasons. I find it ironic that what to this Senator's view is a consumer protection issue is characterized as something other than by its opponents. I guess the opponents of this amendment may not realize that life-care facilities require a deposit. The life-care facility takes that deposit and, in many instances, it does not have to be refunded.

What happens if, the resident of that life-care facility, after signing a contract, finds that it isn't what he expected, for some reason and then he or she cannot get their money back? We are talking about retired schoolteachers, we are not talking about wealthy people. Eighty and ninety percent of all the people in these life-care facilities are middle income people, and what we are saying to them, if we agree to Senator CHAFEE's amendment, is that no, it does not make any difference if the life-care facility did not really live up to expectations, we want them to lose thier money.

Mr. President, that does not make any sense. Why should we lock the door on people who are putting up their life savings so they can enter a life-care facility and say if something does not work out, too bad, they are out of luck?

I do not think that makes good policy sense, let alone meets the test of being good consumer protection. It does not make good policy sense to me because one of the things we ought to be doing is encouraging people to seek out this option which provides a variety of long-term-care services to people. We do not have any long-term-care policy in this country, and this could be very useful in encouraging such initiatives.

I guess it has been alleged that somehow this amendment is unfair because the ability to get your deposit back somehow gives a break to those who are in life-care communities and discriminates against those who are not.

I think the amendment obviously makes it fair to people who are in life-care facilities by allowing them consumer protection.

Right now, if you are over 55 years of age and own your own home, you can sell that home tax free. We do not tax the capital gains on a home. Now, I think that is a good policy. But it sure discriminates against renters. By the argument I have heard here today, we should repeal the capital gains exclusion on homes because that is unfair to renters. That is what the Senator from Rhode Island is really saying, as I understand him.

Any older persons who own a home can sell it if they wish. They can also move into a life-care facility, so there is no discrimination against those not currently in such facilities. If they sell their home and choose to move in with a son or daughter instead, they can receive up to $125,000 tax free under current law to invest as they wish. By contrast, the fees paid by residents of life-care communities are for services and they are not for investment purposes and do not entitle the residents to a share of the facility. This is not some kind of speculation, given the fact that most of these organizations are nonprofit and religious. I think the characterization that somehow this is some kind of special-interest amendment just defeats my ability to rationalize the facts with the characterizations.

I said earlier that life-care communities are for middle-income people. I think we ought to have a few additional facts on the record, Mr. President. The average entry fee as of 1981 for a life-care facility is in the range of $38,000. I suspect that is somewhat higher now. The average income of residents of life-care facilities, it is in the $17,000 to $20,000 range. The majority of people living in life-care communities are people such as retired teachers, social workers, nurses, and the like, living on pensions. The downpayment that we are talking about, that $38,000 entry fee, is usually raised by the selling of one's home: Finally, the average age of the residents in life-care communities is about 80.

So, one way of looking at the legislation is to think of it as simply allowing someone who owns a home and who we have already told, "Look, it is all right if you own that home, we are not going to tax you on the appreciation of that home, we are not going to impute interest to the value of that home and tax you on that," is to allow them to take the proceeds from the sale of that house and move into a continuing care facility. A facility that provides a living environment that is more appropriate for them than living in the house that has become too big for their needs, is no longer located as conveniently as it was when they could easily get around. They can move into a facility that is better designed for people in their seventies and eighties. What we are really doing conceptually is continuing the policy that I think most of us in the Senate and House of Representatives thought was good policy which is to encourage first home ownership based on the principle that you want to give people a good choice of where to live.

And that is what I think we are really talking about here.

We are not talking, by the way, Mr. President, about just a few people here. There are over 100,000 people who are living in life-care communities today, 8,000 of them in Pennsylvania, several times that many in the State of Florida, and the number of life-care communities in the country is expected to double in the next 10 years.

I really worry, though, that none of the developments in life care that ought to take place will take place if we do not retain the language in this legislation that will allow people this kind of consumer protection. It will allow refundable deposits which gives people the ability to get their money back if there is a problem, that is what this amendment allows.

I hope, Mr. President, that the sponsors of this motion to strike the language in the bill will understand, after listening to the debate, that their position is in error and that they will withdraw their amendment.

Mr. CHAFEE. Mr. President, the Senator from Pennsylvania has laid great stress on the fact that we are talking about nonprofit homes. He brought in the Methodists, the Presbyterians, the Episcopalians, the Catholics. I do not know whom he missed.

But his amendment does not do that. The language of the bill does not do that. It applies to profit homes, and let me ask the Senator since that is what he is concerned with—indeed he said 95 percent of them are nonprofit—would he be prepared to accept an amendment that would make it for nonprofit homes only?

Mr. PACKWOOD. May I ask a question while the Senator from Pennsylvania is interrupted? I want to make sure I understand the amendment. The bill, as written, and the amendment in the committee, as I understand it, applies to profit or nonprofit now.

Mr. CHAFEE. That is right.

Mr. PACKWOOD. You would not need an amendment to have it apply to profit or nonprofit.

Mr. CHAFEE. He would have to accept an amendment to strike the for-profit coverage that the language currently provides.

Mr. PACKWOOD. The Senator wants it to apply only to nonprofit?

Mr. CHAFEE. That is right.

Mr. HEINZ. Is the Senator saying he would find the legislation acceptable if it only applied to nonprofit?

Mr. CHAFEE. I would say that that would make the language more attractive. It sure would. I am not saying that I withdraw my objection.

Mr. METZENBAUM. Will the Senator yield?

Mr. HEINZ. The Senator from Rhode Island has the floor.

Mr. METZENBAUM. Will the Senator from Rhode Island yield for a question?

Mr. CHAFEE. Yes.

Mr. METZENBAUM. As the Senator from Rhode Island knows, I support the thrust of his amendment. In fact, I support his amendment. The question he is now propounding has to do with separating the profits from nonprofits. I can understand that amendment and find that acceptable.

My concern, however, relates to the certainty that such an amendment would cover the situation of an owner separately, an operator separately, or an owner-operator so that you would not have a situation where you provide the right to make a contribution of $90,000 to the nonprofit but that is worked out, as it is now done in some housing bills, by a promoter who then winds up in the operating position.

I am wondering whether or not the amendment that the Senator from Rhode Island is contemplating would cover all of that aspect of the question.

Mr. CHAFEE. I must say I had not gotten into that thought. I take it what the Senator is suggesting is you could have a situation where a Presbyterian home was owned by the Presbyterians but the operation of it was under a for-profit establishment of some type and the Senator is concerned about that.

Mr. METZENBAUM. The Senator from Rhode Island is correct. I never underestimate the conceptual expertise of the lawyers who practice in areas of this kind. I think the Senator from Rhode Island would agree that many of the housing deals that have been structured, so-called, for nonprofits over the years have wound up really being to the utilization of nonprofit for appearances sake but with the private developers getting all the advantages.

I support the direction of the question the Senator from Rhode Island propounded to the Senator from Pennsylvania. But I just want to be sure that the Senator from Rhode Island would anticipate covering the whole gamut.

Mr. CHAFEE. I do not know how complex that gets. Why do we not probe the Senator from Pennsylvania a little more to see if he is amenable to the suggestion. If he is not, we can keep going. If he is, we can have a quorum call and discuss it.

Mr. PACKWOOD. Mr. President, will my good friend respond to a question, because now I am confused. The bill applies to profit and nonprofit.

Mr. CHAFEE. Correct.

Mr. PACKWOOD. My good friend from Rhode Island was making the argument in his opening comments about this being an unfair situation, when one has his money in a saving account and receives interest and pays taxes. Now he is saying if they give the money to the Methodists, which I understand might be acceptable, that is all right.

Mr. CHAFEE. I am thinking about it.

Mr. PACKWOOD. But if they give it to the Marriott's, it will be ipso facto not all right.

For the life of me, I do not understand the objection. If the purpose of the amendment of the Senator from Pennsylvania—I should not say the amendment, it is in the bill; he offered it in committee—is to provide adequate, permanent life care, what difference does it make whether it is provided publicly or privately, for profit or nonprofit, if it meets the test of the bill?

Mr. CHAFEE. Well, because if it is a nonprofit, under the way this works, as you know, let us say you have a $90,000 deposit and $9,000 of income. The $9,000 goes directly to the institution, be it the Marriott Corp. or be it the Presbyterian home for the aged, whatever it is.

If it is going to the Presbyterian home, it is a nonprofit organization and you have some belief—perhaps not totally accurate—that that money is used to reduce the charges of the person there; in other words, reduce the amount that the person will have to pay in the monthly fee. In most of these arrangements, you pay your deposit, then you pay x dollars per month.

So there is a suggestion, in a nonprofit organization, that that is going to reduce the cost of the food, the cost of the services, the cost of the medical facilities, whatever it is; whereas, in a profit, there is no such incentive at all. It could well be that that money was being used to pay off the mortgage so they could go on and buy another one.

Mr. PACKWOOD. Could be.

Mr. CHAFEE. Could be.

Mr. PACKWOOD. In that case, they would not be able to offer the services as cheaply as the Methodists and the Baptists.

Mr. CHAFEE. That is probably quite true. They might offer far more elaborate ones.

Mr. PACKWOOD. Assuming equal advantages, whether you are a profit or a nonprofit, clearly those who are going to buy life care facilities, if they look into it, they are going to go where they get the best deal. If a nonprofit is offering the best deal, I do not know why my good friend would be worried about the profit organizations. They simply would not be able to compete.

Mr. CHAFEE. I am not in complete agreement with that.

Mr. METZENBAUM. Will the Senator yield for a question?

Mr. CHAFEE. Yes.

Mr. METZENBAUM. In connection with the question of the distinguished chairman of the Finance Committee, is it not a fact that this is a two-sided sword? One side of the sword has to do with the fact that there is a tax revenue loss when that individual who puts up his or her $90,000, instead of putting it in a bank and drawing interest—and you are addressing yourself to that aspect of it—that is one side. The second side has to do with the fact that, under the Heinz proposal, the Marriott Corp., or whomsoever is a profit corporation, receives $90,000 tax free for a period of years and there is no direct loss of income on that taxable income that otherwise they would have to pay. Without the amendment, the Marriott Corp. would have to report that $90,000 as income, or else, if they took it as a loan, they would have to have the imputed interest as a part of their income to the seller or the resident or to themselves.

Mr. CHAFEE. You have to recall we are dealing solely with the tax on the individual. Marriott Corp.'s tax situation is left out of this. It is the individual that escapes the tax. In other words, the individual puts up the $90,000 and the individual, in the Heinz language in the legislation, if he is in a continuing care facility, he pays no tax on it. If he is living with a son and the money is down at the local bank, the $90,000, he pays a tax on it.

If he has managed to hang onto his or her home, and the money is in a money market certificate, he or she pays the tax on it. But if it is in one of these arrangements that the Senator from Pennsylvania has carved out here, that indeed includes the Marriott Corp.

At the top of his lungs he can declaim it has nothing to do with the Marriott Corp. But, here is the brochure. And the person puts up the money and goes into this and pays no income tax on his or her money. The point is, it is unfair.

Mr. HEINZ. Will the Senator yield so we can clarify the way it works? I think the Senator has gone through an interesting recitation and he is right in many respects, but I think he is missing a small part of the picture.

The Senator has said if somebody has $90,000 and they have it in the money market account, they are going to pay taxes. Assuming they get income on which they will be taxed, but they will only pay taxes, if they receive income. If someone takes the $90,000, they put it in the stock market, if they are lucky they will get dividends, and they will pay taxes on the dividends. If they put it in the bank, they will get income in the form of interest, and they will pay their share of taxes somewhere between zero to 50 percent, depending on their tax bracket, on that interest. There is a very big difference, however, when the deposit is made to a life-care facility they do not receive any income at all. In the Deficit Reduction Act of 1984, we said we were going to impute income to them, even though they do not receive any money. Now the question is the $90,000, and it normally would be earning interest. What is happening to it? Is somebody getting the use of that money and not paying any taxes on it? The answer is, in the case of for-profits, no. The Marriott Corp., if they ever get into this business, or any for-profit entity is going to invest that money. They are not going to let it sit and gather dust. They are going to earn income on it. Guess what? The Federal Government is going to make the for-profits pay tax. They are going to pay taxes to the Federal Government on the earning from that $90,000, or $50,000 or $36,000.

If the Senator succeeds in his amendment—is not the effect to tax that $90,000 twice? It will be taxed once because of the income stream to the Marriott Corp. That money goes to Marriott, and then under the imputed interest rules the resident will have interest imputed to him at some rate, 10, 12, 14 percent, and will have to pay taxes on that? So you get the earning stream from that deposit to a for-profit taxed not once but twice. Is not that going to be the effect of the Senator's amendment? I am not trying to be cute. I am being deadly serious about this.

Mr. CHAFEE. That is like saying that when you have a deposit in the bank, your interest is credited, and you pay tax on it, and then you go buy some groceries, that the grocer is taxed on it, and, therefore, there is double taxation.

Mr. HEINZ. No. In all due respect to my friend from Rhode Island——

Mr. CHAFEE. Can the Senator let me proceed without interrupting?

Mr. HEINZ. I am happy to.

The PRESIDING OFFICER. The Senator from Rhode Island has the floor.

Mr. CHAFEE. The arrangement here is that a person puts up a deposit which the person can withdraw. It is refundable. The Senator from his presentation gave a long dissertation about how my amendment would disturb the nonrefundability and upset these arrangements. Not at all. What the Senator has done in this amendment that was narrowly adopted is provide a different arrangement for two people who are in similar circumstances. One puts up $90,000, and that money is used tax-free, and is used to pay the groceries, the heat, the light, the golf course fees, and a whole series of things for that individual. In other words, the living expenses of that person are based on pretax dollars. Another person who is living with his or her children, or struggling along at home, or in an apartment, wherever it might be, his or her only asset is $90,000 and living on the income from that, that person lives on the after-tax income. There is the difference. That is the inequity of the proposal that the Senator worked into the legislation.

That is why we are here saying perhaps in some way, someday we should have a special arrangement, but let us have it for everybody over 65, not just for this group in these homes requiring deposits that residents can get back. It has nothing to do with nonrefundability. The Senator gave a long dissertation on this, indicating this is a consumer rights issue. It has nothing to do with consumer rights. We are solely dealing with the refundable money. If it is nonrefundable, then there is no question that there is no income tax on it. That is not a loan. But if it is refundable, then the people should be treated equally. At least we ought to have some hearings on the issue, and determine what we are getting into here. The Senator keeps score on the Marriott. The Marriott is not any little picayune corporation. As a matter of fact, they say here as a real estate developer, Marriott annually develops properties with a value exceeding $1 billion. This is not some mythical thing they might get into. Here is a picture of one they are building. The Fairfax at Fort Belvoir, VA, is Marriott's first life-care community. Yes. It has been specifically designed for retired Army officers and their families. It is an attractive deal. On and on it goes. They would not put out a brochure like this signed by J.W. Marriott, Jr., unless, as they say, "over the next 40 years as many as 50 million Americans will be making choices about their retirement years. With this in mind, Marriott carefully studied the needs and preferences of older people by asking them what they want," and so forth and so on. Now they are going into it.

I think before we give one group a tremendous advantage over another in this society of ours, we ought to figure what we are doing. Let us have some equity here. Let us not say the person who has $200,000 and can put up $90,000 in one of these places or $200,000, and have interest on the first $90,000 tax free. That is not a fair deal. So for those reasons, Mr. President, I think the language in the bill that was adopted so narrowly is extremely unfair. I hope we can prevail on removing that language. That is what my amendment does.

Mr. HEINZ. Mr. President, will the Senator yield for a question?

Mr. CHAFEE. Surely.

Mr. HEINZ. As the Senator knows, the effect of the current law, were the Senator's amendment to prevail would be that if you made a $90,000 deposit to the Marriott or to the Baptist life-care facility, either way, if that deposit was not refundable that would be fine. There would be no imputed interest to him or her. Does the Senator from Rhode Island support that policy? Is that correct?

Mr. CHAFEE. That is the existing law.

Mr. HEINZ. And the Senator supports that policy?

Mr. CHAFEE. I do.

Mr. HEINZ. Can the Senator explain why refundable and nonrefundable fees should be treated differently? I do not understand why the Senator looks at refundability as some terrible thing. It is all right according to the way I understand the Senator for people to pay nonrefundable entry fees, yet if the money is refundable they should be taxed. What is the big difference between those two situations other than that it seems to make at least to my mind some sense for people to have at least some leverage over the life-care community?

Mr. CHAFEE. If the Senator has difficulty seeing the difference between putting your money someplace and never getting it back, and putting your money someplace and being entitled to get it at any time you want, then we have real problems on this floor.

Mr. HEINZ. If the Senator will bear with me a second, I can see the Senator's objection very clearly if it was possible for the individual to get their money back with interest. It would be a huge IRA. It would be a $90,000 IRA.

But it is not an IRA. It is simply the return of money without any payment for it over a substantial period of time. I am not quite sure I understand the problem.

Mr. CHAFEE. We will go through it slowly.

Mr. HEINZ. OK.

(Mr. McCONNELL assumed the Chair.)

Mr. CHAFEE. What the money is doing there is providing the care for the individual. It is not just some money that is sitting there that is not reflected in any way on the care the person gets. The amount a person pays in the monthly charge is nowhere near equal to the total cost to the person there.

Mr. HEINZ. That is true whether it is refundable or not.

Mr. CHAFEE. Let me finish.

What you are dealing with is you have a person who has this arrangement where his money can be withdrawn at any time. Under the Heinz language in the bill, that money is tax free. It is a wonderful situation. There is no question about it. As the Senator from Pennsylvania [Mr. HEINZ] knows, I proposed in the committee that everybody over 65 have this arrangement and the Senator voted against it. I could never understand how he favors this.

The Senator was opposed to an arrangement that everybody gets this advantage. I do not know what was motivating him, but he said it is fine that if you are in one of these home care facilities with the 18-hole golf course and your money is there, and the money is used to care for your costs—I suppose no greens fees, it takes care of everything—that is fine. But the poor widow with arthritis who is living in a little cottage somewhere solely on the income from some deposit that she has made, barely able to hobble around, that income is taxable, and the Senator says, "Right, that is a good arrangement." And we had a vote on it and he voted against it.

Now we are talking equity here?

Mr. HEINZ. Will the Senator——

Mr. CHAFEE. Let me finish. I am not going to quit now.

[Laughter.]

Mr. CHAFEE. That is what they call equity. You go to the Marriott. They have great facilities at the Marriott. Two hundred acres, only one golf course. Wait until next year. [Laughter.]

Tax free. Come one, come all. You will like it.

But that poor little widow with arthritis, she has food stamps and everything, but tax her. That was the vote in the committee. We got two votes on the Chafee amendment to let everybody have the same advantage. There were two votes.

The Senator from Pennsylvania said, "No, we cannot have that. That is a bad deal."

Mr. LONG. If the Senator will yield, the Senator from Louisiana was absent that day. I have heard the Senator's argument, and if he will offer his amendment again, he will get at least three votes.

[Laughter.]

Mr. HEINZ. Will the Senator yield at this point?

Mr. CHAFEE. I will be glad to.

Mr. HEINZ. The Senator knows that the amendment that the Senator from Pennsylvania offered had the benefit of some hearings held by the Senate Committee on Aging. With no prejudice to the excellent idea of the Senator from Rhode Island, I think he should pursue that amendment, hold hearings on it, and, who knows, he might be a hero to everybody, including those crippled widows with arthritis. It may be a good idea. I wish he would introduce legislation so we could have hearings on it.

Mr. CHAFEE. You voted against it once. Are you changing now?

Mr. HEINZ. I am keeping an open mind. But I think you could get more than three votes. Who knows?

Mr. President, I thank my colleague for yielding. I heard everything he had to say, but I am not sure it answered the question I asked about why it is all right for somebody to make a nonrefundable deposit, and it is not all right to make a refundable deposit? I am reminded that if somebody makes a deposit in a money market fund that invests in municipal bonds, that money is not taxable. There are mutual funds that specialize in munic-

ipal bonds, tax free. What we are really saying with the Chafee amendment is it is OK to buy municipal bonds, if you have enough money to do it, and you will not get taxed on it. But if you need a life-care facility, we are going to tax you though you do not get interest on it. That is the sum and substance.

I suspect most minds are made up one way or the other.

I would suggest that the provisions of the bill have the support of the American Association of Retired Persons. They are strongly opposed to the Chafee amendment.

I do not think that some 15-million members of the American Association of Retired Persons are out to feather the Marriott's nest or anybody else's nest. They are looking out for what is best for senior citizens.

I would hope that people will vote this on the real issues as they confront this question and we can dispose of the amendment one way or the other. I hope it is defeated and defeated thoroughly.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Rhode Island yield the floor?

Mr. CHAFEE. I do not have the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Let us put this in perspective, if we can, going back to the distinction that the Senator from Rhode Island was making at one time as to profit and nonprofit organizations and paying the $90,000. There is a $90,000 cap. Somebody cannot pay $200,000 or $300,000. It is limited in the hopes of making sure that people can provide for basic life-care amenities without providing for exquisite, several hundred thousand dollar life-care accommodations.

Mr. CHAFEE. Can I make a correction at that point?

Mr. PACKWOOD. Yes.

Mr. CHAFEE. It is the first $90,000 that is nontaxable. That does not mean that the total deposit required may not be greater.

Mr. PACKWOOD. I understand. There is a $90,000 cap on the exclusion.

Mr. CHAFEE. On the exclusion. But it could well be a $200,000 deposit. There is no limit in the language. This thing could go high, the sky being the limit.

Mr. PACKWOOD. The Senator is correct as to the fact that it is not a cap if you pay beyond that.

Mr. CHAFEE. And no limit on monthly charges, either.

Mr. PACKWOOD. We are aware of that.

We are facing an aging population. Medicare costs have become a significant cost for this country and will become a more significant cost. We have been trying to devise ways for those moving into their elderly years to provide for themselves if possible, or partially, and it partially helps relieve the Federal Government of a further expensive burden.

For the life of me, I cannot see that it makes a great deal of difference because the individual has freedom of choice as to whether they choose to go into the Baptist retirement home or the Marriott retirement home. There are many, many private facilities in this country provided by charitable organizations, life-care facilities.

Let us take a look at what happens to the mythical $90,000 the Senator talked about. The little old lady with arthritis stays home, puts her money into the savings and loan and gets 10 percent interest, receiving $90,000 a year and pays taxes on the $9,000 a year and with what is left attempts to take care of herself, keep body and soul together, and so forth.

If the same little old lady with arthritis every Sunday goes to the Baptist church and decides she wants to retire to the Baptist home, she pays her $90,000 to the Baptist home and they put it into the bank account; $9,000 interest is realized.

They may or may not pay tax on that amount. It depends on how they are structured, rather than being counted as related to their charitable purpose or not. If it is not, they would not pay income tax at all. If it is, they would pay income tax.

There is no question about the Marriott Corp., or a private corporation. They are in it for profit. You pay the $90,000 to them and they put it in a bank account. They receive the interest and pay taxes on it.

They may be able to offset it with some other deductions, but an individual could do that. The question is, Do we want to distinguish between a charitable or nonprofit organization and a profit organization? Is there something illicit, immoral, unfair, inept about a private organization that provides life-care facilities while there is something decent, humane, nice, moral about its being provided by nonprofit? I hope we are not coming to that distinction.

Mr. CHAFEE. We have not come to that distinction, Mr. President, because the profit versus nonprofit proposal that I noted here received no support from the——

Mr. PACKWOOD. I would not support it, Mr. President, and I am glad it received no support, because I do not think we should distinguish between the two.

Mr. CHAFEE. Mr. President, if the Senator does not see a difference, I do. I see a difference.

Mr. PACKWOOD. Clearly, there is a difference. One is in it for profit, one is not in it for profit. I am talking about the quality of care that is provided, the choice you or your spouse make as to whether to go to the Marriott home or the Baptist home. That is a choice individuals make of their own free will. Presumably, they will go the one where they feel they will be more comfortable, where they are going to like it better, where they are going to receive the better rate. The question is, Should we preserve that for nonprofit or charitable organizations but not for profit?

I think there is a distinction to be made between profit and nonprofit but we are not making it here. Because this does not apply just to the Marriott home. It applies to the Baptist home, to the Catholic home, as long as they meet the standards of lifetime care. I do not know why we have singled out Marriott, who has yet to build the home or is going to, why we single out profits here and say if you do that, that is unfair; if the Baptists do it, that is fair. I think it ought to be sauce for the goose and sauce for the gander.

I think it is a policy we ought to be encouraging. The only difference is if a person chooses to remain at home, live in a house, that is their choice. No one is taking that away from them. But I think the wise policy is what the Senator from Pennsylvania has propounded and I hope the Senate would sustain the committee and sustain the position of the Senator from Pennsylvania.

Mr. CHAFEE. Well, Mr. President, the distinguished chairman of the committee, the Senator from Oregon, I recall, voted against my proposal that this be something that everybody be entitled to.

Mr. PACKWOOD. Everybody is entitled to it if they choose to move into a life-care facility.

Mr. CHAFEE. No, they are not, Mr. President. Some people may not choose to do that. We are favoring one group over another. With two people over 65, you are treating one different from the other. For the life of me, I cannot see that rationale.

The Senator from Oregon voted against my amendment to let everybody have this advantage. What we are doing is treating one group differently from another. If that is equity, then I do not know what the definition of equity is. We are saying that one group in these homes who puts up the money, bank account, can get it back any time, that that money can be used to pay for that person's groceries, heat, light, with pretax dollars. No tax.

Obviously, you are going to get a lot more for no-tax dollars than for after-tax dollars. The poor person who is living in his home for a variety of reasons—maybe there is not one of these facilities accessible—does not get that

advantage. I think it is wrong. No hearings, some discussion by the mover of the measure in the committee that they had hearings on this in the Committee for the Aging. Well, the Committee for the Aging is not a legislative committee. They did not write legislation.

There were no hearings when we had them in the Finance Committee on imputed interest—come one, come all. Nobody came.

I suppose he indicated who is in favor of his amendment? I think we ought to add the Marriott Corp., too.

Mr. HEINZ. Mr. President, if the Senator will yield, just to be clear on the record, there was testimony submitted to the Finance Committee on this subject during our imputed interest hearings. It was the appropriate forum.

Mr. CHAFEE. Mr. President, what was the date on that?

Mr. HEINZ. The date of the hearing?

Mr. CHAFEE. No, Mr. President, the date of the submission of the testimony.

Mr. HEINZ. It is, May 20.

Mr. CHAFEE. When was the hearing?

Mr. HEINZ. I do not know, Mr. President.

Mr. CHAFEE. Mr. President, I conducted the hearings on the imputed interest and nobody showed up from this group. The Senator says they submitted it in writing? It was submitted for the record, I understand, and the record has not been printed, so none of us has seen it.

Mr. HEINZ. Mr. President, one was from the Continuing Care Coalition, a statement in support of the amendment of the Senator from Pennsylvania. The other was the argument of the Health Care Association, also in support of the Senator's amendment.

Mr. METZENBAUM. Mr. President, will the Senator from Rhode Island yield?

Mr. CHAFEE. I yield, Mr. President.

Mr. METZENBAUM. Mr. President, I support the effort of the Senator from Rhode Island to eliminate the Heinz amendment. I think that it is fair to point out that he correctly describes it as the Marriott Corp. relief act, because if Marriott were not interested and did not have its host of lobbyists frequenting our halls on this, I do not know that we would have this issue before us.

Before getting into that, I would like to point out that all is not gold that glitters and all life-care communities are not all they are cracked up to be. I want to say that I support the concept of these life-care communities. I think there are many advantages to them. I think they are a step in the right direction, certainly a step away from nursing home care and they provide greater facilities. But all of them have not done so well and all of them have not treated those who have put up their money that well.

There was a recent article in the April issue of Money magazine, part of which I referred to yesterday and another part of which I would like to read to my colleagues at this moment.

In three months of investigation, *Money* has identified 40 life-care communities, also known as continuous-care communities, that since the mid-1970s have gone bankrupt or have experienced severe financial difficulties. How many of the nation's roughly 300 such communities—most of them built in the past decade—are currently in trouble is anybody's guess. But informed estimates are not encouraging. Edward Hosinger, director of Oppenheimer & Co.'s municipal bond research department, has followed the fortunes of 50 life-care communities financed with tax-exempt bonds since 1980; he reports that fully 10% have defaulted on their debts and that another 14% are failing to meet the occupancy rates that in initial projections were deemed crucial to success. Such statistics do not, of course, necessarily imply malfeasance, maladministration or even a community's ultimate failure. But they almost always mask broken promises. Sometimes the results are as devastating as the loss of a large portion of one's life savings, as was the fate of the people in the photo at left.

Not all life-care communities are shaky, dishonestly managed or unsuccessful. But alarmingly few are on the kind of firm financial and actuarial footing that should exist before promoters make promises of lifetime security.

The article then goes on to talk about a woman by the name of Helen Bishop of Theodore, AL.

Helen Bishop of Theodore, Ala. was a victim of just such a scam. In 1977 Bishop, now 74, traded her biggest asset—her house, worth $18,000—for a lifetime lease at a nearby continuous-care community then called Alabama Meadows. She thought she'd found the answer to her prayers. In promotional literature and sales pitches to prospective residents, the developer promised that the completed village would offer more than 300 apartments, a nursing home for infirm residents as well as a chapel, library, swimming pool, therapeutic whirlpool baths and covered walkways connecting the buildings.

By the fall of 1981, however, only two small apartment buildings had been constructed.

The article makes reference to a number of other community care facilities that have not worked out that well. Now we find a situation where Marriott, in its annual report, makes it very clear that they are going to move into this area and move into it in a big way. In fact, that is the entire thrust of the last annual report that has come to my attention.

This is not the annual report. It looks like it. It may be a prospectus. I am not certain what it is, but it is about an eight-page document put out by Marriott in which they make it very clear they are going to move into this in a very big way.

We would like to introduce you to an important new venture for Marriott Corporation, Marriott Life Care Communities. It reflects what we have learned in many months of planning our company's entry into the demanding field of retirement community development. What have the 3 years of preparation for this new venture taught us?

And then it goes on to state what they taught them and what they are going to do. Now, it does not address itself, it should be pointed out, to the tax aspects, and it is to that point that the Senator from Rhode Island offers his amendment. With the Heinz amendment it will cost the Federal Treasury $44 million. Now, $44 million may not be a lot of money to some people, but it is a $44 million impact upon the budget over the period of the next 5 years. And that figure will continue to grow.

Now, what is the real concern about this? The real concern is that many operations which are now nonprofits are moving into this field as a profit operation, and without that being a reality we would not have this issue before us. It is not a new issue for the U.S. Congress. It was in 1984 that we adopted the language that created the problem, and we did it to tighten up the law with respect to these community care facilities. Now what we are doing is revisiting the same issue and making a 100 percent turnaround to provide a tax loophole. But the tax loophole that we are talking about is double edged. Marriott Corp. or XYZ Corp. will pay nothing for the use of the $90,000. They will pay nothing for that money as long as that patient is in their care.

Now, that obviously is an advantage. They will pay no tax on the receipt of the $90,000. But there is a second advantage. Marriott as a consequence will have lesser income to report but they will have the ability to use that $90,000 for the purpose of further development without having to pay anything for it and without having to pay any taxes in connection with it.

Now, the second part of the problem relates to the resident. The resident may be in a position to deduct that part of the $90,000 or the greater amount, because in many of these instances the amount is far greater than $90,000, the resident will get the right to deduct that portion of the contribution, or the loan made—it is a loan, not a contribution—which is allocated to medical expense. I have no way of knowing how much that medical expense will be and how that allocation will be determined. Then you have the other part of that equation as ably stated by the Senator from Rhode Island, and that is that the individual's $90,000, which otherwise would be income producing, he or she will be paying no taxes on that $90,000. So that what we have is everybody gains but, again, who suffers? The American taxpayer.

I have difficulty in finding why we have this issue before us, why it was accepted by the Finance Committee. There is a big difference between the profits and the nonprofits. If Marriott charges $2,500 a month instead of $1,000 a month, they will pay taxes on that $2,500. By having the $90,000 on a tax-free basis, there will not be any taxes that they have to pay. But if a nonprofit organization is in that position, the nonprofit would not have to pay any taxes under any circumstances because we look favorably upon the treatment of nonprofits in this country. But beyond that point—and it has already been alluded to—is the fact that if Marriott or the profit corporation gets this extra income, that does not mean they are going to reduce their rates, whereas it is reasonable to assume, if the nonprofits receive this extra income, they are going to reduce their rates because they are not in a profitmaking operation.

I believe the Senator from Rhode Island has ably presented the amendment. I hope that this Senate will look favorably on and accept the amendment. What we are talking about is an unfair tax advantage for those residents of these community care centers who are able to pay in excess of $90,000 as a deposit and it discriminates against the residents of these facilities or others who are not in a similar position. That seems to me to be another indication of whose ox is being gored when you look at fairness and equity in dealing with tax measures.

I may want to address myself further to this issue, but I note that the chairman of the Finance Committee apparently is under some time constraints and I yield the floor with that understanding.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I ask unanimous consent to enter into the RECORD two items: one, a letter dated April 8 from Mr. Sheldon L. Goldberg, executive vice president, the American Association of Homes for the Aging, a reply to the Money magazine article referred to earlier; and, second, an article that appeared in Money magazine by Candace E. Trunzo, entitled "Solving the Age-Old Problem—If the Idea of Sending a Loved Relative to a Nursing Home Fills You With Dread, Take Heart. There Are New and Better Options," referring to continuing care facilities.

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

APRIL 8, 1985.

Mr. LANDON Y. JONES,
Executive Editor, Money Magazine, Time and Life Building, Rockefeller Center, New York, NY.

DEAR MR. JONES: On behalf of the American Association of Homes for the Aging (AAHA) we are voicing our displeasure over the article that appeared in the April issue of Money magazine, entitled "The Broken Promise of Life Care." AAHA represents over 2500 nonprofit facilities offering a wide range of housing, health and community services to their elderly residents. Nearly 600 AAHA members provide continuing care of life care contracts to their residents.

The article unjustly and inaccurately depicted the entire continuing care industry as one plagued by bankruptcies, mismanagement, and fraud. In this growth-oriented industry there have been failures, but more importantly, there are hundreds of successful, well-managed, thriving communities in existence that provide services to thousands of satisfied elderly residents.

We at AAHA, and many of our members, in good faith, supplied reporters of your magazine with substantial background material on the significant contributions made by the continuing care industry. We are always glad to represent our industry and to provide an accurate picture to current and future consumers of such services. However, the article which you have published bears little resemblance to the industry we represent.

The majority of the communities today are sponsored by religious affiliated and/or oriented organizations and provide services to a wide range of elderly residents. The examples you primarily have based your report on represent a small sample of exceptions, none of which are members of our association. We object to the fact that you failed to report on the hundreds of other sound communities currently in operation. Your staff had the opportunity to spend two days at Kendall At Longwood in Kennett Square, Pennsylvania, often referred to as one of the nation's most successful communities, but failed to report on the obvious quality of the facility and the hundreds of satisfied residents who reside there.

At this time, the number of states which provide for regulation are limited, but many more states than listed are currently considering legislation. The state of Wisconsin does have a law on the books, Oregon regulates the treatment of refunds, and Virginia passed their continuing care bill on February 20 of this year. The states of New York, New Mexico, Texas, Connecticut, Kansas, New Jersey, and Washington are all either considering legislation at this time or have considered it this year. AAHA is actively working with these states to aid them in developing responsible legislation.

The majority of communities are located in states which do have comprehensive legislation. Your figures fail to recognize that there are at least a dozen states that do not have any operating continuing care communities, and approximately 15 states have less than 5 communities in operation. Florida's law has many times been used as model in other states, but is much stronger than was represented. Among its many requirements: 50% of the units must be pre-sold before construction may begin, 40 percent of the annual operating budget must be held in escrow every year, and 10 percent of the operating budget must be held in escrow during the first 6 months for refunds for those who did not move in. The skilled nursing component of all communities are regulated in each state and the District of Columbia through licensing requirements.

We agree that the decision to enter a continuing care retirement community should not be taken lightly. We believe that consumer education is of utmost importance, and AAHA has been in the forefront of developing information for consumers interested in pursing continuing care as an option. We have published a consumer guidebook for CCRCs, a national directory that lists 287 communities describing fees and services provided in each community, and a consumer brochure that is available at no cost to interested consumers. AAHA's consumer guidebook offers consumers information on the concept of continuing care, how care is paid for, and what services are included for those fees, what to look for in management and sponsorship of a community, and how to assess the community's financial condition. A checklist is provided to guide a consumer through this process and makes recommendations to carefully review all contracts with appropriate advisors. AAHA strongly believes that consumers do have the right to examine all aspects of a community and should do so before committing themselves to an investment in a community.

Your article does note our National Accreditation program for continuing care facilities, which will begin accreditation of communities in early 1986. The accreditation program will work to set tough, fair, and responsive standards designed to protect elderly consumers and confer accreditation only upon verification of the financial integrity of the continuing care provider.

The few disreputable operators identified in your article are black spots on what is otherwise a respected industry, an industry very much committed to the mission of providing responsive services to the elderly. These and others who have acted in a fraudulent manner have done a great disservice to the majority of those in the industry who are operating facilities, as well as to the elderly that have placed their trust in them.

It is fair and responsible to inform your readers of problems, but to leave the impression that an entire industry is suspect is incorrect and irresponsible. Your article reports on the few bad operations but fails to mention the substantial contributions made by the overwhelming majority of reputable, responsible service providers.

Continuing care can and does work. We feel it is one of the most attractive alternatives for provision of long term care services for our nation's elderly available today and will continue to play a major role in the future. We urge you to take a closer, more representative look at this industry.

Sincerely,

SHELDON L. GOLDBERG,
Executive Vice President.

SOLVING THE AGE-OLD PROBLEM

(By Candace E. Trunzo)

It's the classic complaint of the aged and aggrieved parent: a mother can care for five young children more readily than five adult children can care for one mother. In most families, though, children don't neglect an elderly relative out of heartlessness but out of helplessness. Aiding someone who is growing frail and infirm can be frustrating and sometimes impossible.

Fortunately, more help than ever is available in the form of improving institutions and expanding in-home services. The grow-

ing numbers of home health-care workers now permit more old people to live on their own. There are agencies that help the elderly find roommates—young or old—to share quarters, costs and companionship. Special geriatric day-care centers make it possible for old people—who might otherwise have to go to nursing homes—to live with relatives who work. And for those who do require institutionalization, there's a much wider choice of facilities.

It is usually up to the family to weave through the maze of available government, community and commercial services. You'll probably have an easier time than your ailing father, say, finding out what the alternatives are, doing the necessary paperwork and checking the suitability of facilities. The elderly, even the most vital, independent ones, sometimes won't take the initiative, points out Michael Smyer, associate chairman of the gerontology center at Pennsylvania State University. "They are not a 'gimme' group," he explains. "The psychology of entitlement didn't saturate their generation the way it has ours."

You might start by getting in touch with your state's local office of the aging, the community family-service bureau or a religious organization. Senior-citizen centers—there are 8,000 throughout the country serving the elderly who are fit—are familiar with programs for all old people. Some localities have special agencies to help you locate available services. In Atlanta, for example, the Aging Connection is a central information and referral service for seniors.

Most people want to live at home; getting old or sick doesn't change that. While you may think your relative requires the kind of care only a nursing home can provide, there may be an alternative that will satisfy both of you. Says Jean Kinnard of the American Association of Homes for the Aging: "If there is any trend in care for the elderly, it's a tendency to reach out more with meals on wheels, adult day care and other services. The concept is called homes without walls, and the idea is to help the elderly who can still live independently."

For example, a state-sponsored program in Florida called Community Care for the Elderly is helping more than 10,000 old people stay out of institutions. The agency delivers meals to elderly people in their homes or shuttles them to a community dining facility to nourish both body and spirit. Through the program the elderly also can hire helpers who will wash windows and rake lawns, and homemakers who can help with shopping and light housekeeping. A health maintenance staff attends the elderly in their homes, helping them bathe and shave, and administering physical therapy and some other medical treatments. In addition, the plan provides transportation to doctors' offices. Fees are based on ability to pay; a homemaker costs from nothing to $5.46 an hour. Community Care for the Elderly has benefited the state as well as its older citizens. Administrators of the program estimate that by providing these services in lieu of institutionalization, Florida saved itself $9.5 million in the past fiscal year.

While Florida is one of only a handful of states that provide such a wide range of in home services for its elderly, there are public and private agencies in most communities that do so. In addition, more than 600 geriatric day-care centers have opened nationwide, charging from $10 to $35 a day. They provide companionship, recreation, hot meals and varying amounts of medical care. The nonprofit Olive Stone Senior Day Care Center in Santa Monica does not give medical care but offers such activities as field trips and courses taught by professors from a nearby community college. A dance therapist comes in once a week and a professional artist is working with the old people to create a large mural. The center won't solve all the problems of a working relative, however, especially if he has a 40-hour-a-week job; it's open only four days a week. And it's expensive: $33 a day.

Some nursing homes are starting day-care programs and also can provide longer-term respite for families that are responsible for elderly relatives. The Wesley Woods Health Center in Atlanta, for instance, will look after an elderly relative for a month or so in order to let you take a vacation.

The elderly who don't live with their families—or don't have families to live with—but don't want to live alone have several choices too. Many localities have set up centers that match elderly roommates. One such group in Los Angeles, Housing Alternatives for Seniors, has matched up 400 elderly people so far. One of them, Dorothy Farrell, 89, suffers from arthritis and was having trouble navigating the steps of her two-story walk-up. "I'd never lived alone until recently, and I spent many hours brooding," she says. "I wanted companionship and someone to share the expenses." She found both in Olga Popivanova, 73, a retired language teacher who was forced out of her apartment when it was converted to a condominium. "This is a very special understanding between two ladies," Farrell says.

YOUTHFUL MATCH-UPS

Other agencies are making intergenerational match-up. Back Bay Aging Concerns, a Boston group, has sponsored a project in which 14 people ranging in age from 20 to 80 share a 19th-century brick townhouse. Everybody takes a hand in the chores. Depending on the size and location of the bedroom, the costs range from $150 to $265 a month.

A program called Homesharing for Seniors in several cities, including Boston, Philadelphia, San Francisco and Seattle, approaches matching young and old differently. It finds housemates for elderly single people who want to remain at home but need some moral, financial and perhaps physical support. Mary Page, 64, a retired hospital administrator who suffers from arthritis, now shares her four-bedroom house in Seattle with Steven and Tricia Wittman-Todd, both in their twenties, and their newborn daughter. Page says she feels more secure with her housemates. The Wittman-Todds, who couldn't afford a house of their own, like the idea of an extended family.

Homesharing for Seniors can't help elderly people who need nursing care, but Seattle's Adult Family Home project does. The program finds younger families with room to spare and a willingness to care for a frail old person in return for payment. In some cases, well-off elderly negotiate their own rates. In others, the state reimburses homeowners as much as $300 a month, plus up to $125 if the sponsor undergoes some training, in physical therapy, say.

Another innovative living arrangement for elderly people is called congregate housing. It's reminiscent of the old-style rooming house but with more supervision and services. The Westonian, a privately owned and operated residence, is one of more than a dozen such places in the Boston area. A rambling Victorian structure in well-to-do suburban Weston, it houses 35 elderly people, some in single rooms and others in suites. All have private baths. Lunch and dinner are prepared for the residents and served in the main dining room, but each resident is expected to make his own breakfast in the communal kitchen. Services include cleaning, laundry and food shopping. The cost, including utilities and two meals daily, is $900 to $1,700 a month, depending on the type of accommodations.

The Weinfeld Residence in Chicago, run by the Council for Jewish Elderly, accommodates 12 residents who average 81 years of age. Each has his own room and bath. "Why did I come here?" asks Gertrude Ginsberg, 85. "The old feet wouldn't carry me to shop anymore. The old arms wouldn't do the floors anymore. An old person couldn't ask for a better home than this." Independence is emphasized: residents clean their own rooms, do their own laundry and make their own breakfasts. A housekeeper handles the major cleaning chores. A social coordinator is on hand five days a week to arrange activities, and a staff member trained in emergency medical procedures is there all night, every night. Weinfeld, which is subsidized by the council and the federal government, costs residents about $800 a month.

Apartment buildings or complexes designed specifically for the elderly are another possibility. In many cases they are funded—directly or indirectly—by the Department of Housing and Urban Development, and rents are subsidized. At Scheuer House in Bayside, N.Y., 149 identical one-bedroom apartments go for about $100 to $535 a month, depending on the tenant's income. The building's special features include Braille floor numbers on the elevator buttons, corridors that are thickly carpeted to cushion falls, and an emergency buzzer system in each bath and bedroom. Fifteen of the apartments are designed for the handicapped with doorways wide enough to accommodate wheelchairs and toilet seats with wing-shaped grab bars. The majority of federally subsidized buildings, however, have waiting lists of 10 years or more; at Scheuer House it takes 14 years to get in.

Elderly people who are independent now may want to make sure that they will be cared for if they become incapacitated. They can choose from among the increasing number of so-called continuous-care communities. The best of these resemble college campuses, with apartment houses for the aged, an intermediate-care facility for those who need some medical attention and a facility that offers around-the-clock skilled nursing care, all on the same grounds. Residents of the apartment house are admitted to the medical buidings if they fall ill and return to the apartment house when their health improves. Fees at such communities vary. The American Association of Homes for the Aging (1050 17th St. N.W., Washington, D.C. 20036) publishes a free guide for choosing a continuing-care facility.

Continuous care is a particularly attractive alternative for elderly couples. Nelson Baker, a retired theology professor, and his wife Florence, will leave a retirement complex to move into Carleton Village in Bedford, Mass. when that nonprofit continuous-care community is completed next year. "While we're both in good health now, my wife and I will be 76 soon," Baker explains. "At Carleton, if anything happens to either one of us, we'll be able to stay together." For a one-bedroom apartment, the Bakers will pay a one-time endowment of $32,000 and then $800 a month, which covers utili-

ties, one meal a day in the community dining room and medical expenses that are approved by the community's medical director. There's a putting green, a swimming pool and a meditation room. While some continuing-care centers offer unlimited nursing-home care, Carleton residents will be entitled to 60 days of free care and discounted rates if longer care is required.

The continuous-care community run by the Ebenezer Society of Minneapolis is perhaps the most extensive in the country. The society is Lutheran, but the center admits elderly people of any faith. There are two high-rise apartment buildings for those who can function independently, and three nursing-care facilities. At Ebenezer Hall, one of the intermediate-care facilities, the 150 residents, who range in age from 70 to 97, are encouraged to decorate their private rooms with homelike touches that range from lace curtains and patchwork quilts to Mork and Mindy posters. The hall has a beauty salon—a wash and set is $3.50—plus a resident-run shop for personal items and taxi service to anywhere in the Minneapolis metropolitan area for 50¢. Regularly scheduled lectures and workshops cover everything from learning Norwegian to adjusting to hearing loss. Residents and visitors are free to come and go, day or night. Explains Joyce Traczk, the social services director: "We want them to lead as full a life as they did before they came here." Ebenezer Hall costs residents $12,000 a year.

The society also sponsors a community-services program for those who live at home and need therapy, housekeeping or nursing services. It offers young adults a six-month course in how to care for their disabled parents. And it has sponsored what may be the first cooperative apartment building for the middle-income elderly. Cost: $12,000 to $15,000 for a one-bedroom unit. Residents have their own board of directors and hold meetings to run the building. Some special services are provided, including visiting nurse's aides.

Nursing homes may be the only alternative for some families. About 5% of those over 65 are institutionalized. Sadly, not all nursing homes offer competent care, but in general they have come a long way from the mid-1970s, when charges of patient neglect and abuse were common, according to Edward Kuriansky, the special state prosecutor in New York who is in charge of nursing-home investigations. The best facilities tend to be nonprofit institutions sponsored by religious, union or fraternal organizations. At the better facilities, rehabilitation is the byword, regardless of the patient's age. The Wesley Woods Health Center in Atlanta, for example, features an extensive rehabilitation program including occupational, physical and speech therapy as well as psychotherapy to motivate patients to improve their health. Approximately 40% of its patients are able to return to their homes.

It's crucial to check thoroughly the nursing homes you're considering. You can compile a list of good ones in your area by consulting your doctor, hospital social worker, senior-citizens center and the state chapters of the American Health Care Association (for proprietary homes) and American Association of Homes for the Aging (for nonprofit homes). You should visit the homes at least twice—once on an official tour and once as a surprise. A well-run home will welcome you and your questions. Make sure the residents seem content, clean and neat. Taste the food. Are portions adequate and does it seem fresh? To get a free checklist that will help you evaluate homes, send a stamped, self-addressed envelope to the National Council of Health Centers, 2600 Virginia Ave. NW., Suite 1100, Washington, D.C. 20037.

Inescapably, nursing-home care is expensive. The average monthly charge is $1,000, but it can go up to $2,500, depending on the locality and the kind of accommodations. Most families expect more help from Medicare than they will get. While Medicare pays most hospital bills for the ailing elderly, it covers only part of nursing-home costs and only for 100 days. Private health insurance rarely pays for nursing-home care. Medicaid does—but Medicaid patients must first use up all their money, selling most of their assets to raise cash. Then they must sign over their Social Security benefits plus all but a small monthly allowance. Some old people illegally transfer their savings and their houses to their children to qualify for Medicaid without going broke.

Gerontologist Michael Smyer advises families pondering ways to care for an aging relative to take him into their deliberations from the start. "Find out how he feels about various options," Smyer suggests. "One thing that greatly contributes to unhappiness is when people think they have no choices." He also urges you to bear in mind your relative's emotional as well as physical needs. You may want your mother to live with you, but that doesn't mean she'll be happy doing it. Observes Symer: "I've found that making sure the elderly are content, so that the debilitation of depression and loneliness do not occur, goes a long way toward preventing physical decline."

Mr. METZENBAUM. Mr. President, I would like to be recognized just to introduce another article.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, so they may all appear at the same place in the CONGRESSIONAL RECORD, I ask unanimous consent that the April 1985 article of Money magazine be included in the RECORD at this point.

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

THE BROKEN PROMISE: LIFE CARE COMMUNITIES

(By Denise M. Topolnicki)

Today an estimated 90,000 elderly Americans live in so-called life-care communities. In exchange for a one-time payment of anywhere from $15,000 to more than $175,000, these people have purchased a contract that usually guarantees them food, housing and, if necessary, nursing-home care until the day they die. Yet the personal and financial welfare of an unknown but significant number of residents of life-care communities is at risk. They face the loss of thousands of dollars. They confront a serious erosion of their sense of security. They are victims of an industry that on the surface brims with promise but in reality is deep in distress, plagued by finanically unsound enterprises and sometimes beset by criminally unscrupulous operators. Shockingly, the law affords life-care residents little protection: only 11 states have specific life-care regulations backed by civil or criminal penalties, and people who might sue under other statutes shy away from litigation for fear of throwing good money after bad.

In three months of investigation, Money has identified 40 life-care communities, also known as continuous-care communities, that since the mid-1970s have gone bankrupt or have experienced severe financial difficulties. How many of the nation's roughly 300 such communities—most of them built in the past decade—are currently in trouble is anybody's guess. But informed estimates are not encouraging. Edward Hosinger, director of Oppenheimer & Co.'s municipal bond research department, has followed the fortunes of 50 life-care communities financed with tax-exempt bonds since 1980; he reports that fully 10% have defaulted on their debts and that another 14% are failing to meet the occupancy rates that in initial projections were deemed crucial to success. Such statistics do not, of course, necessarily imply malfeasance, maladministration or even a community's ultimate failure. But they almost always mask broken promises. Sometimes the results are as devastating as the loss of a large portion of one's life savings, as was the fate of the people in the photo at left.

Not all life-care communities are shaky, dishonestly managed or unsuccessful. But alarmingly few are on the kind of firm financial and actuarial footing that should exist before promoters make promises of lifetime security. In this article, Money examines the life-care industry's troubled past, looks at its present and surveys some of the reforms that could help it in the future to fulfill its not inconsiderable promise.

To thousands of elderly Americans, the idea has proved irresistible: sell your house and use part or all of the proceeds, or part of your savings, to buy a contract that entitles you to live for as long as you wish in a life-care community. The one-time initial payment, usually around $35,000, entitles you to occupy, but not own, a pleasant apartment or townhouse-style unit. There, warmed by the company of neighbors your own age, you pay a monthly maintenance fee, like a condominium fee, that not only defrays the cost of such services as garbage collection and groundskeeping but more often than not also covers at least one meal a day in a common dining facility.

When you're no longer able to live independently, you can move at little or no extra charge into the community's nursing-care facility. Your nursing costs will be paid for, usually for as long as you live. That can be promised because your payments will have been pooled with your neighbors' and managed in such a way that sufficient reserves will exist to meet medical costs. An added safety margin is provided by the fact that some residents will never need nursing-care services.

The sad fact of the matter, however, is that many life-care community operators—even some with the best intentions—have miscalculated horribly. Sometimes they overestimated demand for their product. When sales of life-care contracts fell short of expectations, so did revenues. Occasionally they underestimated month-to-month operating expenses and hence set monthly fees too low. Or they made incorrect assumptions about the cost of and demand for nursing care. In the worst instances, evidence suggests that some operators had no means, and perhaps no intention, of ever delivering the services they promised. Most disturbing, in some of those cases the principals were con men in clerical collars.

Helen Bishop of Theodore, Ala, was a victim of just such a scam. In 1977 Bishop,

now 74, traded her biggest asset—her house, worth $18,000—for a lifetime lease at a nearby continuous-care community then called Alabama Meadows. She thought she'd found the answer to her prayers. In promotional literature and sales pitches to prospective residents, the developer promised that the completed village would offer more than 300 apartments, a nursing home for infirm residents as well as a chapel, library, swimming pool, therapeutic whirlpool baths and covered walkways connecting the buildings.

By the fall of 1981, however, only two small apartment buildings had been constructed, none of the other amenities had been provided and Bishop's monthly maintenance fee had been raised from $147 to $399. She refused to pay, packed up her belongings and moved. Now she lives in a trailer outside Mobile that one of her sons helped her buy. She has long since given up any hope of recovering her home, which was sold, or of getting any other kind of restitution. Even so, she's glad to be done with the ordeal. Says she, gesturing at the cramped but cozy interior of her trailer home: "About the only time I feel bad is when I visit my friends and think I gave up my house for this."

Nearly four years later, the Meadows looks much as it did when Bishop left. It has a new name though: Town and Country Meadows. And all but 21 of the 43 people who lived there at its peak have died or moved away. The remaining residents, who paid as much as $42,000 for life-care contracts, now pay maintenance charges as high as $548 a month. Yet services continue to decline. Some residents must carry their garbage across a grassy field to a dumpster more than 120 yards from their homes. Maid service recently was reduced from weekly to biweekly. And almost none of the originally promised features have been furnished yet.

Current community members hope that a new owner will take over the project and fulfill the promises they paid for. Yet because their contracts give them no equity in their residences, they worry that they'll be evicted if the village is sold to a real estate investor. Then too, they fear another brush with con men.

Both the Meadow's founder and its second owner have spent time behind bars for security fraud. Moreover, the court-appointed conservator who has supervised the village for most of the time since it ran into financial trouble in 1978, has made a number of questionable managerial moves. One of them the September 1984 hiring of the Rev. Samuel Ferrell, a Florida-based life-care consultant whose 1976 feasibility study helped launch the troubled community, was uncovered by *Money* and brought to the attention of Alabama attorney general Charles Graddick. He has since asked the state securities commission to investigate whether Ferrell is qualified to serve once again as a consultant on the project. (Curiously, at the time of the hiring, Ferrell was still listed as a defendant in a pending civil suit brought in 1979 by the conservator, Mobile attorney Robert Denniston. Among other things, the suit accuses Ferrell of defrauding creditors and misappropriating funds in connection with his earlier involvement in the project. Denniston filed a motion to have Ferrell dismissed from the suit in February.)

The story of Alabama Meadows is not a typical. It begins with the Rev. Jimmy Ballard, a Baptist minister from Birmingham, who in 1975 set up a nonprofit corporation, comfortingly called the Christian Fellowship Foundation. Ballard sold about $2 million worth of 10% bearer bonds to finance the Meadows project. Most of the bonds were sold to churchgoers by clergymen. By December 1978, the bonds were in default and Ballard had been replaced at the Meadows by conservator Denniston.

In 1981 Ballard was convicted in Alabama of securities fraud. His crime: failing to disclose important financial information to Meadows bond buyers, including the fact that the Meadows' bonds were encumbered by a $300,000 debt incurred by the Christian Fellowship Foundation at an aborted life-care project in Florida. Ballard was released after serving little more than two years of a nine-year sentence. He could not be prosecuted for selling worthless life-care contracts because Alabama has no law regulating their sale.

Ballard's greatest misdeed, however, may have been enlisting an ordained Presbyterian minister, Kenneth Berg, to manage the Meadows. When Berg, now 62, arrived in Mobile in December 1978, he was a self-described savior of troubled life-care communities who had owned or managed more than 50 such facilities in 17 states since the early 1960s.

Berg is a modern-day rogue, a Mark Twain character who could charm the elderly—he called himself Dr. for the Ph.D. in religion he earned from the University of Iowa in 1952. He worked for the conservator as manager of the foundering Meadows project for 13 months. During that time he served without pay and even added four apartments to the old school building that houses offices and the cafeteria. But he also took up where Ballard left off, selling so-called enhanced life-care contracts to residents for $6,000 to $9,000. While the original contracts sold by Ballard promised 100 days of nursing care at no additional cost, Berg's version offered care indefinitely.

Had Berg simply sold these life-care contracts, he would not have ended up behind bars. But just one month after arriving at the Meadows, he started borrowing money from residents to keep the project afloat. Before he stopped borrowing in November 1980, Meadows residents had given him more than $218,000. A month later, he defaulted on the first of these loans.

That didn't stop him, however, from buying the Meadows on liberal terms in February 1981. Conservator Robert Denniston, who executed the sale, says he was unaware of the reverend's ethically questionable predilection for borrowing from life-care residents. The deal also went through despite Berg's financial situation—at the time he or corporations he headed were in default on more than $2.2 million in promissory notes. Berg made a $200,000 down payment and financed the remaining $1,550,000 of the purchase price with a promissory note secured by a seller's lien on all but seven undeveloped acres of the property. More than half of his down payment came from transferring his claim to the seven acres for cash to a trio of investors. Berg planned to get permanent financing for the project through the sale of tax-exempt bonds. But he failed to secure financing and defaulted on the $1,550,000 note in September 1981.

Spurred by a complaint from Helen Bishop, who had not lent money to Berg but was angry about the Meadows' checkered history, attorney general Graddick started investigating Berg six months later. As a result, he was charged in 1983 with 150 counts of securities fraud and theft in connection with his sale of notes at the Meadows. He eventually pleaded guilty to three of the securities charges and was sentenced last September to three years in the Kilby Correctional Facility at Mount Meigs, Ala. He has since been released on probation. The condition: that he pay back his Meadows victims.

Only Meadows residents who bought notes from Berg will receive restitution. Those who paid for life-care contracts will not. Nor, it seems, will Berg's victims in other states. In Iowa, for example, Berg sold life-care contracts that turned out to be worthless. Yet because he apparently engaged in no criminal behavior such as securities fraud, and because the state lacks a law regulating the sale of such contracts, no government agency is likely to force him to make good on his debts or his promises.

This angers Dorothy Raynor, 74, and Jackson and Evelyn Hamaker, both 77. They bought life-care contracts in 1980 and '81 for a Berg project that never opened in Perry, Iowa. It was to have been a life-care community fashioned from a reconditioned roadside motel, bar and restaurant. The Hamakers paid $28,755 in entry fees; Raynor parted with $38,700. Berg abandoned the project in late 1981.

Under pressure from the Iowa attorney general, Berg offered to pay back the Hamakers and Dorothy Raynor, along with 27 other people who reserved apartments in Perry and at another never-opened project in Des Moines. But Jackson Hamaker, who wants Berg back behind bars, is skeptical. Says he: "Berg cannot live long enough to pay us all back and he just might try to do something like this again." (*Money* has attempted without success to interview Berg.)

Berg's duplicities are so bald and his involvement in life care so widespread that his influence on the industry seems greater than it really is. More frequently, communities run into financial difficulties because operators set entrance or monthly maintenance fees too low, cannot sell enough life-care contracts or entwine the fortunes of a life-care project too closely with their own. Take the case of Clearview City, a budget-priced retirement village in an unincorporated Kansas town of the same name, 30 miles southwest of Kansas City.

Clearview City was ostensibly operated by a nonprofit corporation called the Good Neighbor Christian Foundation. But it was actually owned and controlled by Paul Hansen, a Kansas City developer who formed the foundation and started selling occupancy contracts for the property in 1977. For $13,950, for instance, prospective residents could buy a lifetime lease for a two-bedroom unit in renovated Army barracks built during World War II to house workers at a nearby munitions plant. The contracts were vague. They did not, for example, guarantee lifetime nursing care at no extra charge. But promotional literature stated that the village would have a nursing home.

Hansen, died in 1981, leaving Clearview City uncompleted. Progress has been slow and the project has been clouded by financial uncertainty ever since. One reason: Hansen's estate is still tied up in probate court.

Signs of financial distress are everywhere. Resident Noel Hord, 74, for example, believed that management would hire security guards when he saw security listed as a feature in promotional literature. But Clear-

view City has never employed professional watchmen. Instead, elderly residents volunteer to man the guard shack at the village's entrance. Another occupant, Herbert Carpenter, 59, says that management promised to paint apartment interiors every five years at no charge. Residents now pay from $175 to $225 for that service. About 170 of the community's roughly 430 apartments are still unoccupied; most of those units are filled with debris. The nursing home has not been built, and though all references to a nursing home have been removed from Clearview City's promotional material, the community's administrator, Jack Marker, says he hopes that one will be constructed.

Even luxurious life-care communities created by sophisticated developers for the affluent elderly have flopped. To find out why, *Money* examined three projects: Mount Royal Towers near Birmingham, Ala., a $30 million complex that has operated under the jurisdiction of a bankruptcy court since April 1984; Royal Regency in Winter Haven, Fla., which in December 1983 defaulted on $53 million worth of bonds; and Bishop's Glen, a partially constructed $36 million project near Daytona Beach that's also under bankruptcy court jurisdiction. The stiff entry fees; from $42,000 for a one-bedroom unit at Royal Regency to $178,000 for a three-bedroom apartment at Mount Royal.

An impressive stable of experts, including accountants from Laventhol & Horwath and Price Waterhouse and market researchers from Yankelovich Skelly & White, worked on the deals at various times. The projects were financed with tax-exempt revenue bonds issued, but not backed, by government authorities and underwritten by registered brokers.

Why didn't high-priced talent ensure success? Some life-care community managers, marketers, financial consultants and bond analysts point to fees earned by developers before they barely begin the task of selling life-care contracts. At Bishop's Glen, for example, only 47% of the bond-sale proceeds were left for land acquisition and construction costs after investors, consultants and underwriters collected fees and expenses and money was set aside for initial debt-service payments. According to Oppenheimer & Co.'s Edward Hosinger, trouble often occurs when less than 50% of the bond proceeds are earmarked for land and construction costs. Hosinger would prefer that developers receive a return on their investment only after a project is 80% sold out, not as soon as bonds are sold. Says he: "The developer would then have an incentive to make the project viable."

Royal Regency similarly ran into difficulty because a low percentage—only 45%—of bond proceeds were left over for land acquisition and construction costs. And at Mount Royal Towers, one of the major problems was that entry fees were up to three times higher than at nearby life-care communities. Only 78 of the community's 205 available units have sold.

The futures of the roughly 100 life-care residents at these projects are uncertain. Royal Regency probably will be converted to an apartment complex. If that happens, residents may stay in their units so long as they pay the same rents as other tenants. But many life-care contract holders would prefer to move out and are suing to get back part of their entry fees. Spokesmen for Mount Royal and Bishop's Glen say that efforts will be made to continue operating those projects as life-care centers.

Oppenheimer's Hosinger is not sanguine about the prospects of present and future life-care projects—unless major changes occur. He feels that communities would be more likely to succeed if hospitals and nursing homes gave financial backing to projects. He also suggests that churches and religious organizations sponsoring life-care communities lend major financial support, not just their names, to the developments. Yet churchmen have been wary of life care since at least 1981, when the United Methodist Church settled a class-action lawsuit by paying $21 million to residents of seven failed church-sponsored life-care communities in Arizona, California and Hawaii. The developments had been operated by a nonprofit corporation called Pacific Homes. The church, which had allowed its name to be used in connection with the marketing of the projects, had contended that it was not legally responsible for damages arising from the unsuccessful communities because, in its view, a religious denomination could not be sued.

Another reform would be to require that life-care providers hire actuaries before selling contracts and then keep them on retainer after the community has opened. Actuaries would help community developers to sharpen their estimates about how long residents will live and about how many of them will require nursing-home care and for how long. Actuaries also could help sponsors figure out how much they should charge to cover current and future operating and health-care expenses.

A few life-care communities have hired actuaries, to positive effect. But many more hae chosen to forgo the expense. Without an actuarial review, however, it is essentially impossible to say whether any particular continuous-care community is financially healthy or not. Yet no existing or pending state or federal legislation includes the idea of mandating actuarial review, and industry-wide standards for actuarial examinations do not exist.

Insurance companies are now experimenting with policies that could be used along with actuarial reviews to ensure that life-care contract holders get what they pay for. Ideas include:

Long-term health-care insurance. Such policies could be sold to individuals or groups, including residents of life-care villages, and would cover all degrees of nursing care. Possible cost for a person age 65: $36 to $40 a month.

Private insurers could assume some of a life-care provider's financial risk in exchange for a portion of the residents' fees, much like reinsurance companies take on part of other insurers' risks in return for premiums.

A rating service, like A.M. Best's in the insurance industry or Moody's in the bond business, could assess the financial strength of life-care communities. Right now, no such clearinghouse exists and none is in the offing.

Proposals such as these would clean up the life-care industry. They'd add, of course, to the already high cost of continuous care. But actuary Patricia Wilson, a vice president with the pension consulting firm of Johnson & Higgins, argues that developers and residents would be willing to share the burden of increased costs. Developers would enjoy a marketing advantage by offering insured contracts, and residents would be willing to pay more for peace of mind.

Widespread actuarial review and insurance may one day stand behind life-care communities. But until consumers can count on such guarantees from life-care providers, they must rely on the law for protection. All states license and inspect nursing homes at life-care developments. But only Arizona, California, Colorado, Florida, Illinois, Indiana, Maryland, Michigan, Minnesota, Missouri and Pennsylvania have broader statutes comprehensively regulating life-care communities. Yet even these states' laws are too weak to protect residents' investments, and enforcement has been lax. Only seven states, for example, require communities to maintain reserve funds to cover unexpected expenses. Although Florida's law often is cited as a model statute—it stipulates that entry fees and deposits be held in escrow until developers secure long-term financing and sell 50% of a community's units—only one state regulator oversees 66 existing and 30 proposed communities.

The pace of legislative reform has been sluggish. Bills are now pending only in Alabama, New Jersey and Virginia. No federal legislation is being considered. Meanwhile, the American Association of Homes for the Aging is pushing for industry-sponsored policing. The association is developing a national accreditation program based on a model used since 1979 by life-care providers in the Delaware Valley. Under the model program, a committee of life-care community operators and experts on aging visits each project that applies for accreditation and scrutinizes its present and projected financial situation, its management policies and the standards used in setting fees. Accredited communities are reviewed again every three years.

Sixteen Delaware Valley developments have been accredited so far, including Kendal and Crosslands, two neighboring villages located 20 miles south of Philadelphia. Both communities are managed, but not financially backed, by the Quakers and are considered models for the life-care industry. Their shared 250-acre campus is home to 800 residents who got the swimming pools, garden plots and nursing homes they were promised. The villages, which have undergone actuarial reviews by the respected Philadelphia firm Hay-Huggins enjoy such excellent reputations that they have a waiting list of 980 applications. Entrance and maintenance fees range from $27,500 and $899 a month for a studio apartment to $89,500 and $1,995 a month for a two-bedroom unit.

What can people who are now considering life-care communities do to protect themselves? The first thing to remember is that you're investing in a contract, not buying real estate. Says Patricia Wilson of Johnson & Higgins: "Purchasers tend to look at the size of the apartment and the thickness of its carepeting. They need to look more carefully at the community's financial stability."

If you're considering a new project that's financed with a bond issue, ask for a copy of the prospectus. Reading it may enable you to find indications of potential trouble, such as an inexperienced developer or high up-front-fees.

To evaluate an existing community, examine all available financial data. Be warned, however, that expense and balance sheet information will not tell you if a community is likely to have enough cash to cover future health-care costs. Only an actuary can tell you that, so find out if the community has hired an actuary and ask to see a copy of his report. If you cannot get one or if it says that fees will have to be raised significantly

to make up for shortfalls, you'll probably want to reject the community.

Unfortunately, people who've picked poorly in the past have little to look forward to. Some industry spokesmen are fond of repeating that no one has ever been evicted from a failed life-care community. Retorts Patrick Robinson, the Alabama assistant attorney general who investigated Kenneth Berg: "Maybe nobody's been thrown out. But what about the people who left Alabama Meadows and other places because they didn't get what they were promised?"

The PRESIDING OFFICER. The Senator from Florida.

Mrs. HAWKINS. Mr. President, I have been listening with interest to this debate it was waged on the floor and become increasingly concerned about the elderly not only in the United States but those who choose to come to Florida to make it their permanent home. We all understand the reality of an aging population. Responsible citizens, responsible legislators should provide safe, secure, and affordable housing and medical services at reasonable costs. We have tried the nonprofit. We have read with interest many letters that come to my office. We read with interest the many articles which have just been put into the RECORD comparing not-for-profit and for-profit.

This is the United States of America. This is the country where we should come up with new solutions to problems as the need arises.

Shortly after the 1984 Deficit Reduction Act was adopted last year, I become concerned about the effect the new imputed interest rules would have continuing care facilities. It became immediately evident that the attempt to correct the perceived abuses in this area of below market loans would inadvertently limit opportunities to build safe and affordable facilities for aging Americans.

The population of florida is growing at a tremendous rate. An estimated 20,000 people a month move to Florida to make it their permanent home. We should be very careful what we do here today.

In October 1984, I joined with 20 of my colleagues in writing to Ronald Pearlman, who was then the Acting Assistant Secretary at the Department of the Treasury, to express our collective concern and to request that the Treasury Department issue interim or transition rules which exempt continuing care facilities.

Let us talk about the critical need. Current demographic trends indicate that the number of individuals aged 65 or over is expected to grow from 26 million in 1980 to 32 million by the year 2000. In Florida alone, the number of individuals between 65 and 74 will increase by 27 percent between the years 1980 and 1990. These elderly Americans will need affordable housing and continuing care facilities or a viable option.

Let us let your mothers and fathers, your aunts and uncles have a choice. The consumer should be given the opportunity. We have a unique opportunity to remain openminded. Let the marketplace take care of this problem. Let the consumer shop around. Let the consumer try a not-for-profit; let the consumer try a for-profit.

I invite all my colleagues to come to Florida, and they can spend a week at either type. We have them in every community.

You should have the option, if you are 65 or older. We have several Members, I imagine, who would qualify, who could comparison shop in my State, and I will give them a list of the options. I will tell you where to go, and you can shop the market, because some day you, too, will be looking at Florida, to make it your permanent home in the winter. Several of my colleagues have already made that choice, and they have a winter home in Florida—more than a few.

As this demand for long-term care grows in all our States, the elderly, who are well-informed, who have the time to call you, who have the time to call me, who have the time to write me, who have the time to write all of us, are going to become very aware of the role Government played in providing for their retirement.

Federal agencies, State governments, and local governments are becoming increasingly concerned that they will be unable to meet the growing demand for publicly financed, long-term care services. New methods for private financing are necessary.

I read with interest a recent survey conducted by the Department of Health and Human Services on private financing of long-term care, and I will quote from that survey:

Continuing care facilities represent a popular and effective approach for financing and providing residential, social, and health services for the elderly.

The language in the Senate Finance Committee measure as it was reported by the committee contains an important provision which would prevent interest income—which is never received—from being imputed to elderly Americans who pay entry fees to life care or continuing care communities.

This legislation is urgent. It is not a writeoff for big business. I have heard that all day long. It is not a writeoff for big business. I would never support a free ride for wealthy corporations.

What all of us should do is support the opportunity to allow an elderly person who sells his or her home, who sells the roof over their head, and uses the safety and certainty of a life-care facility, to have the opportunity to do without an unjust penalty.

Why do we always go after the people who are providing for themselves? Why do we spend days and days and days here arguing about what to do with the poor? Then we spend days and days and days trying to figure out what we are going to do with those who sell their home and go into a continuing care facility with the comfortable feeling that the provider will still be in business if this person lives to be 90 years of age.

The average entry fee for life-care communities in my State is around $40,000. That is not a wealthy person in my State. You can sell your home and probably get $100,000 if you have owned it since 1957, in my State.

Mr. LONG. Mr. President, will the Senator yield at that point?

Mrs. HAWKINS. When I finish.

Forty thousand dollars may seem like a lot of money to some Senators on this floor.

I receive letters from women who have outlived their husbands, and they say: "My only problem today is that I have lived too long. My utility bill is tremendous." Sometimes they say: "I have to live with my children, and I have to sell my home. I want to go to a facility that has dependability, that seems like a home and not a nursing home. The day may come when I need assistance and I have no family. When I sell my home and go into one of these facilities that guarantees me the security I need as I grow older and may become ill, I want to be sure that I have an opportunity to shop around and that this facility will be in business for a long time."

One hundred thousand elderly residents now living in these facilities are retired teachers. There are a lot of retired teachers in my State and a lot of retired military employees. They are hardworking citizens who have saved all their lives in order to be worry-free when they retire.

No one realized while they were saving and paying for their home that they were going to live an extra 10 years, and they are very nervous when they see my colleagues and Government continue to make rules which will not give them options.

I urge my fellow Senators to allow the elderly to have options by voting to retain the language now in the Finance Committee bill.

Mr. LONG. Mr. President, I must say that the more I hear the debate, the more I am convinced the Senator from Pennsylvania is advocating a meritorious provision.

I was not in the committee the day we voted on the matter. I was ill that day.

But, Mr. President, those who are speaking against the provision ignore the fact that elderly people do have options that are tax free. For example, a great number of elderly people own their own home and the income, you might say, that can be attributed to the housing expense is not taxed to them. Anyone who owns his own home

has the privilege of living in his own home and he pays no tax on that. I know he pays no tax in Louisiana because we have a homestead exemption. He does not even pay a property tax on it, none, zero. I hope most other States are as considerate to the elderly who own their own little homes as we are in Louisiana.

I am sure that most of them do not have very expensive homes. So, insofar as they own a home the income that it would take to buy that home and the interest on that income is not taxable.

Now, if one should sell his home and seek to move into an extended care facility, that is a facility that would house him, provide him with some accommodations, make him comfortable and try to provide him some people with whom to visit, hoping that that person is not ill at this point in life. If he goes into one of those nonprofit operations, assuming this person is not a needy person, or a welfare client at this point, a great number of them require that he make a donation of either all he owns or a certain portion of his earthly belongings.

Let us say if he sold his home for $90,000 and wanted to go into a facility that would provide him some care a lot better than that which is available to welfare clients, he then would donate his $90,000, let us say, to the home sponsored by the nonprofit or the church organization.

They would use that money to help defray their expenses and their costs and they would provide him care. There is no tax involved in any of that, no tax whatever.

If he went into a private, for-profit establishment making a refundable loan to the institution there would be tax on that and the estimate, according to the committee report, assumes that the average amount of income to be imputed would be between $5,000 and $6,000, starting with $5,600 and going up to $5,942. So there would be a tax, about $150 a month, on this person's decision to sell his home for $90,000 and move into a privately owned and privately operated facility where he would have the option of having his $90,000 back anytime he wanted it back if he decided to quit living there.

Now, ask this question, Mr. President: Assume the estimate to be that, let us say, $150 a month, or if it is $90,000 we are talking about a tax, let us say, of $250 a month. Why do we want to put a tax of $250 a month on some dear old person who moves into a for-profit operation?

If we do that it means one simple thing, that if one is seeking to operate such a facility for profit he has to reduce what he can provide these dear old people by $150 a month. Obviously if he is providing more than his income he is going to go broke.

Mr. President, your decision here is do you want to permit a nonprofit organization seeking to provide something better than is available to elderly people at this time an opportunity to compete, or do you want to deny them the opportunity to compete? There is no doubt about it now. You just take the figures in the committee report if you are a nonprofit operation and you are operating as most of them are structured today where the people just come up and put their money in, and in a lot of States the residents cannot get any of the money back.

In the name of consumer protection, a lot of States have passed laws to say that at least for the first 6 months if they are not happy, residents can get their money back and leave. So that some States protect these dear old people in that situation and some do not protect them at all. In other States, if they move in there and it is completely unsatisfactory that is just too bad, the money is gone and they are stuck, and there is no way they can get their money back.

We are talking here about a proposal where persons will have the option to have their money back if they are not satisfied. They can go somewhere else with it and find themselves a better deal. Then if you like the nonprofit, OK, go to the nonprofit, go the church operation, if they will take you, or just take your own money and buy yourself a little home and try to live there the best you can as a recluse, or whatever.

Mr. President, the Senator from Louisiana some years ago offered an amendment in the Finance Committee to say that where people build these for-profit hospitals in the United States they can make the same type profit that an average private manufacturing operation could make. The purpose there was to fix it so that when people build hospitals for profit under Medicare and Medicaid, those people will have the possibility of building facilities just as competitive for capital as that invested in manufacturing or an average commercial business.

Mr. President, since we passed that amendment, all over America companies like Humana, which was on television recently, sponsoring the mechanical heart operation, and others, have been building some of the finest hospitals in America. They are consistently some of the cleanest, some of the most modern, and the best facilities, Mr. President, of any small hospitals I see in America.

Mr. President, I visited these for-profit hospitals in Louisiana and I have seen what was there before that time. There is absolutely no comparison. You should not mention the two in the same breath.

These new hospitals being built on a for-profit basis have the old things absolutely beat to death. They are cleaner, they are more modern, and the facilities are far better, with the latest type equipment. The ones I have seen are spotless and they are a credit to the practice of medicine.

That is what we have in place of some of the very bad hospitals that have had to be closed because the Department found they just would not measure up to human expectations and adequacy for American citizens of any State. We have thousands of first-class for-profit operations because we made it possible for them to make a profit and provide a better facility for the people.

Now my understanding is that under the new orders we have under the DRG's these modern facilities charge the same thing as the old facilities, the nonprofits and all the others, charge the same fees for these Medicare and Medicaid patients. Where they are making their money is where they are providing the service to people who are not on Medicare, not on Medicaid, people who are below 65 and come in paying their full cost or being insured by private insurance companies and come in to use good facilities as privately insured or fee-for-service patients.

Mr. President, if you want to vote the amendment down, you may. But if you do it—and when I say this, I am talking about the amendment to the bill, the Heinz amendment—if you want to strike the Heinz amendment from the bill, what you are doing here is to leave a discrimination to the effect anywhere from $150 to $250 a month against elderly people who would choose to take the free enterprise option.

Now, in recent years we have given private enterprise the opportunity to compete in providing health services.

They have provided health services superior to that which was available in facilities that existed prior to that time. In doing so, they have put pressure on those that existed prior to that time to be more efficient, to be cleaner, to provide a better service, otherwise they would be out of business.

Mr. President, I see nothing wrong with saying that on this very limited basis—what is this thing supposed to cost? It is estimated the first year would cost about $4 million—I see nothing wrong with saying, "Let us see what happens if the free enterprise system is given an opportunity to provide the service in such a way that the elderly people are not being denied $150 to $250 a month which otherwise could be made available for their care, give them the same opportunity to provide as much as the money would buy, where the benefit goes to the elderly person."

In the last analysis, you are not talking about a benefit for Marriott or any other provider. You are talking about a benefit for the elderly.

If they would like to go into a for-profit, privately owned operation dedicated to those type of people, do you want to tax each old person $150 to $250 a month per individual, knowing what that would do to reduce the level of care they are going to get by $150 to $250 a month?

I personally think, Mr. President, that it would serve a purpose to let the private, free-enterprise type operators, the for-profit facilities, make available housing and facilities to elderly people to compete and see what happens.

How many homes do we estimate would be involved in this thing if the amendment would come into law? About 27 homes that exist at this time. So the benefit would go, mind you, Mr. President, the benefit would go not to the 27 homes, it would go to the people who would be living in those 27 homes. So you would say, "Here are 27 privately owned homes where these elderly people living in the homes could live better. They could live better to the tune of $150 to $250 a month."

If you do not like those dear old people, do not vote for the amendment. Tell them, "No, if you want to have these same benefits, you have got to go into a church home and give your money to the church where you can never get it back."

Mr. CHILES. Will the Senator yield on that point?

Mr. LONG. Yes.

Mr. CHILES. I just wanted to say that where I first got interested in this was with the Senator from Pennsylvania about the time we were passing the Deficit Reduction Act. And without the underlying Heinz amendment, and some amendments which I think have been agreed on to go with that, Treasury still has not clarified the situation about all of those people who are in the church homes right now, that are in the nonprofits right now, that have been there and have invested their life's savings, that are already there, whether they are caught up with this.

So the Senator from Florida has a concern because I can tell you there is a concern. We always talk about these amendments and what they do, and if you talk about Social Security and how that upsets old people. I can tell you in my State there are an awful lot of people that are in these life care institutions, in nonprofit, in church institutions, who do not know from day to day whether they are going to find that they are taxed out of that institution and that they cannot survive under that. Because there is a great hiatus here. We have asked Treasury to clear it up. They have not done it. I think legislation is very necessary to do that. That is the principal concern I have. Some of these other arguments seem to have merit to me, but I can tell you if we do not have the underlying Heinz amendment and the follow-on amendments that need to go with that, I think we have a situation in which we can have a lot of people, I say to the distinguished Senator from Louisiana, put out of where they are now, where they have already put in their life's savings. They are gone. I mean, they are locked in. They are living in a lifestyle in which they seem to want to continue, is what they express to me when I go down there.

In any one of those places that I have visited, when I try to talk on Medicare, when I try to talk on Medicaid, when I try to talk on COLA's, they say, "We don't want to hear about that. We want to know what is going to happen to our life-care situation." That is the principal thing that is on their minds.

Mr. LONG. Mr. President, let us just analyze the type situation that can face an elderly person. The person is alone. The person would like to have some company.

Mr. President, I can appreciate what that problem is a little bit. I bought some farmland some time back. There was a dear old person living in a cabin on that property. Once in a long time somebody would come by and visit this dear old man. I did not know him personally when I bought the property.

Eventually, the dear soul passed away—dead for days before anybody came by and discovered that person was dead. That is how some of these dear people live.

That is not an exception. I also knew a couple who had a lot of money, an affluent couple. Before the husband passed away, they bought a beautiful home, so the wife continued to live there alone. Once in a while she went out, but she became more and more recluse. That person died and was dead days in that house—and that is a high-income family in this latter instance—dead for days before anybody went by and discovered that dear lady passed on to the Great Beyond. How much company do you reckon either one of those two people were having?

We are trying to provide a way where people can be around people in their age bracket, provide them with some interest, to have someone to talk to.

What happens? Here we find a great big tax penalty if they do it the way they would like to do it.

Let us say one lives in the community with a lot of Catholic population. My wife tells me that in Louisiana the great many of the best homes we have for the elderly people are operated by Catholics. And the Catholic nuns deserve a great deal of credit for that.

Let us assume one wants to move into one of those facilities, so he donates his property to make himself eligible to move into the home. Let us assume this is a Protestant. After he is in there for a while, he may not be happy with it. All these Catholics seem to think they are certain to go to Heaven, but they are not sure that the Protestant is going to make it. Well, suppose that Protestant decides he went to the wrong place. He is not happy, but if he wants out he cannot get his money back.

The Senator from Pennsylvania is offering an amendment to say, "Well, the tax advantage would be there for the benefit of these old people on the condition that they would get their money back. If they are not happy, they can have their money back."

In due course, the Marriott Co. might build some facility. They sure are not going to build many unless they have some satisfied customers, because if the customers are not satisfied they are going to move out and the Marriotts will lose money.

One would not want to go into that business unless he thinks he can make those people happy. Suppose someone built a for-profit operation, the best in America, got the best facilities to offer, better than anybody else has to offer. Why would you want to discriminate against them by saying, "If a person puts up $90,000, you have got to charge him $250 a month tax for that one dear old person."

For every one of those old people that puts up $90,000, there is a $250 a month tax penalty for moving into that facility. To me, Mr. President, this does not make good sense. I think it would be worth paying $4 million a year to find out if it is a good deal, and that is what this thing would cost in the beginning.

The estimated cost for fiscal year 1986 is $2 million; fiscal year 1987, $5 million; and gradually builds up in 1990 to a cost of $17 million.

I would think, Mr. President, that is a small price to pay to just experiment a little bit and see whether the free-enterprise operations, offering someone a service, hoping to make a profit out of it, might be a better deal for some of these dear old people than the church-operated facilities.

I point out, Mr. President, that the experiences we have had in hospitals, based on what I have seen, is that these for-profit hospitals built in my State—and they built them all over Louisiana; they are the best hospitals we have in those communities—they have the best hospitals that ever existed in those communities in history. And they are 100 percent better than what was there before they were built.

Now, why should we not try to give free enterprise a chance to see what they can offer, in terms of housing and facilities for elderly. If it is not

very good, all we have to do is repeal it whenever it suits our purpose.

Mr. CHAFEE addressed the Chair.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER (Mr. HUMPHREY). The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I ask unanimous consent that a letter from the Assistant Secretary of the Treasury for Tax Policy, Mr. Pearlman, addressed to Senator DOLE, be printed in the RECORD.

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

DEPARTMENT OF THE TREASURY,
Washington, DC, June 25, 1985.

Hon. ROBERT DOLE,
U.S. Senate,
Washington, DC

DEAR SENATOR DOLE: In response to your request, I write to advise you of Treasury's views regarding the continuing care facilities amendment to H.R. 2475, as reported by the Senate Finance Committee on June 13, 1985.

Section 4(a) of the amendment to H.R. 2475 creates an exception to section 7872 (relating to the treatment of loans with below-market interest rates) for loans to certain qualified continuing care facilities if the lender is at least sixty-five years old and to the extent the principal amount of the loan does not exceed $90,000. In general, a qualified continuing care facility is defined by the amendment as a facility where substantially all the residents have entered into "continuing care contracts" and where substantially all the facilities used to provide services are owned or operated by the borrower. A "continuing care contract" means a written contract between the resident and the facility under which the resident (or his or her spouse) may use the continuing care facility for their lives, and where the resident or spouse will first reside in a separate, independent living unit with only minimal provision of care, and only thereafter will be provided substantial and long-term nursing care as the resident's health may require, at no additional substantial cost. Nursing homes are explicitly excluded from the category of qualified continuing care facilities which are granted this exception from the below-market loan rules.

We recognize that the proper treatment for tax purposes of refundable entry fees paid to facilities by prospective residents is of great concern to members of Congress and to the public. However, we do not think that the continuing care facility amendment as currently drafted represents an adequate or fair solution to the problem. This amendment has been drafted to exclude from its benefits many institutions which provide care for persons who are unable to care for themselves, such as the *traditional nursing home*, many of which are operated by religious and not-for-profit social welfare organizations. From a tax policy perspective, there is no reasoned distinction to be made between a loan to a *traditional nursing home* and a loan to a "qualified continuing care facility." Line-drawing of this type is always difficult to administer. Moreover, giving preferential treatment to some facilities over others fosters competitive advantages and disadvantages, which is not the proper role of the tax law in this area.

For these reasons, Treasury continues to urge the tax-writing committees to hold hearings on the tax treatment of loans made to dependent care facilities across the board. We believe it is preferable to consider legislation after hearing the views of all types of dependent care facilities, as well as those of members of Congress, Treasury, and the public generally. Only at that time can we be confident that an even-handed and adequate solution to the dependent care issue has been crafted. Should the Senate choose to delete section 4(a), we will be happy to assist the Finance Committee in expediting a full consideration of tax issue.

Sincerely,

RONALD A. PEARLMAN,
Assistant Secretary (Tax Policy).

IN SUPPORT OF LIFE CARE CENTERS

Mr. WILSON. Mr. President, I rise to strongly support the Heinz committee amendment.

As a member of the Senate Select Committee on Aging, I wish to remind my colleagues here today that this issue of life care facilities and the vital role they play in the long-term care of our elderly was thoroughly reviewed by that committee.

It is well established that the demographics of our elderly population demand innovative financing mechanisms to enable our seniors to avail themselves of a variety of options for shelter and health care, including the complexities of long-term care. California has long been a leader in the life care concept. We have had our share of difficulties, but we have had on the whole, significant successes. I speak here of the variety of nonprofit organizations in California which have taken up the burden and the opportunity to provide to the elderly one of the most innovative methods of care, full care, available today.

Private enterprise is not unaware of the successful examples set by the nonprofit organizations. This Heinz committee amendment permits both the nonprofit and the for-profit organizations to continue to develop these options.

A life care center typically provides a full range of residential health and social services for the remaining lifetime of an elderly individual in exchange for an entrance fee and a monthly charge. Due to the unique financing arrangements of these organizations, they represent an important method of financing long-term care. Last year some of my colleagues and I attempted to obtain from the Internal Revenue Service a clarification on the issue of imputed interest on the entrance fee. Our concern was for the deleterious impact of certain provisions in the 1984 Tax Reform Act. In the absence of any response, Senator HEINZ proposed his committee amendment.

The fact is that the amendment from the Senator from Rhode Island to strike the Heinz amendment will fall most heavily upon the individual elderly person seeking alternatives to spending down to Medicaid nursing home status, and who seeks a self-financed, decent, method of care for himself, or herself, and their spouse. It comes down to denying to that individual the freedom to prepare for himself, or herself, a way of caring for the difficulties otherwise faced in isolation.

Further, I wish to point out to my colleagues that absent the Heinz amendment, the elderly who are now residing in these facilities will be penalized for having made an enlightened choice.

I urge the defeat of the amendment from the Senator from Rhode Island, and the support of the Heinz amendment without modification.

Mr. EVANS. Mr. President, I rise to support the amendment of the Senator from Rhode Island [Mr. CHAFEE]. This amendment keeps this body from adopting a poorly reviewed policy allowing some individuals to establish a tax-free, $90,000 interest-bearing savings account.

This amendment would strike the provisions of the imputed interest bill which excepts from below-market loan rules, loans made to continuing care facilities under continuing care contracts. Such exceptions are limited to loans that are made by lenders that are 65 years or older and where the principal amount does not exceed $90,000.

I wholeheartedly agree that we need to look toward the needs of our elderly population. But this must entail a review that is comprehensive, looking to the questions of equity and the creating of policy responsive to this rapidly growing segment of our population. A population of 65 years or older that is now 12 percent of our total population and which is expected to double by 2050.

My opposition can be summarized by two concerns.

First is the question of equity. How can we justify this $90,000 tax-free deal to seniors entering a continuing care facility, when seniors that reside in nursing homes are not eligible? What about seniors that still live in their own homes that can't take advantage of such a deal? We cannot justify this provision through the test of equity.

Second is the question of policymaking. This provision must undergo appropriate review through the committee process. This has not happened. Without this process, we miss the chance to develop comprehensive policies for all seniors.

Furthermore, we endanger the credibility of the Senate committee process which we depend upon so heavily. If we come to a situation where we can no longer depend on Senate committees to fully review legislation before it comes before the full Senate, we take a step toward compromising our policymaking decisions.

Mr. HEINZ addressed the Chair.

Mr. CHAFEE. Mr. President, I still have the floor.

Mr. HEINZ. Mr. President, the Senator loses his right to the floor when he propounds a unanimous-consent request.

The PRESIDING OFFICER. The Chair recognizes, for the second time, the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I send to the desk a modification to my amendment.

The PRESIDING OFFICER. The amendment is so modified.

Mr. LONG. Mr. President, point of clarification. I would like the amendment read.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

On page 36, on line 12 after the word "contracts" insert the following: "and (iii) which are owned and operated by an organization described in section 501(c)(3)".

Mr. CHAFEE. Mr. President, this modification adds a qualification to the definition of those life care facilities where a resident qualifies for this special tax treatment. It is those facilities that are owned and operated by an organization described in section 501(c)(3); namely, a nonprofit organization.

Mr. President, what we are doing under the language of the Heinz amendment which was adopted is moving into a whole new area where, as I said, we have had no hearings whatsoever in the Finance Committee, and where it is discriminatory in that it does not apply to nursing homes. Why we don't have it apply to nursing homes I will never know. If you go into one of those specified facilities, you get a special advantage.

What I am doing in this modification is providing that it applies to those 95 percent of the community life care facilities which, according to the Senator from Pennsylvania, are operated by nonprofit organizations. Let us get some experience with this, and have some hearings. Eventually, perhaps, we may want to move into the for-profit facilities. But at this time, I am not anxious personally to enrich the coffers of the Marriott Corp., or any others. Therefore, I offer this amendment.

Mr. PACKWOOD. Mr. President, I want to make sure I understand what the Senator has done. The Senator modified his amendment to exclude the for-profit life-care facilities. Is that right?

Mr. CHAFEE. That is right.

Mr. PACKWOOD. Henceforth, only the nonprofits will be eligible for the $90,000?

Mr. CHAFEE. That is right. It is the individuals.

Mr. PACKWOOD. I understand it is the individual. But if the individual makes the payment to a nonprofit, they will get the $90,000 exclusion. If they make it to a for-profit, they will not.

Mr. CHAFEE. That is correct.

Mr. PACKWOOD. In fairness to the Senator from Louisiana, the Senator is talking about only now we statutorily make it completely unfair. It does not matter what kind of facility you build. It does not matter if you are giving it away with a loss. It does not matter if you are running it out of the goodness of your heart. If you have the 501(c)(3), you cannot be a for-profit organization. You have to be a 501(c)(3) charitable organization. That is unfair.

Mr. CHAFEE. Mr. President, we kicked fairness aside long ago. Fairness was kicked out when the Heinz amendment was adopted. We have risen above fairness a long time ago on this floor. There is no problem with that anymore. The idea that a dear old lady is in a nursing home does not have the advantage of this, but a dear old lady from the Marriott Corp. gets it, is not fair. Fairness was thrown out a long time ago. Fairness was thrown out in the Finance Committee when this was adopted. The little old widow, the arthritic widow at home, the dear little old lady in her home struggling, who has money down at the bank at the Shreveport Federal Deposit Corp.—what does she get out of it? Nothing. She pays taxes. If she goes to the Marriott, that is OK. So let us not mention the word "fairness" in connection with this legislation.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I think we have debated the Chafee amendment at some length. It is a bad amendment to begin with. I think the consensus of the floor is pretty clear on that point. What the Senator has done is to make it worse because again he is still maintaining the distinction that the ability to get a refundability of the deposit is still a problem, even though to most of us it is a matter of consumer protection. But then the Senator says in this amendment, that is all right, you can have refundability of your deposit and not be taxed as though you had received income, even though you have it, if you have made a deposit to a nonprofit 501(c)(3) continuous care facility. But if you do it to somebody who is operating a for-profit, that is evil, bad, wrong, and it writes into our law for the first time a distinction I do not think we have ever made. We do not make distinctions between for-profit hospitals and not-for-profit hospitals. We do not make distinctions between for-profit nursing homes and not-for-profit nursing homes. I would not be at all surprised, Mr. President, if we rejected this overwhelmingly. It is a principle that is a bad one. I think we ought to reject it out of hand. However bad the amendment of the Senator from Rhode Island was to begin with, it is 10 times worse now.

Mr. LONG. Mr. President, will the Senator yield to me?

Mr. HEINZ. I am happy to.

Mr. LONG. Mr. President, the amendment by the Senator from Rhode Island would be just the same as if we had passed an amendment to say if one goes into a for-profit hospital in America, that he would have to pay a tax of say $100 over and above what he would otherwise pay which he would not pay if he went into a nonprofit. If that had been the law to begin with, we would not have any for-profit hospitals in America.

Mr. HEINZ. The Senator is absolutely correct.

Mr. LONG. Again, let me say that my experience is that the way we got rid of all those old outmoded facilities, and we got some beautiful hospitals that nobody ever anticipated was by fixing it so one could have a for-profit operation, and they could have the hope of making a profit and without being discriminated against in the tax laws.

The Senator would introduce an element of discrimination not against the for-profit hospital nor against the for-profit home, but against the individuals who go there. Those are the ones who would have to pay the penalty.

Mr. HEINZ. The Senator from Louisiana is correct.

Mr. President, I move to table the Chafee amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Pennsylvania to lay on the table the amendment of the Senator from Rhode Island. On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. EAST] and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

I also announce that the Senator from Vermont [Mr. STAFFORD] is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 73, nays 24, as follows:

[Rollcall Vote No. 137 Leg.]

YEAS—73

Abdnor	Byrd	D'Amato
Andrews	Chiles	Danforth
Bingaman	Cochran	DeConcini
Boren	Cohen	Denton
Boschwitz	Cranston	Dixon

Dodd	Humphrey	Pryor
Domenici	Inouye	Quayle
Durenberger	Johnston	Rockefeller
Eagleton	Kassebaum	Roth
Ford	Kasten	Rudman
Garn	Kerry	Sasser
Glenn	Lautenberg	Simon
Goldwater	Laxalt	Simpson
Gore	Levin	Specter
Gorton	Long	Stennis
Gramm	Lugar	Stevens
Grassley	Matsunaga	Symms
Hart	Mattingly	Thurmond
Hatch	McClure	Trible
Hawkins	McConnell	Wallop
Hecht	Melcher	Warner
Heflin	Murkowski	Wilson
Heinz	Nickles	Zorinsky
Helms	Packwood	
Hollings	Pressler	

NAYS—24

Armstrong	Dole	Mitchell
Baucus	Evans	Moynihan
Bentsen	Exon	Nunn
Biden	Harkin	Pell
Bradley	Hatfield	Proxmire
Bumpers	Kennedy	Riegle
Burdick	Leahy	Sarbanes
Chafee	Metzenbaum	Weicker

NOT VOTING—3

East	Mathias	Stafford

So the motion to lay on the table amendment No. 423, as modified, was agreed to.

CHANGE OF VOTE

(Later, the following occurred:)

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the record of my vote which was cast earlier this afternoon on the Heinz tabling motion to the Chafee amendment to the imputed interest bill be recorded as a "yea" vote rather than the "nay" vote which I actually cast.

By way of explanation, let me say to the President and to my colleagues that when the amendment by the Senator from Pennsylvania [Mr. HEINZ] was considered in the Finance Committee 2 weeks ago and came to a vote in the Finance Committee, I voted in favor of the amendment. When the Heinz amendment came to the floor, the Chafee amendment was designed to eliminate the Heinz language, which I favor. I came to the floor thinking that I was voting to preserve the Heinz language from the Chafee amendment and cast a "nay" vote. I found, much to my regret, after all the votes had been recorded and announced, I had in fact voted "nay" on a motion to table.

Mr. BYRD. Mr. President, reserving the right to object—I will not object—for the RECORD, will this change of vote affect the outcome on the question?

Mr. DURENBERGER. The change of vote will not affect the outcome in any way, since it was a 72-to-25 vote.

Mr. BYRD. Mr. President, I withdraw my reservation.

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

(Note: The above tally has been changed to reflect the foregoing unanimous-consent request.)

(Conclusion of later proceedings.)

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEINZ. Mr. President, it is my understanding that entrance fees to continuing care facilities that are not loans are not subject to the below-market loan provisions of section 7872 of the Internal Revenue Code, and are therefore not affected by this amendment.

Mr. PACKWOOD. That is correct.

Mr. HEINZ. Mr. President, I would also like to clarify the use of several terms in the amendment and in the accompanying committee report. It is my understanding that the terms "personal care" and "skilled nursing care" are merely descriptive terms for the types of care provided by continuing care facilities and are not meant to refer to any statutory definitions of these services as might be included in Federal and State law?

Mr. PACKWOOD. That is correct. However, it is our intention that continuing care facilities provide the full range of supportive and health care services, including the highest level of nursing care.

Mr. HEINZ. Mr. President, I thank my distinguished colleague from Oregon for clarifying an uncertainty that has created a great deal of concern for those caring for and providing services to the more than 100,000 elderly Americans in life-care facilities throughout the Nation.

Mr. President, under the life-care amendment, a facility qualifies as a qualified continuing care facility only if substantially all of the facilities which are used to provide services which are required to be provided under the continuing care contract are owned or operated by the sponsor of the life-care facility. In the State of Florida, Mr. Chairman, there is, in effect, an informal moratorium on the construction of new nursing homes. As a result, in some cases, life-care communities may, on a temporary basis, have to provide long-term nursing care for their residents by entering into contracts with unrelated nursing facilities under which the sponsor of the life-care facility will operate, along with the operator of the nursing facility, beds in the unrelated nursing facility. Mr. Chairman, I understand that in your view, such an arrangement would qualify under the statute so long as the sponsor of the life-care facility is taking all reasonable steps to obtain the regulatory approval required to construct a new nursing facility, or is constructing such a facility.

Mr. PACKWOOD. That is correct.

Mr. CHILES. Mr. President, is it your understanding that the definition of continuing care community provided in H.R. 2475 and the accompanying report language, applies only to continuing care facilities with entry fees that are determined by the IRS to be loans, and is not to be applied to those fees that are not loans.

Mr. PACKWOOD. Yes, that is correct.

Mr. CHILES. I would like to thank the distinguished chairman of the Finance Committee for clarifying that point, as well as those issues raised by Senator HEINZ. It is my belief that continuing care communities represent one of the most innovative and creative approaches to housing the elderly that currently exists. And I believe that this relatively new industry should be given an opportunity to develop and grow.

Mr. PACKWOOD. Mr. President, for the information of Senators, as of the moment we have no time agreement. We are still working on it. But for those who have asked about will there be a window of opportunity, I honestly do not know. It depends on whether there are amendments offered and whether they are good or bad, a motion to table, or whether they will get the floor. But there is no agreement at the moment.

AMENDMENT NOS. 424 AND 425

(Purpose: The requirement that substantially all facilities must be owned or operated by a qualified continuing care facility shall not apply to current facilities)

(Purpose: The requirement that any continuing care contract contain a lifetime residency guarantee shall not apply to loans made before January 1, 1986)

Mr. HEINZ. Mr. President, I send to the desk two technical amendments. I ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, reserving the right to object, and I do not intend to object, I have heard things called technical around here that are not so technical. Will the Senator from Pennsylvania be good enough to explain?

Mr. HEINZ. I will. I am offering these amendments on behalf of Senators CHILES and HAWKINS, as well as myself. I will be happy to explain my amendment, which I would in any event.

The first amendment would actually preserve the viability of a small number of existing lifecare communities currently serving older Americans in their retirement years. The amendment is necessary because some existing lifecare facilities, while meeting important housing and health care needs of their elderly residents, do not meet the requirement that substantially all of the facility be owned or operated by a single owner. These are existing facilities that need some grandfathering.

Due to historical patterns, some existing facilities have contracted out with nursing homes to meet the health care needs of their residents. While we are requiring that future facilities provide these services in one setting and under a single owner, it would work an undue hardship on existing facilities which are providing valuable services to, in essence, put them out of business by imposing this standard on them retroactively. So that first amendment would provide a grandfather clause so that the facilities in existence as of July 1, 1985, would be exempt from the requirements.

The second amendment, Mr. President, is also technical in nature. This amendment states that all loans to facilities that meet the requirements of a continuing care facility in all respects except that they do not provide care for the life of the resident will be exempt from section 7872 until December 31, 1985. The reason for this amendment is that some facilities have been set up in such a way that they provide care until an individual becomes severely disabled, and then contract out for nursing home services. We recognize that some existing facilities operate in this manner, and to the extent that they are affected by the preceding amendment, they will be given a 6-month moratorium from its application, until December 31, 1985. This will allow them ample time to decide whether they wish to change their manner of operation to conform to the new regulations, or to discontinue providing such services.

Mr. METZENBAUM. Mr. President, reserving the right to object, and I do not intend to object, I would like to point out to my colleague from Pennsylvania that, indeed, these are not technical amendments. These are amendments that have substance to them. One has an extension of the period of 6 months. The other has to do with some other substantive aspects. It seems to me that the Senate has expressed its will. I have no doubt in my mind that the Senate would be willing to accept these amendments if brought to a vote. But I do have difficulty when substantive amendments that actually change the law are referred to as technical amendments—a technical amendment, in my opinion, normally being a change of a number or the correction of language, something of the kind, not really changing the impact of the amendment. I do not intend to object but I object to calling them technical amendments.

Mr. HEINZ. I thank the Senator for not objecting. By the way, it was my intention to explain the amendments in any event. I do not want to get into a semantical argument with the learned and able Senator as to whether in his view or in my view these are or are not technical amendments. I think they are very modest and small amendments.

The PRESIDING OFFICER. Will the Senators yield. The Senator from Pennsylvania is seeking consent. Is there objection? Without objection, it is so ordered. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. HEINZ], for himself, Mr. CHILES and Mrs. HAWKINS, proposes amendments 424 and 425 en bloc.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The amendments are as follows:

AMENDMENT NO. 424

On page 42, between lines 15 and 16, insert the following:

(3) SUBSTANTIAL OWNERSHIP REQUIREMENT NOT TO APPLY TO CERTAIN FACILITIES.—The requirement of subparagraph (B) of section 7872(g)(4) of the Internal Revenue Code of 1954 (as added by section 4) shall not apply to any qualified continuing care facility—

(A) in existence before July 1, 1985, or

(B) for which a binding contract to build such facility was entered into before July 1, 1985.

For purposes of this paragraph, the term "qualified continuing care facility" has the meaning given to such term by section 7872(g) of such Code (as added by section 4).

AMENDMENT NO. 425

On page 42, between lines 15 and 16, insert the following:

(3) LIFETIME RESIDENCY GUARANTEE NOT TO APPLY TO CERTAIN LOANS.—The requirement of subparagraph (A) and of clause (ii) of subparagraph (B) of section 7872(g)(3) of the Internal Revenue Code of 1954 (as added by section 4) shall not apply to loans made before January 1, 1986.

Mr. HEINZ. Mr. President, I have discussed these amendments with the committee chairman and the staff. I know of no objection to them. They address exactly what I described, which is some conforming changes we need to make just so a few facilities that have specific problems do not end up being unintentionally discriminated against.

Mr. PACKWOOD. The Senator from Pennsylvania is correct. I know of no objection to the amendments and we are prepared to accept them.

The PRESIDING OFFICER. The question is on agreeing to the amendments.

So the amendments (Nos. 424 and 245) were agreed to.

Mr. HEINZ. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEINZ. Mr. President, I thank all Senators.

AMENDMENT NO. 426

Mr. DANFORTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. DANFORTH] proposes an amendment numbered 426.

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

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

The amendment is as follows:

On page 40, Section 6 of the Bill is amended by redesignating Section 6 as Section 7 and inserting after Section 5 the following new section:

"SEC. 6. SECTION 7872 OF THE INTERNAL REVENUE CODE SHALL NOT APPLY TO NON-LOAN PAYMENTS TO CERTAIN RESIDENTIAL HOUSING FACILITIES FOR THE ELDERLY.

"Section 7872 of the Internal Revenue Code of 1954 (relating to treatment of loans with below market interest rates) is amended by inserting after subsection (h) the following new subsection:

'(i) CERTAIN PAYMENTS ARE NOT LOANS.—For purposes of this section, payments made to an independent living facility for the elderly by a payor who is an individual at least 65 years old shall not be treated as loans provided—

'(1) The independent living facility is designed and operated to meet some substantial combination of the health, physical, emotional, recreational, social, religious and similar needs of persons over the age of 65;

'(2) In exchange for the payment, the payor obtains the right to occupy (or equivalent contractual right) independent living quarters located in the independent living facility;

'(3) The amount of the payment is equal to the fair market value of the right to occupy the independent living quarters;

'(4) Upon leaving the independent living facility, the payor is entitled to receive a payment equal to at least 75 percent of the fair market value at that time of the right to occupy the independent living quarters, the timing of which payment may be contingent on the time when the independent living facility is able to locate a new occupant for such quarters; and

'(5) The excess, if any, of the fair market value of the independent living quarters at the time the payor leaves such quarters (less a reasonable amount to cover costs) over the amount paid to the payor is used by an organization described in section 501(c) (3) to provide housing and related services for needy elderly persons.' "

Section 6 is further amended by inserting after subsection (e) the following new subsection:

"(f) SECTION 6.—The amendment made by Section 6 shall apply as if included in the amendments made by Section 172(a) of the Tax Reform Act of 1984."

Mr. DANFORTH. Mr. President, this amendment concerns a somewhat related issue to that which was considered at the time the Chafee amendment was offered. The type of situa-

tion, however, envisioned by this amendment is not covered by the bill in its present form. The bill in its present form deals with the question of what happens if a hypothetical individual makes a cash contribution to a health care facility and the income from that contribution is used to provide overall life care for the person making the contribution. In other words, the situation which was just debated between Senator HEINZ and Senator CHAFEE was a person contributes, say, $100,000 for life care. The income from that fund is used to provide not only housing but health care, entertainment, expenses, a whole variety of things not necessarily related to living expenses.

However, the bill in its present form does not cover any situation which has strong arguments, stronger arguments even for avoiding inclusion in imputed interest. The situation in this amendment is where an individual is not contributing funds for life care in general but instead is purchasing the right to occupy real property. If a person contributes to an organization and pays the fair market value of the right to occupy forever real property, and this right is something which a person can either dispose of or it is a part of the individual's estate, the right exists forever. And what is paid is the fair market value of the property right. If on the occasion of the sale of the property or the death of the individual or the abandonment of the property, the facility then sells the property right and the individual realizes not less than 75 percent of the proceeds, then the transaction does not involve so much the purchase of an annuity, which I think is analagous to the provision that is now in the bill, but, rather, the acquisition of an interest in real estate which can be disposed of as real estate and in which the individual, when it is disposed of, can have either a gain or a loss. It is the risk of the fluctuations in the market for this particular property. It seems to me that if the purchase of life care is covered in the bill, a fortiori, the acquisition of a real estate interest should be encompassed in the bill.

Mr. President, the amendment I am offering does not, in my opinion, change existing law. Rather, the amendment merely states that certain payments which are not loans shall not be treated as loans for purposes of section 7872 of the Internal Revenue Code. I offer this amendment because of the possible negative inference which might otherwise be drawn from the provisions of section 4 of H.R. 2475.

That is precisely what this amendment endeavors to to. It clarifies that this transaction is not a loan. It is not a loan but, rather, it is the acquisition of real estate.

My amendment insures that the Internal Revenue Service will not treat payments made by persons over the age of 65 for the right to occupy independent living quarters as loans for purposes of section 7872 of the Internal Revenue Code provided four requirements are satisfied:

First, it applies to transactions, under the terms of this amendment, where the independent living quarters are purchased must be part of an independent living facility designed and operated to meet some substantial combination of health, physical, emotional, recreational, social, religious, and similar needs of the elderly.

Second, the amount of the payment must be equal to the fair market value of the right to occupy the independent living quarters. It is the right to occupy not the total life care that is purchased.

Third, upon leaving the independent living facility, the senior citizen must receive a payment equal to at least 75 percent of the fair market value of the right to occupy the living quarters at that time.

Fourth, any difference between the full fair market value of the right to occupy the living quarters and the amount paid to the senior citizen at the time he or she leaves the facility must be used by a charitable organization to provide housing and related services to needy elderly persons.

It is important to understand that this type of arrangement is not analogous to a loan. It is virtually identical to direct ownership. If the fair market value of the living quarter increases, the value of the senior citizen's right of occupancy also increases. Conversely, if the value falls, the value of the senior citizen's right also falls. Income from these transactions would be treated as a capital gain or loss. This is no different from the risks and benefits of directly owning a house, a condominium or a cooperative, with the single exception that at the time the senior citizen purchases the right to occupy the living quarters the senior citizen agrees to make a charitable contribution in the future for the benefit of needy elderly persons. Under existing law, a person who owns a house or condominium could make a charitable contribution of a portion of the future appreciation in that house or condominium and be entitled to a charitable deduction. We would not impute interest income to that homeowner, nor should we impute interest income to the senior citizen under the circumstances I have described.

Mr. President, section 4 of H.R. 2475 exempts certain loans from the provisions of section 7872 of the Internal Revenue Code. The loans covered by section 4 are just that—loans. An occupant of a qualified life care facility described in section 4 does not obtain an equity interest in his or her living quarters. The amount paid to such occupant when he or she leaves the qualified continuing care facility is exactly equal to amount he or she originally paid, and is in no way related to the fair market value of the quarters occupied. Exempting these loans from imputed interest requirements may well be a reasonable way to encourage development of such facilities. But the argument is even more persuasive for my amendment because the transactions covered are the economic equivalent not of loans, but of direct ownership.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment of the Senator from Missouri.

The amendment (No. 426) was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 427

(Purpose: To exclude from the gross income of individuals over 65 an amount equal to investment income not greater than the interest on $90,000)

Mr. CHAFEE. Mr. President, earlier today, we debated the question of those in living care facilities—whether they would be able to deposit money there in a refundable account and receive the benefits of that tax free. I tried to restrict this. I started off by believing I could restrict it considerably, and that obviously was running into difficulty. Then I moved to at least restrict it to the institutions for nonprofit.

Since that decision has been made rather overwhelmingly, that the Senate wishes to permit those deposits in continuing care facilities to be tax free, I have an amendment which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE] proposes an amendment numbered 427.

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

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

The amendment is as follows:

On page 38, between lines 23 and 24, insert the following:

(c) EXCLUSION FROM INCOME OF CERTAIN PASSIVE INVESTMENT INCOME OF INDIVIDUALS 65 AND OVER.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to exclusions from income) is amended by redesignating section 134 as section 135 and by inserting after section 133 the following new section:

"SEC. 134. CERTAIN INVESTMENT INCOME OF INDIVIDUALS 65 AND OVER.

"(a) GENERAL RULE.—In the case of an individual who has attained the age of 65 before the close of any taxable year, gross income shall not include any investment income of such individual for such taxable year to the extent that such income does not exceed the product of—

"(1) $90,000, multiplied by

"(2) the applicable Federal rate (determined under section 1274(d)) in effect as of the close of the calendar year with or within which such taxable year ends.

"(b) INVESTMENT INCOME.—For purposes of this section, the term 'investment income' has the meaning given such term by subparagraph (B) of section 163(d)(3).

"(c) MARRIED INDIVIDUALS.—For purposes of this section, married individuals shall be treated as 1 individual.".

(2) CONFORMING AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking out the item relating to section 134 and inserting in lieu thereof the following new items:

"Sec. 134. Certain investment income of individuals 65 and over.

"Sec. 135. Cross references to other Acts.".

On page 38, line 24, strike out "(c)" and insert in lieu thereof "(d)".

On page 42, between lines 15 and 16, insert the following:

(3) EXCLUSION FROM INCOME.—The amendments made by section 4(c) shall apply to taxable years beginning after the date of enactment of this Act.

Mr. CHAFEE. Mr. President, this amendment would provide some equity. It says that anybody over 65 will be entitled to have a deposit in the amount of $90,000 and that the income from that investment would be tax free. This is to provide, as I say, some fairness.

We have already decided that if you are in a continuing care facility, you can make this deposit and the interest would be tax free. For some peculiar reason, this does not apply to those in nursing homes. It does not apply to the little, old lady, arthritic, who is living by herself. It does not apply, either, in her own home or in rental quarters. So it seems to me that we should treat the elderly the same, and I think the amendment I have proposed would do this.

The amendment does not discriminate against, say, only those who are in a living care facility, profit or nonprofit—Marriott or whoever else. That person's deposit of $90,000 is tax free. My amendment would provide this for everybody over 65.

In the sense of equity, I urge my colleagues to support the amendment.

Mr. PACKWOOD. Mr. President, will the Senator yield?

Mr. CHAFEE. I yield.

Mr. PACKWOOD. What is the cost?

Mr. CHAFEE. I do not know. I do not think that when we are dealing with equity, that is a matter on which we should spend too much time.

Mr. PACKWOOD. We deliberately faced the subject of the amendment of the Senator from Rhode Island in committee and decided not to get into a further gigantic IRA arrangement, or whatever you may call this. Is that what the Senator is doing, that everyone in this country can have $90,000 unless they are over 65—is it limited by age?

Mr. CHAFEE. Yes; limited by age 65. It is the same as we have already decided.

The Senator from Oregon, the distinguished chairman of our committee, thought it was a good proposal—the fact that you could deposit in a continuing care facility $90,000 income tax free. I thought that was an extraordinary provision. Not in a nursing home. It did not apply there. It did not apply if you are living at home. So I thought we ought to be consistent.

Mr. PACKWOOD. Mr. President, I have no idea what this would cost, nor does the sponsor of the amendment. But if everyone in this country over 65 has income earned on $90,000 tax free, this is something we should consider. It has to cost billions and billions of dollars, it is my hunch. No one knows.

I raise the point of order that it violates the Budget Act. I ask that the amendment be stricken as violating the act.

The PRESIDING OFFICER. This amendment reduces revenues below the level expressed in the second budget resolution, and therefore the point of order is well taken.

Mr. CHAFEE. Will the Chair be kind enough to repeat that?

The PRESIDING OFFICER. This amendment reduces revenues below the level expressed in the second budget resolution, and therefore the point of order is well taken.

Mr. CHAFEE. I ask the Chair if the entire bill before us does not do the same. We just adopted an amendment of the Senator from Pennsylvania that reduced revenues by $25 million. Will the Chair offer his opinion on that situation?

The PRESIDING OFFICER. The bill as reported is revenue neutral for the fiscal year 1985. Therefore, it is not subject to a point of order.

Mr. CHAFEE. Would the President be good enough to explain? We just adopted on the floor an amendment by a voice vote that cost $25 million. Is that de minimis or does that not count? Is that not real dollars?

The PRESIDING OFFICER. That amendment likewise would have been subject to a point of order, but the amendment having been agreed to, the point of order is now moot.

Mr. CHAFEE. But the amendment is now part of the bill. So is the whole bill not subject to a point of order?

The PRESIDING OFFICER. The Parliamentarian advises the bill is treated on the basis on which it was reported from committee.

Mr. CHAFEE. That is parliamentary jargon that I do not quite understand.

Mr. PACKWOOD. Mr. President, I ask what the Chair is ruling: Is it that first we look at the bill as introduced and since the bill is revenue neutral, it is not subject to a point of order? Each amendment as it comes along may or may not be subject to a point of order, but you do not impute it backward to the bill when it is added. Do I understand the ruling correctly?

The PRESIDING OFFICER. The Senator is correct.

Mr. CHAFEE. That is a bit of ingenuity that I am afraid I have not mastered. Let us take that slowly. You can add innumerable amendments to the bill that cost millions or billions, and if a point of order is not raised to each amendment at the time and is adopted, the whole measure itself, which now involves these billions above any budget limitations that were there, is perfectly all right? Could the Chair lead me through that Alice in Wonderland safely?

The PRESIDING OFFICER. The Senator's analysis is correct.

Mr. CHAFEE. That is the way it works?

The PRESIDING OFFICER. That is what the law says.

Mr. CHAFEE. So the law says you do not pay any attention to the final product.

The PRESIDING OFFICER. The Senator's analysis is correct.

Mr. CHAFEE. Is that what the law says, Mr. President?

The PRESIDING OFFICER. The Chair will read the provision. "The enactment of such bill or resolution as reported." The Chair advises that with respect to points of order in this wise the bill is not affected by amendments.

Mr. CHAFEE. If that is the law I refer the President to Charles Dickens' definition of the law.

Let me ask another question, Mr. President, if I might. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CHAFEE. If I should change the effective date of my amendment to 1986, would it then be subject to a point of order as exceeding the budget?

The PRESIDING OFFICER (Mr. DENTON). In that case it would be subject to a 303 point of order.

Mr. CHAFEE. I feel I am surrounded. I am not too familiar offhand with a 303 point of order.

Would the President be good enough to explain that?

The PRESIDING OFFICER. Until the first concurrent resolution for fiscal 1986 has been finally adopted, this amendment would not be in order. And that resolution is now in conference.

Mr. CHAFEE. The same will apply to fiscal 1987?

The PRESIDING OFFICER. No. Such amendment would be in order.

Mr. CHAFEE. Now we are getting somewhere.

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

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

Mr. CHAFEE. Mr. President, it is obvious that we have a lot of problems here. I just think what we have done today in this act, what was adopted in the committee lets one group of people, very select group—nothing about equity, fairness, one select specialized group, not in nursing homes, not living at home, not living with their children, not living in an apartment—one little group that puts up the $90,000 in a savings account, but the savings account is called a deposit, can withdraw it any time and that group gets the interest on that deposit tax free. Now that just is not right.

Mr. President, I think we have real problems in accommodating the elderly in this Nation. I challenge anybody in this Senate to have more concern over the living conditions and fate of the elderly than I have. Therefore, I think we ought to have hearings and see what kind of a path we can follow that really takes care of the elderly, not some little special gimmick that comes in and takes care of this select few that happens to be living in profit or nonprofit establishments called continuing care facilities.

We pointed out earlier in the debate the abuses that could come about here. A person could have $200,000 on deposit. The Marriott's latest facility could require a $200,000 deposit and $1,000 a month, $500 a month, whatever. That person gets the first $90,000 of that tax free. What a bonanza for the wealthy. A person has other income of all sorts, but that $90,000, even if he is in the 50-percent bracket, is tax free. The widow at home, barely getting by, just nursing along that nest egg of $90,000, all she has got, no more, no other income, in the 14-percent bracket or whatever it is, 20-percent bracket, and she is subject to the full tax.

Now, if the manager of the bill can tell me that is fair, I challenge him to do so.

When he chooses to respond, I would ask him, once we get by this tax reform measure, if we cannot have some hearings in the Tax Committee on some kind of a program that will encourage the elderly to live in facilities, of varied kinds that might be concocted by the committee, in some way to better take care of themselves. Maybe it will be an IRA. The manager of the bill, the floor manager says, "What I proposed and the bill I have got before the desk is a $90,000 IRA, Individual Retirement Account Act." Sure, that is what it is. Maybe we ought to do that. Maybe it ought to be more.

But clearly we have not let our imaginations function thoroughly in the legislation that is being adopted here today.

Bingo. In comes an amendment—nobody knows what it is; no hearings—for a special little group, not just the nonprofits, the profits as well, and that is portrayed as fairness.

So what I seek from the manager of the bill, the distinguished chairman of our committee, is a commitment or a promise—his word is good with me—that we will have some hearings. Obviously, we cannot do them in the immediate future—we are tied up with this tax reform—but thereafter dealing with this whole subject so we can do something constructive for a lot of elderly, not just that little group that is in these homes, these continuing-care facilities, but for the others that cannot afford to live in these facilities.

Mr. PACKWOOD. Obviously, the committee is interested in the plight of elderly health care and elderly housing. We are involved in this every day. We have hearings on it almost every session in one form or another.

We have undertaken action in the past. I recall in the last decade, although I may be off a year or two, we passed a provision to allow you to sell your house and get $125,000, I believe it was, $125,000 tax free so you could roll it over in some other kind of retirement facility. Clearly, when we set up 401(k) pension plans, or approved them which are being widely used, much to the concern of the Treasury, because the projected revenue losses on them are maybe extraordinary, it was deemed for the principal purpose of retirement. So the committee is always open to consider other forms of retirement security, additional forms of security for those on retirement.

I do think the particular amendment the committee adopted that Senator HEINZ offered was a particular form of life-care retirement. There may be others to be considered. I do not think it unfair that we said on this particular occasion we will limit it to life care even any more than it would be unfair to say when we passed the rollover of selling your house when you are 55 or older that it is unfair. Yes, the committee will try to consider it. You know the schedule. We are between now and the end of September running about 3 days a week on tax reform hearings. The distinguished Senator from Rhode Island is chairman of the Tax Subcommittee. He has hearings scheduled as I recall. We have had Health Subcommittee hearings. Trade is at issue. That is looming ever larger. We will try to fit them in. There may be some full committee hearings. We may not have enough full committee days to have them, but I think it is perhaps a little bit unfair for the Senator from Rhode Island to say we have not given consideration to it in the past or simply because every single thing we pass does not affect every single person equally it is unfair.

Mr. CHAFEE. I do not think anybody can suggest from our remarks that we have not dealt with the elderly in the past. I am saying that this is a new type of situation we are considering. Certainly the amendment that we adopted in the committee 8 to 7 embarks us in an area that we have not been before.

Mr. PACKWOOD. You recall the Senator—it does to a degree—was one of the initial supporters of those 401(k) plans. Some people get them. Some people do not. I do not think you regard it as unfair that some get them and some do not.

Mr. CHAFEE. The 401(k)'s, as the chairman knows, are not discriminatory. There is no similar antidiscrimination rules for continuing care facilities.

Mr. PACKWOOD. I would be willing to agree with the chairman of the subcommittee in the case of employer benefits. Any of these employee benefits that are not discriminatory would not be regarded as unfair, and the fact that one employer provides them and another does not should not be a reason to distinguish between them.

Mr. CHAFEE. The manager of the bill is misunderstanding the approach I am seeking. I am not seeking to reexamine benefits that currently exist for the elderly. What I am seeking is to have some hearings in the future on imaginative ways that we might care for this very substantial group of our population which is increasing and not restrict it to this tiny little segment that was taken care of when the other great segment was left out in these benefits. I am not out to reexamine what was done in the past, or whether $125,000 on the sale of a home is good or bad or indifferent or should be increased. The chairman misunderstood me. I am not critical of anything that has taken place in the committee in the past. Realizing we are chock-full through October I suspect with this tax reform, I am seeking from the chairman of the committee some commitment or suggestion—however we want to label it—that when we get a breathing spell we can have some hearings, and get some people in to think of imaginative ways we can handle housing for the elderly other than the existing methods.

Mr. PACKWOOD. The answer is yes.

Mr. CHAFEE. Mr. President, I withdraw the amendment I submitted.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. CHAFEE. I thank the manager of the bill for his courtesy not only here but also for the agreement. Everybody is trying to get their matter heard, for hearings on this and hearings on that. I just want to make sure that we squeeze this in somewhere. Maybe it will be early in 1986 before we can have some good hearings.

Mr. PACKWOOD. I can assure my good friend we will have them.

Mr. CHAFEE. Thank you.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, as the distinguished chairman of the Committee on Finance is aware, some States have usury provisions that are tied to various interest formulas. I brought this issue to the attention of the committee during our consideration of H.R. 2475.

In the State of Arkansas, as a result of a constitutional amendment adopted in 1982, the usury limitation for all loans is a 5-percent float over the Federal discount rate. Since the discount rate is currently 7 percent the usury limit for all loans in Arkansas is 12 percent. That is the maximum amount that can be charged, and if a lender goes above that ceiling, severe penalties are imposed.

Under the bill pending before the Senate, the new imputed rate for purposes of sections 1274 and 483 of the Tax Code is 100 percent of the applicable Federal rate [AFR]. This change is an excellent one in my opinion, since last year's bill had an imputed rate of 110 percent AFR, and a penalty rate of 120 percent of AFR. Going to 100 percent AFR is more reasonable, and also, much simpler, since buyers and sellers will only have to refer to one rate when discussing the transaction. With the higher rates, Mr. President, a situation developed in Arkansas where the lender could charge the maximum amount allowable under State law—the 5-percent float—and still not meet the 110 percent AFR under the Tax Code. Obviously, there was no choice, due to the penalties under State law for violation of the usury provision. Therefore, in order for a transaction to go forward, the parties agreed to the State usury limit, but then for tax purposes, interest was imputed at 120 percent of AFR. This was really an extremely harsh result, particularly since the transaction was not done for tax reasons. The lender couldn't charge any more interest, even if he had wanted to.

The State of Arkansas is one of several States with usury provisions. In the State of Arkansas, our provision is a constitutional amendment.

I prepared an amendment to this particular bill which is pending today on the Senate floor—that in a situation where the State usury limit was less than 100 percent AFR—but, by no more than 1 percent—and the parties charged the maximum amount allowable under the State law, they would not be subjected to the higher Federal rate.

As I mentioned to the distinguished chairman earlier, I do not intend at this point on this bill to offer my amendment. But I would like to bring this issue to the chairman's attention once again, and to ask him a question or two, if I may. Since there are other States that would have the same problem, and since we do not know what interest rates are going to be in the future, I would like to ask the chairman of the Finance Committee if we can have the staff of the Joint Committee on Taxation review the spread between the discount rate and the 100 percent AFR for the last year, and also provide the Senator from Arkansas with information in the future on the difference between the two rates.

Mr. PACKWOOD. We absolutely can, and I will join the Senator in that request.

Mr. PRYOR. I deeply appreciate the chairman's response. I know he is aware of the problems in States like our own—like the State of Arkansas—and these problems will only occur when the spread between the AFR and the discount rate is greater than 5 percent.

My second and final question which I will propose to the distinguished chairman is this: I hope the chairman would be agreeable to taking a look at this issue at some point in the future—not today—if the spread between AFR and the discount rate becomes greater than 5 percent.

Mr. PACKWOOD. Not only will I, but I will do it enthusiastically because if the spread is greater than 5 percent, we have problems in addition to the problems the Senator from Arkansas is raising. I do appreciate his withholding the amendment, because otherwise we would be faced with the States opting out of this by passing usury laws. I do not know if it would be constitutional, but it would be confusing, and it would cause great problems with this bill.

Mr. PRYOR. I appreciate the chairman's response and his cooperation to work on this issue should the need arise, and it could well arise. We have no idea what interest rates are going to do in the future. I appreciate the chairman's support in looking at this effort.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 428

(Purpose: To provide for a blended imputed interest rate where debt exceeds $2 million for sales of seller-financed farms and ranches, and real property used in an active trade or small business)

Mr. MELCHER. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] proposes an amendment numbered 428.

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

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

The amendment is as follows:

On page 25, line 6, strike the ".", and insert the following:

"; or, any debt instrument given exclusively in consideration for the sale or exchange by a qualified person of qualified property, if the stated principal amount of such instrument does not exceed $10,000,000."

On page 25, insert the following paragraphs between line 9 and line 10:

"(3) QUALIFIED PROPERTY.—For purposes of this section, the term "qualified property" means—

(A) Real property which was used as a farm (within the meaning of section 6420 (c)(2)) at all times during the three year period ending on the date of sale or exchange, together with any tangible personal property which was used in the active conduct of the trade or business of farming on such farm and is sold in connection with the sale of such farm, but only if such real property and tangible personal property is sold or exchanged for use in the active conduct of the trade or business of farming on such farm by the transferee of such property, or

(B) Real property used in an active trade or business within the meaning of section 355; provided, however, that the holding of real property for rental shall not be treated as an active trade or business, and real property held for rental shall not be treated as qualified property.

(4) QUALIFIED PERSON.—For purposes of this section, the term "qualified person" means—

(A) A person who—

(i) is an individual, estate, or testamentary trust,

(ii) is a corporation which immediately prior to the date of the sale or exchange is owned directly or indirectly by 35 or fewer individuals, or

(iii) is a partnership which immediately prior to the sale or exchange is owned by 35 or fewer individuals. For purposes of this paragraph, direct and indirect ownership of a corporation or partnership shall be determined under rules similar to section 544."

On page 26, line 3, strike the "." and insert the following:

"; or, $2,000,000 in the case of any qualified debt instrument given exclusively in consideration for the sale or exchange by a qualified person of qualified property."

Mr. MELCHER. Mr. President, in 1979, when new regulations of the Internal Revenue Service were promulgated concerning the imputed interest rate, we started a debate that lasts up until we finish this bill, because it was deemed that the Internal Revenue Service in those rules were unduly intruding into sales of farms, ranches and small businesses. And it was felt, because that intrusion went too far, that Congress should intervene and should straighten out the problems those farmers and ranchers and small business people that were trying to have seller financed sales.

I suppose it is fair to say, Mr. President, that when the intrusion by the IRS extends to the point that it squelches actual sales of farms and ranches, that we begin to hear about it from those who are directly involved. As I recall the sequence, we first heard about it in transactions between family members, from one generation to the next, transferring farms, for instance. But we also heard about it in transactions from one generation to the next in terms of small business.

As I recall, when I read the first letters and had the first conversations with affected constituents, I felt, a peculiar disbelief within myself: how could these people be describing such a situation which sounded so totally unreasonable.

Well, when enough sales had been squelched and enough abuse had been meted out, or at least what was interpreted as abuse—and I would agree with those who were making their complaints, that abuse is not too strong a word—when there was enough interference by the Internal Revenue Service that we all began to hear about it, it did not take very long to decide that at the first opportunity, the first tax bill that came along, we would attempt to straighten out this interference. And, of course, we did, to a certain extent, in 1981, in that tax bill. I recall on one vote, I believe adopting a proposal that several of us offered, it was 100-to-nothing. It makes you wonder why we needed the vote. We really did not need the vote, I guess, recorded vote, the yeas and nays. It could have been just a voice vote. But I suppose we thought we might be stronger in conference if we had a recorded vote.

But it turned out that we did not get enough straightened out and the problem has continued to hang over us until even today.

The amendment I am offering to what is a good bill carries only two points. It applies to what happens to a seller-financed sale of farms or ranches or closely held small businesses if that particular seller-financed sale happens to be more than $2 million.

Mr. President, the bill itself is a pretty good bill and it solves almost all of the problems because, in point of fact, the sales of farms and ranches and small businesses that have been the bone of contention, most of them do not reach $2 million. And so these are, under the bill's terms, treated with IRS not applying a higher rate to it as imputed interest.

So, well and good. But, of course, we have to look at the few sales that go above $2 million and then the proper thing to say is, what happens to them? Do they have the lower rate of interest applied after $2 million? And the answer to that is, no, they do not.

They began to lose the advantage of the lower rates of interest as they exceed $2 million.

Mr. President, there is one solid argument for my amendment. For 6 months during this stopgap period, on any amount over $2 million it has been blended with the lower rate. The committee bill now before us, of course, does not do that and for reasons that have been identified by the IRS there would be some revenue loss. But I am looking again at farms, ranches, and closely held small businesses and saying there can be some transactions that are seller financed for these properties, and why should Internal Revenue Service include any more than is necessary? So for those properties, farms, ranches, and small, closely held businesses I am saying that for any sale up to $10 million—that figure between $2 million and $10 million will blend the lower and higher rate of interest.

For any transactions that have occurred in the last 6 months on farms, ranches, small businesses, or closely held small businesses, that is exactly the way IRS has been treating these sales under the stopgap legislation dealing with imputed interest. What is the cost of this? What is the Treasury loss? It is $1.8 million per year. I will repeat that. It is $1.8 million per year. It is less than $2 million. It is not a big thing. It is $9 million for 5 years if we follow the pattern that is established in the committee report that accompanies this bill. Perhaps it is to small an amount, then, to even be discussing. I pose that as a method to get at the point as the reason why I think the amendment should be adopted. It is a small amount in terms of revenue loss. But the merit of the amendment, as I present it, is this: We would have the transactions that are seller financed for farms, ranches, and small businesses to operate under exactly the same rules that IRS has in effect for the past 6 months. Six months is not a long period of time. It is a relatively fair amount of time when we are talking about imputed interest rates because for the past 6 years the rules on imputed interest rates have been changed time and time again. I believe, Mr. President, the least we can do is to adopt this amendment, and accept it in light of the condition that we have on farms, ranches, and small businesses in rural America. There will be many of those who find it necessary to sell for purposes of liquidation, for purposes of getting out of the business that is losing, and whoever is the present operator of the farm or small business for economic reasons is going to have to make a change. There will have to be a transaction made.

In most of those transactions, seller financing probably is going to come into play. I believe that the least we can do is to hold steady these sales. Perhaps there will be reason to consider whether or not a point of order should be raised on this amendment because it does change by that amount a little less than $2 million a year or $9 million over the 5 years in revenue loss as estimated by the Joint Tax Committee. I hope a point of order is not raised, because I believe that if we adopt this amendment, we are taking a good step forward in continuity of the past 6 months of what imputed interest will be, and what the rules will be from now on concerning farm, ranch, and small business sales.

Mr. President, in the amendment there is a cap of $10 million. Why a cap? Is what I have said a meeting of the need for this amendment? Well, Mr. President, I am not concerned that there are going to be sales of farms, ranches, and small businesses in these distressed areas of rural America for greater than $10 million. That is not in my thinking, nor is it, I think, in the thinking of any other Senator—that these types of distress sales are going to be greater than $10 million. But there is another side to this. Some Senators may be concerned as would be the IRS on are we opening up something that is a gimmick for some other group to come in and to utilize? In other words, will there be a loophole for somehow a shopping center, or a big high-rise condominium or what you have you? The amendment is plainly drawn, is properly drawn, easily understood, and accepted by IRS as to what it means because of what they have been operating under for the past 6 months. There is no question but what that is not the intent of the amendment, to make sure that any possibility of creating a loophole does not occur with the amendment. That is the reason for the $10 million cap.

I have been asked by interested Senators whether or not the amendment would not apply, say, to a business that is owned by a few people, say a family. Would it permit a very wealthy family to get in on the sale that would be a new loophole? So the amendment precludes that from happening. Or could it be a corporation that somehow owns a company and could they

get in on it? That is precluded in the amendment.

So, Mr. President, I can confidently say that the amendment does not open the door, and does not create a loophole. The amendment does exactly as I described it—for sales of farms, ranches, and small businesses that are going to be seller financed, they will be subject to the same conditions as right now, today, and have been during the past 6 months. That will not apply, however, if you can find some farm, ranch, or small business that would be in a $10 million sale. It will not apply. But I do not know of those farms or ranches, nor do I know of those small businesses. Mr. President, I am not trying to open any doors or any loopholes for different contrivance to escape what will be the IRS new rules on applicable imputed interest rates.

Mr. President, this is the area that concerns me in this bill that is now before us. I think it is a very fine bill and does what we have been seeking to do in clearing up the problem we have had with the imputed interest over the past several years since 1979.

I believe that the people in our home States who are now looking at seller-financed farms or small businesses are going to applaud the work that has been done by both the House committee, the Ways and Means Committee, and the Senate Finance Committee. They will be thankful that the Congress has addressed this subject.

I would hope that we would take this one small step to clarify and to simplify the procedures or the remedy I have described for these small business people and farmers. I think now more than ever it is essential that this point be clarified as we face the conditions now existing in rural America which is in a rather deep recession, and where the necessity often arises for the transfer of properties that might otherwise be liquidated. In other words, because you can see that the liquidation process is facing you, it would provide cash flow and profits to keep from indebtedness. To the extent this can be utilized we will be doing the right thing for our constituents.

I believe, unless the chairman of the committee will instruct me that no point of order will be raised, that perhaps I should make a motion or ask unanimous consent that the budget be waived for the amount of this cost, which I repeat, Mr. President, is estimated by the Joint Taxation Committee to be $9 million over 5 years or $1.8 million per year in those 5 years.

Without losing my right to the floor, Mr. President, I ask unanimous consent that I might inquire of the distinguished chairman of the Finance Committee.

The PRESIDING OFFICER. Is there objection? Hearing none, without objection, it is so ordered.

Mr. PACKWOOD. I have not decided whether to raise a point of order or move to table. I do want to make some comments on the merits of the bill itself.

Mr. MELCHER. Mr. President, I thank the distinguished chairman. I will throw myself into the gentle and merciful hands of the chairman, in the hope that he will be benevolently fair to the Senator from Montana.

Mr. PACKWOOD. I admire the interpleading of the Senator from Montana. I wish I had farms that would qualify for the $10 million limit. I do not. Many of the farms have been sold for less than $2 million.

I will say what my misgivings are. Under the budget process there is a powerful tool for raising a point of order on all bills, as it happens on this bill, whether the bill is going to lose money. It is good regimen for the Senate. The Senator's bill includes a relatively small amount of money. I raised the point of order earlier on the amendment of the Senator from Rhode Island. I think his amendment lost a great deal, certainly more than this amendment would lose.

I would like to establish a precedent on raising points of order when amendments are offered that lose not $1.8 million a year but $180 million. We get many of those amendments, and we will get many more when we get to the tax reform bill, when we will be talking about a package that over the 5 years will raise about $4.7 trillion, which will, of course, be offset by decreases in the individual tax rates. We are going to be having amendments bandied about in the magnitude of $5, $10, $15, $20, or $50 billion.

I do not know whether we will have a budget adopted at that time or not, but if we do not, almost all of those amendments would be subject to points of order.

For the moment, however, I want to direct myself to what it is this bill is trying to correct and to put it into as simple language as possible.

This bill does not prohibit seller financing. Seller financing is basically where the seller is willing to sell the property to a buyer, to take a mortgage, and to take back interest at a significantly lower rate of interest than the going rate of interest, and perhaps hold the mortgage himself, in the hopes of inducing the purchaser to buy the property.

What this bill does prohibit is the kind of deals that have been structured, deliberately structured, to cause the Federal Government to lose money in a way that was never intended.

I will give an example. Let us say you have a piece of property that you bought 10 years ago for $500,000 and $500,000 was what the property was worth. Today it is worth $1 million. That is the honest appraisal of it, $1 million.

If you are going to sell it at the going rate of interest on a normal mortgage, that would be all you could get for it, $1 million. You sell it at $1 million, and you have a $500,000 capital gains, the difference between what the property was worth when you bought it 10 years ago and what it is worth now, and you pay taxes on that $500,000 capital gain. Capital gains taxes are less than the taxes on regular income. The maximum capital gains tax today is 20 percent. The maximum personal income tax today is 50 percent. So you sell it at $1 million, take your $500,000 capital gains, carry the contract yourself for the 10 percent interest, and the 10 percent interest you receive is regular income. You pay taxes on that at whatever your regular income tax rate is.

The buyers in exchange gets a piece of property worth $1 million. That is the basis upon which the buyer can depreciate the property. Let us say he would depreciate the property over 10 years—they do not, but assume it for purposes of argument—he would depreciate it at a rate of 10 percent a year, $100,000 a year.

What happens is that the deal gets jiggered around. Although the property is only worth $1 million, the buyer and the seller agree to sort of this kind of an arrangement: "I will sell you this property for $1.5 million. You, in turn, will pay me, however, interest at the rate of 5 percent, not 10 percent. The going rate is 10 percent but you pay 5 percent."

What effect does this have? To begin with, the property that you bought for $500,000 10 years ago and is really worth only $1 million is now sold for $1.5 million, so you have a $1 million capital gain on which you pay a low rate of tax. The buyer has a piece of property allegedly worth $1.5 million that he can depreciate over 10 years at the rate of $150,000 (assuming you depreciate at 10% a year), despite the fact that the property is worth only $1 million. The note on the property is paid to the seller at the rate of 5 percent interest instead of 10 percent interest. That is counted as regular income, but because you are receiving less interest, you pay less taxes. Everybody wins except the taxpayer in this country who is subsidizing the deal.

So this bill simply says that you can have all the seller financing you want and on deals up to $2 million, the assumed rate of interest will be the cost to the Federal Government to borrow the money—what we have to pay to borrow the money—or 9 percent, whichever is less. If you do not have at least that 9 percent rate of interest in your contract, the Internal Revenue Service is going to presume that you

51-059 O-86-2 (Pt. 13)

did have 9 percent interest and tax you on that basis.

Let us be fair about it, Mr. President—there is not anybody in this country that can borrow money for as low a rate as the Federal Government. On sales between $2 and $3 million, we have what we call a blended rate between the 100 percent of whatever it costs the Federal Government to borrow money and the 9-percent rate we have in the bill for those sales below $2 million. And the closer it gets to $4 million, the closer the rate of interest must be to the figure that it costs the Federal Government to borrow money. On sales above $4 million, the assumed rate of interest, or the Internal Revenue Service calls it the imputed rate of interest, is the cost to the Federal Government to borrow money. Again, you cannot borrow it for that; you are still getting a good deal.

But we will impute that rate of interest so that you cannot have these cooked-up deals where the buyer gets an inflated value for the piece of property against which to figure depreciation and where the seller gets an unjustified increase in his or her capital gain upon which to pay a relatively low capital gains tax, in which interest is lower than anyone can borrow money for or and the property's sale price is higher than you would pay on a legitimate sale of the property at the value of the property. That is all we are trying to stop in this bill or regularize.

Mr. MELCHER. Mr. President, will the Senator yield?

Mr. PACKWOOD. No, Mr. President, not yet.

The bill makes no distinction between kinds of property. You may own a pharmacy, you may own a gasoline station, you may own a farm. The same rules apply to all properties.

First, I think it is unfair that we are going to single out farm properties and say these will be treated differently than any other kinds of property.

Second, there is in the bill a provision that says that the Treasury can issue regulations to say that if a buyer can prove to the Internal Revenue Service that a rate below the going rate of interest that the Federal Government pays for money is appropriate, then they can enter into that kind of contract without the tax penalty that is assessed under the statute. If there is an appropriate circumstance. But an appropriate circumstance is not to artificially inflate the value of the property so that you get a big capital gain as the seller and so that you can get a big depreciable piece of property as the buyer. That is all we are trying to remedy.

The amendment of the Senator from Montana looses, in terms of the way the Federal Government talks about money, an infinitesimal amount of money, very small. But I believe I will raise a point of order against it because we are going to have bills coming before the Senate, coming out of my Finance Committee, involving not just hundreds of billions of dollars but trillions, and amendments being offered that are going to cost $30 billion, $40 billion, $50 billion, $60 billion or more. I want the precedent rather firmly established that until we have adopted a budget—and we have not yet and I am not sure we will have in the fall when we start the tax reform bill—that we establish very firmly a precedent that amendments that tend to cost the Treasury even more money will be subject to a point of order.

So, Mr. President——

Mr. MELCHER. Mr. President, will the chairman yield?

Mr. PACKWOOD. I yield, Mr. President.

Mr. MELCHER. On the drugstore or the filling station or the hardware store, I have no problem with $2 million, and as far as the ranches, I suspect over 90 percent of them are below $2 million. So the bill properly takes care of those. But there are some small businesses that would be benefited by the amendment that I have offered, and I shall give the chairman a very pertinent example.

A sawmill that is in bad straits now; they are losing money, although not a big sawmill—with, say, 40 or 50 employees. That transaction may easily exceed $2 million and the transaction may involve the present seller having to get out offering some of the key employees or all of the employees the chance, or two or three people in the community a chance to keep the sawmill going with the 40 or 50 jobs; it could very easily exceed $2 million. I offer that as a very pertinent example, because these transactions unfortunately are occurring in my State and perhaps even in the State of the distinguished chairman. We do get beyond retail outlets in some instances.

With the type of closely held small business like a sawmill that does involve jobs, the communities themselves get real involved and the difference can be, on making the transaction work, that difference between the Treasury rate—I believe the applicable Treasury rate now would be roughly 12 percent—about 12 percent. The difference might be that the seller could finance it at, say, 9 percent. So I do not question the distinguished chairman on that. But I wonder if he could—while it may be the unusual instance of the small business, I wonder whether the chairman could understand my concern for that kind of transaction.

Mr. PACKWOOD. Mr. President, I can understand. The Federal long-term semiannual interest rate today is 10.6 percent. But if the Senator is talking about a shaky sawmill, and heaven knows both the Senator from Montana and I have those kinds of sawmills in our States, you can still structure it today at a 10.6 percent rate under this bill. That is probably 2 to 3 percent less than you are going to have to pay in terms of interest if it is a very risky transaction and, clearly, a shaky sawmill is a risky transaction. So there is no penalty if you seller-finance it a 10.6 percent.

Second, if you are literally going to say, "Here is my sawmill with 50 people; I want to go out of business, and I can arrange financing in an arms-length deal that calls for borrowing at lower than the Federal rate, the Treasury has authority to issue regulations that may protect you."

You may come under the regulations and make a case for the IRS, but that should not be the principle that is in the law.

Mr. MELCHER. Mr. President, may I further inquire of the chairman?

Is the chairman saying that the IRS could make an exception because they thought it was a hardship case? In other words, they could allow the 9 percent even though it exceeded $2 million?

Mr. PACKWOOD. If they could show that they can borrow at a lower rate in a bonafide transaction, that is possible.

Mr. MELCHER. Could the seller finance the sale, say, for in excess of $2 million at 9 percent and not be interfered with by IRS?

Mr. PACKWOOD. Mr. President, will my good friend repeat that?

Mr. MELCHER. If the chairman will indulge me, would the IRS allow the seller to finance a sale above $2 million in that instance at less than the 10.6 percent the chairman recited as the applicable Treasury rate?

Mr. PACKWOOD. If the seller can show that the money can be raised, can be borrowed at a lower rate of interest, yes, the IRS may. They do not have to. It is discretionary. It is not mandatory in the bill.

Mr. MELCHER. I think the whole point is that the borrower cannot get the money except the seller financing the sale that way because it is a hardship case. It is not a successful venture. The seller, in order to get out from under this example we are using, in order to get out from the sawmill says, "Well, if you can, if you want to take it, I could allow as low a rate as the IRS will permit, which I understand would be 9 percent." And that would be a little advantage in debt service because the difference of 3 percent per year on $6 million would be, I guess, $60,000 and that might give him a little better shot.

Mr. PACKWOOD. As I said to my good friend from Montana, if the seller can indicate the money can be

borrowed for a lower rate of interest, legitimately, then the IRS may be able to permit that. I do not want to say they will. And I do not know how otherwise to answer the question of my good friend.

Mr. MELCHER. I was thinking the amendment answered the question.

Mr. PACKWOOD. The Senator lost me.

Mr. MELCHER. If the chairman will yield to me, I was thinking the answer to the question was the amendment, because then the seller could agree to that lower rate of interest in order to help the purchasers make a successful venture out of the sawmill that is failing, using that as an example.

Mr. PACKWOOD. Mr. President, my good friend and I do not agree on the substance of his amendment. I am going to make a point of order on the budget side in any event. But were we not making that point of order, he and I would simply disagree on the merits of the amendment.

Mr. President, I do raise a point of order that the amendment violates the Budget Act and should fall.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER (Mr. NICKLES). The Senator from Montana.

Mr. MELCHER. Mr. President, I move that the Budget Act be waived in regard to this amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

Mr. PACKWOOD. Mr. President, I move to table the motion to waive the Budget Act.

Mr. MELCHER. Mr. President, will the chairman withhold just momentarily?

Mr. PACKWOOD. I will withhold.

Mr. MELCHER. I thank the chairman for his generosity.

Mr. President, I wish to pursue for a moment this question of the hypothetical sawmill or some other type of small business which provides some jobs and the business is in distress. Using the sawmill, while hypothetical, it is a very practical one because there are sawmills which are in distress and would be helped by the amendment I am proposing. I have the feeling that the difference between what the Treasury rate is and the imputed interest that could be applied on the lesser amount below $2 million, when you get above $2 million in some small businesses it may be the very thing that defeats a transaction because the difference between 9 percent and 12 percent—3 percent—is considerable in a shaky business, and yet there are plenty of examples where the business, if it survives, providing anywhere from 20 to 50 jobs, is of grave concern to the community and to those employees.

While the amendment, admittedly, will cost the Treasury $1.8 million, I think that the merit to the amendment is to leave in place, for these small businesses and these farmers and ranchers that may have to liquidate, the same rules on imputed interest they have been following for the past 6 months.

On that basis, Mr. President, I hope we can get beyond this point on the budget waiver and then adopt the amendment.

I again thank the chairman. I only wanted to make that brief explanation.

Mr. PACKWOOD. Now, Mr. President, I move to table the motion to waive the Budget Act.

Mr. MELCHER. Mr. President, I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. EAST] and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

I also announce that the Senator from Vermont [Mr. STAFFORD] is absent on official business.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 43, as follows:

[Rollcall Vote No. 138 Leg.]

YEAS—54

Bentsen	Hatch	Moynihan
Biden	Hatfield	Murkowski
Bingaman	Hecht	Nunn
Bradley	Heinz	Packwood
Chafee	Hollings	Pell
Cochran	Humphrey	Pressler
Cohen	Johnston	Proxmire
D'Amato	Kassebaum	Quayle
Danforth	Kennedy	Roth
Denton	Lautenberg	Rudman
Dole	Laxalt	Simpson
Domenici	Long	Specter
Evans	Lugar	Stennis
Garn	Matsunaga	Stevens
Glenn	Mattingly	Thurmond
Goldwater	McConnell	Trible
Gorton	Metzenbaum	Warner
Gramm	Mitchell	Weicker

NAYS—43

Abdnor	Eagleton	McClure
Andrews	Exon	Melcher
Armstrong	Ford	Nickles
Baucus	Gore	Pryor
Boren	Grassley	Riegle
Boschwitz	Harkin	Rockefeller
Bumpers	Hart	Sarbanes
Burdick	Hawkins	Sasser
Byrd	Heflin	Simon
Chiles	Helms	Symms
Cranston	Inouye	Wallop
DeConcini	Kasten	Wilson
Dixon	Kerry	Zorinsky
Dodd	Leahy	
Durenberger	Levin	

NOT VOTING—3

East	Mathias	Stafford

So the motion to table the motion was agreed to.

Mr. PACKWOOD. I move to reconsider the vote by which the motion was agreed to.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PACKWOOD. Mr. President, I might announce to everyone that there is still no arrangement made yet and we have no agreement on time. I do not expect another vote for at least 45 minutes or an hour.

I do plan to have a colloquy with the Senator from Georgia, Senator MATTINGLY, involving a matter of an amendment that he is going to withdraw, I hope, and we will schedule a hearing on it.

During the time, I hope possibly some agreement can be worked out on the remaining issues. But, for the moment, there will be no vote on the floor, I am sure, for at least 45 minutes.

The PRESIDING OFFICER. The Chair will announce that the waiver motion having been tabled, the Chair will now move on the point of order.

Since the amendment results in a loss of revenues for this fiscal year, a year for which the second concurrent resolution on the budget has been agreed to, and Congress now being at the revenue floor, the point of order under the Budget Act is sustained. The amendment falls.

Mr. PACKWOOD. I thank the Chair. I believe the Senator from Georgia seeks recognition.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Has the Chair recognized me?

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I thank the Chair.

I am seeking to find out from the distinguished majority leader what the program is for the rest of the day, the rest of the week, and the first week after the Senate returns.

Mr. President, I yield the floor. I understand the majority leader is very busy in his office at the moment talking with some administration officials, so I yield the floor.

I thank the Chair, and I thank the distinguished Senator from Georgia [Mr. MATTINGLY].

FARM COOPERATIVE AMENDMENT

Mr. MATTINGLY. Mr. President, the amendment I would have offered today, which was cosponsored by 24 of our colleagues, is very simple. It will not take very long to explain. I ask unanimous consent that the text of the amendment be printed in the RECORD.

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

(Purpose: To amend the Internal Revenue Code in order to clarify the right of agricultural cooperatives to net earnings and losses from different lines of business when computing taxable income)

Intended to be proposed by Mr. MATTINGLY, for himself and Mr. ABDNOR, Mr. NUNN, Mr. ZORINSKY, Mr. COCHRAN, Mr. THURMOND, Mr. HEFLIN, Mr. HELMS, Mr. BOREN, Mr. NICKLES, Mr. DENTON, Mr. EAST, Mr. TRIBLE, Mr. DIXON, Mr. WARNER, Mr. BOSCHWITZ, Mr. PRESSLER, Mr. HARKIN, Mrs. KASSEBAUM, Mr. HOLLINGS, Mr. GRAMM, Mr. QUAYLE, Mr. KASTEN, Mr. SYMMS, and Mr. GRASSLEY.

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

"SEC. . (a) The Internal Revenue Code is amended by adding the following new sentence at the end of section 1388(a): 'For any year to which this subchapter applies, when an organization computes its net earnings from business done with or for patrons, losses in one or more of the organization's allocation units (whether functional, divisional, departmental, geographic or other) may be offset against earnings from business done with or for patrons in one or more allocation units of the organization.'.

"(b) The Internal Revenue Code is amended by renumbering subsection (5) of section 521(b) as subsection (6) and inserting a new subsection (5) as follows:

"(5) NETTING OF LOSSES.—Exemption shall not be denied any such association because it offsets losses incurred in either its purchasing or marketing operations against earnings incurred in either its purchasing or marketing operations for purposes of computing its net earnings available for distribution to its patrons for any year to which this section applies.'."

Mr. MATTINGLY. Mr. President, the amendment would have merely made the Tax Code more explicitly clear on the issue of how farmer-owned cooperatives shall be allowed to calculate their income for tax purposes.

I ask unanimous consent that the Dear Colleague letter signed by 25 Senators, including myself, be printed in the RECORD at this point.

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

U.S. SENATE,
Washington, DC, June 25, 1985.

DEAR COLLEAGUE: For nearly twenty years the Internal Revenue Service has attempted to deny farmer-owned agricultural cooperatives the right to offset losses in one area of business activity against gains from other areas of activity. This practice—referred to as netting—is allowed routinely for all other proprietary business enterprises. However, in 1965, the IRS started to question the right of cooperatives to net gains and losses.

The issue has been litigated on three different occasions, and in each instance Tax Court rulings against the IRS clearly reaffirmed the right of agricultural cooperatives to net gains and losses among their various divisions. Never known to take "no" for an answer, the IRS again in January of this year issued a ruling holding that cooperatives may not net gains and losses.

Thus, we are now seeking your support for an amendment to H.R. 2475, the imputed interest simplification bill. The amendment will merely spell out what the Tax Court has been trying to tell the IRS—that agricultural cooperatives shall be allowed to net gains and losses in determining taxable income.

We are enclosing an issue brief on the subject and a copy of the proposed amendment. If you would like to join us in co-sponsoring this measure please contact Cliff Humphrey at 4-3643.

Sincerely,

Sam Nunn, Mack Mattingly, Jim Abdnor, Ed Zorinsky, Thad Cochran, Strom Thurmond, Howell Heflin, Jesse Helms, David L. Boren, Don Nickles, Jeremiah Denton, John P. East.

Paul Trible, Alan J. Dixon, John Warner, Nancy Landon Kassebaum, Rudy Boschwitz, Fritz Hollings, Larry Pressler, Tom Harkin, Phil Gramm, Dan Quayle, Bob Kasten, Steve Symms, Chuck Grassley.

Mr. MATTINGLY. Mr. President, over the past 20 years the Internal Revenue Service has attempted to unilaterally change the rules of the game regarding how farm cooperatives are allowed to figure their taxable income. They have attempted to deny these co-ops the right to offset losses from one area of business activity against profits from another area of activity. This practice is called netting of gains and losses and is allowed for all other types of business enterprises.

The sad part about all of this is the fact that the IRS has been taken to court on this very issue—not once, but three times in recent years. On each occasion the Tax Court has ruled against the IRS and in favor of the agricultural cooperatives. The court decisions have held that the Tax Code is presently written expressly allows co-ops to net gains and losses in figuring taxable income. Apparently however, the court decisions have not deterred the bureaucrats at Internal Revenue. They have continued to harrass various cooperatives resulting in the needless expenditure of tens of thousands of dollars in legal fees to defend a practice that the Tax Court has ruled is perfectly legal. Listen to the court's language in one of the cases which have involved this netting issue:

(The court considers the IRS) "position herein not only contrary to the express provisions of (the Tax Code), but conceptually strained and lacking any fundamental policy support; in short, an unwarranted tinkering with the tax structure applicable to cooperatives.

Mr. President, I ask unanimous consent that a summary of the texts of the court decisions be printed in the RECORD.

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

FORD-IROQUOIS FS, INC. V. COMMISSIONER 74 T.C. 1213 (1980)

Facts: Taxpayer, a subchapter T agricultural cooperative, operates a grain marketing department and an agricultural supply department. Both departments do business with cooperative members and nonmembers.

Taxpayer had net operating losses during 1971 and 1972. Its board of directors elected to carry forward and offset the net operating losses against taxpayer's 1973 income, effectively offsetting (1) losses from the supply and grain department against 1973 supply department income, and (2) losses generated in 1971 and 1972 by members who have since terminated membership against 1973 supply department income generated by current members.

Taxpayer's article of incorporation and bylaws are silent on the treatment of cooperative losses. In each case, however, complete control and management is granted to the board of directors. Membership contracts contain no provision for late assessment of losses by adjustment to the price paid for grain or price charged for supplies.

Issue: (1) May a subchapter T cooperative carry forward losses incurred in its grain marketing operations to offset income from its farm supply operations? (2) May a subchapter T cooperative carry forward losses incurred in the grain and supply operations arising out of transactions with cooperative members who terminated their membership after the loss year?

Holding: A cooperative may net across functions and use the Section 172 net operating loss deductions.

"When Congress enacted Subchapter T, it created a detailed statutory framework for the taxation of cooperatives. We find no statutory restriction on the deduction of net operating losses by cooperatives as proposed by (the Commissioner) either in Subchapter T or Section 172.

"Given the relevant article of incorporation and bylaws, the considered business judgment of the board of directors, the apparent approval of the members, the actual allocations and the language of the state law concerning cooperative member-debt liability, we hold that (taxpayer) is entitled to carry forward that part of its grain and farm supply losses allocable to terminated members."

"The allocation of losses amoung a cooperative's present, continuing and future members is properly the concern of the membership and its board of directors."

"(Taxpayer) chose to carry forward the net operating losses rather than attempt to recover such amounts from terminated members. This was a business judgment."

ASSOCIATED MILK PRODUCERS, INC. V. COMMISSIONER 68 T.C. 729 (1977)

Facts: Taxpayer is an agricultural cooperative operating under section 521 of the Internal Revenue Code. From 1959 through 1961 taxpayer's expenses exceeded income. Taxpayer's board of directors decided it would be inequitable to charge the current losses against patrons' capital reserve accounts. They were also concerned about the impact on member relations or reducing prior reserve accounts.

For the five years preceding its 1959 fiscal year taxpayer had no taxable income to which it could carry back a net operating loss. The board decided that the losses should be carried forward to future profitable years. Accordingly, net income for the years 1962 through 1966 was offset and patronage refund allocations eliminated until the entire amount of the prior years' losses was absorbed. For each year taxpayer claimed net operating loss carryforward deductions pursuant to section 172.

The Internal Revenue Service disallowed these deductions under its theory that since a cooperative must operate at "cost" it cannot have a loss. Instead, the Service

would have the cooperative recoup this operating deficit from the patrons for that period.

Issue: May a cooperative operating under section 521 of the Internal Revenue Code utilized Section 172 net operating loss carryovers?

Holding: A cooperative operating under section 521 of the Internal Revenue Code may utilize Section 172 net operating loss carryovers.

"We consider (the Commissioner's) position herein not only contrary to the express provisions of section 172, but conceptually strained and lacking any fundamental policy support; in short, an unwarranted tinkering with the tax structure applicable to cooperatives."

"The same articles of incorporation and by-laws upon which (the Commissioner) relies as requiring that losses be charged to capital reserve accounts, go on to provide that the allocation of such charges among the various patrons' reserve accounts is to be determined on an equitable basis by the board of directors. (Taxpayer's) board of directors did in fact consider this question and determined that it would not be fair to allocate the losses to existing capital reserve accounts, and that charging them to future net income would be more equitable."

LAMESA COOPERATIVE GIN V. COMMISSIONER OF INTERNAL REVENUE 78 T.C. 894 (1982)

Facts: Taxpayer is an agricultural cooperative operating under Section 521 of the Internal Revenue Code. Taxpayer's primary business is ginning cotton furnished to it by patrons and marketing cotton seed. Taxpayer also purchases small quantities of farm supplies that it resells to patrons approximately at cost, as a convenience to its patrons.

Taxpayer sold in taxable year 1974 equipment on which it had deducted depreciation in prior years. All the gain from the sale of the equipment was reported on taxpayer's taxable year 1974 return as ordinary income under Sec. 1245 of the Internal Revenue Code. In determining the amount to be paid as patronage dividends, taxpayer allocated all this gain to its taxable year 1974 patrons in proportion to their patronage during that year.

Also, because the scale of the purchasing operation was quite small relative to its overall operations, taxpayer did not keep any separate accounts with respect to the purchasing operation. Taxpayer based its allocation of patronage dividends for taxable year 1974 solely on the patronage to its marketing operation.

Issue: (1) Should the patronage dividend deduction claimed by taxpayer be disallowed because the gain from the sale of equipment in taxable year 1974 was not properly allocated among current and former patrons. (2) Should the patronage dividend deduction be disallowed to the extent allocable to taxpayer's purchasing function?

Holding: The patronage dividend allocations made by taxpayer with respect to both the gain from the sale of the equipment in taxable year 1974 and with respect to any gain that it might have derived from its supply purchasing function were not inequitable.

"Boards of directors of cooperatives do not have carte blanche to make whatever allocations they choose, but we believe (the commissioner) should recognize that directors have some discretion, some flexibility, in the exercise of business judgment. Only when unreasonable exercise of that discretion appears should the board's weighing of the equities be overturned by this Court."

"In determining whether (the commissioner) erred by disallowing the patronage dividend deduction that it attributed to gains from the purchasing function, our inquiry should simply be whether the allocation was inequitable in view of the board of directors' considerable discretion."

"In summary, we find that the patronage dividend allocations made by (taxpayer) with respect to both the gain from the sale of the equipment in taxable year 1974 and with respect to any gain it might have derived from its supplies purchasing function were not inequitable. This is not to say that the particular method of allocation employed by (taxpayer) would have been the only proper way of allocating these gains. We hold merely that petitioner's board of directors did not unjustly discriminate against one group of patrons at the expense of another group, given the practicalities of the allocation, the substantial similarity in the identity of patrons over the years, the absence of any indication that any of the patrons complained about such allocations, and, with respect to the profit from the purchase and resale of supplies, the de minimus nature of the item."

Mr. MATTINGLY. Mr. President, despite this clear and direct language, the IRS has persisted in trotting out a new challenge to the netting rules for farm cooperatives. Mr. President, this is just simply wrong and if the only way to get the IRS to follow the law and abide by the decisions of the Tax Court is to make the statutory language even more explicit, then so be it.

Mr. President, I will not belabor the point. It is obvious to even the most casual observer that the IRS is not treating our farmer-owned cooperatives in a fair and equitable manner. I would remind my colleagues of the words used by Secretary Block in his April 2 letter to Treasury Secretary Baker. He said:

Farmer cooperatives must have the authority to net gains and losses in their various divisions in order to survive in today's highly volatile agricultural industry.

Mr. President, I ask unanimous consent that Secretary Block's letter be printed in the RECORD.

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

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, April 2, 1985.

Hon. JAMES A. BAKER III,
Secretary of Treasury
Washington, DC.

DEAR JIM: The Internal Revenue Service recently issued a technical advice memorandum stating that a farmer cooperative may not offset losses in one of its divisions against the gains in another to determine its net taxable income if, in the IRS' opinion, the offset is "inequitable." This common practice, called "netting" could cause a farmer cooperative to lose its tax status if gains and losses are combined in its purchasing and marketing divisions to compute patronage dividends.

The IRS memorandum also says that when a cooperative's board of directors makes netting decisions, the cooperative will lose its statutory right to deduct patronage refunds from taxable income.

I would appreciate your review of the IRS technical advice memorandum for the following reasons:

1. Farmer cooperatives must have the authority to net gains and losses in their various divisions in order to survive in today's highly volatile agricultural industry. By netting gains and losses among several divisions, a cooperative may spread economic risk and significantly reduce the effect of catastrophic failure in any one of them.

2. IRS' determination imputes values and principles to the internal cost accounting methods of cooperatives that appear to be inappropriate under the laws governing cooperatives.

The Department of Agriculture previously expressed its concerns to the IRS and the Department of the Treasury on the issue of netting. Withdrawal of the IRS memorandum would aid efforts to reach accommodation between Department of Agriculture and Department of Treasury on this important tax issue.

This matter is of vital concern to the nation's farmer cooperatives. I believe that your thorough view of this issue will show that the IRS position merits reconsideration. I appreciate your consideration in this matter.

Sincerely,

JOHN R. BLOCK,
Secretary.

Mr. MATTINGLY. So, Mr. President, this is a life-or-death issue which faces our farm community at a time when the farm economy is literally on its knees. Just yesterday, Secretary Block wrote to my esteemed colleague, the chairman of the Senate Finance Committee. I ask unanimous consent that that letter be printed in the RECORD.

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

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, June 25, 1985.

Hon. ROBERT PACKWOOD,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: An amendment will probably be offered during full Senate consideration of H.R. 2475, the imputed interest tax bill, to amend sections 1388(a) and 521(b) of the Internal Revenue Code. The changes are intended to make it undisputably clear that cooperatives can net earnings and losses from different lines of business when computing their taxable income.

The U.S. Department of Agriculture supports enactment of this amendment.

Cooperatives are owned and controlled, on a democratic basis, by their members. The members may decide to have their cooperative only provide one service, such as marketing their grain. Financial results of this activity are figured on an annual basis and a tax is paid on any margins generated by the business.

The members may also decide to have their cooperative provide more than one service, such as marketing grain and purchasing supplies. When this happens the Internal Revenue Service has ruled the association must, for tax purposes, assume it is not a single cooperative but rather that sep-

arate cooperatives exist for each function performed.

The IRS position is contrary to a basic tenet of corporations operating on a cooperative basis: that the members decide the extent to which they share the risks in the cooperative venture. A decision by members to diversify risk by netting the results of two or more operations is a legitimate business decision which ought to be immune from challenge by IRS. Cooperatives are voluntary organizations. Members who do not like the way margins are computed are free to do business elsewhere, or start a competing cooperative which accounts for margins as its members prefer it done.

The U.S. Department of Agriculture favors enactment of legislative language making it clear that members of a cooperative may net margins and losses on any basis that they decide is equitable among themselves.

Sincerely,

JOHN R. BLOCK,
Secretary.

Mr. MATTINGLY. In that letter, Secretary Block expressed his support for the amendment which we would have offered here today.

I would likewise ask the chairman and Senator LONG, the distinguished ranking member of the committee, to give careful consideration and to take prompt action on this issue which is so vital to the future of farmer-owned cooperatives. We sought only to tell the IRS that—contrary to what they may think—they are not above the law and that they should abide by the repeated findings of the Tax Court.

Mr. President, I also ask unanimous consent that the text of a letter to Secretary Block on this matter, signed by 26 Senators be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, April 22, 1985.

Hon. JAMES A. BAKER III,
Secretary, Department of the Treasury, Washington, DC.

DEAR MR. SECRETARY: Over a period of nearly fifteen years there has been a recurring effort by the Internal Revenue Service to question the right of agricultural cooperatives to arrive at their taxable income by netting gains and losses among their patron units.

Secretaries of Agriculture over the years have submitted extensive and detailed analyses on behalf of the farmer-owned cooperatives but the issue remains unsettled. Recently Secretary Block wrote to you asking for your assistance and intervention regarding withdrawal of the recent IRS memorandum relating to this issue.

This is a vitally important matter to a great many of this Nation's farm cooperatives. The nearly two million farmer/members of these cooperatives are, as you know, having great economic difficulty.

We urge you, Mr. Secretary, to give this important matter your prompt and favorable attention.

Sincerely,

Sam Nunn, Mack Mattingly, Strom Thurmond, Jesse Helms, John P. East, Thad Cochran, Edward Zorinsky, Howell Heflin, David L. Boren, Paula Hawkins, Paul Trible, John C. Stennis, Dick Lugar.

Alan J. Dixon, Dave Durenberger, Pete Wilson, Jim Abdnor, David Pryor, Rudy Boschwitz, Don Nickles, Ernest F. Hollings, Dan Quayle, Nancy Landon Kassebaum, Jeremiah Denton, Russell Long, Lloyd Bentsen.

Mr. MATTINGLY. Mr. President, the chairman of the committee has assured me that he would help us by holding hearings and reporting legislation correcting this netting issue. Mr. CHAFEE, who is the chairman of the appropriate subcommittee, has also graciously agreed to assist in this important effort. I also wish to note that five Finance Committee members signed the original letter of April 22, to Secretary Baker. So I think we can look forward to a speedy resolution of the problem.

Mr. President, I ask and hopefully an agreement has been considered by the appropriate subcommittee chairman to hold a hearing on one of the Mondays in July. I would request a speedy hearing, and hopefully the ranking minority member and also the chairman of the Finance Committee will help move this bill expeditiously to committee report.

Mr. PACKWOOD. I talked with the chairman of the subcommittee, Senator CHAFEE. Senator CHAFEE said he would be willing to hold a hearing. I did not pin him down to the first Monday in July but Mondays are normally open. We have full committee hearings—Tuesday, Wednesday, Thursday, and on occasion on Friday—all summer on tax reform. We try to save Mondays for different subcommittee meetings. The Senator indicated he would be willing to hold a hearing.

Mr. MATTINGLY. I did not mean to say the first Monday, but one of the Mondays in July, if the Senator would be willing to do that.

Mr. PACKWOOD. I do not know if the Senator said July. But the Senator is certainly willing to hold it, and Mondays are open.

Mr. MATTINGLY. The Senator did say July?

Mr. PACKWOOD. The Senator may have said it to you. That is fine.

Mr. NUNN. Will the Senator yield?

Mr. MATTINGLY. Yes.

Mr. NUNN. Mr. President, I would like to join my colleague from Georgia in strongly supporting this amendment. I think it is enormously important. We have an agricultural community in America that is in extreme distress. The State of Georgia and the Southeast United States is certainly in that position, and I think many other areas are. This bill protects farm cooperatives. It is important, and very key in keeping them involved in a sea of turmoil and trouble in the farm community. One of the few restraints that we have remaining now is in institutions represented by farm cooperatives, and this amendment is very, very important in that regard.

So I am pleased that the chairman of the committee and the ranking member have agreed to have hearings. I am pleased that Senator CHAFEE who chairs the subcommittee has agreed to have hearings. I hope we will be given an opportunity to present our case there. This is a very important matter to the agricultural future of our State and Nation. So I am pleased that my colleagues introduced the amendment, and I am certainly pleased we have this amendment from the Finance Committee.

Mr. PACKWOOD. I thank the distinguished junior Senator from Georgia for withholding it on this bill because very frankly I think it would have caused a further possibility of filibuster. The present rules run out as of July 1. This bill is of critical importance to the entire realty industry of this country. I do not mean big shopping centers, but little sellers of houses. And the junior Senator has been very generous in withdrawing it. I think the withdrawal of this amendment is the key to our committee to reaching agreement on some other matters.

Mr. MATTINGLY. I would like to ask the chairman of the Finance Committee to do all he can to make certain that the scope of this amendment, when it gets to the committee, is limited to the netting issue.

Mr. PACKWOOD. I will do the best I can. As the chairman knows, every now and then one of the members of the committee does not necessarily agree with what the chairman says, and asks questions outside of the purview of the topic. But as we start the hearings, I will ask the Senator from Rhode Island to consider a hearing on the topic of netting. I do not know where we will end up.

Mr. MATTINGLY. I know that sometimes things get expanded in committee. The reason I am asking for it to be limited to netting is because that is the issue. This subject came up on the supplemental appropriations bill and we agreed on a sense-of-the-Senate resolution. I think we are going in the right direction of getting the proper attention by trying to hold a hearing, and getting this important issue resolved. I hope it can be done expeditiously. There will be other vehicles coming down the line that we can offer an amendment to, and I would like to keep my options open if there is inaction. I do not expect inaction from your committee, because it is such a great committee. I feel certain you are going to accommodate us on this matter.

Mr. PACKWOOD. Again, I thank my distinguished colleague.

Mr. MATTINGLY. Thank you, Mr. President.

Mr. ABDNOR. Mr. President, I am pleased that the Finance Committee has agreed to expeditiously examine the Internal Revenue Service's [IRS] unfair attack on agricultural cooperatives. It is my hope that the Finance Committee's action will clarify the right of agricultural cooperatives to net gains and losses in determining taxable income.

Let me point out that agricultural cooperatives are the backbone of economic activity in rural America. These farmer-owned cooperatives provide a host of services to their farmer-members. Producer-owned cooperatives have contributed greatly to agricultural efficiency, farmer education, farm and ranch mechanization, successful marketing and processing of agricultural commodities, and technological research in the field of agriculture.

Unfortunately, the Internal Revenue Service [IRS] has attempted to deny farmer-owned agricultural cooperatives the right to offset losses in one area of business activity against gains from other areas of activity. This practice—referred to as netting—is allowed routinely for all other proprietary business enterprises. However, in 1965, the IRS started to question the right of cooperatives to net gains and losses.

Again in January of this year, IRS issued a ruling holding that cooperatives may not net gains and losses.

Let me point out to my colleagues that IRS is attempting to discriminate against agricultural cooperatives. Cooperatives are not asking for special treatment; they are asking only for fair treatment. Every other proprietary business enterprise is allowed to net gains and losses. Any other business can offset losses in one area of that business' activity against gains in another area. It is my hope that action will be taken to reaffirm the right of farmer-owner cooperatives to do this very same thing.

If a private businessman who owns a hardware and appliance store loses money selling hardware but makes money selling appliances, he can offset the losses against the gains or net his income. Conversely, IRS is attempting to prohibit agricultural cooperatives from netting their incomes. If IRS had its way, a feed and fertilizer cooperative which lost money selling feed but yet made money selling fertilizer would not be about to offset the losses against the gains. Clearly, this isn't fair, right, or equitable. In my opinion, it is an attempt by IRS to undermine the co-op system.

This issue has been litigated on three different occasions, and in each instance Tax Court rulings against IRS clearly reaffirmed the right of agricultural cooperatives to net gains and losses among their various divisions.

In each occasion the Tax Court ruled strongly in favor of agricultural cooperatives. In the case of the Associated Milk Producers, Inc. versus the Commissioner of Internal Revenue, the Tax Court forcefully held the following:

> We consider (the Commissioner's) position herein not only contrary to the express provisions of section 172, but conceptually strained and lacking any fundamental policy support; in short, an unwarranted tinkering with the tax structure applicable to cooperatives.

Mr. President, it is clear to the courts that agricultural cooperatives have the right to net gains and losses. IRS is waging an unwarranted, and, according to the courts, illegal attack on farmer-owned cooperatives. I thank my colleagues on the Finance Committee for agreeing to examine IRS' attack on cooperatives and I pledge my total support for legislation which would reaffirm the right of cooperatives to net gains and losses.

Mr. MATTINGLY. Mr. President, I ask unanimous consent that the record be kept open today on this particular issue so my colleagues can have an opportunity to enter their statements for the record.

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

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

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

AMENDMENT NO. 429

(Purpose: To replace the dollar for dollar phaseout of 9 percent discount rate in instruments between $2,000,000 and $4,000,000, with a discount rate of 100 percent of the applicable Federal rate)

Mr. DURENBERGER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

> The Senator from Minnesota [Mr. DURENBERGER] proposes an amendment numbered 429:
>
> On page 26, strike lines 1 through 3 and insert:
>
> "(2) QUALIFIED AMOUNT.—The term 'qualified amount' means $2,000,000,

Mr. DURENBERGER. Mr. President, I support H.R. 2475, a bill to simplify and make permanent the imputed interest rules. Passage of this legislation is urgently needed. As we all know, the current stop-gap provisions expire at the end of this week, and we owe the people who live under our tax laws some certainty, so that transactions can go forward and an orderly market maintained.

I should like to remind my colleagues of what we are doing here today. We are not carving out loopholes, as some would suggest. We are trying to undo what the Treasury and the IRS have forced on people who need to use seller financing.

I do not think the IRS likes people. And it definitely does not like people who for no reasons related to the Tax Code, conclude a transaction that does not give the IRS the maximum amount of revenue that tax theoreticians think might be possible.

This perspective is flat out wrong, and it is one of the reasons why we find ourselves in the midst of a major tax reform movement. People are just sick and tired of the complexity, the intrusiveness, and the unfairness of the Internal Revenue Code.

Here we have a situation where ordinary people devised a mechanism whereby, when the bank would not lend money, or interest rates were too high and they could not afford the cost of money, or maybe the transaction was with a neighbor and they did it with just a handshake, and suddenly they find themselves subject to government intruding into their transactions and recharacterizing it. No doubt there are some who definitely sat down across the table and worked out an arrangement to mine the Tax Code. It was these types of extremely abusive transactions that ruined it for everyone.

Imputed interest provisions have been in the Tax Code since 1964. In 1979, when Treasury said that they were going to raise the imputed interest rate from 6 to 9 percent, I and other Members of the Senate had a great deal of reservation. Nevertheless, it was not until the 1981 tax bill that we were able to address the situation and we passed an amendment, adopted by the Senate 100 to nothing, to place some restrictions on the IRS as to when they could impose imputed rates.

Then came the 1984 Deficit Reduction Act, when contained rather draconian provisions allowing the IRS to interject itself between buyer and seller in a seller-financed transaction and impute large amounts of interest to the transaction. I can assure you that this body did not vote on these provisions characterized as changes to the imputed interest rules. If they had been characterized as such they would never have passed this body.

When the ramifications of these 1984 act provisions became widely known, there was an open outcry throughout the country by those who need seller-financing to have an orderly real estate market. In a very short time period, my Minneapolis and Washington offices received hundreds

of calls and letters asking for relief from this provision. This same outpouring of urgent pleas was seen in the offices of my colleagues.

I was inclined to help provide the relief all right, in the form of repealing the provisions. When this appeared unlikely, I introduced legislation, S. 3032. S. 3032 was introduced last year in an effort to address the fact that it's individuals that we are dealing with.

What this meant was striving to simplify what is a complex area. It was a simple two-tiered system. If you had $1.5 million of seller financing or below, your interest rate was 9 percent. If you had above $1.5 million, your interest rate was 80 percent of AFR. The Senate ended up passing complex compromise legislation last year that was drafted in terms of property—in terms of farms, in terms of houses of one kind or another, in terms of businesses of this size or that size, et cetera. But it was never really put in the context of individuals.

In conference, a stop-gap system was devised. It borrowed the two-tiered system of S. 3032. The small transaction exemption was raised to $2 million and over that the rate was 110 percent of AFR. Nonetheless, the idea was the same. People now had a rule that at least they had some chance of understanding and some certainty as to what their interest would have to be. I take some small pride of authorship for the vehicle before us today. It looks a lot like my earlier legislation, and this year's version, S. 729.

However, there is one improvement that I would like to make to the bill before us today.

I am joined in this effort by Senators ABDNOR, ZORINSKY, INOUYE, DECONCINI, DOMENICI, LEAHY, DODD, JOHNSTON, NICKLES, WILSON, BOSCHWITZ, DIXON, AND WALLOP.

The dollar-for-dollar phaseout, blending mechanism currently in the bill should be replaced with the blending mechanism currently in use under the stop-gap imputed interest rules. Seller financing above $4 million would be unchanged and as under the committee bill, the entire amount would be required to carry interest equal to 100 percent of the AFR.

My amendment is a simple one; in fact, it is only one sentence long. It has only a minor impact on the bill as a whole—yet, it would establish simpler interest rate calculations for seller financing between $2 and $4 million.

Let me explain:

The current stop-gap imputed interest rule sets up a straight blending mechanism, whereby the first $2,000,000 of borrowed amount receives a 9 percent test rate and everything in excess of $2,000,000 is blending using a 110-percent test rate.

The House bill changed this simple blending mechanism to a more complex dollar-for-dollar reduction method. Under the dollar-for-dollar reduction method, the amount of seller financing eligible for the lower 9 percent rate would be reduced by one dollar for each dollar that the amount of the seller financing exceeded $2 million. Thus, if "A" sells property to "B" in return for a note of $3 million, $1 million; $2 million minus the excess of $3 million over $2 million; would be eligible for the 9 percent rate. The excess amount of $2 million would be tested at 100 percent of the AFR.

This system penalizes people just over the $2 million line. They immediately start to lose the benefit of the 9-percent rate. People, like the farmer, who is forced to sell his property, is a distressed sale situation, and cannot find financing other than seller financing. It is not too hard for the value of a farm to reach the $2 million mark. It used to be easier than it is today, but the value of agricultural land in Minnesota has dropped by a third to a half because there is no longer an expanding market for the commodities that land produced. In Minnesota alone the loss of farm equity over the last 2 years is $7.48 billion. That is $7.5 billion lost in 2 years.

The point is that now land values will not support the amount of loans that we encouraged the American farmer to incur. Banks are reevaluating loans and putting the farms out of business. Thousands of farmers will go out of business in Minnesota alone this year. We need to do something about this problem, but in the meantime, enactment of imputed interest provisions that do not allow for adequate relief of imputed interest for the farmer who must sell his land, will kill the market for farmland and depress the price even further. Tax Code considerations are not the motivating factor here, but plain and simple survival.

We drew a rather arbitrary line of $2 million to provide farmers, small business, and homeowners some certainty and some relief for the provisions of imputed interest. We should not then start taking away that benefit immediately when the $2 million line is crossed.

I would have preferred a straight blend of 9 percent for $2 million and 100 percent of AFR for everything over that. However, the cost in the context of overall bill, and revenue neutrality consideration due to the deficit, was too prohibitive.

Thus, I scaled back my amendment so that the cost is only $20 million compared to $107 million for a full blend. The Senate finance bill currently contains $19 million in excess revenues over the same period, so the bill would continue to be revenue neutral under the definition we are working within terms of tax simplification and within reasonable allowances for estimating error.

In summary, I ask my colleagues for their support of this amendment.

The amendment is narrow in scope; it only changes the bill, with regard to financing between $2 and $4 million. It does not change the revenue neutrality of the bill, and most importantly it results in a simpler and fairer blending system. The amendment should be adopted.

Mr. ABDNOR. Mr. President, will the Senator yield?

Mr. DURENBERGER. I yield.

Mr. ABDNOR. Mr. President, I am pleased to join my colleague from Minnesota, Senator DURENBERGER, in cosponsorship of an amendment to H.R. 2475, 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.

H.R. 2475 is a fine bill and I applaud the House Ways and Means and Senate Finance Committees for their expeditious handling of this important issue. As always, Mr. President, my perspective is colored by the crisis in rural America and it is in that context that I frame my remarks in support of this amendment.

Mr. President, our amendment addresses what I perceive to be a shortcoming in the imputed interest bill which places an unnecessary burden on farmers who rely heavily on seller financing in the transfer of their property. Specifically, I am referring to the many farmers who, wishing to sell their farms, would fall somewhere in H.R. 2475's phaseout range.

Rather than penalizing the farmer who sells his farm, carries back $3 million of the financing, and is thus liable for 100 percent of the applicable Federal rate on $2 million of the carryback while enjoying the 9-percent break on only $1 million, our amendment allows that farmer the benefit of a blended rate for seller financing falling in the $2 to $4 million range.

Mr. President, in light of this amendment's minimal revenue impact, I am fully supportive of its overriding objective of effectively enhancing the smooth transfer of farm property between buyer and seller. In my opinion, this is a harmless means of extending a helping hand to farmers who are already plagued by high interest rates.

The need for this amendment is clearly evident. I join Senator DURENBERGER in urging my colleagues to support this amendment to the imputed interest rules embodied in H.R. 2475.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota has the floor.

Mr. METZENBAUM. Mr. President, will the Senator yield?

Mr. DURENBERGER. I am glad to yield to the Senator from Ohio.

AMENDMENT NO. 430

(Purpose: To provide a discount rate equal to 110 percent of the applicable Federal rate in case of sale-leasebacks or where purchase price exceeds $25,000,000)

Mr. METZENBAUM. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 430 to amendment No. 429.

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

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

The amendment is as follows:

At the end of the pending amendment, add the following:

(d) IMPUTATION RATE INCREASED TO 110 PERCENT IN CASE OF SALE-LEASEBACK OR WHERE PURCHASE PRICE EXCEEDS $25,000,000.—Section 1274 of such Code (relating to determination of issue price in the case of certain debt instruments issued for property) is amended by adding at the end thereof the following new subsection:

"(f) 112 PERCENT RATE WHERE SALE-LEASEBACK INVOLVED OR PURCHASE PRICE EXCEEDS $25,000,000.—

"(1) IN GENERAL.—In the case of any debt instrument to which this subsection applies, the discount rate used under subsection (b)(2)(B) or section 483(b) shall be 110 percent of the applicable Federal rate.

"(2) LOWER DISCOUNT RATES SHALL NOT APPLY.—Subsection (e) and section 1274A shall not apply to any debt instrument to which this subsection applies.

"(3) DEBT INSTRUMENTS TO WHICH THIS SUBSECTION APPLIES.—This subsection shall apply to any debt instrument given in consideration for the sale or exchange of any property if—

"(A) pursuant to a plan, the transferor or any related person leases such property after such sale or exchange, or

"(B) the purchase price of such property exceeds $25,000,000.

"(4) AGGREGATION RULES.—For purposes of this subsection, all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.".

Mr. PACKWOOD. Mr. President, this is the compromise that I hope will make this bill acceptable and allow us to finish it.

First, the Senator from Minnesota has an amendment slightly changing the way interest is imputed on sales between $2 million and $4 million. While I thought the provision I had in the bill was superior, I am willing to accept these provisions as part of a package arrangement with the Senator from Ohio who has an amendment that he has just offered in the second degree relating to sales above $25 million and to sale-leaseback arrangements.

I think on balance, all things considered, it is a satisfactory resolution of the quandry in which we have found ourselves.

I encourage the adoption of the amendment in its entirety.

The PRESIDING OFFICER. Is there further debate?

Mr. SYMMS. Mr. President, I have just stepped into the Chamber. Has the Senator from Ohio explained his amendment yet?

Mr. METZENBAUM. Not as yet.

Mr. SYMMS. I will wait until he explains his amendment.

Mr. METZENBAUM. Mr. President, this amendment is consistent with that which the Senator from Ohio has been speaking to for the last maybe 30 hours or so absent nights, that is, my concern that this bill, which deals with the whole subject of imputed interest, opens the door very widely to the wheelers and dealers and the syndicators who really are not particularly involved in real estate but are involved in putting together tax packages.

I have said from the outset that the imputed interest rate issue as pertains to sales of small homes, whether made by the individual or made by a company selling homes to individuals, is not my real concern. Nor is it my concern to affect the small business sales. Nor is it my concern to affect the sale of farms selling for less than $1 million.

I am concerned about the big investment banking firms that use our tax laws to provide tax shelter for individuals on a participating basis.

So my amendment would reinstate the Treasury rules to a point of 110 percent of imputed rate, that is the Federal funds rate, for if the purchase price exceeds $25 million, any seller financing amount must state an interest rate equal to 110 percent of the T-bill rate.

The Treasury testified at the hearing that large transactions should not receive relief. Treasury defined "large" as transactions with purchase prices of $2 million. As a matter of fact, this bill would now go up to about $4 million with the Durenberger amendment, which is the amendment to which I offered my second-degree amendment.

The second part of the amendment would deal with sale-leasebacks.

Any sale-leasebacks transaction would have to satisfy the 110 percent of the T-bill interest rate test or the imputed interest rules would become effective.

What is a sale-leaseback? A sale-leaseback is a transaction where the owner of a building sells it to a third party and then leases it back. The new owner receives the right to depreciate the building, and that is merely a way of creating some tax shelter for some people who are interested in buying a tax shelter.

The implications of the excessive and unintended tax benefits can be seen by just looking at a few recent transactions.

Continental Corp.'s $221 million sale of its Manhattan office tower; Mellon Bank's headquarters in Pittsburgh sold for $280 million; and the First National City Bank of Houston's headquarters was sold for a very substantial amount.

In each instance it was a sale and a leaseback. In each instance obviously it was for a figure in excess of $25 million.

In each of these deals, the corporation sells its headquarters to a tax-shelter partnership, guarantees to lease the property, and pays all operating costs. In effect, the corporation merely sells the right to depreciate the property.

In all candor, the amendment of the Senator from Minnesota is not one that I look at with enthusiasm. I think it extends further the rights and extra privileges given in the basic bill. But since it does not strike at the very subject about which I am most concerned, and that is to get at the tax-shelter syndicators, I have seen fit not to raise an objection to that and offering this as an amendment to it.

The chairman of the Finance Committee has rightly described the situation as being a package deal. I am prepared not to object or to raise any issue with respect to the Durenberger amendment provided that it contains my amendment, notwithstanding the fact that I have less than an enthusiastic point of view with respect to the Durenberger amendment.

So I am pleased to learn from the chairman of the Finance Committee that he feels that the amendment I have offered is an acceptable one and I believe he has indicated to me in earlier conversation that if it is accepted, if it becomes a part of the bill, he would provide strong leadership and strong effort to keep it in the bill at the conference committee level.

Mr. PACKWOOD. Mr. President, my good friend from Ohio is correct. I think overall the bill is fair to 99 percent of the transactions in this country that are small or moderate transactions, and that is what the bulk of them are. I will do the best I can in conference to keep the provisions of this Durenberger-Metzenbaum amendment if it passes, and the Senator has my word on it.

Mr. METZENBAUM. I thank the chairman of the Finance Committee.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MELCHER. Mr. President, if I could have the attention of the distinguished chairman of the Finance Committee, I would ask if he would yield to me for a question.

Mr. PACKWOOD. I will be happy to answer questions. The Senator from Montana has the floor, therefore I do not need to yield. But I will be happy to answer questions.

Mr. MELCHER. The amendments that are before us, it is my understanding that the Durenberger amendment would lose about $4 million per year in revenue and that the Metzenbaum amendment would gain approximately $6 million per year.

Mr. PACKWOOD. That is approximately right.

Mr. MELCHER. I thank the chairman for that information.

Mr. President, the amendments offset each other in revenue gain and revenue loss. While my amendment would cause the loss of $1.8 million—that is slightly less than $2 million for the fiscal year—the effect of the Durenberger amendment would mean that had my amendment been accepted, or if it is accepted in the future in the bill, instead of the revenue loss of $1.8 million per year, it will be something less than that, perhaps as low as $1 million per year.

Mr. President, if the chairman will indulge me, I wonder if the Senator would respond to that either as correct or incorrect.

Mr. PACKWOOD. I am not sure I understand what the Senator said. I heard what the Senator said. I am not sure I understood the question.

Mr. MELCHER. The effect of the Durenberger amendment in revenue loss is brought about because it would be a blended rate between $2 million and $4 million on all types of transactions. That has been measured to be approximately $4 million per year revenue loss. My amendment went to farms and small businesses.

Mr. PACKWOOD. As I read the amendment, it went to small businesses involved in agriculture, did it not?

Mr. MELCHER. No. I will clarify that. My amendment went to small businesses. It did not have to be involved in agriculture. But since a portion of the Durenberger amendment would cover that, then if my amendment were part of the bill, the revenue lost would be about $1 million, instead of $1.8 million. It would be perhaps even less than a million dollars.

Mr. PACKWOOD. I see what the Senator is saying. I think the Senator may be right. I would not swear to it.

Mr. MELCHER. I thank the chairman.

Mr. President, we are dealing with unusually small amounts of revenue gain or revenue loss. But nevertheless, I think it is wise to recognize what is revenue neutral, what is revenue positive or what is revenue negative. So we are doing that.

The technicality on which the merits of my amendment was not voted upon was because there was a slight revenue loss. Therefore, a budget waiver would be necessary even though it was a very small amount. But what I am pointing out now, Mr. President, and taking the time of the Senate to point out, is if we do accept the Durenberger amendment and the Metzenbaum amendment, there will be no revenue loss. There will be a slight revenue gain. Mr. President, I am not going to make a point of order against the Durenberger amendment because there is some revenue loss. That is not my intention at all. In fact, I am in favor of the Durenberger amendment. I only suggest that perhaps if we accept this package, consideration of the merits of my amendment without regard to the budget waiver might be in order subsequent to that.

I will now await the action on the Senate on the question before us. I will be ready to at least discuss the possibility of my amendment being reintroduced, which indeed a revenue loss would be considerably reduced by the adoption of the Durenberger amendment.

Mr. PACKWOOD. I thank my colleague. I think the Senator's assessment is right. I want the Senator to withhold it until I check. But because the Durenberger amendment does cover part of what the Senator's amendment covers, the revenues lost I think would be less than what it was as initially offered.

Mr. METZENBAUM. Mr. President, I think we are ready to act on my amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment in the second degree.

The amendment (No. 430) was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Is there further debate on the amendment of the Senator from Minnesota, as amended, if not, the question is on agreeing to the amendment.

The amendment (No. 429) was agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll. The assistant legislative clerk proceeded to call the roll.

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

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

Mr. PACKWOOD. Mr. President, I believe we are ready to vote.

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

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

AMENDMENT NO. 431

Mr. MELCHER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The Legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] proposes an amendment numbered 431.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is as follows:

On page 25, line 6, strike the ".", and insert the following:

"; or, any debt instrument given exclusively in consideration for the sale or exchange by a qualified person of qualified property," if the stated principal amount of such instrument does not exceed $9,000,000.

On page 25, insert the following paragraphs between line 9 and line 10: "(3) Qualified Property—For purposes of this section, the term "qualified property" means—

(A) Real property which was used as a farm (within the meaning of section 6420 (c)(2)) at all times during the three year period ending on the date of sale or exchange, together with any tangible personal property which was used in the active conduct of the trade or business of farming on such farm and is sold in connection with the sale of such farm, but only if such real property and tangible personal property is sold or exchanged for use in the active conduct of the trade or business of farming on such farm by the transferee of such property, or

(B) Real property used in an active trade or business within the meaning of section 355; provided, however, that the holding of real property for rental shall not be treated as an active trade or business, and real property held for rental shall not be treated as qualified property.

(4) Qualified Person.—For purposes of this section, the term "qualified person" means—

(A) A person who—

(i) is an individual, estate, or testamentary trust,

(ii) is a corporation which immediately prior to the date of the sale or exchange is owned directly or indirectly by 35 or fewer individuals, or

(iii) is a partnership which immediately prior to the sale or exchange is owned by 35 or fewer individuals. For purposes of this paragraph direct and indirect ownership of a corporation or partnership will be determined under rule similar to Section 544."

On page 26, line 3, strike the "." and insert the following:

"; or, $2,000,000 in the case of any qualified debt instrument given exclusively in consideration for the sale or exchange by a qualified person of qualified property."

Mr. MELCHER. Mr. President, this is substantially the same amendment I offered before and explained before dealing with sales of farms and small businesses. I have reduced it from a cap of $10 million down to $9 million. I believe the amendment has been adequately explained. It does not dovetail into the amendment just accepted by the Senate, the Durenberger amendment.

Mr. PACKWOOD. Mr. President, I believe this amendment is acceptable on both sides.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 431) was agreed to.

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MELCHER. 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, the Senator from Kansas hopes the Senate will quickly adopt the Finance Committee's legislation responding to the imputed interest problem. It is a fair solution which will allow sellers of real estate to finance up to $2 million of the sales price at 9 percent. This is substantially below the interest rates available commercially and is essentially pre-1984 law for these transactions. This should take care of all residences and a large portion of commercial transactions. It should be emphasized that we are not talking about the purchase price of a building, but only the size of the loan the seller is willing to give. The sale price is not limited by these rules.

For loans over $4 million, the rate which must be stated is 100 percent of the applicable Federal rate. This is more favorable than either the Deficit Reduction Act or the 6-month temporary rules which we enacted last fall. I think most people will agree that it is a rare buyer of real estate, no matter how solvent, who could borrow at the same interest rate as the Federal Government. Thus, the rate for even the largest transactions will be below market.

For transactions with between $2 and $4 million of seller-financing, a blended rate between 9 percent and the applicable Federal rate will apply.

In addition, the Finance Committee added a provision to allow even lower rate loans for larger transactions when interest rates exceed 12 percent. This should help real estate sales even if interest rates should rise well above current projections.

The committee bill meets the requirement of revenue neutrality by extending the cost recovery period for real estate generally from 18 to 19 years. It is a measure of the committee's sense of responsibility that it has sought to make desired changes without adding to the Federal deficit.

I would say that it is disappointing that the committee adopted an unrelated change in the no-interest loan rules to exempt refundable deposits to a limited group of continuing care facilities from the laws applicable to everyone else. While this exception has been portrayed as a proelderly issue, it seems to me that the impact may likely be to provide no cost financing for these facilities and increasing their profitability at the expense of the Treasury.

Mr. President, despite this provision, the bill is a satisfactory solution to the imputed interest issue. The stop-gap legislation will expire July 1. It would be helpful to let buyers and sellers of real estate know the Senate's position before then.

Mr. DOMENICI. Mr. President, it is very important that the Congress act to legislate some reasonable rules regarding seller financing. If we don't pass some modifying language the very punitive provisions of the Deficit Reduction Act will go into effect July 1, 1985. I don't think this would be good for the economy and at the same time I think it is unnecessary Government intrusion into contractual relationships of buyers and sellers. I also think it undermines the respect for the tax system.

If Congress does nothing today, the Deficit Reduction Act provisions become law. They force parties dealing at arms-length to negotiate interest rates that are equal to, or higher than, commercial rates or else face adverse tax consequences.

One of those tax consequences is to perhaps end up paying income taxes on what I call phantom interest income. If a person doesn't charge enough interest, the IRS can impute income to him and make him pay taxes on it even though there is no income in his pocket. That is phantom income and that is not right.

Seller-financing has become an increasingly popular alternative to commercial financing. In order to make the sale, sellers are often willing to negotiate interest rates that are lower than those charged by commercial lenders. Realtors in my State tell me that many sales of property would never occur without this ability to negotiate lower interest rates.

I am as concerned as anyone that there may have been some abuses of this provision. Proponents of stringent imputed interest rules talk about tax loopholes and tax free, tax sheltered millionaires out there in business, the implication being that seller financing of real estate has somehow created a whole new class of millionaire in America.

I think the statistics confirm that to the extent there has been abuse, it has been on the really big deals. I have never heard it alleged that the family selling their house because they have outgrown it, or are moving because dad needs to find a new job someplace else, are offering seller-financing because they think they are going to get rich by abusing the tax code. It is just not the case. The same is true for a farmer or rancher selling some of his land. Sometimes people have to offer seller financing or the alternative is "no sale." This same reality faces the small businessman.

As chairman of the Budget Committee I am painfully aware of all the steps we take to try and keep interest rates down, yet in the context of this issue, if we don't adopt the Durenberger approach or the House bill, we will be not only encouraging higher interest rates for these transactions, we will be requiring them.

I am going to vote for the Durenberger amendment. It corrects the overzealous nature of last year's seller financing provisions and mitigates the impact which would have resulted.

For sales under $2 million the safe-harbor rate would be 9 percent.

For sales between $2 and $4 million, the first $2 million would be at 9 percent and the rest would be at the applicable Federal rate. This results in a blended rate.

For sales over $4 million, the entire sale must be financed at the applicable Federal rate. This is the so-called cliff provision.

I don't like the cliff. For a rapidly growing State like New Mexico, this $4 million ceiling is not good, however, it is better than the House version and it is better than the provisions in the Deficit Reduction Act. Treasury officials tell me it is the best we can do without losing a tremendous amount of tax revenue.

Thank you, Mr. President.

Mrs. HAWKINS. Mr. President, the legislation we are considering today is urgent. The stop-gap legislation that we adopted last year will expire on July 1, and then our farmers, small businesses and individuals selling

homes will be subject to the draconian provisions on imputed interest included in the 1984 Deficit Reduction Act.

Mr. President, the legislation that is now pending is extremely important to my State of Florida. As a high growth State, Florida needs affordable housing and depending on the economic climate, seller financing is the only means for thousands of Floridians to buy and sell property.

Let me state for the record that I would have preferred to repeal the imputed interest rules all together. It is simply not the role of the Government to impose an interest rate on property sales. Two parties striving to close a transaction should not be prohibited from using creativity and ingenuity to reach an affordable agreement. It is my intention to encourage such efforts in the private sector, not to stifle them.

Unless we take action today, the current law will allow the IRS to dictate an interest rate to an 80-year-old woman in Jacksonville, FL, trying to arrange a financing agreement with a prospective buyer for the purchase of the home she has owned for over 50 years. It is Government intervention in its worse form and is nothing less than deplorable.

My thoughts on imputed interest are well documented and I supported Senator SYMMS' repeal efforts last year. I violently object to the Internal Revenue Service interjecting itself into the private negotiations between buyer and seller. I still prefer total repeal of the imputed interest rules, but realize that the only solution to this nightmare that has any chance of passing both Houses and providing some relief to the harsh 1984 rules is a compromise in this nature.

I, therefore, urge my colleagues to support this bill so that honest Americans trying to sell their homes, businesses and farms may continue to do so with as little intervention by the IRS as possible.

AMENDMENT NO. 431

(The following proceedings occurred later in the day:)

Mr. DOLE. Mr. President, I ask unanimous consent that the part of the Meicher amendment numbered 431 on page 26, line 3, be inserted in the Durenberger amendment No. 429 rather than to the committee substitute. This deals with the imputed interest measure which was passed earlier.

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

Mr. PACKWOOD. Mr. President, I suggest we move to final passage.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass?

So the bill (H.R. 2475) as amended, was passed.

Mr. PACKWOOD. I move to reconsider the vote by which the bill, was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, let me congratulate the managers of the bill and all those who participated. There will be no more rollcall votes today. I do not believe there will be any rollcall votes tomorrow, but I want to discuss that with the distinguished minority leader. I shall try to make some announcement so the offices will be alerted between now and 6:15 or 6:30 p.m.

There will be no more rollcall votes this evening. We will have a number of nominations to approve, but I understand those are now in the process of being cleared on both sides. I hope that can be done tonight or sometime tomorrow. I shall make some announcement later.

At this time, I particularly congratulate the chairman of the committee and the distinguished ranking member [Mr. LONG] and all those who participated.

I also thank the distinguished Senator from Ohio [Mr. METZENBAUM], who started us off on a little rocky road, but it worked out all right. I think his amendments are good amendments. I am pleased that the bill has been concluded and we have done it all in a matter of a few hours once we started on it.

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

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

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent there now be a period for the transaction of routine morning business until 6 p.m., with statements therein limited to 5 minutes each.

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

EXPRESSION OF OPPOSITION TO SYSTEM OF APARTHEID IN SOUTH AFRICA

Mr. BYRD. Mr. President, on the calendar of bills and joint resolutions read the first time is one bill, H.R. 1460, which, until rule XIV, would be read the second time at some point during this period.

Does the distinguished majority leader have any objection to my asking that that second reading take place now?

The PRESIDING OFFICER. The clerk will read H.R. 1460.

The legislative clerk read as follows:

A bill (H.R. 1460) to express the opposition of the United States to the system of apartheid in South Africa, and for other purposes.

Mr. DOLE. Mr. President, I object to any further proceedings.

The PRESIDING OFFICER. The bill will be placed on the calendar.

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.

AGRICULTURAL COMMODITY USES RESEARCH ACT OF 1985

Mr. GLENN. Mr. President, today I rise to introduce "The Agricultural Commodity Uses Research Act of 1985." This act comprises one element of the package needed to return prosperity to U.S. agriculture.

Mr. President, the 1980's have not been kind to U.S. agriculture. Prices have declined, forcing incomes lower. Land values have declined, forcing thousands of farmers out of business. Unfortunately, this situation probably will not improve in the near future. As a result, we must not only provide short-term aid to address our current problems but also devise a long-term strategy which will return profit to agriculture.

The history of U.S. agriculture reveals that farm prosperity occurs when demand for commodities is in balance with supply. During the 1970's, an expanding export market absorbed the increasing supply of commodities produced by U.S. agriculture, permitting a period of record prosperity. However, there are signs the export market may not provide the demand America's farmers need in the 1980's and beyond. Even now, excess capacity in U.S. crop agriculture approaches 6 percent. Ominously, continuation of current trends means that the production capacity of U.S. agriculture may have to shrink to bring

supply and demand back into balance. Proliferation on new technologies, including the enormous potential of biotechnology, reinforces the gloomy outlook.

Mr. President, along with that, we have seen the sales of America's farm products, which are about one-third of our agricultural production in this country, shrink by one-fourth during the past few years, due in large part to the strength of the dollar. This has made it difficult for us to sell in competition with other agricultural production around the world.

So, along with proliferation of new technologies, including the enormous potential of biotechnology, this situation challenges us to devise a program that is forward looking and bold—a program that will increase demand at a rate which is at least equal to the rate of increase in supply. I believe that a program drawing on America's unparalleled agricultural research creativity can accomplish this goal.

Specifically, the program I am proposing in the "Agricultural Commodity Uses Research Act of 1985" is a $100 million federally funded, 5-year research program to develop new nonfood uses for agricultural commodities traditionally used as food or livestock feed. I repeat: New nonfood uses of agricultural commodities.

The bulk of the $100 million would be directed to the Agricultural Research Service and the Competitive Grants Section of the Cooperative State Research Service. Federal funds in the competitive grants section would have to be matched by grant recipients at a ratio of $1 of self-generated funds to every $2 of Federal funds. The matching funds requirement will encourage recipient institutions to develop ties with private industrial concerns, thereby forming a bond which will improve both successful adoption of new products and the quality of long-term research.

The agricultural commodity uses research program will encourage application of basic knowledge in biology, chemistry, and physics to developing the potential for new nonfood products from food and feed grains. To a limited degree, such research is already being conducted within the USDA/land grant college system, as well as by private industry. However, the amount being spent is small. For example, in fiscal year 1984, only $5 million out of a total Agricultural Research Service budget of $474 million was spent on developing new uses for food and feedgrain commodities.

Let me repeat those figures. In fiscal year 1984, only $5 million of the total $474 million earmarked for research was spent in developing new uses for food and feedgrain commodities.

Furthermore, expenditures on new uses for agricultural commodities pale in comparison to the amounts spent on production research. This imbalance is one reason U.S. agriculture's productive capacity has outstripped demand for its products. The "Agricultural Commodity Uses Research Act of 1985" is one step in rectifying the imbalance.

Mr. President, throughout our whole history as a nation, we have poured money into research for agriculture; and it has not been just "amber waves of grain and purple mountain majesty across the fruited plain, from sea to shining sea," which has brought us the agricultural production capacity that we have in this country. We learned how to do new things; we put effort into research. We learned how to do things in different ways, how to replenish the soil with fertilizer, how to stabilize the soil and prevent it from running off into the sea. We learned how to create new seeds. We created what is termed in the world "the green revolution," because we produced things beyond anybody's imagination.

When I was a boy in Ohio, good farm production of corn was around 40 or 45 bushels an acre. Now, somewhere around 120 or 125 bushels per acre is not unusual on our best productive land in Ohio. That is triple the production that was possible on the best farmland when I was growing up in Ohio.

It shows what we can do when we put our money into research and land grant colleges and create a green revolution. Yet, we have not gone the next step and said, "What are we going to use agricultural products for outside of just food?"

What I am trying to do with this bill is to get some money into research so that we can have new nonfood uses for our commodities and use up some of our surpluses.

When I was studying organic chemistry in college many years ago, I remember all the predictions about uses of food and breaking it down and making all sorts of products out of it. If we just had half the research in that area for new nonfood uses of agricultural products, it seems that we could come up with uses of commodities that would match the prodigious production we have.

New nonfood products from food and feed grains are not far off fantasies that would take years to develop. Right now, in fact, corn starch is used in manufacturing paper products, building materials, textiles, and adhesives. Three to five billion pounds of U.S. produced fats and oils are used in nonfood products. In my judgment, we have just begun to scratch the surface in this area.

Many chemicals currently made from petroleum, for example, can also be made from carbohydrates. With the increase in oil prices, carbohydrates have become competitive as a feedstock. However, research is needed to develop more efficient processes for turning carbohydrates into substitutes for petrochemicals.

Even more potential lies in new chemicals and other products which utilize the unique properties that polymers of starch and cellulose possess, such as biodegradability, water solubility, and water retention. There is also the potential offered by what some scientists term "molecular farming." This type of farming would use genetic engineering to program crops or livestock to produce potentially useful chemicals and other molecular substances.

New nonfood products derived from food or feed commodities offer not only the potential to increase demand for farm products, but also the potential to reduce America's dependence on imports of certain strategic materials, particularly oil. Moreover, naturally derived chemicals can potentially provide environmentally safer substitutes for petrochemicals.

Mr. President, let me emphasize that the proposal I am introducing today will not solve our immediate farm problems. It is not going to do that now or next year. Instead, it is a long run, forward looking strategy to help return profit to agriculture and to restore our farmers' confidence in the future.

Mr. President, I look forward to that future, to working with Congress and working with agricultural interests in this country and with our farmers to shape that program for the future.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD along with these remarks and look forward to working with my colleagues for passage of this bill. I very firmly believe that if we can match research into new uses of commodities that begins to approach the successes we have had in the production of food we will have gone a long way toward balancing the agricultural situation in this country and bring profitability to American agriculture once again.

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. 1366

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 "Agricultural Commodity Uses Research Act of 1985".

AGRICULTURAL COMMODITY USES RESEARCH PROGRAM

SEC. 2. (a) During each of the fiscal years 1986 through 1990, the Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") shall conduct a research program in accordance with this Act (and the provisions of law referred to in sections

3(c) and 5(c) of this Act) to develop new non-food uses for agricultural commodities traditionally used as food or as inputs into the production of livestock or livestock products.

(b)(1) In addition to any other amounts authorized to be appropriated to the Department of Agriculture for research purposes, there are authorized to be appropriated for each of the fiscal years 1986 through 1990 50 percent of the amounts referred to in subsection (c).

(2) To the extent practicable, the Secretary shall use funds appropriated under provisions of law other than paragraph (1) to carry out the activities referred to in subsection (c) during such fiscal years in amounts equal to 50 percent of the amounts referred to in subsection (c).

(c) To the extent practicable, the Secretary shall carry out the program referred to in subsection (a) through the following activities in at least the following amounts:

(1) Competitive research grants, to be made available in accordance with section 3—

(A) $3,400,000 for fiscal year 1986;
(B) $6,800,000 for fiscal year 1987;
(C) $13,600,000 for fiscal year 1988;
(D) $14,140,000 for fiscal year 1989; and
(E) $14,710,000 for fiscal year 1990.

(2) Agricultural research service, to be made available in accordance with section 4—

(A) $3,000,000 for fiscal year 1986;
(B) $6,000,000 for fiscal year 1987;
(C) $12,000,000 for fiscal year 1988;
(D) $12,480,000 for fiscal year 1989; and
(E) $12,980,000 for fiscal year 1990;

(3) Special research grants for an agricultural commodity uses research institute at the Ohio State University, Columbus, Ohio, to be made available in accordance with section 5—

(A) $150,000 for fiscal year 1986;
(B) $150,000 for fiscal year 1987;
(C) $150,000 for fiscal year 1988;
(D) $160,000 for fiscal year 1989; and
(E) $170,000 for fiscal year 1990;

COMPETITIVE RESEARCH GRANTS

SEC. 3. (a) The Secretary shall use funds made available under section 2(c)(1) to make competitive research grants to pay the Federal share of the cost of conducting research described in section 2(a).

(b) The Federal Share of grants provided under subsection (a) may not exceed 66⅔ percent of the cost of conducting such research.

(C) Except as provided in this section, the Secretary shall make such grants in accordance with section 2(b) of the Act entitled "An Act to facilitate the work of the Department of Agriculture, and for other purposes", approved August 4, 1965 (7 U.S.C. 4501(b)).

AGRICULTURAL RESEARCH SERVICE

SEC. 4. The Secretary shall use funds made available under section 2(c)(2) to conduct research described in section 2(a) at regional research centers of the Agricultural Research Service.

SPECIAL RESEARCH GRANTS FOR AGRICULTURAL COMMODITY USES RESEARCH INSTITUTE

SEC. 5. (a) The Secretary shall use funds made available under section 2(c)(3) to make special research grants to Ohio State University, located in Columbus, Ohio, to pay the Federal share of the cost of establishing and operating an institute for the study of the economics of developing and marketing new non-food products derived from agricultural commodities traditionally used as food or as inputs into the production of livestock or livestock products.

(b) The Federal share of grants provided under subsection (a) may not exceed 50 percent of the cost of conducting such research.

(c) Except as provided in this section, the Secretary shall make such grants in accordance with section 2(c) of the Act entitled "An Act to facilitate the work of the Department of Agriculture, and for other purposes", approved August 4, 1965 (7 U.S.C. 4501(c)).

SCHEDULE

Mr. BYRD. Mr. President, I would like at this time to propound a query to the distinguished majority leader for the benefit of Senators so that this might be in the RECORD and they might schedule their days accordingly.

Would the distinguished majority leader be able to say at this point what the program will be for the remainder of today, for tomorrow, and Friday and next week if he is in a position to do that at this time?

Mr. DOLE. We have completed the so-called imputed interest legislation. We hope to take up some executive nominations yet today. There will be no more rollcall votes today.

On tomorrow we will have a conference report on S. 883, the Export Administration Act. We will probably do S. 1279 and H.R. 2800, the Landsat and commercialization tonight. We understand that is being cleared on the Senator's side. It will take a few moments.

Mr. BYRD. This will be tomorrow?

Mr. DOLE. I would like to do that one this evening, Landsat and commercialization which is noncontroversial. I understand it is in the process of being cleared. It has passed the House of Representatives.

Tomorrow we just have a conference report and Executive Calendar nominations. We are looking for other noncontroversial matters tomorrow and I do not anticipate rollcall votes tomorrow unless there should be one on a nomination.

So no more rollcall votes today, none on tomorrow, and we will not be in on Friday.

Then on Monday, July 8, we hope to begin consideration of the South Africa bill and I would guess we will come in at noon on that Monday, have opening statements, hopefully get some amendments laid before the Senate. If they can be debated, it may not be necessary to have rollcall votes on that day. We would have to go over that bill on Tuesday to complete action on the McClure-Volkmer gun legislation where we do have a time agreement.

There will be a number of votes on Tuesday, July 9, and then Wednesday through Friday we would complete action on South Africa and other possible legislation.

Mr. KENNEDY. Mr. President, will the Senator yield for a question?

Mr. BYRD. I yield.

Mr. KENNEDY. I express certainly my appreciation to the majority leader and minority leader for the willingness to schedule the debate and discussion on the South African legislation. The majority leader had indicated some time ago that he was prepared to schedule it at an appropriate time. I express my appreciation to the majority leader for permitting the Senate to move toward consideration of that legislation and also indicate my understanding of the prior consent agreement is that we were going to consider the final action on the McClure-Volkmer gun legislation. There are consent agreements that have been proposed on that legislation.

I have some amendments. I think we will have probably a time for debate and discussion.

I would be quite willing if it was the desire of the majority leader to see to the end of the South African legislation and then to consider McClure-Volkmer right after that, whatever the majority leader would want to do in the order. We would be more than glad to cooperate with him.

Mr. DOLE. I appreciate that. I assume if we could work that out we would just slip the unanimous-consent agreement on the McClure-Volkmer gun bill until a later time on Tuesday. As I understand, and I am not certain how long it will take on the South Africa legislation, but I would guess a couple of days—it is my understanding a couple of days.

Mr. KENNEDY. I would certainly hope so. I think that I can see perhaps two or maybe three amendments to the Foreign Relations Committee bill. There may obviously be others who would want to reduce its impact. I would hope we would not get into a prolonged discussion or debate on it. I do not anticipate that at this time. But I would hope that we could complete action in a couple of days. I would think it would take certainly that amount but would be glad at the appropriate time that we come back to consider a consent agreement should the majority leader so request. At least I personally would. I am sure others would have their views on that.

Mr. DOLE. Let me check with the principals involved with the McClure-Volkmer legislation which includes the distinguished Senator from Massachusetts and if it is satisfactory and agreeable we could probably slip that agreement around and complete action on South Africa before moving to the gun bill. If we cannot we just may have to split it and come back to it on Wednesday.

Does that give the minority leader some idea?

Mr. BYRD. Yes; and I thank the distinguished majority leader. I thought I heard the majority leader say there might be a rollcall vote on a nomination tomorrow.

Mr. DOLE. I do not anticipate any. You never know. As far as I know there have been no requests on this side for any vote on a nomination. If the nomination were particularly controversial, I assume we could probably hold it over. But there is a certain sense of maybe not urgency but the need to confirm the nominations if possible tomorrow because it will give those nominess a little time during the recess to prepare themselves for their new position.

Mr. BYRD. Did the distinguished majority leader have reference to any particular nomination when he stated that there might be a vote tomorrow?

Mr. DOLE. I do not believe so. It is possible someone might jump up and say, "on that one I want a rollcall." I do not anticipate it or know of any request. If there are—I hope there are not—I assume we could accommodate them.

Mr. BYRD. I understand, and I thank the distinguished majority leader.

Mr. KENNEDY. Mr. President, will the majority leader yield?

Mr. DOLE. I yield the floor.

Mr. KENNEDY. If the majority leader wanted to propose a consent agreement on the South African legislation tomorrow, this would certainly be something that might be considered and we will be glad to cooperate with the majority leader in any way to try and see if those supporting the legislation would certainly support a reasonable time limit spelled out by the majority leader.

Mr. DOLE. I appreciate that, I might say to the distinguished Senator from Massachusetts, and I will ask the chairman of the committee, Senator LUGAR, to be in touch with Senator PELL and others to see if we might be able to propound a unanimous-consent request tomorrow for an agreement on that bill.

While we are waiting for clearance of maybe the Landsat bill—is that ready? I understand that may be ready. The distinguished Senator from Washington, Senator GORTON, will handle that legislation on this side and following that I should have word within about 4 or 5 minutes on nominations and I will be right back.

Mr. BYRD. Very well.

BUDGET ACT WAIVER

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar 195, Senate Resolution 180, the budget waiver for S. 1279.

The PRESIDING OFFICER. The resolution will be stated.

The bill clerk read as follows:

A resolution (S. Res. 180) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1279.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Washington?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution was agreed to, as follows:

S. RES. 180

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 1279. Such waiver is necessary because S. 1279 authorizes the enactment of new budget authority which would first become available in fiscal year 1985 and such bill was not reported on or before May 15, 1984, as required by section 402(a) of the Congressional Budget Act of 1974 for such authorizations.

The authorization contained in S. 1279 is necessary to ensure that sufficient funds are available for the Secretary of Commerce to carry out the purposes of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.). That Act provided for a phased commercialization of land remote sensing, and the commencement of activities under the Act have necessitated increased funding which could not have been anticipated at the time of the enactment of that Act. S. 1279 provides the statutory authority by which appropriations may be made to fulfill the purposes of that Act.

The Appropriations Committees of the Senate and the House of Representatives have indicated that they will include appropriations for such purposes in the supplemental appropriations bill currently under consideration. Thus, congressional consideration of this authorization will in no way interfere with or delay the appropriations process, but will actually provide the authorization pursuant to which such appropriations may be made.

LANDSAT AUTHORIZATION ACT

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 188, S. 1279, the Landsat Commercialization Act.

The PRESIDING OFFICER. The bill will be stated by title.

The bill clerk read as follows:

A bill (S. 1279) to provide authorization of appropriations for activities under the Land Remote Sensing Commercialization Act of 1984.

The PRESIDING OFFICER. Is there objection to consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment as follows:

On page 2, line 2, strike "million".

So as to make the bill read:

S. 1279

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 609 of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4278) is amended by striking "$75,000,000 for fiscal year 1985" and inserting in lieu thereof "$295,000,000 for fiscal years 1985 through 1989, of which not more than $125,000,000 shall be available for fiscal year 1985 and 1986,".

Mr. GORTON. Mr. President, I ask unanimous consent for consideration of the committee amendment to S. 1279.

The PRESIDING OFFICER. Is there objection? Without objection, the clerk will report.

The bill clerk read as follows:

On page 2, line 2, strike "million".

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

Mr. GORTON. Mr. President, H.R. 2800 which is indentical to S. 1279, authorizes funding for the transfer of the Federal Government's land remote sensing satellite [Landsat] system to the private sector.

The bill authorizes $295 million for the fiscal years 1985 through 1989, provided that no more than $125 million will be appropriated in fiscal years 1985 and 1986. This funding is intended to enable a private contractor to construct and launch two land remote sensing satellites pursuant to the Land Remote Sensing Commercialization Act of 1984 (Public Law 98-365).

The Department of Commerce has selected, by means of a competitive process, a contractor to operate the existing Landsat system and to construct and operate two follow-on satellites. The contractor is Earth Observation Satellite, Inc. [Eosat], a partnership between Hughes Aircraft and RCA Astro Electronics. This contract has been approved in principle by the Secretary of Commerce, the Director of the Office of Management and Budget, and the President. On May 22, 1985, the President transmitted to the Congress a budget request for $125 million to begin funding the Eosat contract. The supplemental appropriations bill passed by the Senate last week included $125 million for this purpose.

The Eosat contract satisfies the requirements of titles II and III, of Public Law 98-365. Titles IV, V, and VI of the act established other requirements which are being addressed by the Federal Government.

Title IV directs the Secretary of Commerce to issue regulations to govern private remote sensing activities under the jurisdiction of the United States. I understand that draft

regulations are near completion and I look forward to reviewing them in the near future.

Title V provides for continued Federal research and development in remote sensing. The Secretary of Commerce and the Administrator of NASA are required to submit to the Congress by July 17, 1985 a report on Federal research and development in remote sensing applied to the Earth and its atmosphere.

Title VI provides for continued Federal archiving of remote sensing data. I anticipate that the Department of Commerce will inform the Congress of the Department's plans for carrying out these archiving requirements.

The sole purpose of H.R. 2800 is to authorize the Eosat contract. The Commerce Committee's Subcommittee on Science, Technology and Space, which I chair, will exercise oversight of these other provisions through hearings and, where appropriate, further legislation.

S. 1279 was ordered reported by unanimous vote of the Commerce Committee on June 13, 1985. The bill requires a waiver of section 402(a) of the Budget Act of 1974 because the bill includes authorization of fiscal year 1985 appropriations and was not reported prior to May 15, 1984. The budget waiver (S. Res. 180) was reported by the Budget Committee on June 24. The House of Representatives passed H.R. 2800 on June 24 as well.

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.

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate now turn to Calendar Order No. 199, H.R. 2800, the House companion bill.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 2800) to provide authorization of appropriations for activities under the Land Remote-Sensing Commercialization Act of 1981.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Washington?

There being no objection, the Senate proceeded to consider the bill.

Mr. GORTON. Mr. President, I move to strike all after the enacting clause and insert the text of S. 1279, as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington.

The motion was agreed to.

Mr. HOLLINGS. Mr. President, I support H.R. 2800, the House counterpart to S. 1279 that was reported by the Senate Committee on Commerce, Science, and Transportation on June 14, 1985. This bill should finally, and I underscore finally, resolve the budgetary issues surrounding the commercialization of the Federal land remote sensing satellite system [Landsat].

Last year when the Senate Committee on Commerce, Science, and Transportation authorized the commercialization of Landsat, everyone thought the issue had been resolved and that the private sector would soon be operating the system. However, it is now nearly a year later, and the final conditions of the contract are still being negotiated by Eosat and the Department of Commerce. The budgetary issues, however, have been resolved, and this bill will take care of that matter and reiterate congressional support for this activity.

Although it has taken a long time, it appears that the final proposal works to protect the best interest of the Federal Government, to minimize the amount of the Federal transitional support, and to ensure the successful commercialization of Landsat. Therefore, it has been worth the wait. I hope that Eosat and Commerce can now quickly resolve their remaining differences so that the work can get under way and the data gap can be minimized.

I support the authorization of the Landsat system recommended in H.R. 2800 and am pleased that this bill will result in a significant net cost savings to the Federal Government. Based on a preliminary estimate, the proposed contract with Eosat, compared to continued Federal operation of the Landsat System, will result in a net cost savings of $290 million. The commercialization of the Landsat system is in the best interest of both the Federal Government and the private sector.

Mr. President, I support H.R. 2800 and the guarantees that are contained in the proposed contract between the Department of Commerce and Eosat. I urge my colleagues to support this measure so that Eosat can get on with the development of a viable commercial land remote sensing satellite system.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 2800), as amended, was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 2800) entitled "An Act to provide authorization of appropriations for activities under the Land Remote-Sensing Commercialization Act of 1984", do pass with the following amendment:

Strike out all after the enacting clause and insert:

That section 609 of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4278) is amended by striking "$75,000,000 for fiscal year 1985" and inserting in lieu thereof "$295,000,000 for fiscal years 1985 through 1989, of which not more than $125,000,000 shall be available for fiscal years 1985 and 1986.".

Mr. GORTON. 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.

ORDER TO INDEFINITELY POSTPONE S. 1279

Mr. GORTON. Mr. President, I move to indefinitely postpone S. 1279.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington.

The motion was agreed to.

A MOUNTAINEER'S PRIDE

Mr. BYRD. Mr. President, last Thursday—June 20—was officially West Virginia Day in my home State—the 122d birthday of West Virginia's admission to the Union as the 35th State.

Across my State, West Virginia Day was celebrated in a variety of ways. In my opinion, one of the most expressive instances of that celebration was an essay composed by Mr. Adam Kelly, a West Virginia editor who writes a column that appears in several publications in the State. Mr. Kelly's column on this occasion, entitled "What West Virginians Are About," captures simply but eloquently the feeling that many West Virginians have toward themselves, and that increasing numbers of non-West Virginians perceive while spending time with the people of my State.

I ask unanimous consent that Mr. Adam Kelly's column, as it appeared in the Evening Journal of Martinsburg, WV, on June 19, 1985, be printed in the RECORD.

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

WHAT WE WEST VIRGINIANS ARE ABOUT

(By Adam Kelly)

West Virginia Day.

For too many years West Virginians have sat back and let the rest of America take pot shots at them.

"You can't be from West Virginia, you're wearing shoes," is the same jeering remark often uttered by those first introduced to a West Virginian.

On television and in magazines, in all the other mass media and by word of mouth, the rest of the country has been almost convinced that West Virginia is just a ragtag collection of poverty pockets and exploding mines, illiterate hicks and lazy bums who do nothing but brew moonshine and collect welfare handouts.

The people of West Virginia know better. So do those who visit the state and really "see" West Virginia instead of merely looking for what they expect to find here.

This West Virginian thinks the time has come to speak out.

Sure, West Virginia has plenty of faults. Its people are well aware of them—to the extent they'll probably tell you about them before you get a chance to ask. West Virginians are not ones to hide their problems.

In fact, they're so humble that they might forget to tell you that the good things about West Virginia outweigh the bad so many times over that they wouldn't live elsewhere for anything in the world.

For West Virginia has managed to maintain progress without being trapped in a concrete wasteland.

This state supplied the coal, natural gas and oil to fuel America during the growth years of this century. Very little of this vast wealth was returned into its hills. But when America finally gets down to looking seriously for a long-term solution to its energy problems it will turn again to West Virginia. What other state has as much coal so near the great masses of population and industry?

When the people in the crowded, pollution-fouled, crime-ridden, big cities of America get fed up with urban existence, where do they turn for a return to the simple, rural life that permits existence with dignity and purpose?

In times of war, what other state has sent so many of its young men to fight and die? More West Virginians per capita have died in America's conflicts than men from any other state in the union. Nowhere are people more devoted to country than here.

And what other state has preserved its ancient crafts and traditions—not in museums either—but as living monuments to the common man?

West Virginians have yet to renounce their heritage for any mad dash into an uncertain future.

If you want to know what real roots are, listen to a sweet-voiced quartet at a family reunion toward dusk on a summer evening. Watch the contented faces of ladies at work on a "Rose of Sharon" or "Double Wedding Ring" quilt.

Where do you find these things in abundance?

You can find them in the same state where people are still unafraid to help a stranger, where folks are just plain friendly—not hiding behind a mask of hospitality, but people who treat everyone like a human being even when they stand to gain nothing in the world by it.

Example: a motorist confused in the fog near Morgantown on a rainy, dark night missed the correct ramp entrance and inadvertently drove part way up the wrong way. He pulled off frantically to the side, there to ponder his predicament. A good old boy in a pickup coming down the ramp sized up the situation immediately, stopped, rolled down his window, and said: "Back her down. I'll just sit here and block the road." A like situation on any metropolitan freeway in America would have resulted in an utter cacophony of screams, curses, and horn-blowing imprecations—and no help.

In the struggle to subdue their rugged mountains West Virginians have learned the value of each person. They have survived without losing dignity.

And now that the rest of America is realizing what West Virginia never forgot—that who you are, deep inside, is more important than how fast you can go, how big you can build or how much you can earn—the West Virginians will not scorn them. (Even though we have every right to do so.)

Though the rest of America, caught up in the rat race, often has unjustifiably tried to shame West Virginians for being "backward," the people here are not grudge holders. It's just not in their nature.

Instead, they'll invite the stranger in to "sit a spell," cast off his fetters and return to the God-given rhythms of sunrise, moonset and the slow pulse of ancient mountains.

And maybe, just maybe, the rest of the country can learn a lesson from West Virginians: that when people recall they are a part of nature, and love her hollows, creeks, woods and mountains, they can never be enslaved, by a timeclock, by a machine or by other persons.

West Virginians never did lose sight of this. And thus Mountaineers always have been, are now, and always will be, free.

REPROGRAMMING OF FUNDS FOR RENOVATION OF IMMIGRATION BUILDING

Mr. MATHIAS. Mr. President, as chairman of the Committee on Rules and Administration, I would like to advise the Senate of my intention to seek to reprogram certain funds appropriated for renovation of the Immigration Building, located at 119 D Street Northeast. While ordinarily this would be a routine matter, in this instance I have concluded that it would be proper to give this notification because of the effect of the proposed reprogramming on the Senate Employees' Child Care Center. I should add that the ranking member of the Rules Committee, Senator FORD, intends to join in the reprogramming request, and that he agrees that this notification would be advisable.

Part of the cost of renovating any building is the expense of obtaining temporary quarters for the occupants displaced by the renovation. In the case of the Immigration Building, the substantial nature of the work being done precludes any occupancy during the renovation process. Virtually all of the occupants of the building have been temporarily relocated, with the exception of the Senate Employees' Child Care Center [SECCC]. As Senators will recall, in August 1983, the Rules Committee allocated about 3,500 square feet of space in the Immigration Building for use as a child care center for the children of Senate employees. On November 14 of that year, the Senate adopted Senate Resolution 269, authorizing payment of up to $20,000 in start-up costs for the center. On February 27, 1984, the Senate Employees' Child Care Center opened its doors, and for the past 16 months has been providing high-quality child care services. The center is not operated by the Senate, but by a nonprofit corporation organized by the parents of children who attend the center. The executive director, Dr. Nancy Brown of Bowie, MD, and her dedicated staff have worked hard to SECC a model onsite workplace child care facility. Their success may be measured by the fact that, in addition to the 38 children who now attend the center every working day, many more children are on a waiting list to enter the center.

When it became clear that the renovation of the Immigration Building required that the structure be completely vacated, I directed the staff of the Rules Committee to review all the options for a temporary home for SECC. Of course, the relocation of the center for the required period of more than a year presented special problems beyond those applicable to an office relocation. It was not simply a question of finding adequate space, but of locating adequate space suitable for this particular use. For example, fire safety regulations in virtually every jurisdiction—including the District of Columbia—require that facilities for young children be located at or very near ground level. This requirement alone greatly restricted the number of potential sites. The competing demands of other essential Senate offices further narrowed the options.

After an intensive search of all properties owned or accessible to the Senate, and some under the jurisdiction of the House of Representatives, the rules staff concluded that there was really only one viable solution to this problem: to purchase modular building units in which the center could be temporarily housed until the Immigration Building has been fully renovated. These units can be procured in sufficient quantity, and are of sufficiently high quality, to provide an adequate relocation space equivalent to the facility the center now occupies in the Immigration Building. These units may be safely erected on property controlled by the Senate. Upon completion of renovation of the Immigration Building, the modular units would become available to the Senate for any use that then appears appropriate. Such uses could include occupancy by the Capitol Police or some other support function, either on the original site on which they had been erected or elsewhere; or, if there is a change in the current plans that call for the child care center to return to the renovated Immigration Building, for continued use for child care.

If the Senate has no further need for the modular units, they could presumably be resold. The cost of the needed modular units would be approximately $160,000. While significant, this sum must be compared to the costs the Senate would incur were it to undertake the substantial adaptations needed to render some space within another Senate building suitable for child care use, and to the costs of leasing suitable space for a temporary home for the center. We have also determined that this sum is available for reprogramming from the ac-

count established to pay for the renovation of the Immigration Building. Senator FORD and I agree that, when all the factors are taken into consideration, the purchase of modular units is the best available solution to the problem of temporary relocation of the Senate Employees' Child Care Center.

As I stated at the outset of these remarks, my intention, and that of the senior Senator from Kentucky, is to request the Architect of the Capitol to seek approval from the Appropriations Committee to reprogram these funds. We are both mindful of the fact that, during the debate on the resolution authorizing the allocation of $20,000 in start-up costs, Senators were assured that Senate Resolution 269 authorized only a "one-time appropriation," and that no further funding requests for the child care center were anticipated. The reprogramming request is not inconsistent with these assurances, for two reasons:

First, no new appropriation of any kind is called for, but rather a reallocation of funds already appropriated.

Second, the purchase of these modular units is not solely for the benefit of the child care center, but simply for its temporary use, after which the units will be available for any use needed by the Senate, or for resale. However, in order to allow an opportunity for objection by any Senator who feels that this reprogramming request is inappropriate in light of the assurances made by me in the debate on Senate Resolution 269, Senator FORD and I hereby advise our colleagues that we plan to sign this reprogramming request at the close of business tomorrow, June 27, unless such objections are communicated to us.

OVER THE BIG-POWER CHASM

Mr. PELL. Mr. President, I was intrigued by a recent article in the New York Times by Armand Hammer, who is chairman and chief executive officer of Occidental Petroleum Corp.

I know of no one in the free world who has dealt so extensively over the years with the Soviets on business and other matters as has Dr. Hammer. He has come to have a profound understanding of our adversaries. Accordingly, I take a great interest in his thinking on the issues facing both sides.

His June 15 article, "Over the Big-Power Chasm," offers the hope that the "long impasse between the Soviet Union and the United States may possibly now be resolved." Dr. Hammer believes that the leaders of the two countries may now have strong motivations for peace which could lead to a verifiable agreement for the reduction of armaments. He urges that the two leaders meet before the end of the year to create a psychological momentum.

Dr. Hammer argues:

There is an opportunity for Mr. Reagan and Mr. Gorbachev to achieve immortality. There is an opportunity for a better world. The cynics and doubters on both sides must be ignored.

Mr. President, I commend this article to my fellow Senators and ask that it be printed in the RECORD following my remarks.

The article follows:

[From the New York Times, June 15, 1985]

OVER THE BIG-POWER CHASM

(By Armand Hammer)

LOS ANGELES.—The long impasse between the Soviet Union and United States may possibly now be resolved. The unfolding of recent events may make the time right and ripe. An opportunity has arisen that will enable the present antagonism to suddenly melt into a cooperative spirit.

Why has this "impossible event" now become possible?

President Reagan, whose prior pronouncements were bitter and sometimes belligerent, has been turned by events into a cooperative spirit. He is presiding over this nation for the last time. His eyes are no longer on political considerations. He can have only one ambition—the noblest kind—to go down in history as a peacemaker.

His second, although subordinate, consideration is that if he can achieve a verifiable agreement for the reduction in armaments, the only mark that would be against him, now that he has gone a long way to solving inflation problems, is the deficit. But if the United States could free itself from devouring military expenses, the deficit could disappear.

Mikhail S. Gorbachev's motivation for peace is similar to Mr. Reagan's. He, too, would be hailed by generations to come if he could end the strife and its resulting menace to all—and by such an achievement could take his place alongside Lenin in Russian history. The burdens of armaments weigh heavily upon the Russian people, just as American expenditures do upon us.

There is no public bookkeeping system to reveal this in the Soviet Union, but books are not necessary. The standard of living of the Russian people is far lower than the dream of revolution envisioned. If Mr. Gorbachev could relieve his treasury of the exhausting expenses of the arms race, the Russian people could enjoy a higher standard of living. Mr. Gorbachev would be blessed by his people not only for peace but also for giving them a better quality of life.

The rewards for establishment of a genuine friendly relationship are so immense, and the time so right, that both sides must dare make concessions previously considered impossible. The technical problems in disarmament are so involved and complex that the greatest experts on both sides may honestly differ. When one is dealing with nuclear weapons, which can never be fully tested because there would be nothing left to test, agreement is made more difficult. Thus, we must reach a point that goes beyond military mathematics and both sides must recognize that there is little to lose in trusting the other.

The growth of mutual trust, in turn, involves psychological elements, not merely deeds. The creation of a psychological momentum is itself the greatest deed. One way to achieve this would be a meeting before the end of 1985 between Mr. Reagan and Mr. Gorbachev. If, in the meantime, both sides refrained from rhetoric condemning each other, it would set the stage for a successful meeting. Mr. Reagan could win over the Russians by offering to go to Russia for the first meeting, with a return meeting by Mr. Gorbachev next spring.

Neither leader has been in the other's country. What is there to lose by both leaders meeting and getting to know each other? If both could declare to the world, at such a meeting, that neither would be the first to use nuclear or conventional weapons in an attack upon the other and, further, that they intended to hold additional meetings at regular periods because they were determined to achieve friendship, good will and good progress in the Geneva negotiations, there would then be an electric shock of gratification throughout the world. Such a mutual announcement with an earnest handshake might cause celebrations and dancing in the streets, like the declaration of a cease-fire at the end of a war. And from this, in turn, would flow such a flood of approval and stimulation that the process of reconciliation would be accelerated beyond any possible anticipation.

There is an opportunity for Mr. Reagan and Mr. Gorbachev to achieve immortality. There is an opportunity for a better world. The cynics and doubters on both sides must be ignored.

As Pindar, the Greek poet said, "We must exhaust the limits of the possible."

Everything is possible.

THE RIGHT WAY TO THINK ABOUT TAX REFORM

Mr. SYMMS. Mr. President, the American people have begun what promises to be a long debate on the merits of tax reform and simplification. In the process, we all can learn much; and there will doubtless be many changes of opinion along the way. It is significant however, that in a recent Business Week-Harris poll on the components of President Reagan's tax proposal, the three most popular items were:

Raising maximum IRA for married couples to $4,000: 81 percent favor, 15 percent oppose, 4 percent not sure.

Raising personal exemptions to $2,000 and index for inflation: 76 percent favor, 17 percent oppose, 7 percent not sure.

Retain mortage-interest deduction, with limit on second homes: 66 percent favor, 29 percent oppose, 5 percent not sure.

That certainly looks like a consensus, and I would be willing to wager that it will hold up and perhaps increase as the tax debate proceeds.

Predictably, there will be some who will insist we have things all wrong. A case in point appeared in the Washington Post on Sunday June 16: "The Right Way To Help Low-Income Families," by Martin Feldstein and Kathleen Feldstein, two prominent economists, one of whom formerly was chair of the Council of Economic Advisers. Their article demonstrates, in fact, the wrong way to think about tax reform; and the sooner someone says so, the less damage can be done by it. But let's first see what the problem is:

[From the Washington Post, June 16, 1985]

THE RIGHT WAY TO HELP LOW-INCOME FAMILIES

(Martin Feldstein and Kathleen Feldstein)

The most significant challenge facing the congressional tax-writing committees is to reshape the president's proposal to raise the personal exemption from $1,080 to $2,000. In its current form, it would cause a huge revenue loss, would disproportionately benefit higher-income groups and would discourage work effort.

The proposed increase in the personal exemption would have an important, desirable effect: it would free virtually all Americans below the poverty line from federal taxation and would reduce the relative tax burden of families with children. But the mechanics of the president's proposal make it far more costly than is appropriate or necessary. Although the aim is to reduce or eliminate the tax liabilities for low-income families, the proposed method would raise the personal exemption for all taxpayers. The result is actually a bigger benefit to high-income taxpayers.

The president's plan would give a couple in the top 35 percent tax bracket with no children a bigger tax break than a family with two children in the lowest 15 percent tax bracket. This uneven tax cut happens because the value of the additional exemption increases with the taxpayer's marginal tax rate. For each person in the 35 percent bracket, the increase in the exemption from $1,080 to $2,000 is worth $322—since 35 cents in tax would have been paid on each dollar of the $920 increase. A high-income couple therefore sees its tax cut by $644. But for a family of four in the 15 percent bracket, the tax break is only worth $552—four times 15 percent of $920. So the high-income couple actually gets $92 more tax reduction than a lower-income family with two children.

The increased exemption for higher-income taxpayers does not have any of the positive incentive effects that result from reductions in marginal tax rates. Indeed, the rise in the personal exemption is a disincentive, since the increase in the taxpayer's total after-tax income reduces the incentive to work.

Another implication of applying the exemption across the board is that it adds up to an enormous revenue loss. The Treasury estimates that the proposed increase in the exemption would cut revenue by $40 billion in 1987, or over 10 percent of projected income tax revenues, and 38 percent of that $40 billion represents a tax cut for the top 17 percent of taxpayers, those with incomes over $40,000.

The right way to help low-income taxpayers without the enormous revenue loss is to target tax relief directly where the need lies.

Perhaps the simplest way would be to increase the personal exemption to $2,000 only for taxpayers in the 15 percent tax bracket—that is, for couples and families with taxable, incomes up to $29,000. Those in the 25 percent tax bracket—with incomes between $29,000 and $70,000—could be given a more modest increase to $1,200. But those with incomes over $70,000 would continue to receive the $1,080 exemption provided under current law.

Targeting the exemption increases in this way would cut the revenue loss in half—to $20 billion instead of the $40 billion implied by the president's proposal. The targeted exemption increase would nevertheless provide as much relief to low-income families and individuals and would take as many people off the tax rolls as the president's plan.

Another alternative would be to limit the increase to children and not to give any increase to adults. Raising the exemption to $2,000 for all children who are dependents on their parents' tax returns would reduce tax revenue by less than $15 billion. And limiting the increased exemption to children under 6, whose mothers are more likely to be at home and not contributing to family income, would reduce the revenue loss to less than $5 billion.

A quite different way to target tax relief to low-income families would be to replace the exemption with a tax credit. The main difference between the two is that an exemption reduces taxable income and is therefore worth more to a taxpayer in a high tax bracket. In contrast, a tax credit directly reduces the individual's tax liability and is therefore worth the same number of dollars regardless of the individual's tax bracket.

For example, for someone in the 15 percent bracket, a $300 tax credit per person would reduce taxes by as much as a $2,000-per-person exemption. but for taxpayers in the 35 percent bracket, the $300 tax credit would reduce taxes by less than half of the $700 that a $2,000 exemption would bring. By targeting tax relief in this way, the revenue loss would be cut to less than $19 billion.

It is clear that there are several ways to target relief on low-income taxpayers, ways that save tens of billions of dollars and improve incentives to work and to save. An appropriate modification here would make it possible to eliminate or scale back some of the counterproductive increase in business taxation. Rethinking the increased personal exemption should be a top priority for Congress.

That is a bouquet of ideas, but there is a bee in every blossom. Every proposal in the article is based on the same fundamental mistake: the notion that the personal exemption in the Federal Tax Code is just another means for Government to distribute income. Once you buy that idea, then it makes a bizarre sort of sense to tamper with the personal exemption the way we raise, lower, phase in, make conditional, and otherwise modulate various special interest tax breaks.

But the personal exemption is not a tax break. It was never meant to be just another provision like, say, the child care credit or the home energy savings credit. The personal exemption was, from its start, the recognition by Government that an individual's most essential expenses should not be taxed by Government. The personal exemption is not a matter of economics; it is a question of decency. We leave in the taxpayers' hands a bare minimum of money, untaxed, which the members of their families need to survive.

Granted, the current exemption of $1,080 is not sufficient for that purpose; and the proposed $2,000 is not ideal, but it is headed in the right direction. Granted, a $2,000 per person exemption is worth more to a taxpayer in a high bracket than it is to someone in a lower bracket. But that is only because tax brackets are so high. In a truly flat tax system, the exemption would be worth an equal amount to everyone. If the Feldsteins will support that reform, fine; otherwise, they should explain why essential living expenses for an upper income taxpayer, remember, that's what the personal exemption is all about—are somehow lower than they are for a low-income person. That is what happens when you confuse the personal exemption with an income transfer scheme.

From that confusion flows the proposal to increase the exemption only for children, not for adults. Adults, we presume, do not have essential living costs? If so, why not abolish the exemption altogether and replace it with a national children's allowance? If we are to think of the exemption as, in effect, a welfare component of the Tax Code, then we should go all the way to Federal child support.

An even more confused possibility is to limit the personal exemption to children under 6, "whose mothers are more likely to be at home and not contributing to family income." Accordingly, a child of 5 brings the family a larger personal exemption than a child of 7. A child of 4 has a higher personal exemption than a handicapped child of 9. A child of 3 gets a king-sized exemption, while exemptions for the aged blind, and disabled remain low.

Why would anyone propose such nonsense? The Feldsteins, to their credit, explain why: It "would reduce the revenue loss to less than $5 billion." By the same token, their other variations on the personal exemption would limit revenue loss to one degree or another. That is also the rationale for their suggestion that the exemption be replaced with a tax credit, although they do not explain whether it would be a refundable credit. That is an interesting omission; for if the purpose of this exercise is to milk middle- and upper-income taxpayers to benefit low-income persons, then a refundable tax credit is called for. That, however, is a very expensive proposition; and it is clear that revenue loss is far more important to the Feldsteins than any other consideration.

There is the heart of darkness: the obsession with lost revenue. Lost to whom? To the Treasury, of course, not to the American family. All other arguments against the $2,000 personal exemption are subordinate to that one: We need their money.

How else can one explain the following assertion, "Indeed, the rise in the personal exemption is a disincentive, since the increase in the taxpayer's total after-tax income reduces the incentive to work." How's that again? If the taxpayers can count on a larger

after-tax income, they won't work as hard? I dread to ask if the Feldsteins want Congress to carry that astounding axiom to its logical conclusion: the less after-tax income you have, the harder you'll work. That is Ethiopian economics. Its result is the impoverishment of individuals, the ruin of nations. And that is not a bad summary of the course our Government was following in the 1970's under administrations of both parties. We broke decisively with that past in 1981, and I doubt that the American people are willing to return to it now.

There are those who would have us believe we must choose between a pro-family tax system and a progrowth tax code, between fairness to families through a $2,000 personal exemption and encouragement to businesses through investment incentives. That is not the choice before us. Our decision is between profligate Federal spending and prudent management of the public's resources. Curiously, this is one subject the Feldsteins have avoided, one alternative that is not explored. Instead of raising more revenue, we can fritter less away.

Nothing I have said should be taken to mean I do not share the Feldsteins' concern for low-income families. Precisely for their benefit, I have joined in proposing a tremendous expansion of the earned income tax credit, in tandem with the $2,000 personal exemption and other reforms. Discussing one of those provisions without adverting to the others only distorts the whole package and understates its strong commitment to the working poor and those just beginning to climb up the opportunity ladder.

We can give those families a hand, and it need not come at the expense of other families who are working and saving for the future. But first we have to stop thinking of tax reform as a way of raising revenue. We have to stop thinking of it as a choice of whose ox will be gored. And to those who have not yet learned the lessons of the past, we have to make clear at the outset that, in a paraphrase of William Jennings Bryan, you shall not nail the American family with high taxes. You shall not crucify the family upon the budget cross.

TRIBUTE TO ANNA THOMAS

Mr. PRYOR. Mr. President, I wish to recognize today one of those very special people who have worked for years in the U.S. Senate and whose contribution goes beyond the simple thanks any of us are able to express. I might even say whose patience and forbearance passes all understanding.

I am referring in this instance, Mr. President, to Anna Thomas, a member of my staff for the past 5 years and a dedicated employee of the Senate off and on since 1969.

I say "off and on" because Anna was secretary to Senator Fulbright of Arkansas from 1969 through the early 1970's, and then she went with him to a law firm here in Washington after his retirement from the Senate. I was fortunate enough to persuade her to come back to the Hill in 1980, and since that time she has kept my office in balance and my professional and personal life in some semblance of order.

People in Arkansas have known for years that if they want instant service in getting an emergency passport, or a telephone call penetrating a seemingly impenetrable bureaucracy, or simply a warm and responsive voice on the other end of a phone line, they can find that solace and assurance in Anna Thomas. Her experience as a sympathetic listener and efficient worker goes back, as a matter of fact, to the days when she worked for the Big Rock Stone and Material Co. in Little Rock.

Another chapter in Anna Thomas' life was crucial in forming her commitment to service on behalf of her country. That came during the years she worked in the foreign service stationed in Lebanon and Cambodia. She was in Cambodia, in fact, when the American Embassy closed its doors during our last years in that country.

Anna Thomas knows the Senate and she loves its intricate workings and sometimes complicated but fascinating ways of doing business. Because of that continuing interest in the Byzantine ins and outs of this body, we have persuaded her to work 1 day per week in our Little Rock office. All of us know that this is not enough, but we will take her for as much time as we can get her.

And as she leaves Washington for Arkansas, I want to wish Anna every success and happiness, as well as many years of distinguished semiretirement.

TEXTILE TRADE LEGISLATION

Mr. THURMOND. Mr. President, on June 20, 1985, I received a letter from the Economic Policy Council expressing opposition to S. 680, the Textile and Apparel Trade Enforcement Act, which I introduced with 29 original cosponsors earlier this year. My bill now has 52 cosponsors in the Senate, and the House counterpart has 285 cosponsors.

While the administration's opposition to this bill was not unexpected, it is, in a sense, ironic. In September 1980 I was given a written commitment that this administration would work to achieve the goal of relating import growth from all sources to the domestic market growth. The Economic Policy Council and other key officials in the administration have not kept this commitment. Mr. President, I ask unanimous consent that this commitment letter be placed in the RECORD at this point.

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

ARLINGTON, VA, *September 3, 1980.*

Hon. STROM THURMOND,
Senate Office Building,
Washington, DC.

DEAR STROM: The fiber/textile/apparel manufacturing complex provides 2.3 million vitally needed American jobs, including a high percentage of female and minority employees. As President, I shall make sure that these jobs remain in this country.

The Multifiber Arrangement [MFA], which is supposed to provide orderly international trade in fibers, textiles, and apparels, was first negotiated under a Republican administration. The MFA expires at the end of 1981 and needs to be strengthened by relating import growth from all sources to domestic market growth. I shall work to achieve that goal.

Sincerely,

RONALD REAGAN.

Mr. THURMOND. The point to be emphasized is that if the administration had carried out this commitment, there would have been no need to introduce S. 680. However, because the administration has failed to uphold this commitment by not implementing an adequate textile trade policy, there now exists an urgent need for Congress to correct this problem.

Let us examine this situation more closely. Since the time when this commitment of tying textile import growth to market growth was given, the following has occurred:

First, domestic market growth for textile and apparel goods over the past 4 years has been only 1 to 1.5 percent—about the rate of population growth.

Second, import growth over that same period, however, has averaged 19 percent per year. This includes the 2 recession years of 1981 and 1982 in which the average import growth was lower than recent figures. It also includes 1983 when there was a record increase in imports of 25 percent, and the tremendous surge that occurred last year when a new import record increase of 32 percent was set.

Third, U.S. Labor Department statistics show that 300,000 textile/apparel/fiber jobs have been lost in this country over the past 5 years; 27,400 were in South Carolina.

Fourth, many others who are still employed in this industry are working short weeks, resulting in reduced income.

Fifth, 50 percent of all finished apparel sold in this country is now imported.

Mr. President, it is abundantly clear that there is a massive import problem facing the American textile industry. Many economists have stated that if this trend continues, the American testile/apparel/fiber industry will cease to exist by 1995. With the death

of this industry will come the direct loss of over 2 million jobs—more than the steel, auto, and chemical industries combined. In addition to these direct losses, there will be over 2 million additional related jobs lost in this country with the demise of the textile industry. Cotton farmers, wool producers, wood pulp manufacturers, truck drivers, insurance agents and many others who supply, service, or in some way depend on the textile industry for their livelihoods would find their economic existence jeopardized.

Mr. President, this is one Senator who will not stand idly by and watch one of America's most economically and strategically important industries crumble. I regret the administration's position on S. 680, and I urge them to strongly reconsider their stand.

Mr. President, the letter dated June 19, 1985, from the administration included an attachment regarding the implications of the Textile and Apparel Trade Enforcement Act. I would like to take this opportunity to refute the one-sided statements contained in this letter and attachment.

Mr. President, I ask unanimous consent that my response to the administration June 20, 1985, letter on the Textile and Apparel Trade Enforcement Act of 1985 appear at this point in the RECORD.

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

RESPONSES TO THE ADMINISTRATION'S JUNE 20, 1985 LETTER ON THE TEXTILE AND APPAREL TRADE ENFORCEMENT ACT OF 1985

The letter states that the Administration is deeply concerned about conditions facing the industry and its workers and believe that a free trade policy will provide, in the long run, the best opportunity for economic growth.

The problems facing the U.S. textile industry and its workers are so severe that anything short of exceptional measures like the Textile and Apparel Trade Enforcement Act of 1985 will not permit the industry to be around for the long run. If such measures are not taken the industry will lose a million workers by the early 1990's. A long run "free trade" solution is not even an option at this point.

The letter states that this legislation "would impose a very high cost on U.S. consumers and spur inflation".

Recent research shows that retail prices of imported and domestic apparel are practically identical for many types of apparel. Imports are marked-up 300 to 400 percent and consumers do not benefit from the lower costs of imported apparel and textiles. History shows that price increases of domestic textiles and apparel have always been around half of the U.S. inflation rate because of the great degree of domestic competition among U.S. textile and apparel producers. Apparel production capacity can be expanded as easily within the U.S. as offshore. Capacity utilization in the textile industry is running at about 75 percent. There should be no bottle-necks as production is transferred back to the domestic producers. Finally, analysis done by Data Resources, Inc. shows that limiting import growth to the growth of the domestic market will by 1990 have a minimal effect on price levels but will avoid many adverse effects which would result from a continuation of the present trend in imports.

The letter states that the domestic industry benefits from "relatively high tariff levels: an average of 22.3 percent compared with an average of less than 5 percent for all other industries".

Textile and apparel tariffs are relatively higher than those on other products because of their import sensitivity. These tariffs were not cut as much as others during multilateral negotiating rounds because, upon advice of the International Trade Commission, the industry was found to be severely import impacted. The current high rates reflect the judgment of the International Trade Commission (ITC) when imports were less than half of what they are today. After the increased import penetration of the last four years the ITC would today almost certainly recommend few or no tariff cuts. Finally, because of the overvalued dollar, these tariffs afford only a fraction of the protection they did when the ITC gave its advice.

The letter says that approximately "80 percent of all imports from low cost suppliers are under quota".

The latest publication from the Department of Commerce, the "Major Shippers Report" for April 1985 indicates that about 73 percent of imports from low cost suppliers are under quota not 80 percent. In 1982 the amount under control was 81 percent so as a percentage, fewer imports are now under quota from these countries than in 1982. However, this is only part of the issue. The International Trade Commission in its recent analysis of the Multi-Fiber Arrangement indicated that the agreements negotiated by the Administration permit increases through borrowing that in spite of quotas, annual shipments may grow by 15 percent or more.

The letter states "the substantial import growth experienced during the past two years has been halted".

In recent testimony before the House Ways and Means Trade Subcommittee, Administration officials indicated that import growth in 1985 could be in the 15 to 20 percent range. This is hardly insubstantial. Moreover, the fact that only about 73 percent of trade from the developing countries is under control would indicate that import growth could be significantly higher. Last year trade from the smaller developing countries increased 64 percent over 1983.

The letter states that textile and apparel imports "declined by 4.4 percent during the first four months of 1985".

These imports have declined but the reason for the decline has little or nothing to do with the textile import program. There was a wide-spread inventory glut caused to a great extent by the import surge of 1984. When this was coupled with the stagnant market of the recent months, imports did in fact slow down. However, domestic shipments slowed down by even more. Through April 1985 domestic shipments of textiles and apparel were off 8.3 percent.

The letter states that *"domestic textile and apparel industry shipments increased by 7 percent in 1972 constant dollars".*

This very modest increase over four years is an admission that the market is essentially stagnant. The industry has always acknowledged that the market is growing by no more than one or two percent annually and the 7 percent growth rate cited in the letter translates to about 1.7 percent per year growth for each of those four years. More importantly, in quantity terms instead of dollars, shipments have declined by about 0.2 percent per year over this period. What the letter did not say is that over the same period imports increased by 100 percent.

The letter says that the U.S. industry will "continue to benefit from the unprecedented measures the Administration has taken".

We don't understand how doubling of imports can be construed as unprecedented efforts to support the industry. During these four years almost 250 textile mills have closed their doors, primarily because of imports. Employment in the textile industry today is at its lowest level since statistics have been kept. Some 250,000 fewer workers are now employed in the textile/apparel complex than in 1980. Over 100,000 jobs have been lost in the last year alone.

The letter states that the legislation would "undoubtedly cause affected countries to retaliate to the detriment of our exporters, especially those in our agricultural sector".

The letter also states that the U.S. exported more than $33 billion to the 12 countries most affected by the bill. According to U.S. Census data, our exports to these countries in 1984 were, in fact, $54 billion. What the letter does not say is that imports from those 12 countries in 1984 amounted to $124 billion. With that kind of a trade surplus it is difficult to fathom how these countries would be justified in retaliating. In 1984, the U.S. exported $23 billion to Japan and it is even more difficult to fathom how Japan, given our bilateral trade problems and Japan's closed markets, would be in any position whatsoever to retaliate. Finally, customers of our commodity-type exports buy because of price. Given the current oversupply in many agricultural products, the overvalued dollar, and subsidies by foreign governments, we believe that U.S. exports will continue to lose overseas markets.

The letter states that the legislation is "inconsistent with the international Multifiber Arrangement".

We have always maintained that the legislation is completely consistent with the objectives of the Multifiber Arrangement (MFA) which are to prevent market disruption and provide for growth of developing country exports. The Textile and Apparel Trade Enforcement Act finds a wide-spread condition of market disruption because of the failure to adequately enforce the provisions of the MFA. This bill would mandate actions very similar to those taken unilaterally by the European Community several years ago. Included were cut-backs in trade from major suppliers, very low growth rates and global control of imports. When the EC took those actions there was no retaliation, nor were any claims made that such actions were inconsistent with the Multifiber Arrangement. In fact, the Multifiber Arrangement itself was modified through a protocol of understanding to specifically permit the kinds of actions taken by the EEC. Similar actions could certainly be taken in this case.

Finally, the letter says that the legislation would "result in the abrogation of the 34 bilateral textile and apparel agreements we have negotiated with our trading partners".

We are not convinced that all of these agreements will be abrogated, provided the United States consults with the countries and explains what is being done. Moreover, the current MFA expires in mid-1986 and the U.S. may decide not to renew it. It is

also important to note that with 22 of the countries the legislation would call for an increase in trade levels of 15 percent in 1985, followed by an annual growth rate of six percent thereafter (except in very sensitive categories). Finally, agreements have been renegotiated in the past. For example, the agreements with Hong Kong and Taiwan where renegotiated and tightened in 1979 and in 1980 to try to prevent excessive import increases.

ALCOHOLISM AMONG THE ELDERLY

Mrs. HAWKINS. Mr. President, a recent article in the New York Times sheds new light on an increasingly serious problem—alcoholism among the elderly.

In this article, it is indicated that new research points to alcoholism among the elderly as being a more serious problem than previously believed. A primary reason that this problem has remained undiscovered, and untreated, for so many years is that alcoholism has long been confused with the symptoms of other diseases among the aged. Experts now see alcoholism as a "hidden contributor to some of the most prevalent ailments of the elderly, including mental problems, broken bones from falls, and other disabilities such as incontinence." Not only does alcoholism have debilitating effects on the health of the elderly, but it can mask the symptons of other serious illnesses. This situation is expected to become even worse, as the number of elderly problem drinkers is expected to rise as the Nation's aged population increases.

As Dr. Michael L. Freedman, director of the division of geriatric medicine at the New York University Medical Center, was quoted as saying:

> Until relatively recently, many doctors had certain preconceptions about old people, and this led to misdiagnoses. For example, in some patients, symptoms that were thought to be those of senility were actually of alcoholism. I think we're still underdiagnosing alcoholism among the elderly.

According to this informative article, it is thought that more than 1 million of the 28 million Americans over the age of 65 are problem drinkers; other statistics indicate that from 10 to 15 percent of elderly patients seeking medical assistance had a drinking problem related to their ailment.

Because alcoholism among the elderly is just beginning to be perceived as the serious problem it is, minimal statistical data is available. The need to secure this information, however, is beginning to be realized. As said by Dr. Ernestine Vanderveen, chief of the psychosocial research branch at the Alcoholism Institute:

> Those who are studying alcohol and the elderly are on the cutting edge of a relatively new field of research.

An example of these escalated efforts is the study being conducted by the National Institute on Mental Health, considered to be the most comprehensive ever done on psychiatric problems in the United States. This study is enabling researchers to estimate with much more precision than before the numbers of elderly alcoholics in selected areas of the country. Thus far, the study has suggested that alcohol abuse or dependence is a problem for 1.4 to 3.8 percent of the men over the age of 65 in the research sample, and from 0.1 to 0.7 percent of the women in that age group. The subjects of this study were diagnosed as abusing alcohol according to their scores in a variety of categories assessing their patterns of alcohol use, including whether they had a daily need to drink, whether they were unable to stop drinking, whether they went on drinking binges or suffered from blackouts, or whether they had missed work or been in accidents because of drinking. The research done in this study has enabled a distinction to be drawn between two groups: those who began drinking early in life, and those who began late in life, often in response to loneliness or the deaths of loved ones.

It is necessary that the results of this study be disseminated, and that its information be applied to finding solutions to the problems of elderly alcoholics. This situation is a particularly difficult one because the elderly often have multiple health problems, and complications resulting from a combination of these ailments and alcohol abuse, can go unrecognized and become very serious. Alcohol often interferes with the medications regularly prescribed to the elderly, and as Dr. Freedman states in this New York Times article:

> Alcohol is especially dangerous in combination with central nervous system depressants—barbituates, tranquilizers, and painkillers. Alcohol can even cause problems in combination with something as simple as an aspirin, due to the effect on the stomach.

Experts also feel that other areas which must be studied include research into the effects of long-term drinking on memory loss; the rate at which alochol is metabolized by the elderly; and the interaction of prescription drugs and alcohol. And while the causes, and effects, are studied, we must simultaneously work to find the best treatment. Too often, the depression, the loneliness, and many times, the poverty and physical disability present in many senior citizens' lives create special problems in providing adequate treatment.

These very special health needs of America's elderly must be addressed, and can be addressed, successfully. I offer my support and encouragement of these escalated efforts by the medical and research community to find solutions to the problem of alcohol abuse among the elderly.

Mr. President, I ask unanimous consent that the New York Times article, entitled "For Aged, Problem Drinking Is on the Rise," dated June 17, 1985, be inserted in the RECORD.

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

FOR AGED, PROBLEM DRINKING IS ON THE RISE

(By Glenn Collins)

New research findings suggest that alcoholism among the elderly is a more serious problem than previously believed.

A number of experts believe alcoholism has long been confused with the symptoms of other diseases among the aged. They see alcoholism as a hidden contributor to some of the most prevalent ailments of the elderly, including mental problems, broken bones from falls and other disabilities such as incontinence.

Researchers have found that not only does alcoholism have debilitating effects on the health of the elderly, but that it also can mask the symptoms of other serious illnesses.

The findings, about both the extent and the nature of problem drinking among the old, have led a variety of Federal agencies to increase their efforts to study the problem.

The number of elderly problem drinkers is expected to rise as the nation's aged population increases, even though the rate of alcoholism among the elderly is lower than in the general population.

"Even if the overall percentage of alcoholism in the elderly population is low, it's a huge national problem," said Dr. Michael L. Freedman, director of the division of geriatric medicine at the New York University Medical Center.

"Until relatively recently, many doctors had certain preconceptions about old people, and this led to misdiagnoses," he added. "For example, in some patients, symptoms that were thought to be those of senility were actually caused by alcoholism. I think we're still underdiagnosing alcoholism among the elderly."

Currently, studies of the scope, causes and effects of alcohol abuse by the aged are being conducted by the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Aging and the Veterans Administration.

"Those who are studying alcohol and the elderly are on the cutting edge of a relatively new field of research," said Dr. Ernestine Vanderveen, chief of the psychosocial research branch at the alcoholism institute. "And we're trying hard to stimulate research, interest in this area."

Dr. Vanderveen said that financing for such research was increasing. She added that she could not place a specific dollar cost on studies of alcoholism and aging, because such research is often part of broader studies involving alcoholism, the elderly and mental illness.

More than a million of the 28 million Americans over the age of 65 are believed to be problem drinkers, according to the National Council on Alcoholism, a nonprofit educational organization. A 1982 study by Dr. Jacob Brody of the National Institute on Aging suggested that from 10 to 15 percent of elderly patients seeking medical help had a drinking problem related to their ailment.

GATHERING STATISTICS

Gathering accurate statistics has been complicated by conflicting definitions of alcoholism, as well as the difficulty of obtaining accurate survey information. However, an ongoing Government study of mental illness, the most comprehensive ever done on psychiatric problems in the United States, is enabling researchers to estimate more precisely the number of elderly alcoholics in selected areas of the country.

Called the Epidemiologic Catchment Area program, the study is sponsored by the National Institute of Mental Health. So far, it has involved household interviews with subjects in New Haven, Baltimore, St. Louis and Durham, N.C.

The study suggests that alcohol abuse or dependence is a problem for 1.4 to 3.8 percent of the men over the age of 65 in the research sample, and from 0.1 to 0.7 percent of the women in that age group. Additional findings from interviews conducted in Los Angeles have not been analyzed. More than 20,000 people are to be interviewed.

"This is the most definitive study available of the prevalence rates of specific disorders," said Dr. Darrel A. Regier, director of the division of biometry and epidemiology of the mental-health institute.

The institute's interviewers defined alcoholism according to the criteria of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association. Subjects were diagnosed as abusing alcohol according to their sources in a variety of categories assessing their patterns of alcohol use, including whether they had a daily need to drink, whether they were unable to stop drinking, whether they went on drinking binges or suffered from blackouts, or whether they had missed work or been in accidents because of drinking.

"Until recently we've had very little in the way of accurate information about this population," said Dr. Nathan Rosenberg, the health scientist administrator at the alcoholism institute. He said research has drawn a distinction between two groups: those who begin drinking early in life, and those who begin late in life, often in response to loneliness or the deaths of loved ones.

"However," he said of the latter group, "it is possible that the late-onset drinkers may be experiencing a recurrence of drinking problems in their 20's or 30's. We just don't know as yet." On the other hand, "many of the elderly who are not currently problem drinkers may have been alcoholics in the past," said Dr. Dan G. Blazer, a professor of psychiatry at the Duke University Medical School. As director of the Affective Disorder Program there, he has conducted research on problem drinking and the old.

Dr. Blazer said there was evidence that drinking among the elderly declines, as compared with the drinking of younger people. But he said: "We have younger groups of people who are moving into later life who have a history of drinking more heavily. So we may have increased prevalence in future years."

"The absolute number of elderly alcoholics," Dr. Blazer added, "will rise as the numbers of the elderly increase in the years to come."

Dr. Blazer said that often the elderly have multiple health problems and their complications and that these problems "can be masked and not be recognized, and become very serious."

SYMPTOMS RELATED TO DRINKING

Among some elderly people, memory loss, paralysis, peripheral nerve problems and liver and kidney ailments, he said, may actually be symptoms related to alcohol abuse. But since the elderly, just as those in other age groups, have difficulty telling others that their drinking is a problem, both the patients and their doctors may ascribe the symptoms of alcohol abuse to other ailments.

"Alcohol can interfere with many of the medications regularly prescribed to the elderly," Dr. Freedman said. "Alcohol is especially dangerous in combination with central-nervous-system depressants—barbiturates, tranquilizers and painkillers. Alcohol can even cause problems in combination with something as simple as aspirin, due to the effect on the stomach."

Dr. Rosenberg said that the prominent areas of research into alcohol and the aged involve the effect of various levels of long-term drinking on memory loss, the rate at which alcohol is metabolized by the elderly and the interaction of prescription drugs and alcohol.

Also, more research is needed to understand how elderly problem drinkers are best treated, Dr. Freedman said. The isolation, poverty and physical disability of many elderly alcoholics pose special difficulties for those who run rehabilitation programs. "This is a large national problem, and there is very little treatment available," Dr. Freedman said.

SEVENTH MYTH OF THE DAY: THAT THE SUPERPOWERS CAN ABOLISH NUCLEAR WEAPONS FOREVER

Mr. PROXMIRE. Mr. President, here we go again. For the past several days I have discussed a national myth each day. That is a statement made by top officials usually in the administration that many Americans accept as the truth because it has come from the top most political authority in the land. In each case the consideration of a minute or two shows that it is just another fallacy, not a lie because the propagator may sincerely believe it, but a statement that is untrue.

The seventh myth of the day is believed by many who have heard it stated by the President of the United States because all of us wish so fervently it could be true. Here's the myth: That this country can follow policies that will abolish nuclear arms from the face of the Earth. President Reagan has repeatedly voiced this as his ultimate objective. It is a nice, happy thought that an unrealistic and not very mature 12-year-old child might treasure. It is also transparent nonsense. Why is it nonsense? Because the genie is out of the bottle. The capability of producing nuclear weapons is now widely known among scores of countries. Years ago undergraduate students at Princeton and Harvard working separately, in each case by themselves, with no faculty assistance and no access to any classified information put together the complete design for atomic bombs. All they needed was plutonium. Plutonium is widely dispersed throughout the world. We can no more rip this understanding and the materials that would make nuclear weapons a reality out of public access and public consciousness than we can exclude from the common human psyche the hatred, greed, and cruelty that persuades nations to go to war.

Mr. President, this myth is dangerous. It is vital that we find the courage to face the truth that mankind must live with nuclear weapons forever. Only when we face that grim fact will we have a chance to develop the determination to do our level best to live in international peace. If we do not succeed, some day, somehow, sooner or later, mankind will perish.

MORE BOOKS ABOUT THE BUTCHER OF LYONS

Mr. PROXMIRE. Mr. President, earlier this month I spoke in this Chamber about speculation mounting that this fall, after more than a 2-year intermission, the trial of former Nazi SS Officer Klaus Barbie will begin.

In the meantime, publishers are having the chance to fill the stands with more books on the sadistic life of the infamous Butcher of Lyons, Klaus Barbie.

In the June 27 issue of the New York Review of Books three new books are reviewed.

The first book is titled "Nazi Legacy: Klaus Barbie and the International Fascist Connection." It is written by three gifted and scrupulous British journalists.

The "Nazi Legacy" gives the first account of Barbie's 50-year career in international crime.

By interviewing Holocaust survivors, the authors show Barbie's role in the 1942 deportation of Jews to concentration camps. It adds more sadistic details to the barbaric career Barbie had in Lyons.

And, among other things, "The Nazi Legacy" details Barbie's 30-year stay in Bolivia and his relationships with three of the most dangerous paramilitary Bolivian officials of the past.

The second book is titled "Klaus Barbie: The Untold Story." The author is Ladislas de Hoyos, a French TV journalist, whose televised interview with Barbie helped unmask the Nazi's identity.

The book repeats many stories already tolds. It also provides the transcript of Barbie being interrogated by a French official in 1948 about the death of Jean Moulin.

Jean Moulin was a hero of the resistance during World War II. He organized the Maquis, a French guerrilla group that fought the Germans.

The third book is "The Children of Izieu." It is written by a Parisian couple, Beate and Serge Klarsfeld. Beate is a German Christian whose father served in the Wehrmacht and

Serge is a French Jew whose father died at Auschwitz.

It is an awesome documentation of the arrest and deportation of 44 Jewish children, who were hidden in a shelter near Lyons. All 44 of the children were deported to the gas chambers of Auschwitz.

The book displays pictures and family stories of those 44 children put to death by Barbie.

Mr. President, these three books add more agonizing chapters to the sordid story of the Holocaust. It is a story that still has no end.

Klaus Barbie is one of hundreds of war criminals who have yet to be prosecuted for their demonic attempts to eliminate various religious, racial, and cultural groups.

They have yet to be tried for the senseless murders of innocent people.

Mr. President, the United States also has yet to ratify the Genocide Treaty, and this is extremely unfortunate.

Book after book, article after article and story after story show more of the heinous crimes of the Holocaust. Yet the United States continues to remain silent of the one treaty that commits the world community to preventing future Holocausts.

Mr. President, there is no better time than the beginning of the Barbie trial for the United States to take a stand and ratify the Genocide Treaty.

It is far past the time that we should have let the Holocaust criminals and any future perpetrators of genocide know that we abhor such hateful crimes.

The time for ratification of the Genocide Treaty is now.

THE ARMS WE SHOULD CONTROL: SALES TO THIRD WORLD

Mr. PROXMIRE. Mr. President, arms control is a burning issue in Congress and throughout the country. It should be. If history teaches us anything about the causes of war, it teaches us that when two leading and hostile military powers in the world compete in building massive arsenals of destruction they move on a deadly dangerous track to war. Neither adversary may intend to go to war. Indeed the great irony of this age is that both nuclear powers are building their arsenals in the name of peace. Peace they say means strength and no matter how many times each nation can blow up the other somehow it does not feel strong enough.

His Holiness Pope John Paul spoke in Belgium on May 17. He spoke in memory of those who died in World War I. He called for an end to war. He pleaded and prayed for an end to the arms race. The Pope also said that we must be realistic and recognize that war can be forced on a nation by aggression. In that case the nation that is attacked has, in the view of the Pope, a duty as well as a right to defend itself.

Now, Mr. President, it is perfectly obvious that if the United States attacked the Soviet Union or the Soviet Union attacked the United States both nations would perish. And I mean utterly perish. You know what. I know it. President Reagan knows it and Mr. Gorbachev and his fellow Communist leaders in the Kremlin know it. If only 1,000 of the 13,000 nuclear warheads that the United States can deliver on the U.S.S.R. get there, and far more would, in a superpower war, there would be no organized Soviet Union left. More than half their population—more than 130 million Russians—would die almost instantly. The United States would suffer a similar total catastrophe. So why not stop the arms race now? If we could stop the arms race right here and now, if we could freeze it, the prospect of a nuclear war would sharply diminish.

Will this administration consider negotiating to stop the arms race now or ever? No. The chances are absolutely nil. Maybe 4 years from now in the new administration there will be hope. There will be hope, that is, if a nuclear catastrophe does not strike in the meantime. So what can we do?

In the meantime, there is another kind of arms race we can and should stop right now. It is the race to sell arms or give arms to the Third World, the underdeveloped countries. Mr. President, can you or can any Senator imagine a crueler or more truly wasteful policy than selling or lending or giving lethal weapons of war to impoverished countries? I cannot.

On May 16 the Senate passed a foreign aid bill. What kind of foreign aid did that bill provide? Sad to say billions of dollars of that foreign aid consisted of lethal military weapons. Only 17 of us voted against that expenditure of billions of dollars of the American taxpayers money that will go to burden those depressed, impoverished countries with military weapons. As always, the military aid was justified as a means of preventing aggression. A strong case can be made that this is precisely and exclusively the purpose of this assistance. On the other hand, the U.S.S.R. is providing its own foreign military aid program. And what countries receive lethal military weapons from the U.S.S.R.? The very nations that oppose the nations the United States arms. Both sides are spending their treasure to enable these poor countries to destroy each other. It is outrageous. And the amounts are immense. Considerable evidence indicates that the foreign military assistance and sales and loans from the Soviet Union exceeded U.S. military assistance plus sales and loans in 1984 by a margin of $10.4 billion to $7.2 billion. Incidentally France sold a whopping $9.2 billion. Since France is generally aligned against the Soviet Union and with NATO, it seems likely that the anti-Communist Third World nations may have ended up with more military weapons from the big three military exporters than the Communist Third Worlders did.

Now, Mr. President, how cruel and inhumane this traffic in military weapons is. Doesn't this vicious arms competition call out for arms control? This country should press and press hard for an agreement with the U.S.S.R. and with France and other arms exporting countries to stop it.

Americans line up all over the country to contribute to help those starving in Africa and Asia. That instinct to help suffering people is beautiful and noble. We should help. But the greatest help we could give the impoverished people of the Third World would be to negotiate an international reduction in the sale, the loan, the gift of military weapons to Third World countries. These weapons impoverish as well as kill and maim human beings. We cannot unilaterally stop this terrible traffic in death without giving Communist countries an advantage. But we can and should negotiate an end to this burden on American taxpayers that brings only death, misery, and poverty to the Third World.

POLL RESULTS SHOW U.S. DRUG USE TOPS 1960's LEVEL

Mrs. HAWKINS. Mr. President, a very disturbing report was featured in the Washington Post's Health magazine. The title says it all: "Drug Use Tops 1960's Level."

In this article, the results of a recent Washington Post-ABC News nationwide survey reveal that young Americans are experimenting with drugs far more than their 1960's counterparts. In the survey, half the individuals between the ages of 18 and 30 said they have tried marijuana and one in five said they have used cocaine. By contrast, among those aged 31 to 44—people who came of age when drug use first became widespread—only one-third said they had ever used marijuana, and only 1 in 12 reported having tried cocaine.

An additional, and even more troubling, statistic of this poll, is that while drugs started as a big-city problem a generation ago, the survey shows that marijuana and cocaine use have spread, expanding to the suburbs, small towns, and rural communities. Though drug use is still greatest in urban areas, and along the east and west coasts, it has risen sharply everywhere else in the United States as well.

Among those aged 18 to 30, 4 in every 10, whether they use the drug or not, felt that there should be no pen-

alty for possession of small amounts of marijuana for personal use. Among those over 30, only 2 in 10 said it should be legalized. Oddly enough, though cocaine use has experienced the most dramatic increase, virtually no one participating in the survey expressed support for the legalization of cocaine; 9 percent of the younger group, and 5 percent of the older group, indicated their support.

One positive result of the poll indicated that only 3 percent of the individuals surveyed admitted to current use of illicit narcotics. What it suggests is encouraging: While many people may experiment with drugs, relatively few stay with them.

It is assumed that because responses to the poll questions involving use of an illegal substance were voluntary, the amount of drug use they reveal may be understated. Even so, the increase attested to by the results of this poll is alarming. In general, the survey shows a great many young people involving themselves in an area that is foreign to most of their parents, and almost totally unknown to their grandparents. For example, among those in the survey aged 61 or older, only 2 percent said they have ever used marijuana and 1 percent said they have used cocaine. Only 1 percent in that age group said that they use either drug frequently, and only 3 percent said they have friends who use these narcotics.

Similarly, among those aged 45 to 60, only 8 percent said they have tried marijuana and 3 percent said they have used cocaine. None admit to being frequent drug users; only 3 percent said they use them occasionally. But among this group, 20 percent admitted to having friends who used either marijuana or cocaine.

Among people between 31 and 44 years old, 34 percent said they have used marijuana and 8 percent said they have tried cocaine; 4 percent admitted to being frequent or occasional users, and almost half—44 percent—said they have friends who used one of the drugs.

As for those aged 18 to 30, 49 percent said they have used marijuana, 20 percent said they have used cocaine, and 8 percent said they currently used one of the drugs frequently or occasionally. Two of every three said that they have friends who used one of the two drugs.

Among this last group, men and women reported having experimented with marijuana to about the same degree. Men, though, are most likely to have tried cocaine, and are also more likely to be using either of the drugs today. In the 18-to-30 year-old age bracket, for instance, 53 percent of the men interviewed and 47 percent of the women say that they have used marijuana in the past; 25 percent of the men and 16 percent of the women said that they have used cocaine; 12 percent of the men in that age group but only 5 percent of the women admitted to using marijuana currently; for cocaine the figures are 5 percent among men and 2 percent among women.

These comparisons among generations indicated dramatically how much the drug problem has grown, especially in places that were not the least affected not long ago. We must continue to fight this dangerous trend and remain unrelenting in our efforts to curb the pervasiveness of illicit narcotics in our society. As chairman of both the Senate Drug Enforcement Caucus, and the Senate Subcommittee on Children, Family, Drugs and Alcoholism, I will continue to do whatever I can to make young people aware of the danger and destruction of the use of drugs, until I see that statistics like the ones reported in this survey are decreased to zero use, by every age group.

Mr. President, I ask unanimous consent that the Washington Post-ABC News poll be printed in the RECORD.

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

WASHINGTON POST-ABC NEWS POLL

More than one in four Americans admits having experimented with cocaine and almost one in ten admits having tried cocaine, according to a Washington Post-ABC News nationwide survey. And while very few say they use either drug today, substantial numbers of people say they have friends who do use them.

Q. Have you ever used marijuana or hashish . . . cocaine? Are you using marijuana or hashish . . . cocaine these days? Do any of your friends use marijuana or hashish . . . cocaine?

[In percent]

	Have used	Use now	Friends use
Marijuana or hashish	28	4	37
Cocaine	9	1	17

Q. How would you compare alcohol abuse to drug abuse in the community where you live: Which would you say is more of a problem?

[In percent]

	All people	Age 18 to 30	Age 31 and older
Alcohol is more of a problem	38	47	34
Drugs are more of a problem	36	37	35
Both equal/No difference	20	15	23
No Opinion	6	1	8

Q. How much trouble have drugs caused in your family? How much trouble has drinking caused in your family?

[In percent]

	Drugs	Drinking
A great deal of trouble	4	16
A fair amount of trouble	2	10
A little trouble	3	7

Source: From a nationwide telephone poll of 1,503 people, May 9–13.

HAVE USED MARIJUANA OR COCAINE

[In percent]

	People aged 18 to 30	People over age 30
East	58	21
Midwest	44	17
South	40	15
West	67	17
Big cities	57	30
Suburbs of big cities	49	16
Small towns	49	13
Rural areas	39	14

ANGOLA

Mr. SYMMS. Mr. President, I am delighted with the Senate vote approving repeal of the Clark amendment, and I want to particularly express my appreciation for my colleagues on the other side of the aisle who helped to make this vote so decisive.

The Soviet Union, if you want to look for a single admirable trait of the world's most barbarous nation, at least recognizes who their allies are, and renders them assistance. There is another recent development in Angola that I wish to bring to the attention of my fellow Members of Congress. Not only are the Soviets aiding the Marxist Angolan Government with massive military assistance, but they just signed a "cultural and scientific exchange" protocol for 1985–86 with them. This agreement will allow the U.S.S.R. to grant 300 scholarships and 15 apprenticeships for Angolan students in U.S.S.R. secondary and higher education establishments. The purpose of this exchange is undoubtedly to indoctrinate the Angolan students in the virtues of the Communist system, as the Soviets are doing with Afghan children, and with countless other young victims.

Comrade Carlos Fernandes, Angola's Secretary of State for cooperation, stressed the importance of the protocol on strengthening existing cooperation between the two countries. With agreements like this, and the treaty of friendship and cooperation that Angola signed many years ago with the Soviets, the argument that Clark repeal will force the MPLA to turn to the Soviets even more seems somewhat ridiculous. I for one am convinced that the Soviet leash is on tightly, and that it will never be severed unless greater pressure is brought to bear on the MPLA. For that reason, I am grateful for the Senate's gesture yesterday, and hope that our sign of support for Unita will encourage our

European allies and other African nations to lend even greater assistance to Dr. Savimbi and his brave supporters. Most important, I believe it will tell the Soviets that America has not deserted her friends in Africa.

The contrasts between the MPLA and Unita are sharp—Unita, and I am quoting from a news article from the Johannesburg Star, "leaving firepower aside * * * has a remarkable civil organization in the areas under its control." The article goes on to say that "Dr. Savimbi's economic development programme might be regarded as a model for Third World countries."

Savimbi's primary objective has been to make his people self-reliant and independent. He sought to avoid the type of situation into which so many African countries have fallen, helpless without Western foreign aid programs, which all too often have failed to promote self-sufficiency. These countries who never really get on the tracks of growth and progress remain weak and vulnerable to Soviet exploitation, subversion, and destabilization efforts.

Unita's people demonstrate the talent and ability that result from economic self-sufficiency, fierce determination, and national pride. Latin is taught at the 1,000 pupil institute, near Huambo in free Angola. More than 20 of the graduates of this institute have gone to study in eminent universities in Switzerland, France, and Portugal. This record of achievement is something we ought to remark on proudly. The worst policy America could follow is the continuance of assistance to the corrupt, bankrupt, unscrupulous Marxist MPLA Government that is incapable of, and unwilling to meet the most basic needs of the Angolan population.

If we believe in promoting a good, solid, and above all, a free future for the people of Angola, repealing the Clark amendment is the greatest signal to send to Africa. The freedom-loving people of that continent look to the United States with hope and inspiration—it is immoral and downright sinful for us to deny them our political and diplomatic support, especially when we are lending it to others around the world who share Unita's objectives of representative, democratic government. I intend to do all in my power to encourage the conferees on the State authorization bill to retain the Clark repeal provision.

Mr. President, I ask unanimous consent that the article I mentioned earlier be printed in the RECORD and I urge my colleagues to read it.

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

SAVIMBI'S PLAN IS MODEL FOR THIRD WORLD COUNTRIES

(By Fred Bridgland)

There are constant diplomatic rumours that Dr Jonas Savimbi's Unita rebel movement in Angola will lose its South African backing. These are very often based on thin information, but even if South African support were withdrawn, Unita would remain a sturdy animal.

Leaving fire power aside, Unita has a remarkable civil organization in the areas under its control. Dr Savimbi's economic development programme might be regarded as a model for Third World countries—but for the fact that his movement receives considerable support from South Africa. This reality precludes many academics and journalists who should know better from having a long, hard and objective look at what is going on in Dr Savimbi's territory.

Dr Savimbi's development policy is based on the belief that his people will have to rely almost entirely on their own resources and that the peasantry must be the strong base of the economy. The peasent is not interested in foreign ideologies, whether communist or capitalist-oriented: they are too complicated for him.

"The peasant is interested, first, to have his fields cultivated, to have food for himself, his wife and children," says Dr Savimbi. "Second, he wants education for his children. As long as you don't solve these problems of the peasant, you don't solve anything else at all. That's central to my philosophy."

In Unita's territory—about one-third of the total area of Angola—a system of collective farms and extension services to the villages has been developed. Young Unita volunteers who have had agricultural training (many Africans were trained in Portuguese times at the agricultural institute in Sa Da Bandeira) find themselves drafted not into the infantry, but into the agricultural corps. There are also schools in the bush in Unita's south-eastern stronghold which train agricultural officers. As the army pushes northwards, the agricultural officers follow to establish new collectives and provide services to the peasantry.

The collectives concentrate on the production of staples such as maize and cassava, but there is also an important emphasis on tobacco—smoke-cured in grass huts—for the fighters. Onions, beans, carrots, tomatoes and cabbages are also produced and, through the agricultural officers and the Unita women's movement, LIMA (the League of Angolan Women), these vegetables are being introduced into the fields of villages where the traditional diet has been bland and limited.

Peasants are obliged to give one day's labor each week on the collective farms. In return the collectives' tractors or oxen are lent for plowing private plots. Many of the people taken from towns captured by Unita are resettled on the collectives, where they are also given their own private plots.

One of the many myths about Angola is that agriculture cannot be sustained in the south-east, which the Portuguese described as "the land at the end of the world".

True, the sandy watersheds are uncultivable. But the valleys of the rivers which flow down to the Okavango swamps in Botswana and into the upper Zambezi have rich black soils which the Portuguese never bothered to exploit because there was so much rich agricultural land which was nearer the ports of Luanda and Lobito on the Atlantic coast. It is these soils which Unita is now exploiting, using fertilisers made from ash, tree leaves, grass and animal dung collected in deep compost pits.

Nor are these agricultural projects confined to the south-east. Large collectives and village extension schemes are established well to the north of the Benguela Railway, especially in the Sautar region, 160 km northeast of Luena (formerly known as Luso), where there are 20 agricultural centres in the Luando River Valley alone. The Director of Agriculture for this Northern Front is Mr. Julio Santos Lobito, a 25-year-old who graduated from high school under the Portuguese but who received all his agricultural training under the Unita system.

Dr. Savimbi's primary objective is to make his people self-reliant and self-sufficient. Though he has moved a long way towards this objective, large supplies of maize still pour across South Africa to be stored in Unita's underground warehouses spread across Angola. The South Africans also supply large stocks of low-grade French corned beef for Unita's fighting men. While much of Africa is suffering from drought and food shortages, journalists have noted the absence of food problems in Unita territory. A *Le Monde* correspondent, Philipe Houdart, recently wrote: "One can detect very little malnutrition and children with distended stomachs are rare. Only newly arrived refugees show food deficiencies . . ."

But where the fighting is intense, food production has, not unexepectedly, collapsed. And, indeed, people are fleeing into Unita areas from the once richly productive Central Plateau—now a zone of incessant conflict between Unita and the government. Agriculture here, in the most densely populated part of Angola, has become so badly disrupted that the International Committee of the Red Cross (ICRC) and various Western governments believed a major famine was in the making unless massive emergency aid was delivered soon. The ICRC believed that between 200,000 and 600,000 people on the Central Plateau could starve.

Early this year Dr. Savimbi agreed not to obstruct ICRC convoys carrying food to stricken villages. But the Angolan Government refused to give the ICRC permission to leave the main cities, believing, not without reason, that the food would sustain populations whose main loyalties are to Unita.

In an attempt to obtain a change of policy, a senior ICRC official flew from Geneva to Havana in July to plead directly with Cuban President Fidel Castro to bring pressure to bear on the ruling MPLA. Other aid agencies, for example, Christian Aid, have found it impossible to obtain permission to move freely on the Central Plateau to assess the extent of the emergency. The Havana mission was successful and this month the ICRC will begin an emergency feeding programme for the 200,000 people considered most in need.

In the areas it controls, Unita also has intensive programmes in education, medicine and technical services. In each case the services range from the simple and practical to the sophisticated. There are primary schools and a developing system of secondary education. Even Latin is taught at the 1,000-pupil Institute Polivalente, where the headmaster is Mr. Eduardo Oseeias Chingufo, formerly director of Angola's distinguished Dondi Institute, near Huambo. He came into the bush with Dr. Savimbi in 1976. In his school he has 57 teachers, including 13 who are concentrating on teacher training. More than 20 pupils who have graduated from the Institute Polivalente have gone on to universities in Switzerland, France and Portugal.

This year, newly qualified doctors, whom Dr. Savimbi sent abroad for training back in 1976 and 1977, have begun returning to

Unita territory to reinforce what Dr. Rony Brauman, president of the Paris-based Medicins Sans Frontieres describes as the most impressive village public health programme in black Africa. In every base and village in Unita territory there is a system of deep-pit latrines which are more effective in preventing disease than any amount of medicine.

Dr Savimbi initially trained as a medical doctor in Portugal before switching to international law and politics at Lausanne University. He has made a health programme one of his priorities. Hygiene is taught in nursing colleges and ordinary schools and by LIMA in the villages. Unita's territory is divided into health regions, with bush hospitals and clinics staffed by male nurses, who trained under the Portuguese and missionaries, and who are capable of doing straightforward surgery, including amputations. They have been helped over the last two years by doctors of Medicins Sans Frontieres, who have been treating wounded Unita soldiers.

There is also heavy emphasis on technical training. A fleet of more than 300 trucks runs some 950 km into Angola along the Savimbi Trail. Drivers and mechanics are trained at Dr Savimibi's giant logistics base at Luengue, in southeast Angola, about 150 km north of the Namibian frontier, Each truck has attached to it a chief mechanic and an assistant mechanic; the driver also has mechanical training.

It is their responsibility to lavish all their care and attention on their truck and keep it running. Gun mechanics and electricians are trained in other Unita schools.

There is electricity in many Unita bases. There is a bush factory producing clothes for the army, and a secretarial school, training secretaries for the burgeoning Unita administration.

Dr Savimbi believes that if he comes to power he must be ready to assume responsibility. The system to sustain a successful state must be built now. He likes to tell his people they can do anything if they are willing to learn—"many whites believe in the inferiority of blacks. You must work and prove you can perform any task."

The formula works. He has established a system that provides services to people from internal resources. This is at the heart of his political success, more important in the long term than any help he obtains from outside.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:50 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 1141. An act relating to telephone services for Senators.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

S. 413. An act to extend the provision of title XII of the Merchant Marine Act, 1936, relating to war risk insurance.

The enrolled bill was subsequently signed by the President pro tempore [Mr. THURMOND].

At 3:08 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 198. Joint resolution providing for appointment of Barnabas McHenry as a citizen regent of the Board of Regents of the Smithsonian Institution.

MEASURE REFERRED

The following joint resolution was read the first and second times by unanimous consent, and referred as indicated:

H.J. Res. 198. Joint resolution providing for appointment of Barnabas McHenry as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

MEASURE PLACED ON THE CALENDAR

The following bill was read the second time and placed on the calendar:

H.R. 1460. An act to express the opposition of the United States to the system of apartheid in South Africa, and for other purposes.

MEASURE READ THE FIRST TIME

The following bill, received from the House of Representatives on June 25, 1985, was read the first time:

H.R. 2378. An act to amend section 504 of title 5, United States Code, and section 2412 of title 28, United States Code, with respect to awards of expenses of certain agency and court proceedings, and for other purposes;

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, June 26, 1985, she had presented to the President of the United States the following enrolled bill:

S. 413. A bill to extend the provisions of title XII of the Merchant Marine Act, 1936, relating to war risk insurance.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-1339. A communication from the Acting Deputy Assistant Secretary of the Air Force transmitting, pursuant to law, a report on decisions to convert aircraft maintenance functions at two Air Force Bases to performance under contract; to the Committee on Armed Services.

EC-1340. A communication from the General Counsel of the Department of Defense transmitting a draft of proposed legislation to provide transportation for next of kin of certain unaccounted for persons to attend national meetings relative to POW-MIA's; to the Committee on Armed Services.

EC-1341. A communication from the Director of the Defense Security Assistance Agency transmitting, pursuant to law, a report on a foreign military assistance sale to Japan; to the Committee on Armed Services.

EC-1342. A communication from the Chairman of the Federal Trade Commission transmitting, pursuant to law, the 1982-83 report on cigarette labeling and advertising; to the Committee on Commerce, Science, and Transportation.

EC-1343. A communication from the Secretary of Energy transmitting, pursuant to law, the annual report under the Public Utility Regulatory Policies Act; to the Committee on Energy and Natural Resources.

EC-1344. A communication from the Secretary of Health and Human Services transmitting a draft of proposed legislation to amend the Social Services Block Grant Act; to the Committee on Finance.

EC-1345. A communication from the General Counsel of the Department of Defense transmitting a draft of proposed legislation to amend the Arms Export Control Act concerning agreements with member nations of NATO; to the Committee on Foreign Relations.

EC-1346. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, copies of international agreements, other than treaties, entered into by the U.S. in the 60 days previous to June 14, 1985; to the Committee on Foreign Relations.

EC-1347. A communication from the Director of Civilian Personnel, Uniformed Services University of the Health Sciences, transmitting, pursuant to law, the University's 1984 annual pension report; to the Committee on Governmental Affairs.

EC-1348. A communication from the Acting Assistant Secretary of Health and Human Services transmitting, pursuant to law, a report on two altered Privacy Act systems of records; to the Committee on Governmental Affairs.

EC-1349. A communication from the Secretary of Health and Human Services transmitting, pursuant to law, the annual report of the Director of the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases; to the Committee on Labor and Human Resources.

EC-1350. A communication from the Secretary of Education, transmitting, pursuant to law, final regulations, for Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals: Supported Em-

ployment Demonstration Projects; to the Committee on Labor and Human Resources.

EC-1351. A communication from the Secretary of Education, transmitting, pursuant to law, Notice of proposed annual funding priority for Innovative Programs for Severely Handicapped Children; to the Committee on Labor and Human Resources.

EC-1352. A communication from the Chairman of the Equal Employment Opportunity Commission, transmitting, pursuant to law, a report of the Commission's interagency coordination activities for the period October 1, 1983 to September 30, 1984; to the Committee on Labor and Human Resources.

EC-1353. A communication from the Executive Director of the Committee For Purchase From the Blind and Other Severely Handicapped, transmitting, pursuant to law, the annual report of the Committee for fiscal year 1984; to the Committee on Labor and Human Resources.

EC-1354. A communication from the Librarian of Congress, transmitting, pursuant to law, the annual report on the activities of the Library of Congress for fiscal year 1984; to the Committee on Rules and Administration.

EC-1355. A communication from the Secretary of Agriculture transmitting a draft of proposed legislation to deny farm program benefits to producers who grow cannabis or other prohibited plants on their farms; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1356. A communication from the Assistant Secretary of the Army transmitting a draft of proposed legislation to increase the number of authorized Deputy Chiefs of Staff for the Army; to the Committee on Armed Services.

EC-1357. A communication from the Chairman of the Board of Governors of the Federal Reserve System transmitting, pursuant to law, the 71st Annual Report of the Board of Governors of the Federal Reserve System; to the Committee on Banking, Housing, and Urban Affairs.

EC-1358. A communication from the Assistant Administrator of NASA transmitting corrections to a request of May 15, 1985 for transfer of certain funds to the Construction of Facilities budget; to the Committee on Commerce, Science, and Transportation.

EC-1359. A communication from the Secretary of Energy transmitting, pursuant to law, a report on the Department's biomass energy and alcohol fuels programs; to the Committee on Energy and Natural Resources.

EC-1360. A communication from the Secretary of Energy transmitting, pursuant to law, a report on activities undertaken by the Department to implement the alternative fuels production program; to the Committee on Energy and Natural Resources.

EC-1361. A communication from the Secretary of Health and Human Resources transmitting, pursuant to law, a report on the implementation of home and community based services provisions of the Social Security Act; to the Committee on Finance.

EC-1362. A communication from the General Counsel of the Department of the Treasury transmitting, a draft of proposed legislation to remove States' liability for sub-State entities' Social Security deposits, and to have States, political subdivisions, and interstate instrumentalities pay Social Security contributions directly to the Treasury along with Federal income tax withholding; to the Committee on Finance.

EC-1363. A communication from the Secretary of Health and Human Services transmitting, pursuant to law, the 1985 Social Security Annual Report; to the Committee on Finance.

EC-1364. A communication from the Director of the Office of Legislative Affairs, AID, transmitting, pursuant to law, the 1985 Annual Report on the Sahel Development Program; to the Committee on Foreign Relations.

EC-1365. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-43 adopted by the Council; to the Committee on Govermental Affairs.

EC-1366. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-47 adopted by the Council; to the Committee on Governmental Affairs.

EC-1367. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-50 adopted by the Council on June 11, 1985; to the Committee on Governmental Affairs.

EC-1368. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-48 adopted by the Council on June 11, 1985; to the Committee on Governmental Affairs.

EC-1369. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-49 adopted by the Council on June 11, 1985; to the Committee on Governmental Affairs.

EC-1370. A communication from the Executive Director of the President's Commission on Executive Exchange, transmitting a draft of proposed legislation to provide for the establishment of an experimental program relating to the acceptance of voluntary services from participants in an executive exchange program of the Government; to the Committee on Governmental Affairs.

EC-1371. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a list of the reports issued by the General Accounting Office during the month of May 1985; to the Committee on Governmental Affairs.

EC-1372. A communication from the General Counsel of the Foreign Claims Settlement Commission, Department of Justice, transmitting, pursuant to law, a report on the implementation of the Government in the Sunshine Act for calendar year 1984; to the Committee on Governmental Affairs.

EC-1373. A communication from the Acting Director of the Office of Personnel Management, transmitting a draft of proposed legislation to amend title 5, United States Code, to reform the Civil Service Retirement System, and for other purposes; to the Committee on Governmental Affairs.

EC-1374. A communication from the Commissioner of the Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, a report on the waiver of certain grounds of admissability for certain refugees; to the Committee on the Judiciary.

EC-1375. A communication from the Auditors involved, transmitting, pursuant to law, the annual audit report of the National Council on Radiation Protection and Measurements; to the Committee on the Judiciary.

EC-1376. A communication from the Administrator of Veterans' Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to authorize the Veterans' Administration to make temporary and part-time appointments of certain health-care personnel for periods in excess of one year; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LUGAR, from the Committee on Foreign Relations, with amendments and an amended preamble:

S. Res. 185: Resolution to promote emigration from Cuba.

By Mr. LUGAR, from the Committee on Foreign Relations, with an amendment and with a preamble:

S. Con. Res. 46: Concurrent resolution to express the sense of the congress regarding Americans missing in Southeast Asia.

JOINT REFERRAL OF NOMINATION

Mr. PACKWOOD. Mr. President, as in executive session, I ask unanimous consent that the nomination of William B. Horn to be Assistant Secretary for Fish and Wildlife be jointly referred to the Committee on Energy and Natural Resources and Environment and Public Works.

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

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. CRANSTON (for himself and Mr. SARBANES):

S. 1360. A bill to amend the Energy Policy and Conservation Act to improve the administration of the Federal energy conservation program for consumer products, to enhance consumer information programs, to encourage the purchase of more energy-efficient appliances, to implement efficiency standards for certain appliances and to improve environmental quality by reducing acid-producing emissions threatening public health and safety, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SPECTER (for himself, Mr. PRESSLER, Mr. EXON, Mr. DIXON, Mr. SIMON, Mr. ROCKEFELLER, and Mr. MCCONNELL):

S. 1361. A bill to amend the Regional Rail Reorganization Act of 1973 to provide for the transfer of ownership of the Consolidated Rail Corporation (Conrail) to the private sector, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. EVANS (for himself, Mr. DURENBERGER, Mr. ANDREWS, Mr. STEVENS, Mr. BOSCHWITZ, Mr. DANFORTH, Mr. LUGAR, Mr. WEICKER, Mr. MATSUNAGA, Mr. MITCHELL, Mr. MOYNIHAN, Mr. RIEGLE, Mr. BINGAMAN, Mr. LEVIN, Mr. ZORINSKY, Mr. GORE, Mr. EXON, Mr. SASSER, Mr. ROCKEFELLER, Mr. DODD, Mr. BOREN, Mr.

KERRY, Mr. CRANSTON, and Mr. ABDNOR):

S. 1362. A bill to amend part A of title IV of the Social Security Act to provide for a study of quality control standards and procedures under the Aid to Families with Dependent Children program, to provide for a moratorium on the imposition of penalties for erroneous payments, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY (for himself, Mr. THURMOND, Mr. KERRY, Mr. HOLLINGS, Mr. DECONCINI, Mr. CRANSTON, Mr. CHAFEE, Mr. D'AMATO and Mr. METZENBAUM):

S. 1363. A bill to prohibit the use of the mails to send dangerous martial arts weapons; to the Committee on the Judiciary.

By Mrs. KASSEBAUM:

S. 1364. A bill to authorize assistance for famine prevention in Africa; to the Committee on Foreign Relations.

By Mr. ROTH (for himself, Mr. EAGLETON, Mr. LEVIN and Mr. COHEN):

S. 1365. A bill to establish as an executive department of the Government a Department of International Trade and Industry, to establish the National Oceanic and Atmospheric Administration and the Bureau of the Census as independent agencies, and for other purposes; to the Committee on Governmental Affairs.

By Mr. GLENN:

S. 1366. A bill to require the Secretary of Agriculture to conduct a five-year research program to develop new non-food uses for agricultural commodities, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. GORE:

S. 1367. A bill to provide for the establishment of a clearinghouse and for studies on how to collect and analyze statistics and other information on the aggregate cost, utilization, and quality of health care services in order to provide for greater efficiency and quality in the purchase of health care services; to the Committee on Governmental Affairs.

By Mr. MATHIAS (for himself, Mr. MATSUNAGA and Mr. PELL):

S. 1368. A bill to end shipment of padded-jaw or steel-jaw leghold traps; to the Committee on Environment and Public Works.

By Mr. CRANSTON:

S. 1369. A bill to direct the Secretary of State to take certain measures to improve security at foreign international airports; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. HATCH:

S. Res. 187. A resolution expressing the sense of the Senate that the United States Government should take further measures for the prevention of aircraft piracy; to the Committee on Foreign Relations.

By Mr. MATHIAS (for himself and Mr. PELL):

S. Res. 188. A resolution to recognize the personal commitments contributions of Paul Mellon; ordered held at the desk.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CRANSTON: (for himself and Mr. SARBANES):

S. 1360. A bill to amend the Energy Policy and Conservation Act to improve the administration of the Federal Energy Conservation Program for consumer products, to enhance consumer information programs, to encourage the purchase of more energy-efficient appliances, to implement efficiency standards for certain appliances and to improve environmental quality by reducing acid-producing emissions threatening public health and safety, and for other purposes; to the Committee on Energy and Natural Resources.

CONSUMER PRODUCTS ENERGY EFFICIENCY AMENDMENTS

Mr. CRANSTON. Mr. President, today I am introducing legislation to amend the Environmental Policy and Conservation Act to set national energy efficiency standards for major household appliances.

A companion bill will be introduced today in the other body by Representative SAM GEJDENSON of Connecticut.

This legislation will have several major benefits for the American people and the Nation as a whole:

First, it will benefit consumers who operate new energy-efficient appliances, because they will save money on their electric bills.

Second, all utility ratepayers and shareholders will benefit, because as consumers use more efficiently the electricity that utilities generate, the need to build expensive new powerplants to meet anticipated load growth will be diminshed, and the use of inefficient or expensive powerplants diminished.

Third, manufacturers of major home appliances will benefit from avoiding having to face different standards in each State in which they choose to do business, and will have their ability to compete in foreign markets enhanced.

Fourth, all those living in the Eastern United States affected by acid rain, as well as those utilities whose powerplants are producing emissions responsible for billions of dollars worth of acid-rain damage, will benefit by being able to reduce their acid-producing emissions in the least cost, cleanest and most efficient way possible.

Mr. President, California is once again pointing the way for the rest of the Nation. My State has been developing tough appliance efficiency regulations since 1975.

And they have been remarkably effective.

In my State, refrigerators use more electricity than any other household appliance.

Before California adopted appliance efficiency standards, refrigerators and refrigerator-freezers consumed 12 billion kilowatt hours of electricity each year, according to the California Energy Commission.

But in 1983, as a result of the appliance standards on refrigerators and refrigerator-freezers, residential users saved around 213 million kilowatt hours of electricity.

The saving on refrigerators alone was worth $18 million.

In 1983, an efficient central air-conditioner retailed for approximately $225 more than a non-efficient one. Since as much as 80 percent of air-conditioner purchases are made by builders or apartment house owners—who usually seek the lowest cost appliance available and will not benefit, in most cases, from lower utility bills—this higher price is a disincentive to purchase and energy-efficient air-conditioner, even though the cost will be passed along to the ultimate user of the appliance.

But, when efficiency standards eliminate the nonefficient, cheap appliances, see how the consumer fares:

A consumer using an energy-efficient air-conditioner in 1983 saved about $47 on utility bills in California in that 1 year.

The average life of a central air-conditioner is 13 years.

Over the expected life cycle of the central air-conditioner, a consumer would save $611 on utility bills in 1983 dollars, benefiting by $386, despite the initial higher cost of his appliance.

Yet, information on so-called life-cycle costing is not readily available to those consumers who do purchase their own appliances, and not usually considered when purchases are made by others. This legislation addresses both of those problems.

The total savings on all home appliances covered by California's efficiency regulations—central and room air-conditioners, gas and electric water heaters, gas space heaters, refrigerators, refrigerator-freezers, and freezers—exceeded $173 million in 1983.

California's electric power utilities saved the energy equivalant of 2 million barrels of oil that year which would have been wasted were it not for the more efficient appliances in use in the State.

Over the next 20 years, the regulations will reduce the average monthly residential electricity bill by around 7 percent for all Californians—even those who aren't using new energy-efficient appliances—because utilities shut off the most inefficient and costly plants first, as demand for electricity drops, and all utility ratepayers benefit.

Of course, those who acquire energy-efficient appliances will save even more.

The cumulative electricity savings on appliances covered by the California standards between now and the year 2002 could total $13 billion according to California Energy Commission estimates.

And that's just California, Mr. President.

Similar regulations nationwide could save roughly 10 times as much.

Sounds like a good idea, doesn't it?

That is why several other States have adopted or are considering appliance standards in some form, though no State has yet adopted the comprehensive approach California has.

But differing State standards present a major problem for a manufacturer who wants to sell efficient appliances to a national market.

That's one more reason why the standards need to be national.

Some have argued that, while saving energy is a good idea, appliance efficiency standards are unnecessary because appliances are becoming more efficient.

Unfortunately, that contention suffers from an inadequate understanding of the facts.

What is happening, Mr. President, is that in States like California, where appliance efficiency standards are in force, inefficient appliances are being improved or removed from the market. These changes cause the national averages for energy efficiency to look better. But, in those States which are not covered by appliance efficiency standards, significant improvements in appliance efficiency have not been made.

Meanwhile, the unnecessary use of electricity by inefficient appliances is doing serious, and perhaps irreversible, harm to our environment.

The oil, gas, and especially coal burned in powerplants to produce electricity, pollutes the air and is a major cause of billions of dollars worth of acid-rain damage annually.

The damage in the United States and in Canada continues and worsens, while proposed legislative solutions are stalemated in a furious debate over who should bear or share the cleanup costs.

National appliance efficiency standards, by reducing the need for electricity in all regions, would make possible the early retirement of the worst polluting plants.

By themselves, over a period of years, they would save almost enough energy to permit emissions reductions sufficient to stop further damage from acid rain. With other sensible conservation steps, the needed 50 percent reduction in acid-producing emissions could easily be achieved.

That's the least cost, cleanest, and most efficient remedy for acid rain yet proposed in this body. I ask my colleagues to consider it carefully.

Mr. President, I ask that the summary of the Consumer Products Energy Efficiency Amendment together with a partial list of the endorsing organizations, representing more than 16 million Americans, be included at this point in the RECORD, and that the bill be printed immediately following my remarks.

S. 1360

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consumer Products Energy Efficiency Amendments of 1985".

SEC. 2. FINDINGS AND PURPOSE.

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

(1) consumer appliances consume a significant portion of domestic and imported energy, and if current trends continue, such appliances will consume 30 percent more energy in the next two decades, requiring the construction and use of many new large central powerplants;

(2) continued use of inefficient appliances threatens our national security, national environment and the domestic economy, and can be a competitive disadvantage in international appliance markets;

(3) energy-efficient appliances are technologically feasible and are presently being manufactured by some manufacturers. In more widespread production and use, they would substantially reduce electric consumption and reduce energy costs to all users of such appliances;

(4) increased disclosure of information regarding appliance energy consumption would promote the purchase of energy-efficient appliances;

(5) however, better information cannot effectively influence a substantial percentage of consumer appliance purchases because they are made by building contractors, landlords and other third-party purchasers who do not bear the energy costs of operating such appliances; and

(6) the deposit of acid compounds emitted by powerplants is causing and contributing to widespread, long-term ecosystem degradation. Appliance standards, by saving electricity, will contribute to reducing these emissions.

(b) PURPOSE.—The purpose of this Act is to provide for a substantial gain in energy efficiency, and thereby serve the national interest, by improving the administration of the Federal energy conservation program for consumer products, enhancing consumer information programs to encourage the purchase of more energy-efficient appliances, and establishing energy efficiency standards for furnaces, central air conditioners, water heater, refrigerators, refrigerator-freezers and freezers.

SEC. 3. DISCLOSURE IN ADVERTISING AND SALE.

(a) DISCLOSURE AT POINT OF SALE.—Subsection (c)(4) of section 324 of the Energy Policy and Conservation Act (42 U.S.C. 6294(c)(4)), relating to labeling, is amended to read as follows:

"(4) A rule under this section applicable to a covered product shall, within 180 days after the date of the enactment of the Consumer Products Energy Efficiency Amendments of 1985, require disclosure, in any printed matter displayed or distributed at the point of sale of such product, of any information which may be required under this section to be disclosed on the label of such product or included in advertising related to such product.".

(b) DISCLOSURE IN ADVERTISEMENT.—Such subsection is further amended by adding at the end thereof the following new paragraph:

"(7)(A) In the case of a manufacturer of a covered product to which a rule under this section applies, the Commission shall, within 180 days after the date of the enactment of the Consumer Products Energy Efficiency Amendments of 1985, require such manufacturer to disclose, in any broadcast advertisement or any advertisement in any newspaper, magazine or other periodical, any information which may be required under this section to be disclosed on the label of such product.

"(B) Such disclosure shall be made in a manner that the Commission determines is likely to assist consumers in making purchasing decisions.".

(c) TECHNICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

"DISCLOSURE IN LABELING, ADVERTISING AND SALE"

(2) The table of contents for such Act is amended by striking out the item relating to Section 325 and inserting in lieu thereof the following:

"Sec. 325. Disclosure in labeling, advertising and sale."

SEC. 4. CONSUMER EDUCATION.

Section 337 of the Energy Policy and Conservation Act (42 U.S.C. 6307), relating to consumer education, is amended—

(1) by striking out "337." and inserting in lieu thereof "337. (a)";

(2) by striking out the last sentence; and

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

"(b) The Secretary, in consultation with the Commission, shall publish and make available comparative guides of each type (and class) of covered products, indicating its energy efficiency and annual operating cost. Such guides shall contain consumer information on calculating the life-cycle costs of each such type (and class).".

SEC. 5. ENERGY EFFICIENCY STANDARDS FOR WATER HEATERS, CENTRAL AIR-CONDITIONERS, FURNACES, REFRIGERATORS, REFRIGERATOR-FREEZERS AND FREEZERS.

Section 325(a) of the Energy Policy and Conservation Act (42 U.S.C. 6295(a)), relating to energy efficiency standards, is amended by adding at the end thereof the following new paragraph:

"(3)(A) Notwithstanding subsection (b) and subsection (d), the Secretary shall, no later than 180 days after the date of the enactment of the Consumer Products Energy Efficiency Amendments of 1985, prescribe an energy efficiency standard for each type (or class) of covered products specified in paragraphs (1), (2), (5), (12), and (13) of section 322(a). Notwithstanding the second sentence of subsection (c), each such energy efficiency standard shall take effect not later than 18 months after the date on which the Secretary prescribes it. The Secretary may not reevaluate, under subsection (h), a standard required by this paragraph before the end of the 3-year period beginning on the date on which such standard takes effect.

"(B) The standards for a type (or class) of covered products under this paragraph shall—

"(i) be no less than the average shipment weighted energy efficiency for such type (or class) for 1984, and

"(ii) be based on a test procedure prescribed under section 323 for such type (or class).".

SEC. 6. PROMOTION OF DOMESTIC PRODUCTION AND REDUCTION OF DOMESTIC UNEMPLOYMENT.

(a) ECONOMIC JUSTIFICATION OF STANDARDS.—Subsection (d) of section 325 of the

Energy Policy and Conservation Act (42 U.S.C. 6295), relating to energy efficiency standards, is amended by redesignating paragraphs (6) and (7) as paragraphs (10) and (11), respectively, and by inserting after paragraph (5) the following new paragraphs:

"(6) the effect of such standard on the promotion of domestic production,

"(7) the effect of such standard on the reduction of unemployment and the improvement of the economy.".

"(8) the effect of such standards on electric utilities, including demand growth, construction needs, utility rates, and load management,"

"(9) the effect of such standards on the human environment, including reductions in the deposition of acid compounds emitted by powerplants,"

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to determinations made more than 180 days after the date of the enactment of this Act.

SEC. 7. REPORT ON IMPORTS.

Section 338 of the Energy Policy and Conservation Act (42 U.S.C. 6308), relating to annual report, is amended by adding at the end thereof the following: "Each such report shall include information regarding the percentage of covered products which are imported and the percentage of components of covered products which are imported.".

SEC. 8. IMPROVEMENTS IN ENERGY EFFICIENCY AND CONSERVATION.

(a) REQUIREMENT FOR STANDARD.—Subparagraph (C) of section 325(a)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6295(a)(2)(C)), relating to a determination that a substantial improvement in energy efficiency is feasible is amended by striking out "substantial improvement" and inserting in lieu thereof "improvement of 20 percent or more".

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 325(b) of such Act (42 U.S.C. 6295(b)(2)) is amended by striking out "significant conservation of energy" and inserting in lieu thereof "improvement of 20 percent or more in energy efficiency".

SEC. 9. CRITERIA FOR ESTABLISHING SPECIAL STANDARDS.

(a) BASIS OF DETERMINATION FOR SPECIAL STANDARDS.—Subsection (f) of Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295(f)), relating to special energy efficiency standards, is amended by adding at the end thereof the following new paragraph:

"(3)(A) In determining under this paragraph whether a performance-related feature justifies the establishment of a higher standard, the Secretary shall consider such factors as—

(i) the utility to the consumer of such a feature, and

(ii) such other factors as he deems appropriate.".

"(B) In determining under this paragraph whether a performance-related feature justifies the establishment of a lower standard, the Secretary shall consider such factors as—

"(i) the utility to the consumer of such a feature,

"(ii) the additional cost of meeting the otherwise applicable standard,

"(iii) the additional estimated range of annual operating costs which would result from such lower standard, and

"(iv) such other factors as the Secretary deems appropriate.".

(b) CONFORMING AMENDMENT.—Section 325(f)(1) of such Act is amended by striking out the last sentence thereof.

SEC. 10. EFFECT OF FEDERAL STANDARD ON OTHER LAW; ESTABLISHING EXPECTED AVERAGE IMPROVEMENTS FOR ENERGY EFFICIENCY.

Subsection (b) of Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295(b)), relating to energy efficiency standards, is amended—

(1) by striking out "(b)" and inserting in lieu thereof "(b)(1)";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(3) by striking out "or" at the end of subparagraph (B) (as so redesignated) an inserting in lieu thereof "and";

(4) by striking out the last sentence thereof; and

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

"(2) If no standard for a type (or class) of covered product is prescribed, the Secretary shall issue a guideline for improvement in energy efficiency for such type (or class) for each of the following 5 years. The Secretary shall monitor the improvements in efficiency of such type (or 13 class) and shall prescribe a standard under section 325 whenever such type (or class) fails, for 3 consecutive years, to achieve at least half of the improvement under such guideline. Such rule shall require a level of energy savings equal to the improvement specified in such guideline.".

Subsection (a) of Section 327 of the Energy Policy and Conservation Act (42 U.S.C. 6297(a)), relating to effect of Federal standards on other law, is amended by adding immediately at the beginning of subsection (a)(2)(A)—"except for interim standards under section 325(a)(3), ".

KEY PROVISIONS

To improve consumer information, DOE is directed to produce and distribute appliance efficiency guides, and the disclosure of appliance efficiency is required in advertising.

DOE is directed to issue "interim" standards for furnaces, central air conditioners, water heaters, refrigerators, refrigerator-freezers, and freezers within 6 months.

The existing law is amended to eliminate automatic pre-emption of state standards when DOE issues "interim" standards or determines that "no standard" is justified.

DOE is required to reconsider any "no standard" finding if expected marketplace improvements fail to occur.

The terms of the existing law that DOE misinterpreted during its previous rulemakings are defined. On the basis of these misinterpretations, DOE sidestepped issuing the efficiency standards intended by Congress.

ENDORSING ORGANIZATIONS (PARTIAL LIST)

Amana Refrigeration, Inc.
American Public Power Association.
Conservation Foundation.
Energy Conservation Coalition.
Environmental Action Foundation.
Environmental Policy Institutes.
Federation of American Scientists.
Friends of the Earth.
League of Women Voters of the United States.
National Audubon Society.
National Consumer Law Center.
National Wildlife Federation.
Natural Resources Defense Council.
Pacific Gas & Electric Co.
Public Citizen.
Sierra Club.
Solar Lobby.
San Diego Gas & Electric Co.
Union of Concerned Scientists.
United Methodist Church—Board of Church and Society.

CONSUMER PRODUCTS ENERGY EFFICIENCY AMENDMENTS OF 1985

APPLIANCE ENERGY CONSUMPTION: BACKGROUND

Residential appliances consume roughly one-third of the electricity produced in the US and the equivalent of over half of all US oil imports. The costs to consumers of operating these appliances is a major household expense. A typical family spends over $1,000 a year operating its appliances.

THE NEED FOR LEGISLATION

Economical and efficient appliances are available which could save consumers hundreds to dollars every year, yet the efficiency of the average appliance purchased has not improved significantly in many cases. Why? In part, the problem lies with the lack of adequate consumer information. Many consumers are not aware of the choices available and the potential for savings. Basic consumer guides to appliance efficiency are generally not available, or if produced at all, are difficult to obtain and not designed for comparison shopping. Moreover, many appliances are not purchased by the person who pays the utility bills. Appliances are often purchased by the builder, contractor, or landlord, who cares more about the initial cost. The lack of any significant improvements in the average efficiency of furnaces, central air conditioners, and water heaters sold in the United States since 1972 is in large part due to the fact that such "third party" purchases predominate for these products.

DOE FAILS TO IMPLEMENT THE LAW

In 1975, President Gerald Ford proposed a national goal of reducing the energy use of new appliances by 20%. That year, Congress passed the Energy Policy and Conservation Act (EPCA) incorporating the first national appliance efficiency program covering 13 types of appliances. In 1978, as part of the National Energy Act, Congress directed the Secretary of the newly established Department of Energy to establish efficiency standards for all thirteen products originally listed in EPCA. Yet today, ten years after the passage of EPCA, no appliance efficiency standards have been issued. Instead, DOE has issued "no standard" standards for appliances. If DOE's intransigence continues, many expensive new power plants will be unnecessarily built to serve the increased energy demands of residential appliances during the next two decades.

By Mr. SPECTER (for himself, Mr. PRESSLER, Mr. EXON, Mr. DIXON, Mr. SIMON, Mr. ROCKEFELLER, and Mr. MCCONNELL):

S. 1361. A bill to amend the Regional Rail Reorganization Act of 1973 to provide for the transfer of ownership of the Consolidated Rail Corporation [Conrail] to the private sector, and for other purposes; to the Committee on Commerce, Science, and Transportation.

CONRAIL PUBLIC SALE ACT

Mr. SPECTER. Mr. President, today I am introducing the Conrail Public Sale Act of 1985. This bill implements

the Morgan Stanley proposal to purchase the 85-percent interest of the United States in the common stock of Conrail, and to return Conrail to broad public ownership through one or more public stock offerings.

The Morgan Stanley proposal to return Conrail to broad public ownership—an alternative which I have supported for almost 1 year—provides the most effective assurance for the long-term viability of Conrail's rail system. Conrail's expected continued viability and profitability have also been verified by the April 1 U.S. Railway Association report. The proposal further avoids the anticompetitive problems contained within the proposed sale/merger of Conrail/Norfolk Southern, ensures a greater return to the Government and taxpayers—who have already invested in excess of $7 billion in the modernization of the Conrail system—and allows all taxpayers the opportunity to invest in Conrail's future, as opposed to giving away the system to Norfolk Southern.

I have been concerned about the sale of Conrail since June 1984 when final proposals were submitted by private bidders. I believed then that these proposals had potentially serious consequences for my State, the Commonwealth of Pennsylvania. Through exhaustive analysis over the last year, I have become convinced that a sale of Conrail to Norfolk Southern will also have harmful consequences for the entire Nation.

I reached my conclusions after a lengthy and detailed investigation. This investigation included extensive consultations with labor and business leaders; numerous discussions with the Secretary of Transportation, Elizabeth Dole; review of voluminous documents; and seven hearings that I have conducted on this subject. These hearings were held in Harrisburg in October, Philadelphia in December and March; Pittsburgh in January and February; and in Washington, DC, with Senator DIXON and the Northeast-Midwest Senate Coalition in January and February. I heard the testimony of more than 55 witnesses, including shippers, public officials, competing bidders, investment bankers, union leaders, and Conrail management and financial officers.

I have also visited Conrail car repair shops and shipping facilities throughout Pennsylvania. The hundreds of concerned workers and union officials with whom I spoke on these visits further convinced me that it would be strongly contrary to the national interest, as well as the best interest of Pennsylvania, to proceed with the proposed sale of Conrail to Norfolk Southern.

The proposed purchase price by Norfolk Southern of $1.2 billion for the Government's 85 percent interest in Conrail represents a huge giveaway of taxpayers' money. Norfolk Southern will be able, through tax benefits, to recoup that minor investment in a few short years. Given the taxpayers' expenditure of over $7 billion in Conrail, Conrail's present book value of $4 billion, and the fact that Conrail has in excess of 41 billion in cash and annual profits of over $500 million, the Norfolk Southern sale price is outrageous.

In addition, the Congressional Budget Office has completed its review of S. 638—the proposed sale of Conrail to Norfolk Southern—and has concluded that:

> The Federal Government would be paid about $1.4 billion in 1986 for the sale of Conrail, would save about $10 million a year in labor protection payments, and would lose about $0.4 billion in tax revenues and $0.8 billion in future interest and dividend payments from Conrail over the 1986-90 period. (CBO Report, June 6, 1985, p. 1).

Thus, in the course of 5 years, the Government, which received $1.4 billion for the sale of Conrail, would lose $1.2 billion. Astoundingly, the effective purchase price for Conrail under Secretary Dole's proposal would be only $200 million.

This report confirms what I have stated repeatedly throughout the past year—that the sale of Conrail to Norfolk Southern is a giveaway, and the purchase price is absurdly low. The report verifies that the revenue losses to the Government would result largely from Norfolk Southern's ability to use Conrail's depreciation deductions to offset taxable income generated by other portions of the merged corporation. Why Norfolk Southern should receive this enormous benefit—to the detriment of American taxpayers who already have contributed so heavily to Conrail's restoration—has never been satisfactorily answered.

Alternatively, the Morgan Stanley plan offers the Government an immediate $1.2 billion in cash for the Government's 85 percent interest in Conrail. In addition, the Morgan Stanley plan offers the Government stock purchase warrants in Conrail worth a minimum of $20 million over a 10-year term. In the event that the value of Conrail's stock appreciates beyond conservative estimates, the stock warrants to be received by the Government would be of much greater value.

Further, the anticompetitive problems raised by combining Conrail's 15,000 miles of track with Norfolk Southern's 18,000 miles, thereby creating the Nation's largest rail system, are insurmountable. The Senate Judiciary Committee, on which I serve, has conducted several hearings on this topic, and plans to investigate the subject even further. The divestiture plan proposed by the Department of Justice as a remedy to specified antitrust violations is not feasible. It is unrealistic to divert key lines to small carriers such as Guilford Transportation or the Pittsburgh & Lake Erie Railroad, which will be unable to provide effective competition for the combined rail giant of the Conrail/Norfolk Southern system. No such anticompetitive problems exist with the Morgan Stanley proposal.

The Morgan Stanley proposal, involving approximately 32 "blue chip" investors—such as Citicorp, Columbia, Harvard and Princeton Universities, United States Steel, and Nynex—is a commitment which represents the strongest testimony to the economic viability of Conrail and its future as a major independent rail carrier. The investors have accepted public interest covenants equivalent to those negotiated by the Department of Transportation and Norfolk Southern, including provisions relating to cash balances, dividends, and capital expenditures. These covenants, unlike the Norfolk Southern proposal, are contained within the legislation and cannot be negotiated. One of the major investors, CSX Corp., is a major rail system, but it will place its stock interest in trust to ensure that it will not participate in the management or control of Conrail, and that no antitrust problems will arise.

Over a period of time, not to exceed 5 years following the purchase, the investor group will resell to the public a majority of its interest in Conrail through one or more public stock offerings. The Government will bear no market risk associated with future sales of Conrail stock. At the conclusion of such offerings, the investor group will own no more than 40 percent of an independent, financially secure Conrail, with no single investor owning more than 10 percent. Conrail employees will receive two seats on Conrail's board of directors.

This proposal provides taxpayers with a superior return for their investment in Conrail and, at the same time, preserves effective rail competition in the Northeast and Midwest without creating any complex antitrust issues requiring legislative resolution. This proposal will result in a financially strong and independent Conrail, thus ensuring long-term employment opportunities for Conrail workers. This proposal will better meet the interests of taxpayers, Conrail current and former employees, shippers, and consumers. Further, it satisfies the financial and public interest factors identified by the Department of Transportation in establishing a process for the sale of Conrail under the Northeast Rail Service Act of 1981.

For these reasons, I introduce this bill today and 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. 1361

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 "Conrail Public Sale Act of 1985".

FINDINGS

SEC. 2. The Congress finds that—

(1) the Northeast Rail Service Act of 1981 (45 U.S.C. 1101, et seq.) provided for an orderly return of Conrail freight service to the private sector;

(2) the provisions of the Northeast Rail Service Act of 1981 were successful in removing Conrail's obligations beyond railroad freight service and in otherwise preparing Conrail for an orderly return to the private sector;

(3) the Board of Directors of the United States Railway Association twice found Conrail to be a profitable corporation under section 403 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 763);

(4) Morgan Stanley & Co. Incorporated developed a firm proposal on behalf of a diverse group of private investors to purchase the interest of the United States in the common stock of Conrail and to return Conrail to broad private ownership through one or more public stock offerings;

(5) the sale proposal of the investor group organized by Morgan Stanley & Co. Incorporated best meets the objectives of (A) leaving Conrail in the strongest financial position after the sale, (B) preserving patterns of service to shippers and communities in the region that Conrail now serves by continuing Conrail as an independent railroad, and (C) maximizing the return to the United States on its investment consistent with the objectives set forth in subparagraphs (A) and (B);

(6) the sale proposal of the investor group organized by Morgan Stanley & Co. Incorporated satisfies the requirements of the Northeast Rail Service Act of 1981, including the intent, goals, and objectives relating to the sale of the interest of the United States in the common stock of Conrail and the requirements of section 401(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 761(e)); and

(7) amendments to the Regional Rail Reorganization Act of 1973 and related laws are needed to permit the sale of the interest of the Untied States in the common stock of Conrail to the investor group organized by Morgan Stanley & Co. Incorporated and to permit cancellation of the interest of the United States in Conrail debt and preferred stock.

PURPOSE

SEC. 3. It is the purpose of the Congress in this Act to return Conrail to the private sector by directing and facilitating the sale of the interest of the United States in the common stock of Conrail to the investor group organized by Morgan Stanley & Co. Incorporated.

DEFINITIONS

SEC. 4. In this Act, unless the context otherwise requires, the term—

(1) "closing date" means the date that the interest of the United States in the common stock of Conrail is transferred pursuant to the Purchase Agreements;

(2) "Conrail" means the Consolidated Rail Corporation;

(3) "Purchase Agreements" means the agreements between the Purchasers and the Secretary in the form filed with the Committee on Commerce, Science and Transportation of the Senate;

(4) "Purchasers" means the investor group organized by Morgan Stanley & Co. Incorporated to purchase the interest of the United States in the common stock of Conrail as identified in the Shareholders' Agreement;

(5) "Secretary" means the Secretary of Transportation; and

(6) "Shareholders Agreement" means the agreement among the Purchasers, Conrail and Morgan Stanley & Co. Incorporated in the form filed with the Committee on Commerce, Science and Transportation of the Senate.

TITLE I—AMENDMENTS TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973 AND THE NORTHEAST RAIL SERVICE ACT OF 1981

LIMIT ON AUTHORITY TO PURCHASE STOCK

SEC. 101. Section 216(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)) is amended by adding at the end thereof the following new paragraph:

"(5) The authority of the Association to purchase debentures or series A preferred stock of the Corporation shall terminate upon the closing date.".

RESPONSIBILITY OF CONRAIL DIRECTORS

SEC. 102. Section 301(i) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 741(i)) is amended by inserting immediately after "required by law" the following: ", taken to implement the sale of the interest of the United States in the common stock of the Corporation to the Purchasers,".

APPLICABILITY OR REGIONAL RAIL ORGANIZATION ACT OF 1973 TO CONRAIL AFTER SALE

SEC. 103. Section 301 of the regional Rail Reorganization Act of 1973 (45 U.S.C. 741) is amended by adding at the end thereof the following new subsection:

"(k) GOVERNING PROVISIONS AFTER SALE.—The provisions of this Act shall not apply to the Corporation and to activities and other actions and responsibilities of the Corporation and its directors after the closing date, other than with regard to—

"(1) section 102;

"(2) section 201(d);

"(3) section 203, but only with respect to information relating to proceedings before the special court established under section 209(b);

"(4) section 216(f)(8), but only as such authority applies to activities related to the ESOP and related trusts before the closing date;

"(5) section 217(e);

"(6) subsection (b) of this section, but only with respect to matters covered by the last sentence of such subsection;

"(7) subsection (i) of this section, but only as such authority applies to service as a director of the Corporation before, or in connection with the implementation of, the sale of the interest of the United States in the common stock of the Corporation;

"(8) section 305, but only as to the effect, and continuing administration, of supplemental transactions consummated before the closing date;

"(9) section 308, but only in abandonment actions when such authority has been relied on to file a notice or notices of insufficient revenues before the closing date;

"(10) section 401;

"(11) section 402;

"(12) section 404;

"(13) section 408;

"(14) section 701, but only as may be necessary to identify employees eligible for benefits prescribed under that section and as provided in section 108 of the Conrail Public Sale Act of 1985;

"(15) section 702(e);

"(16) section 704(b);

"(17) section 709;

"(18) section 710(b)(1);

"(19) section 711; and

"(20) section 714, but only with regard to disputes or controversies specified in such section that arose before the closing date.".

IMPLEMENTATION OF SALE

SEC. 104. (a) Section 401 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 761) is amended to read as follows:

"SALE OF THE CORPORATION

"SEC. 401. (a) PURCHASE AGREEMENT.—As soon as practicable, but not later than 10 days following the date of enactment of the Conrail Public Sale Act of 1985, the Secretary shall execute and deliver on behalf of the United States the Purchase Agreements. The Secretary shall transfer the interest of the United States in the common stock of the Corporation to the Purchasers in accordance with such Agreements.

"(b) CONDITIONS OF SALE.—In addition to the terms and conditions of the Purchase Agreements, the transfer of the interest of the United States in the common stock of the Corporation shall be subject to, and governed by, the terms and conditions of the Shareholders' Agreement and the Conrail Agreement, which shall be executed concurrently with the Purchase Agreements.

"(c) RAILROAD PURCHASERS.—Any railroad which purchases common stock of the Corporation shall vote such stock in the same proportion as all other common stock of the Corporation is voted unless the Commission determines that such railroad has purchased a controlling interest. As used in this subsection, the term 'railroad' shall include any entity controlling, controlled by, or under common control with any railroad (other than the Corporation or its subsidiaries).

"(d) ANTI-TAKEOVER RESTRICTION.—Except as may be provided in the Purchase Agreements with respect to the initial allocation of shares among the Purchasers, no person (with the exception of the ESOP), affiliated group of persons, or group of persons acting in concert may, for a period of five years beginning on the closing date, hold or acquire more than 10 percent of the outstanding shares of any class of the voting stock of the Corporation.".

(b) The item in the table of contents of the Regional Rail Reorganization Act of 1973 relating to section 401 is amended to read as follows:

"Sec. 401. Sale of the Corporation.".

CANCELLATION OF DEBT AND PREFERRED STOCK

SEC. 105. Section 402 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762) is amended to read as follows:

"DEBT AND PREFERRED STOCK

"SEC. 402. (a) RECAPITALIZATION.—In connection with the sale of the interest of the United States in the common stock of the Corporation under section 401, and consistent with the Purchase Agreements, the Secretary shall take such action as may be necessary to cause the Corporation to be recapitalized to assure that the interest of the United States, or any agent or instrumentality thereof, and all other commitments or obligations of the Corporation to the United States or any agent or instrumentality thereof arising out of such interest, in any debt (including accrued interest and contin-

gent interest thereon) and preferred stock (including accrued and unpaid dividends thereon) of the Corporation shall be canceled or retired and contributed to the capital of the Corporation. The Secretary shall cause the recapitalization authorized by this section to be effective as of the closing date.

"(b) EFFECT.—For purposes of regulation by the Commission and State public utility regulation, the recapitalization authorized by this section, the sale of the interest of the United States in common stock of the Corporation, and the value of the consideration received therefor by the United States shall not reduce the Corporation's investment net of depreciation in any of its assets and shall not affect the calculation of the Corporation's stock or asset values, expenses, costs, returns, profits, or revenues, or otherwise affect or be the basis for a change in the regulation of any railroad service, rate, or practice of the Corporation, including any service, rate, or practice provided or established by the Corporation in connection with other carriers.".

PUBLIC INTEREST COVENANTS

SEC. 106. (a) Section 404 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 764) is amended to read as follows:

"PUBLIC INTEREST COVENANTS

"Sec. 404. (a) DEFINITIONS.—For purposes of this section, the term—

"(1) 'affiliate' means, with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with, such person (for which purpose the term 'control' when used with respect to any person means the possession, directly or indirectly, of power to direct or cause the direction of the management and policies of such person) and, without limiting the generality of the foregoing, includes any officer of such person or of any affiliate of such person;

"(2) 'capital expenditures' means all amounts expended by the Corporation and its subsidiaries for replacement or rehabilitation of, or enhancements to, the railroad plant, property, trackage, and equipment of the Corporation and its subsidiaries, all as determined in accordance with generally accepted accounting principles: *Provided, however,* That no amount spent upon normal repair, maintenance and upkeep of such railroad plant, property, trackage, and equipment in the ordinary course of business shall constitute capital expenditures;

"(3) 'cumulative net income' means, for any period, the net income of the Corporation and its consolidated subsidiaries (after provision for income taxes) properly attributable to the conduct of the business of the Corporation and its consolidated subsidiaries before provision for any preferred stock payments;

"(4) 'debt' means (A) indebtedness, whether or not represented by bonds, debentures, notes, or other securities, for the repayment of money borrowed, (B) all deferred indebtedness for the payment of the purchase price of property or assets purchased, (C) all guaranties, endorsements, assumptions, and other contingent obligations in respect of, or to purchase or to otherwise acquire, indebtedness of others, and (D) all indebtedness secured by any mortgage pledge or lien existing on property owned, subject to such mortgage pledge or lien, whether or not indebtedness secured thereby shall have been assumed;

"(5) 'net additional debt' means, at any time, an amount equal to the difference between the Corporation's consolidated debt outstanding at such time and its consolidated debt outstanding immediately after the closing date;

"(6) 'net additional preferred stock' means, at any time, an amount equal to the fair market value of the consideration received by the Corporation for the issuance of outstanding preferred stock issued subsequent to the closing date;

"(7) 'non-required capital expenditures' means the amount, if any, by which capital expenditures for any fiscal year exceeds the greater of (A) an amount equal to depreciation of the Corporation for financial reporting purposes for such year or (B) $500,000,000;

"(8) 'person' means an individual, corporation, partnership, association, trust, or other entity or organization, including a government or political subdivision thereof or a governmental body;

"(9) 'preferred stock' means any class or series of preferred stock, and any class or series of common stock having liquidation and dividend rights and preferences superior to the common stock acquired by the Purchasers from the Secretary on the closing date; and

"(10) 'subsidiary' means any corporation more than 50 per centum of whose outstanding voting securities are directly or indirectly owned by the Corporation.

"(b) AFFIRMATIVE COVENANTS.—During a period of five years commencing on the closing date:

"(1) The Corporation shall furnish to the Secretary its audited consolidated financial statements within 90 days after the end of each fiscal year of the Corporation and its unaudited interim financial statements within 45 days after the end of each quarter (except the fourth quarter). Such interim financial statements shall have received such limited review by the Corporation's independent certified public accountants as such accountants normally accord to interim financial statements of publicly held companies.

"(2) The Corporation and each railroad subsidiary shall continue in the railroad business substantially as such business was being conducted by the Corporation as of February 8, 1985, and such railroad subsidiary and (subject to permitted abandonments and service alterations in accordance with applicable law and the normal procedures and regulations of the Commission) to maintain rail freight services throughout its system that are economically justifiable: *Provided, however,* That expedited abandonment proceedings commenced pursuant to section 308 of this Act before the closing date may be continued, but no new filings of notices of insufficient revenues may be made pursuant to such section. The Corporation shall maintain its corporation existence and its material licenses and franchises.

"(3) Notwithstanding any repeal of section 308 of this Act, the Corporation shall continue its practice of offering any line for which an abandonment certificate is issued by the Commission to a purchaser who agrees to provide interconnecting rail service. Such offer shall last for the 120-day period following the date of issuance of the abandonment certificate and the price for such abandoned line shall be equal to 75 percent of net liquidation value as determined by the Commission.

"(4) The Corporation and each of its subsidiaries shall maintain, preserve, protect, and keep their respective properties in good repair, working order, and condition, and shall not permit deferred maintenance, in order to provide and maintain rail service as required by paragraph (2) of this subsection.

"(5) The Corporation and each of its subsidiaries shall maintain insurance against loss or damage of the kinds customarily insured against by corporations similarly situated.

"(6) The Corporation shall spend in each fiscal year the greater of (A) an amount equal to the Corporation's depreciation for financial reporting purposes for such year or (B) $500,000,000, in capital expenditures: *Provided, however,* That in any year, the Corporation's Board of Directors may reduce the required capital expenditures for such year to an amount which the Board determines is justified by prudent business and engineering practices: *And further provided,* That in any event, the Corporation's cumulative capital expenditures subsequent to the closing date shall not be less than: $350,000,000 on the first anniversary of the closing date, $700,000,000 on the second anniversary of the closing date, $1,050,000,000 on the third anniversary of the closing date, $1,400,000,000 on the fourth anniversary of the closing date, and $1,750,000,000 on the fifth anniversary of the closing date.

"(7) The Corporation and each of its subsidiaries shall pay all debt promptly when due and payable.

"(8) The Corporation and each of its subsidiaries shall keep proper books and records in which full, true, and correct entries of all transactions will be made in accordance with generally accepted accounting principles (as applicable to companies subject to the reporting requirements of the Securities Exchange Act of 1934) applied on a consistent basis.

"(9) The Corporation shall continue to operate from its headquarters in Philadelphia, Pennsylvania and to retain its locomotive shop and car repair shop in Altoona, Pennsylvania;

"(10) The Corporation shall continue to maintain or reestablish, with the small eastern rail carriers of less than $300,000,000 annual operating revenues, reasonably efficient routes of major importance at the request of any such rail carrier.

"(11) The Corporation shall continue its affirmative action program, including its minority vendor program, substantially as such program was being conducted by the Corporation as of February 8, 1985, subject to any provisions of applicable law.

"(12)(A) Within 45 days after the close of each fiscal quarter of the Corporation and promptly following the declaration of any common or preferred stock payment described in paragraph (5) or (6) of subsection (c) of this section by the Board of Directors of the Corporation, but not later than 10 days before making such payment, the Corporation shall deliver to the Secretary a certificate executed by an executive officer or representative of the Corporation which shall (i) certify that as of such date, and, in the case of any such certificate delivered in connection with such payment, after giving effect thereto, the Corporation shall have complied, and, after giving effect to such payment, shall then be in compliance with, all of the covenants set forth in this section and that no default exists, or after giving effect to such payment, would exist, with respect to any such covenant, and (ii) set forth all computations necessary to evidence compliance with all of the covenants set forth in this section at the date of such certificate, and in the case of any such cer-

tificate delivered in connection with such payment, on a pro forma basis after giving effect to such payment.

"(B) The Secretary shall, not later than January 31 of each year, submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a reporting listing the certificates required under subparagraph (A) that were submitted by the Corporation during the preceding calendar year.

"(13) The Corporation shall give prompt notice to the Secretary and to each of the signatories to the Shareholder's Agreement of any default under any of the covenants set forth in subsection (b) or (c) of this section.

"(c) NEGATIVE COVENANTS.—During a period of five years commencing on the closing date:

"(1) The Corporation shall not, absent insolvency, liquidate, wind-up, dissolve, or file for voluntary reorganization under title 11 of the United States Code or any other law relating to bankruptcy, insolvency, or relief of debtors.

"(2) The Corporation shall not permit to occur any transaction or series of transactions (other than in the ordinary course of business of the Corporation and its subsidiaries) whereby all or any substantial part of the railroad assets and business of the Corporation and its subsidiaries taken as a whole are sold, leased, transferred, or otherwise disposed of to any corporation or entity other than to a wholly-owned subsidiary of the Corporation.

"(3) The Corporation shall not merge or consolidate with or into any corporation or any other entity. The Corporation shall not permit any subsidiary to merge or consolidate with or into any other entity unless, after giving effect to such merger or consolidation—

"(A) the Corporation shall be fully in compliance with all of the covenants enumerated in this section;

"(B) all of the covenants enumerated in this section shall continue to apply to the surviving or resulting entity of such merger or consolidation fully and to the same extent as they applied to the Corporation or to its subsidiaries (as the case may be) immediately prior to such merger or consolidation; and

"(C) such merger or consolidation shall not have violated any of the provisions of paragraph (8) of this subsection.

"(4) In connection with the financing of the purchase price of the common stock of the Corporation sold pursuant to the Purchase Agreements, (A) the Corporation shall not use its cash or cash equivalents hand, other than in connection with the transactions with employees contemplated by such Agreements and (B) the Corporation shall not subject its or its subsidiaries assets to any pledge, lien, mortgage, or other security interest.

"(5)(A) Except as otherwise provided under subparagraph (B), the Corporation shall not at any time, in respect of any shares of any class or series of the common stock of the Corporation—

"(i) declare or pay any dividends in cash, property, or other assets (other than dividends payable solely in shares of any class or series of the common stock of the Corporation) thereon;

"(ii) apply any of its property or assets to the purchase, redemption, or other acquisition or retirement thereof;

"(iii) set apart any sum for the purchase, redemption, or other acquisition or retirement thereof, or

"(iv) make any other distribution, by reduction of capital or otherwise.

Any action described in clause (i), (ii), (iii), or (iv) with respect to the Corporation's common stock is hereinafter in this section referred to as a 'common stock payment'.

"(B) No such common stock payment shall be made except to the extent that each of the conditions set forth below shall have been satisfied:

"(i) Such common stock payment is entirely in cash and the Corporation shall, after giving effect to such common stock payment, be fully in compliance with all of the covenants enumerated in this section.

"(ii) Immediately after giving effect to such common stock payment, the cumulative amount of all common stock payments made subsequent to the closing date shall not exceed (I) 40 percent of the cumulative net income of the Corporation accrued subsequent to the closing date minus (II) the cumulative amount of all preferred stock payments (as defined in paragraphs (6) of this subsection) made subsequent to the closing date: *Provided, however,* That the Board of Directors of the Corporation may waive the limitation contained in this clause (ii) for the purpose of permitting payment of regular quarterly common stock dividends not to exceed $1.03 per share during each of the two quarterly periods commencing immediately subsequent to the closing date.

"(iii) Immediately after giving effect to such common stock payment, the Corporation shall have cash and cash equivalents on hand at such time not less than the greater of: (I) $500,000,000, or (II) the sum of $500,000,000, net additional debt, and net additional preferred stock (the 'formula'): *Provided however,* That the formula shall be reduced by an amount equal to cumulative non-required capital expenditures made by the Corporation subsequent to the closing date.

Solely for purposes of the calculations under clause (ii) of this subparagraph (B), the following shall not be considered to be a common stock payment: (I) the purchase by the Corporation of the warrants issued to the Secretary pursuant to the Conrail Agreement, (II) purchases of up to 1,000,000 shares of common stock in response to, or in anticipation of, the exercise of the warrants, or (III) purchases, directly or indirectly, of shares of common stock held as of the closing date by the ESOP.

"(6)(A) Except as provided under subparagraph (B), the Corporation shall not in respect of any shares of any class or series of preferred stock of the Corporation—

"(i) declare or pay any dividends in cash, property, or other assets thereon;

"(ii) apply any of its property or assets to the purchase, redemption, or other acquisition or retirement thereof.

"(iii) set apart any sum for the purchase, redemption, or other acquisition or retirement thereof; or

"(iv) made any other distribution, by reduction of capital or otherwise.

Any action described in clause (i), (ii), (iii), or (iv) with respect to the Corporation's preferred stock is hereinafter in this paragraph referred to as a 'preferred stock payment'.

"(B) No such preferred stock payment shall be made except to the extent that each of the conditions set forth below shall have been satisfied:

"(i) Such preferred stock payment is entirely in cash and the Corporation shall, after giving effect to such preferred stock payment, be fully in compliance with all of the covenants enumerated in paragraphs (6) and (7) of subsection (b), and paragraphs (2), (3), (5), and (6) of subsection (c), of this section.

"(ii) Immediately after giving effect to such preferred stock payment, the cumulative amount of all common stock payments and all preferred stock payments made subsequent to the closing date shall not exceed the cumulative net income of the Corporation accrued subsequent to the closing date.

"(iii) Immediately after giving effect to such preferred stock payment, the Corporation shall have cash and cash equivalents on hand at such time not less than $500,000,000.

"(7) Notwithstanding paragraph (5) of this subsection, if the Corporation is in default in making capital expenditures pursuant to subsection (b) (6) of this section, common stock payments may not be made until the Corporation is again in compliance with such subsection (b) (6).

"(8) (A) The Corporation shall, and shall permit its subsidiaries to, enter into transactions with the Purchasers and their affiliates only if such transactions are (i) in the aggregate fair to the Corporation and its subsidiaries, and (ii) similar in kind and nature to, and documented, recorded, and accounted for in the same manner as, transactions between the Corporation and other persons not affiliated with the Corporation or with any of the purchasers.

"(B) Except in the implementation of the transactions contemplated by the Conrail Sale Agreements, the Corporation and its subsidiaries shall not engage in any of the following transactions with any Purchaser or its affiliates:

"(i) transfer, by merger, assumption, or otherwise, of any obligation of any Purchaser or its affiliates to the Corporation or any subsidiary in an amount greater than the value to the transferee of such merger, assumption, or other transaction;

"(ii) loans or advances by the Corporation or any subsidiary to any Purchaser or its affiliates; purchases or other acquisitions by the Corporation or any subsidiary of any capital stock, obligations, or securities of any Purchaser or its affiliates; capital contributions to or investments in or guarantees of any debt or obligation of any Purchaser or its affiliates by the Corporation or any subsidiary; and

"(iii) assignments of any right to receive income for a consideration of less value than such right by the Corporation or any subsidiary to any Purchaser or its affiliates.

"(C) Nothing in this paragraph shall prohibit transactions between the Corporation and any of its subsidiaries or among any of such subsidiaries.

"(9) In no event shall the Corporation obtain a reversion of any excess assets held in the trust or a successor trust maintained with the Corporation's supplemental pension plan or any successor plan. The Corporation shall not terminate its supplemental pension plan.

"(10) The Corporation shall not amend, modify, rescind, or revoke any provision of the Corporation's restated articles of incorporation relating to the relative rights, preferences, and limitations of any series or class of capital stock of the Corporation held by the Purchasers immediately after the closing date.

"(d) ACCOUNTING TERMS AND DETERMINATIONS.—(1) Unless otherwise specified in this section, all accounting terms used in this section shall be interpreted, all accounting determinations shall be made, and all financial statements required to be delivered shall be prepared, in accordance with generally accepted accounting principles as in effect from time to time in the United States, applied on a basis consistent (except for changes approved by the Corporation's independent public accountants) with the most recent audited consolidated financial statements of the Corporation.

"(2) For the purpose of calculations under paragraphs (5) and (6) of subsection (c), the transactions by which the Purchasers assumed ownership of the Corporation's common stock shall be accounted for as a recapitalization of the Corporation with a 100 percent revaluation of the Corporation's assets and liabilities based on the fair value of the new capital structure.

"(e) ADMINISTRATION.—(1) The Secretary may, upon application by the Corporation, waive (in whole or in part) any provision of this section if the Secretary determines in writing that such waiver would not impair continued rail service by the Corporation and its railroad subsidiaries or result in a material reduction in the financial strength of the Corporation and its subsidiaries taken as a whole.

"(2) The Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate any determination under paragraph (1).

"(3) No waiver shall be effective under this subsection until after the expiration of 45 calendar days after the transmittal required by paragraph (2).".

(b) The item in the table of contents of the Regional Rail Reorganization Act of 1973 relating to section 404 is amended to read as follows:

"Sec. 404. Public interest covenants.".

APPLICABILITY OF CERTAIN LAWS TO THE SALE OF CONRAIL

SEC. 107. (a) Section 408 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 768) is amended to read as follows:

"REVIEW

"SEC. 408. (a) AGREEMENTS.—Except as provided in section 1152 of the Northeast Rail Service Act of 1981 (45 U.S.C. 1105), the Conrail Sale Agreements and their negotiation, execution, and implementation shall not be subject to administrative or judicial review or to review by the Commission.

"(b) WARRANTS.—Warrants issued to the Secretary under the Conrail Agreement, and any shares of stock issued upon the exercise of such warrants, shall be deemed to have been issued and approved under section 11301(b) of title 49, United States Code.".

(b) The item in the table of contents of the Regional Rail Reorganization Act of 1973 relating to section 408 is amended to read as follows:

"Sec. 408. Review.".

LABOR PROTECTION

SEC. 108. (a) Notwithstanding any other provision of law, the benefit schedule prescribed by the Secretary of Labor under section 701(a)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797(a)(2)) shall continue in force and effect until superseded by an agreement between Conrail and the representatives of the various classes and crafts of employees of Conrail providing for protection of employees of Conrail.

(b) Conrail shall be responsible for funding all benefits under subsection (a) after the closing date, and the United States shall not be liable for any such benefits after that date.

SPECIAL COURT JURISDICTION

SEC. 109. Section 1152 of the Northeast Rail Service Act of 1981 (45 U.S.C. 1105) is amended—

(1) by inserting "or the Conrail Public Sale Act of 1985" immediately after "subtitle" each place it appears;

(2) in the second sentence of subsection (c), by inserting ", as the case may be," after the insertion made by paragraph (1) of this section;

(3) in subsection (a), by striking out "or" at the end of paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof a semicolon, and by adding at the end thereof the following:

"(5) brought by the United States to enforce section 401 or 404 of the Regional Rail Reorganization Act of 1973 or any term or condition of the Conrail Sale Agreements entered into under such section 401;

"(6) brought by one or more of the Purchasers to enforce any obligation of the United States (or any agency or instrumentality thereof) under the Conrail Sale Agreements entered into under section 401 of the Regional Rail Reorganization Act of 1973; or

"(7) brought by the Corporation to enforce section 401 of the Regional Rail Reorganization Act of 1973.

For purposes of any action brought under paragraph (5) of this subsection, a violation of any provision of subsection (b) or (c) of section 404 of the Regional Rail Reorganization Act of 1973 shall be deemed to constitute immediate and irreparable harm for purposes of awarding injunctive relief to the United States."; and

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

"(e) Any person who suffers direct economic injury as a result of an alleged violation by Conrail of any provision of subsection (b) or (c) of section 404 of the Regional Rail Reorganization Act of 1973 may petition the Secretary to seek enforcement of such provision. If the Secretary determines that a petitioner has demonstrated that it has suffered direct economic injury as a result of such a violation, the United States shall bring an action under subsection (a)(5) to require Conrail to comply with such provision.".

APPLICABILITY OF OTHER LAWS

SEC. 110. (a) Section 1168(a) of the Northeast Rail Service Act of 1981 (45 U.S.C. 1116(a)) is amended by striking out "implementing service transfers" and inserting in lieu thereof "implementing the sale of the interest of the United States in the common stock of Conrail".

(b) Section 16(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(b)) shall not apply to any public sale of Conrail common stock by the Purchasers for a period of seven months beginning on the closing date.

TITLE II—TECHNICAL AND CONFORMING AMENDMENTS AND APPEALS

SEC. 201. The following provisions of the Regional Rail Reorganization Act of 1973 are repealed or amended as follows:

(1) Section 102 (45 U.S.C. 702) is amended—

(A) by inserting after paragraph (1) the following new paragraph:

"(1A) 'closing date' means the date that the interest of the United States in the common stock of the Corporation is transferred pursuant to the Purchase Agreements;";

(B) by inserting after paragraph (4) the following new paragraphs;

"(4A) 'Conrail Agreement' means the agreement between the Corporation and the Secretary in the form filed with the Committee on Commerce, Science and Transportation of the Senate;

"(4B) 'Conrail Sale Agreements' means the Conrail Agreement, the Purchase Agreements, and the Shareholders' Agreement;";

(C) by inserting after paragraph (7) the following new paragraph:

"(7A) 'ESOP' means the Consolidated Rail Corporation Employee Stock Ownership Plan adopted July 25, 1980, as amended, and the trust created in connection therewith;";

(D) by inserting after paragraph (13) the following new paragraphs:

"(13A) 'Purchase Agreements' means the agreements between the Purchasers and the Secretary in the form filed with the Committee on Commerce, Science and Transportation of the Senate;

"(13B) 'Purchasers' means the investor group organized by Morgan Stanley & Co. Incorporated to purchase the interest of the United States in the common stock of the Corporation as identified in the Shareholders' Agreement;"; and

"(E) by inserting after paragraph (18) the following new paragraph:

"(18A) 'Shareholders' Agreement' means the agreement among the Purchasers, the Corporation, and Morgan Stanley & Co. Incorporated in the form filed with the Committee on Commerce, Science and Transportation of the Senate;

"(2) Subsections (a) and (b) of section 214 (45 U.S.C. 724(a) and (b)), are repealed, and such section 214 is amended by striking out "(c) ASSOCIATION.—".

"(3) The following provisions of the Regional Rail Reorganization Act of 1973 (together with the item relating to each such provision contained in the table of contents of such Act) are repealed:

"(A) Section 405 (45 U.S.C. 765).
"(B) Section 406 (45 U.S.C. 766).
"(C) Section 407 (45 U.S.C. 767).
"(D) Section 409 (45 U.S.C. 769).
"(E) Section 410 (45 U.S.C. 769a).
"(F) Section 411 (45 U.S.C. 769b).
"(G) Section 412 (45 U.S.C. 769c).
"(H) Section 413 (45 U.S.C. 797l).

AMENDMENTS AND REPEALS OF OTHER RAIL LAWS

SEC. 202. (a) The following provisions of the Northeast Rail Service Act of 1981 are amended as follows:

"(1) Section 1135(a) (45 U.S.C. 1104(a)) is amended by inserting after paragraph (5) the following new paragraphs:

"(5A) 'Conrail Agreement' means the agreement between Conrail and the Secretary in the form filed with the Committee on Commerce, Science and Transportation of the Senate;

"(5B) 'Conrail Sale Agreements' means the Conrail Agreement, the Purchase Agreements, and the Shareholders' Agreement.

"(5C) 'Purchase Agreements' means the agreements between the Purchasers and the Secretary in the form filed with the Committee on Commerce, Science and Transportation of the Senate.

"(5D) 'Purchasers' means the investor group organized by Morgan Stanley & Co.

Incorporated to purchase the interest of the United States in the common stock of Conrail as identified in the Shareholders' Agreement."; and

(2) by inserting after paragraph (7) the following new paragraph:

"(7A) 'Shareholders' Agreement' means the agreement among the Purchasers, Conrail, and Morgan Stanley & Co. Incorporated in the form filed with the Committee on Commerce, Science and Transportation of the Senate.

(b)(1) The following provisions of the Northeast Rail Service Act of 1981 are repealed:

(A) Section 1154 (45 U.S.C. 1107).

(B) Section 1161 (45 U.S.C. 1110).

(C) Section 1166 (45 U.S.C. 1114).

(D) Subsection (c) of section 1167 (45 U.S.C. 1115).

(2) The items relating to such sections 1154, 1161, and 1166 in the table of contents of such Act are repealed.

(c) Section 501(8) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821(8)) is amended by striking out "(A)" and by striking out all that follows "improved asset utilization;".

(d) Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825) is amended—

(1) in subsection (a)(1), by striking out all after "railroad" through "1981)"; and

(2) in subsection (b)(2)(C), by striking out all after "costs" the second time it appears through "subsidy".

(e) Subsection (b)(1) of section 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 829) is repealed.

(f) Section 511(e) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821(e)) is amended—

(1) by striking out "(1)" in the first paragraph;

(2) by striking all that follows "time" in the first paragraph and inserting in lieu thereof a period; and

(3) by striking out paragraph (2).

(g) Section 402 of the Rail Safety and Service Improvement Act of 1982 (45 U.S.C. 825a) is repealed.

(h) Section 1005(b)(1) of the Rail Passenger Service Act (45 U.S.C. 655(b)(1)) is amended by striking out "the Consolidated Rail Corporation,".

(i) Section 10362(b)(7)(A) of title 49, United States Code, is amended by striking out "by the Consolidated Rail Corporation or".

(j) Section 332(d) of title 49, United States Code, is amended by striking out ", the Consolidated Rail Corporation,".

EFFECT OF REPEALS

SEC. 203. All repeals under this Act of provisions authorizing the appropriation of funds are made without prejudice to the continued availability of funds appropriated under such provisions before the effective date of such repeal.

TITLE III—REVENUE PROVISIONS

TAX TREATMENT

SEC. 301. (a) GENERAL RULE.—Except as provided in subsection (b), nothing in this title (or in any amendment made by this title) shall affect the Federal tax treatment of Conrail (or of any affiliated group of which it is a member).

(b) MODIFICATION AND CLARIFICATION OF TAX TREATMENT.—For purposes of the Internal Revenue Code of 1954—

(1) CONRAIL CARRYFORWARDS MAY NOT BE CARRIED FORWARD.—No Conrail net operating loss, capital loss, or credit under the Internal Revenue Code of 1954 attributable to any period before the closing date may be carried forward to any period after the closing date.

(2) NO INCOME FROM CANCELLATION OF DEBT OR PREFERRED STOCK.—No amount shall be included in the gross income of any person (and no basis adjustment in the assets of Conrail shall be made) by reason of any cancellation of any obligation (or preferred stock) of Conrail in connection with the Conrail Sale Agreements.

(3) ADJUSTED BASIS.—The adjusted basis of Conrail's assets shall not be increased by any adjustment relating to any period prior to the closing date.

(4) EARNINGS AND PROFITS.—For purposes of section 316 of the Internal Revenue Act of 1954, Conrail shall be deemed to have accumulated earnings and profits of $500,000,000 as of the closing date.

(5) WAIVER OF CERTAIN EMPLOYEE STOCK OWNERSHIP PLAN PROVISIONS.—For purposes of determining whether the employee stock ownership plans of Conrail meet the qualifications of sections 401 and 501 of the Internal Revenue Code of 1954 the limits of section 415 of such Code (relating to limitations on benefits and contributions under qualified plans) shall not apply with respect to interests in stock transferred pursuant to a law heretofore enacted.

(6) TAXABLE YEAR OF CONRAIL.—The taxable year of Conrail shall close as of the closing date.

DEFINITIONS

SEC. 302. For purposes of this title—

(1) CONRAIL.—The term "Conrail" includes any corporation which was a subsidiary of Conrail immediately before the closing date.

(2) CONRAIL SALE AGREEMENTS.—The term "Conrail Sale Agreements" has the same meaning such term is given in paragraph (4B) of section 102 of the Regional Rail Reorganization Act of 1973, and includes all representations and warranties made in such agreements, entered into to implement this Act

TITLE IV—MISCELLANEOUS PROVISIONS

COMMON CARRIER STATUS OF CONRAIL AFTER SALE

SEC. 401. Conrail shall be a common carrier by railroad under section 10102(4) of title 49, United States Code, notwithstanding this Act. Purchase of Conrail stock shall not be the sole basis of a determination that any Purchaser has become a common carrier by railroad under section 10102(4) of title 49, United States Code.

SEPARABILITY

SEC. 402. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

EFFECT ON CONTRACTS

SEC. 403. Nothing in this Act shall affect any obligation on Conrail to carry out its transportation contracts and equipment leases, equipment trusts, and conditional sales agreements, in accordance with their terms.

EFFECTIVE DATES

SEC. 404. (a) Except as provided in subsection (b), the provisions of this Act, and amendments made by such provisions, shall take effect on the date of enactment of this Act.

(b) Sections 108, 201, and 202 of this Act shall take effect on the closing date, except that subsection (a) of each of sections 201 and 202 shall take effect on the date of enactment of this Act.

Mr. McCONNELL. Mr. President, I am convinced, as I suspect a majority of my colleagues are, that the Government should not be in the business of running a railroad. But I am equally convinced that the Department of Transportation's plan to sell Conrail to Norfolk Southern Corp. is seriously flawed.

The Department's Conrail/Norfolk Southern merger proposal poses significant anticompetitive problems, would cost thousands of jobs, loss of tax revenue, and diversions effecting numerous regional carriers and their shippers. In my State of Kentucky, alone, there is no doubt that we would suffer severe economic hardship through the loss of rail jobs and displacement of our coal markets. Hearings before the Judiciary Committee confirmed these concerns. Today, I am pleased to cosponsor alternative legislation to return Conrail to the private sector as an independent, viable carrier through one or more public offerings.

The Morgan Stanley public offering proposal is superior in every way. First, the Government would receive a greater return on its investment: $1.2 billion on the date of sale, approximately $400 million or more in tax savings and the opportunity to share in any appreciation in the price of Conrail stock through the issuance of purchase warrants for 1 million shares. Second, the public offering proposal contains the very same or equivalent public interest covenants which the Department of Transportation determined to be crucial.

Mr. President, this is a solid package backed by more than 30 investors consisting of pension funds, universities, money managers, investment companies, and corporations. They know a good, long-term investment when they see one. The backing of this sophisticated group of investors, as well as the track record of Conrail's innovative and successful management, bears credence to my view that an independent Conrail will remain viable over the long term.

As envisioned by NERSA, the public offering would return Conrail, as one unit, to the private sector. It is not a Government-engineered paste-and-patch job. Rather, it is free market approach which will provide the Government and its taxpayers with a superior return for their investment in Conrail, will preserve effective rail competition and will avoid complex antitrust issues. It's a sensible, workable, and fair solution to get the Government out of the railroad business, and I urge my colleagues to support this public offering.

Mr. DIXON. Mr. President, I am pleased to join my distinguished colleagues in introducing the Conrail Public Sale Act of 1985, a bill that is of paramount importance to the continued vitality and competitiveness of the Eastern U.S. rail freight industry, tens of thousands of railroad employees and their families, and thousands of shippers and manufacturers throughout the country. This bill provides for the continued independent operation of Conrail by selling the Government's 85 percent interest to a group of private investors who, through a series of stock offerings over a 5-year period, will sell their interest to the public.

In 1973, by passage of the Rail Reorganization Act (3R ACT), Congress created the U.S. Railway Association [USRA]. The USRA, with a mandate from Congress, developed a plan for salvaging the collapsed eastern rail freight system, identified most notably by the Penn Central Railroad. Out of this plan, on April 1, 1976, was born Conrail, the Consolidated Rail Corporation. Since then, almost 10 years have passed and the American taxpayers have poured billions of dollars into the revitalization of Conrail. In 1980, with the passage of the Staggers Rail Act, substantial deregulation of rail transportation has occurred and has contributed greatly to Conrail's ability to attract business and serve its customers profitably.

In 1981, Congress passed the Northeast Rail Service Act [NERSA] embodying sustantial labor, tax, and other concessions designed to allow Conrail to become profitable and competitive. NERSA also established a procedure for the orderly transfer of Conrail to the private sector.

And so it is that since 1981, the Department of Transportation has set about to implement the provisions of NERSA to return Conrail to the private sector. Under Secretary Dole's leadership, the sale of Conrail has become one of the Department's highest priorities. She has presided over an unparalleled bidding process which culminated in some 15 different offers to purchase Conrail. After intense and detailed negotiations designed to ensure the long-term viability of Conrail and at the same time provide the Government with the best financial return on its enormous investment in Conrail, she selected Norfolk Southern Corp. In the process leading to her final selection, Secretary Dole negotiated an impressive array of covenants to protect the interests of shippers and citizens served by Conrail.

Norfolk Southern Corp. is certainly to be commended for their interest and conduct in this Government sale process. They have a proud heritage and an outstanding record as one of America's premier freight railroads. We ourselves in Illinois have benefited for years from the reliable and efficient rail service provided by Norfolk Southern. And now they propose to put weight of their past record and their future prospects behind their bid to acquire Conrail.

Unfortunately, Mr. President, I believe a purchase of Conrail by Norfolk Southern, or any other large railroad for that matter, will have very serious consequences which outweigh the potential benefits. To begin with, as the Department of Justice has stipulated, this proposed merger has serious anticompetitive implications. My concerns go well beyond the Justice Department position—which I do not share—that these antitrust issues can be reached with the divestiture of some 1,200 miles of track to two small, financially weak railroads.

Acquisition of Conrail by Norfolk Southern or Conrail's other major Eastern competitor, CSX, would create real competitive problems in both the Northeast and in parts of the Midwest and South. The resulting merger-railroad would divert substantial amounts of traffic from various railroads including the Illinois-based Chicago and Northwestern and the Illinois Central Gulf which comprise the backbone of the competitive Midwest rail system.

These substantial traffic diversions would result in financial losses which would, in turn, require these smaller railroads to reduce service and to cut back employment. In Illinois and in other parts of the Midwest, this would mean a loss of competitive rail service, serious disruptions to shippers and industries, and a considerable loss of jobs. It is worth pointing out that the administration seems to agree that there are real competitive problems, because the legislation it is recommending provides complete antitrust immunity, something which I believe has never before been provided for a merger between two profitable railroads.

A public offering, by maintaining the competitive status quo, avoids any antitrust problems. Further, the Morgan Stanley offer has the potential to provide a greater financial return to the Government. The Morgan Stanley investors' group will match the competing offer of $1.2 billion to purchase, plus provide the government with warrants for 1 million shares of Conrail common stock. As in the Chrysler Corp. situation, these warrants will assure the Government of an opportunity to share in any future appreciation of Conrail common stock. Finally, the Morgan Stanley proposal will not have the adverse tax consequences of the Norfolk Southern offer. CBO has recently estimated that the Treasury will lose some $400 million over 4 years if Norfolk Southern acquires Conrail and proceeds to shelter income through the use of Conrail's depreciable asset lease.

And that, Mr. President, is why I rise today to cosponsor legislation to implement the public stock offering proposed of Morgan Stanley's investment group. The Morgan Stanley proposal will ensure Conrail's future as an independent, self-sustaining railroad. This proposal will preserve the competitive balance of rail service in the Northeast and Midwest and will risk none of the serious economic dislocations and job losses which could otherwise occur. The Morgan Stanley proposal will allow smaller, Midwest railroads to continue to play a much-needed, highly competitive role in our Nation's rail system.

I was at first skeptical that a realistic and workable public offering alternative was possible in the Conrail situation. However, the $1.2 billion commitment by the well-respected and sophisticated investors in the Morgan Stanley group makes it clear that a public offering is worth the Congress' most serious consideration. The public offering alternative solves some real problems and offers real advantages for the Government and the public. I urge my colleagues to examine this proposal carefully. I am confident they will find that the public offering alternative is worthy of their support.

By Mr. EVANS (for himself, Mr. DURENBERGER, Mr. ANDREWS, Mr. STEVENS, Mr. BOSCHWITZ, Mr. DANFORTH, Mr. LUGAR, Mr. WEICKER, Mr. MATSUNAGA, Mr. MITCHELL, Mr. MOYNIHAN, Mr. RIEGLE, Mr. BINGAMAN, Mr. LEVIN, Mr. ZORINSKY, Mr. GORE, Mr. EXON, Mr. SASSER, Mr. ROCKEFELLER, Mr. DODD, Mr. BOREN, Mr. KERRY, Mr. CRANSTON, and Mr. ABDNOR):

S. 1362. A bill to amend part A of title IV of the Social Security Act to provide for a study of quality control standards and procedures under the Aid to Families With Dependent Children Program, to provide for a moratorium on the imposition of penalties for erroneous payments, and for other purposes; to the Committee on Finance.

AID TO FAMILIES WITH DEPENDENT CHILDREN QUALITY CONTROL IMPROVEMENTS ACT

Mr. EVANS. Mr. President, along with a number of my colleagues, I am introducing legislation that will initiate comprehensive and principled improvements in the existing quality control system for Aid to Families With Dependent Children [AFDC].

Today, States are being threatened with severe fiscal sanctions for error rates in excess of Federal targets. Recently, the Secretary of Health and Human Services levied $70 million in liability against 21 States, nearly half

of whom had error rates below the national average.

Mr. President, I would ask that a table detailing the fiscal year 1981 error rate sanctions against the States for AFDC be included in the RECORD at the end of my remarks.

States have, in recent years, made great progress in reducing errors. Without official collection of any fiscal sanctions by the Federal Government, the AFDC payment error rate has been reduced from 16.5 percent in 1973 to an official 6.7 percent by September 1982.

Although the States have made significant improvements they are also threatened with sizable fiscal penalties for exceeding federally-set error tolerance levels. For example over $1.3 billion in sanctions will be imposed against States for fiscal years 1981 to 1989 under the existing quality control system.

Recently, Gov. Madeleine Kunin of Vermont testified before the House Ways and Means Committee that a fiscal sanction as small as $700,000 against her State would have serious repercussions. Governor Kunin pointed out that the loss of a 50 percent Federal match of $700,000 was actually a loss of $1.4 million. She went on to speculate that actions to absorb this loss would consist of cutting training of program personnel by half and termination of systems development efforts—systems, ironically, that are put in place to reduce errors.

Other actions would include laying off field workers and readjusting overhead costs so that they could be spread over to other programs. These sanctions will serve as punitive measures against States and lead to results that Congress clearly did not intend.

Undoubtedly, States will have to absorb such cutbacks through reducing administrative costs which will result in even higher rates of error. Or, States will pass on the financial burden to AFDC recipients through reduced or restricted benefits.

Gov. James Blanchard of Michigan testified before a House committee last year that he was able to put 25,000 youngsters to work with about $40 million through his Summer Youth Employment Program. He was testifying on the existing quality control system and the adverse impact it would have on the States. His example is relevant because although Michigan did not receive a fiscal sanction for fiscal year 1981 in AFDC, it is anticipating a sanction of about $40 million for fiscal year 1982 and 1983.

The point Governor Blanchard makes, and I believe it is a critical one, is that with each sanction the dollar amount involved is sizable. In this instance, the amount of sanction, $40 million, equals the amount it costs the State of Michigan to provide 25,000 youth with summer employment.

My own State of Washington is in the process of a slow recovery from its recession and this means that State revenues are already thinly spread. it is likely that fiscal sanctions would have to be paid by reducing welfare grants or by limiting medical services to the poor. Such action would hurt the very people the programs are designed to serve.

We could examine all 50 States and, although each particular situation would be unique, the issue remains the same: The fiscal sanctions component of the Federal quality control program, as currently administered, acts as a disincentive to State error reduction. Furthermore, it inevitably will penalize the very people the AFDC Program is supposed to serve.

Mr. President, I strongly believe the Federal Government should maintain quality control guidelines to which States must adhere; however, I am deeply concerned with the arbitrary and inequitable nature of existing standards. The purpose of quality control is to help States improve AFDC administration and reduce AFDC errors. Its purpose is not to force States to develop unduly restrictive eligibility requirements.

Its purpose is not to shift AFDC costs from Federal to State budgets and its purpose is not to force States to reduce administrative resources which will inevitably result in higher AFDC errors in the future. The purpose of quality control is to provide States with an effective management tool so that program administration can be as cost-efficient as possible.

Unfortunately, our existing system prevents rather than assists States in achieving these goals. That is why I believe legislation to eliminate inequitable sanction practices and to determine the actual error tolerance level for States is imperative.

The current tolerance level of 3 percent was established by TEFRA in 1982. This percentage was arrived at arbitrarily and is not supported by any conclusive research. Furthermore, it fails to take into account economic conditions as well as significant geographic and program differences among the States. These factors often contribute to errors in ways largely beyond the control of States.

In fact, a 1982 unpublished HHS study found that such outside factors as greater population density, higher crime rates, sizes of local population and size of the welfare agencies' caseloads contribute significantly to higher error rates. Despite these findings, HHS makes no effort to consider these factors when determining a State's error liability.

My legislation would direct the Secretary of Health and Human Services and the National Academy of Sciences to take these factors into account when conducting concurrent studies to determine what the tolerable error rate for States should be. During the interim period, my bill would impose a moratorium on collection procedures while maintaining a temporary error target of 4 percent. Until the actual tolerable rate of error can be documented and established the moratorium would provide relief from a practice that is costly to both the Federal and State Governments. I must emphasize that the Federal Government has collected nothing through fiscal sanctions in AFCD since the practice was established in fiscal year 1981.

Mr. President, I ask that at the conclusion of my remarks a table comparing HHS and CBO baseline assumptions for the collection of AFDC error rate penalties be placed in the RECORD.

As can be seen from this table, there is a significant discrepency between what HHS and CBO estimate will be collected. HHS asserts that for fiscal years 1984 through 1989 the Federal Government will collect over $1 billion in sanctions. According to the Department's estimates, it was supposed to collect from the States who received sanctions $74 million in fiscal year 1984 and $513 million in this current fiscal year. However, HHS's initial estimates are already inaccurate. It collected nothing in fiscal year 1984 and to date it has collected nothing for fiscal year 1985 with only 3 months left in this current fiscal year.

CBO on the other hand seems to be more accurate in its projections. It estimates that by fiscal year 1989 the Federal Government can expect to collect just under $200 million, with the first year of collection from States beginning in fiscal year 1988. Clearly, the existing quality control system will cost us more to adminsiter in the years to come than we can ever hope to collect from it in revenues.

Until an actual national error rate can be established, my legislation would return the target to 4 percent, the existing level before TEFRA lowered it in 1982. As a constructive means to enforcement of quality control standards, my bill would provide incentive payments to States who are able to sustain an error rate below 4 percent. The incentive payment would be equal to one-half the amount of money a State saves the Federal Government by maintaining an error rate less than 4 percent.

In assessing error rates, the Federal Government currently takes the best of both worlds when it applies sanctions based on the midpoint of the State error rate range. My legislation requires the Federal Government to use the lower bound of the confidence interval as the official statistical error rate. The lower bound is the best estimate because it will provide the Federal and State Governments with a 98 percent probability that the official

error rate is not an overestimate. As a punitive measure, fiscal sanctions should be imposed on the lower bound or the most accurate estimate of a State's actual error.

My legislation also provides that State will not be held accountable for the so-called technical errors. These errors relate to administrative requirements such as WIN registration and assignment of social security numbers to all welfare recipients. Correction of these errors have no fiscal impact because they often will make clients eligible for the program, not eliminate them from the rolls.

I am told by administrators in my State that the technical errors are most common. They told me about one case involving a low-income mother and her child who are eligible for AFDC. The mother obtained a Social Security number for her child but did not understand that she had to report it to the welfare office. The existing quality control system which counts technical errors such as this found both the mother and her child ineligible.

The State was sanctioned for the entire amount of the grant which was extrapolated over the entire caseload that is measured to determine the error rate. The end result not only overstates the actual error rate; but it measures an error that has nothing to do with the need or eligibility of the AFDC recipient.

Mr. President, in conclusion, I cannot emphasize more strongly that the Federal Government should hold States accountable for errors in AFDC. However, I strongly believe that existing Federal policy lacks a principled foundation. Quality control is a management tool that must provide incentives, not disincentives to States for efficient and cost-effective program administration.

Our existing system falls far short of these objectives and is in dire need of a comprehensive examination. The legislation I am introducing today will put Federal quality control for AFDC back on solid footing and it will restore its usefulness as a mangement tool—the purpose that Congress clearly intended it to fulfill. I urge my colleagues to join me in this effort which is of such great importance to both Federal and State Governments.

Mr. President, I ask unanimous consent that the bill, as well as the tables mentioned earlier, be printed in the RECORD.

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

S. 1362

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

STUDY OF AFDC QUALITY CONTROL

SECTION 1. (a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study for the purpose of determining tolerable State error rates under the Aid to Families with Dependent Children program.

(b) FACTORS TO BE ANALYZED IN STUDY.—The Study shall include (but not be limited to) the following:

(1) The need for annual adjustments in tolerable error rates on a State-by-State basis to allow for factors beyond the control of the State.

(2) The need for adjustments to the standard error rate based on variable factors such as population density and caseload volume.

(3) The nature of client-caused errors, the degree to which such errors can be controlled by the State, and the cost effectiveness of methods for reducing such errors.

(c) SUBMISSION OF PRELIMINARY STUDY PLAN.—Within 30 days after the date of the enactment of this Act, the Secretary shall submit to the Senate Committee on Finance and the House Committee on Ways and Means a preliminary study plan, outlining the format and methodologies to be employed in the study.

(d) CONCURRENT STUDY BY NATIONAL ACADEMY OF SCIENCES.—The Secretary shall also contract with the National Academy of Sciences to conduct a concurrent study for the purpose described in subsection (a), which shall also include the factors described in subsection (b). For purposes of such study, the Secretary shall provide to the National Academy of Sciences any relevant data available to the Secretary, at the onset of the study and on an ongoing basis.

(e) SUBMISSION OF REPORTS.—The Secretary of Health and Human Services and the National Academy of Sciences shall report the results of their respective studies to the Congress within one year after the date of the enactment of this Act.

CHANGE IN TOLERABLE ERROR RATE PENDING CONGRESSIONAL ACTION TAKEN AFTER STUDY HAS BEEN COMPLETED

SEC. 2. (a) IN GENERAL.—Section 403(i)(1)(A) of the Social Security Act is amended by striking out "exceeds—" and all that follows through "then the Secretary", and inserting in lieu thereof "exceeds 0.04 for any fiscal year, then the Secretary".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to fiscal year 1983 and each fiscal year thereafter. It is the intent of the Congress to reevaluate the tolerable error rate established under Section 403(1) of the Social Security Act after the Secretary of Health and Human Services and the National Academy of Sciences have submitted the reports required under Section 1 of this Act.

WAIVER AUTHORITY

SEC. 3. (a) IN GENERAL.—Section 403(1) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) The Secretary, in accordance with this paragraph, may waive all or any part of any sanction that would otherwise be imposed upon a State under paragraph (1) if such State is unable to reach the allowable error rate for the fiscal year involved despite a good faith effort by such State.

"(B) Any State may request a waiver of all or part of any sanction that would otherwise be imposed for any fiscal year under paragraph (1), basing such request upon a showing—

"(i) that the State made (and is continuing to make) a good faith effort to reduce or eliminate the erroneous payments involved but was unable to reach the allowable error rate for such fiscal year despite that effort; or

"(ii) that (I) the Secretary's determination of the State's error rate for such fiscal year was made incorrectly or in a manner inconsistent with the provisions of this subsection, and (II) the State's error rate, if determined correctly and in a proper manner, would be lower than the rate so determined by the Secretary.

The Secretary shall consider and review such request, and either approve it or disapprove it in whole or in part, in accordance with a timetable which shall be specified in regulations. If the Secretary disapproves the request, the State may appeal the Secretary's decision to the Grant Appeals Board in the Department of Health and Human Services for such further action as may be provided for by law or regulations (including judicial review of the Secretary's decision or the Board's determination).

"(C) In considering and reviewing any request for a waiver submitted by a State under this paragraph, the Secretary shall take into account—

"(1) factors beyond the State's control (including disasters, strikes by State or other staff personnel engaged in determining eligibility or processing cases, sudden workload changes resulting from changes in Federal or State laws or regulations or from rapid caseload growth, and State actions resulting from incorrect policy interpretations by federal officials);

"(ii) factors relating to agency commitment, including demonstrated commitment by upper level State officials to the error reduction program under this subsection, the sufficiency and quality of operational systems designed to reduce errors, the use of effective systems and procedures for the statistical and program analysis of quality control and related data, and effective management execution of the corrective action process;

"(iii) the State's past performance with respect to erroneous payments, including past error rate levels and past error rate reduction efforts;

"(iv) the cost effectiveness of error rate reduction, both in general and in the particular circumstances existing within the State; and

"(v) such other factors as the Secretary may determine to be appropriate, as specified in regulations or as detailed by the State in its waiver request.

The Secretary's regulations shall specify the factors to be considered and the criteria to be used in assessing waiver requests under this paragraph, and shall indicate the relative weight or importance of each of such factors and criteria in order to assist States in determining the appropriateness of proposed requests."

(b) CONFORMING AMENDMENTS.—Section (403)(i)(1) of such Act is amended—

(1) in subparagraph (A), by striking out "as defined in subparagraph (C)" and inserting in lieu thereof " 'as defined in subparagraph (B)";

(2) by striking out subparagraph (b); and

(3) by redesignating subparagraph (C) as subparagraph (B).

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective for fiscal year 1986 and each fiscal year thereafter.

MORATORIUM ON REDUCTION IN PAYMENTS FOR EXCESS ERRORS

SEC. 4. (a) IN GENERAL.—Section 403(i) of the Social Security Act (as amended by section 3 of this Act) is further amended by

adding at the end thereof the following new paragraph:

"(6) No reductions in payments to States under this section shall be made pursuant to this subsection, or pursuant to the provisions of Public Law 96-123, for any fiscal year after fiscal year 1979."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to fiscal year 1980 and each fiscal year thereafter. It is the intent of Congress to revise the moratorium established under section 403(i)(6) of the Social Security Act after the Secretary of Health and Human Services and the National Academy of Sciences have submitted the reports required by section 1 of this Act.

INCENTIVE PAYMENTS TO STATES

SEC. 5. Section 403(i) of the Social Security Act (as amended by section 4 of this Act) is further amended by adding at the end thereof the following new paragraph:

"(7)(A) If a State's ratio of erroneous excess payments to its total payments (as determined under paragraph (1) is less than 0.04 for any fiscal year after fiscal year 1985, the Secretary shall pay to such State as an incentive payment an amount equal to 50 percent of the net amount by which federal payments to such State for such fiscal year are reduced by reason of such ratio being less than 0.04.

"(B) Payments under subparagraph (A) shall not be made until such time as Congress removes the moratorium imposed under paragraph (5). At that time, incentive payments for prior years shall be made (without interest) in a lump sum."

IMPROVEMENTS IN AFDC QUALITY CONTROL STANDARDS AND PROCEDURES

SEC. 6. (a) IN GENERAL.—Section 403(i) of the Social Security Act (as amended by section 5 of this Act) is further amended by adding at the end thereof the following new paragraph:

"(8)(A) In determining the error rate in any State for purposes of this subsection—

"(i) such rate shall be fixed at the lower bound of the standard interval for errors within which the State's true error rate falls; and

"(ii) errors which are technical in nature or have no fiscal impact, such as omissions (from the State's files) of Social Security account numbers, assignments of support rights, declarations of cooperation in obtaining support, and WIN or other work program registrations, shall be disregarded."

FISCAL YEAR 1981 ERROR RATE SANCTIONS FOR AFDC

	Amount of sanction	State error rate (percent)	Federal tolerance (percent)
State:			
Alabama	$47,000	7.7	7.6
California	35,067,000	6.8	4.0
Colorado	1,898,000	8.2	4.2
Connecticut	424,000	7.4	7.1
Florida	3,467,000	7.9	5.1
Hawaii	1,212,000	10.1	7.5
Idaho	691,000	9.1	4.3
Indiana	113,000	4.1	4.0
Kansas	1,903,000	8.1	4.1
Maine	168,000	7.9	7.5
Minnesota	571,000	4.4	4.0
New Mexico	2,554,000	12.4	4.5
Nebraska	280,000	5.5	4.4
New York	6,270,000	8.0	7.2
Ohio	3,935,000	8.9	7.7
Oklahoma	1,508,000	6.6	4.0
South Dakota	13,000	4.6	4.5
Tennessee	1,754,000	8.9	6.0
Texas	1,112,000	7.5	5.9
Washington	4,162,000	9.3	5.8
Wyoming	413,000	13.7	4.0

Note.—The national average error rate in fiscal year 1981 for AFDC was 7.7 percent.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to fiscal year 1981 and each fiscal year thereafter.

HHS and CBO budget assumptions for the collection of AFDC error rate penalties, fiscal year 1984-89

	Millions
HHS assumptions for collection of AFDC error rate penalties:	
Fiscal year 1984: Collect for errors in fiscal year 1981	$74
Fiscal year 1985: Collect for errors in fiscal years 1982, 1983, and 1984	513
Fiscal year 1986: Collect for errors in fiscal year 1985	220
Fiscal year 1987: Collect for errors in fiscal year 1986	198
Fiscal year 1988: Collect for errors in fiscal year 1987	175
Fiscal year 1989: Collect for errors in fiscal year 1988	159
Total	1,339
CBO assumptions for collection of AFDC error rate penalties:	
Fiscal year 1984: Collection	0
Fiscal year 1985: Collect for errors in fiscal years 1981, 1982, and 1983	0
Fiscal year 1986: Collect for errors in fiscal year 1984	0
Fiscal year 1987: Collect for errors in fiscal year 1985	0
Fiscal year 1988: Collect partially for previous years	57
Fiscal year 1989: Collect for errors in fiscal year 1987	137
Total	$194

NOTE.—CBO uses the administration's estimates of error rate penalties with collection equal to ½ of the penalties and delayed 1 yr.

Mr. MITCHELL. Mr. President, I join with Senator EVANS as an original cosponsor of legislation which is designed to reform the existing quality control and fiscal sanction policies for the Aid to Families with Dependent Children [AFDC] Program.

Recently 21 States, including my home State of Maine, received fiscal sanctions for their 1981 error rates in the AFDC program. The sanction of $168,000 levied against the Maine AFDC program is significant to a program in a small State with many poor people who rely upon it for support.

I support the concept of quality control in the AFDC program. The States too support quality control, as it is also in their best interest to minimize error since mispayments waste State, as well as Federal, resources. I do not believe, however, that the existing quality control system used for the AFDC program is an accurate or equitable measure of State performance in lowering AFDC error rates.

Many States argue that the current error rate was arrived at arbitrarily by the Department of Health and Human Services. In the past few years, States have made significant progress in reducing their error rates, but many have still exceeded the tolerable limit for error. If States are forced to pay the sanctions which have been levied, they will have to resort to cutbacks in AFDC programs or reduce administrative costs, which may result in higher error rates in the future.

We must encourage the Department of Health and Human Services to develop a quality control and fiscal sanction policy which produces timely and accurate error information derived from fairly reviewed cases. The current quality control process does not achieve this goal. Final error rate determinations by the Federal Government can lag by as much as 2 years behind State determinations, eroding the relationship between potential sanctions and the period of performance to which they apply, thus hindering corrective action.

The legislation being introduced today will reform the existing quality control system while temporarily relieving States and the Federal Government from costly sanctioning practices. The legislation will maintain a basic 4-percent error tolerance target until an actual and appropriate errors rate can be established. States would then be liable for errors in excess of the target range.

I hope that other Members of the Senate will support this legislation which is a sincere attempt to address the shortcomings in the current AFDC quality control policy while continuing to require that States work to reduce error rates in this program to a reasonable level.

Mr. KERRY. Mr. President, I am pleased to join in support of an important piece of legislation being introduced today by my distinguished colleague from Washington, Senator EVANS.

Central to this bill is the theme of fairness as it relates to the quality control system and procedures used in the AFDC program. The quality control system was originally designed to reduce programmatic errors in AFDC by forcing States, through fiscal sanctions, to improve their administration of this program. However, in the effort to improve AFDC efficiency, more problems may be created and ultimately more beneficiaries may be adversely affected.

From fiscal years 1972 to 1981, States have reduced their error rates from approximately 16.5 percent to 7.3 percent. In my own State of Massachusetts, the AFDC error rate has dropped from 22 percent in 1979 to a recent 5.3 percent in January 1985. Mr. President, tremendous progress has been made by the States in this area. States still face sanctions nationally of $1.3 million for fiscal years 1981 to 1989. I fear, Mr. President, that sanctions will ultimately come out of AFDC administrative funds or from cutbacks in benefits. I believe that this could jeopardize future improvements in the program.

There is no doubt that the current system is flawed. It is a system that will inequitably penalize States without taking into consideration important factors. For example, sanctions imposed this year for past errors fail to take into consideration major improvements in the States' systems. Inherent in the present system are perverse incentives. In Massachusetts, we have computer matches with banks and State agencies to uncover hidden assets and income. Because of this innovative system, Massachusetts' reported error rate has increased. I believe States should be rewarded for programs that work. The present system also fails to take into account geographic, economic, and regional differences which contribute to errors out of the control of States. For example, the Department of Health and Human Services has an unpublished study that shows how higher population density, crime rate, and welfare case loads result in a greater number of errors. In addition, our system penalizes States for technical errors that involve no less in Federal funding.

Mr. President, I also question the sincerity of HHS in their attempt to achieve equality throughout all quality control systems. Last year, HHS decided to remove fiscal sanctions related to the administration of the Supplemental Security Insurance Program. HHS claimed that their error rate had improved significantly. Can this be fairness when the administration stops sanctioning itself for improvements in their error rate, but does not reward the States in the same way?

Mr. President, States must be held accountable for errors in their AFDC program. But an effective system must be devised which recognizes systematic improvements and is applied fairly. Senator EVANS' bill works toward achieving this. It directs the Secretary of HHS to conduct a comprehensive study to determine what an acceptable error rate for the States should be. While the study is taking place, a moratorium would be placed on sanctions imposed on the States, thus ending a system of blatant inequality. It is for this reason for fairness that I confidently support Senator EVANS' bill and I strongly urge my colleagues to join me.

Mr. SASSER. Mr. President, I rise today to cosponsor the bill introduced by my colleague from Washington, which would provide for a moratorium on fiscal sanctions being levied on States exceeding their federally designated tolerable error rates in the AFDC program.

The fiscal sanction provisions of the Social Security Act were intended by this Congress to promote efficiency and to prevent waste, fraud, and abuse in State AFDC programs. This is a goal which I wholeheartedly support.

However, the tolerable error rate which has been set by the Department of Health and Human Services does not allow for errors which are caused by client fraud, nor are technical errors, economic and geographic conditions, and program differences between States taken into consideration. Therefore, the sanctions faced by 21 States, including Tennessee, are based on a system of quality control the accuracy of which is doubtful at best.

The bill introduced today by Senator EVANS provides for a reasonable tolerable error rate while the Secretary and Congress develop a fairer and more accurate method for eliminating fraud and waste from State AFDC programs. Moreover, this bill provides for a moratorium on fiscal sanctions until such a reasonable quality control system is devised. Under the present system, States are incurring fiscal harm. This will undoubtedly reduce the State funds available for the AFDC program in future years.

Since fiscal sanctions have already been imposed on States based on the current, inaccurate system, now is the time to study this quality control system and place a moratorium on the sanctions. I urge my colleagues to join me in cosponsoring this bill.

My support for the provisions of this bill has been requested by the commissioner of the Tennessee Department of Human Services, and I ask unanimous consent that her letter soliciting my support be placed in the RECORD immediately following the conclusion of my remarks.

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

STATE OF TENNESSEE,
DEPARTMENT OF HUMAN SERVICES,
Nashville, TN, June 20, 1985.

Hon. JAMES R. SASSER,
U.S. Senator, Russell Senate Office Building, Washington, DC.

DEAR SENATOR SASSER: I recently have been notified by Secretary of Health and Human Services, Margaret Heckler, that Tennessee is subject to a $1,754,000 fiscal sanction because of errors committed in our Aid to Families with Dependent Children Program during the 1981 fiscal year. Twenty other states are being sanctioned also, for the same period.

For Tennessee, which in subsequent years has reduced its error rate from 8.9% to 3.8%, the loss of nearly $2 million could prove devastating, not only to the AFDC Program, but to other vitally important social programs as well. Such reductions in funds may mean that we cannot continue to raise AFDC payments, which are now among the lowest in the nation. The loss may mean that we cannot expand medical services to needy children. Providing expanded medical services to children is one of Governor Alexander's top priorities and is a critical need in our State. These programs and others in Tennessee and across the nation are in jeopardy because of the projected $1.3 billion in potential sanctions through 1989.

In its mandate to the states to control waste, fraud and abuse, Congress certainly did not intend to damage the very programs it sought to preserve. Yet, this will be the effect if sanctions are imposed: either benefits will be reduced or administration will be cut back. In either event, everyone loses. Lower benefits endanger orderly family life. Reduced administrative funds result in higher error rates.

Tennessee has long resisted the imposition of fiscal sanctions as a technique to curb waste, fraud, and abuse. It is our position that improvement in this area would be much more effective if states were provided fiscal incentives for exemplary performance. Nevertheless, if there is to be a sanction system, it must be a fair, accurate and reasonable one. The existing quality control system is none of the above. This is not only the view of a state that is facing such sanctions; this review also reflects Health and Human Services' own internal, but unpublished, analysis of the Quality Control System:

Let me list for you some of the System's many shortcomings:

It is untimely. States are unable to take rapid corrective action. Our case review findings for April, 1982, are not yet certified by Health and Human Services. The $1.8 million sanction presently being assessed dates from April, 1980—over five years ago!

The quality and skill of Quality Control staff vary from state-to-state.

There is an upward and downward range of reliability in error rate computation, and the Quality Control System imposes the highest possible range on the states.

Technical errors, such as children having no social security number or failing to register for work when not attending school, are considered as significant as willful misrepresentation.

Client-caused errors, over which states have little control such as unreported income or resources, count as much as state-caused administrative errors. In fact, for the year in question, client-caused errors made up over two-thirds of Tennessee's 8.9% error rate.

The error rate tolerance level is arbitrary. Presently it is set at 3%, which is arrived at completely arbitrarily. We know of no government agency or private sector opertion capable of operating at a 97% accuracy level.

The Quality Control System does not take into account economic conditions, geographic conditions, or program differences.

Simply stated, it is neither a fair nor an adequate system upon which to set in motion a plan that will reduce over a billion dollars in benefits to needy children and adults over the next few years. I urge you and all members of Tennessee's Congressional delegation to either sponsor or support legislation which would require Health and Human Services to conduct an empirically valid study of quality control in the AFDC program; establish a reasonable error tolerance level; eliminate the inequitable sanction process; and establish a moratorium on the system now in place.

Sincerely,

MARGUERITE W. SALLEE,
Commissioner.

By Mr. KENNEDY (for himself, Mr. THURMOND, Mr. KERRY, Mr. HOLLINGS, Mr. DECONCINI, Mr. CRANSTON, Mr. CHAFEE, Mr. D'AMATO, and Mr. METZENBAUM):

S. 1363. A bill to prohibit the use of the mails to send dangerous martial

arts weapons; to the Committee on the Judiciary.

BAN ON SALE OF DANGEROUS MARTIAL ARTS WEAPONS BY MAIL

Mr. KENNEDY. Mr. President, today I am introducing legislation to prohibit mail-order sales of dangerous martial arts weapons. This legislation is needed to close a loophole in Federal law that frustrates enforcement of State laws applicable to martial arts weapons and to halt the increasing use of the mail to send these weapons.

The sale and distribution by mail of dangerous martial arts weapons that are outlawed or regulated by many States is a growing problem affecting the health and safety of citizens throughout the country, especially young people. For example, many States have recently enacted laws that specifically prohibit manufacturing, carrying, selling, or possessing certain martial arts weapons. However, razor-sharp throwing stars, kung fu killing sticks, known as nunchakus, and fighting chains, which are all designed to maim or kill other human beings and which are often available for as little as $10 or less, continue to be shipped through the U.S. mail.

The distribution of these illegal devices goes unchecked because existing Federal postal regulations—which prohibit the mailing of certain firearms, explosives, switchblades, and other dangerous articles—do not yet specifically prohibit sending martial arts weapons through the mail. Legislation is needed to provide the U.S. Postal Service with explicit authority to stop mail-order sales of these weapons to States which outlaw or regulate their use.

The surge in popularity of martial arts has led many States to enact legislation to keep dangerous martial arts paraphernalia out of the hands of children. The Consumer Product Safety Commission estimates that in the last 5 years, over 100,000 martial arts-related injuries of all kinds were treated in hospital emergency rooms. Over 60 percent of the victims were between the ages of 5 and 24. The easy access of children and youth gangs to inexpensive mail-order martial arts weapons, now advertised in a variety of publications, undoubtedly contributes to a substantial number of the accidents and attacks that now occur outside legitimate, supervised sports activity. In Massachusetts, for example, one martial arts instructor reports recently confiscating 100 illegal weapons from children as young as 8. Parents, educators, police, and State and local officials have written to me about the need to cut off the flow of these mail-order weapons to children.

In addition, the increasing use of martial arts weapons by criminals is a growing threat to public safety that warrants immediate action. A recent nationwide survey found a small but significant number of convicted felons who admitted using martial arts weapons to commit violent crimes. News reports strongly suggest that the number of robberies, assaults, murders, and other crimes involving martial arts weapons is growing, and there have been numerous attacks on police officers with these deadly weapons.

The legislation that I am introducing provides a direct and simple remedy for the problem. The bill amends the current criminal ban on mailing dangerous items contained in 18 U.S.C. 1716, by adding certain clearly specified martial arts weapons to the existing list of nonmailable dangerous items, and prohibits mail-order sales to States which have banned the items. The Postal Service may prescribe regulations for mailing otherwise nonmailable martial arts weapons to the Armed Forces, National Guard, police, and to a State in which the sale or transfer itself would be legal under the law of such State. In addition, the bill is expressly inapplicable to any knife, sword, or ceremonial or collector's weapon that is otherwise mailable under 18 U.S.C. 1716.

This approach involves a modest but important revision of existing law that will reduce the availability of these lethal weapons to unsupervised children, gangs, and criminals, without inhabiting legitimate martial arts or other sports and hobbies. Indeed, some martial arts enthusiasts, concerned about the public safety and the undeserved reputation that illegal weapons give their sport, have joined law enforcement officials in urging this legislation.

I ask that the text of the bill and a survey of State statutes applicable to martial arts weapons be printed in the RECORD at this point. The survey was prepared by Paul L. Morgan, legislative attorney of the Congressional Research Service's American Law Division. I also ask that recent news articles addressing this issue may be printed in the RECORD.

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

S. 1363

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1716 of title 18, United States Code, is amended by—

(1) redesignating subsection (h) as subsection (i); and

(2) inserting after subsection (g) the following new subsection:

"(h)(1) Whoever—

"(A) knowingly deposits for mailing or delivery, or

"(B) knowingly causes to be delivered by mail, any dangerous martial arts weapon, and thereby sells or transfers, or attempts to sell or transfer such weapon to any person in a state which prohibits manufacturing, selling, carrying, or possessing, such dangerous martial arts weapon, shall be fined not more than $1,000 or imprisoned not more than one year or both.

"(2) Dangerous martial arts weapons may be conveyed in the mails under such regulations as the Postal Service shall prescribe—

"(A) to civilian or Armed Forces supply or procurement officers and employees of the Federal Government ordering, procuring, or purchasing such weapons in connection with the activities of the Federal Government;

"(B) to supply or procurement officers of the National Guard, the Air National Guard, or militia of a State, Territory, or the District of Columbia ordering, procuring, or purchasing such weapons in connection with the activities of such organizations;

"(C) to supply or procurement officers or employees of the municipal government of the District of Columbia or of the government of any State or Territory, or any county, city, or other political subdivision of a State or Territory, ordering, procuring, or purchasing such weapons in connection with the activities of such government;

"(D) to manufactures of such weapons or bona fide dealers therein in connection with any shipment made pursuant to an order from any person designated in subparagraphs (A), (B), and (C); and

"(E) to a person or business in a State in which a sale or transfer would be legal under the laws of such State.

The Postal Service may require, as a condition of conveying any such weapon in the mails, that any manufacturer or dealer proposing to mail such weapon explain in writing to the satisfaction of the Postal Service that the mailing of such weapon will not be in violation of this section.

"(3) For the purposes of this subsection, the term "dangerous martial arts weapon" means—

"(A) A nunchaku, also known as klackers, kung fu sticks, or similar weapons consisting of two sticks of wood, plastic, or metal connected at one end by a length of rope, chain, wire, or leather;

"(B) a shuriken or similar pointed star-like object intended to injure a person when thrown;

"(C) a manrikigusari, also known as a fighting chain, or similar weapon consisting of a length of chain having weighted ends.

"The term dangerous martial arts weapon does not mean any knife, sword, or ceremonial or collector weapon that is otherwise mailable under this section."

"(3) inserting at the end of new subsection (i):

"This subsection shall not apply to subsection (h) concerning dangerous martial arts weapons."

STATE REGULATION OF CERTAIN MARTIAL ARTS IMPLEMENTS

With the relatively recent popularity of martial arts television programs and motion pictures, there has arisen a corresponding popularity in the possession and use of certain implements identified with the marital arts. While these devices may be used in legitimate exercises, their ancient and intended martial arts uses were as weapons, particularly the nunchaku 1 and the shuriken.2 Use or possession of one or both of these contrivances have been statutorily regulated in at least eleven states.3 The statutes found range from outlawing the possession or manufacture of nunchaku 4 to merely prohibiting elementary or secondary school students under the age of twenty-one years

from knowingly carrying nunchaku or shuriken onto public or private elementary or secondary school premises.5

Absent a legislative determination to the contrary, reported decisions indicate that state courts have not found nunchaku to be a dangerous or deadly weapon per se, thus, mere possession or possession in a public place, open or concealed, is not a criminal offense.6 In some jurisdictions, intent to use nunchaku unlawfully against another must be proven before possession or carrying the instrument is unlawful 7 while, interestingly enough, in another state the mere possession of nunchaku is illegal while intent to use the shuriken unlawfully against another must be shown before possession is illegal.8 Another jurisdiction prohibits the carrying, possession or attempt to use against another "the so called 'Kung-Fu' Weapons." 9 Even when regulated, there may be specific exceptions in the statutes authorizing use of the implements in martial arts exercises.10

PAUL L. MORGAN,
Legislative Attorney,
American Law Division.

MAY 10, 1985.

FOOTNOTES

[1] Also known as nunchaku sticks, zoo bow, klackers, kung fu sticks, chuka stick, nun chuahka, and nunchuck, this instrument consists of two sticks of wood, about a foot long, hinged end to end by a short cord, rope, wire or chain so as to allow freedom to swivel. Said to have originally developed in Southeast Asia, its form recalls a small agricultural flail and by holding one of the sticks, a karate student can swing or twirl the freely moving part in patterns or can bring both sticks together in the fashion of a nutcracker. *Commonwealth* v. *Adams,* 245 Pa. Super. 431, 369 A.2d 479 (1976). See also: Comment, "Criminal Law—Weapons—Prohibition of Karate instruments." 45 *Tennessee Law Review* 758 (Summer 1978).

[2] Also known as a throwing star, death star, shirken and kung fu star, this instrument has been defined as "a disk having sharp radiating points or any disk shaped bladed object which is hand-held and thrown and which is in the design of a weapon used in connection with the practice of a system of self-defense." *Colorado Revised Statutes* (Supp. 1984) § 18-12-106(e).

[3] Arizona, California, Colorado, Kentucky, Maryland, Massachusetts, New York, Oregon, Rhode Island, Virginia, and Washington. Statutes set forth in Appendix II.

[4] E.g., *Arizona Revised Statutes* (Supp. 1984-1985) §§ 13-3101, 3102.

[5] *Revised Code of Washington Annotated* (supp. 1985) § 9.41.280.

[6] *State* v. *Muliufi,* 64 Hawaii 485, 643 P.2d 546 (1982); *People* v. *Tate,* 68 Ill. App. 3rd 881, 386 N.E. 2d 13 (1981); *People* v. *Malik,* 70 Mich. App. 133, 245 N.W. 2d 434 (1976); *Commonwealth* v. *Adams,* 245 Pa. Super. 431, 369 A.2d 479 (1976).

[7] E.g., *Oregon Revised Statutes* (Supp. 1981) § 166.220.

[8] See: *New York Penal Law* (McKinney, 1984-1985) § 265.01 with Hechtman's Supplementary Practice Commentaries as postscript.

[9] *General Laws of Rhode Island* (Supp. 1983) § 11-47-42. If intended to apply to nunchaku, the use of the term "Kung Fu weapons" may be incorrect. "Nunchaku" comes from a Japanese word for "flying sticks" and is a weapon used by karate practioners while Kung Fu, generally thought to be an unarmed defensive form of martial arts, is of Chinese origin. See generally: Comment, note 1 supra, at 758, 769 fn 58.

[10] E.g., *California Penal Code* (West 1985) § 12020; *Colorado Revised Statutes* (Supp. 1984) § 18-12-106.

APPENDIX I: STATE CRIMINAL STATUTES SPECIFICALLY REGULATING MARTIAL ARTS IMPLEMENTS

States	Simple possession [1]	Concealed weapon	Manufacturing
Arizona	N [2]		N
California	N [2],S		N [2],S
Colorado	N [3],S [3]		
Kentucky		N,S	
Maryland		N	
Massachusetts	N [4],S [4]		N,S
New York	N,S [5]		
Oregon	N [5]	N [6]	
Rhode Island	(7)	(7)	
Virginia		N,S	
Washington	N [8],S [8]		

[1] Not including statutes precluding certain classes of individual from possessing weapons, e.g., ex-convicts, felons, mental patients. See: e.g., Arizona Revised Statutes (Supp. 1984-85) § 13-3101, subsection 5, infra in Appendix II.

[2] Martial arts school or demonstration exception.

[3] May not possess in a public place unless part of martial arts demonstration.

[4] Carrying on person or in vehicle prohibited.

[5] Must have intent to use unlawfully.

[6] Merely carrying with intent to use unlawfully.

[7] "Kung Fu" weapons.

[8] Possession on elementary or secondary school grounds by student under 21 prohibited.

Note.—N = Nunchaku; S = Shuriken.

APPENDIX II: TEXT OF STATE CRIMINAL STATUTES SPECIFICALLY REGULATING MARTIAL ARTS IMPLEMENTS

[Omitted in RECORD.]

[From the Washington Times, June 10, 1985]

NINJA IMITATORS

The Ninja, an ancient martial arts assassin, is apparently the latest hero for street kids, much as Superman was some years back. The black-hooded Ninja imitators may often be seen practicing karate kicks, but sometimes, thanks to mail-order magazines, they come complete with combat weapons such as nunchakus, throwing stars, and even Samurai swords.

Police, community leaders, psychologists and professional karate instructors are attempting to deal with the problem, which came to public attention after incidents in several New York state locations. A university psychologist says the behavior of youths who dress up and act the parts of Ninjas has become commonplace; incidents involving the police have raised public awareness of the problem.

John Northman, a clinical psychologist at the State University of New York at Buffalo, said there is "a tendency for kids to identify . . . with those who are powerful," however, this particular fad is "different from kids playing cowboys and Indians because it's directly threatening to others."

[From the Morning Union, June 10, 1985]

NINJA IMITATORS WORRY AUTHORITIES

BUFFALO, NY.—The Ninja warrior, an ancient martial arts assassin glamorized in books and karate movies, has become the new super hero for many young people, much the same as Superman was for their parents.

But unlike the caped crusader, the modern-day street Ninja, complete with nunchakus, throwing stars, and sometimes-menacing Samurai swords, poses problems for the forces of law and order.

Police, community leaders, psychologists and professional karate instructors are trying to deal with the problem, which came to public attention after incidents in Buffalo and Dunkirk, a city of 15,000 residents about 50 miles southwest of Buffalo.

"It's getting to be a hassle in the streets," said John Overton, a professional karate instructor in Buffalo.

"Most everybody tries to put it under the rug, but it's an ongoing problem," said Sgt. T.P. Kulig of the Dunkirk Police Department.

Kulig investigated an incident last October in which a 14-year-old boy dressed as a Ninja warrior and carrying nunchakus—also known as chucka sticks, traditionally oak sticks connected with leather or a chain—threatened a police officer with a sword.

Police said the youth, who was arrested, was part of a group whose members dressed in black and extorted money from other youths. His case has been referred to Chautauqua County Family Court.

Youngsters have been seen with hoods practicing kick routines, but few have been seen with weapons and police have received few reports of attacks, Kulig said.

But tragedy struck May 23 when Buffalo police shot and killed a man who attacked two officers with a 29-inch Samurai sword. Police said they had gone to the home of Wayde Lee Oates, 21, to investigate a report he had threatened a neighbor.

Homicide chief Leo Donovan said Oates charged two officers "with a two-handed hold on the sword, screaming like a warrior."

A university psychologist says the behavior of youths who dress up and act the parts of Ninjas has become commonplace; incidents involving the police have raised public awareness of the problem.

"These kind of things have been going on for years," said John Northman, a clinical psychologist at the State University of New York at Buffalo.

Northman said youths emulate characters like Ninjas to help find their own identity—not because they want to rebel.

"It all depends on how you handle it and filter it through your mind," Northman said. "When your filter fails and there is a failure to exercise that judgment, that's when you get into trouble.

"There's a tendency for kids to identify . . . with those who are powerful," he added. "It's different from kids playing cowboys and Indians because it's directly threatening to others."

[From the Sunday Republican, June 9, 1985]

WEAPONS BATTLE WILL REACH SENATE

(By George R. Delisle)

We told you last January about Larry Kelley of Amherst, a karate instructor who has been carrying on a one-man war against mail order firms which pour illegal weapons into the hands of Massachusetts youngsters.

Kelley told us in January that he had gone to various federal, state and local law enforcement authorities to complain that a variety of illegal weapons, including nunchaku (kung-fu sticks), shuriken, (star knives or throwing stars) and double-edged "butterfly" knives, all prohibited under Massachusetts law, are routinely mailed into our state, mainly to children, by a few unscrupulous mail order companies cashing in on the popularity of "ninja" movies.

Kelley asked SOS for help "on a lark," as he later told us. But we contacted several law enforcement agencies and were told that Kelley's charges were all completely true.

U.S. Postal Service authorities told us that they would like nothing more than to put a stop to the trafficking in potentially

deadly bladed weapons through the mails. But, we were told, there is no federal law on the books to prohibit the mailing of such weapons, even into states like Massachusetts in which possession of such weapons is a felony offense.

We asked you last January to consider writing to your congressman and senators to urge enactment of just such a law. In the meantime, Kelley has continued to press state and federal officials for action against the mail order weapons merchants.

Now, in what looks like a major victory, Kelley reports that two of the most influential members of the U.S. Senate have joined forces to propose a legislative solution to the problem.

Kelley provided us this week with a copy of a letter from U.S. Sens. Edward M. Kennedy, D-Mass., and Strom Thurmond, R-South Carolina, chairman of the powerful Senate Judiciary Committee, which was mailed to all other members of the Senate May 23. The letter states opens, "After the Memorial Day recess we plan to introduce legislation to prohibit certain mail-order sales of dangerous martial arts weapons."

According to the Kennedy-Thurmond letter, "The distribution of these illegal devices goes unchecked because existing Federal postal regulations—which already prohibit the mailing of certain firearms, explosives, switchblades and other dangerous articles—do not specifically prohibit sending martial arts weapons through the mail. Legislation is needed to provide the United States Postal Service with explicit authority to stop mail-order sale of martial arts weapons to states which have outlawed such sales or possession."

Kennedy and Thurmond called upon their colleagues to join them in co-sponsoring the legislation they are proposing, which would prohibit the mailing, delivery, or advertising for sale by mail-of any "dangerous martial arts weapon" to any state which prohibits the manufacture, sale or possession of such weapons.

Kelley told us this week that the bill, with strong bi-partisan backing, should have strong support in the Senate. However, he fears that the importers and manufacturers of these deadly playthings will soon be launching an all-out lobbying effort to kill the measure.

Kelley noted that mail-order sales of illicit martial arts weapons are worth many millions of dollars annually, and predicted that those who profit from such sales won't give up without a fight. Already, he said, ads have started showing up in martial arts publications urging their readers to fight for their "freedom" to carry various martial arts weapons.

Kelley said that makers and importers of illicit weapons have shifted their advertising focus to very young children. He showed us a recent ad in one martial arts magazine which depicted a boy no older than 14 and a girl about 10 years old, both armed with double-edged butterfly knives. Children aged from eight to 16 now represent the bulk of these company's customers, Kelley said.

Kelley urged concerned parents and civic groups to write to their senators and congressmen now to urge swift enactment of the Kennedy-Thurmond bill which, he believes, will effectively shut off the mass flow of these deadly weapons into our state.

[From the Daily News, May 28, 1985]

MAIL ORDER MAIMING

(By Chris Hamel)

Amherst karate instructor Larry Kelley says that in one summer, a 12-year-old can learn to kill with mail order martial arts weapons. But by the coming summer's end Kelley may have won his fight to keep the deadly weapons out of minors' hands.

For nine months, he has been battling against what he estimates is a $75 million-a-year distributors' empire. And now Sen. Edward M. Kennedy, D-Mass., is "just about ready" to introduce legislation that would put controls on the weapons, according to Brian Delaney of Kennedy's Boston office.

Delaney notes that Kennedy's staff is ironing out with U.S. Postal Service a bill that will put limits on the arms similar to those on guns and knives. Kennedy's staff also is waiting to see if any co-sponsors of the bill will come forward, Delaney said.

Kelley claims that the nation's No. 1 "ninja" weapons mail distributor is in Philadelphia and he hopes that a co-sponsor will be Sen. Arlen Specter, R-Pa. Kelley, 30, also notes that he has been encouraged in his campaign by Sen. John F. Kerry, D-Mass.; state Sen. John Olver, D-Amherst; and Massachusetts Secretary of Public Safety Charles Barry.

Ninjas were highly skilled Japanese assassins, who were hired by contract and flourished into the 17th century. They used a variety of hand-to-hand combat weapons, updated models of which can be ordered through ads in today's martial arts magazines, regardless of one's age or expertise with weaponry.

"Literally every martial arts magazine has advertisements for deadly weapons," Kelley says, noting that most of the periodicals are published in California, a state that prohibits ninja weapons.

He adds that major distributors are located in California, Florida, Georgia and Pennsylvania. Most of the manufacturing is done in Taiwan by Asian or American entrepreneurs, he says.

Kelley also notes with irony that in Japan, ninja weapons—with the exception of swords licensed to karate schools—are banned.

"I'm not against the weapons," he says, "but against having them in the hands of kids and criminals."

Kelley guesses that as many as a million readers will see weapons ads in a single karate magazine in a month's span. He thinks that advertisers are targeting youth.

"The majority audience is people under 18," he says. "That's my assumption. But after seeing an ad (for ninja weapons) with kids in it, who do those people think that they're targeting?"

GLAMORIZED IN FILMS

Summer is a key time for interest in the weapons, Kelley explains. The late Bruce Lee, regarded as the greatest of karate fighters and an expert weapons handler, made several feature films in which there is dazzling use of nunchaku sticks and other arms.

Nunchaku sticks, or "chucks" as they are known in street slang, are hefty batons joined together by a sturdy chain. The bats can be used to club someone and the chain can be used to choke.

Kelley, who writes about karate, deeply admired Lee's skills and has published stories about him.

But he adds, "Bruce Lee popularized the weapons. He knew they had dramatic affect. He said that he did the fancy stuff to attract an audience. Every summer, Bruce Lee comes back at the movies."

Kelley cites two classic Lee films—"Enter the Dragon" and "Return of the Dragon"—which sparked interest in ninja weapons. Further, he believes that the public got a sort of triple ninja whammy from the media in the 1970s.

"A MEDIA AVALANCHE"

He says, "In the '70s, you had Lee's movies, David Carradine in 'Kung Fu' on TV, an increase in the number of (kung-fu) magazines, and the hit song 'Kung Fu Fighting' on the radio. If you put them all together, you've basically got a media avalanche."

Some instruments that became ninja weapons started out as tools in the Asian rice trade. Nunchaku sticks, for instance, were used to beat rice before they were used to club victims.

But Kelley says that some of today's arms come not from ninja history, but from the ghoulish imaginations of manufacturers.

"They paint it black and call it a ninja weapon," he notes.

In most ninja weapons ads, distributors request personal checks, credit cards or money orders for purchase. Kelley suspects that most young people use money orders to buy the weapons, and he hesitates to estimate how many of the weapons are in kids' hands, or how many youngsters own the items.

MOST ARMS INEXPENSIVE

Most of the arms are surprisingly cheap. Shuriken, or "throwing stars," cost as little as $1.

They are star-shaped, palm-sized metal pieces that are hurled at high speed at an enemy. Kelley says that the stars, which dealers sometimes fashion into belt buckles, can penetrate a car hood or split a 5-pound melon.

Nunchaku can be bought for $15; steel claws that can be strapped to one's hands can be had for under $20 a pair; a combination brass knuckles/stainless steel knife can be purchased for under $15.

As Kelley notes, the weapons are within the budget of a 12-year-old and their advertising is plentiful. He cites one martial arts magazine with 42 advertisers, who are hawking arms that are illegal in Massachusetts.

Kelley adds that one dealer delivered a weapon to him by mail, despite an ad disclaimer that arms would not be shipped to states where prohibited.

[From the Washington Times, Apr. 23, 1985]

KENNEDY WOULD BAN "KILLING STARS"

Sen. Edward M. Kennedy, D-Mass. will seek a federal ban on mail-order kung-fu weapons such as the metal *shuriken* "killing star" that can pierce eyes and slit throats. He will ask Congress to "shut off the sudden surge of interstate shipments of mail-order martial arts paraphernalia, such as killing stars, kung-fu sticks, crossbows and a variety of other deadly instruments, he said at a police graduation ceremony in Malden, Mass., Friday.

Jack Kelly, a black-belt in karate who runs a martial-arts instruction studio in South Amherst, Mass., initiated the campaign when he mailed a "throwing star" to every member in the Senate. "They can listen to me preach about the dangers of these weapons but when they feel the cold

steel in their hands it makes them take notice," Mr. Kelly said.

Dale Dye, executive editor of Soldier of Fortune magainze which prominently displays combat weapons for sale, said that Sen. Kennedy's proposed legislation would not affect merchandise sold in his magazine. "These are really esoteric items. The person who purchases and uses these weapons without the training can hurt themselves. . . . The guy who is stealing to buy dope probably has better things to spend his money on. And I'm not entirely sure the average American is intimidated with these things."

[From the Sentinel, Mar. 20, 1985]

NINJA FREE AMHERST?

KARATE EXPERT SEEKS SUPPORT TO CURB WEAPONS SALES

(By Steven P. Barrett)

They are marketed as the "ultimate self-defense weapons." But according to at least one area karate expert and several local law officials, Ninja weapons are fast becoming dangerous playthings for the area's youth.

Ninja weapons range from easily concealable heavy metal wrist claws to belt buckle knives. Once the weapons of ancient Japanese assassins, the weapons quickly are becoming the "in-thing" for high school age youngsters.

But this is one trend which has bothered local karate expert Larry Kelley enough to begin a quest to make the area a "ninja-free zone."

Kelley, a champion karate expert instructor and owner-manager of the Karate Health Fitness Center in South Amherst, continued his battle last Friday to have Congress tighten up regulations dealing with the interstate shipment and purchase of dangerous "Ninja-style" martial arts equipment.

At a press conference at his West Street gym which attracted local and statewide media, Kelley dramatized the impact of the dangerous nature of these weapons. One of Kelley's students, Adam Sloat of Northampton, even demonstrated the power of a nonchucku (kungfu stick) be splitting a coconut in half.

Kelley maintains these weapons "serve no common lawful purpose" except for an 80 lb. cross bow which, he added, couldn't even be used to hunt in this state.

"It's not legal to possess or manufacture these weapons," he added, "but you can mail away for them."

And people, particularly school-age youngsters, are mailing away for them. Some children even buy the deadly weapons in school.

Two high school students, one each from Amherst and Belchertown, spoke to The Sentinel about the popularity of the Ninja craze in their school systems.

"Mark" (not his real name), an ARHS sophomore, told The Sentinel he recently purchased a "Baili-Song" knife (which acts like a bladed nonchuck) at Amherst Regional.

"Most of the people I hang around with are into Karate," he said, "and half of them are rotten apples . . . I think there's more to this than I know."

He added there was a "wholesaler" in the school.

"Sean" (not his real name), a Belchertown Jr.-Sr. High School senior, told The Sentinel: "These things are pretty popular there . . . What they don't get in the mail, they make themselves.

"One kid has a mace right out of the Middle Ages . . . this Ninja stuff is very popular," he added.

According to Sean, the Jr.-Sr. High School "is a bad place because the schools are mixed."

"One seventh-grader, a little one, said he had a double edged blade to 'protect himself'," he added.

Mark said the Ninja craze "even has the girls excited" at Amherst.

Sean said he knows of students wearing "studded wristbands" after class, and they're "found all over." He said that during class, the "kids keep them in their pockets."

The spikes, he said, were quarters and/or a half inch long.

The Ninja, according to Kelley, were professional assassins in Japan, and he doesn't want this cult emulated by our children. He also had sharp words for Asian World, a chief supplier, based in Chicago and Philadelphia.

"I'm trying to shut those suckers down . . . these guys give capitalism a bad name," he said.

Kelley also had sharp words for politicians, local officials and parents "who remain unaware of the situation, or do little to stop it from growing." He also offered a "guestimate" that 10 percent of the kids in local high schools are into the Ninja craze and/or possess these weapons.

"There are no reasons on earth why this stuff would be sent into the states if tighter restrictions were enacted," he said. Kelley cited present state laws (M.G.L. Ch 269 S.10) regarding double edge blades, nonchucks ("kung fu sticks") and other assorted weapons.

He blamed the "not my sweet little town" attitude which he contends is held by police chiefs and school officials.

"The kids, the politicians, and the people in power don't know what's going on under their noses," he added.

But John Heffley, director for Secondary Schools in the Amherst-Pelham Regional School District, disagreed with Kelley saying he and high school Principal Gaylord Saulsberry are aware of the craze and have confiscated weapons in the past.

"It would be foolish to say it's not happened here," Heffley added. "But I'm not aware of a large scale presence here.

"We've confiscated (throwing) stars over the period of time, but not belt blades."

Heffley, like Kelley, would like to see more legislation to restrict the interstate mail order purchases of these weapons. "Even my 13-year-old could get one," he said.

Allan Eastman, of the Belchertown Jr.-Sr. High School, said he and Kelley have had discussions dating back to October when Kelley began his campaign.

He, like Heffley, disagrees with Kelley's feeling that towns don't recognize the problem.

Eastman said problems with Ninja weapons were "quelched" when school officials informed the students the weapons were indeed illegal. "Students weren't aware the stars were illegal, even though they knew the nonchucks were. I also don't think they realized the studded bracelets and wristbands were illegal because of the wording of the law," he added.

Eastman also disagreed with Kelley's "guesstimate" that 10 percent of high school students in the area are involved in Ninjutsu activites.

"I'm doing the same thing Kelley is doing, "guesstimating", but my guess is that only five percent of the kids are involved in that," he said.

Eastman said the school has confiscated throwing stars, but not the belt-blades, "But that's not to say there aren't any," he added. Area police officials also say they have acted to solve the problem.

Amherst Police Lt. David Jenkowski said his department has taken action in the past by confiscating the ninja weapons and charging people for violating the law.

According to Jenkowski, the department has confiscated nonchucks, throwing stars, double edged knives and studded belts on a regular basis.

"There's no question that these things are horrendous, and when we are made aware of a problem, we will act on it," he said.

And area efforts have been supported by law enforcement officials. Belchertown Police Chief Robert Knight was unavailable for comment.

W. Michael Ryan, District Attorney for Hampshire and Franklin Counties, said he believes the handling of the martial arts weapons is a local one for local police departments. But, he added, his office would help in the investigation of certain cases.

Although Ryan is concerned about the potential seriousness of the weapons and Ninjutsu craze, he added that he "couldn't say there have been a lot of incidents" regarding the use and possession of Ninja style weapons.

While no one has been incarcerated for mere possession of a weapon, Ryan said one man was sent to jail for using a double-edged blade in an assault. But according to Kelley, efforts to stem the flow of dangerous weapons are being squelched by trade magazines which glorify the killer equipment.

A cover photo on Black Belt magazine (which bills itself as the World's Leading Authority on Self Defense) last December, portrayed Bud Malstrom, a leading American Ninjutsu practitioner, holding a hooded ninja "warrior" in a headlock, ready to decapitate his intended victim with a sword.

The title of the leading story was "ninjamania: Ninjutsu Craze Sweeps The Nation."

But Kelley's efforts may be paying off within the martial arts profession, particularly its media. In this month's edition of Black Belt there were three articles which clearly indicated disfavor with reckless behavior and disregard for legal issues and laws surrounding martial arts weapons.

Nevertheless, there were still many advertisements for ninja style weapons and equipment. Some were even full page displays which advertised "ninja uniforms in adult and child sizes," and a wide array of blades and nonchucks ranging from the small balligongs to full size machetes.

Yet it is the "kung fu" movies and the hype surrounding the art which worries Kelley because of the impression they might have on youngsters in the same way the switchblade held fascination for youths during the 50's.

Kelley not only competes and teaches, but he is an accomplished writer for several karate magazines.

"I'm almost embarrassed to have my byline in these magazines.

"It used to be that karate equipment (the legitimate kind) would take up 85 percent of the ads, and only 15 percent would deal with weapons.

"But, quite literally, over half of all the weapons now being advertised are illegal, and that alone tells the world story," he added.

Violence on the television and movie screens, Kelley added, leaves the audiences "anesthetized" to what's going on.

Kelley has no love for the "kung-fu" movies featuring Chuck Norris and Bruce Lee. He has even less patience or the recent spate of Ninja movies, "which glorify assassins."

"Ninja movies are keeping this stuff respectable in the eyes of youngsters. John Wayne has been replaced by the scum of the earth."

[From the Boston Globe, Mar. 15, 1985]

KARATE TEACHER SEEKS WEAPONS CURB

(By Teresa M. Hanafin)

Fearing serious injuries among school children, a karate instructor in Amherst wants legislation to stop the influx of certain martial arts weapons into Massachusetts by mail.

"The stuff is just cascading into the state," Larry J. Kelley said during a telephone interview yesterday. "It's crazy. It's reached a fever pitch, an absolute mania among kids. It's got to stop, because some kid is going to get really hurt."

Kelly's resolve to do something was bolstered three months ago when he noticed that a 13-year-old student in one of his classes had a bandage on her hand.

When he asked the girl what happened, her answer both surprised and distressed him.

She said she had cut herself while handling a razar-sharp ball-song, a butterfly knife that is a favorite of enthusiasts of ninjutsu, a Japanese martial art. In this case, it belonged to a boy who attended the same school as the girl.

Among the weapons Kelley thinks are dangerous, particularly in children's hands, are nunchucks, also called nunchaku, two clubs connected at one end by a chain or rope: crossbows; blowguns, and throwing stars—metal discs hurled at an opponent's eyes or sharpened and used to slit throats.

The items are readily available to anyone of any age for the right price from mail order companies that advertise in martial arts magazines. A throwing star can cost as little as $1.

Kelly, 30, is careful to distinguish among various martial arts; he said arts such as judo and alkido do not use weapons and teach honor. Karate involves weapons, but mostly large wooden staffs used to build up strength and coordination and which cannot be concealed, he said.

He blamed the proliferation of certain martial arts weapons on a resurgence of interest in the Ninja, a secretive cult of assassins in Japan from the 13th to 17th centuries, and martial arts movies in which the hero uses such weapons.

Bow Sim Mark, a master of the Chinese martial art tai chi who works at the Chinese Wushu Research Institute in Boston, said she deplored the availability of deadly martial arts weapons.

Daniel M. O'Leary, assistant chief of safety services for the Boston public schools, said officials have confiscated nunchaka and throwing stars from students, but not in large amounts.

"It's a cult thing" he said. I've seen a kid with these nunchaka in a leather case. He'll have poor shoes on his feet, but he probably paid $70 for the nunchaka."

At issue is what Kelley said is a conflict between what Massachusetts law prohibits and what the federal government allows. In Massachusetts, manufacturing or possessing certain martial arts weapons is a felony.

However, it is not illegal for those who import or manufacture these weapons in a state where it is legal to mail them into Massachusetts.

Kelley wants Congress to place tighter controls on the interstate shipment of these weapons. Rather than advocating a ban, he has suggested that martial arts weapons ordered from an out-of-state company be mailed to a dealer. Under Kelley's plan, the person who ordered the weapon would have to show proof of age before the dealer would turn over the material.

To draw attention to his crusade, Kelley mailed throwing stars of about 2½ inches in diameter to every US senator. He also plans to hold a press conference today at his karate school, the Karate Health Fitness Center in Amherst, to demonstrate the lethalness of some weapons by demolishing coconuts with a pistol crossbow.

[From the S'field Morning Union, Jan. 16, 1985]

VIOLENCE MADE EASY—BY MAIL

Those who are concerned about rising violence in society also might consider that, for the price of a few dollars and a stamp, anyone can become a threat to life and limb.

That's anyone—child, drug addict or psychopath who decides to carry razor-edged throwing weapons or other devices designed to maim, cripple or kill.

Such instruments were used in ancient times by Oriental assassins, and have become popular through the proliferation of martial arts publications that advertise them for mail-order sale.

Massachusetts law bans the retail sale or use of these weapons, but can't stop the mail-order commerce. Postal regulations, which forbid mailing of firearms, explosives and switchblade knives, have no provisions for controlling the flow of martial arts weapons—even to a state that has outlawed them.

One man who knows what these devices can do is Amherst karate instructor Larry Kelley. For many months, Kelley has been trying to alert parents to their danger, and to get the public aroused enough to demand changes in postal regulations that will eliminate the deadly trade.

Among Kelley's supporters are law enforcement officials who now can disarm a child found carrying the weapons, but can't stop the same child from ordering more.

Thus the double-edged knives, the "kung-fu sticks" and the star knives, designed for throwing and almost certain to wound or kill, remain available on request—no permits necessary and no questions asked.

The situation calls for congressional action, which is unlikely to happen without a public outcry. And the longer such action is delayed, the more young people who find fascination in a steady diet of television and magazine violence can arm themselves.

[From the Sentinel, Wednesday Mar. 20, 1985]

COMMON INTERESTS

(By Steven P. Barrett)

Perhaps many of you are now familiar with Larry Kelly, owner-manager of the Karate Health Fitness Center in South Amherst who is waging a struggle with the Town's Leisure Services and Supplemental Education program. In that battle, he rightly asserts that small businessmen who offer instructional training shouldn't have to compete directly with taxpayer subsidized programs. He has my full support on the matter, and on an even more important issue too: curbing mail order sales of dangerous "Ninja" style weapons and martial arts equipment.

Kelly has been carrying the ball on this issue pretty much by himself since he began his campaign to prevent these sales last fall. He became alarmed about the increasing number of illegal non-chucks, throwing stars and other destructive devices falling into the hands of local school children after more of his students started bringing them to his attention. He even believes there's a "wholesaler" operating in Amherst High School. The law of supply and demand, fueled by excessive and lavish media hype has encouraged youngsters into buying this illicit craze and bag of goods. In addition to the "kung-fu", Chuck Norris and Bruce Lee martial art flicks (they don't even rate the title "movie") all the kids need to do is read any karate magazine sold in area newstands.

After that, it's easy. They see the ads, fill out the forms and send the money in. Pretty soon they're equipped with the latest version of medieval hand-to-hand combat too.

Kelly, an established writer on karate matters, is justifiably embarrassed by the increasing number of ads inducing anyone, yes anyone, to purchase lethal weapons through the mail. He's particularly concerned that the "anyone" buying this stuff through the mail could be a child.

As a conservative, I don't want to see more government controls imposed on the private sector. But, as Kelly told this columnist, "These guys are giving capitalism a bad name."

In that case, I'm willing to let the government, through stricter rules governing mail order sales, act as the calvary once again.

I hope our readers will follow Kelly's lead in urging our congressional delegation to take swift action to eliminate this silent, yet more realistically deadly arms race in our communities and school buildings.

We already have "nuclear free zones," so why not establish "Ninja free zones". To paraphrase Speaker Tip O'Neill, (who has also supported Kelly's efforts), disarmament begins at home.

[From the Daily Hampshire Gazette, Nov. 6, 1984]

ILLEGAL WEAPONS SEEN HERE

(By Jane Regan)

Area youths are buying dangerous, illegal weapons by mail in emulation of 16th-century bands of Japanese assassins, according to a local karate instructor.

Inspired by movies like "Enter the Ninja" and "Revenge of the Ninja," youngsters have been sending away for illegal weapons like "nunchaku," two hardwood rods connected by a chain, and "shurikens," star-shaped metal disks with sharpened points, and have been "playing ninja."

Larry Kelley, the director of the Karate Health Fitness Center in South Amherst, has gone on a crusade against "ninjamania." By contacting public officials, the media, and officials of the U.S. Postal Service, Kelley hopes to stop the flow of illegal weapons into the state and into the hands of youth caught up in the ninja craze.

The ninja were 16th century Japanese assassins who practiced ninjutsu, one of the martial arts. Clothed in black suits and hoods with only a slit for the eyes, they used weapons like nunchaku or poison arrows to assassinate enemies for whichever warlord paid the highest fee.

According to Kelley, ninjutsu was outlawed in the 17th century and is considered a "bastardized child with a tainted past" by the practitioners of other Japanese martial arts like karate, judo, and aikido. "These people were slime. They had no morals whatsoever," Kelley said of the ninjas.

But "ninjamania" has inspired youths to emulate the warriors and purchase illegal like "Game of Death Minichucks" (a type of nunchaka) through the mail. Kelley, who has confiscated about 100 illegal weapons from students as young as 8, is worried that children will hurt themselves playing with the weapons or might even use them in a fight.

If children can fill out an order form, they can deck themselves out for gang warfare or a quick burglary. Almost none of the order forms found in advertisements in martial arts magazines remind the buyer that it is a felony in some states, including Massachusetts, to possess or carry many of the weapons.

Timothy Babyok, owner of Easthampton's Isshinryu Karate Club, said he has also noticed the rise in popularity of ninjutsu, which he referred to as "the art of killing." "It's just totally unbelievable that kids would want to get into this," he said. "It is poisoning the young peoples' heads."

According to "Black Belt" magazine, ninjutsu instructors across the nation teach students how to climb up walls using spiked shoes and gloves, and numerous teach-yourself manuals are available for youngsters eager to learn how to throw a star or twirl nunchaku.

Police officers in the nation's larger cities have been assaulted with ninja weapons, according to Kelley. Two burglars dressed in ninja warrior suits broke into actress Penny Marshall's Hollywood home last winter. And Kawasaki Motorcycles has a 1984 bike called "Ninja."

An Amherst Regional High School sophomore who asked not to be identified, said he got his first nunchaku two years ago. "I personally have about 10 friends who kind of formed their own ninja club," he said in a recent interview. "They each have at least one illegal weapon."

The youth said he knows many students at the high school who have weapons. One of the most popular weapons is the shuriken. "If they don't order them, they make them in metal shop," he said.

Alan Jacque, industrial arts teacher at the school, said he knows some students have shurikens, but he has not seen any in his shop recently. "If I ever catch them, I call the police," he said. "I caught one person five years ago."

But Principal Gaylord F. Saulsberry said teachers have confiscated illegal weapons like throwing stars from students in shop classes, and admitted that it is difficult to catch someone who only sharpens a star on a grinder for a few minutes. "It's not new," he said. "When we find them, we confiscate them, and call the parents. That isn't unique to Amherst."

Police in Northampton, Easthampton and Amherst have all confiscated such illegal weapons from youths in recent years. Northampton Det. Gordon R. Luce estimated that city police have confiscated about 10 nunchaku and stars in the past year, as well as numerous wrist bands. He said that unless there is an assault, they usually merely confiscate the weapons.

Easthampton Det. Richard Lavellee said his department has charged people for possession of a dangerous weapon on occasion, but said police often opt to merely confiscate and warn the perpetrators.

But some youths continue to carry the weapons. Said the Amherst student, "Everybody who orders them says, 'If I get caught, I'll just say I didn't know it was illegal.' "

And because police and school officials can only confiscate weapons when they discover them, Kelley is trying to go to the source of most illegal weaponry: the U.S. mail. He recently contacted a postal inspector in Springfield and the Consumer Protection Division of the Franklin-Hampshire District Attorney's office. "This stuff is all illegal. Why is it getting into the state?" Kelley asked.

Postal Inspector Charles Fox said he has inquired with the Office of Mail Classification in Washington over whether companies mailing weaponry from a state where it is legal into a state where it is illegal can be charged according to some federal law. He said he had never investigated a case like this, and expects a ruling from Washington within a week or so.

Fox said that if a company is found to be sending illegal items, the U.S. Postal Service can put a "stop order" on any packages bearing the company's name. "If the company is being flagrant," he said, "they (the federal court) can take action against it."

Detectives on the University of Massachusetts police force are also involved in putting a stop to ninja-mania. They are currently investigating an alleged ninjutsu teacher on campus. Officially, the instructor is on campus to teach karate to university students, but Lt. Michael Grabiec said police received a report that he was teaching ninjutsu to high school-age students. Grabiec said that although teaching ninja fighting techniques is not illegal, if the instructor and his students are using any of the illegal weapons he could be charged with possession of a dangerous weapon.

Kelley, a full-time karate teacher, said he has no respect for the ninja tradition, either as it existed in the 16th century or as it is today. "Any little idiot can throw (shurikens) and make them stick," he said. "I've been sitting down with my students and talking to them. They admit it's wrong."

Mr. CHAFEE. Mr. President, I am pleased to join Senators KENNEDY and THURMOND today in introducing legislation to prohibit the mail-order sales of dangerous martial arts weapons.

The popularity of Kung Fu movies and television programs has produced a fascination with martial arts paraphernalia in the United States, particularly among our young people. Many States have enacted laws to prohibit the manufacture or sale of these dangerous weapons.

In my own State of Rhode Island there is a longstanding prohibition against carrying, possessing, or attempting to use against another these so-called Kung-Fu weapons. Just recently the Rhode Island State Legislature passed new legislation adding five point, so-called Chinese stars to that list of prohibited items. No one under 18 years of age is allowed to carry or possess these devices, which can inflict serious cuts and wounds when thrown. They have become a new fad with gangs of young boys who use them to terrorize other young people and certainly not to engage in the exercise of martial arts as a sport.

While the State is dealing very effectively with distribution and possession of these items within Rhode Island, our efforts are being thwarted by interstate catalog sales of martial arts paraphernalia. The distribution of these illegal devices therefore goes unchecked because existing Federal postal regulations—which already prohibit the mailing of certain firearms, explosives, switchblades, and other dangerous articles—do not specifically prohibit sending martial arts weapons through the mail.

Legislation is needed to provide the U.S. Postal Service with explicit authority to stop mail-order sale of martial arts weapons to States which have outlawed such sales or possession. The bill we are introducing today would amend the existing ban on dangerous items contained in Federal statutes, by adding certain clearly specified martial arts weapons to the existing list of other nonmailable dangerous items, such as switchblade knives. This measure would also prohibit mail-order sales to States which have banned the sale or possession of such items.

This legislation is both timely and necessary. The Federal Government, through the U.S. Postal Service, should not be in the position of impeding or frustrating State authorities which have acted in the best interests of citizens. In this legislation there is no attempt to mandate policy in States which have not seen fit to regulate the manufacture or use of these weapons in their jurisdictions. But for those States which have seen fit to take action in this area, this legislation will assist their efforts immensely. I urge other Senators to join in support.

By Mrs. KASSEBAUM:

S. 1364. A bill to authorize assistance for famine prevention in Africa; to the Committee on Foreign Relations.

PREVENTION OF FAMINE IN SUB-SAHARAN AFRICA

Mrs. KASSEBAUM. Mr. President, for the past decade the United States has been a major contributor to the efforts of Western nations to alleviate famine in Africa. We have poured billions of dollars into these efforts. Yet the overall results have been a dismal failure. Today, one of three people in sub-Saharan Africa is in extreme need of emergency food aid. Last year alone, 5 million African children died of causes related to hunger. Most people agree that Africa is little, if any, better off today than it was before Western donors began their relief efforts. However, experts disagree on the causes of our failure.

The Agency for International Development recently released its annual report on the Sahel Development Program. The report indicated that AID

would narrow its range of activities under the Sahel program in order to "reflect more accurately the pace of economic development in the Sahel and AID's capacity to contribute to the development process." Mr. President, I believe that this more-limited approach to aiding the Sahel makes sense and will enable us to concentrate more effectively on small-scale projects.

Along those same lines, I am introducing a bill today that would focus on small-scale, affordable, resource-conserving, low-risk, local projects to restore the lands in Africa which have suffered extreme deterioration due to deforestation, decertification, and overuse. The bill would channel $75 million in existing funds toward programs that stress participation by international and African nongovernmental organizations and U.S. private and voluntary organizations.

Although it is important to acknowledge our failures in African famine relief, it is equally necessary to take notice of our successes. There have been encouraging examples of small-scale projects which give reason for hope that sub-Saharan Africa can be saved. By this bill, we hope to recreate the conditions which led to these successes.

Mr. President, I would like to express support for close collaboration between the Peace Corps and AID in future development efforts, as indicated in their joint communique of last spring. In addition, I commend the efforts of AID Administrator Peter McPherson to encourage individual initative by AID personnel. I hope that Congress can assist AID's efforts to speed decision-making, broaden the base of responsibility, and improve the responsiveness of its overseas missions.

The bill I am introducing today will support these efforts by AID and the Peace Corps. It will help to harness the creative energies of nongovernmental agencies and PVO's both here and abroad. And, it will support the vastly underrated talents of the peasant farmers to restore their lands. Mr. President, this bill is a much-needed initiative to improve the effectiveness of our efforts to aid Africa.

By Mr. ROTH (for himself, Mr. EAGLETON, Mr. LEVIN, and Mr. COHEN):

S. 1365. A bill to establish as an executive department of the Government a Department of International Trade and Industry, to establish the National Oceanic and Atmospheric Administration and the Bureau of the Census as independent agencies, and for other purposes; to the Committee on Governmental Affairs.

DEPARTMENT OF INTERNATIONAL TRADE AND INDUSTRY ACT

Mr. ROTH. Mr. President, I rise today to introduce a bill to create a new Cabinet Department of International Trade and Industry and I am pleased to be joined by Senators EAGLETON, LEVIN, and COHEN, as original cosponsors.

The issues in trade may be complex, but the facts are simple. America is losing in trade. The trade deficit, as I know everyone in this body is aware, has reached crisis proportions. Our trade position in manufactured goods has plummeted—a full $50 billion from 1983 to 1984. The pressure from imports is hurting the full range of American industries from textiles to semiconductors. Prospects for agriculture trade, once the shining star of our trade picture, are now dim. Between 1984 and 1985 agriculture exports are projected to drop from $38 billion to $34 billion.

These are statistics that should not be ignored. It is true that the recovery has brought new opportunities for many in our society. Still the extraordinary trade deficit is an alarming reflection of the adversity now facing other Americans who have lost their jobs to imports and the fears of still others who may be next in line. We must not leave these people out.

Why are we losing in trade?

Today, it is not my purpose to expound on the usual array of substantive causes of the trade deficit—the value of the dollar, the LDC debt problems, uneven recoveries in industrial nations, unfair trade practices, export disincentives, et cetera.

My purpose here today is to make clear that the U.S. Government's trade organization, or I should say lack of organization, is itself an important reason why we are losing in trade.

Not only is trade organization an important cause of our trade deficit, it is becoming a more important cause with each passing day.

TOO MANY VOICES AND NO VOICE ON TRADE

When I stood before you last session to call for the creation of a Cabinet-level Trade Department, I said that we needed a single, strong spokesman for trade in the executive. Then I was concerned about two, often competing, voices—the U.S. Trade Representative [USTR] and the Secretary of Commerce. That split in leadership hobbled the formation and execution of U.S. trade policy.

Now the situation is even worse. One day the USTR is leading on trade, the next the Secretary of Commerce, then the Secretary of State, occasionally the Secretary of Defense and finally we now hear that the Secretary of Treasury has become a key player.

Everyone is the leader on trade, yet no one is the leader. At this point in time, can we really afford a further splintering of trade leadership? Of course not, this organizational situation fosters confusion, paralysis and at times literally leaves a vacuum on trade policy.

I thought this squabbling for turf reached a crescendo last winter at the start of the United States/Japan trade negotiations. First the President tapped the Secretary of State as the top player for the United States, an unexpected development since the USTR and the Commerce Secretary were to that point the focus on trade. The interagency battles that broke out after this development were intense. Finally, after weeks of delay, the negotiation of each specific area was assigned to a separate agency—USTR got electronics, Commerce got telecommunications, Treasury got medical devices and pharmaceuticals and Agriculture got forestry and paper products. Finally, the actual negotiations with the Japanese could begin. But the interagency squabbling did not subside. Press articles continue to speculate on the latest shifts in power.

TRADE A LOW PRIORITY

Another key objective of a new Trade Department is to make Trade a top, permanent national priority. In the past I have spoken often about how trade plays second fiddle to other national interests. Now I am concerned that trade may not even play second fiddle.

Trade effects seem to be treated as an incidental outcome of policies driven by other higher priority interests.

The administration has yet to recognize the value of the dollar for the crisis that it is.

While our telecommunications trade deficit surges, we wait for administration position on the Danforth telecommunications bill.

The export administration bill is another area that cries for attention, but has not been given priority within the administration.

In this country we define our national priorities through our Cabinet structure. Trade needs this stature.

MANAGEMENT NIGHTMARE

Finally, the management problems I have highlighted in the past continue to proliferate.

Let me share one recent example with you * * * at USTR there is one staffer to handle trade relations with a major country. He has piles of congressional and other mail to answer, data to collect, policy positions to develop and important negotiations underway. At the Department of Commerce, meanwhile, there are about six people assigned to this country literally looking for work to do. But turf considerations preclude sharing the tasks. Meanwhile the USTR staffer is sent off for management training * * * the work piles up and the question is: training to manage whom?

My office hears a steady stream of these tales.

Now there is talk of new trade negotiations * * * be they a broad new

round of multilateral talks; a series of comprehensive bilateral negotiations for free trade areas with specific countries; or aggressive new negotiating efforts to open foreign markets like those we are now engaged in with Japan.

It is unrealistic to expect the handful of negotiators in the Trade Representative's office—no matter how skillful or experienced—to carry out such far reaching negotiations without help. The Trade Representative will have to go, hat in hand, to other agencies, asking for support.

Far more preferable would be an organization connecting our trade negotiators directly, through clear management ties, to competent support staff, data analysts, and statistical experts.

Speaking of support staff and data analysts, this is one more area that clearly needs beefing up in a new trade organization. We need better intelligence on what foreign industries are doing and what their governments are doing to help them. American industry should not be asked to bear the full burden of uncovering foreign unfair trade practices and American industry can use the help of the U.S. Government to ferret out information on developments abroad that affect our own industries ability to compete.

TIME FOR A NEW DEPARTMENT

When we are staring at a $135 billion trade deficit for 1985 and no end in sight, I ask you isn't it time to establish a Cabinet Department of International Trade and Industry?

Don't we need to clearly establish trade leadership in the executive by giving the trade portfolio to a single, strong Cabinet Secretary who has the institutional muscle to promote our trade interests?

Isn't it time to put trade among our top national priorities?

Shouldn't we make sure that our trade bureaucracy can function as effectively as possible?

Isn't it time we had better intelligence on our competitors abroad?

I don't think we can afford to wait any longer before we get our trade organization in working order for the 1980's and beyond. The fact is that we will not be able to achieve the coherent, strategic trade policy so many Members in this body are calling for until we confront this organization issue.

This is one cause of the trade deficit over which we have direct control. It is one cause we can easily remedy.

I am delighted to have the strong support of Senators EAGLETON, LEVIN, and COHEN, and I hope each of you will give careful consideration to the organization issue as you identify the range of actions we in the Congress can take to confront the trade deficit.

Trade should be an engine of growth not just for the rest of the world, but for this country as well. The world market now amounts to $2 trillion and world trade is now growing. American industry is now poised for international competition—its leaner, more competitive and more conscious of the importance of the international marketplace than ever before.

The establishment of a new Trade Department can help ensure that we successfully meet today's trade challenges so that we can move on to capture the growing trade opportunities.

I ask unanimous consent that a fact sheet, several newspaper articles, and the text of the bill in full be printed in the RECORD following the remarks of my colleague and cosponsor Senator EAGLETON, the ranking minority member of the Governmental Affairs Committee.

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

S. 1365

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 "Department of International Trade and Industry Act of 1985".

TABLE OF CONTENTS

TITLE I—GENERAL PROVISIONS
Sec. 101. Findings.
Sec. 102. Definitions.
TITLE II—DEPARTMENT OF INTERNATIONAL TRADE AND INDUSTRY
PART A—ESTABLISHMENT
Sec. 201. Establishment of Department.
Sec. 202. Functions of the Secretary.
Sec. 203. International economic competitiveness impact statements.
PART B—OFFICES AND ADMINISTRATIONS
Sec. 211. Office of United States Trade Representative.
Sec. 212. United States Travel and Tourism Administration.
Sec. 213. Administration for Productivity and Technology.
Sec. 214. Office of Competitive Analysis.
PART C—OFFICERS
Sec. 221. Deputy Secretary.
Sec. 222. Under Secretaries.
Sec. 223. Administrator for Productivity and Technology.
Sec. 224. Assistant Secretaries.
Sec. 225. Deputy United States Trade Representative.
Sec. 226. General Counsel.
Sec. 227. Inspector General.
Sec. 228. Other officers.
PART D—TRANSFERS TO THE DEPARTMENT
Sec. 231. Transfers from the Office of the United States Trade Representative.
Sec. 232. Transfers from the Department of Commerce.
PART E—ADMINISTRATIVE PROVISIONS
Sec. 241. Personnel provisions.
Sec. 242. Delegation and assignment.
Sec. 243. Succession.
Sec. 244. Reorganization.
Sec. 245. Rules.
Sec. 246. Working capital fund.
Sec. 247. Funds transfer.
Sec. 248. Contracts, grants, and cooperative agreements.
Sec. 249. Publications.
Sec. 250. Use of facilities.
Sec. 251. Field offices.
Sec. 252. Gifts and bequests.
Sec. 253. Seal of Department.
Sec. 254. Annual report.
PART F—RELATED AGENCIES
Sec. 261. Interagency trade organization.
Sec. 262. Export-Import Bank of the United States.
Sec. 263. Overseas Private Investment Corporation.
Sec. 264. National Security Council.
Sec. 265. International Monetary Fund.
Sec. 266. Council on International Trade, Economic, and Financial Policy.
PART G—CONFORMING PROVISIONS
Sec. 271. Amendments.
Sec. 272. Repeals.
TITLE III—ESTABLISHMENT OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AS AN INDEPENDENT AGENCY
PART A—ESTABLISHMENT OF ADMINISTRATION
Sec. 301. Short title.
Sec. 302. Findings.
Sec. 303. Definitions.
Sec. 304. Establishment.
Sec. 305. Officers.
Sec. 306. Transfer of the National Oceanic and Atmospheric Administration from the Department of Commerce.
PART B—ADMINISTRATIVE PROVISIONS
Sec. 311. Rules.
Sec. 312. Delegation.
Sec. 313. Personnel and services.
Sec. 314. Contracts.
Sec. 315. Use of facilities.
Sec. 316. Service charges.
Sec. 317. Acquisition and maintenance of property.
Sec. 318. Facilities at remote locations.
Sec. 319. Copyrights and patents.
Sec. 320. Gifts and bequests.
Sec. 321. Transfers of funds from other Federal agencies.
Sec. 322. Working capital fund.
Sec. 323. Seal of Administration.
Sec. 324. Annual report.
Sec. 325. Status of Administration under certain laws.
Sec. 326. Salary of Assistant Administrators.
TITLE IV—ESTABLISHMENT OF THE BUREAU OF THE CENSUS AS AN INDEPENDENT AGENCY
Sec. 401. Transfers.
Sec. 402. Establishment.
Sec. 403. Conforming amendments relating to the Bureau of the Census.
Sec. 404. Coordination of statistical functions.
TITLE V—TRANSFERS TO OTHER FEDERAL AGENCIES
PART A—MINORITY BUSINESS DEVELOPMENT AGENCY
Sec. 501. Transfers to the Small Business Administration.
Sec. 502. Administrative provisions relating to the Minority Business Development Agency.
Sec. 503. Conforming amendments relating to the Minority Business Development Agency.
PART B—ECONOMIC DEVELOPMENT ADMINISTRATION
Sec. 511. Transfers to the Department of Agriculture.
Sec. 512. Administrative provisions relating to the Economic Development Administration.

Sec. 513. Definition of function.
Sec. 514. Conforming provisions relating to the Economic Development Administration.

TITLE VI—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

Sec. 601. Additional transfers.
Sec. 602. Transfer and allocations of appropriations and personnel.
Sec. 603. Incidental transfers.
Sec. 604. Effect on personnel.
Sec. 605. Savings provisions.
Sec. 606. Separability.
Sec. 607. Reference.
Sec. 608. Transition.
Sec. 609. Termination of the Department of Commerce.

TITLE VII—MISCELLANEOUS

Sec. 701. Effective date.
Sec. 702. Interim appointments.
Sec. 703. Authorization of appropriations.

TITLE I—GENERAL PROVISIONS

FINDINGS

SEC. 101. The Congress finds and declares that—

(1) principal national goals of the United States are to—

(A) maintain United States leadership in international trade liberalization and expansion efforts;

(B) reinvigorate the ability of the United States economy to compete in international markets and to respond flexibly to changes in international competition; and

(C) expand United States participation in international trade and investment through aggressive promotion and marketing of American products and services;

(2) the economy of the United States is so inextricably linked with the international economic system that all domestic economic sectors are influenced by the dynamics of global trade and investment;

(3) the expansion of United States participation in international trade will improve the general welfare of the people of the United States by increasing demand for American products and services, creating jobs, and increasing the gross national product;

(4) business, labor, and all levels of government must join efforts to place the highest priority on developing methods and policies to achieve the goals described in paragraph (1), and the achievement of such goals is dependent on a marked improvement in the capability of United States businesses to compete in foreign markets;

(5) the Federal Government can enhance the capability of United States businesses to compete in foreign markets by acting to—

(A) reduce political and economic barriers to sales and investments by such businesses;

(B) promote American goods and services in foreign countries;

(C) encourage aggressive participation by the private sector in the international marketplace; and

(D) develop policies to enhance productivity and long-term growth;

(6) effective and efficient Government action to enhance the capability of United States businesses to compete in foreign markets requires coordination of the development and implementation of Government policies relating to the international trade interests of the United States;

(7) the Federal Government can enhance the capability of State governments to attract international investment and expand foreign markets for goods and services produced in such States by—

(A) providing information resources suitable for developing and conducting international export and investment programs in the States;

(B) coordinating activities of Federal overseas trade facilities with State international trade offices;

(C) providing practical and technical assistance to States developing or conducting international export and investment programs; and

(D) taking appropriate actions to promote the availability of such information and assistance;

(8) effective and efficient Government action to strengthen efforts by States to develop and conduct programs to encourage international investment in, and promote export by, such States requires coordinating the development and implementation of Government policies relating to the international trade interests of the United States;

(9) effective and efficient Government action with respect to international trade further requires the employment of a corps of personnel consisting of individuals who, like the personnel of the governments of present and potential United States trading partners, are highly experienced and educated in international trade operations and negotiations;

(10) the present organizational structure of Government administration of international trade activities is so diffuse that inconsistent and contradictory policies and actions result;

(11) such inconsistent and contradictory policies and actions discourage experienced Government personnel from career service in international trade activities;

(12) the consolidation of Government functions relating to international trade, including functions relating to technical analysis, policymaking, international negotiation, and operational responsibilities, into a Department of International Trade and Industry will provide the needed coordination of Government activity in international trade and will encourage the retention of the highly experienced personnel necessary for such coordination to be effective;

(13) United States performance in international trade is fundamentally linked to the competitiveness of American industry in the world economy;

(14) improvements in the competitiveness of United States industry, products, and services can be aided by reducing traditional antagonisms and by encouraging maximum cooperation among government, industry, labor, and the public;

(15) a lack of analytical capability and knowledge concerning the competitive position and prospects of American industries and foreign industries greatly hampers or delays the ability of the United States to formulate responsible trade policies and policies that affect the international competitiveness of domestic industries;

(16) government policies and organization should recognize that there are critical links between technological innovation, industrial competitiveness, and trade performance; and

(17) the economic well-being of the American people will be substantially enhanced through the creation of the Department of International Trade and Industry.

DEFINITIONS

SEC. 102. As used in this Act, unless otherwise provided or indicated by the context—

(1) the term "Department" means the Department of International Trade and Industry;

(2) the term "Secretary" means the Secretary of International Trade and Industry;

(3) the term "function" means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program;

(4) the term "administrative and support functions" means legal functions, investigative functions, budget preparation and analysis functions, administrative functions, public information functions, and congressional relations functions carried out by a Federal agency, and such other support services as may be determined by the head of such agency;

(5) the term "executive department" has the meaning given to the term "Executive department" by section 101 of title 5, United States Code;

(6) the term "Federal agency" has the meaning given to the term "agency" by section 551(1) of such title;

(7) the term "office" includes any office, administration, agency, institute, unit, organizational entity, or component thereof;

(8) the term "Council" means the Council on International Trade, Economic, and Financial Policy established by section 266(a); and

(9) the term "Advisor" means the Advisor to the President for International Trade, Economic, and Financial Policy appointed under section 266(d).

TITLE II—DEPARTMENT OF INTERNATIONAL TRADE AND INDUSTRY

PART A—ESTABLISHMENT

ESTABLISHMENT OF DEPARTMENT

SEC. 201. There is established an executive department to be known as the Department of International Trade and Industry. The Department shall be administered by a Secretary of International Trade and Industry, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary shall be the United States Trade Representative and shall have the rank and status of Ambassador Extraordinary and Plenipotentiary.

FUNCTIONS OF THE SECRETARY

SEC. 202. (a) In addition to the functions transferred to the Secretary by this Act, such other functions as the President may assign or delegate to the Secretary, and such other functions as the Secretary may, after the effective date of this Act, be required to carry out by law, the Secretary shall—

(1) serve as the principal advisor to the President on international trade policy and advise the President on the impact of other policies of the United States Government on international trade;

(2) exercise primary responsibility, with the advice of the interagency organization established under section 242 of the Trade Expansion Act of 1962, for developing and implementing international trade policy, including commodity matters and, to the extent related to international trade policy, direct investment matters and, in exercising such responsibility, advance and implement the goals described in section 101(1) as the primary mandate of the Department;

(3) exercise lead responsibility for the conduct of international trade negotiations, including negotiations relating to commodity matters and, to the extent that such negotiations are related to international trade, direct investment negotiations;

(4) with the advice of the interagency organization established under section 242 of the Trade Expansion Act of 1962, issue policy guidance to other Federal agencies on

international trade, commodity, and direct investment functions to the extent necessary to assure the coordination of international trade policy;

(5) seek and promote new opportunities for American products and services to compete in the world marketplace;

(6) assist small businesses in developing export markets;

(7) support State governments involved in attracting international investment and expanding foreign markets for goods and services produced in such States;

(8) enforce the laws of the United States relating to trade;

(9) analyze economic trends and developments in order to understand and foster the conditions that enhance productivity and growth;

(10) report directly to the Congress—

(A) on the administration of, and matters pertaining to, the trade agreements program under the Trade Act of 1974, the Trade Expansion Act of 1962, and section 350 of the Tariff Act of 1930; and

(B) with respect to other important issues pertaining to international trade;

(11) keep each official adviser to the United States delegations to international conferences, meetings, and negotiation sessions relating to trade agreements who is appointed from the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives under section 161 of the Trade Act of 1974 currently informed on United States negotiating objectives with respect to trade agreements, the status of negotiations in progress with respect to such agreements, and the nature of any changes in domestic law or the administration thereof which the Secretary may recommend to Congress to carry out any trade agreement;

(12) consult and cooperate with State and local governments and other interested parties on international trade matters of interest to such governments and parties, and to the extent related to international trade matters, on investment matters, and, when appropriate, hold informal public hearings;

(13) serve as the principal advisor to the President on government policies designed to contribute to enhancing the ability of American industry and services to compete in international markets;

(14) serve as the principal advisor to the President in identifying and assessing the consequences of any government policies which adversely affect, or have the potential to adversely affect, the competitiveness of United States industries and services;

(15) promote cooperation between business, labor, and government to improve industrial performance and the ability of American industries to compete in international markets and to facilitate consultation and communication between the government and the private sector about domestic industrial performance and prospects as well as the performance and prospects of foreign competitors; and

(16) exercise responsibility, through the Stevenson-Wydler Technology Innovation Act of 1980 and other policies, for the Federal Government's role in encouraging technological innovation for industrial and commercial purposes.

(b) The Secretary shall be the Chairman of the Board of Directors of the Overseas Private Investment Corporation.

(c) The Secretary shall be the Chairman pro tempore of the interagency organization established under section 242 of the Trade Expansion Act of 1962.

(d) The Secretary shall be a member of the National Security Council.

(e) The Secretary shall be Deputy Chairman of the National Advisory Council on International Monetary and Financial Policies established under Executive Order 11269, issued February 14, 1966.

(f)(1) The Secretary of International Trade and Industry shall consult with the Secretary of Agriculture or the designee of the Secretary of Agriculture on all matters which potentially involve international trade in agricultural products.

(2) If an international meeting for negotiation or consultation includes discussion of international trade in agricultural products, the Secretary of International Trade and Industry or the designee of such Secretary shall be Chairman of the United States delegation to such meeting and the Secretary of Agriculture or the designee of such Secretary shall be Vice Chairman. The provisions of this paragraph do not limit the authority of the Secretary under subsection (g) to assign responsibility for the conduct of, or participation in, any trade negotiation or meeting to the Secretary of Agriculture.

(g) Except where expressly prohibited by law, the Secretary, at the request or with the concurrence of the head of any other Federal agency, may assign the responsibility for conducting or participating in any specific international trade negotiation or meeting to the head of such agency whenever the Secretary determines that the subject matter of such international trade negotiation is related to the functions carried out by such agency.

INTERNATIONAL ECONOMIC COMPETITIVENESS IMPACT STATEMENTS

SEC. 203. (a)(1) In any case in which the provisions of a regulation, Executive order, or executive agreement may have a significant impact on the ability of significant domestic product and service industries to compete in domestic and international markets against foreign products, the President shall, at least sixty days prior to the date on which such regulation, order, or agreement will take effect, submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a statement describing the impact such provisions are likely to have, during the periods ending one year and five years, respectively, after the date on which such statement is submitted, on American imports and exports, the balance of payments, and the ability of American industries to compete in domestic and international markets against foreign products.

(2) The President may waive the requirements of paragraph (1) with respect to a particular regulation, Executive order, or executive agreement if the President determines that it is necessary, in order to serve the national interest or deal with an emergency situation, that such regulation, order, or agreement take effect immediately without compliance with such paragraph. The President shall transmit a statement describing each waiver made under this paragraph to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and shall publish a copy of such statement in the Federal Register.

(b)(1) Notwithstanding any provision of the Standing Rules of the Senate or the Rules of the House of Representatives, if a bill or resolution reported by a committee of the Senate or House of Representatives contains provisions which, if enacted, would have a significant impact on the ability of significant domestic product and service industries to compete in domestic and international markets against foreign products, the report accompanying such bill or resolution shall contain a statement describing the impact such provisions are likely to have, during the periods ending one year and five years, respectively, after the date on which such bill or resolution is reported, on American imports and exports, the balance of payments, and the ability of American industries to compete in domestic and international markets against foreign products.

(2) The provisions of paragraph (1) are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

PART B—OFFICES AND ADMINISTRATIONS

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

SEC. 211. (a) There is established in the Office of the Secretary the Office of the United States Trade Representative. The Secretary, through the Office of the United States Trade Representative, shall perform all functions (other than administrative and support functions) transferred to the Secretary by section 231.

(b) There shall be in the Office of the United States Trade Representative the Deputy United States Trade Representative appointed under section 225. The Deputy United States Trade Representative shall perform such of the functions described in subsection (a) as the Secretary may delegate.

UNITED STATES TRAVEL AND TOURISM ADMINISTRATION

SEC. 212. There is established in the Department the United States Travel and Tourism Administration. The United States Travel and Tourism Administration shall be administered by the Under Secretary of International Trade and Industry for Travel and Tourism appointed under section 222(b). The Secretary, through the Under Secretary of International Trade and Industry for Travel and Tourism, shall perform—

(1) all functions (other than administrative and support functions) transferred to the Secretary by clause (3)(E) of section 232; and

(2) all functions (other than administrative and support functions) transferred to the Secretary by clauses (1) and (2) of such section that were, on the day before the effective date of this Act, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the officers and employees of such Department specified in clause (3)(E) of such section.

ADMINISTRATION FOR PRODUCTIVITY AND TECHNOLOGY

SEC. 213. (a) There is established in the Department the Administration for Productivity and Technology. The Administration for Productivity and Technology shall be administered by the Administrator for Pro-

ductivity and Technology appointed under section 223, and shall be composed of—

(1) the Patent and Trademark Office established by subsection (b);

(2) the National Bureau of Standards established by subsection (c);

(3) the Office of Telecommunications and Information established by subsection (d); and

(4) the National Technical Information Service established by subsection (e).

(b) There is established in the Department the Patent and Trademark Office. The Patent and Trademark Office shall be administered by the Assistant Secretary of International Trade and Industry and Commissioner for Patents and Trademarks appointed under section 224(b). The Secretary, through the Administrator for Productivity and Technology and the Assistant Secretary of International Trade and Industry and Commissioner for Patents and Trademarks, shall perform—

(1) all functions (other than administrative and support functions) transferred to the Secretary by clause (3)(D) of section 232; and

(2) all functions (other than administrative and support functions) transferred to the Secretary by clauses (1) and (2) of such section that were, on the day before the effective date of this Act, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Assistant Secretary of Commerce and Commissioner for Patents and Trademarks.

(c) There is established in the Department the National Bureau of Standards. The National Bureau of Standards shall be administered by the Director of the National Bureau of Standards appointed under section 228(f). The Secretary, through the Administrator for Productivity and Technology and the Director of the National Bureau of Standards, shall perform—

(1) all functions (other than administrative and support functions) transferred to the Secretary by section 232(3)(F); and

(2) all functions (other than administrative and support functions) transferred to the Secretary by clauses (1) and (2) of such section that were, on the day before the effective date of this Act, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Director of the National Bureau of Standards of the Department of Commerce.

(d) There is established in the Department the Office of Telecommunications and Information. The Office of Telecommunications and Information shall be administered by the Assistant Secretary of International Trade and Industry for Communications and Information appointed under section 224(c). The Secretary, through the Administrator for Productivity and Technology and the Assistant Secretary of International Trade and Industry for Communications and Information, shall perform—

(1) all functions (other than administrative and support functions) transferred to the Secretary by clause (3)(C) of section 232; and

(2) all functions (other than administrative and support functions) transferred to the Secretary by clauses (1) and (2) of such section that were, on the day before the effective date of this Act, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the officers and employees of such Department specified in clause (3)(C) of such section.

(e) There is established in the Department the National Technical Information Service. The National Technical Information Service shall be headed by the Director of the National Technical Information Service appointed under section 228(g). The Secretary, through the Administrator for Productivity and Technology and the Director of the National Technical Information Service, shall perform—

(1) all functions (other than administrative and support functions) transferred to the Secretary by clause (3)(G) of section 232; and

(2) all functions (other than administrative and support functions) transferred to the Secretary by clauses (1) and (2) of such section that were, on the day before the effective date of this Act, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Director of the National Technical Information Service of the Department of Commerce.

OFFICE OF COMPETITIVE ANALYSIS

SEC. 214. (a) There is established in the Department an Office of Competitive Analysis which shall be administered by the Director of the Office of the Competitive Analysis. The Director of the Office of Competitive Analysis shall be appointed by the Secretary and shall be an individual who, by reason of professional background and experience, is specially qualified to carry out the functions of the Office specified by this section.

(b)(1) The Office of Competitive Analysis shall provide the information, analysis, and analytical expertise needed to support the Secretary, other officers and employees of the Department, and the Congress in carrying out their functions relating to trade policy, trade negotiating strategy, and other policies affecting the competitiveness of domestic industries.

(2) The Office of Competitive Analysis shall monitor and analyze information for various industrial sectors, including economic, commercial, and technological developments in the United States and abroad which affect the current performance and future prospects of domestic industries currently facing or likely to face significant international competition. In collecting information, monitoring events, and conducting analyses, the Office shall develop a comprehensive and expert understanding of the structure and performance of factors affecting such industries and the international competitors of such industries, and shall give particular attention to the operation and impact of programs established by foreign governments to assist or support their industries.

(c)(1) The Secretary, in consultation with the Director of the Office of Competitive Analysis, shall employ individuals for the Office who have demonstrated professional ability or superior potential in the areas of economics, management analysis, industrial relations, strategic planning, and engineering, or who have particular expertise with respect to an industrial sector. Notwithstanding the provisions of sections 241(b), 602, and 603, the Secretary, in consultation with the Director of the Office of Competitive Analysis, may appoint any individual having the qualifications required by the preceding sentence to a position in the Office.

(2) The Secretary shall insure that officers and employees of the Office of Competitive Analysis have full access to all relevant information collected or prepared by other offices of the Department, and shall insure that officers and employees of the Office have access and exposure to the workings of domestic and foreign industry by means of—

(A) rotations among, or service with, other offices of the Department, including the Foreign and Commercial Services; and

(B) service in delegations of the Department involved in trade negotiations on relevant issues.

(d)(1) In March of each year, the Office of Competitive Analysis shall publish and submit to Congress a report describing actual or foreseeable economic and technological developments, in the United States and abroad, affecting the competitive position of United States industry and of particular United States industry sectors.

(2) The report shall identify and describe with particularity actual or foreseeable developments, in the United States and abroad, which—

(A) create a significant likelihood of a competitive challenge to, or of substantial dislocation in, an established United States industry;

(B) present significant opportunities for United States industries to compete in new geographical markets or product markets, or to expand their position in established markets; or

(C) create a significant risk that United States industries will be unable to compete successfully in significant future markets.

(3) The report shall specify with particularity the industry sectors affected by the developments listed in paragraph (2).

(e)(1) The Secretary shall convene an industry sector competitiveness council for each industry sector specified in reports rendered under paragraphs (2) and (3) of subsection (d), which is of national significance by reason of its employment or capital resources, its impact on national defense, or its importance as a supplier to, or customer of, other United States industries. The Secretary may also convene an industry sector competitiveness council for any industry not so identified which the Secretary finds fulfills one or more of the criteria listed in subsection (d)(2), or for any other purpose.

(2) Such council shall include representatives of business, labor, government, and other individuals or representatives of groups whose participation is considered by the Secretary to be important to developing a full understanding of the situation confronting the industry.

(3) Such council shall assess the actual or potential dislocation, challenge or opportunity for the industry involved and formulate specific recommendations for responses by business, government and labor—

(A) to encourage adjustment and modernization of an industry identified under subsection (d)(2)(A);

(B) to monitor and facilitate industry responsiveness to opportunities identified under subsection (d)(2)(B); or

(C) to encourage the ability of United States industries to compete in future markets identified under subsection (d)(2)(C).

(4) Any discussion held by any council established under paragraph (1), or any working group operating under its auspices, shall not be considered to violate any Federal or State antitrust law.

(5) Any discussion held by any council established under paragraph (1), or any working group operating under its auspices, shall not be subject to the provisions of the Federal Advisory Committee Act.

(6) Any industry sector competitiveness council shall disband 30 days after making its recommendations, unless the Secretary specifically requests that the Council continue in operation. If in a subsequent annual report by the Secretary under subsection (d)(1), conditions specified in subsection (d)(2) which had previously required the creation of a council continue, or have recurred, the Secretary shall again convene a council, although the Secretary may, in the Secretary's discretion, change the membership of the council as deemed appropriate.

PART C—OFFICERS

DEPUTY SECRETARY

SEC. 221. (a) There shall be in the Department a Deputy Secretary of International Trade and Industry, who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall have the rank and status of Ambassador. The Deputy Secretary shall perform such functions as the Secretary may prescribe.

(b) The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Deputy Secretary shall act for and exercise the functions of the Secretary until the absence or disability of the Secretary no longer exists or a successor to the Secretary has been appointed by the President and confirmed by the Senate.

(c) The Deputy Secretary shall be Vice Chairman of the Board of Directors of the Export-Import Bank of the United States.

UNDER SECRETARIES

SEC. 222. (a) There shall be in the Department three Under Secretaries of International Trade and Industry, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) One of the Under Secretaries of International Trade and Industry appointed under subsection (a) shall be the Under Secretary of International Trade and Industry for Travel and Tourism. The Under Secretary of International Trade and Industry for Travel and Tourism shall administer the United States Travel and Tourism Administration established by section 212.

(c) Each Under Secretary of International Trade and Industry shall perform such functions as the Secretary may prescribe.

ADMINISTRATOR FOR PRODUCTIVITY AND TECHNOLOGY

SEC. 223. There shall be in the Department an Administrator for Productivity and Technology, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator for Productivity and Technology shall—

(1) administer the Administration for Productivity and Technology established by section 213(a);

(2) perform—

(A) all functions (other than administrative and support functions) transferred to the Secretary by clause 3(H) of section 232; and

(B) all functions (other than administrative and support functions) transferred to the Secretary by clauses (1) and (2) of such section that were, on the day before the effective date of this Act, performed by the Secretary of Commerce or the Department of Commerce, as the case may be, through or under the direction of the Assistant Secretary of Commerce for Productivity, Technology, and Innovation; and

(3) perform such additional functions as the Secretary may prescribe.

ASSISTANT SECRETARIES

SEC. 224. (a) There shall be in the Department nine Assistant Secretaries of International Trade and Industry, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) One of the Assistant Secretaries of International Trade and Industry appointed under subsection (a) shall be the Assistant Secretary of International Trade and Industry and Commissioner for Patents and Trademarks. The Assistant Secretary of International Trade and Industry and Commissioner for Patents and Trademarks shall administer the Patent and Trademark Office established by section 213(b).

(c) One of the Assistant Secretaries of International Trade and Industry appointed under subsection (a) shall be the Assistant Secretary of International Trade and Industry for Communications and Information. The Assistant Secretary of International Trade and Industry for Communications and Information shall administer the Office of Telecommunications and Information established by section 213(d).

(d) Each Assistant Secretary of International Trade and Industry shall perform such functions as the Secretary may prescribe.

DEPUTY UNITED STATES TRADE REPRESENTATIVE

SEC. 225. There shall be in the Department a Deputy United States Trade Representative, who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy United States Trade Representative shall have the rank and status of Ambassador, and shall perform such functions as the Secretary may prescribe.

GENERAL COUNSEL

SEC. 226. There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate. The General Counsel shall provide legal assistance to the Secretary concerning the activities, programs, and policies of the Department.

INSPECTOR GENERAL

SEC. 227. There shall be in the Department an Inspector General who shall be appointed in accordance with the Inspector General Act of 1978, as amended by section 271 (h) of this Act.

OTHER OFFICERS

SEC. 228. (a) There shall be in the Department a Permanent Representative to the General Agreement on Tariffs and Trade, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall have the rank and status of Ambassador.

(b) There shall be in the Department a Chief Negotiator for Textile Matters, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall have the rank and status of Ambassador.

(c) There shall be in the Department a Director General of the United States Foreign and Commercial Services, who shall be appointed by the President, by and with the advice and consent of the Senate.

(d) There shall be in the Department a Deputy Commissioner of Patents and Trademarks and two Assistant Commissioners of Patents and Trademarks, each of whom shall be appointed by the President by and with the advice and consent of the Senate.

(e) The Secretary may appoint an Intergovernmental Advisor. The Intergovernmental Advisor shall act as the liaison between the officers and employees of the Department and the heads of State development agencies or the designees of such State agency heads. In determining whether to appoint an Intergovernmental Advisor, and in selecting an individual for appointment, the Secretary shall consult with the Chairman of the National Governors Association and the President of the National Conference of State Legislatures.

(f) There shall be in the Department a Director of the National Bureau of Standards, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the National Bureau of Standards shall administer the National Bureau of Standards established by section 213(c).

(g) There shall be in the Department a Director of the National Technical Information Service, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the National Technical Information Service shall administer the National Technical Information Service established by section 213(e).

(h) There shall be in the Department a Director of the Office of Competitive Analysis, who shall be appointed by the Secretary in accordance with section 215(a).

(i) Each officer of the Department appointed under this section shall perform such functions as the Secretary may prescribe.

PART D—TRANSFERS TO THE DEPARTMENT

TRANSFERS FROM THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

SEC. 231. There are transferred to the Secretary all functions of the United States Trade Representative and the Office of the United States Trade Representative in the Executive Office of the President and all functions of any officer or employee of such Office.

TRANSFERS FROM THE DEPARTMENT OF COMMERCE

SEC. 232. Except for functions transferred by titles III, IV, and V, there are transferred to the Secretary—

(1) all functions of the Secretary of Commerce;

(2) all functions of the Department of Commerce; and

(3) all functions of, and all functions performed under the direction of, the following officers and employees of the Department of Commerce:

(A) the Under Secretary of Commerce for International Trade, the Assistant Secretary of Commerce for Trade Development, the Assistant Secretary of Commerce for Trade Administration, the Assistant Secretary of Commerce for International Economic Policy, and the Director General of the United States and Foreign Commercial Services;

(B) the Under Secretary of Commerce for Economic Affairs, the Director of the Bureau of Economic Analysis of the Department of Commerce, the Director of the Bureau of Industrial Economics of the Department of Commerce, and the Chief Economist of the Department of Commerce;

(C) the Assistant Secretary of Commerce for Communications and Information, the Director of the Office of International Affairs of the Department of Commerce, the Associate Administrator for Telecommunications Application of the Department of

Commerce, the Associate Administrator for Federal Systems and Spectrum Management of the Department of Commerce, the Associate Administrator for Telecommunications Sciences of the Department of Commerce, and the Associate Administrator for Policy Analysis Development of the Department of Commerce;

(D) the Assistant Secretary of Commerce and Commissioner for Patents and Trademarks;

(E) the Under Secretary of Commerce for Travel and Tourism and the Assistant Secretary of Commerce for Tourism Marketing;

(F) the Director of the National Bureau of Standards of the Department of Commerce;

(G) the Director of the National Technical Information Service of the Department of Commerce; and

(H) the Assistant Secretary of Commerce for Productivity, Technology, and Innovation.

PART E—ADMINISTRATIVE PROVISIONS

PERSONNEL PROVISIONS

SEC. 241. (a) The Secretary may appoint and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as may be necessary to carry out the functions of the Secretary and the Department. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.

(b)(1) At the request of the Secretary, the Director of the Office of Personnel Management shall, under section 5108 of title 5, United States Code, provide for the establishment in each of the grade levels GS-16, GS-17, and GS-18, and in the Senior Executive Service, of a number of positions in the Department equal to the number of positions in that grade level which were used primarily for the performance of functions and offices transferred by this Act and which were assigned and filled on the day before the effective date of this Act.

(2) Appointments to positions provided for under this subsection may be made without regard to the provisions of section 3324 of title 5, United States Code, if the individual appointed in such position is an individual who is transferred in connection with the transfer of functions and offices under this Act and, on the day before the effective date of this Act, holds a position and has duties comparable to those of the position to which appointed under this subsection.

(3) The authority under this subsection with respect to any position established at the grade level GS-16, GS-17, or GS-18 shall terminate when the person first appointed to fill such position ceases to hold such position.

(4) For purposes of section 414(a)(3)(A) of the Civil Service Reform Act of 1978, an individual appointed under this subsection shall be deemed to occupy the same position as the individual occupied on the day before the effective date of this Act.

(c) The Secretary may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate such experts and consultants for each day (including traveltime) at rates not in excess of the rate of pay for grade GS-18 of the General Schedule under section 5332 of such title. The Secretary may pay experts and consultants who are serving away from their homes or regular place of business travel expenses and per diem in lieu of subsistence at rates authorized by sections 5702 and 5703 of such title for persons in Government service employed intermittently.

(d)(1)(A) The Secretary is authorized to accept voluntary and uncompensated services without regard to the provisions of section 1342 of title 31, United States Code, if such services will not be used to displace Federal employees employed on a full-time, part-time, or seasonal basis.

(B) The Secretary is authorized to accept volunteer service in accordance with the provisions of section 3111 of title 5, United States Code.

(2) The Secretary is authorized to provide for incidental expenses, including but not limited to transportation, lodging, and subsistence for individuals who provide voluntary services under subparagraph (A) or (B) of paragraph (1).

(3) An individual who provides voluntary services under paragraph (1)(A) shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, relating to compensation for work injuries, and chapter 171 of title 28, United States Code, relating to tort claims.

(e) Within one hundred and eighty days after the effective date of this Act, the Secretary shall prepare and transmit to the President and the Congress a report containing recommendations for the establishment of a trade personnel system designed to attract and retain highly qualified, experienced, and motivated professionals to administer the trade policies and activities of the United States. The system shall contain provisions for—

(1) the advancement and retention of personnel on a competitive basis;

(2) the establishment of exchange programs for officers and employees of Federal agencies who are members of the Council on International Trade, Economic, and Financial Policy established under section 266;

(3) the designation of senior positions in such Federal agencies in order that personnel employed in such agencies may advance in careers relating to international trade; and

(4) the transfer of personnel between the system and the Foreign Service personnel system in order that personnel employed in such systems may be employed in foreign and domestic service.

(f) In order to assure United States representation in trade matters at a level commensurate with the level of representation maintained by industrial nations which are major trade competitors of the United States, the Secretary of State shall classify certain positions at Foreign Service posts as commercial minister positions and shall assign members of the Foreign Service performing functions of the Department of International Trade and Industry, with the concurrence of the Secretary of International Trade and Industry, to such positions in nations which are major trade competitors of the United States. The Secretary of State shall obtain and use the recommendations of the Secretary of International Trade and Industry with respect to the number of positions to be so classified under this subsection.

DELEGATION AND ASSIGNMENT

SEC. 242. Except where otherwise expressly prohibited by law or otherwise provided by this Act, the Secretary may delegate any of the functions transferred to the Secretary by this Act and any function transferred or granted to the Secretary after the effective date of this Act to such officers and employees of the Department as the Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions by the Secretary under this section or under any other provision of this Act shall relieve the Secretary of responsibility for the administration of such functions.

SUCCESSION

SEC. 243. (a) Subject to the authority of the President, and except as provided in section 221(b), the Secretary shall prescribe the order by which officers of the Department who are appointed by the President, by and with the advice and consent of the Senate, shall act for, and perform the functions of, the Secretary or any other officer of the Department appointed by the President, by and with the advice and consent of the Senate, during the absence or disability of the Secretary or such other officer, or in the event of a vacancy in the office of the Secretary or such other officer.

(b) Notwithstanding any other provision of law, and unless the President directs otherwise, an individual acting for the Secretary or another officer of the Department pursuant to subsection (a) shall continue to serve in that capacity until the absence or disability of the Secretary or such other officer no longer exists or a successor to the Secretary or such other officer has been appointed by the President and confirmed by the Senate.

REORGANIZATION

SEC. 244. (a) Subject to subsections (b) and (c), the Secretary is authorized to allocate or reallocate functions among the officers of the Department, and to establish, consolidate, alter, or discontinue such organizational entities in the Department as may be necessary or appropriate.

(b) Except as provided in subsection (c), the Secretary may establish, consolidate, alter, or discontinue any organizational entity in the Department or allocate or reallocate any function of an officer or employee of the Department upon the expiration of a period of sixty days after the receipt by the Committee on Finance and the Committee on Governmental Affairs of the Senate and the Committee on Government Operations and the Committee on Ways and Means of the House of Representatives of notice by the Secretary containing a full and complete statement of the action proposed to be taken pursuant to this section and the facts and circumstances relied upon in support of such proposed action.

(c) The authority of the Secretary under this section does not apply to—

(1) the Office of United States Trade Representative established under section 211, or any function which such section specifies shall be performed by the Secretary through such Office; and

(2) any other office established under this title or any other function which this title specifies shall be performed by a particular officer or employee of the Department.

RULES

SEC. 245. The Secretary is authorized to prescribe, in accordance with the provisions of chapters 5 and 6 of title 5, United States Code, such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.

WORKING CAPITAL FUND

SEC. 246. (a) The Secretary is authorized to establish for the Department a working capital fund, to be available without fiscal

year limitation, for expenses necessary for the maintenance and operation of such common administrative services as the Secretary shall find to be desirable in the interest of economy and efficiency, including—

(1) a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its components;

(2) central messenger, mail, and telephone service and other communications services;

(3) office space, central services for document reproduction and for graphics and visual aids;

(4) a central library service; and

(5) such other services as may be approved by the Director of the Office of Management and Budget.

(b) The capital of the fund shall consist of any appropriations made for the purpose of providing working capital and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. The fund shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus of the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain the fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to those services which the Secretary determines will be performed.

FUNDS TRANSFER

SEC. 247. The Secretary may, when authorized in an appropriation Act in any fiscal year, transfer funds from one appropriation to another within the Department, except that no appropriation for any fiscal year shall be either increased or decreased by more than 10 per centum and no such transfer shall result in increasing any such appropriation above the amount authorized to be appropriated therefor.

CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS

SEC. 248. (a) Subject to the provisions of the Federal Property and Administrative Services Act of 1949, the Secretary may make, enter into, and perform such contracts, leases, cooperative agreements, grants, or other similar transactions with public agencies, private organizations, and persons, and make payments (in lump sum or installments, and by way of advance or reimbursement, and, in the case of any grant, with necessary adjustments on account of overpayments and underpayments) as the Secretary considers necessary or appropriate to carry out the functions of the Secretary or the Department.

(b) Notwithstanding any other provision of this Act, the authority to enter into contracts or to make payments under this title shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. This subsection does not apply with respect to the authority granted under section 252.

PUBLICATIONS

SEC. 249. Subject to such procedures of the Director of the Office of Management and Budget may prescribe, the Secretary may disseminate in the form of reports or publications such information as the Secretary considers appropriate.

USE OF FACILITIES

SEC. 250. (a) With their consent, the Secretary, with or without reimbursement, may use the research, services, equipment, and facilities of—

(1) an individual;

(2) any public or private nonprofit agency or organization, including any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(3) any political subdivision of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; or

(4) any foreign government,

in carrying out any function of the Secretary or the Department.

(b) The Secretary, under terms, at rates, and for periods that the Secretary considers to be in the public interest, may permit the use by public and private agencies, corporations, associations or other organizations, or by individuals, of any real property, or any facility, structure or other improvement thereon, under the custody of the Secretary. The Secretary may require permittees under this section to maintain or recondition, at their own expense, the real property, facilities, structures, and improvements used by such permittees.

FIELD OFFICES

SEC. 251. (a) Subject to subsection (b), the Secretary may establish, alter, consolidate, maintain, or discontinue State, regional, district, local, or other field offices as the Secretary finds necessary or appropriate to perform any function of the Secretary or the Department.

(b) The Secretary may establish, alter, consolidate, maintain, or discontinue State, regional, district, local, or other field offices under subsection (a) upon the expiration of a period of sixty days after the receipt by the Committee on Finance and the Committee on Governmental Affairs of the Senate and the Committee on Government Operations and the Committee on Ways and Means of the House of Representatives of notice by the Secretary containing a full and complete statement of the action proposed to be taken pursuant to this section and the facts and circumstances relied upon in support of such proposed action.

GIFTS AND BEQUESTS

SEC. 252. (a) The Secretary is authorized to accept, hold, administer, and utilize gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the United States Treasury in a separate fund and shall be disbursed on order of the Secretary. Property accepted pursuant to this paragraph, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

(b) For the purpose of Federal income, estate, and gift taxes, and State taxes, property accepted under subsection (a) shall be considered a gift or bequest to or for use of the United States.

(c) Upon the request of the Secretary, the Secretary of the Treasury may invest and reinvest in securities of the United States or in securities guaranteed as to principal and interest by the United States any moneys contained in the fund provided for in subsection (a). Income accruing from such securities, and from any other property held by the Secretary pursuant to subsection (a), shall be deposited to the credit of the fund, and shall be disbursed upon order of the Secretary.

SEAL OF DEPARTMENT

SEC. 253. The Secretary shall cause a seal of office to be made for the Department of such design as the Secretary shall approve. Judicial notice shall be taken of such seal.

ANNUAL REPORT

SEC. 254. The Secretary shall, as soon as practicable after the end of each fiscal year, prepare and transmit a written report to the President for transmission to the Congress on the activities of the Department during such fiscal year.

PART F—RELATED AGENCIES

INTERAGENCY TRADE ORGANIZATION

SEC. 261. The second sentence of section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) is amended to read as follows: "Such organization shall be composed of the President, who shall be Chairman, the Secretary of International Trade and Industry, who shall be Chairman pro tempore, the Secretary of Agriculture, who shall be Vice-Chairman, the Secretary of Defense, the Secretary of Labor, the Secretary of State, and the Secretary of the Treasury, and the heads of such other departments and agencies and such other officers as the President shall designate.".

EXPORT-IMPORT BANK OF THE UNITED STATES

SEC. 262. (a) Paragraph (1) of section 3(c) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(c)) is amended to read as follows:

"(1) There shall be a Board of Directors of the Bank consisting of the President of the Export-Import Bank of the United States who shall serve as Chairman, the Deputy Secretary of International Trade and Industry, who shall serve as Vice Chairman, the First Vice President of the Bank, and two additional persons appointed by the President of the United States by and with the advice and consent of the Senate.".

(b) Notwithstanding the amendment made by subsection (a), any individual who—

(1) is serving as a member of the Board of Directors of the Export-Import Bank of the United States on the day before the effective date of the Department of International Trade and Industry Act of 1983; and

(2) is not Chairman or Vice Chairman of such Board on such date,

shall continue to serve until his successor is appointed by the President and confirmed by the Senate, except that in any case in which the appointment of a successor to such member would cause the total number of members of the Board of Directors of the Export-Import Bank of the United States to exceed five, such member shall serve until the resignation of such member is accepted by the President.

OVERSEAS PRIVATE INVESTMENT CORPORATION

SEC. 263. The second and third sentences of section 233(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2193(b)) are amended to read as follows: "The Secretary of International Trade and Industry shall be the Chairman of the Board. The Director of the

United States International Development Cooperation Agency shall be the Vice Chairman of the Board.".

NATIONAL SECURITY COUNCIL

SEC. 264. The fourth paragraph of section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended—

(1) by redesignating clauses (5), (6), and (7) as clauses (6), (7), and (8), respectively; and

(2) by inserting after clause (4) the following new clause:

"(5) the Secretary of International Trade and Industry;".

INTERNATIONAL MONETARY FUND

SEC. 265. Section 3 of the Bretton Woods Agreement Act is amended by adding at the end thereof the following new subsection:

"(e) The United States executive director of the Fund shall consult with the Secretary of International Trade and Industry with respect to matters under consideration by the Fund which relate to trade.".

COUNCIL ON INTERNATIONAL TRADE, ECONOMIC, AND FINANCIAL POLICY

SEC. 266. (a) There is established in the Executive Office of the President a Council on International Trade, Economic, and Financial Policy. The Council shall coordinate United States trade policies with United States international economic policies, including international financial and monetary policies, in a manner which supports the goals specified in section 101(1). The Council shall be composed of the President, who shall be Chairman, the Vice President, who shall be Vice Chairman, the Attorney General, the Secretaries of Agriculture, International Trade and Industry, Labor, State, and the Treasury, the Chairman of the Council of Economic Advisers, and the heads of such other Federal agencies and such other officers as the President shall designate.

(b) The Council shall meet at such times and with respect to such matters as the President shall direct. The Council may invite the participation in its activities of any Federal agency not represented on the Council when matters of interest to such agency are under consideration.

(c) The Council shall, to the maximum extent practicable, draw upon the resources of the Federal agencies represented on the Council. The President may establish by regulation such procedures and committees as the President may determine necessary to enable the Council to carry out its functions.

(d)(1) There shall be in the Executive Office of the President an Advisor to the President for International Trade, Economic, and Financial Policy, who shall be appointed by the President. The Advisor shall be the Executive Director of the Council and the Executive Director of the interagency organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)), as amended by section 261 of this Act (hereafter in this subsection referred to as the "interagency organization").

(2) The Advisor is authorized to employ not in excess of fifteen professional staff members, and such additional secretarial, clerical, and support personnel as may be necessary, to provide support and assistance to the Council and to the interagency organization.

(3) Upon request of the Advisor, the heads of Federal agencies represented on the Council may detail to the Advisor, on a nonreimbursable basis, officers and employees of such agencies in order to provide support and assistance to the Council and to the interagency organization. Not more than ten officers and employees of Federal agencies may be detailed to the Advisor under this paragraph in any fiscal year.

(e) Every six months, the Advisor, on behalf of the President and the Council, shall prepare and transmit a report to the Congress which—

(1) identifies specific respects in which United States international economic policies (other than trade policies) are in conflict with, or may be in potential conflict with, United States trade policies; and

(2) contains such recommendations for resolving such conflicts or potential conflicts as the Advisor considers appropriate.

PART G—CONFORMING PROVISIONS

AMENDMENTS

SEC. 271. (a) Section 19(d)(1) of title 3, United States Code, is amended by striking out "Secretary of Commerce," and inserting in lieu thereof "Secretary of International Trade and Industry,".

(b) Section 101 of title 5, United States Code, is amended by striking out the item relating to the Department of Commerce and inserting in lieu thereof the following:

"The Department of International Trade and Industry.".

(c) Section 5312 of such title is amended—

(1) by striking out the items relating to the Secretary of Commerce and the United States Trade Representative; and

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

"Secretary of International Trade and Industry.".

(d)(1) Section 2(b) of Reorganization Plan No. 3 of 1979 is amended by striking out paragraph (1) and by striking out "(2)".

(2) Section 5313 of title 5, United States Code, is amended by adding at the end thereof the following:

"Deputy Secretary, Department of International Trade and Industry.".

(e) Section 5314 of such title is amended—

(1) by striking out the item relating to the Under Secretary of Commerce, the Under Secretary of Commerce for Economic Affairs, and the Under Secretary of Commerce for Travel and Tourism;

(2) by striking out the item relating to the Deputy United States Trade Representatives; and

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

"Under Secretaries of International Trade and Industry (2).

"Under Secretary of International Trade and Industry for Travel and Tourism.

"Administrator for Productivity and Technology, Department of International Trade and Industry.

"Deputy United States Trade Representative.

"Permanent Representative to the General Agreement on Tariffs and Trade, Department of International Trade and Industry.

"Advisor to the President for International Trade, Economic, and Financial Policy.".

(f) Section 5315 of such title is amended—

(1) by striking out the item relating to the Assistant Secretaries of Commerce;

(2) by striking out the item relating to the General Counsel of the Department of Commerce; and

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

"Assistant Secretaries of International Trade and Industry (8).

"Assistant Secretary of International Trade and Industry and Commissioner of Patents and Trademarks.

"General Counsel, Department of International Trade and Industry.

"Director, National Bureau of Standards, Department of International Trade and Industry.

"Director General, United States Foreign and Commercial Services, Department of International Trade and Industry.

"Chief Negotiator for Textile Matters, Department of International Trade and Industry.".

(g) Section 5316 of such title is amended—

(1) by striking out the item relating to Commissioner of Patents, Department of Commerce;

(2) by striking out the item relating to the National Export Expansion Coordinator, Department of Commerce;

(3) by striking out the item relating to the Director, United States Travel Service, Department of Commerce;

(4) by striking out the item relating to the Inspector General, Department of Commerce;

(5) by striking out the item relating to the Director, National Bureau of Standards, Department of Commerce; and

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

"Inspector General, Department of International Trade and Industry.".

(h) The Inspector General Act of 1978 is amended—

(1) by striking out "the Department of Commerce," in section 2(1);

(2) by inserting "the Department of International Trade and Industry," after "Interior," in such section;

(3) by redesignating subparagraphs (G) through (N) of section 9(a)(1) as subparagraphs (H) through (O), respectively;

(4) by inserting after subparagraph (F) of such section the following:

"(G) of the Department of International Trade and Industry, all functions of the Inspector General of the Department of Commerce and the Office of the Inspector General of the Department of Commerce relating to the functions transferred to the Secretary of International Trade and Industry by section 232 of the Department of International Trade and Industry Act of 1983;";

(5) by striking out "Commerce," each place it appears in section 11; and

(6) by inserting "International Trade and Industry," after "Interior," each place it appears in such section.

(i)(1) Chapter 4 of title I of the Trade Act of 1974 is amended to read as follows:

"CHAPTER 4—REPRESENTATION IN TRADE NEGOTIATIONS

"SEC. 141. FUNCTIONS OF THE SECRETARY OF INTERNATIONAL TRADE AND INDUSTRY.

"The Secretary of International Trade and Industry shall—

"(1) be the chief representative of the United States for each trade negotiation under this title or section 301;

"(2) report directly to the President and the Congress, and be responsible to the President and the Congress for the administration of trade agreements programs under this Act, the Trade Expansion Act of 1962, and section 350 of the Tariff Act of 1930;

"(3) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs; and

"(4) be responsible for making reports to Congress with respect to the matters set forth in clauses (1) and (2).".

(2) The table of contents in the first section of the Trade Act of 1974 is amended by striking out the items relating to chapter 4 and section 141 and inserting in lieu thereof the following:

"CHAPTER 4—REPRESENTATION IN TRADE NEGOTIATIONS

"Sec. 141. Functions of the Secretary of International Trade and Industry.".

(j) The Foreign Service Act of 1980 is amended—

(1) by striking out paragraph (3) of section 202(a) (22 U.S.C. 3922(a)) and inserting in lieu thereof the following:

"(3) The Secretary of International Trade and Industry may utilize the Foreign Service personnel system in accordance with this Act—

"(A) with respect to the personnel performing functions—

"(i) which were transferred to the Department of Commerce from the Department of State by Reorganization Plan No. 3 of 1979; and

"(ii) which were subsequently transferred to the Secretary of International Trade and Industry by section 232 of the Department of International Trade and Industry Act of 1983; and

"(B) with respect to other personnel of the Department of International Trade and Industry to the extent the President determines to be necessary in order to enable the Department of International Trade and Industry to carry out functions which require service abroad."; and

(2) by striking out "Commerce" each place it appears in section 2403(c) and inserting in lieu thereof "International Trade and Industry".

(k)(1) Section 201 of the International Travel Act of 1961 (22 U.S.C. 2122) is amended by striking out "Commerce" and inserting in lieu thereof "International Trade and Industry".

(2) Section 202(a)(13) of such Act (22 U.S.C. 2123(a)(13)) is amended by striking out "Commerce" and inserting in lieu thereof "International Trade and Industry".

(3) Section 301 of such Act (22 U.S.C. 2124) is amended to read as follows:

"SEC. 301. All duties and responsibilities of the Secretary under this Act shall be exercised directly by the Secretary or by the Secretary through the Under Secretary of International Trade and Industry for Travel and Tourism.".

(4) Section 302(b)(1) of such Act (22 U.S.C. 2124a(b)(1)) is amended—

(A) by striking out "Commerce" in subparagraph (A) and inserting in lieu thereof "International Trade and Industry";

(B) by inserting "of International Trade and Industry" after "Under Secretary" in subparagraph (B); and

(C) by striking out subparagraph (D) and inserting in lieu thereof the following:

"(D) an individual designated by the Secretary of International Trade and Industry from the Department of International Trade and Industry;".

(5) Section 303(f) of such Act (22 U.S.C. 2124b(f)) is amended by striking out "and shall advise the Assistant Secretary for Tourism Marketing with respect to the preparation of the marketing plan under section 202(a)(15)".

REPEALS

SEC. 272. (a)(1) The first section of the Act entitled "An Act to establish the Department of Commerce and Labor", approved February 14, 1903 (15 U.S.C. 1501), is repealed.

(2) The first section of the Act entitled "An Act to create a Department of Labor", approved March 4, 1913 (15 U.S.C. 1501), is amended by striking out beginning with "and the Department of Commerce and Labor" through "accordingly".

(b) Subsection (a) of the first section of the Act entitled "An Act to authorize an Under Secretary of Commerce for Economic Affairs", approved June 16, 1982 (96 Stat. 115; 15 U.S.C. 1503a), is repealed.

(c) The Act entitled "An Act to provide for the appointment of one additional Assistant Secretary of Commerce, and for other purposes", approved July 15, 1947 (15 U.S.C. 1505), is repealed.

(d) The first sentence of section 304 of the Department of Commerce Appropriation Act, 1955 (15 U.S.C. 1506), is repealed.

(e) The Act entitled "An Act to authorize an additional Assistant Secretary of Commerce", approved February 16, 1962 (15 U.S.C. 1507), is repealed.

(f) Subsection (a) of section 9 of the Maritime Appropriation Authorization Act for Fiscal Year 1978 (15 U.S.C. 1507b), is repealed.

(g)(1) The first section of the Act of March 18, 1904 (33 Stat. 135, chapter 716; 15 U.S.C. 1508), is amended by striking out the paragraph relating to the Office of the Solicitor of the Department of Commerce and Labor.

(2) Section 2 of the Act of July 17, 1952 (66 Stat. 758, chapter 932; 15 U.S.C. 1508), is repealed.

(h)(1) Sections 4 and 12 of the Act entitled "An Act to Establish the Department of Commerce and Labor", approved February 14, 1903 (15 U.S.C. 1511), are repealed.

(2) The first section of the Act of August 23, 1912 (37 Stat. 407, chapter 350; 15 U.S.C. 1511), is amended by striking out the paragraph relating to the Bureau of Foreign and Domestic Commerce.

(3) The first section of the Act of January 5, 1923 (42 Stat. 1109, chapter 23; 15 U.S.C. 1511), is repealed.

(4) The first section of the Act of May 27, 1936 (49 Stat. 1380, chapter 463; 15 U.S.C. 1511), is repealed.

(i) Section 8 of the Act entitled "An Act to establish the Department of Commerce and Labor", approved February 14, 1903 (15 U.S.C. 1519), is repealed.

(j) Title III of the Act entitled "An Act making appropriations for the Departments of State, Justice, and Commerce for the fiscal year ending June 30, 1945, and for other purposes", approved June 28, 1944 (15 U.S.C. 1521), is amended by striking out the paragraph relating to the working capital fund of the Department of Commerce.

(k) Sections 1, 2, and 3 of Public Law 88-611 (15 U.S.C. 1522, 1523, and 1524) are repealed.

TITLE III—ESTABLISHMENT OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AS AN INDEPENDENT AGENCY

PART A—ESTABLISHMENT OF ADMINISTRATION

SHORT TITLE

SEC. 301. This title may be cited as the "National Oceanic and Atmospheric Administration Act of 1983".

FINDINGS

SEC. 302. The Congress finds and declares that the establishment of an independent agency for ocean, coastal, and atmospheric programs will—

(1) provide a focus for ocean, coastal, and atmospheric activities;

(2) facilitate the development of a single agency and a unified means for research concerning ocean, coastal, and atmospheric programs; and

(3) aid in the establishment of a coherent program to promote understanding, assessment, development, management, conservation, and protection of ocean, coastal, and atmospheric environments.

DEFINITIONS

SEC. 303. For the purposes of this title—

(1) the term "Administration" means the National Oceanic and Atmospheric Administration established under section 304; and

(2) the term "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration appointed under section 305(a).

ESTABLISHMENT

SEC. 304. There is established as an independent establishment of the Government the National Oceanic and Atmospheric Administration. The Administration shall succeed the National Oceanic and Atmospheric Administration of the Department of Commerce in existence on the day before the effective date of this Act.

OFFICERS

SEC. 305. (a) The Administration shall be administered by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall carry out all functions transferred to the Administrator by this Act and shall have authority and control over all personnel, programs, and activities of the Administration.

(b) There shall be in the Administration a Deputy Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such functions as the Administrator shall prescribe. The Deputy Administrator shall act for and perform the functions of the Administrator during the absence or disability of the Administrator, or in the event of a vacancy in the office of the Administrator.

(c) There shall be in the Administration an Associate Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Associate Administrator shall perform such functions as the Administrator shall prescribe. The Associate Administrator shall act for and perform the functions of the Administrator during the absence or disability of the Administrator and the Deputy Administrator or in the event of a vacancy in both of those offices.

(d) There shall be in the Administration not less than five and not more than seven Assistant Administrators, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Administrators shall perform such functions as the Administrator shall prescribe. The Administrator shall designate the order in which the Assistant Administrators shall act for and perform the functions of the Administrator during the absence or disability of the Administrator, the Deputy Administrator, and the Associate Administrator, or in the event of vacancies in all of those offices.

(e) There shall be in the Administration a General Counsel, who shall be appointed by the President, by and with the advise and consent of the Senate. The General Counsel shall be the chief legal officer for all legal

matters arising from the conduct of the functions of the Administration.

(f)(1) There shall be in the Administration a Commissioned Officer Corps, which shall be the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration established by Reorganization Plan No. 4 of 1970. Members of the Corps, including those appointed after the effective date of this Act, shall be entitled to all rights, privileges, and benefits available under any law to commissioned officers of the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration of the Department of Commerce on the day before the effective date of this Act.

(2) All laws and regulations applicable to commissioned officers of the National Oceanic and Atmospheric Administration of the Department of Commerce on the day before the effective date of this Act shall be applicable to commissioned officers of the Administration.

(g) The Secretary of the Navy may detail to the Administrator, on an additional-duty basis, a Navy flag officer of the rank of rear admiral, who shall serve and be designated as the Naval Deputy to the Administrator. The Naval Deputy shall—

(1) act as a liaison between the Administrator and the Secretary of the Navy in order to avoid duplication of Federal oceanographic activities;

(2) act to maintain a close relationship between the Administration and the Navy in research and development; and

(3) ensure that national security considerations are addressed by the Administrator in formulating policies.

(h)(1) There shall be in the Administration a Director of the national sea grant college program, who shall be appointed by the Administrator and who shall be a qualified individual who has knowledge or expertise in fields relating to ocean and coastal resources and appropriate administrative experience. The Director of the national sea grant college program shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be compensated at a rate not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title.

(2) The Director of the national sea grant college program shall administer the national sea grant college program subject to the supervision of the Administrator and in accordance with functions prescribed by law or by the Administrator.

TRANSFER OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION FROM THE DEPARTMENT OF COMMERCE

SEC. 306. (a)(1) The National Oceanic and Atmospheric Administration of the Department of Commerce is transferred to the Administration.

(2) All functions of the Secretary of Commerce or the Department of Commerce with respect to or being administered through the National Oceanic and Atmospheric Administration of the Department of Commerce or the Administrator of such Administration on the day before the effective date of this Act are transferred to the Administrator appointed under section 305(a).

(3) All functions of the National Oceanic and Atmospheric Administration of the Department of Commerce or the Administrator of such Administration are transferred to the Administrator appointed under section 305(a).

PART B—ADMINISTRATIVE PROVISIONS

RULES

SEC. 311. In the performance of the functions of the Administrator and the Administration, the Administrator is authorized to make, promulgate, issue, rescind, and amend rules and regulations. The promulgation of such rules and regulations—

(1) shall be governed by the provisions of chapter 5 of title 5, United States Code; and

(2) shall be after notice and opportunity for full participation by relevant Federal agencies, State agencies, local governments, regional organizations, authorities, councils, and other interested public and private parties.

DELEGATION

SEC. 312. Except as otherwise provided in this Act, the Administrator may delegate any function to such officers and employees of the Administration as the Administrator may designate, and may authorize such successive redelegations of such functions in the Administration as may be necessary or appropriate. No delegation of functions by the Administrator under this section or under any other provision of this Act shall relieve the Administrator of responsibility for the administration of such functions.

PERSONNEL AND SERVICES

SEC. 313. (a) In the performance of the functions of the Administrator and in addition to the officers provided for by section 305, the Administrator is authorized to appoint, transfer, and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Administrator and the Administration. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and compensated in accordance with title 5, United States Code.

(b) The Administrator is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

(c) The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5, United States Code.

(d) The Administrator is authorized to utilize, on a reimbursable basis, the services of personnel of any Federal agency. With the approval of the President, the Administrator is authorized to enter into cooperative agreements under which members of the Army, Navy, Air Force, and Marine Corps may be detailed by the Secretary of the Army, the Navy, or the Air Force, as the case may be, to assist the Administrator in carrying out the functions of the Administrator. Members of the Army, Navy, Air Force, or Marine Corps detailed to carry out functions under this section shall carry out such functions to the same extent as that to which such members might be lawfully assigned in the Department of Defense.

(e) The Administrator is authorized to appoint such advisory committees as may be appropriate for purposes of consultation and advice to the Administration in carrying out the functions of the Administration.

(f)(1)(A) The Administrator is authorized to accept voluntary and uncompensated services without regard to the provisions of section 1342 of title 31, United States Code, if such services will not be used to displace Federal employees employed on a full-time, part-time, or seasonal basis.

(B) The Administrator is authorized to accept volunteer service in accordance with the provisions of section 3111 of title 5, United States Code.

(2) The Administrator is authorized to provide for incidental expenses, including but not limited to transportation, lodging, and subsistence for such volunteers.

(3) An individual who provides voluntary services under paragraph (1)(A) of this subsection shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, relating to compensation for work injuries, and chapter 171 of title 28, United States Code, relating to tort claims.

CONTRACTS

SEC. 314. The Administrator is authorized, without regard to the provisions of section 3324 of title 31, United States Code, to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration. The Administrator may enter into such contracts, leases, agreements, and transactions with any Federal agency or any instrumentality of the United States, or with any State, territory, or possession, or with any political subdivision thereof, or with any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate. The authority of the Administrator to enter into contracts and leases under this section shall be to such extent or in such amounts as are provided in appropriation Acts.

USE OF FACILITIES

SEC. 315. With their consent, the Administrator may, with or without reimbursement, use the services, equipment, personnel, and facilities of Federal agencies and other public and private agencies, and may cooperate with other public and private agencies and instrumentalities in the use of services, equipment, personnel, and facilities. The head of each Federal agency shall cooperate fully with the Administrator in making the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. The head of a Federal agency is authorized, notwithstanding any other provision of law, to transfer to or to receive from the Administration, without reimbursement, supplies and equipment other than administrative supplies or equipment.

SERVICE CHARGES

SEC. 316. (a) Notwithstanding any other provision of law, the Administrator may establish reasonable fees and commissions with respect to applications, documents, awards, loans, grants, research data, services, and assistance and may change and abolish such fees and commissions. Prior to establishing, changing, or abolishing any schedule of fees or commissions under this section, the Administrator may submit such schedule to the Congress.

(b) The Administrator is authorized to require a deposit before the Administrator provides any item, information, service, or assistance for which a fee or commission is required under this section.

(c) Moneys received under this section shall be deposited with the Treasury in a special account for use by the Administrator and are authorized to be appropriated and made available until expended.

(d) In establishing reasonable fees or commissions under this section, the Administrator may take into consideration—

(1) the actual costs which will be incurred in providing items, information, services, or assistance;

(2) the efficiency of the Government in providing such items, information, services, or assistance;

(3) the portion of the cost that will be incurred in providing such items, information, services, or assistance which may be attributed to benefits for the general public interest rather than to exclusive benefits for the applicant;

(4) any public service which occurs through the provision of such items, information, services, or assistance; and

(5) such other factors as the Administrator considers relevant.

(e) In any case in which the Administrator determines that any person has made a payment which is not required under this section or has made a payment which is in excess of the amount required under this section, the Administrator, upon application or otherwise, may cause a refund to be made from applicable funds.

ACQUISITION AND MAINTENANCE OF PROPERTY

SEC. 317. (a) The Administrator is authorized—

(1) to acquire (by purchase, lease, condemnation, or otherwise) construct, improve, repair, operate, and maintain—

(A) laboratories;

(B) research and testing sites and facilities;

(C) quarters and related accommodations for employees and dependents of employees of the Administration; and

(D) such other real and personal property (including patents), or any interest therein within and outside the continental United States,

as the Administrator considers necessary;

(2) to lease to others such real and personal property;

(3) to provide by contract or otherwise for eating facilities and other necessary facilities for the welfare of employees of the Administration at its installations and to purchase and maintain equipment therefor.

(b) Title to any property or interest therein acquired pursuant to this section shall be in the United States.

(c) The authority granted by subsection (a) of this section shall be available only with respect to facilities of a special purpose nature that cannot readily be reassigned from similar Federal activities and are not otherwise available for assignment to the Administration by the Administrator of General Services.

(d) The authority of the Administrator to enter into contracts and leases under this section shall be to such extent or in such amounts as are provided in appropriation Acts.

FACILITIES AT REMOTE LOCATIONS

SEC. 318. (a) The Administrator is authorized to provide, construct, or maintain for employees and their dependents stationed at remote locations as necessary and when not otherwise available at such remote locations—

(1) emergency medical services and supplies;

(2) food and other subsistence supplies;

(3) meeting facilities;

(4) audiovisual equipment, accessories, and supplies for recreation and training;

(5) reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) living and working quarters and facilities; and

(7) transportation for school-age dependents of employees to the nearest appropriate educational facilities.

(b) The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of such subsection shall be at prices reflecting reasonable value as determined by the Administrator.

(c) Proceeds derived from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Administrator to pay directly the cost of work or services provided under this section, to repay or make advances to appropriations of funds which do or will bear all or a part of such cost, or to refund excess sums when necessary, except that such payments may be credited to a service or working capital fund otherwise established by law, and used under the law governing such funds if the fund is available for use by the Administrator for performing the work or services for which payment is received.

COPYRIGHTS AND PATENTS

SEC. 319. The Administrator is authorized to acquire any of the following described rights if the property acquired thereby is for use in, or is useful to, the performance of functions of the Administrator or the Administration:

(1) Copyrights, patents, and applications for patents, designs, processes, specifications, and data.

(2) Licenses under copyrights, patents, and applications for patents.

(3) Releases, before an action is brought, for past infringement of patents of copyrights.

GIFTS AND BEQUESTS

SEC. 320. The Administrator is authorized to accept, hold, administer and utilize gifts, donations, or bequests of property, real or personal, tangible or intangible, and contributions of money for purposes of aiding or facilitating the work of the Administrator or the Administration. For the purposes of Federal income, estate, and gift taxes, and State taxes, property accepted under this subsection shall be considered a gift or bequest to the United States.

TRANSFERS OF FUNDS FROM OTHER FEDERAL AGENCIES

SEC. 321. The Administrator is authorized to accept transfers from other Federal agencies of funds which are available to carry out functions transferred by this Act to the Administrator or functions assigned by law to the Administrator after the date of enactment of this Act.

WORKING CAPITAL FUND

SEC. 322. (a) The Administrator is authorized to establish for the Administration a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as the Administrator shall find to be desirable in the interest of economy and efficiency, including such services as—

(1) a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Administration and its components;

(2) central messenger, mail, and telephone service and other communications service;

(3) office space, central services for document reproduction and for graphics and visual aids; and

(4) a central library service.

(b) The capital of the fund shall consist of any appropriations made for the purpose of providing working capital and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Administrator may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Administration, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus of the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain such fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to those services which the Administrator determines will be performed.

SEAL OF ADMINISTRATION

SEC. 323. The Administrator shall cause a seal of office to be made for the Administration of such design as the Administrator shall approve. Judicial notice shall be taken of such seal.

ANNUAL REPORT

SEC. 324. (a) As soon as is practicable after the close of each fiscal year, the Administrator shall submit to the President a report on the activities of the Administration during the preceding fiscal year. The President shall transmit each such report to the Speaker of the House of Representatives and the President pro tempore of the Senate not later than December 31 of each year.

(b) Each Federal agency shall, without charge, provide the Administrator with such data and information as the Administrator may request to carry out this section. Each Federal agency shall, on a cost reimbursable basis, provide the Administrator with such services and personnel as the Administrator may request to carry out this section.

(c)(1) The Administrator is authorized to include in the report required by subsection (a) for each fiscal year a report on any program or activity carried out by the Administrator during such fiscal year.

(2) Notwithstanding any other provision of law, the inclusion by the Administrator in the report required by subsection (a) for any fiscal year of a report on any program or activity carried out by the Administrator during such fiscal year shall be considered compliance with any requirement established by law or regulation that the Administrator prepare a report with respect to the administration of such program or activity during all or part of such fiscal year. If the Administrator includes in the report required under subsection (a) for any fiscal year a report on any program or activity, the Administrator shall include in such report all items required to be included in the report with respect to such program or activity required to be prepared by law or regulation.

STATUS OF ADMINISTRATION UNDER CERTAIN LAWS

SEC. 325. For purposes of section 552b of title 5, United States Code, the Administration is an agency. For purposes of chapter 9

of such title, the Administration is an independent regulatory agency.

SALARY OF ASSISTANT ADMINISTRATORS

SEC. 326. Section 5316 of title 5, United States Code (as amended by section 271(g) of this Act) is further amended—

(1) by striking out the items relating to the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, and the Assistant Administrators, National Oceanic and Atmospheric Administration; and

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

"Assistant Administrators, National Oceanic and Atmospheric Administration.".

TITLE IV—ESTABLISHMENT OF THE BUREAU OF THE CENSUS AS AN INDEPENDENT AGENCY

TRANSFERS

SEC. 401. (a) All functions of the Secretary of Commerce being administered through the individual holding the office of Director of the Census on the day before the effective date of this Act are transferred to the Director of the Census appointed under section 21 of title 13, United States Code, as amended by section 402(e) of this Act.

(b) All functions of the Secretary of Commerce with respect to the Bureau of the Census or the Director of the Census are transferred to the Director of the Census appointed under section 21 of title 13, United States Code, as amended by section 402(e) of this Act.

(c) The Bureau of the Census of the Department of Commerce is transferred to the Bureau of the Census established by section 3 of title 13, United States Code, as amended by section 402(d) of this Act.

(d) There are transferred to the Director of the Census appointed under section 21 of title 13, United States Code (as amended by section 402(e) of this Act) all functions of the Inspector General of the Department of Commerce or of the Office of the Inspector General of the Department of Commerce relating to the agency and functions transferred by subsections (a), (b), and (c) of this section.

ESTABLISHMENT

SEC. 402. (a)(1) Section 4 of title 13, United States Code, is repealed.

(2) Sections 1, 2, and 3 of such title are redesignated as sections 2, 3, and 4, respectively.

(b) Title 13, United States Code, is amended by inserting before section 2 (as redesignated by subsection (a)(2) of this section) the following new section:

"§1. Purpose

"The purpose of this chapter is to establish an independent Bureau of the Census due to the importance of the functions of the Bureau in providing statistical information to all agencies of the United States Government and to the people of the United States.".

(c) Section 2 of such title (as redesignated by subsection (a)(2) of this section), is amended by striking out clause (2) and inserting in lieu thereof the following:

"(2) 'Director' means the Director of the Census appointed under section 21 of this title; and".

(d) Section 3 of such title (as redesignated by subsection (a)(2) of this section), is amended to read as follows:

"§3. Establishment

"There is established an independent establishment in the executive branch of the Government to be known as the Bureau of the Census. The Bureau shall be administered by the Director.".

(e) Section 21 of such title is amended to read as follows:

"§21. Director of the Census; powers and duties

"(a) The Bureau shall be headed by a Director of the Census, who shall be appointed by the President, by and with the advice and consent of the Senate.

"(b) The Director may prescribe such policies, standards, criteria, procedures, rules, and regulations as the Director finds necessary or appropriate to carry out the functions of the Director.

"(c) The Director may organize the Bureau as the Director finds necessary or appropriate.

"(d) Except as otherwise expressly provided by law, the Director may delegate any of the functions of the Director to such officers and employees of the Bureau as the Director may designate, and may authorize such successive redelegations of such functions as may be necessary or appropriate. A delegation of functions by the Director shall not relieve the Director of responsibility for the administration of such functions.

"(e) The Director is authorized to obtain the services of experts and consultants as authorized by section 3109 of title 5 of the United States Code, at rates not to exceed $100 per day for individuals unless otherwise specified in an appropriation Act.

"(f) The Director is authorized to appoint, without regard to the classification and civil service laws, advisory committees to advise the Director with respect to any function of the Director or the Bureau.

"(g) The Director shall consult with interested Federal agencies with a view to obtaining their advice and assistance in carrying out the purposes of this title. Each Federal agency is authorized to furnish to the Director, upon request of the Director, any information or other data which the Director finds necessary to carry out his duties.

"(h) If authorized by the Director, officers and employees of the Bureau are empowered, while engaged in the performance of their duties, to administer oaths.".

(f) The table of sections for chapter 1 of title 13, United States Code, is amended—

(1) by redesignating the items relating to sections 1, 2, and 3 as the items relating to sections 2, 3, and 4, respectively; and

(2) by inserting before the item relating to section 2 (as redesignated by clause (1) of this subsection) the following new item:

"1. Purpose.".

(3) by inserting "powers and" before "duties" in the item relating to section 21.

(g) Title 13, United States Code, is amended—

(1) by striking out "Secretary" each place it appears and inserting in lieu thereof "Director"; and

(2) by striking out "Department of Commerce" each place it appears and inserting in lieu thereof "Bureau of the Census".

CONFORMING AMENDMENTS RELATING TO THE BUREAU OF THE CENSUS

SEC. 403. (a) Section 5314 of title 5, United States Code (as amended by section 271(e) of this Act) is further amended by adding at the end thereof the following:

"Director of the Census.".

(b) Section 5316 of title 5, United States Code (as amended by sections 271 (g) and 326 of this Act) is further amended by striking out the item relating to the Director, Bureau of the Census, Department of Commerce.

COORDINATION OF STATISTICAL FUNCTIONS

SEC. 404. Within ninety days after the effective date of this Act, the President shall transmit to the Congress a detailed plan for an arrangement between the Bureau of the Census established by section 3 of title 13, United States Code (as amended by section 402(d) of this Act) and the offices of the Department involved in carrying out statistical functions which provides for cooperation between such Bureau and such offices in carrying out statistical functions of the Government.

TITLE V—TRANSFERS TO OTHER FEDERAL AGENCIES

PART A—MINORITY BUSINESS DEVELOPMENT AGENCY

TRANSFERS TO THE SMALL BUSINESS ADMINISTRATION

SEC. 501. (a)(1) There are transferred to the Administrator of the Small Business Administration all functions of the Secretary of Commerce or the Department of Commerce with respect to or being administered through the Minority Business Development Agency of the Department of Commerce or the Director of such Agency.

(2) There are transferred to the Administrator of the Small Business Administration all functions of the Minority Business Development Agency of the Department of Commerce and the Director of such Agency.

(b) The Minority Business Development Agency of the Department of Commerce is transferred to the Small Business Administration.

ADMINISTRATIVE PROVISIONS RELATING TO THE MINORITY BUSINESS DEVELOPMENT AGENCY

SEC. 502. For a period of not less than one year beginning on the effective date of this Act—

(1) the Minority Business Development Agency shall be a separate identifiable unit in the Small Business Administration; and

(2) the Administrator of the Small Business Administration, through the Director of the Minority Business Development Agency, shall perform all functions (other than administrative and support functions) transferred to such Administrator by section 501.

CONFORMING AMENDMENTS RELATING TO THE MINORITY BUSINESS DEVELOPMENT AGENCY

SEC. 503. (a) Section 5316 of title 5, United States Code (as amended by sections 271(g), 326, and 403(b) of this Act) is further amended by inserting after the item relating to the Associate Administrators of the Small Business Administration the following:

"Director, Minority Business Development Agency, Small Business Administration.".

(b) Section 9(a)(1)(N) of the Inspector General Act of 1978 (as redesignated by section 271(h)(3) of this Act) is amended to read as follows:

"(N) of the Small Business Administration—

"(i) the office of that agency referred to as the 'Office of Audits and Investigations'; and

"(ii) all functions of the Inspector General of the Department of Commerce and the Office of the Inspector General of such Department relating to the functions transferred to the Administrator of the Small Business Administration by section 501 of the Department of International Trade and Industry Act of 1983; and".

PART B—ECONOMIC DEVELOPMENT ADMINISTRATION

TRANSFERS TO THE DEPARTMENT OF AGRICULTURE

SEC. 511. (a)(1) There are transferred to the Secretary of Agriculture all functions of the Secretary of Commerce or the Department of Commerce with respect to or being administered through the Assistant Secretary of Commerce for Economic Development or the Economic Development Administration of the Department of Commerce.

(2) There are transferred to the Secretary of Agriculture all functions of the Assistant Secretary of Commerce for Economic Development and the Economic Development Administration of the Department of Commerce.

(b) The Economic Development Administration of the Department of Commerce is transferred to the Department of Agriculture.

ADMINISTRATIVE PROVISIONS RELATING TO THE ECONOMIC DEVELOPMENT ADMINISTRATION

SEC. 512. For a period of not less than one year beginning on the effective date of this Act—

(1) the Economic Development Administration shall be a separate identifiable unit in the Department of Agriculture;

(2) the Secretary of Agriculture, through the Administrator for Economic Development, shall perform all functions (other than administrative and support functions) transferred to such Secretary by section 511; and

(3) the Administrator for Economic Development shall report to the Secretary of Agriculture through the Under Secretary of Agriculture for Small Community and Rural Development.

DEFINITION OF FUNCTION

SEC. 513. As used in this part, the term "function" includes responsibility for performing all acts relating to the furnishing of adjustment assistance under chapters 3 and 4 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq. and 19 U.S.C. 2371 et seq.), for projects approved prior to October 1, 1981, but does not include authority to provide additional assistance or to otherwise increase the liability of the United States with respect to such projects.

CONFORMING PROVISIONS RELATING TO THE ECONOMIC DEVELOPMENT ADMINISTRATION

SEC. 514. (a) Section 5316 of such title (as amended by sections 271(g), 326, 403(b), and 503(a) of this Act) is further amended by striking out the item relating to the Administrator for Economic Development and inserting in lieu thereof the following:

"Administrator for Economic Development, Department of Agriculture.".

(b)(1) Section 101(a) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3131(a)) is amended by striking out "Secretary of Commerce" and inserting in lieu thereof "Secretary of Agriculture".

(2) Section 601(a) of such Act (42 U.S.C. 3201) is amended to read as follows:

"(a) The Secretary shall administer this Act, and with the assistance of an Administrator for Economic Development, shall coordinate the Federal cochairmen appointed heretofore or subsequent to this Act. The Administrator for Economic Development shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such functions as the Secretary may prescribe.".

(c) Section 9(a)(1)(A) of the Inspector General Act of 1978 is amended to read as follows:

"(A) of the Department of Agriculture—

"(i) the offices of that department referred to as the 'Office of Investigation' and the 'Office of Audit'; and

"(ii) all functions of the Inspector General of the Department of Commerce or the Office of the Inspector General of such Department relating to functions transferred to the Secretary of Agriculture by section 511 of the Department of International Trade and Industry Act of 1983".

TITLE VI—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

ADDITIONAL TRANSFERS

SEC. 601. Any function of the Secretary of Commerce or the Department of Commerce which—

(1) is not transferred by titles II, III, IV, or V of this Act; and

(2) is incidental to, necessary for, or primarily related to, the performance of a function transferred by any such title,

is transferred to the head of the Federal agency to which the related function is transferred by such title.

TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL

SEC. 602. Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions and offices transferred by this Act, subject to section 1531 of title 31, United States Code, shall be transferred to the head of the Federal agency to which such functions or offices are transferred by this Act. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

INCIDENTAL TRANSFERS

SEC. 603. (a) The Director of the Office of Management and Budget, at such time or times as the Director shall provide, is authorized to make such determinations as may be necessary with regard to the functions and offices transferred by this Act, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions and offices, as may be necessary to carry out the provisions of this Act. The Director shall provide for the termination of the affairs of all entities terminated by this Act and for such further measures and dispositions as may be necessary to effectuate the purposes of this Act.

(b) After consultation with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget is authorized, at such times as the Director of the Office of Management and Budget may provide, to make such determinations as may be necessary with regard to the transfer of positions within the Senior Executive Service in connection with the functions and offices transferred by this Act.

EFFECT ON PERSONNEL

SEC. 604. (a) Except as otherwise provided by this Act, the transfer pursuant to this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer of such employee under this Act.

(b) Any person who, on the day preceding the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in a Federal agency to which functions are transferred by this Act to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(c)(1) Except as provided in paragraph (2), positions whose incumbents are appointed by the President, by and with the advice and consent of the Senate, the functions of which are transferred by this Act, shall terminate on the effective date of this Act.

(2) Paragraph (1) shall not apply to the position of Commissioner General of the United States Government for the 1984 Louisiana World Exposition established by section 2(b) of Public Law 97-254, or to members of the Foreign Service.

SAVINGS PROVISIONS

SEC. 605. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges that—

(1) have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred by this Act; and

(2) are in effect when this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the head of the Federal agency to which such functions are transferred by this Act, a court of competent jurisdiction, or by operation of law.

(b)(1) The provisions of this Act shall not affect any proceedings, including notices of proposed rule making, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act before the Department of Commerce or the Office of the United States Trade Representative, or any office thereof with respect to functions transferred by this Act; but such proceedings or applications, to the extent that they relate to functions transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made under such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the head of the Federal agency to which such functions are transferred by this Act, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Secretary of Commerce, the United States Trade Representative, and the head of each Federal agency to which functions are transferred by this Act are authorized to issue regulations providing for

the orderly transfer of proceedings continued under paragraph (1).

(c) Except as provided in subsection (e)—

(1) the provisions of this Act do not affect actions commenced prior to the effective date of this Act, and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No action or other proceeding commenced by or against any officer in his official capacity as an officer of the Department of Commerce or the Office of United States Trade Representative with respect to functions transferred by this Act shall abate by reason of the enactment of this Act. No cause of action by or against the Department of Commerce or the Office of United States Trade Representative with respect to functions transferred by this Act, or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this Act. Causes of action and actions with respect to a function or office transferred by this Act, or other proceedings may be asserted by or against the United States or an official of the Federal agency to which such function or office is transferred by this Act, as may be appropriate, and, in an action pending when this Act takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this subsection.

(e) If, before the date on which this Act takes effect, the Department of Commerce or the Office of the United States Trade Representative, or any officer thereof in his official capacity, is a party to an action, and under this Act any function of such Department, Office, or officer is transferred to a Federal agency, then such action shall be continued with the head of such agency substituted or added as a party.

(f) Orders and actions of the head of a Federal agency in the exercise of functions transferred to the head of such agency by this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the Department of Commerce or the Office of the United States Trade Representative, or any office or officer thereof, in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the head of the Federal agency to which such function is transferred by this Act.

SEPARABILITY

SEC. 606. If a provision of this Act or its application to any person or circumstance is held invalid, neither the remainder of this Act nor the application of the provision to other persons or circumstances shall be affected.

REFERENCE

SEC. 607. With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to—

(1) the Secretary of Commerce or the United States Trade Representative; or

(2) the Department of Commerce or the Office of the United States Trade Representative or any officer or office thereof,

shall be considered to refer to the head of the Federal agency to whom such functions were transferred by this Act.

TRANSITION

SEC. 608. With the consent of the Secretary of Commerce or the United States Trade Representative, as the case may be, the head of each Federal agency to which functions or offices are transferred by this Act is authorized to utilize—

(1) the services of such officers, employees, and other personnel of the Department of Commerce or the Office of the United States Trade Representative, as the case may be, with respect to functions or offices transferred to that agency by this Act; and

(2) funds appropriated to such functions or offices for such period of time as may reasonably be needed to facilitate the orderly implementation of this Act.

TERMINATION OF THE DEPARTMENT OF COMMERCE

SEC. 609. The Department of Commerce is terminated.

TITLE VII—MISCELLANEOUS

EFFECTIVE DATE

SEC. 701. (a) This Act shall take effect one hundred and twenty days after the date of enactment, except that—

(1) section 608 shall take effect on the date of enactment; and

(2) at any time after the date of enactment of this Act—

(A) the officers provided for in titles II, III, and IV of this Act may be nominated and appointed, as provided in such titles; and

(B) the Secretary of Commerce, the United States Trade Representative, and the head of each Federal agency to which functions are transferred by this Act may promulgate regulations under section 605(b)(2).

(b) Funds available to the Department of Commerce or the Office of the United States Trade Representative (or any official or component thereof), with respect to the functions transferred by this Act, may be used, with approval of the Director of the Office of Management and Budget, to pay the compensation and expenses of an officer appointed under subsection (a)(2)(A) who will carry out such functions until funds for that purpose are otherwise available.

INTERIM APPOINTMENTS

SEC. 702. (a) If one or more officers required by this Act to be appointed by and with the advice and consent of the Senate have not entered upon office on the effective date of this Act and notwithstanding any other provision of law, the President may designate any officer who was appointed by and with the advice and consent of the Senate, and who was such an officer on the day before the effective date of this Act, to act in the office until it is filled as provided by this Act.

(b) Any officer acting in an office pursuant to subsection (a) shall receive compensation at the rate prescribed by this Act for such office.

AUTHORIZATION OF APPROPRIATIONS

SEC. 703. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act. Amounts appropriated under this section shall be available until expended.

DEPARTMENT OF INTERNATIONAL TRADE AND INDUSTRY FACT SHEET

PURPOSE OF THE BILL

A new Cabinet Department of International Trade and Industry is needed to:

Make trade a permanent national priority.

Provide a single, strong spokesman for trade within the Executive branch.

Alleviate serious management problems inherent in our current trade structure.

Provide linkage between trade and industry competitiveness issues.

The new Department would facilitate the development of coherent, strategic trade policy, effective implementation of trade agreements and enforcement of U.S. trade laws and support improvements in U.S. competitiveness.

ENTITIES IN THE NEW DEPARTMENT

The new Department would carry out the functions of these existing entities:

The Office of the United States Trade Representative.

The International Trade Administration.

The Under Secretary of Commerce for Economic Affairs (except the Bureau of the Census).

The Patent and Trademark Office.

The United States Travel and Tourism Administration.

The National Telecommunications and Information Agency.

The National Bureau of Standards.

In addition, the following new entities would be created:

The Office of Competitive Analysis.

The Administration for Productivity and Technology.

The Secretary will be the United States Trade Representative. The Secretary will also be Chairman of the Board of Directors of the Overseas Private Investment Corporation and a member of the National Security Council as well as Deputy Chairman of the National Advisory Council on International Monetary and Financial Policies. The Deputy Secretary of the Department will be Vice Chairman of the Board of Directors of the Export-Import Bank.

The new Department will have a staff of approximately 10,000 employees.

RELATED ORGANIZATIONAL CHANGES

In addition to the establishment of the new Department of International Trade and Industry, several existing units in the U.S. Department of Commerce will be placed in new organizational settings:

The National Oceanic and Atmospheric Administration will become an independent agency.

The Bureau of the Census will become an independent agency.

The Minority Business Development Agency will be moved to the Small Business Administration.

The Economic Development Administration will be moved to the Department of Agriculture.

WHITE HOUSE STRUCTURE

The President will chair the top-level trade policy interagency coordinating body (the Trade Policy Committee-TPC). The Secretary of International Trade and Industry will be the Chairman pro tempore and the Secretary of Agriculture will be the Vice Chairman.

In addition, there will be new statutory interagency council also chaired by the President whose purpose will be to coordinate the full range of U.S. international economic policies (e.g. debt, exchange rates and trade). This body will be called the Council on International Trade, Economic and Financial Policy (CITEF).

To support the President in his role on these councils, there will be a small White House staff, limited by law to 15 people. Directing this staff will be a new appointee,

the Advisor to the President for International Trade, Economic and Financial Policy.

The role of this staff will be confined to the normal White House function of top-level policy brokering. This staff will not handle trade negotiations or day-to-day operational aspects of trade policies, functions which will be brought under one roof in the new trade department.

DIFFERENCES WITH LAST SESSION'S BILL

The bill introduced in the 99th Congress is nearly the same as S. 121, reported out of the Governmental Affairs Committee in October, 1983 by a strong bipartisan vote (13-3).

There are only two differences:

The 99th Congress bill does not provide for an Under Secretary for Agriculture. Such a position, added at markup last session, was not broadly supported in the agriculture community.

Language on a small business trade assistance office was eliminated as this office was established in the Trade Act of 1984.

GROUPS SUPPORTING TRADE REORGANIZATION

The President's Commission on Industrial Competitiveness, U.S. Chamber of Commerce, National Association of Manufacturers, American Business Conference, and National Federation of Independent Business.

[From the Journal of Commerce and Commercial, Jan. 31, 1985]

DEPARTMENT OF TRADE A TOP PRIORITY

(By Sen. William V. Roth, Jr.)

Last year economic forecasters reached an uncommon agreement on one prediction: the U.S. trade deficit would reach record proportions in 1984. Now, with the announcement of a $123.3 billion deficit for the year—roughly double the figure for 1983 and four times the size of the deficit in the late 1970s—the disturbing projections have been confirmed. The question is, what are we going to do about it?

Among the proposals to attack the trade deficit that will surface and provoke debate in the coming months will be:

Change U.S. macroeconomic policies to better serve the interests of our exporters.

Eliminate government rules and actions that discourage exports—for example, ease rules on export licensing, requirements of the Foreign Corrupt Practices Act and export embargoes.

Begin new multilateral trade negotiations aimed at opening foreign markets to U.S. products and bringing international trading rules up to date.

Develop a long-term trade strategy to promote America's trade interests.

While each of these strategies should be carefully considered, the prospects for accomplishing any of them will be enhanced substantially if we establish a single, effective government trade organization—a Cabinet-level department of trade.

Take the issue of macroeconomic policy. If we want trade to be considered in the development of macroeconomic policy, trade must be a top national priority, there must be a strong advocate for trade within the government and that advocate must be present in the key decision-making meetings.

None of these factors is present today, and trade and economic policy proceed as if they were unrelated. The establishment of the new trade department would remedy this situation.

In this country we define our top national priorities through our Cabinet structure. By creating a new department of trade we will grant trade the equal status it deserves with defense, foreign policy and other key issues.

The need for a single, strong advocate for trade within the government is clear. Responsibility for trade is now divided between two Cabinet officials. Trade is only one of a number of responsibilities assigned to the secretary of commerce, while the U.S. trade representative, although a Member of the Cabinet, lacks the clout of a full Cabinet department head in advocating his positions.

Legislation creating a new trade department can be drafted to help ensure that the secretary of trade is at the right place at the right time when U.S. economic policy is debated and implemented.

A highly-placed advocate has not been present at crucial times in the past when many of the export-discouraging policies now in effect were taken. For instance, the decisions to impose agricultural embargoes during the Nixon and Carter administrations were made in the National Security Council without the participation of the U.S. trade representative.

This lack of participation could not happen with the trade organization that I envision. The new secretary of trade would participate in deliberations of the National Security Council whenever trade-related issues were discussed.

While the need for new trade negotiations seems clear to many observers, our performance in such negotiations could be hampered seriously if we do not reorganize first.

It is unrealistic to expect the handful of experts in the Trade Representative's Office—no matter how skillful or experienced—to carry out such far-reaching negotiations without help. The trade representative would have to go, hat in hand, to other agencies asking for support.

Far more preferable would be an organization connecting the trade representative's negotiators directly, through clear management ties, to competent support staff, data analysts and statistical experts.

Finally, it is difficult to imagine a long-term trade strategy emerging from our current situation in which one agency (Commerce) is responsible for trade data analysis and policy implementation, while an entirely separate and sometimes competing agency (the Trade Representative's Office) handles trade policy development and negotiations.

Instead of encouraging forward thinking and innovation, the present organizational split promotes turf rivalries and a largely reactive approach to trade problems. And there is no question that our foreign competitors know how to exploit these jurisdictional battles to enhance their own trade performance at the expense of ours.

Moreover, our government does not possess the analytical capability to determine with any certainty the overall state of U.S. industrial competitiveness or the condition of many key sectors of the American economy. Under trade reorganization, all the functions needed to formulate a long-term trade strategy will be brought under one roof and strengthened.

Now more than ever, our nation needs a Cabinet-level department of trade. I am hopeful that with the active support of the Reagan administration, Congress will act to create the department before the year is out.

To be sure, creation of the trade department is only the beginning of what must be a concerted, long-term effort by many agencies, groups and individuals to reduce the staggering U.S. trade deficit. But if we do not reorganize our trade bureaucracy, the policy changes we need will be more difficult to achieve. Trade reorganization should be a part of our strategy to tackle the trade deficit.

[From the Washington Times, Jan. 23, 1985]

TRADE AGENCY BENEFITS

(By R.K. Morris)

January is a sobering month. The holiday bills come rolling in and millions of people reflect on the notion that borrowing can be an expensive business.

It is a good time to take stock of American trade. We have been borrowing very heavily on our international trade credit card. That is what the 1984 trade deficit of nearly $130 billion means. Of the $343 billion worth of imports U.S. citizens bought last year, only a little more than 60 percent can be paid for by U.S. exports. Receipts from U.S. foreign investments can no longer make up the difference. So it is being financed by loans from foreigners at interest rates we can ill-afford, not with a $200 billion budget deficit.

The image of a borrower in over his head helps to convey the seriousness of the problem, but it obscures its complexities. The United States has interests beyond simply balancing the books on trade. As the premier trading nation and the world's largest economy, we shoulder the heaviest portion of the responsibility for keeping the international trade and monetary systems working. In domestic terms, proposed trade actions must be weighed against their possible effects on the competitiveness of U.S. industry, the costs to U.S. industrial and private consumers, and the implications for the U.S. economy.

It is an area of national life as complicated as the cockpit of a 747 jetliner, only each control affects all the others. The time has come to give basic responsibility for trade policy to a single department, a single Cabinet secretary.

The proposal for a department of trade and industry is hardly new. It was debated in 1979 and again in 1983 and 1984. The 1985 debate on a new department is now clearly under way. As a representative from American Express pointed out in congressional testimony in 1983, "The intellectual rationale for it [a new trade department] is not being debated; that seems clear. The stumbling block is politics."

As the trade deficits mount, the rationale for a trade department will become clearer still. Eventually such an entity will almost certainly be a part of the executive branch. The question is not whether but when.

It is unfortunate that the discussion of such a department has been blurred by the rhetoric of protectionism. But Congress does not need a trade department in order to curb imports. They can raise tariffs or otherwise limit access to the U.S. market without creating a new department.

It is less clear that our government can fashion and implement a consistent program of positive trade policies without reorganization. The evidence suggests that the current mix of political and bureaucratic ingredients is not enough. How else can one explain the constant challenge to the Export-Import Bank, which does less for U.S. exports than its counterparts in competitor countries like Japan, Germany, France, and the United Kingdom.

How else can one explain a series of export control decisions that have penalized U.S. exports in the short run and that, over time, could seriously erode U.S. productive capacity?

What other explanation is there for America's passive, almost nonexistent, exchange-rate policies when there is a broad consensus that at least half of the U.S. trade problem is due to the exchange rate? A seriously overvalued dollar is pulling in imports at an alarming rate, drying up the foreign markets of U.S. companies, and forcing many firms to shift production to foreign facilities to hold on to market share in the United States as well as abroad.

The hope of those who support a department of trade and industry is not that it will inaugurate an era of protectionism but that it will signal a commitment to competitiveness.

American manufacturers are traders. The number of products that are in fact world products, assembled in one country from the production of many, is constantly increasing. One result is that U.S. manufacturers, who account for 66 percent of all U.S. exports, cannot afford blind protectionism any more than farmers, bankers, or anyone else who deals in international trade.

The test of a trade policy, of course, is not whether it is a protectionist policy or a free trade policy but whether it is a policy that serves the economic interests of the United States.

A trade department offers the dual hope that it will be better able than any existing agency or group of agencies to develop policies that meet that test, and better able to win acceptance for them from the administration, the Congress, and the public.

Mr. EAGLETON. Mr. President, Senator ROTH, Senator LEVIN, Senator COHEN, and I are introducing a bill creating a new Department of International Trade and Industry. The legislation is substantively unchanged from the bill passed out of the Governmental Affairs Committee in October 1984. My convictions regarding the merits and wisdom of this legislation are unchanged as well. What has changed is our world trade position, and that, unfortunately, is greatly weakened. The mighty engine of American industry, guided by the firm hand of our industrial and trade policies, is huffing and puffing and wheezing along like the "Little Engine Who Couldn't."

Consider the following:

U.S. trade deficits soared over the $100 billion mark in 1984, rising from $69 billion in 1983 to a record $123 billion last year. The 1985 trade deficit may surpass that level by as much as $40 billion.

The dollar remains dangerously high relative to other currencies, depressing demand for American exports;

Our patent and trademarks laws are antiquated, and are violated routinely with effective impunity;

U.S. private research and development is lagging behind that of our major competitors;

The high-tech industries, often cited as the salvation of the U.S. economy, suffered a loss of world market share in 7 of 10 sectors in the last year;

The United States has become a debtor Nation for the first time since World War I.

These warning signs call for a change in American trade policy. The haphazard, fragmented and duplicated approach of the past—tolerable in the bygone era of American trade dominance—is woefully inadequate today. American trade policy is an anachronism, designed to diffuse authority, planning, and implementation. The negotiations with Japan on auto imports this past spring are typical of the problem. No fewer than five separate U.S. agencies played a critical role in the proceedings. Our message isn't getting through because we are tripping over ourselves and our collected spokesman.

Faced with this deepening crisis in international trade, what has been our Government's reaction? "Frantic" and "chaotic" are two words that come to mind. The fact is, we have no clearly identifiable policy on trade. A gaggle of executive agencies and departments, joined by the Congress, have expressed concern and offered remedies, but they largely boil down to quick fix, reactionary or ineffective measures. A few examples:

By an overwhelming margin of 92 to 0, the Senate passed a resolution calling for the Japanese to open their markets to American producers in exchange for our continued participation in a trade relationship;

The International Trade Commission recently reversed its attitude on imports, as seen in its recent footwear decision, and in so doing apparently contradicted the President's fondness for free trade;

The President, who's not afraid to talk rudely to the Soviets, turned into Miss Manners this spring when he let the Japanese auto import quotas lapse without forcing the Japanese to abide by the rules of free trade.

Taken together, America's recent efforts at developing a trade and industrial policy represent the "Keystone Kops" method of problem management. Our lack of a clear message coupled with diffused authority on this issue ensures that American trade policy remains ineffective.

We need to develop a trade policy to match the hardheaded, calculated, nationalistic strategies of our competitors. It is time for our Government to accept the need for a major and consistent role in trade policy. As Douglas Fraser, former president of the United Auto Workers, stated:

In a rapidly changing global environment, in which virtually every other developed and industrializing government acts decisively to chart their nation's economic course, our economic future will continue to dim until we confront and surmount our unwillingness to plan.

Even President Reagan's own Commission on Industrial Competitiveness, which included some of the Nation's top corporate executives, made virtually the same point:

Government should take the lead in highlighting the importance of competitiveness . . . International competition requires a well-integrated policymaking process that places trade considerations on a par with domestic and foreign policy issues.

A Department of International Trade and Industry could help avert us from our perilous course by making trade a national priority, and by bringing coordination, coherence and clout to U.S. trade policy. This bill is not just reorganizing boxes on the organization charts of government. It is not simply a cosmetic folding together of the U.S. Trade Representative and pieces of the Commerce Department. Such a merger alone is an improvement—eliminating the puzzling split between negotiating and policymaking on the one hand, and analysis and implementation on the other—but such a slight reform would hardly justify the substantial and costly disruption that inevitably results from departmental reorganization.

This bill must do more. In the end, it must contain the amendments which Senator LEVIN and I offered last Congress, and which were incorporated in the bill as reported by the Government Affairs Committee on October 4, 1983. These amendments give the Department new tools for the development and implementation of policy, and a new mandate to develop our domestic industrial policies in conjunction with the challenges of international trade.

Trade and industrial issues, in the final analysis, are simply different facets of the same problem. The days are long gone when America had the luxury of treating domestic and international economic problems as discrete, separate worlds. Nations are becoming increasingly bound together in a vast web of financial and economic attachments, and what happens beyond our shores deeply affects our economy, and vice versa. If you think otherwise, ask the 250,000 American steelworkers whose jobs have vanished in this decade. Ask the people in the American shoe industry. Ask the 200,000 domestic autoworkers who've been forced into new occupations. Without addressing a number of fundamental problems that have eroded our competitiveness—an aging physical plant; the adversarial relationship between business, labor, and government; and the lack of government leadership in technological innovation—our ability to compete successfully with other nations in the future is doubtful.

I believe this bill is greatly improved by the addition of an Office of Competitive Analysis which, among other things, will provide the U.S. enhanced

analytical capability. Time and again we hear the complaint that our Government does not understand the workings of American industries or those of our foreign competitors.

By failing to understand the characteristics, capabilities and strategies of our foreign competitors, we are unable to anticipate and plan. further, we need expertise to detect flaws and weaknesses in our domestic enterprises before those weaknesses become debilitating or even fatal. Without this capability, we will find ourselves always on the defensive, always reacting to external events.

The President's Commission on Competitiveness found that the dearth of analytical information about our competitors simply shuts out many otherwise-capable U.S. companies from competing abroad. The commission stated:

> If those American businesses that could export did so, the GAO (General Accounting Office) estimates the American economy would create an additional 125,000 jobs and $4 billion in sales.

The Office of Technology Assessment released a report a few years ago which found that better analysis of steel markets during the past 15 years would have made an important and beneficial difference in the kind of import relief program we designed for our steel industry. It singled out three gaps in our knowledge: The dynamics of the world steel trade, the significant differences within our own steel industry, and the changing technology of iron- and steel-making.

Dr. Jordan Baruch, a former Assistant Secretary of Commerce, noted that a single Japanese export-trading company spent $19 million in 1 year gathering and analyzing information about foreign technological developments. Multiply that expenditure by the large number of Japanese export-trading companies, add in the contacts with the relevant Japanese Government officials, and you get some idea of the efforts of our competition to understand commercial, economic, and technological developments.

Our future success in the global marketplace depends on our Government's ability to recognize and interpret the conditions affecting industries, here and abroad.

The Office of Competitive Analysis is charged with a second mission: To provide a channel for formalizing government-business-labor cooperation in policymaking. We all know the toll that adversarialism among these three groups has taken in this country. We are also aware that other nations have promoted a spirit of cooperation among these same interest groups, and in so doing made themselves more formidable trading nations. Again, the President's commission underscored the importance of this need:

> Government . . . should nurture an effective consensus-building dialogue among leaders in industry, labor . . . and academia. [T]he traditional adversarial relationship between business and labor may no longer serve the best interests of both parties and the public.

To fulfill this mission, the Office will monitor the competitive health of our domestic industries and identify those sectors facing a significant challenge from abroad. For any such sector of vital interest to the Nation, the Secretary of International Trade and Industry would be required to convene a temporary industrial competitiveness council. This advisory council would bring together the diverse industry interests to devise a series of comprehensive, cohesive, and equitable recommendations for the industry's future.

When this legislation was considered in the last Congress, the amendment creating these councils prevailed in committee. Enough committee members from both sides of the aisle shared my view that this mechanism was vital and relatively modest in scope. The administration did not agree, nor did some other members of the committee. The same opposition to this provision may resurface in this Congress as some continue to believe that this mechanism is a Trojan horse for industrial policy. Beneath the label is the implication that government would be intervening in marketplace and picking winners and losers. I advocate no such thing. Our national tradition generally has been hands off the business sector. But, as one trade expert put it, "hands off" need not mean "eyes closed." Our intent here is to provide better resources for business, labor, and government so that problems and opportunities are identified early on. Good trade policy operates well in advance of the economic earthquakes.

This legislation will succeed only if it is enacted and implemented with a true sense of what our problems are and a recognition of what is the proper government role in attacking them. Since I deem the Office of Competitive Analysis essential to the bill, should its structure be diminished in any significant way, the legislation would revert to box shuffling and I would be unable to support it.

A final improvement in the bill is the clarification of the Secretary's primary respcnsibility in the Federal Government for encouraging technological innovation. Former Senator Adlai Stevenson told the Governmental Affairs Committee 2 years ago: "technology is the basis for our ability to compete." Well, technological innovation used to be our comparative advantage over nearly every other nation. The picture has changed dramatically. Although we lead other nations in overall government funding of R&D, roughly half of the total is for defense and space programs, which has little spillover into the civilian economy. Civilian R&D, the source of the greatest strides in innovation for commercial use, has not been a priority. In contrast, outlays for R&D by our major trading partners tend to focus on projects with significant payoff in the commercial sphere. We are, for example, far behind both Germany and Japan in this area. We would do well to more better manage our R&D and to target industrial competitiveness as a priority.

A tool for this purpose already exists. The Stevenson-Wydler Technology Act, enacted in 1980 with strong bipartisan support, could lead to great progress in organizing the Government's efforts in fostering technological breakthroughs and in encouraging their commercial applications. Among other things, the act calls for linking R&D efforts with universities and industry in order to promote marketable technology. The administration, however, has not yet seen fit to implement the act's provisions in any meaningful way. I hope that placing responsibility for this program firmly with the Secretary will better ensure that its mandate will be taken seriously.

Fifty-five years ago this month, Congress passed the Smoot-Hawley Tariff Act, the highest import levy in American history. That one act alone provoked a wave of retaliation, forced Europe to suspend debt repayments, and caused world commerce to dry up. Talk of enacting "Smoot-Hawley Revisited" as a 1980's approach to our trade problems is not idle chitchat, but a serious reaction of understandable desperation. Sentiment in Congress for retaliation against our trading partners is escalating. Members of Congress are at this moment drafting legislation to introduce before the July 4 recess slapping a 20-percent tariff on all Japanese imports unless the Japanese show that they have finally opened their home markets to goods from abroad.

Earlier this spring, the Senate passed, by an unprecedented 92 to 0 vote, a resolution condemning Japanese trade practices.

Hong Kong weavers, South Korean television manufacturers, Mexican tomato growers, and Japanese steel manufacturers are all smarting from U.S. quotas.

The U.S. International Trade Commission, succumbing to national economic pressures, 2 weeks ago reversed its decision of last year and recommended stiff quotas on shoe imports.

A short while ago I spoke in the Senate about the process of give and take with our trading partners and about how Japan is all take because it enjoys the trade opportunities we offer while refusing to extend recipro-

cal opportunities to exporting U.S. companies. I was angered that the administration allowed the voluntary restraints against Japanese autos to expire, letting an unfair trader go free without exacting any quid pro quo.

The President and the Congress, however, need to offer the American people something better than protectionism. There is an alternative: an effective economic and trade policy.

Let us admit it before it's too late: The United States can no longer respond effectively to the economic challenges from abroad with its present casual, reactive, patchwork of trade policy and policymakers. We need an active, anticipatory, and consolidated mechanism. A new Department of International Trade and Industry can't solve all our problems, but I'm sure that it is a mandatory precursor to any meaningful resolution of those problems. We need the Department to enable us to speak as one nation, articulating one coherent, coordinated, and consistent policy, strengthened in the ways that I have mentioned. I am anxious to work with my colleagues on this legislation so that America can meet its competitive challenges.

By Mr. GLENN:

S. 1366. A bill to require the Secretary of Agriculture to conduct a 5-year research program to develop new nonfood uses for agricultural commodities, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

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

By Mr. GORE:

S. 1367. A bill to provide for the establishment of a clearinghouse and for studies on how to collect and analyze statistics and other information on the aggregate cost, utilization, and quality of health care services in order to provide for greater efficiency and quality in the purchase of health care services; to the Committee on Governmental Affairs.

HEALTH CARE DATA SYSTEMS CLEARINGHOUSE ACT

● Mr. GORE. Mr. President, I rise today to introduce S. 1367, the "Health Care Data Systems Clearinghouse Act of 1985." My colleague, Congressman RON WYDEN of Oregon, has introduced a companion bill in the House today.

Health care is one of the most important consumer services in this country. Unfortunately, it is also the most expensive. The rising cost of health care threatens to price many Americans out of the market for treatment they need.

The problem is stubborn and solutions are elusive, but this country can't afford not to contain health care costs. This bill is an excellent start.

The bill would establish a clearinghouse to help consumers and employers find and interpret data on health care services, systems, prices, and quality. In order to keep the Government's role to a minimum, the clearinghouse would not collect or distribute the actual data, but would tell consumers where they could find it. It would encourage the voluntary flow of data vital to informed consumer decisions.

The only way we can hope to stabilize health care costs is to inject the principles of free enterprise into our health care system. Proper competition depends on widespread consumer knowledge. At present, few consumers have access to health care information, and few hospitals are eager to provide it. The cloak of mystery gets in the way of economic efficiency and rational decisionmaking.

This bill would help to demystify America's health care system. Besides assisting individual consumers, it also would benefit hundreds of small businesses that currently pay too much for health services because they lack the data to make a prudent purchase or the resources to hire a cost containment consultant.

We need a health care system that's a free market for consumers, not a free ride for producers. In the long run, a health care data clearinghouse will help to make health care more equitable, more accountable, and above all, more affordable.

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

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

S. 1367

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Health Care Data Systems Clearinghouse Act of 1985".

SEC. 2. CLEARINGHOUSE ON AGGREGATE HEALTH CARE DATA AND ANALYTIC PROGRAMS.

(a) ESTABLISHMENT AND GENERAL FUNCTIONS.—(1) The Secretary of Health and Human Services shall make grants for the establishment and operation of a clearinghouse to gather and disseminate information on (A) sources, methods, and systems for the collection of aggregate health care statistics and other data on the cost, utilization, and quality of health care services, and (B) methods and systems available to analyze these data, including existing norms, standards, and criteria that can be used in making comparisons among providers.

(2) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application for an initial grant under paragraph (1). If the Academy submits an acceptable application, the Secretary shall make the initial grant to the Academy. If the Academy does not submit an acceptable application for an initial grant under paragraph (1), the Secretary shall request one or more appropriate public or nonprofit private entities recognized for their expertise in the analysis of health care data to submit an application for an initial grant under paragraph (1) and shall make a grant to the entity which submits the best acceptable application.

(3) No grant may be made under this section unless an application is submitted to the Secretary in such form and containing such information as the Secretary shall prescribe.

(b) SPECIFIC FUNCTIONS OF CLEARINGHOUSE.—In order to qualify for a grant under this section, the applicant must demonstrate that it has the capability to, and under the grant will on an ongoing basis, establish and provide for the operation of a clearinghouse which will—

(1) identify those recognized individuals and organizations in the public and private sectors (including those within the Federal Government and including peer review organizations, health systems agencies, and State health planning and development agencies) that have experience with the collection of aggregate health care data or developed analytic programs (as those terms are defined in section 4), or both,

(2) collect information on those individuals' and organizations' methods and systems for the collection, analysis, interpretation, and dissemination of aggregate health care data, and make this information available to interested parties, and

(3) provide, upon request, technical assistance in the use of methods and systems for the collection, analysis, interpretation, and dissemination of aggregate health care data.

(c) CONFIDENTIALITY.—In order to qualify for a grant under this section, the applicant must provide assurances that the clearinghouse will disseminate (or arrange for the dissemination of) information about methods and systems for collection, analysis, interpretation, and dissemination of aggregate health care data only in a manner that is consistent with the confidentiality of individually identifiable patient medical information.

(d) ADVISORY COMMITTEE.—In addition, in order to qualify for a grant under this section, the applicant must provide for the establishment of one or more advisory panels to advise the applicant on the activities of the clearinghouse, including, in particular, on appropriate methods and systems for the collection, interpretation, analysis, and dissemination of aggregate health care data in a manner consistent with the confidentiality of individually identifiable patient medical information. Any such panels shall include representatives of physicians, hospitals, other health care providers, insurers, businesses, unions, and public entities that purchase health care through insurance or self-insurance, and labor, as well as members of the public.

(e) REPORT ON CLEARINGHOUSE.—As a condition for receiving a grant under this section, the applicant must agree to submit to the Secretary an annual report on the activities of the clearinghouse under the grant. The Secretary shall provide for timely transmittal of a copy of each such report to Congress.

(f) SUNSET OF AUTHORITY.—Unless otherwise extended by act of Congress, the Secretary is not authorized under this section to provide any funding for the operation of a clearinghouse after the end of the five-fiscal-year period beginning with fiscal year 1986.

SEC. 3. STUDIES CONCERNING IMPROVING THE USE OF AGGREGATE HEALTH DATA.

(a) STUDY OF MAKING EXISTING MEDICARE AGGREGATE DATA MORE WIDELY AVAILABLE.—The Secretary shall study the feasibility—

(1) of making aggregate health care data relating to the medicare program (under title XVIII of the Social Security Act), and health care data of the Office of Personnel Management relating to the Federal Employees Health Benefits program, more widely available to group and other purchasers of health care services, and

(2) of applying existing analytic programs (or adapting such programs) to the analysis of these data for the use by these purchasers.

(b) STUDY OF IMPROVEMENTS IN DATA COLLECTION AND ANALYTIC PROGRAMS FOR THE PURPOSE OF MEASURING QUALITY.—The Secretary shall study what changes should be made—

(1) in the aggregate health care data collected by the Secretary (or by other Federal agencies making payment for health care services) in the process of implementing Federal health care programs, and

(2) in the analytic programs used to analyze those data,

in order for these data and programs to be appropriately applied to assess better the quality of health care services. In considering changes, the Secretary shall consider the collection of additional information on quality of health care services.

(c) DEADLINES.—The Secretary shall transmit to Congress reports on each of the studies under this section not later than six months after the date of the enactment of this Act. Each report shall include the projected completion date of the respective study.

SEC. 4. DEFINITIONS.

As used in this Act:

(1) The term "aggregate health care data" means information, in a form in which medical information is not identifiable to a specific patient, which relates either—

(A) to the price, utilization, and quality of health care services furnished by providers, or

(B) to the costs and benefits associated with particular methods of paying for health care services.

(2) The term "analytic program" means a method for analyzing, on a comparative basis, aggregate health care data.

(3) The term "Secretary" means the Secretary of Health and Human Services.●

By Mr. MATHIAS (for himself, Mr. MATSUNAGA, and Mr. PELL):

S. 1368. A bill to end shipment of padded-jaw or steel-jaw leghold traps; to the Committee on Environment and Public Works.

BAN ON STEEL-JAW LEGHOLD TRAPS

● Mr. MATHIAS. Mr. President, I introduce a bill to end the shipment of steel-jaw leghold traps.

The steel-jaw leghold trap is a cruel device designed to keep animals alive in order to preserve their soft pelts. The trap shackles and cripples animals, often leaving them for days to contend with predators, the elements, and starvation before the trapper returns. It is not difficult to imagine the pain that the animal must endure. Sometimes, a terrified animal chews off a paw to escape.

The trap is nonselective. There is a 75-percent chance that once a trapper returns to the mechanism, he will find an animal that he does not want and did not intend to capture—a domestic pet, a non-fur-bearing animal, a hunting dog. Testimony before the House Subcommittee on Health and the Environment last year revealed that of the 1,199 animals caught with the leghold trap in a predator control program for coyotes, only 138 were coyotes. The rest included golden eagles, antelope, various other wild mammals and birds, 30 sheep, and other domesticated livestock. In another study concerning the endangered American bald eagle, a University of Minnesota researcher reported that "within an 8-year period—1972-80—21 percent of all eagle admissions were caught in steel-jaw traps."

The efforts to ban the leghold trap have widespread support in this country. Congressman TOM LANTOS has introduced a similar bill in the House of Representatives with 90 cosponsors so far. In addition, I would like to draw your attention to the result of a study conducted by Yale University that was funded by the U.S. Department of the Interior. The survey revealed that 78 percent of the American people favor a ban on the steel-jaw leghold trap.

However, Mr. President, prohibiting the use of this trap is not a goal only of animal welfare organizations and environmental groups in the United States. Outrage and concern over the use of this barbaric instrument have been expressed worldwide. At present, 48 countries ban the use of the leghold trap because of its inhumane and cruel characteristics. Despite their important fur industries, countries such as Norway, Germany, and Switzerland have banned the trap without experiencing economic hardship. I consider this to be conclusive testimony that the fur industry's future is not contingent on the steel-jaw leghold trap. In fact, most of the furs imported by U.S. merchants come from countries where the traps are banned.

Mr. President, the U.S. Government should take a leading role against animal cruelty. Instead, the Interior Department is our country's largest user of leghold traps through its subsidy program to reduce predators on public lands. This is reprehensible.

Yale University president, A. Bartlett Giamatti, has eloquently written:

> When man becomes vicious to animals, he loses his dignity as a human being, and humanity suffers. And this has been true throughout history.

I urge each of my colleagues to consider this bill and the strong public opinion behind it. This proposal has been inactive too long. It is imperative that we ban the steel-jaw leghold trap now to ensure that millions of animals are spared its vicious bite.

I ask that the text of the measure be printed at the conclusion of these remarks.

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

S. 1368

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, whoever delivers, carries, transports, or ships by any means whatever, in interstate or foreign commerce, any padded-jaw or steel-jaw, leghold trap or whoever receives, acquires, or purchases, knowingly, any such trap so delivered, carried, transported, or shipped, shall for the first offense, be fined not more than $1,000; for the second or subsequent offenses, he shall be fined not more than $5,000 and imprisoned for not more than two years.

SEC. 2. The provisions of this Act shall become effective one year after the date of its enactment.●

ADDITIONAL COSPONSORS

S. 233

At the request of Mr. D'AMATO, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of S. 233, a bill to provide for the minting of coins in commemoration of the centennial of the Statue of Liberty.

S. 418

At the request of Mr. GRASSLEY, the name of the Senator from Nebraska [Mr. ZORINSKY] was added as a cosponsor of S. 418, a bill to amend the Internal Revenue Code of 1954 to exclude certain net capital gain of insolvent taxpayers from the alternative minimum tax.

S. 538

At the request of Mr. METZENBAUM, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 538, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide for warnings concerning the use by children of drugs containing aspirin, and for other purposes.

S. 670

At the request of Mr. PELL, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor 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. 681

At the request of Mr. MATHIAS, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 681, a bill to amend chapter 89 of title 5, United States Code, to authorize the Office of Personnel Man-

agement to waive certain eligibility requirements relating to enrollment of annuitants in a Federal employees health benefits plan.

S. 729

At the request of Mr. DURENBERGER, the name of the Senator from Alabama [Mr. DENTON] 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. 828

At the request of Mr. MELCHER, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of S. 828, a bill to define the circumstances under which construction workers may deduct travel and transportation expenses in computing their taxable incomes for purposes of the Federal income tax.

S. 855

At the request of Mr. PRYOR, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 855, a bill for the relief of rural mail carriers.

S. 987

At the request of Mr. EXON, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 987, a bill to recognize the organization known as the Daughters of Union Veterans of the Civil War 1861-1865.

S. 1060

At the request of Mr. D'AMATO, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 1060, a bill to amend title II of the Social Security Act to protect the benefit levels of individuals becoming eligible for benefits in or after 1979 by eliminating the disparity (resulting from changes made in 1977 in the benefit computation formula) between those levels and the benefit levels of persons who became eligible for benefits before 1979.

S. 1112

At the request of Mr. SPECTER, the names of the Senator from Utah [Mr. GARN], the Senator from Utah [Mr. HATCH], the Senator from Idaho [Mr. SYMMS], and the Senator from Wisconsin [Mr. KASTEN] were added as cosponsors of S. 1112, a bill to amend the Internal Revenue Code of 1954 to increase the exemption amount to $2,000.

S. 1174

At the request of Mr. MCCONNELL, the name of the Senator from Texas [Mr. BENTSEN] was added as a cosponsor of S. 1174, a bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to provide States with assistance to establish or expand clearinghouses to locate missing children.

S. 1223

At the request of Mr. ARMSTRONG, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 1223, a bill to authorize the erection of a memorial on Federal land in the District of Columbia or its environs to honor members of the Armed Forces of the United States who served in the Korean War.

S. 1277

At the request of Mr. BRADLEY, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of S. 1277, a bill to amend title XIX of the Social Security Act to provide that States may provide home or community-based services under the Medicaid Program without the necessity of obtaining a waiver.

S. 1311

At the request of Mr. GOLDWATER, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of S. 1311, a bill to authorize the Smithsonian Institution to plan, design, and construct facilities for the National Air and Space Museum.

SENATE JOINT RESOLUTION 68

At the request of Mr. DODD, the names of the Senator from Wisconsin [Mr. KASTEN], and the Senator from Maryland [Mr. MATHIAS] were added as cosponsors of Senate Joint Resolution 68, a joint resolution to designate November 21, 1985, as "William Beaumont Day."

SENATE JOINT RESOLUTION 134

At the request of Mr. BIDEN, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of Senate Joint Resolution 134, a joint resolution to designate "National Safety in the Workplace Week."

SENATE JOINT RESOLUTION 143

At the request of Mr. GORE, the names of the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from North Dakota [Mr. BURDICK], the Senator from Missouri [Mr. DANFORTH], the Senator from Indiana [Mr. LUGAR], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Hawaii [Mr. INOUYE], the Senator from Florida [Mr. CHILES], the Senator from Michigan [Mr. LEVIN], the Senator from Utah [Mr. HATCH], the Senator from Maryland [Mr. SARBANES], the Senator from Michigan [Mr. RIEGLE], and the Senator from Montana [Mr. MELCHER] were added as cosponsors of Senate Joint Resolution 143, a joint resolution to authorize the Black Revolutionary War Patriots Foundation to establish a memorial in the District of Columbia at an appropriate site in Constitution Gardens.

SENATE CONCURRENT RESOLUTION 46

At the request of Mr. ANDREWS, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of Senate Concurrent Resolution 46, a concurrent resolution to express the sense of the Congress regarding Americans missing in Southeast Asia.

SENATE RESOLUTION 81

At the request of Mr. ARMSTRONG, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Resolution 81, a resolution to establish regulations to implement television and radio coverage of proceedings of the Senate.

SENATE RESOLUTION 187—REGARDING FURTHER MEASURES FOR THE PREVENTION OF AIRCRAFT PIRACY

Mr. HATCH submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 187

Whereas international aircraft piracy has become an outrageous tool of terrorists groups for achieving unconscionable demands;

Whereas international airline hijackings jeopardize the lives, health, and safety of the passengers and crew, of whatever nationality;

Whereas certain governments have, on occasion, provided sanctuary or asylum to airline hijackers;

Whereas the granting of sanctuary must be viewed as an irresponsible sovereign act insofar as such act may encourage further aircraft piracy and terrorism; and

Whereas terrorist acts which result or threaten to result in injury or death to civilians can never be condoned, regardless of the motive or grievance upon which they rest: Now, therefore be it

Resolved, That it is the sense of the Senate that the United States Government should strive to eliminate acts of terrorism across international boundaries by exerting all possible means to:

(1) suspend all commercial air service between Athens, Greece, and the United States until such time as the Athens International Airport is considered safe and secure by the Federal Aviation Administration in consultation with the International Federation of Airline Pilots Association, and the International Air Transport Association; reinstitute the practice of placing law enforcement personnel on board international commercial flights; confer all necessary authority upon the Federal Aviation Administration for the purpose of combating aircraft piracy;

(2) call upon the governments of Canada, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland to consider taking immediate action under the Bonn Anti-Hijacking Declaration to cancel all commercial flights to and from any country which provides assistance and safe-haven to those engaged in violent acts against air transport;

(3) encourage reestablishment of the death penalty by those allied governments which have abolished such penalty, if death occurs from the aircaft piracy or attempted hijacking;

(4) consider any and all measures that the United States Government shall deem appropriate to be applied against those governments involved in state-supported terrorism.

SENATE RESOLUTION 188—RECOGNIZING THE CONTRIBUTIONS OF PAUL MELLON

Mr. MATHIAS (for himself and Mr. PELL) submitted the following resolution; which, by unanimous consent, was ordered held at the desk until the close of business on June 27, 1985:

S. RES. 188

Whereas Paul Mellon retired as Chairman and Trustee of the National Gallery of Art on May 3, 1985;

Whereas the service of Paul Mellon to the Gallery and to the Nation is recognized as forty-seven years of purposeful and disinterested stewardship;

Whereas Paul Mellon has made a lifetime commitment to upholding and enriching the high standards established for the Gallery by its Founder, Andrew W. Mellon;

Whereas he has done so through a remarkable combination of unswerving insistence on the highest possible quality in all things, a dedicated scholarship tempered by imagination and vision, and disciplined allocation of private resources for the public benefit;

Whereas his many benefactions in conjunction with his wise management and administration have resulted in the National Gallery's current standing as a magnificent and vibrant national resource;

Whereas Paul Mellon has demonstrated his commitment to the humanities after his graduation from Yale University and Cambridge University by enrolling in the celebrated course of study of "Great Books" at St. John's College in Annapolis, Maryland;

Whereas Paul Mellon has established the Yale Center for British art, which enhances the opportunity for both academic study and public enjoyment of art, and which also illustrates the relationship between British art and the evolution of indigenous art in America;

Whereas Paul Mellon has recognized that horses and horsemanship have not only stimulated artistic expression, but constitute an art form in which he has made himself a master;

Whereas his gifts and guidance have contributed so significantly to boost the human spirit, that his rewards should include a continued life of health and intellectual challenge; and

Whereas in sum Paul Mellon is recognized as a bold and inspired collector, humanist and philantropist who has made extraordinary and lasting contributions to the spirit and well-being of this Nation, thereby enriching the quality of life for his fellow citizens: Now, therefore, be it

Resolved, That the United States Senate recognizes the personal commitment and contribution of Paul Mellon to the elevation of the quality of life in the United States of America by the example of his own life and by his consistent support of the arts and the humanities;

SEC. 2. A copy of this resolution shall be delivered to Paul Mellon by the Secretary of the Senate as an expression of the appreciation of the American people.

Mr. MATHIAS. Mr. President, on behalf of the distinguished senior Senator from Rhode Island and myself, I send to the desk a resolution commending Paul Mellon for his public service. I ask unanimous consent that it may be held at the desk until tomorrow and that it may be available for cosponsors during that period of time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENTS SUBMITTED

SIMPLIFICATION OF IMPUTED INTEREST PROVISIONS

CHAFEE AMENDMENT NO. 423

Mr. CHAFEE proposed an amendment which was subsequently modified, to the bill (H.R. 2475) to amend the Internal Revenue Code of 1954 to simplify the imputed interest rules of sections 1274 and 483, and for other purposes; as follows:

On page 36, on line 12, after the word "contracts" insert the following: "and (iii) which are owned and operated by an organization described in section 501(c)(3).

HEINZ (AND OTHERS) AMENDMENT NO. 424

Mr. HEINZ (for himself, Mr. CHILES and Mr. HAWKINS) proposed an amendment to the bill H.R. 2475, supra; as follows:

AMENDMENT NO. 424

On page 42, between lines 15 and 16, insert the following:

(3) SUBSTANTIAL OWNERSHIP REQUIREMENT NOT TO APPLY TO CERTAIN FACILITIES.—The requirement of subparagraph (B) of section 7872(g)(4) of the Internal Revenue Code of 1954 (as added by section 4) shall not apply to any qualified continuing care facility—

(A) in existence before July 1, 1985, or

(B) for which a binding contract to build such facility was entered into before July 1, 1985.

For purposes of this paragraph, the term "qualified continuing care facility" has the meaning given to such term by section 7872(g) of such Code (as added by section 4).

HEINZ AMENDMENT NO. 425

Mr. HEINZ proposed an amendment to the bill H.R. 2475, supra; as follows:

AMENDMENT NO. 425

On page 42, between lines 15 and 16, insert the following:

(3) LIFETIME RESIDENCY GUARANTEE NOT TO APPLY TO CERTAIN LOANS.—The requirement of subparagraph (A) and of clause (ii) of subparagraph (B) section 7872(g)(3) of the Internal Revenue Code of 1954 (as added by section 4) shall not apply to loans made before January 1, 1986.

DANFORTH AMENDMENT NO. 426

Mr. DANFORTH proposed an amendment to the bill H.R. 2475, supra; as follows:

On page 40, Section 6 of the Bill is amended by redesignating Section 6 as Section 7 and inserting after Section 5 the following new section:

"SEC. 6. SECTION 7872 OF THE INTERNAL REVENUE CODE SHALL NOT APPLY TO NON-LOAN PAYMENTS TO CERTAIN RESIDENTIAL HOUSING FACILITIES FOR THE ELDERLY.

Section 7872 of the Internal Revenue Code of 1954 (relating to treatment of loans with below market interest rates) is amended by inserting after subsection (h) the following new subsection:

"'(i) CERTAIN PAYMENTS ARE NOT LOANS.—For purposes of this section, payments made to an independent living facility for the elderly by a payor who is an individual at least 65 years old shall not be treated as loans provided—

"'(1) The independent living facility is designed and operated to meet some substantial combination of the health, physical, emotional, recreational, social, religious and similar needs of persons over the age of 65;

"'(2) In exchange for the payment, the payor obtains the right to occupy (or equivalent contractual right) independent living quarters located in the independent living facility;

"'(3) The amount of the payment is equal to the fair market value of the right to occupy the independent living quarters;

"'(4) Upon leaving the independent living facility, the payor is entitled to receive a payment equal to at least 75 percent of the fair market value at that time of the right to occupy the independent living quarters, the timing of which payment may be contingent on the time when the independent living facility is able to locate a new occupant for such quarters; and

"'(5) The excess, if any, of the fair market value of the independent living quarters at the time the payor leaves such quarters (less a reasonable amount to cover costs) over the amount paid to the payor is used by an organization described in section 501(c)(3) to provide housing and related services for needy elderly persons.'"

Section 6 is further amended by inserting after subsection (e) the following new subsection:

"(f) SECTION 6.—The amendment made by Section 6 shall apply as if included in the amendments made by Section 172(a) of the Tax Reform Act of 1984."

CHAFEE AMENDMENT NO. 427

Mr. CHAFEE proposed an amendment to the bill H.R. 2475, supra; as follows:

On page 38, between lines 23 and 24, insert the following:

(c) Exclusion from Income of Certain Passive Investment Income of Individuals 65 and Over.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to exclusions from income) is amended by redesignating section 134 as section 135 and by inserting after section 133 the following new section:

"SEC. 134. CERTAIN INVESTMENT OF INDIVIDUALS 65 AND OVER.

"(a) GENERAL RULE.—In the case of an individual who has attained the age of 65 before the close of any taxable year, gross income shall not include any investment income of such individual for such taxable year to the extent that such income does not exceed the product of—

"(1) $90,000, multiplied by

"(2) the applicable Federal rate (determined under section 1274(d)) in effect as of the close of the calendar year with or within which such taxable year ends.

"(b) INVESTMENT INCOME.—For purposes of this section, the term 'investment income' has the meaning given such term by subparagraph (B) of section 163(d)(3).

"(c) MARRIED INDIVIDUALS.—For purposes of this section, married individuals shall be treated as 1 individual.".

(2) CONFORMING AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking out the item relating to section 134 and inserting in lieu thereof the following new items:

"SEC. 134. Certain investment income of individuals 65 and over.

"SEC. 135. Cross references to other Acts.".

On page 38, line 24, strike out "(c)" and insert in lieu thereof "(d)".

On page 42, between lines 15 and 16, insert the following:

(3) EXCLUSION FROM INCOME.—The amendments made by section 4(c) shall apply to taxable years beginning after the date of enactment of this Act.

MELCHER AMENDMENT NO. 428

Mr. MELCHER proposed an amendment to the bill H.R. 2475, supra; as follows:

On page 25, line 6, strike the ".", and insert the following: "; or, any debt instrument given exclusively in consideration for the sale or exchange by a qualified person of qualified property, if the stated principal amount of such instrument does not exceed $10,000,000."

On page 25, insert the following paragraphs between line 9 and line 10: "(3) Qualified Property—For purposes of this section, the term "qualified property" means—

(A) Real property which was used as a farm (within the meaning of section 6420 (c)(2)) at all times during the three year period ending on the date of sale or exchange, together with any tangible personal property which was used in the active conduct of the trade or business of farming on such farm and is sold in connection with the sale of such farm, but only if such real property and tangible personal property is sold or exchanged for use in the active conduct of the trade or business of farming on such farm by the transferee of such property, or

(B) Real property used in an active trade or business within the meaning of section 355; provided, however, that the holding of real property for rental shall not be treated as an active trade or business and real property held for rental shall not be treated as qualified property.

(4) QUALIFIED PERSON.—For purposes of this section, the term "qualified person" means—

(A) A person who—

(i) is an individual, estate, or testamentary trust,

(ii) is a corporation which immediately prior to the date of the sale or exchange is owned directly or indirectly by 35 or fewer individuals, or

(iii) is a partnership which immediately prior to the sale or exchange is owned by 35 or fewer individuals. For purposes of this paragraph, direct and indirect ownership of a corporation or partnership shall be determined under rules similar to section 544.

On page 26, line 3, strike the ".", and insert the following: "; or, $2,000,000 in the case of any qualified debt instrument given exclusively in consideration for the sale or exchange by a qualified person or qualified property."

DURENBERGER (AND OTHERS) AMENDMENT NO. 429

Mr. DURENBERGER (for himself, Mr. ABDNOR, Mr. NICKLES, Mr. JOHNSTON, Mr. DODD, Mr. DECONCINI, Mr. DOMENICI, Mr. ZORINSKY, Mr. INOUYE, Mr. DIXON, Mr. BOSCHWITZ, Mr. WILSON, Mr. LEAHY, and Mr. WALLOP) proposed an amendment to the bill H.R. 2475, supra; as follows:

On page 26, strike lines 1 through 3 and insert:

"(2) QUALIFIED AMOUNT.—The term 'qualified amount' means $2,000,000,"

METZENBAUM AMENDMENT NO. 430

Mr. METZENBAUM proposed an amendment to amendment No. 429 proposed by Mr. DURENBERGER (and others) to the bill H.R. 2475, supra; as follows:

At the end of the pending amendment, add the following:

(d) IMPUTATION RATE INCREASED TO 110 PERCENT IN CASE OF SALE-LEASEBACK OR WHERE PURCHASE PRICE EXCEEDS $25,000,000.—Section 1274 of such Code (relating to determination of issue price in the case of certain debt instruments issued for property) is amended by adding at the end thereof the following new subsection:

"(f) 110 PERCENT RATE WHERE SALE-LEASEBACK INVOLVED OR PURCHASE PRICE EXCEEDS $25,000,000.—

"(1) IN GENERAL.—In the case of any debt instrument to which this subsection applies, the discount rate used under subsection (b)(2)(B) of section 483(b) shall be 110 percent of the applicable Federal rate.

"(2) LOWER DISCOUNT RATES SHALL NOT APPLY.—Subsection (e) and section 1274A shall not apply to any debt instrument to which this subsection applies.

"(3) DEBT INSTRUMENTS TO WHICH THIS SUBSECTION APPLIES.—This subsection shall apply to any debt instrument given in consideration for the sale or exchange of any property if—

"(A) pursuant to a plan, the transferor or any related person leases such property after such sale or exchange, or

"(3) the purchase price of such property exceeds $25,000,000.

"(4) AGGREGATION RULES.—For purposes of this subsection, all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as one sale or exchange.".

MELCHER AMENDMENT NO. 431

Mr. MELCHER proposed an amendment to the bill H.R. 2475, supra; as follows:

On page 25, line 6, strike the ".", and insert the following: "; or, any debt instrument given exclusively in consideration for the sale or exchange by a qualified person of qualified property," if the stated principal amount of such instrument does not exceed $9,000,000.

On page 25, insert the following paragraphs between line 9 and line 10:

"(3) QUALIFIED PROPERTY.—For purposes of this section, the term qualified property means—

"(A) Real property which was used as a farm (within the meaning of section 6420(c)(2)) at all times during the three year period ending on the date of sale or exchange, together with any tangible personal property which was used in the active conduct of the trade or business of farming on such farm and is sold in connection with the sale of such farm, but only if such real property and tangible personal property is sold or exchanged for use in the active conduct of the trade or business of farming on such farm by the transferee of such property, or

"(B) Real property used in an active trade or business within the meaning of section 355; *provided, however*, that the holding of real property for rental shall not be treated as an active trade or business and real property held for rental shall not be treated as qualified property.

"(4) QUALIFIED PERSON.—For purposes of this section, the term 'qualified person' means—

"(A) A person who—

(i) is an individual, estate, or testamentary trust,

"(ii) is a corporation which immediately prior to the date of the sale or exchange is owned directly or indirectly by 35 or fewer individuals, or

(iii) is a partnership which immediately prior to the sale or exchange is owned by 35 or fewer individuals. For purposes of this paragraph direct and indirect ownership of a corporation or partnership shall be determined under rules similar to Section 544.

On page 26, line 3, strike the "." and insert the following: "; or, $2,000,000 in the case of any qualified debt instrument given exclusively in consideration for the sale or exchange by a qualified person of qualified property."

NOTICES OF HEARINGS

COMMITTEE ON SMALL BUSINESS

Mr. WEICKER. Mr. President, I would like to announce a change in the location of the Senate Small Business Committee's July 3, 1985, hearing on the impact of tax reform proposals on small business. The hearing will now be held at the McCormick State Office Building, room 2100, Boston, MA. It was originally scheduled to take place at the John F. Kennedy Federal Office Building in Boston. For further information, please call Stewart Hudson of the committee staff, at 224-5175 or Jim Brenner of Senator KERRY's staff at 224-2742.

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION

Mr. WALLOP. Mr. President, I would like to announce for the information of the Senate and the public that the Subcommittee on Public Lands, Reserved Water and Resource Conservation of the Committee on Energy and Natural Resources has added an additional bill which the subcommittee will receive testimony on at its hearing scheduled for Friday, July 12, at 9:30 a.m. in room SD-366 in the Dirksen Senate Office Building in Washington, DC.

The additional bill is S. 1208, to authorize the Secretary of the Interior to convey certain land located in the State of Maryland to the Maryland National Capital Park and Planning

Commission. As previously announced, the subcommittee will also receive testimony on S. 720, to establish a permanent boundary for the Acadia National Park in the State of Maine, and for other purposes.

For further information regarding this hearing, please contact Tony Bevinetto or Patty Kennedy at (202) 224-0613.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MATHIAS. Mr. President, I wish to announce that the Committee on Rules and Administration will meet at 9:30 a.m., on Thursday, July 18, in SR-301, Russell Senate Office Building, to receive testimony on the equities of pooling public events of news interest in the Senate. The cost allocation of the pool for the 1985 Presidential Inaugural Ceremonies in the Capitol will be the point of departure.

Organizations and individuals who wish to testify or to submit a statement for the hearing record are requested to contact John Childers, staff director of the Rules Committee, at 224-0299.

Mr. President, I wish to announce that at 9:30 a.m., on Wednesday, July 24, 1985, the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, to receive testimony on four bills relating to the Smithsonian Institution.

S. 581 authorizes the construction of new base camp facilities for the Fred Lawrence Whipple Observatory in Amado, AZ, and the repair and replacement of laboratory and dormitory facilities at the Smithsonian Tropical Research Institute in Panama. The estimated cost of the Whipple Observatory project is $4.5 million, while the estimated cost of the Tropical Research Institute project is $11.1 million. S. 582 authorizes the appropriation of $793,000 for the National Museum Act, under which the Smithsonian awards grants to improve the quality of museum operations throughout the Nation. S. 583 authorizes the appropriation of $11.5 million for construction of additional facilities for the Cooper-Hewitt Museum in New York City, NY. Since the appropriated funds represent about one-half of the total construction cost, the balance is to be raised from private funds. S. 1311 authorizes the Federal Aviation Administration to lease to the Smithsonian Institution, without compensation, up to 100 acres of land at Dulles International Airport. The bill also authorizes the appropriation of $45 million for the construction on such land of the first of a planned total of four aircraft hanger-type buildings for the exhibit of very large aircraft and spacecraft by the National Air and Space Museum.

For further information on this hearing, please contact Ron Hicks of the Rules Committee staff at 224-0290.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Subcommittee on the Oversight of Government of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Wednesday, June 26, 1985, in order to conduct a hearing on the Enforcement of the Employee Retirement Income Security Act [ERISA].

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

COMMITTEE ON THE JUDICIARY

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, June 26, 1985, in order to receive testimony concerning the nomination of Louis L. Stanton, to be U.S. district judge for the southern district of New York.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, June 26, to conduct a closed hearing on the development of a national intelligence strategy.

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

SUBCOMMITTEE ON STRATEGIC DEFENSE AND SUBCOMMITTEE ON DEFENSE

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Strategic Subcommittee of the Committee on Armed Services, and the Defense Subcommittee of the Committee on Appropriations be authorized to meet during the session of the Senate on Wednesday, June 26, to hold a joint hearing to consider Soviet strategic force developments.

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

SUBCOMMITTEE ON INTERGOVERNMENTAL AFFAIRS

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Subcommittee on Intergovernmental Affairs of the Committee on Governmental Relations be authorized to meet during the session of the Senate on Wednesday, June 26, 1985, in order to conduct a hearing on the deductibility of state, and local taxes.

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

SUBCOMMITTEE ON AVIATION

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Subcommittee on Aviation of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on Wednesday, June 26, 1985, in order to conduct a meeting on S. 1017, and S. 1110, dealing with the transfer of National and Dulles Airports.

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

SUBCOMMITTEE ON MANPOWER AND PERSONNEL

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Subcommittee on Manpower and Personnel of the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, June 26, to hold a hearing on S. 1301, the National Security Protection Act of 1985.

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

SUBCOMMITTEE ON CHILDREN, FAMILY, DRUGS AND ALCOHOLISM

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Subcommittee on Children, Family, Drugs and Alcoholism of the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Wednesday, June 26, to mark up S. 140, Children's Justice Act.

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

ADDITIONAL STATEMENTS

TRANSBORDER DATA FLOWS

● Mr. INOUYE. Mr. President, in the past decade, much attention has been focused worldwide on the range of issues relating to transborder data flow, or the movement of information across international borders. In addition to imposing restrictions on the transfer of information, many nations are erecting economic barriers which effectively eliminate choice in the marketplace. Such restrictions could have far-reaching negative consequences for our economic well-being. To protect our interests and promote the principles of free trade, we must press for international negotiations in transborder data flow issues, as currently there are no globally recognized agreements to prohibit barriers to information-based services.

The Wall Street Journal recently printed an excellent article on this issue by Mr. Walter F. O'Connor, vice chairman, international, at Peat Marwick. Mr. President, I ask that it be printed in the RECORD.

The article follows:

[From the Wall Street Journal, June 21, 1985]

REMOVE WORLD BARRIERS AND LET DATA FLOW

(By Walter F. O'Connor)

The Common Market's electronic information network lets data terminals in member countries gain access to information in a variety of fields. But Euronet, as it is called, excludes foreign vendors using computers outside of Europe, and imposes much higher user fees for non-Common Market data processors, regardless of where their computers are located. The Common

Market is not alone in such discriminatory information policy. The ability to transmit and process information across national borders is quickly becoming the sine qua non of operating in the new global economic environment, and as the reliance on information has grown, so has the protectionist threat to its orderly and unrestrained transfer.

Today, a broad array of restrictions on telecommunications, data processing and information services is beginning to show up on the books of some three dozen countries. This should not continue. Our rapidly shrinking world demands that the major trading nations agree on a set of rules for liberal trade in information.

The chief U.S. victims of the protectionist information policies of other nations are the most vigorous and promising industries—business services, high technology and telecommunications. In a report issued last year, the National Telecommunications and Information Administration concluded that emerging restrictions on transborder data flow are eroding U.S. competitiveness in these industries, with "potentially catastrophic" long-term consequences for the economy. More recently, a Conference Board survey of U.S. multinationals reported that 86% of the respondents expressed "serious concern" that any future TBDF restrictions could hurt their international operations.

While it is difficult to translate the actual damages into dollars, the Office of the U.S. Trade Representative claims that such restrictions have forced many U.S. companies to sacrifice some competitve advantage in order to stay in the protected markets. One U.S. company, for instance, estimates that the need to duplicate data-bases and other systems in Canada raised its operating costs by $150,000 a year. Another has placed the incremental cost of West Germany's protectionist telecommunications policy at $200,000 a year.

Most businesses grin and bear it. Some, however, respond by going elsewhere. A major U.S. computer equipment manufacturing and services company, for example, moved to Belgium after West German restrictions on TBDF and the replacement of all leased telephone lines with volume-sensitive packet switching effectively eliminated its economies of scale.

Likewise, Brazil's requirement that companies use locally made equipment and software has forced some foreign firms to invest heavily in equipment incompatible with their world-wide electronic data-processing systems. Canada's insistence that only Canadian satellites be used for data transmissions lets it dictate data-transmission routing, which can raise costs and give certain companies an unfair advantage. The list goes on and on.

Nor are higher operating costs, reduced efficiency and loss of competitiveness the only problems. Privacy and the integrity of proprietary information become issues when Taiwan, among others, insists on monitoring all transmissions in the name of national security.

Some U.S. business executives fear that the growth of such restrictions could make it impossible to do business in certain countries. In fact, a number of companies have already resorted to couriers and telex transmissions in order to get data out of countries where government regulations effectively prohibit direct EDP links.

Unlike most of our trading partners, the U.S. has no public telecommunications monopoly—let alone one with the power to make national policy. Thus, what is lacking is not merely coordination of existing information policy, but a central decisionmaking authority in an area that desperately cries out for decisions.

Without a clear and comprehensive information policy, U.S. companies will continue to operate at a growing competitive disadvantage. Given the already alarming growth of the U.S. trade and balance-of-payments deficits, any further weakening of the U.S.'s international economic position will only raise the ante still further beyond its means.

It is a good sign that the Reagan administration will include high-tech and services industries in the general trade talks expected next year. Computer- and telecommunications-based services deserve special attention. Telecommunications is to trade in services what the transportation industry is to trade in goods.

The OECD ministers' adoption, on April 10, of the Declaration on Transborder Data Flows is an important first step toward open and unimpeded information flows. It is now up to the Organization of Economic Cooperation and Development and other multilateral organizations to move quickly to develop specific rules and guidelines.

Like protectionism in other industries, data barriers hurt everyone by raising costs, lowering efficiency, and eroding technical quality for foreign and domestic users alike. They reduce competitiveness in all industries where communications and information have become major competitive factors. And they can impose severe constraints on a global marketplace in which the forces of integration are rapidly gaining momentum.

Without swift and decisive action on this crucial trade area, the U.S. and our major trading partners risk further decay in the liberal trading system we worked so hard and so long to maintain.●

REALIZING PRODUCTIVE POTENTIAL—III

● Mr. HEINZ. Mr. President, today, in the third of a continuing series on the state and future of American industry, I would like to begin examining the opinions of those that deserve the most attention: the American people. Here, in Washington, we listen to many views—that of journalists, special interests, academics, associates. Yet we often lose sight of the opinions of the American public, the people we serve.

For this reason, I would like to present to Senators the results of a recent public opinion poll. The bimonthly magazine, Public Opinion, in its April/May issue, assembled the results of polls which essentially asked the public, "What do you think should be done about import competition?"

The first question settled the debate between free trade and protection. The survey, when broken down by region, found that the majority favored some kind of protection of American jobs and industry. In the Northeast, the South, the industrial Great Lakes region, and the Central United States, 54 to 60 percent of all those polled favored some sort of protection. In the same regions, only 30 to 31 percent felt that the United States should work to encourage free trade. Only in the West were the figures significantly different. Here, only 48 percent tended toward protection in some form, while 40 percent advocated an open, liberal trading system.

By political party, the poll obtained similar results. Among both Republicans and Independents, 50 percent favored some form of protection and 37 percent opposed. Democrats were somewhat stronger: 64 percent versus 25 percent. Finally, labor unions also supported the same position; 63 percent of union members were for protection, 26 percent against. Nonunion members were less aggressive, 53 percent to 35 percent.

When the respondents were separated by income and by education, the results were markedly different. Only 43 percent of those who had incomes over $40,000 wanted to protect American jobs and industry, and a significant 50 percent supported free trade. Likewise, only 37 percent of college graduates wanted any kind of trade barriers, and a whopping 53 percent were for open trade. At the other end of the spectrum, 63 percent of those with incomes under $10,000 wanted import relief, and among less than high school graduates, 59 percent also wanted the same. For both of the latter categories, only 17 percent desired a free-trading system.

In the aggregate across the Nation, however, the final results were 65 percent for protection of American jobs and industry, 33 percent for the encouragement of free trade.

Following similar lines, the second question asked "Do you think it was a good or bad idea to end all restrictions on Japanese autos coming into the United States?" Again, the American public took a position in support of American industry. Sixty percent were against Reagan's recent decision to end restrictions on Japanese automobile imports, and the remaining 40 percent felt that his actions were a positive measure.

Finally, when consumers were asked whether there should be any restrictions on foreign imports in order to protect American industry and jobs, an overwhelming 62 percent replied "yes," in contrast to the 28 percent who felt that there "should be no restrictions to permit widest choice and lowest prices for consumers."

From a general point of view at least, Americans seem to favor some sort of protection of American industry and jobs. Yet as the survey became more specific, it became clear that American attitudes are more complex, which I will discuss in the coming days.●

RELIGIOUS LEADERS ON IMMIGRATION REFORM

● Mr. KENNEDY. Mr. President, this week the leaders of the major religious communities in the United States joined together in issuing a statement on the goals we should seek in achieving immigration reform.

In reviewing the several legislative proposals that have come before the Congress in recent years, and which are now pending in the Senate, these leaders of the Protestant, Catholic, and Jewish religious communities, outline some important principles which should guide our actions as we move forward with this legislation.

They are the principles of justice and fairness, of equity and equality, and, most important of all, tolerance among all peoples.

Mr. President, if we are to achieve genuine immigration reform, and not merely immigration restriction, I believe the principles enunicated this week by these religious leaders should weigh heavily as we debate the various immigration proposals before us.

I highly commend their statement to the attention of my colleagues in the Senate, as well as to the Members of the House of Representatives, and I ask that it be printed at this point in the RECORD.

The statement follows:

STATEMENT OF RELIGIOUS LEADERS ON IMMIGRATION REFORM

The Congress and the nation have re-initiated consideration of legislative changes to our immigration laws and policies. This is an important task, and should be addressed thoughtfully and with a keen sense of justice and fairness. The manner in which the coming debate is approached can be seen as a test of the ideals and traditions which are our country's proud foundation. Our attitudes toward all marginalized persons within our communities can be considered on trial.

The historic volatility of this issue has been exacerbated in the recent past by those who would seek to create divisions within our society between races, classes, and cultures. The utmost caution and discretion must be exercised by those organizations and individuals involved in the debate to guard against this possibility and to minimize the potential for backlash against the foreign-born.

An essential component of immigration reform is the regularization of the status of those without valid immigration documents who have been productive residents of this country. It should be emphasized that the fates of some three to six million people are at issue many of whom have already been well integrated into our society. Massive deportation is not an option, either practically or morally. Nor is an option the perpetuation of an undocumented subclass subject to exploitation. The degree of exploitation of undocumented workers which we have witnessed and the effects that the continued presence of a large number of undocumented persons have on U.S. society have led us to conclude that a legalization program—and a comprehensive one—is the avenue upon which we should be traveling.

It should be recognized that such a proposition is not only humanitarian, but is also a matter of proper self-interest. This population should be removed from the shadows of undocumented status and placed under the protection and rule of law. Such a step should and must take place without the precondition of the establishment of other reform or control measures and in a manner which encourages the fullest possible participation on the part of qualified individuals.

Proposals to better manage immigration flows must be part of any reform effort. In considering such proposals, attention should be focussed not only upon enforcement, but also on the effects which they may have upon the rights of the citizenry and others resident in the U.S. If the Congress should enact penalties against employers who hire undocumented workers, it is our firm belief that there exists a concurrent responsibility to enact mechanisms for redress of discrimination which may flow from the proposal. If the Congress should provide additional immigration enforcement authority and resources to the federal government, it should also delineate clearly the purposes and limits of such authority to guard against abuse.

Family reunion has appropriately been the cornerstone of our immigration laws and policies since their beginning, and family unity remains an important religious principle and American tradition. This should continue to be reflected in our immigration laws, and the current reform effort should maintain this family emphasis.

Before contemplating proposals to bring in additional temporary workers into the United States, the Congress should enact legislation which protects the human and legal rights of our domestic migrant labor force, and should also consider the possible adverse affects that such a program may have on the wages and working conditions of the domestic labor force similarly employed.

While refugee admission and asylum issues are appropriately independent of the current debate, the Congress must recognize the precarious situation in the United States of large numbers of Haitian, Cuban, and now Salvadoran and other nationals, by their inclusion within reform legislation or through separate legislative proposals presently pending in the Congress.[1]

Finally, there is a special role within the context of the immigration debate for the religious community to promote tolerance among all peoples. We encourage religious bodies throughout the country to commit with us to endeavor to be people of vision where insight is needed, to heal where there is division and hurt, and ever to be faithful stewards of our religious traditions and beliefs.

Bishop PHILIP R. COUSIN,
(African Methodist Episcopal Church) President, National Council of Churches of Christ in the U.S.A.

Bishop ANTHONY J. BEVILACQUA,
Bishop of Pittsburgh, Chairman, Ad Hoc Committee on Migration and Tourism, National Conference of Catholic Bishops.

Rabbi ALEXANDER SCHINDLER,
President, Union of American Hebrew Congregations.

Rev. Dr. ARIE BROUWER,
General Secretary, National Council of Churches of Christ in the U.S.A.

Rev. Msgr. DANIEL F. HOYE,
General Secretary, United States Catholic Conference.

Rabbi DAVID SAPERSTEIN,
Director, Religious Action Center of Reform Judaism.

Rev. WILLIAM K. DUVAL,
Chairman, Immigration and Refugee Program Committee, Church World Service, National Council of Churches of Christ in the U.S.A.●

[1] See H.R. 23 (Cuban-Haitian Adjustment Act) and S. 377 and H.R. 822 on Salvadorans.

INDUCTION OF MARGARET WADE INTO THE BASKETBALL HALL OF FAME

● Mr. COCHRAN. Mr. President, an outstanding Mississippian will be inducted into the Basketball Hall of Fame in Springfield, MA, on July 1, 1985. Coach Margaret Wade, who led the Delta State University Lady Statesmen to three consecutive AIAW national championships, will be among the first three women to be enshrined in the hall of fame.

Miss Wade is a resident of Cleveland, MS, home of Delta State University. In her 6 years at the helm of the Lady Statesmen, Coach Wade compiled a record of 157 wins and 23 losses. Under her leadership, Delta State won three national championships—in 1975, 1976, and 1977. She led her teams to four State championships, three regional championships, and saw her entire starting lineup win All-American honors.

In 21 years as a high school coach—19 at Cleveland, MS, and one each at Marietta, MS, and Belden, MS—Coach Wade compiled a mark of 453 wins, 89 defeats, and 6 ties. Her 27-year coaching record is 610 wins, 112 losses, and 6 ties, plus a 73-70 Delta State victory over the People's Republic of China in 1976.

Coach Wade is a graduate of Delta State and earned a masters degree from the University of Alabama. She was a member of the physical education faculty at Delta State from 1959 until her retirement in 1982. Her career has been one of an extremely devoted educator.

A native of McCool, MS, Coach Wade was an outstanding athlete in her own right in basketball, tennis, soccer, tumbling, and track. I think it is particularly interesting that she was

a starter on the Delta State women's team in the early 1930's when it was decided to discontinue the program, because basketball was considered to be, in the words of the institution's president at the time, "* * * too rough for young ladies." Forty years later when Delta State decided to reinstate women's intercollegiate basketball, Margaret Wade was tapped to be head coach. Not only did she lay to rest forever any doubt about women's ability to play the game, she also established a record and reputation as a coach and recruiter that have made her a legend in her own time.

In 1978, in recognition of her contributions to women's basketball, the Margaret Wade Trophy was created and is presented annually to the Nation's most outstanding woman collegiate basketball player.

Mr. President, I congratulate Coach Wade on her many achievements. She has been a major influence in the development of modern women's basketball. More importantly, she has been an outstanding mentor, inspiration, and example for the players and students who have been fortunate enough to be exposed to her no nonsense, yet gracious style of coaching and teaching.

Coach Margaret Wade is without question Mississippi's "First Lady of Basketball." She has brought great distinction to herself, to Delta State University, to the State of Mississippi, and to the game of basketball.

It is a fitting tribute to Coach Wade and to her outstanding career that she is now being recognized as one of America's "First Ladies of Basketball" through her induction into the Basketball Hall of Fame.●

THE 100TH ANNIVERSARY OF THE INCORPORATION OF PEOPLES NATURAL GAS CO.

● Mr. HEINZ. Mr. President, I rise to commemorate the incorporation of Peoples Natural Gas Co. of Pittsburgh 100 years ago today.

Peoples Natural Gas was the first natural gas company chartered under an act passed by the Pennsylvania General Assembly in May 1885. Since that time, Peoples has grown to serve 320,000 customers in 16 western Pennsylvania counties.

Today, Mr. President, I say "happy hundredth birthday" to Peoples Natural Gas. I also say thank you to Mr. Jack B. Hoey and Mr. Frank J. Lydick, president and senior vice president of Peoples Natural Gas, to all the other officers and to the 1,400 employees and 600 retirees who are responsible for continuing Peoples' century old tradition of service to western Pennsylvania.●

CONGRESSIONAL CALL TO CONSCIENCE VIGIL FOR SOVIET JEWRY

● Mr. QUAYLE. Mr. President, today I am pleased to participate in the Congressional Call to Conscience Vigil for Soviet Jewry. Over recent years the oppression of Soviet Jews has increased to alarming levels. The recent surge of state sponsored anti-semitism equates judaism with racism. Likewise, the study of Jewish culture is being considered "anti-Soviet propaganda."

Jewish emigration from the Soviet Union has diminished to historically low levels. In 1979, 51,000 were allowed to emigrate. Last year, the number fell below 1,000. Those who attempt to leave have been threatened by confinement in psychiatric hospitals, dismissal from their jobs and internal exile.

Members of the Jewish community have been singled out as targets for harassment. One such case is that of Woodford and Irina McClellan. A professor of Russian history at the University of Virginia, Woodford McClellan met his Russian wife in 1972 during a tour of the Soviet Union. After their marriage, 2 years later, Soviet authorities promised Mrs. McClellan would be allowed to emigrate to the United States.

Today, the McClellans have not seen each other for over 10 years and have the unfortunate distinction of being the longest standing United States-Soviet binational marriage case.

The McClellan's plight has not only drawn the attention of Secretary of State Schultz, but also that of President Reagan. Nevertheless, the two remain separated and Soviet authorities seem intent on prolonging their suffering.

Out of compassion for the McClellans and as Americans enjoying the rights of free men, we bear a responsibility to speak out against this tragedy. Our voices must send a clear message to Moscow that Soviet human rights violations will not be ignored by the American people.●

THE CHILDREN'S JUSTICE ACT

● Mr. D'AMATO. Mr. President, I rise today in recognition of outstanding legislation, the Children's Justice Act, sponsored by my distinguished colleague, Senator HAWKINS. Senator HAWKINS has labored diligently to develop this legislation that addresses the nightmare confronting our children and families.

This legislation promotes the healthy and safe development of our children. I commend her for holding hearings on this most important subject and for developing this bill that will provide protection for our children.

Included in her bill is a provision requiring States to provide for the handling of child sexual abuse cases in a manner that reduces trauma to the child victim. The administrative procedures of this section include: First, the establishement of interdisciplinary teams of child abuse professionals, such as law enforcement officers, child protective services workers, prosecutors, child advocates, mental health professionals, and medical personnel for handling child sexual abuse cases: second, coordinated court proceedings for handling intrafamily child sexual abuse; and third, providing for specialized training of law enforcement, legal, judicial, and child welfare personnel to deal with child sexual abuse victims. These are only a few of the many aspects of this bill that will prove beneficial to our children and families suffering from the fear of child sexual abuse.

The Children's Justice Act is similar to the National Children Protection Act I have introduced. Both bills address the serious crime of child sexual abuse. The National Child Protection Act (S. 142) promotes national guidelines to assure the safe and healthy development of our children. The Secretary of the U.S. Department of Health and Human Services would work with a panel of 12 experts and representatives in developing guidelines for day care centers. The Children's Justice Act (S. 140) has a similar provision: Each State would be required to have a multidisciplinary task force of child abuse professionals that would review and make recommendations regarding the priorities within their State to improve its response to sexual child abuse cases.

The National Child Protection Act promotes uniform data gathering on the incidence and reports of child sexual abuse, whereas the Children's Justice Act requires the Uniform Crime Reports Program of the FBI to collect and publish data that indicates a description of the offense, the age of the victim, and the relationship of the victim to the offender.

Moreover, the National Child Protection Act and the Children's Justice Act are designed to combat child sexual abuse. Both bills are a part of our continuing effort to encourage States to send a message to child molesters. These criminals must know that we do not, and will not, condone, nor will we tolerate, the molestation of our children in day care centers or anywhere else.

To make certain that these criminals get the message and the punishment that they deserve, I believe we need stricter penalties for those convicted of child sexual abuse. Stricter penalties are the only way to make certain that these criminals are discourged from destroying the lives of our children. Judges should have the ability to provide stiff sentences for this horri-

ble crime. Clearly, this would help eliminate child sexual abuse.

At this point I would like to include an article published in the New York Law Journal on Thursday, June 13, 1985, that illustrates this point.

The article follows:

JUDGE URGES STIFFER SENTENCES FOR SEXUAL ABUSE OF CHILDREN—GIVES DAY CARE CENTER AIDE 8⅓ TO 25 YEARS

A State Supreme Court justice yesterday sentenced a teacher's aide at a Bronx day care center to eight-and-one-third to twenty-five years in jail for forcibly raping a five-year old girl last year at the center.

In imposing the sentence, Acting Justice Howard E. Goldfluss called the crime committed by the aide, Alberto Ramos, the "ultimate act of obscenity," and asked the State Legislature to amend the Penal Law and authorize life imprisonment for those convicted of similar crimes.

200,000 EXPLOITED CHILDREN

"If there is any doubt that life imprisonment as a maximum penalty would be appropriate, then I ask each and every legislator to sit where we sit—beside us on the bench—and witness the deterioration of a six-year-old child who first suffers the indignity and then must recount it in a courtroom."

With estimates that as many as 200,000 children are sexually exploited each year, Justice Goldfluss, who is sitting by designation from the Criminal Court, described the problem as "a blight upon our land—a curse upon our society." The fact that these acts are occurring "many times over each day," he asserted, "should shock the conscience of this nation."

Mr. Ramos, a part-time aide at the Concourse Day Care Center, is one of seven employees at four such facilities in the Bronx to have been charged with sexually molesting young children under their care. One other defendant pleaded guilty and received a sentence of from three to nine years, and the remaining five cases are still pending, according to a spokesman for the Bronx District Attorney's office.

The three day care centers, other than the Concourse, where the crimes are alleged to have occurred, are the Praca, Westchester-Tremont, and Beck Memorial Centers.

CREDIBLE TESTIMONY

At the sentencing hearing, Justice Goldfluss refuted press reports, which he described as having surfaced prior to trial, that the Bronx District Attorney's Office had used "persuasive" means to influence the child victim to implicate the defendant and testify against him.

Noting that the defense had raised similar claims, Justice Goldfluss said, "but the jury didn't accept this defense nor did this Court, and the reasons were clear."

"The anguish and sorrow of that child was communicated to all who saw her in that courtroom," he continued, "and this, together with the corroborating evidence, left no doubt in the jury's mind that she was remembering in wretched detail what had occurred."

Mr. D'AMATO. I would also like to commend the Northeast Conference on the Judiciary on Child Sexual Abuse for taking a leadership role on behalf of our children. The increased attention that this group has brought to the atrocity of child sexual abuse is vital to the general well-being of American children and families.

If one child is molested or sexually abused, that is one too many. However, with the National Protection Act, the Children's Justice Act, and the participation of groups like the Northeast Conference on the Judiciary on Child Sexual Abuse we can make progress toward ending the exploitation and abuse of children. Together we can educate parents and children about the shocking crime of child sexual abuse. Together, we fight not only for our children and their protection, but for the protection of all children.

Mr. President, we are a Nation whose children are at risk. Therefore, I trust our colleagues will support this legislation that will benefit all of our children. Working together we can, and will, stop this American tragedy.

Thank you, Mr. President.●

JAPANESE TARIFF REDUCTIONS

● Mr. BAUCUS. Mr. President, today's papers carry reports of a Japanese announcement that tariffs will be cut on 1,800 products in the next year. According to reports, tariffs will be entirely eliminated on 36 industrial items and 4 agricultural items; tariffs will be cut about 20 percent on the remaining products.

We should welcome this action. Any steps to open Japan's market are welcome.

At the same time, we must look closely at what is really being done.

I note that a great many products of interest to me and my colleagues are not included: plywood, for example, and grapefruit, and chocolate.

I also note that this package does not go as far as the original cabinet proposal. According to reports in Monday's press, Prime Minister Nakasone's cabinet originally proposed across-the-board tariff cuts on 2,400 products—including plywood and grapefruit. I am disappointed that the final announcement is a retreat from this proposal.

Before we can judge the impact these steps will have, we will have to see the details. We will have to see exactly how the Japanese Government specifies the products that will be covered and how large the tariff reductions are.

Further, it will be important to watch implementation. Tariff reductions are of only limited help if changes in bureaucratic procedures are used to hinder imports.

I do not want to be overly negative. If this announcement is a beginning step, it is a welcome one. If it is followed by an aggressive market opening program, it will make a difference.

I eagerly await announcement of the program on nontariff barriers next month.

SUMMARY

Mr. President, the United States and Japan are close allies. My State of Montana and the country of Japan have a special bond. Tensions between friends are always distressing—and often accompanied by feelings of great frustration.

I am greatly concerned about the United States-Japan relationship. That is why I push so hard for a coherent U.S. trade policy and for Japan to open its markets.

Japan is no longer the defeated island nation in need of special treatment. It is a major economic power—one of the top five in the free world. It must take on the responsibilities of that position. When that happens the relationship will be less stressful.●

FARM POLICY

● Mr. DURENBERGER. Mr. President, passing a long-term farm bill to replace the expiring provisions of the 1981 act before the underlying 50-year-old statutes take effect will make the recent debate on aid to the Contras look like a high school civics class discussion. The fact of the matter is that this year's debate on farm policy will force Congress to make some very difficult choices on the future of agriculture. Unfortunately for rural America, Congress' difficult choices will have painful financial ramifications for our family farmers.

For instance, conventional wisdom holds that this country needs a market-oriented farm policy if we want to be competitive in the international marketplace. A market-oriented farm policy fits in nicely with current efforts to reduce Federal spending. But how can the 98,000 farmers who are technically insolvent, the 109,000 farmers who are on the verge of insolvency and the 417,000 other farmers who need some form of debt restructuring, pay off their debts with the lower loan rates and target prices called for under every market-oriented proposal? They cannot, and that is why the Farm Credit Council has come to the conclusion that it needs authority to establish a federally chartered entity to purchase $10 billion in distressed farm assets.

So, Mr. President, it comes as no surprise to this Senator that the House and Senate Agriculture Committees are having a hard time rewriting the 1981 farm bill. It is not easy fitting a farm program into the numbers contained in the Senate passed budget resolution. It is not easy putting together a farm program which will take America's farmers into the 21st century. It is not easy designing a farm program that will enable family farmers to survive through next spring.

But we must, and for those Members who have not had an opportunity to

review it, I suggest they read an article by Gregg Easterbrook, which appeared in the July 1985 issue of the Atlantic Monthly. While I do not necessarily agree with all of Mr. Easterbrook's findings and conclusions, I found his revisionist look at farm policy to be timely and thought-provoking.

Mr. President, I ask that the article be printed in the RECORD.

The article follows:

[From the Atlantic Monthly, July 1985]

MAKING SENSE OF AGRICULTURE

(By Gregg Easterbrook)

Americans are inclined to think of a crisis as a shortage, but agriculture is in crisis because of surpluses—too much of a good thing. Farmers in the United States produce more food than their countrymen need or want; and although they do not produce as much as the hungry world needs, they produce far more than it can afford to buy. This has been the case ever since the Depression. Indeed, overproduction was a problem even during the Depression, and it has become unusually pronounced in the 1980s, as many Western countries and even a few developing nations have joined the United States in growing more food than anyone knows what to do with. The result is a tragedy of plenty, which offends many of our deepest convictions about resources, virtue, and the soil. One way or another, most of the confusion in American agricultural policy today arises from our reluctance to accept the idea that growing food is sometimes the wrong thing to do.

Few economic endeavors have any aura of romance and tradition. We don't get misty at the sight of a chain store framed against a prairie landscape or take comfort in knowing that each morning thousands of lawyers head out into the predawn darkness to tend their lawsuits. Farming, though, occupies an honored place in our culture. Even big-city sophisticates who would sooner die than attend a Grange Hall dance find it reassuring to know that somewhere out there honest folk are working the earth much as it has been worked for centuries.

Agricultural industries, from farming itself to the retailing of farm products, constitute the largest sector of the American economy, accounting for 20 percent of the GNP and employing more people than the steel and automobile industries combined. Yet many people find it heartless and somehow unfair for anyone to speak of farming as an industry subject to the logic of supply and demand. To this sentimental faction the thought that any farmer should have to go out of business seems intolerable. As the cost of federal agricultural subsidies has risen, there has come into being an opposing faction, which dismisses farmers as spoiled welfare dependents who bilk the public on an unprecedented scale. Last winter's campaign for an emergency farm-credit bill seemed to divide politicians and the press into two camps: those who would "give 'em whatever they want" and those who would "let 'em fry."

The actual circumstances of modern farming conform to few if any of the assumptions that underlie the public debate. In order to see what condition American agriculture is in, one must first dispatch a number of widely held misconceptions.

Farm families as a group are not poor. Their average income in 1983, one of the worst years in memory for agriculture, was $21,907. The average income for all families was $24,580. If one takes into account the lower cost of living in rural areas, farmers live about as well as other Americans. In fact, in some recent years farmers earned more than the national average.

Farmers are not being driven from the land. From October of 1984 through January of 1985—when what was said to be a dire emergency for farmers was making news—the Farmers Home Administration actually foreclosed on forty-two farms nationwide. The FmHA provides loans to farmers who can't get credit elsewhere. Over the same four-month period its borrowers who "discontinued farming due to financial difficulties"—a broad category that reflects foreclosures by lienholders, bankruptcies, and voluntary liquidations to avert bankruptcy—totaled 1,249, or 0.5 percent of the FmHA's 264,000 clients.

From January to September of 1984 production-credit associations and federal land banks under the aegis of the Farm Credit Administration (which is much larger than the FmHA, handling about a third of U.S. agricultural debt) actually foreclosed on 2,908 loans nationwide. If one includes bankruptcies and loans in the process of liquidation, a total of 1.6 percent of FCA-aided farmers were in trouble.

Debt problems are real: early this year the FmHA, FCA-backed institutions, and rural farm banks saw delinquency rates reach record highs. But the incidence of dispossessions has been vastly exaggerated. The number of delinquent loans usually peaks early in the year, because most FmHA loans come due in January. Newspapers rarely follow up their winter reports of a "dramatic increase" in the number of farms in trouble with summer reports of a dramatic decline.

Farming is not a disastrous investment. Farm lobbyists don't like to talk about disposable income, prefering to speak of "profit"—a problematic concept when applied to the self-employed, who can treat as business expenses items like vehicles and real estate, which most others must pay for out of their salaries. In 1983 and 1984 a trillion dollars' worth of farm assets generated a profit of $48 billion—an average return of 2.4 percent a year. But the annual net return on all corporate assets for the same period was only 5.5 percent.

The "farm exodus" has been over for years. Much is made of the fact that the number of U.S. farms declined by 33,000 in 1982 and by 31,000 in 1983. But the declines were far bigger in the 1950s and 1960s—a period enshrined in political mythology as better for farmers. In 1951 the number of farms declined by 220,000; in 1956 by 140,000; in 1961 by 138,000.

Agribusiness does not dominate farming. Only three percent of all U.S. farms are owned by corporations. Moreover, farm ownership is not becoming increasingly concentrated. About one percent of all owners of farmland hold 30 percent of farm acreage, but that ratio is the same as it was in 1946.

Most agricultural products are not eligible for federal support. Federal programs concentrate on what are called basic crops—grains, cotton, rice, and dairy products. Fruits, vegetables, livestock, and specialty crops, such as nuts and garlic, are not subsidized. In recent years these products have often done better than the ones the government takes an interest in—a circumstance that some commentators view as proof that abolishing government programs would solve agriculture's problems. Right now, however, the two categories of farm products are in about the same depth of trouble.

Most farmers don't get subsidies. Participation in the basic crop-subsidy programs is voluntary, and most farmers stay away. A study released in 1984 by the Senate Budget Committee found that the major subsidy programs covered only 21 percent of farms and 16.5 percent of farm acreage.

Those whose response the increasing cost of agricultural programs is that we should continue the subsidies for small farmers but prevent large farmers from enjoying them should take note that the programs already function pretty much that way. The Senate Budget Committee study found that the largest farms were the least likely to be enrolled in subsidy programs. The most direct cash subsidy, called deficiency payments, is capped at $50,000 per farm per year, which renders the program of little value to large operations. Indeed, the one percent of owners controlling 30 percent of American farm acreage received only seven percent of the deficiency payments in 1983, and almost none of the FmHA and Small Business Administration benefits.

No one can get rich on federal subsidies. While a very large amount of money is spent subsidizing U.S. agriculture, it is spread so thin that few individual farmers receive significant amounts. Indiana farmers averaged $1,323 in federal cash payments in 1982; Kansas farmers averaged $1,577; figures in the rest of the heartland were about the same. In Arizona, where farmers receive by far the highest subsidies in the country, direct payments averaged $27,040. Farmers benefit from a variety of other subsidies, the per capita amounts of which are difficult to calculate but clearly not lavish.

Most farmers don't have burdensome debt. President Reagan was wrong to say that "around four percent at best" of farmers need credit help, but the actual figure is not much higher. According to a study by the U.S Department of Agriculture (USDA) which farm-spending advocates often cite, only 6.5 percent of all farmers are actually insolvent or on the verge of being so. The Federal Reserve System estimates that eight percent of farmers have debt-asset ratios over 70 percent, and another 11 percent have debt-asset ratios of 41 to 70 percent. But nearly 58 percent of all farmers are well in the clear, with debt-asset ratios of 10 percent or less.

From the impersonal standpoint of economics, the 19 percent of farmers who, according to the Federal Reserve, are in credit trouble might be viewed as representing agriculture's excess production capacity. Last year 81 percent of the production capacity of all U.S. industries was in use, leaving 19 percent idle. Looked at this way, the share of borderline cases in farming is not particularly different from that in other industries.

Debt has hit farmers hard but not that hard. From 1974 to 1984 outstanding agricultural debt rose 193 percent. Through the same period consumer credit rose 172 percent, mortgage debt rose 167 percent, and all commercial bank debt rose 153 percent.

The embargo on grain sales to the Soviet Union did not clobber wheat farmers. In 1980, the year the embargo was in full effect, agricultural exports jumped from $31 billion to $40 billion—the largest increase ever. Wheat exports increased from 1,375 million bushels in 1979 to 1,514 million in 1980 and increased again in 1981, to 1,771

million bushels. In 1982 and 1983, after the embargo was lifted, wheat exports declined.

JUST ENOUGH TO BE MISERABLE

Farm groups, from the radical American agriculture Movement on the rock-ribbed conservative American Farm Bureau Federation, condemn federal agricultural programs as a matter of ritual, and nearly every congressional hearing on agriculture commences with a rendition of how horribly the government treats the farmer. This is partly because agricultural programs are a philosophical jumble. Containing elements of free-market risk and federal bailouts, capitalist entrepreneurship and socialist central planning, they do not reinforce anyone's world view.

Consumers might say, Don't knock success. U.S. agriculture not only produces an abundance of nutritious food but does so at low consumer prices. Americans spend a smaller percentage of their disposable income on food than do the citizens of any other industrial nation; in the past ten years, as the Consumer Price Index has risen by 114 percent, supermarket prices have risen by only 96 percent. Even when the cost of subsidies—which consumers must pay too, through their taxes—is taken into account, food remains cheap. If the roughly $21 billion being spent in this fiscal year to subsidize agriculture were reflected directly in consumer costs, supermarket prices would be only about six percent higher than they are.

Some farmers dislike federal programs because they don't want the government interfering with their lives, and others dislike the programs because they wish the government would interfere more. The range of opinion is not hard to understand. Farm subsidies provide just enough money to keep nearly every farmer in business producing just enough excess supply to hold prices down. This means that farmers who depend on government subsidies will find it hard to become prosperous enough to do without them. It also means that farmers who aren't subsidized get lower prices than they would if no one was subsidized. Everybody works, but everybody is miserable.

The main subsidy programs are deficiency payments and loans, both of which are administered by the Commodity Credit Corporation. Deficiency payments are straight forward. The farmer simply gets in the mail a check for the difference between the market price and a target price, which is set by Congress, A CCC loan is more involved. A farmer borrows a sum calculated by the government to reflect the value of his crop, and he puts up the crop itself as collateral. The loan is like a salary. If the market price turns out to be higher than the loan rate, the farmer can sell the crop, satisfy the loan, and keep the premium. If the market price is not higher than the loan rate, the farmer activates a "nonrecourse clause" and turns over the crop—the collateral—to close out his obligation. In effect he has forced the government to buy this product.

The cost of agricultural subsidies is difficult to predict. For example, when the farm bill expiring this year (which covers almost all agricultural subsidies) was passed, in 1981, its cost was estimated at $11 billion. Because lawmakers assumed that inflation, running hot in 1981, would continue through the lifetime of the bill, they programmed in large annual increases in loan rates and target prices. Instead inflation cooled, the recession held agricultural exports down, market prices wavered, and loan rates and target prices ended up being higher in relation to market prices than expected. As a result, instead of a total of $11 billion since 1981 the legislation has cost $53 billion. This fiscal year alone the outlay for CCC purchases and deficiency payments is expected to reach $14.2 billion.

In theory the subsidy system combats overproduction, because farmers who "seal" their crops with the CCC must agree to leave idle a percentage of their acreage. But in practice it can backfire. Eligibility is based on acreage: the more acres a farmer has available for production, the more generous his subsidy can be. Thus farmers sod-bust land neither needed nor efficient, solely to get credit for the acreage. And nothing in the program prevents farmers from increasing production, by using more fertilizers, pesticides, and machinery, on land they are not required to idle. It is not unusual for a farm's output to go up in a year in which acreage has been set aside to please the CCC.

Next in dollar value are subsidized loans from the Farmers Home Administration. In this fiscal year the FmHA is spending about $3 billion for below-market operating loans (loans that pay for seed, fertilizer, and so on). Originally the FmHA was to provide only temporary assistance, but now many recipients stay in the system year after year. (When the first federal price-support program was created, in 1933, the secretary of agriculture, Henry Wallace, called it a "temporary method of dealing with an emergency." The emergency farm-credit bill that monopolized the attention of Congress early this year was, like most agricultural assistance, portrayed as a one-time extraordinary measure. There was also an emergency farm-credit bill in 1984, and, barring some miracle, there will have to be another in 1986.)

FmHA assistance is available only to farmers who have already been turned down by commercial banks or production-credit associations. The 264,000 farmers kept in business by the FmHA represent only 11 percent of a total 2.4 million. Yet 11 percent can make all the difference in the marketplace. For example, in commodity markets like those for grain, oil, and gold, where products have no distinguishing features and only numbers count, often the final few percentage points—what economists call the marginal supply—sway the price for all producers. OPEC's Arab members set world oil prices for almost a decade though they produced about a third of the world's oil. Oil was in tight supply, it was a seller's market, and all oil became worth what OPEC was charging, because any seller knew that he could find a buyer willing to pay the marginal price. Now there is a buyer's market for oil, and the OPEC price can no longer be enforced.

Likewise, in 1972, the year of the first major Russian grain purchase (the "Great Grain Robbery"), U.S. wheat prices zoomed from $1.76 a bushel to $3.95. The Russian acquisition totaled just 22 percent of the wheat available on U.S. markets that year, and by December there was more surplus grain in our stockpiles than the Soviets had bought. But the marginal supply had been carried away and the market converted from a buyer's to a seller's domain. By the same token, a moderate percentage of extra supply can depress prices, by robbing sellers (farmers) of their bargaining leverage. In 1981, for example, the corn harvest increased by 22 percent while domestic consumption and exports—or, as the USDA calls it, total "disappearance"—declined slightly. As a result, corn prices fell from $3.11 a bushel to $2.50.

Overproduction becomes acute in the basic crop categories, because one year's mistakes are stored and added to those of the next. In 1981 U.S. fields produced a record 15.6 million bales of cotton, but only 11.8 million "disappeared." Leftovers from 1981 have been plaguing the cotton market ever since. In 1983, for example, cotton production was down to 7.7 million bales and demand was up to 12.7 million, but because the year began with eight million bales in storage, cotton supply still exceeded demand by almost 25 percent. Today the price of cotton is about what it was in 1976, with no adjustment for inflation, and it's below what some growers spend on production.

When foreign demand falls off, the cumulative effects of overproduction become especially painful. Roughly four out of ten acres are planted for foreign sale. Since the early 1970s wheat producers have been serving the foreign market first and the U.S. market as a sideline; in the record years of 1980 and 1981 twice as many bushels were shipped overseas as were used at home. If foreign customers fail to buy, as has lately been the case, there's nowhere for the crops to go but into storage, because the United States already has all the food it needs. Even drastic price cuts would produce at best only a slight increase in U.S. consumption (food generally being subject to what economists call inelastic demand: most buyers want about the same amount regardless of variations in price). Soybean growers produced 2,035 million bushels last year and sold 1,880 million, leaving 155 million in silos. Export demand, which had peaked at 929 million bushels in 1981, was down to 800 bushels. Had export demand stayed at the 1981 level, 1984 would have been a banner year for soybean farming; instead the price of soybeans fell from $7.75 to $6.60 a bushel, and concern about the surplus hangs over this year's planting.

Next on the list of federal subsidies is $954 million for soil and water conservation. The same federal policies that encourage sod-busting of questionable land and boosting production by means of chemicals are to blame for a significant portion of the erosion that this subsidy is meant to control. Another $421 million goes to subsidize federal crop insurance, and about $350 million is spent on emergency loans to help FmHA farmers whose crops have been damaged by weather.

An extra $24.3 million in direct subsidies to farmers was provided in 1984 by the Small Business Administration, under a program that issues cut-rate loans to those hit by natural disasters. (In 1984 SBA "nonphysical-disaster" loans were granted to fertilizer companies in states where commodities released under the payment-in-kind program had reduced demand for fertilizer—one federal subsidy chasing another.) Agriculture also benefits indirectly from the $1.1 billion spent on farm research and extension services, the $18.2 billion spent on food stamps and child-nutrition programs, and the $1.8 billion in Food for Peace aid to poor countries, all of which shore up crop demand. Finally, many billions have been spent on federally subsidized irrigation and electrical power in the West. For a variety of reasons, the exact cost of these subsidies—beyond $80 million being spent this year to subsidize two- and five-percent loans for power and telephone lines to rural communities—defies calculation. Much of the

expense is coming to an end, however, because of a law passed in 1982 that requires western growers to begin paying the full cost of their water.

It is common for farmers—and reporters—to speak as if in a just society virtuous products like food and fiber would only increase in value. Yet we find nothing amiss when the price of computers or eyeglasses falls, and we're upset when the prices of energy and housing climb. A successful economy is supposed to drive down the prices of goods, especially manufactured goods—and the advent of fertilizers, pesticides, self-propelled combines, and large tractors has made agriculture one of the least labor-intensive of industries. Each year the USDA charts farming "inputs" for capital and labor. The 1980 input for farm labor was a fifth that of 1930, while the input for machinery was three times greater, and the input for chemicals was twenty times greater. Farm groups say that there is something wrong with the fact that wheat costs less in real terms today than it did in 1870. There would be something wrong if it didn't cost less.

Farm-state congressmen often cite the index of prices for farm products from the Producer Price Index kept by the Bureau of Labor Statistics. The PPI, like the Consumer Price Index, uses 1967 as its base year. Whereas the CPI rose to 311 in 1984, the index of prices for farm products has risen only to 256. The congressmen never mention that the indexes for almost every commodity within the PPI are behind, or only equal to the CPI. Textile products and apparel are at 210, furniture and household appliances at 219, and rubber and plastic products at 247. Only non-metallic mineral products at 337, and energy at 657, are significantly ahead of the CPI. For that matter, low producer prices keep the cost of running a farm down. Indeed, according to the USDA, the index of what machines, supplies, interest, taxes, and wages cost farmers runs about ten percent below the rate of inflation.

No one likes to be thought of as being on the federal dole, least of all farmers, who put a premium on self-reliance. Farm groups across the spectrum invariably say, "We don't want subsidies, we just want a price," meaning higher market prices, and they note that higher prices would result in less federal spending, because deficiency payments would decline. The next logical step is usually not taken. Absent increased demand, higher prices can be realized only if excess production is controlled, either by cutting subsidies and letting some farmers fail (anathema to the left) or by imposing fierce restrictions on how much and what a farmer may plant (anathema to the right).

Farmers find it difficult to face the overproduction issue, mainly because of the nature of rural life. One of the salient cultural differences between farmers and city folk is that farmers live in places where everybody is in pretty much the same line of work. Everybody either is a farmer or provides a service that farmers need. Imagine if advertising executives had to live in complexes populated entirely by other advertising executives and could have only advertising executives for friends. Would they be so aggressive about stealing business? To be true capitalists, farmers would have to view their neighbors as their arch-enemies. So they compensate by viewing farming itself—the act of working the fields, not of selling the finished product—as their purpose and keeping everybody going as their political challenge. This thinking reflects the kindness and communal purpose we admire in rural life. It also makes for too many farmers.

The regular experience of shared achievement and sorrow in a common pursuit is among the most appealing aspects of rural tradition. Indeed, farm advocates often argue that the communal quality of rural America should be preserved for its own sake, even if economics has passed it by. They say that farm living sets a spiritual example whose worth thus transcends cost-benefit analysis. But when farmers say that their way of life should be preserved for its own sake, inevitably they must argue that all farmers are equally deserving of protection—that farmers have a right to remain farmers.

IOWA: FELLOWSHIP REPLACED BY MACHINERY

In an industry as large as American agriculture nothing is typical. There are the livestock pens of Texas, the vast irrigation networks of Nebraska and Arizona, the hog pens of Illinois and Indiana, the pastoral dairies of Wisconsin and Minnesota, the tiny tobacco plots of the mid-South, the citrus orchards of Florida, the uninterrupted wheat fields of Kansas. Nowhere is contrast more distinct than between the number-one and number-two agricultural states—California and Iowa.

California is a high-tech paradise. Farms are majestic; the climate is blissful. Californians produce some 200 commodities, including milk (the dairy business, surprisingly, is the state's biggest agricultural concern), cotton, rice, cattle, grapes, vegetables, plums, oranges, and almonds. Many farms are diversified: designed to produce several categories of crops and to shift from one to another as rapidly as demand changes.

In Iowa, farming is practiced more or less the way it always has been. Nearly all Iowa farms are family enterprises, and nearly all raise corn, soybeans, hogs, and cattle. The Iowa earth can be harsh, the weather cruel.

Just what constitutes a family farm of the Iowa variety depends on the beholder. A growing number of the nation's 2.4 million farmers—right now, roughly half—sell less than $10,000 worth of crops a year. Generally they work full-time jobs and farm on the side. According to Luther Tweeten, an agricultural economist at Oklahoma State University, most of these part-time farmers sell what they raise for less than they spend on production, leaving them several hundred to a thousand dollars in the hole each year, at least on paper. Such part-time farmers, Tweeten says, enjoy farming as an avocation and seek to qualify for farm tax breaks.

Those who sell from $40,000 to $100,000 worth of crops a year form the group commonly called family farmers. There are 381,000 of them, making up about 16 percent of the total farm population, and they are the most troubled—holding a disproportionate share of farm debt and typically having a lower disposable income than part-time farmers, because the farm is their sole source of income. Iowa is this group's stronghold.

The typical Iowa farmhouse is weathered beyond its years, with paint in various stages of peeling and cracks in interior walls. Visiting two dozen farms in various parts of the state last winter, I saw only one house that could qualify for teleportation to the middle-class suburbs of Atlanta or Portland—or Des Moines, for that matter. None of the farms I saw had paved driveways; several farmers who described themselves as successful mentioned as evidence of their good fortune gravel-convered drives. Owing to the lack of asphalt and concrete, mud was everywhere, deep enough in spots to make walking a trick.

Yet the people on these farms did not live in poverty. Nearly all the farmhouses I visited contained microwave ovens, color TVs, video-cassette recorders, and other tokens of consumer culture. No farmer I met drove a fancy car, but none lacked a car, either. All were well clothed and well fed. And the farm equipment that some possessed was a sight to behold: combines with wingspans like those of aircraft; four-wheel-drive tractors that could pull a Greyhound bus from a ditch; a few Steigers, the Corvettes of tractors, fitted out with air-conditioners and tape decks. This gleaming machinery, more than anything else, represents a profound change in the way farmers live—in the debt burdens they bear and in their relationships with their communities.

"Too many tractors with too much horsepower" is how Helen Lester, of Milo, who has been farming with her husband, Guy, since the Depression, summarized Iowa's predicament. Academics and journalists are not the only ones who began to believe around the mid-1960s that the small farm was doomed. Farmers believed it too. Awesome new tractors and combines would enable a family farmer to cultivate more land than ever. Farmers would almost have to buy more acres in order to spread those capital investments over a larger income base. Big new machines on bigger farms held out the promise that the family farmer could achieve the touted economies of scale enjoyed by sprawling ranches in Texas and the Southwest.

These machines also held out the promise of a more pleasant life, free of tedium and backbreaking labor. A Steiger, with its immense power, could plow more land in one day than a conventional tractor could plow in a week; the big combines would harvest crops with much less need for manpower. Improved seed varieties and chemicals were also coming into play, and were expected to diminish the demands that raising crops made on a farmer's time. What a dream began to emerge: a bigger farm, a higher income, and less physical work. The race was on. Sales of heavy machinery soared, and farms, even family farms, expanded in size.

The value of agricultural real estate escalated from $216 billion in 1970 to $756 billion in 1980 and then crashed. In 1984 it was $765 billion—a decline of about 23 percent when inflation is taken into account. In all the commentary on this fabulous rise and fall, it is rarely noted that farmers themselves were the driving force behind the price changes. Urban growth, often presented as the culprit, exerted a minor influence at best: only three percent of all land in the United States is built on, for cities, suburbs, or highways. When farmers sell, it is almost always to other farmers: the most prized farmland is that which adjoins an existing farm. Through the 1970s farmers sought more land, and farm size increased by an average of 13 percent.

Traditionally farmers have been frugal people, fearful of debt and wary of promises of quick wealth. But they did not respond to the economic developments of the 1970s with characteristic reserve. (In fairness, neither did millions of other Americans. Major corporations lost billions of dollars in sure-thing energy investments, and all sorts of people bought real estate as if the prices could never break, poising their loans on the

assumption of perpetual inflation.) Using machines, chemicals, and new land, farmers both here and abroad expanded their productive capacity by so much in the 1970s that a fall became all but certain. Production through the decade rose at three percent a year in the United States—a record pace for annual growth. Meanwhile, food demand was not increasing as fast as production, and demand for some foods was falling.

Many farmers who bought large machinery told themselves that they would cover the payments by doing "custom work"—tilling and harvesting for other farms. As ownership of combines and 400-horsepower tractors became unremarkable, more farmers were offering custom work than needing it done. One farmer I visited, Pat Meade, in Milo, said, "You can pretty much tell which farms are in trouble by whether they're four-wheel or two-wheel." Meade uses a 1976 100-horsepower tractor that he maintains himself. He said, "When farmers discovered that a big machine would enable them to do all their plowing in a single day and spend the rest of the week at the coffee shop, a lot of them couldn't resist, even if they couldn't afford it. Combines were the worst. The average family farmer actually uses his combine less than thirty days a year. The rest of the time it sits in a shed. Seventy-five to a hundred thousand dollars sitting in your shed, doing nothing." Farmers who went heavily into debt to buy big machines and more acres were dubbed plungers.

A century ago the free-silver movement, led by William Jennings Bryan, centered on the desire for a liberal money supply so that there would be more for farmers to borrow and more for consumers to spend. In the 1970s inflation, though less glorious in conception than free silver, provided the financial climate many farmers had always thought they wanted. Plungers became community heroes. Farm journals were filled with stories of "young tigers" who were not afraid to take on staggering debt loads. "Those who dive deepest will come out on top" and a common saying. When briefly during the 1970s interest rates were below the inflation rate, borrowers came out ahead merely by borrowing. Farmers are dependent on credit even in good times, because they must pay production expenses months before they have crops to sell. The economic conditions of the 1970s seemed to say that it had actually become smart to pile loans on top of loans. But if inflation stopped, the loans would smash into each other like race cars trying to avoid a wreck.

The FmHA, production-credit associations, and banks were just as much to blame for plunging as farmers. With acreage values rising at up to 20 percent a year, farmland was an investment that was staying ahead of inflation. Many banks, needing borrowers to generate income on their inflation-pumped deposits, encouraged farmers to leverage themselves to the limit. According to Meade, "During the 1970s there were times when lenders quite literally drove up and down the road, knocked on people's doors, and asked them if they could use more credit." Philip Lehman, a farmer in Slater, Iowa, and an official of the Iowa Farmers Union, an organization that lobbies for increased federal farm aid, sat on the loan-approval board of a production-credit association in the early 1970s. "Things got to where it was difficult for me to put my initials on the applications," Lehman told me. "It was like granting people licenses to go under."

As inflation and gleaming supertractors dispelled farmers' qualms about extravagant spending, so they altered the spirit for farm communities. Farmers who drove Steigers didn't have to call on their neighbors for help when a wagon got stuck in the mud. Those with combines didn't have to wait for harvesting crews, not did they have to offer to join in harvesting a neighbor's land. Many farmers borrowed to build their own silos and storage facilities during the 1970s, loosening their dependence on town silos and diminishing their obligation to attend co-op meetings. Farmers began to feel guilty of what they disliked most about city dwellers—an absence of community spirit.

"Because farmers want to be self-reliant, the combines and the tractors had an extremely seductive appeal," James Schutter, the pastor of the United Methodist church in Tingley, Iowa, told me last winter. "Machines made you really self-reliant. People didn't realize the machines would also make you isolated. As soon as it became technologically possible to farm independently, everybody wanted that." Milton Henderson, of Mt. Ayr, Iowa, who is retired after working for the Iowa State University extension service for thirty years, said, "Threshing and harvesting parties were wonderful events—much warmer, and more human, community events than the kind we have now, like high school basketball games." He added, "I would never want to go back to the past, plowing four acres a day with a team of horses. I'm just saying the sense of fellowship is gone, replaced by machinery."

Dairy, livestock, and poultry farmers still work year-round, because animals must be tended continually, but well-equipped crop farmers have it easier. They face three months of heavy work during planting and two more at harvest. Farm-crisis stories tend to appear in winter partly because it is then that crop farmers, without daily work to do in their fields, do their lobbying. When the American Agricultural Movement staged its tractorcade in 1979, bringing hundreds of farm machines to Washington to block traffic, AAM members made speech after speech about how their backs were to the wall. Yet many had arrived in brand-new Steigers equipped with stereo systems, and some spent several months in the capital, in no apparent hurry to attend to their businesses. William Olmsted, a United Methodist minister in Greenfield, Iowa, has noticed a subtle change in farm sociology. He told me, "Making your rounds in winter, you can knock on doors at five farmhouses in a row and find no one home. They've gone to town, or are on vacation. Farmers used to *always* be home."

FENCEROW TO FENCEROW

Farmers say they expanded in the 1970's because they were sent a signal from the highest levels of government instructing them to do so. There can be no doubt that they were.

In the 1970's the USDA predicted that food production would fall behind world demand. A book called *Famine 1975* attracted considerable attention when it was published in 1967. When the 1972 Russian grain deal caused wheat prices to rise and poor harvests caused food in general to become costlier, many thought that the pessimistic forecasts had been confirmed and they began to cry shortage. Richard Nixon's secretary of agriculture, Earl Butz, is said to have advised farmers to plant "from fencerow to fencerow." That phrase is now fixed in the heartland's litany of woes as firmly as the Russian grain embargo: farmers refer to it again and again. In 1973 the headline of an article in *The New York Times* declared, "DAYS OF 'CHEAP FOOD' MAY BE OVER." As the decade passed and world harvests remained poor, the idea that the Russians and others would soon be begging us for grain caught hold. Oil prices were rising and the market for gasohol, made with corn alcohol, seemed about to take off. Declarations that agriculture was "the bulwark of democracy," "America's answer to OPEC," and so on became political clichés. When exports were booming, in 1980, President Jimmy Carter's secretary of agriculture, Bob Bergland, declared, "The era of chronic overproduction . . . is over."

"About ten years ago it looked like you just couldn't go wrong by expanding," Jim White, a farmer in Pleasantville, Iowa, told me. White is operating his farm under Chapter 11 of the federal bankruptcy code. In the last 1970s White bought land and equipment on credit and also co-signed notes so that two of his sons would be able to enter farming. In White's house a stack of foreclosure documents sits by trophies that White and his father won for being Polk County Corn Champions in 1963 and 1964. My dad had taught me to be cautious, but everybody—I mean everybody—was saying that biggest had become best," White said.

Who in the 1970s could have predicted that by 1985 rising inflation would be only a memory, that the value of the dollar would rise so dramatically on the world exchange market, that developing countries would begin producing food for export, that gasohol would flop (gas stations in Iowa now post signs proclaiming NO ALCOHOL IN OUR FUEL), and that consumption of dairy products and red meat would decline? This web of events surprised even smooth-talking experts. The average farmer could not possibly have foreseen it. White's production-credit-association loans contained variable-interest-rate clauses. "They said I had nothing to worry about—that rates had varied only a fraction of a point since 1970." White told me. "My rate went from 7 percent to 18.5 percent."

Does the fact that the government has misled farmers confer on them a right to special compensation? The frequency with which the national winds shift leads politicians routinely to give industries bad advice, and part of being a businessman is knowing what to ignore and what to take seriously. More important, though Earl Butz's advice certainly sounds foolish in today's economic climate, it was delivered thirteen years ago, in a different climate. How many businesses could survive by clinging to strategies thirteen years out of date? There would be scant public sympathy for an automobile company still making cars that get ten miles to a gallon. Because of the nature of agriculture, farmers have a more difficult time responding to economic changes than people in other industries. But this does not mean that they should be exempt from having to respond. In February the entire South Dakota state legislature traveled to Washington to lobby for more farm aid. When South Dakota's governor, William Janklow, appeared on the ABC News program *Nightline* to state his case, he absolved farmers of blame because, he said, "Earl Butz told them to plant fencerow to fencerow"—as though this had happened the year before.

It could be that farmers attach almost religious significance to what Butz said because it was the one time they were told exactly what they wanted to hear. Agricul-

ture, a quiet line of work in which it was nearly impossible to get rich, was going to take off. Thanks to technology, incomes would rise and workloads would fall; farmers would rescue the country from foreign debt and become national heroes. With crops in demand, farmers could sell them on the market, not to the government, and make their money fair and square. Everything was finally going to be all right. It is human nature to cling to the moment when things were going to be all right, and so it is natural that farmers should cling to the vision of the early 1970s.

For farmers, Government policy is like the weather. It's good for a spell, it's bad for a spell, and there's just no predicting. In addition to making business planning difficult, flip-flops of policy inevitably build resentment against government, even when the subsidies are flowing.

One farmer, in Creston, Iowa, told me, "I know for a fact that agriculture is controlled by a special committee of bankers and manufacturing interests and that no one is allowed to use the committee's name." Another, in Corydon, Iowa, said, "There was a secret meeting in 1947 at which a plan was laid out to destroy the family farm, and everything that has happened since comes directly from the plan." The two speakers were not kooks and I heard similar sentiments from others during my travels in Iowa.

A fair reading of recent history is that the federal government would have to form a firing squad just to shoot itself in the foot. Nevertheless, some farmers do believe that their troubles must have a nefarious source. Many look outside the federal government. A popular target of suspicion is the Chicago Board of Trade, which most farmers resent as a rich man's plaything designed to make easy profits from the workingman's toil, and which some are convinced was invented by the anti-farm conspiracy in order to cause chaos in farm prices. (Some farmers now use the commodities exchange to hedge their crops, but the Iowa farmers I spoke to said they simply couldn't bring themselves to do that, even if it does make business sense.) Conspiracy theories in themselves are probably harmless, but their prevalence in rural communities suggests that farmers wish to fix the blame as far away from home as possible—to dwell in an unreal world. That wish helps to explain why farmers seem so bitter in television news footage.

Dissatisfaction rules life on the farm today, and the unhappiness farmers vent in the media or at political rallies probably does more to advance the idea of an endless crisis in farming than does the actual incidence of foreclosures. The unhappiness stems in part from raised and then dashed expectations. "Every year for the last fifty years had been a little better than the year before, until the 1980s," Carolyn Erb, a farmer in Ackworth, Iowa, said when I met with her last winter. At some point having a better year begins to seem like a right. That the Washington, D.C. tractorcade was staged in 1979, a year that turned out to be the second best on record for farm profit, shows how consuming a force self-pity can be.

The structure of farm economics guarantees that farmers will be frustrated. Suppose your year's salary would be $20,000, $40,000, or $60,000, with the amount determined by a lottery based on what day you asked for your pay. That is the arrangement that most farmers have to live with. The advent of international blockbuster deals adds turbulence to the market. "Now our decision on exactly what day to sell can make or break us for the entire year," Nancy Meade told me.

Many businesses, of course, must deal with macroeconomic unknowns, but how many individual workers have to? Auto workers are not expected each time they report for their shifts to perform an analysis of international sales patterns, according to which their wages will later be calculated. Family farmers must be laborers, market analysts, and financial managers all at once. Considering the modest track record of specialists who do nothing but predict agricultural markets, it is unreasonable to expect the records of individual farmers to be any better. The anxiety over when to sell can place extreme stress on a farm marriage: the husband may feel obliged to dictate the selling strategy, which offends the wife, who in turn blames the husband for market changes he couldn't possibly have predicted. The sheer uncertainty is oppressive. To return to the salary-lottery analogy, even if you picked the $60,000 day you would be upset about the wringer you'd been put through.

Endless waiting for Washington to make up its mind about farm programs produces more unhappiness. Ronald Reagan announced the latest emergency credit program for farmers in September, 1984, but as of February, 1985, with spring planting approaching, the FmHA had made decisions on only about two percent of the applications it had received. Farmers who had asked for aid had to sit and stew all fall and winter, wondering whether they would be able to stay in business and powerless to find out. Many of those who ultimately got extra help were inclined to be resentful rather than grateful.

Dissatisfaction extends even to successful farmers. Because federal subsidies have the effect of keeping everybody at least barely in business, overproduction prevents successful farmers from realizing the profits they otherwise might. Since farm commodities are basically interchangeable, farmers cannot compete with one another by offering different features or higher quality, as manufacturers can. They can compete only by undercutting already depressed market prices. Those who resisted taking the debt plunge or who run their operations unusually will say they feel pressured to pay for the errors of the careless.

Suppose the government stepped into the computer industry, which is suffering from oversupply, to make sure no manufacturer went out of business. Successful companies like IBM and Apple would be unhappy, because the artificial stimulation of supply would prevent them from getting full value for their products. Unsuccessful companies would find themselves in the debilitating position of being dependent on Uncle Sam and ridden with anxiety over whether their handouts would continue. Everyone would be working, yet no one would be happy. There would be a "computer crisis."

In farm communities across the heartland there is one more level of anxiety. Farmers have never been able to look forward to wealth, but they have had a satisfaction that city workers with better pay cannot hope for—the moment when they hand the farm over to their children. For many farmers that moment is the culmination of a responsible life; for the younger generation it is the moment when the world recognizes that they have done what was expected of them. "Right now it's not a responsible act to bring a son into the business, and you don't know what that does to the farmer's mind," Rod Erb, Carolyn's husband, told me. Transferring a highly capitalized farm from parent to child entails leveraging to the hilt. Under these circumstances parents consider themselves failures, and children, unable to do what generations before them have done, feel they have compromised their entire family histories.

After I left Iowa, there was one farm couple that I couldn't get out of my mind: Dennis and Patricia Eddy, who live in Stuart and have three young sons. The Eddys are existing on six subsidized loans. They had qualified for the Reagan emergency credit aid, which would save them about $23,000 in interest payments overall. They hadn't paid income taxes in five years. The kitchen of their farmhouse had been remodeled and was strikingly attractive; I noticed a microwave oven and other minor luxuries. They had a pure-bred Doberman puppy. Here was a couple who could easily be portrayed as hooked on handouts. "Just once in my life I would like to live at the poverty line," Patricia complained, yet her federal aid is more than many city families with greater need receive—to say nothing of the fact that she lives in her own home. Most urban welfare recipients, I felt sure, would exchange places with the Eddys in the blink of an eye.

Except for the kitchen, however, the Eddys' home was modest. By no stretch of the imagination was the family living indulgently. There didn't seem to be any chance that they would buy a sports car, eat in three-star restaurants, or enjoy many other luxuries that young professionals who went to graduate school on government-subsidized loans consider their due. I felt sure that none of the conservative theoreticians who rail against subsidies in the fastness of paneled libraries would exchange places with the Eddys.

The Eddys said that they were dismayed by having had six different FmHA loan supervisors in eighteen months, each of whom had issued a new set of instructions on how the couple ought to run their lives; by unending anxiety about whether their crops would grow and in turn sell; and by the public perception that those in debt to the FmHA are "bad farmers," which surely in not true.

For a while policymakers diagnosed increasing federal agricultural expenditures as a problem caused by "bad farmers" and "bad managers," who squandered their aid. The label has stuck—one farmer introduced himself to me as "just another bad manager"—although there is nearly universal agreement among agricultural observers that truly lazy or incompetent farmers are rare. If anything, farmers are too good at what they do. They produce too much, and they are baffled and anguished by the fact that bringing food out of the ground, as they were taught was right, does not invariably lead to success. the Eddys were working as hard as they knew how, and that was what stayed with me.

CALIFORNIA: MBAS IN OVERALLS

Iowa seems like an outpost on the moon by comparison with the San Joaquin Valley, in central California. Nearly anything will grow in the valley's benign climate. The land is flat, which is perfect for farming, and cows graze in the nearby foothills of the Sierra Nevada as if they were in the Alps. In Iowa some farmers had plowed and planted their front yards, but here in

Fresno and Tulare counties, one of the world's most productive agricultural regions, every square inch seemed to have been tilled. Farmhouses are modern ranch-style buildings with carports. Machinery doesn't rust. In the Midwest, farms are discreate places because farmers generally buy only land that adjoins their own; in California, however, farms tend to consist of scattered parcels. The scattering lowers the sentimental value of each farm, and it also works against any sense that farms are fortresses to be defended against an encroaching outside world. Farms in California seem much more like businesses. One sees few four-wheel-drive tractors with balloon tires. "Farmers like to buy tractors, managers like to make money," a Californian told me when I visited farms in the state last winter.

One of California's largest operations is Harris Farms, Inc., of Coalinga. The average U.S. farm has 437 acres; Harris has 17,000, and it's as diversified as can be—cotton, tomatoes, garlic, almonds, onions, grapes, potatoes, wheat, and cattle. It is not a corporate farm; John Harris, the only child of the founder, is the sole owner. During the 1970s, when the land frenzy drove prices to $3,500 an acre in the valley and as high as $15,000 an acre in the prestigious vineyard counties, Harris didn't buy. "We could never figure out how to make buying land at those prices pay," he told me.

Harris has 125 full-time workers, whom he calls "employees," and 100 units of housing for them, of a quality better than that of a trailer park but not as good as that of a subdivision. Unskilled seasonal laborers—migrant workers—make $4 an hour, full-time tractor operators make about $14,000 a year, and foremen make up to $65,000. Two foremen, Richard Lobmeyer and Juan Barrera, spend an increasing amount of time with computers: Harris Farms has a large mainframe computer for accounting and half a dozen personal computers for other tasks.

Barrera, for example, uses software designed for tomato growing to track temperature, humidity, and the rate of transpiration and to predict exactly how much irrigation the vines will need. Harris has been switching to less wasteful means of irrigation, such as drip pipes, which apply small doses of water directly to a plant's roots. (Before the 1982 law was passed, many heartland farmers complained bitterly that California water was subsidized, ignoring the fact that their own water falls from the sky free of charge.) Much of Harris's production, is sold to food processors by a standard supplier's contract— a promise to deliver a certain tonnage of, say, tomatoes on a given day at an agreed price. This reduces the potential for a windfall, but it also eliminates anxiety over fluttering prices.

In rural communities it seems to be considered bad taste to build a luxurious house, and Harris does not flout that convention. He lives in the modest house where he was raised, which sits directly across the parking lot from the company's headquarters, concealed behind hedges. His office, however, would make any lawyer proud: it is large and wood-paneled, with original art on the walls and a commodity-price monitor on the credenza.

Diversification as practiced at Harris Farms is said to be the future for profitable agriculture, because it allows the clever manager to stay a step ahead of demand. Midwestern farmers have some ability to shift among the products their environment will support: wheat, corn, soybeans, sorghum, and livestock. For example, when grain prices fall and livestock prices rise, farmers can feed their grain to the stock and sell it ultimately as meat. Trends in the supply of these commodities tend to be parallel, however, and so the degree to which midwestern farmers can diversify often does not amount to much. Being able to shift among unrelated crops—cotton to onions to lettuce—makes for better protection against the erratic market. Working with small specialty crops also enables growers to get an idea of where they stand relative to the competition. Lobmeyer explained: "There are eleven million acres of cotton fields scattered all around the United States. Realistically, there's no way we can get a sense of what other cotton growers are doing. But there are just 294,000 acres of process tomatoes in the country, and 84 percent of them are here in California."

Harris Farms operates almost entirely without federal subsidies. Most of its crops aren't eligible for support. Harris does not enroll his cotton and wheat acreage with the CCC, because, he said, the maximum loan is inconsequential for a 17,000-acre enterprise and not worth the bother going after.

Despite his computers, his economies of scale, and his lack of dependence on the government, Harris is pessimistic. He told me, "At this point farmers have become capable of producing a surplus of just about everything. The regulated programs get all the attention, because they involve federal deficits and family farms, but profit margins in specialty crops are becoming almost as bad." The market for grapes, once a glamour crop, is more depressed than the market for corn. Citrus fruits are about the only crop widely agreed to be profitable this year—profitable, that is, for growers who weren't hit by a series of frosts in Florida and Texas that cut supply. Harris observed that if the country had not experienced a cycle of poor weather for crops in three of the past five years, which led to disappointing yields, surpluses would be even greater than they are, and prices lower.

The weather of late has been unusually severe in southern Iowa, where the gullied bottomland is in any case ill-suited to farming. In 1983 the rain was so relentless that farms were flooded with mud. Pat and Nancy Meade, who live in southern Iowa, lost twenty of the hundred calves born on their farm that year because they drowned in the mud. A high percentage of the hard-luck farm stories presented as typical on television and in newsmagazines have southern-Iowa datelines.

To some extent a bad year can be offset by the generous tax treatment accorded to agriculture. For example, many types of farm buildings and fruit trees can be depreciated, and deductions can be taken for supplies that will not actually be used until the following year. Played properly, the game allows the payment of taxes to be postponed almost indefinitely.

Investors who buy into farms do not, as popular lore would have it, "profit from losing money": the best investment is always one that makes money. The situation of a "tax farmer" is roughly like this. Say that a doctor in the 50 percent tax bracket has $100 in marginal income. If he does nothing, the government takes $50 and he keeps $50. If he shelters the money in a farm generating a $100 deduction, his tax bill is reduced by $50. In both cases the doctor walks away with $50. But in the second case he also has some equity in the farm.

Since the doctor keeps the $50 no matter what, all the investment has to do is make a dollar and he will come out ahead. Thus a commercial farmer who needs a decent income to care for this family is at a disadvantage with respect to a tax farmer for whom any income is pure gravy.

In the long run agriculture's favored tax status may do farm families more harm than good, because shelters encourage the overproduction that is at the core of agriculture's problems. From one pocket the government hands out tax breaks to encourage more farm investment and from the other it hands out subsidies to compensate for the depressed prices that investment causes. Nevertheless, farm-state legislators have extreme difficulty opposing any measure presented as a "farm tax break."

SURROUNDED BY SURPLUS

Agricultural exports have stopped increasing over the past few years, after having grown steadily through the 1970s. The strength of the dollar is usually cited as the reason, and without doubt the strong dollar is a factor. But the growth trend in exports probably would have stalled regardless, because many countries are generating food surpluses of their own. Moreover, almost all of the industrialized countries have higher internal subsidies and more-restrictive trade laws than we do.

In the late 1960s the countries in the European Economic Community met up to 90 percent of their demand for grain. In 1984, a bumper crop year, EEC farmers met 125 percent of that demand. U.S. agricultural sales to the USSR make headlines, but sales to Western Europe have been far more significant in volume. In 1983, for example, Europe bought about $10 billion worth of U.S. food—ten times as much as the Soviet Union did. Last year Soviet grain purchases hit a record high, and yet total sales to "centrally planned countries" accounted for just ten percent of U.S. exports. Asian nations are out best customers. In 1983 they bought $13.5 billion worth of U.S. agricultural products. But since then sales to Asia have been stable or falling.

World wheat production, 447 million metric tons in 1978, is expected to be 505 million metric tons this year—a 13 percent increase. Also since 1978 world rice production has increased by 20 percent and world cotton production by some 35 percent. In every part of the world except Africa and Japan food production is increasing faster than population.

The increased production, particularly in developing countries, can be attributed partly to the spread of modern technology and farming methods—progress that the United States has encouraged and in many cases has funded and supervised. We have a moral obligation to share our agricultural secrets with the world and should be proud that we have done so, but the cost has turned out to be greater than we expected. The world's increased production can also be attributed to U.S. farm-subsidy programs. For many commodities American support prices become the world floor prices, because whenever the going rate falls below what the CCC will pay, a significant portion of the supply is withdrawn from the market. Equilibrium between supply and demand is restored and the decline in the market price is halted. Nonrecourse loan programs, intended to limit the risk to American farmers, have the effect of limiting the risk to farmers in other countries, as well. For example, Argentina knew in 1981,

courtesy of an act of Congress, approximately what the floor price for grain for the next four years would be, and thus could plan accordingly.

The agricultural programs of other countries are far more protectionist than those of the United States. Within the EEC agricultural commodities move freely, but what are in effect tariffs prevent food from being brought into the community at less than the regulated price. Thus American farmers are not permitted to undercut the market price in Europe, whereas any shipper may sell cheaply here. When the EEC has surplus grain, exporters receive direct subsidies to sell their overstock at below-market prices. The European subsidies are threatening to break the bank; several times in recent years the EEC Commission has recommended that the subsidies be cut, only to have farm interests in member nations beat the effort back. In 1986 Spain and Portugal—two potentially major agricultural producers—are expected to join the community, hide behind its tariff curtain, and use its subsidies to boost production.

Japan's regulations are even more stringent. Various restrictions limit the sale in Japan of U.S. commodities for which there might otherwise be higher demand—particularly beef and fruits. According to Yujiro Hayami and Masayoshi Honma, economists at Tokyo Metropolitan University, Switzerland has the world's most protectionist agricultural system, with domestic prices half again as high as the world average. Japan's is next, with domestic prices 45 percent higher than the world average. The EEC's domestic prices are 25 percent higher, and the United States, where domestic prices are slightly below the world average, ranks last in protectionism.

It is perhaps understandable that Europe and Japan, which have known famines in this century, should be anxious to keep farm production up. It's harder to understand the Reagan Administration's behavior. In March, President Reagan withdrew the pressure on the Japanese to observe voluntary auto-export quotas and asked nothing in return. If the Administration continues to push for cutbacks in U.S. agricultural production without insisting that members of the EEC cut back as well, subsidized European farmers will rush in to grab U.S. export markets.

We should be grateful that Japan has so little land, else it would surely make life as hard for American farmers as it has for American manufacturers. Another Asian country, however, has lots of land and a strong agricultural tradition: China. In 1980 China bought $2.3 billion worth of U.S. food and fiber. Now its purchases are down to $500 million and the country has begun to export cotton. Chinese officials have been stepping back from the commune system and introducing a limited form of capitalism in their fields; the results have been dramatic. Since 1978 China's cotton production has risen by 150 percent, its soybean production by 84 percent, its wheat production by 58 percent, and its rice production by 27 percent. Many production techniques used in China are backward (for example, cotton is shipped in nonstandard-sized bales, small enough for two men to lift manually), but Western methods and machines are being introduced. In China workers are accustomed to strict discipline and low wages; modern production could transform the country into the world's breadbasket. "They are much closer to it already than we like to think about," Kenneth Billings, the president of Fresno County's Federal Land Bank, says.

U.S. farm productivity by acre, which has declined slightly from its peak, in 1982, can be expected to rise again soon, as new hybrids, growth hormones, and chemicals come onto the market. A little further down the road gene splicing might make possible entirely new strains of plants that could spark another Green Revolution. The problems of oversupply in the future could make those today seem like warm-ups.

THE ANNUAL CRISIS

Senate majority leader Robert Dole said recently that in every one of his twenty-five years in Congress there has been a farm problem. During the late 1940s President Harry S Truman tried to cut back many farm subsidies and was rebuffed by a livid Democratic Congress. The Senate majority leader at that time, Scott Lucas, of Illinois, sounded very much like Dole when he complained of senators who "are constantly talking about economy in government . . . who have no hesitancy in getting off the economy bandwagon . . . to take care of their own communities . . . regardless of what the cost may be in the future." The Eisenhower Administration pushed through some farm-support cuts in 1953, but when it tried to go further, in 1958, it was defeated. That year Senator Allen Ellender, of Louisiana, argued, "This is not the time to lower prices farmers receive, particualrly when farm income is already at an all-time low." New Deal descendant Lyndon Johnson moved to cut farm subsidies by $540 million in the budget he submitted in 1969, just before he left office. Nixon angered farmers with his attempts to change farm programs. Carter, a farmer, not only asked that subsidies be cut but stood fast during the 1979 tractorcade, refusing to make significant concessions.

The job of secretary of agriculture has chewed up most of those who have held it. Truman's "Brannan plan," named for Agriculture Secretary Charles Brannan, became a euphemism for political lunacy, the racetrack MX of its day. Radical farmers like some members of the American Agricultural Movement point to Eisenhower's Ezra Taft Benson as the first mastermind of the anti-farm conspiracy. LBJ's Orville Freeman, whose affiliation with the Minnesota Democratic Farmer Labor Party was beyond reproach, got into trouble by suggesting that cotton growers cut their prices in order to complete in the world market. Carter's secretary, Bob Bergland, who himself had been a farmer, ended his term amid acrimony. Now Reagan's secretary, John Block, formerly an Illinois hog farmer, is an object of scorn for having gone along with Reagan in the effort to cut farm subsidies. Block has hardly been helped by the fact that his former business partner, John Curry, was a plunger who bought up land with FmHA assistance and then defaulted. Every farmer I met in the Midwest knew about this case; some spoke of Curry as if he were a poisonous snake.

Partly because of the continuous anxiety to which they are subject, farmers have a long history of crying wolf. The agriculture committees, staffed by farm-bloc congressmen, do too. In 1965 a report of the House Agriculture Committee warned, "Hundreds of thousands of our most progressive farmers will find their debt positions intolerable and will be forced into bankruptcy"—language almost identical to that used last winter.

Checking old newspapers, I found that farmers have been proclaiming the "worst year since the Depression" regularly since the early 1950s. Reporting that placed the claim in historical perspective was rare, except for the occasional "down with farmers" piece that exaggerated in the other direction. Covering agriculture is a delicate matter for journalists, and especially for television crews. Someone who loses a farm loses his job, his home, and his way of life all on the same day. It would seem heartless of a reporter to mention that dispossessions are the exception or that thousands of other people experience tragedies that are of equal weight but that simply don't fit a news peg.

"They're taking away my land" is a plaintive cry of farmers, and when true, it's terrible to hear. Often it isn't true. A farmer who defaults on his loan is not losing his land so much as some part of his investment in it. The bank is the true owner of the farm, just as ultimately it is the owner of a mortgaged house.

Through the 1970s the farm bloc complained that farmers were being destroyed by inflation. Senator Jesse Helms, of North Carolina, who is the chairman of the Senate Agriculture Committee, said in 1981. "Farmers understand that unless this inflation is cured, they don't stand a chance." Now that the cure has taken effect, the lack of inflation is said to be a special hardship for farmers. Similarly, cries of "foul" were heard in response to the escalation in farmland prices while it was taking place, even though it was making holding more valuable. Four years ago Catherine Lerza, the head of the National Family Farm Coalition, declared that high land prices had created a crisis for farmers. At about the same time Representative Berkley Bedell, of Iowa, proposed a $250 million Beginning Farmers Assistance Act to subsidize purchases of farmland. Now, of course, it is the decline in land prices that said to pose a crisis for family farmers.

Using the Department of Agriculture's parity tables, some farm advocates claim that farmers are worse off today than ever. Parity tables are supposed to show the buying power of farmers; 1910-1914, when farm prices were strong, is taken as the base period and given a value of 100. In 1984 parity hovered around 58—that is, farmers had 58 percent of the buying power of their forerunners decades earlier. Figures like these are extremely misleading, however, because calculations of parity treat the present as if it were 1914. For example, they take into account the fact that tractors cost more but not that they do more. Parity makes an effective round of political ammunition, but it is not a reliable indicator on which to base policy. One farm-state congressional staff member told me, "Any farmer who seriously believes he would be living twice as well if it were 1914 again is crazy."

At a House Agriculture Subcommittee hearing in February, I gave up trying to count the number of times words like *desperate, disaster, unprecedented,* and *dying* were used. Representative Steve Gunderson, of Wisconsin, asserted, "Clearly, within the credit crisis confronting agriculture we are literally facing the fundamental destruction of rural society." Representative E. Thomas Coleman, of Missouri declared that "farmers are faced with such high interest rates, declining land values, and low return for their products that they are reliving the Great Depression of the 1930's." At this

hearing and throughout the battle over emergency aid, farm-bloc congressmen repeatedly predicted that as many as 10 percent of the nation's farmers could go bankrupt by March 1—the traditional deadline of banks for issuing spring planting loans—if substantially more than $650 million was not provided. A bonus-credit-aid bill was passed but Reagan vetoed it. The first of March came and went, the wave of foreclosures that was supposed to sweep the country did not occur, and the story vanished.

Resisting pressure for spending is a recurring challenge in Washington, and the ability of even conservative Republicans from farm country to forget their speeches about deficits and call for more agricultural subsidies has been remarkable for years. Farmers make powerful claims on the legislature in part because they make up a high percentage of the population in rural communities. In heartland congressional districts almost everyone is tied to the farm economy. No other constitutent group—not auto workers in Detroit or gas producers in Louisiana—places such a statistical lock on its representatives.

Another running theme in Washington is the demand for a crackdown on rampant waste in somebody else's program. Farm groups are among those who have most vociferously protested the federal debt, which contributes to high interest rates and the strength of the dollar. But they also want more spending for farms, which would drive the deficit up. Last winter five of the country's largest agricultural associations formed a lobby called the Balanced Budget Brigade. While some spokesman were making the rounds on Capitol Hill, demanding extra credit aid. During his appearance on Nightline Governor Janklow sneered at Congress's failure to balance the budget—a feat that even New Right thinkers admit will be out of the question for many years—and boasted that states balance their budgets. Janklow didn't add that the main reason why state budgets are balanced is that federal grants supply 18.5 percent, on average, of state revenue. If a cosmic philanthropist made an 18.5 percent contribution to the federal budget, then the federal budget would also balance.

Finding solutions for a chronic problem like agricultural overproduction can vex democratic systems, which almost inevitably focus their attention on the demands of the moment. "Every time we do a farm bill, the short-term outlook—what happens one year down the road—overwhelms all other considerations," William Hoagland, the deputy staff director of the Senate Budget Committee, who was raised on an Indiana farm, told me recently. "In 1981 all we talked about was inflation, which turned out to be a moot point almost immediately after we finished debating it. This year it's debt. What we want from agriculture, what our long-term goals ought to be, stands no chance [of consideration], compared to whatever was in that morning's paper."

Eventually Congress will have to face the fact that there are too many farmers. The farm bill that Reagan has proposed, which in effect would abandon those parts of the federal program that subsidize the least successful farmers, may not be perfect, but so far it is the only one to concentrate on the problem of overproduction. The solutions to that problem do not lie solely in the realm of economic abstraction. They will involve a painful human cost. If the Reagan plan or something like it is enacted, Dennis and Patricia Eddy, for example, may lose their farm. That would not be a happy day for them or for any caring citizen. But the Eddys are young, responsible, bright, and eager to work. If they can't land on their feet, who can?

Early this year Representative E. Kika de la Garza, of Texas, the chairman of the House Agriculture Committee, said he might support changes in federal agriculture programs, but only if they could be achieved "without sacrificing one single farmer." This is like saying, Let's cut back that bloated defense budget—as long as no contractors lose work. There can still be family farms. It's just that not every person who wants a farm can have one, no matter how fervently we might wish he could.●

THE CENTENNIAL OF THE VILLAGE OF HILTON

● Mr. D'AMATO. Mr. President, today I rise to honor the citizens of the village of Hilton as they celebrate both their centennial and the traditional values of small town America. Originally incorporated in 1885 as North Parma, NY, Hilton was later renamed for the pastor of the Freewill Baptist Church, Rev. Charles A. Hilton.

The village of Hilton represents the quintessential American small town—the very backbone of American family life and culture. With Hilton's 4,151 residents and its wonderfully delicious apples and peaches, it is easy to see that the small, warm-hearted, friendly atmosphere which made the United States truly great is still alive and well throughout our Nation.

Like any other town, Hilton has its legends: this one may even be true. Supposedly, Jonathan Underwood came from Vermont as the first settler of this peaceful area. He came with a dream in his mind and an ax in his hand to clear the fertile New York soil and build a cabin for his betrothed. Tragically, when he returned for his bride, she had died. Heartbroken, Jonathan Underwood returned to his cabin to spend the remainder of his life doing for others in his community. It is men like Underwood who made Hilton the prosperous, community-spirited, and pleasant village it is today.

Jonathan Underwood's story is based on an 1805 account. It represents both the fortitude demanded of America's settlers and the compassion for our neighbors that has made our forefathers' efforts flourish. I am proud that as we approach the 21st century we can still look across our country and find homes and communities embodying the values and qualities thought virtuous today, 100 years ago, and even 200 years ago when we struggled for independence.

Happy birthday, Hilton.●

100TH ANNIVERSARY OF THE CANADIAN NATIONAL PARK SYSTEM

● Mr. DURENBERGER. Mr. President, in 1872 an idea took hold that has shaped the way in which we manage and preserve areas of outstanding natural beauty and scenic wonder. The national park idea responded to a unique opportunity, the presence in the vast public domain of great natural wonders. At a time when tens of millions of acres were being released from the public domain for exploitation, these special places were preserved for future generations.

In 1872, Congress created Yellowstone National Park, carving 2.2 million acres out of Federal territory to protect "curiosities" and "wonders."

The idea crystallized in 1916 when 14 great scenic parks and 21 national monuments were put together into a National Park System and the National Park Service was created to care for it.

The mandate of the 1916 Organic Act is:

> To conserve the scenery and the natural and historic objects and the wildlife 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.

How to best preserve and protect these vast, wonderful resources for the enjoyment of present and future generations continues to be debated today. Whatever the outcome of that debate, and it is sure to continue, the fact remains that we have created one of the most unique and valuable systems in the world.

Americans can take great pride in the quality of our National Park System. But the national park idea was not exclusively an American one. Our neighbors to the north have a national park system which rivals our own.

This year marks the 100th Anniversary of the creation of Banff National Park and the Canadian National Park system. Mr. President, I ask that an article on the Canadian National Park system be printed in the RECORD.

The article follows:

CANADA'S PARKS TURN 100

In 1883, three young men working to push the Canadian Pacific Railway through Alberta's mountains came upon a spectacular sight: steaming mineral springs welling out of a misty cave in the mountainside, looking, as one of them put it, like "some fantastic dream from a tale of the Arabian Nights." Quick to spot the tourist potential of such a spot (hot springs were believed to cure everything from syphilis to mercury poisoning), the railway workers claimed ownership. Others instantly disputed their claim, and a public uproar began, to be settled, finally, by the government: Canada owned the land. In 1885, ten square miles near the town of Banff were permanently set aside as Canada's first national park.

Banff National Park celebrates its 100th birthday this year, and the Canadian park system celebrates with it. The first park now encompasses more than 2,500 square miles of Alberta, and it is only one of 29 national parks, ranging from Auyuittuq within the Arctic Circle to Pacific Rim near Vancouver. When more than 70 historic areas and canals are added in, Canada's national parks cover more land than any other park system in the world.

If the country had not set aside those lands when it did, many of the animals for which North America is famous might have vanished. Within the parks, visitors can still see elk, caribou, bighorn sheep, wolves, otters, black bears and grizzlies. Bison and endangered whooping cranes find a home within Wood Buffalo National Park. Millions of migrating ducks, geese and swans take refuge in Canada's protected wetlands.

Even so, some of the animals of the national parks may face critical problems brought on by their own popularity. In 1984, more than 26 million tourists visited the parks, and at the peak of the summer season a popular area like Banff is a congested mass of humanity. This can create a classic conservation dilemma: most parks are established to preserve a pristine heritage for people to enjoy. But the more people take advantage of the opportunity, the more likely they are to threaten, or at least change, the very thing they've saved. Thus, planners must balance several competing forces, and that, Canadian conservationists say, is a major challenge in a milestone year.

Park officials are now straining to keep up with the human demand, and they expect to open or refurbish a number of new facilities, including a restored swimming area in Banff's famous mineral springs. Their hope is that this birthday celebration will renew the nation's commitment to preserving its wild heritage in the midst of development and population growth.

"Landscape is fragile," proclaims a Parks Canada publication, "and sometimes man's 'progress' changes it rudely. Our national parks are designed to protect the natural order of change."—Patricia Daniels.●

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

The PRESIDING OFFICER (Mr. ABDNOR). 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.

AWARDS AND EXPENSES IN COURT PROCEEDINGS

Mr. DOLE. Mr. President, I understand that H.R. 2378, a bill with respect to awards of expenses of certain agencies and court procedings, has arrived from the House, and I ask for its first reading.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

H.R. 2378, a bill to amend section 504 of title 5, United States Code, and section 2412 of title 28, United States Code, with respect to awards of expenses of certain agency and court proceedings, and for other purposes.

Mr. DOLE. Mr. President, I ask that the bill be read the second time.

Mr. BYRD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

EXECUTIVE SESSION

Mr. DOLE. Mr. President, there are a number of nominations we had hoped to clear today, and I hope that any Senator who has some concern about these nominations can advise us by tomorrow that we may proceed with the nominations. There are a number of very important nominations.

In most cases, these people have been cleared by unanimous vote. They have a right to have their nominations confirmed. We are going into a recess period for a week, and it is a very important time for them to get their things in order, for whatever job they might be about to pursue.

We have been able to clear Calendar Nos. 261, 262, 263, 264, and 266. I ask unanimous consent that the Senate now go into executive session to consider those nominations on the Executive Calendar.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nominations will be stated.

Mr. DOLE. Mr. President, I ask unanimous consent that the nominations just identified be considered en bloc and confirmed en bloc.

Mr. BYRD. Mr. President, reserving the right to object, there is no objection on this side to proceeding with and confirming the nominees just enumerated by the distinguished majority leader—Calendar Nos. 261, 262, 263, 264, and 266.

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

EXECUTIVE OFFICE OF THE PRESIDENT

Thomas Gale Moore, of California, to be a Member of the Council of Economic Advisers.

THE JUDICIARY

John Montague Steadman, of the District of Columbia, to be an Associate Judge of the District of Columbia Court of Appeals for the term of 15 years.

Richard A. Levie, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for a term of 15 years.

[NEW REPORTS]

ENVIRONMENTAL PROTECTION AGENCY

Francis S. Blake, of Maryland, to be an Assistant Administrator of the Environmental Protection Agency.

GENERAL SERVICES ADMINISTRATION

Terence C. Golden, of Texas, to be Administrator of General Services.

NOMINATION OF TERENCE C. GOLDEN

Mr. BENTSEN. Mr. President, I am pleased to support as Administrator of the General Services Administration a man with extensive management experience and business skills—Terence C. Golden of Dallas, TX.

Mr. Golden brings to this demanding position a broad education background and diverse practice experience. He received a bachelor of science in mechanical engineering from Notre Dame in 1966 and then obtained a master of science degree in nuclear engineering from the Massachusetts Institute of Technology. He supplemented his strong scientific background with a master of business administration from the Harvard Graduate School of Business Administration in 1970.

Terry Golden first held management positions in the nuclear energy division of Babcock & Wilcox Co. In the mid-1970's he was president, chairman of the board and largest shareholder of a real estate and resort operating company in Puerto Rico, the Palmas del Mar Co.

Since 1976, he has been associated with the Trammell Crow Residential Co. in Dallas, where he was a managing partner responsible for a wide range of activities, from land development and housing construction to mortgage and investment banking. In 1984 he became the Assistant Secretary for Administration in the Department of the Treasury.

Terry Golden's special combination of technical knowledge and diverse managerial skills make him especially suited to administer the General Services Administration.

As a member of the Environment and Public Works Committee, I hope that Mr. Golden will actively support the public buildings reform legislation which three times has passed the Senate, only to languish in the House. Many of us in the Senate share a keen interest in following Mr. Golden's efforts to institute much needed reforms in the management of GSA.

With the advice and consent of the Senate, Terry Golden will have an opportunity to strengthen that important agency by bringing to it his unique personal skills and broad experience.

The Governmental Affairs Committee undertook a lengthy review of Mr. Golden's background and qualifications for his new position. Its support for his confirmation is well justified, and I am pleased to add my own support.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

Mr. BYRD. 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 that the Senate has given its consent to these nominations.

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

REMOVAL OF INJUNCTION OF SECRECY

Mr. DOLE. Mr. President, I ask unanimous consent that the injunction of secrecy be removed from an amendment to the Statute of the International Atomic Energy Agency (Treaty Doc. No. 99-7), transmitted to the Senate today by the President of the United States.

I also ask that the treaty be read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message from the President is as follows:

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to acceptance, an amendment to Article VI, paragraph A.1 of the Statute of the International Atomic Energy Agency, as amended. The amendment was recommended unanimously by the Board of Governors of the Agency on June 6, 1984, and approved by the Agency's General Conference on September 27, 1984. I also transmit the report of the Department of State on the amendment.

The amendment, if approved by two-thirds of the members of the Agency, will increase from nine to ten the members of the Agency designated for a seat on the Board of Governors by virtue of their status as most advanced in the technology of atomic energy without regard to geographical distribution. This expansion will accommodate the entry of the People's Republic of China into the organization, which occurred on January 1, 1984. Under the amendment, the People's Republic of China will be able to occupy a seat on the Board of Governors without displacing any of the other designated members (currently these are Australia, Belgium, Brazil, Canada, Egypt, France, the Federal Republic of Germany, India, Japan, the USSR, The United Kingdom, and the United States).

I recommend that the Senate give early and favorable consideration to this matter, and give advice and consent to acceptance by the United States of the amendment to Article VI, paragraph A.1 of the Statute, as amended.

RONALD REAGAN.

THE WHITE HOUSE, *June 26, 1985.*

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

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

CONFEREES ON H.R. 2475, SIMPLIFICATION OF IMPUTED INTEREST RULES

Mr. DOLE. Mr. President, I move that the Senate insist on its amendment to H.R. 2475, Simplification of Imputed Interest Rules, and request a conference with the House on the disagreeing votes thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Chair appointed Messrs. PACKWOOD, ROTH, CHAFEE, HEINZ, DURENBERGER, LONG, BENTSEN, MATSUNAGA, and MOYNIHAN conferees on the part of the Senate.

ORDER FOR STAR PRINT—S. 1314

Mr. DOLE. Mr. President, I send S. 1314, a bill to amend the Securities and Exchange Act, to the desk and ask unanimous consent that it be star printed to reflect the changes which I send to the desk.

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

ORDERS FOR THURSDAY, JUNE 27, 1985

ORDER FOR RECESS UNTIL 9:30 A.M.

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. Thursday, June 27, 1985.

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

ORDER FOR RECOGNITION OF CERTAIN SENATORS

Mr. DOLE. Further, Mr. President, I ask unanimous consent that following the two leaders under the standing order there be special orders in favor of the following Senators for not to exceed 15 minutes each: PROXMIRE, CHILES, LONG, RIEGLE, BAUCUS, BINGAMAN, BURDICK, HARKIN, CRANSTON, KERRY, WILSON, and DOLE.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, following the special orders just identified, I ask unanimous consent there be a period for the transaction of routine morning business not to extend beyond 12:30 p.m., with statements limited therein to 5 minutes each.

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

PROGRAM

Mr. DOLE. Mr. President, following the conclusion of routine morning business, it will be the intention of the majority leader to turn to any of the following items: The conference report on S. 883, Export Administration; Executive Calendar nominations, plus there may be a possibility of one or two other matters on the calendar that we are in the process of trying to clear. But I have already indicated there would be no votes tomorrow. We will not be in session on Friday. I just had a discussion with the Secretary of Agriculture, it is my understanding there may be a House-passed bill on the calendar with reference to wheat referendum. We have passed and sent to the House a similar bill introduced by Senator ZORINSKY. We may need to take some action on that tomorrow, but we can work that out.

Also, tomorrow we will attempt to work out a consent agreement on South Africa. I have just discussed with the distinguished minority leader and the distinguished Senator from Maryland [Mr. SARBANES] that if there were requests for rollcall votes on any matter, including procedural or any amendment, on Monday, the 8th, they would be carried over until sometime Tuesday, the 9th.

I am reminded we might not be able to put over certain procedural votes. If somebody asked for a rollcall on the Sergeant at Arms to round up absent Members, that might be one we could not avoid. But if there are votes on amendments, meaningful votes, they will be postponed until Tuesday, the 9th. And on the 9th, there will be a number of votes. If we are on either South Africa or the McClure-Volkmer gun bill, there will be four or five or six votes on Tuesday.

RECESS TO 9:30 A.M. TOMORROW

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess until 9:30 a.m., Thursday, June 27, 1985.

There being no objection, at 6:44 p.m., the Senate recessed until Thursday, June 27, 1985, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 26, 1985:

DEPARTMENT OF ENERGY

Charles A. Trabandt, of Virginia, to be a member of the Federal Energy Regulatory Commission for a term expiring October 20, 1988, vice Georgiana H. Sheldon, term expired.

IN THE AIR FORCE

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. William L. Kirk, [redacted] FR, U.S. Air Force.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 26, 1985:

GENERAL SERVICES ADMINISTRATION

Terence C. Golden, of Texas, to be Administrator of General Services.

ENVIRONMENTAL PROTECTION AGENCY

Francis S. Blake, of Maryland, to be an Assistant Administrator of the Environmental Protection Agency.

EXECUTIVE OFFICE OF THE PRESIDENT

Thomas Gale Moore, of California, to be a member of the Council of Economic Advisers.

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.

THE JUDICIARY

John Montague Steadman, of the District of Columbia, to be an associate judge of the District of Columbia Court of Appeals for the term of 15 years.

Richard A. Levie, of the District of Columbia, to be an associate judge of the Superior Court of the District of Columbia for a term of 15 years.