SENATE—*Thursday, July 31, 1986*

(Legislative day of Monday, July 28, 1986)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable CHIC HECHT, a Senator from the State of Nevada.

PRAYER

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

Let us pray.

Father in Heaven, if the leadership of the Nation is not in the U.S. Senate—where in the world is it? If the welfare of the people does not depend upon the men and women who work here—who is supposed to have that responsibility? The fact is, Lord, the buck stops here; there are no viable alternatives.

I pray against the cynicism which casts every Senator in a cartoon image—a caricature in which the politician is a self-serving political animal interested only in his personal goals and works very little. Somehow, Lord, help the truth to be known. Help there to be some understanding of the magnitude of legislation involving issues of monumental proportion which must be processed before early October. God of the impossible, infuse the Senate with the wisdom, energy, courage—and the will—to do the difficult or unpopular thing which will prove the cynic false and dignify this institution as those veterans of the Senate who love and honor this body remember it. For the glory of God and the continuance of leadership integrity. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. THURMOND].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 31, 1986.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CHIC HECHT, a Senator from the State of Nevada, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. HECHT thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. WARNER. Mr. President, as I understand, the first business this morning will be the Hart amendment, following the special orders.

We are advised by the leadership that there will a late session tonight, and all Senators should plan accordingly; and, further, that tomorrow will be a full day for the Senate, with votes anticipated.

Mr. President, I reserve the remainder of the majority leader's time.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the Democratic leader is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that I may reserve my time under the order throughout the day.

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

RECOGNITION OF SENATOR THURMOND

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from South Carolina [Mr. THURMOND] is recognized for not to exceed 5 minutes.

JUNE 1986 IMPORT FIGURES

Mr. THURMOND. Mr. President, I have just received the latest textile and apparel import figures. Unfortunately, they constitute more bad news for our beleaguered domestic textile industry. Even worse is the personal suffering these figures will mean to thousands of hard-working Americans who depend on this industry for their livelihoods. For months I have sincerely hoped that the administration would take actions to slow the flood of imports into our Nation. However, these latest figures are stark evidence that textile and apparel imports remain out of control.

Mr. President, imports in June of this year totaled 1,117 million square yard equivalents, which is up 17.2 percent over last June. In addition, more imports came into our country during the first 6 months of this year than in any other 6-month-period in our history. For the first 6 months of 1986, imports of textiles and apparel were up an astonishing 21.9 percent over the first 6 months of 1985. That is correct, Mr. President, imports for the first half of this year were up almost 22 percent over the first half of last year. With the domestic market for textile products growing at a rate of approximately 3 percent, a 22-percent increase in imports means two things—more plant closings and more job layoffs for America.

Mr. President, also in June of this year, our Nation experienced a $1.84 billion trade deficit in textiles and apparel alone. During June we imported 2.117 billion dollars worth of textile and apparel goods while we exported only 276 million dollars worth of these products. Yes, we imported over seven times as much as we exported. If imports and exports continue at this pace, we will experience a 1986 trade deficit of over $22 billion in textiles and apparel alone. Such a large deficit was unimaginable just a few years ago. It can only mean worse times ahead for the 2 million Americans still employed in this industry and the 2 million employed in related industries.

Mr. President, next week, on August 6, the House of Representatives will vote on whether to override the veto of H.R. 1562, the Textile and Apparel Trade Enforcement Act. I hope that they will take that historic step and, if they do, we should be prepared to do likewise here in the Senate. The future well-being of untold thousands of Americans depends on it.

□ 0910

IMPORTANCE OF TEXTILES TO NATIONAL DEFENSE

Mr. THURMOND. Mr. President, recently the House Armed Services Investigations Subcommittee held a hearing to assess the ability of the domestic textile industry to meet military mobilization requirements. At that hearing, the capability of our domestic industry to meet military wartime needs was drawn into serious question. In testimony before the subcommittee, Raymond Chiesa, the Executive Director for Contracting at the Defense Logistics Agency, said that the American textile industry is already having difficulty meeting the military's needs. Unrestrained foreign

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

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textile imports which have crippled the domestic industry were blamed for these difficulties in meeting our preparedness requirements.

Mr. President, textiles are vital elements in over 300 combat essential items, including such products as bandages, blankets, parachutes, helicopter blades, tires, helmets, and aircraft brake systems. For fiscal year 1985, the Defense Logistics Agency forecast the need for 10.2 million pairs of socks, 9.5 million yards of cotton blend camouflage fabric, 8.8 million woven and knitted hats, and 5.7 million pairs of gloves. Total military essential purchases of domestic textile items totaled over $1.1 billion in 1985. The necessity of a strong textile industry is underscored in a recent Department of Defense report on the domestic textile and apparel industrial base. The report states that the "acquisition of military clothing depends on the availability of domestic production capability." As former U.S. Trade Representative Bill Brock said in 1984: "Every U.S. industry insists it is essential for national security. Textiles is the only one we accept and that goes back 20 years."

Mr. President, I am becoming increasingly concerned about the ability of the textile and apparel industry to respond to the needs of the Defense Department. Over the last 5 years over 350,000 American workers in this industry have lost their jobs as hundreds of plants have closed their doors. The safety, comfort, and morale of our ultimate weapons system, the fighting soldier, depends on textile products. We must maintain a broad textile industry base to supply the needed military textiles. Also, it is crucial that we have the facilities which can be quickly converted to large-scale military production. In addition, if a conflict were prolonged, the industry base must be adequate to meet the needs of both the military and the civilian population.

Mr. President, we must not underrate the importance of this vital industry. The survival of textile and apparel manufacturing in this country is in jeopardy. In response to that dire situation, Congress passed H.R. 1562, the Textile and Apparel Trade Enforcement Act, which was subsequently vetoed by the President. Now, we must act to override that veto. The critical importance of the textile and apparel industry to the future security of our Nation is just one of the many reasons why the veto of H.R. 1562 should be overridden.

Mr. President, I ask unanimous consent that an article from Army Times entitled "Textile Decline Seen Hurting U.S. Readiness" and a factsheet entitled "Selected Military Appropriated Clothing and Textile Items" be printed in the RECORD.

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

[From the Army Times, July 28, 1986]

TEXTILE DECLINE SEEN HURTING U.S. READINESS

(By Rick Maze)

WASHINGTON.—The military may not have enough uniforms, helmets, parachutes, camouflage netting and backpacks in wartime because the U.S. textile industry is dying, a House subcommittee was told.

The textile industry also is important in building helicopter blades, missile casings and launch tubes, and bandages.

Rep. Bill Nichols, D-Ala., chairman of the House Armed Services Investigations Subcommittee, said the increase in imported clothing, coupled with the decline of the domestic textile industry, makes it doubtful that the United States could meet military wartime needs.

In testimony July 15 before Nichols' subcommittee, Raymond F. Chiesa, the Defense Logistics Agency's executive director for contracting, said the domestic industry already is having difficulty meeting the military's need.

Potential shortages could be avoided by stockpiling items, improving technology in domestic factories and establishing an industrial reserve program for textile firms, Chiesa said.

Since 1980, 300,000 domestic textile workers have lost their jobs as American plants have closed and imported goods have replaced U.S. products. Eighty-five percent of military textile and apparel money goes to small businesses, but military business makes up only a small part of the market, he said. The military's textile purchases make up about 1 percent of domestic production, and totals about $1 billion, Chiesa said.

Between fiscal 1984 and fiscal 1986, 21 textile plants have closed and another 15 have reduced capability, Chiesa said. Eight sewing plants also have been lost, he said.

Rep. Marilyn Lloyd, D-Tenn., warned that the decline of the industry could hurt national security. "Due to the importance of textiles to the national defense, it is crucial that we maintain a broad industry base to supply the needed military textiles as well as facilities that can be converted on a large scale to provide sufficient quantities in the event of a national crisis," Lloyd told the subcommittee.

SELECTED MILITARY APPROPRIATED CLOTHING AND TEXTILE ITEMS, FISCAL YEAR 1985 PROCUREMENT FORECAST, DEFENSE LOGISTICS AGENCY, $1.1 BILLION PROJECTED PEACETIME ACQUISITION

1. 10.2 million pairs of socks.
2. 9.5 million yards[1] of cotton blend combat camouflage fabric.
3. 9.2 million cotton and cotton blend combat camouflage coats.
4. 8.8 million woven and knitted hats, caps, berets, and hoods.
5. 7.2 million cotton and cotton blend combat camouflage trousers.
6. 6.6 million pairs of drawers.
7. 6 million dress and utility work trousers/slacks/skirts.
8. 5.7 million pairs of gloves/mittens.
9. 5 million dress and utility work shirts/blouses.
10. 3 million yards[1] cotton blend dress shirting fabric.
11. 3 million yards[1] cotton and cotton blend duck fabric.
12. 2.4 million chemical protective suits.
13. 1.7 million coveralls.
14. 1.6 million dress coats and utility jackets.
15. 1.3 million undershirts.
16. 1.3 million parkas.
17. 1.2 million raincoats and ponchos.
18. 1.1 million hankerchiefs.
19. 1 million nylon duck duffel bags.
20. 700,000 trouser/coat liners.

[1] Yardage figures are linear in various widths.

Mr. THURMOND. Mr. President, I suggest the absense of a quorum.

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

The legislative clerk proceeded to call the roll.

□ 0920

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

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

RECOGNITION OF SENATOR SYMMS

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho.

DUMPING U.S. GOLD RESERVES ON THE WORLD MARKET

Mr. SYMMS. Mr. President, proposals are now flying around this town very rapidly about sanctions against South Africa, and they are obviously going to be considered in this Congress. One of the proposals under consideration would call for the dumping of U.S. gold reserves onto the world market to depress the value of South Africa's largest commodity—gold. The argument is made that South Africa and the Soviet Union are the two largest producers and would suffer the most. Besides, the argument goes, the Government would make a profit because the gold is currently valued on the books at $42.22 per ounce and would sell for over $300 per ounce.

The problem with this action, Mr. President, is this: The incidental impact on the U.S. mining industry would be drastic. We would be cutting off our nose to spite our face. The suggestion is to dump American gold on the world market to drive down the price, thus hurting South Africa without hurting the United States.

But I think we should consider the fact that gold is a world commodity. Its price cannot be set domestically at a different rate than the world price. What few realize is the massive damage the dumping of gold would have on the U.S. mining industry—not just gold, but on the entire mining industry. The mining industry in the United States in my lifetime has never seen a tougher situation than they are

facing right now. Overly restrictive environmental regulations, ever-increasing tax burdens, and depressed commodity prices have put the U.S. industry in its worst recession in history.

Gold has been the only metal—precious or otherwise—to retain a reasonable value. Many mining enterprises—and I think of many in my home State of Idaho—have been kept in business solely by their gold operations. If we go forward with the attempt to bring South Africa to its knees by using Fort Knox, we will be shooting ourselves in the foot. It would be a disaster for the mining industry in this country.

So I would urge my colleagues that those who offer sanctions as a means of getting rid of apartheid to think about the domestic consequences of their actions. It is easy to choose gold when you come from a State that does not produce gold and do not have to worry about a depressed mining economy. For those of us in the western mineral zone—and I think of Montana, Utah, Nevada, California, Wyoming, Colorado, Arizona, New Mexico, and South Dakota—the reality of the depressed condition of mining comes home every day.

Mr. President, South Dakota is a good example of a State that has very, very difficult problems today because of the depressed farm economy. I was told by one of our colleagues from South Dakota yesterday that the Home State Mining Co. employs 2,000 miners in South Dakota. Those 2,000 mining jobs could be put at risk. I think this country can ill afford to have the mining industry put under any more pressure.

Mr. President, gold is the glue that holds many of these mining operations together. At least some operations continue earning a living, keep operations going, and produce the other minerals we need as a result of the slight profit made in gold mining. If we must have sanctions, which this Senator opposes, I urge the Senate to find a method that will not damage the U.S. economy. I think we should be very considerate of the domestic side of this issue. I urge my colleagues to think twice before we do something that will simply cut off our nose to spite our face.

Mr. President, I see the distinguished Senator from Wisconsin is on the floor.

RECOGNITION OF SENATOR HAWKINS

The PRESIDING OFFICER. The Chair wishes to advise the Senator that, under the previous order, the Senator from Florida is to be recognized for a period not to exceed 5 minutes. The Chair is advised by the Senator from Wisconsin that would be convenient. Therefore, we recognize the Senator from Florida.

THE DRUG SMUGGLER AS HERO

Mrs. HAWKINS. Mr. President, some of my colleagues may remember those country music songs extolling the virtues of moonshiners, and their fates and fortunes. The moonshiners were depicted in a sympathetic way; they were really not bad people, just victims of circumstance. That same thing is happening all over again, but this time it is in Mexico. The affable moonshiner has been replaced by your friendly drug smuggler in music played on juke boxes and in record and cassette shops. One of the top hits of the moment is the "Ballad to Caro Quintero." The polkalike ballad sings the praises of a Mexican drug kingpin linked to the brutal murder last year of DEA Agent Enrique Camarena.

A lot of heat was generated as a result of that savage act mainly by the United States which has been demanding that those responsible be brought to justice.

Caro Quintero, a key suspect in the Cambarena slaying, was apprehended in Costa Rica. He was returned to Mexico to stand trial on drug trafficking charges. There the matter rests. No one has been tried yet in the Camarena murder although it occurred 16 months ago. True, there are a dozen suspects in prison. But Ambassador John Gavin says there are at least 50 other suspects in planning and carrying out the kidnap, torture and killing. And he says the Mexican authorities are not hunting them very seriously.

Another drug trafficker who seems to be leading a charmed life in Mexico is Miguel Angel Felix Gallardo. Felix Gallardo supposedly is right at the top of Mexico's "most wanted" fugitive list in connection with the Camarena slaying. But residents in the western California community of Culiacan relate they have seen him walking on the streets in their town, with little concern or fear of being arrested.

Felix Gallardo also is said to have put in an appearance recently at the 15th birthday celebration of a godchild. He is regarded as a Robin Hood kind of character. Like the other Mexican "Narcos" he has challenged the system and beaten it. Where but in Mexico would you find a shrine where tribute is paid to a robber?

Edward Cody, writing in the Washington Post, June 11, 1986, reports this strange story. People in the Culiacan area visit a chapel to ask favors from Jesus Malverde, a turn-of-the-century highwayman who robbed from the rich and gave to the poor.

At the height of his colorful career, Malverde was betrayed by a friend and was hanged by Mexican authorities in 1906. Malverde has become a legend. Peasants come to the shrine, seeking cures or miracles. Not many of the people visiting the shrine are drug smugglers praying for "intercessions" from Malverde whom they regard as a "kindred soul." Admittedly the Roman Catholic bishop in charge of the area has declared that the church has nothing to do with the Malverde cult and that the man was no saint. But that does not deter the Malverde admirers. They come anyway. There is a certain sadness in this whole picture.

The music and lyrics of the currently popular Mexican ballads glamourize the drug traffickers. They are Robin Hoods who challenged the system. They defied authority. In the process they have become folk heroes.

This is a sad use for music which ought to bring enjoyment and comfort to listeners. I cannot think of a worse role-model for youth than a drug smuggler. I hope this is a passing phase in Mexican music, and that it passes quickly.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin, Mr. PROXMIRE, is recognized for not to exceed 5 minutes.

HOW TO CRACK DOWN ON NUCLEAR PROLIFERATION

Mr. PROXMIRE. Mr. President, a few weeks ago this Senator spoke out on the floor of the Senate about the heartening success of the International Atomic Energy Agency in preventing the spread of nuclear weapons. That success has made this nuclear world far safer than it otherwise would be. Acting under the mandate of the Nonproliferation Treaty of 1970 the IAEA has done a superlative job of keeping nuclear proliferation far below the level that many of us predicted it would be by 1986. A very large proportion of countries that might be tempted to develop at least a rudimentary nuclear arsenal have signed the Nuclear Proliferation Treaty. In doing so they have agreed to international inspection to assure that they have not diverted plutonium or weapons grade uranium from nuclear plants to weapons purposes.

Some countries, however, remain outside the treaty. And at least one signatory to the treaty may have started to assemble the basis for building a nuclear arsenal. Leonard Spector is a senior associate of the Carnegie Endowment for International Peace. Spector has recently written a short but excellent monograph on what he calls the "nuclear netherworld." These are the countries that have developed an illegal network to spread the materials for nuclear weapons for profits and to acquire nuclear weapons for power. Spector specifically names six countries which have not signed the NPT treaty. He charges that these

countries support their growing nuclear weapon capabilities by obtaining nuclear commodities illegally from America and Western Europe. Spector names Argentina, Brazil, India, Israel, Pakistan, and South Africa. In addition he charges that Iraq which is a signatory to the treaty may also have bought its way into the nuclear club.

Here is an example of how this trade in mass killing devices operates. Nazir Vaid is a citizen of Pakistan. In June 1984, Vaid was arrested at the Houston Airport. He was trying to smuggle 50 high-speed electronic switches, known as krytons, from the United States to Pakistan. These switches can be used to trigger nuclear devices. So they fall under the Export Control Act. What penalty was Vaid given for this crime that directly escalated the terrible danger of nuclear war and might have caused innumerable deaths? Vaid served a bare 3 months in pretrial detention. Then he was deported to Pakistan. Pakistan is his home. It is his principal place of business. Obviously the penalty was a "wrist tap." A year later Pakistan succeeded in detonating a nonnuclear triggering package for a nuclear weapon using a United States made kryton.

Was this typical of the weak penalties for violating the Nuclear Proliferation Treaty? Here is what Spector writes:

> The Vaid affair is only one of seven different prosecutions for nuclear exports to Pakistan that have been completed in trial or appellate courts in Western Europe and North America since mid-1984. They have run the gamut from the covert smuggling out of West Germany of an entire uranium-processing plant to the finely tuned exploitation of ambiguities in the trigger list that enabled Pakistan to obtain 6,500 specially hardened steel tubes from the Netherlands for use in a centrifuge uranium enrichment plant. As in the Vaid prosecution, the defendants in every one of these cases have received negligible sentences or have gone unpunished altogether.

Spector also points out that the West German businessman who secretly shipped the uranium processing plant to Pakistan for a price of $6 million recieved a $10,000 fine and an 8-month suspended sentence. In the case of the executives of the Dutch company caught exporting the hardened steel tubes—shipments that were made despite warnings from the Dutch Government—the Dutch prosecutor sought only $6,000 fines and a month suspended sentences.

Mr. President, this Senator cannot think of a more vicious crime or a crime fraught with more terrible consequences than that the violation of U.S. law—the Export Administration Act—and a treaty that has become the law in our country—the Nuclear Non-Proliferation Treaty—when such a crime advances the spread of nuclear weapons that could kill millions of innocent people and kick off a nuclear war that could very possibly end human civilization. And what is the motivation for the crime? Answer—turning a profit.

Leonard Spector has other suggestions too. He proposes more oversight by senior officials and the Congress. Specifically he recommends the designation of a ranking State Department nonproliferation aide to be responsible for coordinating all the nuclear prosecutions with appropriate Justice Department officials and for reporting annually on those activities to the Congress. And Spector proposes an especially critical remedy. He calls on the United States to give the prevention of nuclear proliferation the absolutely top priority it deserves. It should take priority over relations with other nations including our allies. He argues that when a supplier government has sufficient evidence to indict an individual for nuclear smuggling and certainly when it has obtained a conviction, it should directly and promptly confront the recipient country involved. And it should insist on the return of any illicitly obtained goods or the dismantling of any illicitly obtained installation.

Mr. President, I ask unanimous consent that the monograph by Leonard Spector to which I have referred from Issues in Science and Technology be printed at this point in the RECORD.

I think it will be very useful to all Members of the Congress.

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

THE NUCLEAR NETHERWORLD

(Leonard S. Spector)

Prologue: Although the United States and the Soviet Union disagree on most aspects of arms control, they have long agreed on the need to prevent the proliferation of nuclear weapons to new states. The two superpowers and other nuclear states have attempted to limit the export of nuclear-weapons-related materials and equipment through formal treaties and agreements. These efforts have had some success, but in recent years a new challenge has emerged: a "gray market" in which nuclear material and information are obtained illegally, through smuggling, exploitation of loopholes in nuclear export controls, and fraud.

Leonard S. Spector, a senior associate at the Carnegie Endowment for International Peace who has worked on nonproliferation for over a decade, examines what he calls the "nuclear netherworld." He finds that, although only a few governments have used this illegal network, the netherworld is playing an increasingly important role in the spread of nuclear weapons. Nuclear supplier nations have been reluctant, according to Spector, to act against states that have used the nuclear netherworld. He warns that without stronger measures, the danger of proliferation will grow.

Leonard S. Spector received his J.D. from Yale University in 1972. He has served on the staff of the Nuclear Regulatory Commission and on the staff of the U.S. Senate Subcommittee on Energy and Nuclear Proliferation. He was the subcommittee's chief counsel from 1978 to 1980. He is the author of Nuclear Proliferation Today and The New Nuclear Nations, annual reports on the spread of nuclear weapons published by the Carnegie Endowment for International Peace.

Clandestine nuclear dealings have long threatened international efforts to halt the spread of nuclear arms. Today this nuclear netherworld embraces a broad range of activities, including outright smuggling, the quiet exploitation of loopholes in nuclear export controls, the purchase of nuclear goods under false pretenses, and secret R&D work on nuclear weapons themselves.

Fortunately, these activities fall short of constituting a black market comparable to those for illicit drugs or conventional arms. Virtually all the nuclear netherworld or gray-market activities are pursued at the behest of a small number of national governments rather than by criminal, dissident, or terrorist groups. There appear to be few if any independent, freestanding smuggling networks. Furthermore, the commodities being sought—nuclear weapons and nuclear weapons material—do not appear to be for sale, only the equipment and technology needed by national governments to build the plants for producing them.

Nevertheless, despite the widespread adoption of an extensive and in many respects successful system of nuclear export controls, the nuclear netherworld continues to survive. Today it is playing an increasingly important role in the programs of a number of countries seeking to build or expand their nuclear weapons capabilities.

The cornerstone of the current system of nuclear export controls is an agreement among the nuclear suppliers—in essence, the advanced industrialized nations, including those in the Eastern bloc—to require that their nuclear exports be subject to audits and inspections by the International Atomic Energy Agency (IAEA) in recipient nations. Suppliers have adopted this requirements for IAEA safeguards under the Nuclear Suppliers' Guidelines they negotiated in 1976. The requirement is also mandated by the 1970 nuclear Non-Proliferation Treaty (NPT), which has been signed by all the suppliers other than France.

The particular commodities that are to trigger the application of safeguards in the recipient countries are worked out in negotiations among the suppliers and are specified in an agreed-upon "trigger list," which is updated from time to time. Manufacturers seeking to export commodities on this list must report their proposed sales to the supplier country authorities and obtain export licenses so that the authorities can verify the intention of the recipient country to apply the required safeguards.

Many recipient countries, of course, are themselves parties to the NPT and as such have agreed to place all their nuclear activities under IAEA inspection. However, *Argentina, Brazil, India, Israel, Pakistan,* and *South Africa* have not joined the pact. To support their growing nuclear weapons capabilities, many of these nonsignatories have quietly attempted to obtain nuclear commodities without being subject to IAEA safeguards. In addition, Iraq, which is a signatory, may have done likewise.

In addition to the safeguards requirement, the supplier nations have agreed to exercise restraint in the sale of the most sensitive nuclear facilities. These facilities include reprocessing plants, which extract weapons-usable plutonium from spent reactor fuel,

and enrichment installations, which can upgrade uranium from its natural state to weapons grade. Indeed, since France canceled its proposed sales of reprocessing plants to South Korea and Pakistan in the late 1970s, there have been no sales of such installations. The very success of these efforts to curtail commercial sales of sensitive nuclear plants, however, has driven would-be purchasers to the nuclear gray market, where at least the components for these facilities can sometimes be obtained.

The export of related dual-use commodities—items having both nuclear and nonnuclear uses—is controlled partly through the use of the suppliers' trigger list. In the West, many of these items are also controlled through the use of the separate export control system (known as the COCOM regime) established to prevent exports of strategic items to the Soviet Union and Eastern Europe. Again, licenses are required for these exports, although IAEA safeguards are not necessarily applied in the recipient nation because the basis for granting the relevant export license is often that the export not be destined for a nuclear end-use. Dual-use items controlled through all these mechanisms include advanced computers potentially useful for designing nuclear weapons, equipment for nuclear weapons testing, and electronics and hardware potentially usable in nuclear weapons themselves.

Despite their seeming comprehensiveness, these controls are far from being wholly effective. They are subject to continuous assault by a number of emerging nuclear nations intent upon using the nuclear netherworld, as a stream of recent revelations has shown.

In one well-known episode, a Pakistani national, Nazir Vaid, was arrested at the Houston airport in June 1984 while trying to smuggle 50 highspeed electronic switches, known as krytrons, from the United States to Pakistan. Because the switches can be used to trigger nuclear devices, their export is controlled. After serving three months in pretrial detention, Vaid pleaded guilty and was deported to Pakistan, his home and principal place of business. Although the United States stopped Vaid, this apparently did not prevent Pakistan from obtaining krytrons. According to U.S. intelligence sources quoted on television by ABC News, in June 1985 Pakistan successfully detonated a nonnuclear triggering package for a nuclear weapon using a U.S.-made krytron. Apparently the krytron either had been smuggled out of the United States by Vaid prior to his arrest or had been obtained through a separate clandestine network.

The Vaid affair is only one of seven different prosecutions for nuclear exports to Pakistan that have been completed in trial or appellate courts in Western Europe and North America since mid-1984. They have run the gamut from the covert smuggling out of West Germany of an entire uranium-processing plant to the finely tuned exploitation of ambiguities in the trigger list that enabled Pakistan to obtain 6,500 specially hardened steel tubes from the Netherlands for use in a centrifuge uranium-enrichment plant. As in the Vaid prosecution, the defendants in every one of these cases have received negligible sentences or have gone unpunished altogether.

Israel too has turned to smuggling in the recent past. In May 1985 Richard Smyth, an American businessman, was indicted in a U.S. court for having smuggled 810 krytrons to Israel between 1980 and 1983. Israel subsequently acknowledged receiving the switches but denied that they were being employed in nuclear weapons. At the request of the United States, Israel has since returned those krytrons not in use. Smyth absconded before his trial, and it is unlikely that further details about this affair will emerge.

Aerospace Daily reported in May 1985 that Israeli smuggling has been more extensive. The usually reliable newsletter claimed that Israel had a nuclear arsenal far larger than the 25 or so weapons generally assumed and that it had deployed a number of nuclear warheads on short-range, surface-to-surface Jericho II missiles. The article alleged that Israel had illegally obtained fuel compounds for the missiles, components for the missiles' inertial-guidance systems, and the shells for the rockets themselves from the United States. So far there has been no U.S. confirmation of the reports, and no indictments for these alleged activities are known to be pending.

According to Italian court records filed in the ongoing prosecution of a 30-man arms and drug smuggling ring, several of the defendants purporting to have 34 kilograms of weapons-usable plutonium offered the material for sale to Iraq in early 1982. The records and subsequent interviews with two of the defendants indicate that senior members of the Iraqi military expressed an interest in obtaining the material and met on three occasions with one or more of the defendants to discuss the sale. The plutonium, however, almost certainly did not exist. The deal collapsed when the Iraqis demanded to see samples. While this episode illustrates that international controls on the most dangerous nuclear commodities appear to be effective, it also reveals the apparent readiness of yet another country to turn to the nuclear netherworld in the hope of evading these restrictions.

Argentina has pursued a somewhat different tack. Without breaking any rules, it has obtained essential equipment from Italy, West Germany, Switzerland, and the United States for the reprocessing and enrichment plants it is building. This equipment includes microswitches, remote manipulators, and waste treatment technology for the reprocessing plant and construction-site generators and a large cooling unit for the enrichment plant. (The equipment for the enrichment plant was obtained in the early 1980s when Argentina's military regime was pursuing construction of the plant in complete secrecy.) The imports do not appear to have been illegal, usually because they involved items so widely used in nonnuclear settings that they are not subject to export controls. Although Argentina has reserved the right to operate its reprocessing plant without safeguards, and although it has refused to put its partially completed enrichment plant under the IAEA system, it has been able to obtain equipment that is highly important, if not essential, for completion of the two plants.

The examples cited here tell only part of the story. In a year's time, the United States, which has devoted considerable intelligence resources to the problem, may make as many as 100 demarches that alert other supplier countries of attempts by emerging nuclear nations to bypass export controls. In many cases, probably the majority, such cooperative efforts stop the illicit exports before they are made. Similarly, the export control guidelines are being steadily tightened. Still significant leakage occurs, as Israel's ability to obtain more than 800 krytrons in three years demonstrates only too well.

Even when convicted, nuclear smugglers have been treated with astonishing leniency. Nazir Vaid served three months in jail and was then sent home. The West German businessman who secretly shipped the uranium processing plant to Pakistan for a price of $6 million received a $10,000 fine and an eight-month suspended sentence. Under West German law the maximum penalty was three years. In the case of the executives of the Dutch company caught exporting the hardened steel tubes—shipments that were made despite warnings from the Dutch government—the Dutch prosecutor sought only $6,000 fines and one-month suspended sentences. Plainly, such penalties need to be strengthened, both as a warning to potential smugglers and as a signal to their foreign government principals that the supplier countries take smuggling very seriously.

In Western Europe the criminal laws themselves need strengthening, and Washington is urging its allies to move in this direction. Here in the United States, where statutory penalties are already tough, the problem is one of inadequate coordination and follow-through. Vaid, for example, was apparently let off lightly because the prosecutor in that case thought that evidence clearly linking Vaid's krytrons to the Pakistani nuclear program was lacking. As investigative journalist Seymour Hersh has brought out, however, the prosecution had subpoenaed a cable showing that the krytrons were ordered in Pakistan by one S.A. Butt—a figure unknown to the prosecutor in the Vaid case but known only too well to State Department experts as a man long involved in Pakistan's clandestine nuclear affairs. Although it was supposedly monitoring the case closely, State apparently failed to alert the prosecutor to this key fact. In the Smyth proceeding a different "case management" problem arose: the failure to take adequate measures to prevent his flight.

The best remedy for such shortcomings is more active oversight by senior officials and Congress. One approach would be to designate a ranking State Department nonproliferation aide to be responsible for coordinating all the nuclear prosecutions with appropriate Justice Department officials and for reporting annually on these activities to Congress.

Internationally, the trigger list also needs further modification. In addition to controlling specific pieces of hardware, the suppliers could prohibit all exports destined for any nuclear plant in a nonnuclear-weapons country that is not under IAEA safeguards. Although falsification of end-user documentation could defeat this blacklist, the added controls would place one more obstacle in the path of such countries as Argentina and Pakistan, thereby making it more difficult for them to obtain needed but currently unregulated items for plants that may be contributing to their nuclear weapons potential.

Unfortunately, past efforts to prosecute individuals and to tighten export controls have had one unintended effect: they have become a substitute for taking action against the national governments that are directing and benefiting from today's nuclear smuggling and gray-marketeering. None of the nations whose export laws Pakistan has violated, for example, has condemned that country in any international forum, such as the United Nations or the IAEA.

Indeed, Pakistan was elected to the IAEA board of governors to represent its region from 1982 through 1984. Only in 1985 did the United States enact legislation that would prohibit foreign aid for any nation that violates U.S. laws to obtain items needed for the manufacture of nuclear explosives. Comparable laws are needed in other supplier states.

Nor have aggrieved supplier countries made any serious attempt, through the threat of sanctions or other diplomatic or legal efforts, to deprive emerging nuclear weapon nations of the fruits of their past illicit actions. The United States took a step in the right direction by demanding that Israel return the krytrons smuggled out by Smyth. In the end, however, Washington appeared to condone Israel's conduct by permitting it to retain those krytrons already in use—some quite possible for nuclear purposes, despite Israel's denials. Similarly, although France refused to deliver a reprocessing plant it promised Pakistan in 1976 (sparking a lawsuit by Pakistan against France before the International Chamber of Commerce), West Germany is not known to have objected to Pakistan's use of its illegally obtained uranium processing plant, a plant now thought to be operating in the town of Dera Ghazi Khan. Certainly, when a supplier country government has sufficient evidence to indict and individual for nuclear smuggling, and especially once it has obtained a conviction, it has little excuse for not confronting the recipient country involved and insisting upon the return of any illicitly obtained goods or the dismantling of any illicitly obtained installation.

The United States's reluctance to damage its relations with some of the emerging nuclear nations in areas of East-West tension has too often led Washington to stay its hand in this regard, and its allies have followed this unfortunate lead. Unless more forceful actions are directed at the source of the problem, however, the nuclear netherworld will continue to exist, thereby seriously undermining global efforts to halt the spread of nuclear arms.

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

RECOGNITION OF SENATOR GORTON

The PRESIDING OFFICER. Under the previous order, the Senator from Washington [Mr. GORTON] is recognized for not to exceed 5 minutes.

S. 2704—PREVENTION OF WRONGFUL USE OF CYANIDE

Mr. GORTON. Mr. President, I rise today to introduce a bill which, if enacted, would direct the Environmental Protection Agency to conduct a study on the distribution of cyanide throughout the United States in order to determine whether steps can be taken to prevent the wrongful use of cyanide against American consumers.

A study of this nature is particularly needed in light of the unfortunate number of actual as well as alleged tampering cases of over-the-counter drugs and food products which we have witnessed during the past year. In my own State of Washington, two individuals met untimely deaths last month due to cyanide-laced capsules.

Mr. President, the American consumer is being subjected to a new form of terrorism, and we need to look at new ways with which to fight these criminal acts. Let me say at the outset that our law enforcement agencies, the Food and Drug Administration, as well as the manufacturers of consumer products, are doing all they can to combat these senseless tampering acts. Millions and millions of dollars are being spent investigating these tampering incidents as well as developing new tamper-resistent packaging.

Unfortunately, no packaging can be totally tamper resistent. However, with better packaging and better consumer awareness on how to detect products that have been tampered with, we can reduce the number of deaths which occur due to mindless acts.

One area which has not been fully explored is the need to control the mass distribution of cyanide. One of the problems that our law enforcement agencies have in apprehending the perpetrators of these crimes is that currently we do not have the means to record who purchases and uses cyanide. At present, we require more information for those people purchasing and using drugs than we do of those who use cyanide.

Since cyanide is widely used in many industrial applications, a simple ban of cyanide is neither a feasible nor reasonable approach to take in addressing this problem. A more responsible and realistic approach is to ask the EPA to carefully study this problem and report back to Congress with recommendations on what steps we can take to further safeguard the American consumer from the wrongful use of cyanide.

My bill has two principle sections: First, it requires that the Administrator of the Environmental Protection Agency issue—within 30 days of enactment of this legislation—regulations requiring that all retail sales of cyanide be registered in terms of the identity of the purchaser, the address of such person, and the intended use of the cyanide. This registry would be very helpful to law enforcement agencies when investigating tampering cases.

The second section of my bill outlines the scope of the EPA study and requires the Agency to report its findings to the Congress 9 months from the date of enactment of this legislation.

Mr. President, tamper-related terrorism is not going to go away tomorrow or the next day. Those of us in Congress must begin to provide our law enforcement agencies and the FDA with new tools to combat these criminal acts. The adoption of this legislation will be an important step in doing just that and, by doing so, restore consumer confidence in the food and medications they purchase in our country's retail outlets.

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

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

S. 2704

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That, on or before the expiration of the 30-day period following the date of the enactment of this Act, the Administrator of the Environmental Protection Agency shall issue such regulations as may be necessary to require any person who sells or otherwise transfers, at a retail level, any cyanide to record such sale or transfer, including the identity of the person purchasing or otherwise receiving such cyanide, the address of such person, and the intended use of such cyanide. Such records shall be available for such use, and retained for such period, as the aforementioned Administrator shall by regulation require.

SEC. 2. (a) The Administrator of the Environmental Protection Agency shall conduct a study of the manufacturing and distribution process of cyanide with a view to determining methods, procedures, or other actions which might be taken, employed, or otherwise carried out in connection with such manufacturing and distribution in order to safeguard the public from the wrongful use of cyanide.

(b) Such study shall include, among other matters, the following:

(1) a determination of the sources of cyanide, including the name and location of each manufacturer thereof;

(2) an evaluation of the means and methods utilized by the manufacturer and others in the distribution of cyanide, including the name and location of each such distributor;

(3) an evaluation of the procedures employed in connection with the selling, at the wholesale and retail level, of cyanide, including a determination as to whether or not persons selling cyanide require the intended purchaser to identify himself or herself;

(4) a determination as to the extent to which recordkeeping requirements are imposed on, or carried out by, manufacturers of cyanide with respect to the specifications of each lot of cyanide produced by such manufacturer;

(5) a determination as to the feasibility and desirability of establishing a central registry of all lot specifications of cyanide for the purpose of providing quick access to investigative and law enforcement agencies;

(6) a consideration and review of all aspects of the matter of interstate versus intrastate to the extent that it involves the manufacturing, distribution, or use of cyanide;

(7) a determination as to the feasibility and desirability of requiring manufacturers of cyanide to color all such cyanide with a distinctive color so that the consuming public can more readily indentify products laced with cyanide;

(8) a determination as to the feasibility and desirability of requiring limited-access storage for cyanide at universities, laboratories, and other institutions that use cyanide for research or other purposes; and

(9) a determination as to the feasibility and desirability of regulating all poisons in accordance with the provisions of the first section of this Act.

(b) On or before the expiration of the 270-day period following the date of the enactment of this Act, the Administrator of the Environmental Protection Agency shall report the results of such study to the Congress, together with his or her recommendations with respect thereto.

(c) As used in this Act, the term—

(1) "person" means any individual, corporation, partnership, or other entity; and

(2) "cyanide" means cyanide or any form thereof.

SEC. 3. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

THE GRAMM-RUDMAN-HOLLINGS "FIX"

Mr. GORTON. Mr. President, the Gramm-Rudman-Hollings "fix" was strengthened yesterday, on balance, through the efforts of my distinguished colleagues, the chairman and ranking member of the Budget Committee. The perfecting modifications made to the "fix" will make more credible our actions with respect to the budget and appropriations process—an action absolutely consistent with the spirit of the original Gramm-Rudman-Hollings legislation.

I am pleased that the Senate has approved these changes not only in the keeping with the spirit, but also as a response to the disappointing manner in which we continue to execute the budget and appropriations processes. The last disappointment was the budget resolution for fiscal year 1987. I supported that budget resolution because I believed that it was adequate, although barely, and because it seemed to me that a budget resolution, almost any budget resolution, was absolutely necessary in our efforts to bring Federal spending under control.

□ 0940

It is, nevertheless, another in a series of congressional budget resolutions which was ultimately less effective than the version originally passed by the Senate. It is another in a series that is less forceful than the Senate Budget Committee's original budget proposal.

This year, however, because of Gramm-Rudman-Hollings and its sequal, Congress will not be able to get away with mediocrity, with impunity. In fact, in passing the "fix" we have prevailed over the temptation to resume budgeting-business as usual.

Mr. President, there is a good chance that we will not pass the reconciliation bill before the August 15 snapshot. There is an excellent chance that a sequester order will be issued by the Office of Management and Budget. There is the reality that we will return in September to make the budget decisions that we should have made this summer, but did not. There is, therefore, the guarantee that the requisite amount will be cut from the 1987 deficit. We will be a step closer to a balanced budget, and several steps closer to the "truth-in-budgeting" that the American people demand. For these reasons I supported the Gramm-Rudman modifications.

RECOGNITION OF SENATOR BAUCUS

The PRESIDING OFFICER. Under the previous order, the Senator from Montana [Mr. BAUCUS] is recognized for not to exceed 5 minutes.

THE FALSE PARADISE OF A SERVICE ECONOMY

Mr. BAUCUS. Mr. President, in John Steinbeck's novel "The Grapes of Wrath" Tom Joad and his family travel with a hope and a prayer to California, believing that California will solve all their problems.

They learned that things are not always what they may seem.

Mr. President, our country may be relying on another false paradise today—it is called our service economy.

The service industry—insurance, banking, fast food businesses—has grown dramatically in recent years—over 25 million new service jobs have opened since 1970.

But this industry alone cannot alleviate our economic problems. In the long run we need something more permanent to stabilize our economy and restore our economic stronghold.

Despite the growth of the service industry, we must recognize that services depend on manufacturing for their business and survival; manufacturing generates the demand for insurance, advertising, consulting, and financial advice.

Service jobs, however, typically pay less than manufacturing. The average hourly wage in America is approximately 11 percent lower in service jobs. Today the inflation-adjusted hourly wage is lower than that of 10 years ago and this figure does not show that many service industries hire primarily part-time employees.

Yet these are the jobs on which our economy is increasingly dependent.

The Labor Department forecasts that, of the 10 fastest growing occupations, none are in high-technology manufacturing, but, rather, all are service-related. These include cashiers, registered nurses, janitors, truck drivers, waitresses, and nursing aides.

These account for about 25 percent of the openings through 1995. The biggest gainer is cashiering—but their average salary is 60 percent less than the average wage in the top 10 occupations in the forecast.

Some workers will enter high paying professions such as law or accounting, but a majority will be channeled into jobs that pay lower wages than most manufacturing positions.

The point is this: The service economy may be a false paradise. As the manufacturing sector experiences severe wage competition from low-wage countries, we may be responding by losing manufacturing jobs and shifting jobs into the service area. In other words, the shift into services reflects the pay cut Americans must take because of declining competitiveness.

This shift is a particularly bad omen for certain segments of our economy. It may worsen the job outlook for black adult males whose 13 percent unemployment rate is double that of white adult males. They may suffer the most as factory jobs are phased out.

Women are disproportionately taking these lower paying jobs. In 5 of the 10 largest growth areas identified by the Labor Department, over three-quarters of the jobs are held by women.

In short Mr. President, the service sector may not be the panacea some envision.

A second fallacy regarding service jobs is that America is unchallenged in its dominance of service industries.

This is not so now and will become less true unless we take action to improve our competitiveness.

The U.S. share of global trade in special business services such as engineering, consulting, and securities investment has decreased to 8 percent in 1983 from 15 percent in 1973. The United States now trails behind France, Germany, and Britain in this aspect of trade.

So far, U.S. technology in services has managed to surpass its foreign competitors. But let me make a prediction: within the next 5 years, within 2 years, within the next 2 months, service companies will be approaching us in Congress rightfully demanding that we press to open up foreign service markets, not just markets for manufactured goods. And we must respond, because we can no longer assume U.S. dominance in this area.

Mr. President, we must act to keep America competitive in services. But we must bear in mind that services are no panacea. We must preserve a strong manufacturing sector, the backbone of our economy.

If we do not, we may find—like Tom Joad and his family when they arrived in California—that the paradise we long for is in fact a cruel mirage.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a

period for the transaction of routine morning business, not to extend beyond the hour of 10 a.m., with statements by Senators therein limited to 5 minutes each.

Mr. BAUCUS. 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.

□ 0950

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

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

AVERELL HARRIMAN, STATESMAN AND PATRIOT

Mr. HART. Mr. President, this weekend, the cause of peace lost one of her most talented and faithful servants, Averell Harriman. Few Americans have contributed more ideas, accomplishments, or time to their Nation than that great statesman and patriot. None had greater integrity or ability.

The briefest description of Averell Harriman's career requires pages. His titles alone comprise a long list: Businessman, adviser to four Presidents, Ambassador, Secretary, Governor, party stalwart, mentor to great diplomats, friend to scores of world leaders, husband to a national leader, patriarch to a great family.

What most distinguished Averell Harriman's service was not just its breadth, but its quality. He integrated his mastery of business, politics, and world history to become a genius of administration, a hero of diplomacy. His achievements were impressive, tangible, lasting. Our understanding of the Soviet Union, the neutrality of Laos, the cessation of nuclear tests in the atmosphere—these are just some of the results of his efforts.

Most impressive of all was the quality of his professional advice—always acute, honest, and fearless. He was unafraid to tell Wall Street it needed the New Deal. He was unafraid to reprehend Soviet leaders for their despotism. And he was unafraid to tell America that we must negotiate with the Soviets, no matter how repugnant we find their behavior.

In all this, he exercised his influence with a selflessness that all in public service would do well to emulate. He worked tirelessly—but never on his own behalf. He wielded great power—but never for its own sake. He was often the first to make diplomatic breakthroughs—but usually the last to claim credit.

Much has been said and will be said about the life of this great statesman. But the current administration has within its power the ability to pay Averell Harriman the kind of tribute I suspect he would have found most gratifying: Progress toward genuine arms control; nonproliferation agreements; a comprehensive test ban; a renewed commitment to civil rights; investments in broadbased economic growth—the goals to which he devoted more than a half-century of service—policies that are good for America.

Mr. President, Winston Churchill once asked: "What is the use of living, if it be not to strive for noble causes and to make this muddled world a better place to live in after we are gone?" Averell Harriman's life was a testament to that purpose. Our great Nation and muddled world will miss his gifted guidance.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

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

PUBLIC DEBT LIMIT EXTENSION

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, while we are waiting for Senator BYRD, we will stay in morning business, but in any event it is my hope now that when we go back on the bill we can agree that there will be an amendment by the Senator from Colorado [Mr. HART], who has been attempting to offer that amendment for some time. I understand if that is the case it will take a couple hours, and then we could have a vote. As far as any other amendments, whatever they may be, we could just postone that judgment until after the vote on the Hart amendment, if that is satisfactory because I know there are a lot of amendments floating around. The Presiding Officer has an amendment. I know the Senator from Washington [Mr. GORTON] has an amendment, the Senator from Maryland [Mr. MATHIAS] has an amendment, the Senator from Massachusetts has an amendment, and the Senator from Kansas may have an amendment. That is only a few. I know there are many, many others out there that have no relationship to the debt ceiling but may be offered in any event. So I would hope that when we resume consideration of the bill, we can agree the Hart amendment will be in order and that it can be offered.

Mr. KENNEDY. Will the majority leader yield?

Mr. DOLE. I will be happy to yield.

Mr. KENNEDY. I have a feeling we have been here before. I want to reiterate my willingness certainly to cooperate with the majority leader in working out some kind of a process or procedure which will permit the Senate to resolve the issue of sanctions in South Africa. I have indicated since we began the debate, even prior to the debate, on the debt limit that I wanted to ensure that that opportunity was available to the membership. I know the leader is familiar with the fact that the Commonwealth countries will be conducting this weekend and the early part of next week an extremely important and significant meeting to decide some of their own policy toward South Africa. It seems to me it is important that the United States lead, and the institution to provide that leadership is the U.S. Senate. I know these matters will be considered, as we meet here this morning, in the Foreign Relations Committee. I am very hopeful that they would be able to agree on legislation. But I know the majority leader understands very well we have debated these issues in the past. We are all familiar with the issues before us. I want to indicate that if we have an opportunity to get the South Africa amendment laid down, I would be more than willing to lay it aside to permit the Senator from Colorado [Mr. HART] to dispose of his amendment. Then I think after a couple of hours we would have a very clear idea what the Senate Foreign Relations Committee had resolved, or at least what the chairman had proposed. We could then get back to that issue. I am not interested in interrupting the consideration of the amendment by the Senator from Colorado, but I do reiterate what I said last night, yesterday and the day before. That is that this issue is timely. It is important. The strife and violence continues to grow in South Africa. The Senate as an institution has continued to fail to speak on this issue of enormous urgency. The President has stated his position, and I believe that it is imperative we state ours.

I want to cooperate, but I also indicate that we are at a point now where we are going to have to exercise whatever rights we have to get that kind of consideration. Having said that, I will try at appropriate times to submit to the Senate through one means or another the addressing of that issue. I thank the majority leader.

Mr. DOLE. Mr. President, I hope we would let nature take its course, let Senator HART offer his amendment and dispose of it. Otherwise, I will just recess or do something else. We are not going to bring up South Africa now and we are not going to discuss it now—maybe later, if we can get an agreement, but we are not going to offer it and then set it aside and let other Members offer amendments. We are on the debt ceiling legislation. It is very important. It is important to a lot of people if we do not pass this legislation. As I understand from Treasury,

September 2 is sort of the drop-dead date; we will not be able to pay our bills, and I think we ought to keep our eyes on that, not just some meeting that may be held somewhere with reference to South Africa. I think the Commonwealth countries know that Congress is serious about our concerns with respect to South Africa, that we have demonstrated that in the past on a bipartisan basis, and I am not certain it does any good to say we have an amendment pending, whether that is going to cause any change in what is going to happen in some meeting this week.

□ 1010

So I hope we could proceed on the basis of trying to finish the debt limit extension. We have started contacting Members on this side this morning with reference to nailing down some framework and agreement for aid to the Contras and the South Africa bill. As soon as I have a report on this side, I will pass it on to the distinguished minority leader, to see if there would be a chance for any progress on an agreement.

Again, the Foreign Relations Committee is meeting as we speak. I do not really see the urgency of discussing another bill until they complete action.

I hope we could go ahead with the Hart amendment. Otherwise, I am prepared to recess the Senate.

(Mr. D'AMATO assumed the Chair.)

Mr. KENNEDY. Mr. President, before we do that, if the leader will yield, I cannot resist at least the rather sad commentary that the Senate of the United States is in a position where we are prepared to recess to avoid debate and discussion on one of the most important and timely issues in the world today. I think that is a sad commentary on this institution, which tends to reflect at times the best in terms of debate and discussion on American policy, particularly in the area of foreign policy, and the Constitution has given us that responsibility.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. DOLE. I am pleased to yield to the distinguished minority leader.

Mr. BYRD. Mr. President, I am a little concerned about what the distinguished majority leader has just said. He says there will be no amendment on South Africa.

Mr. DOLE. At this time.

Mr. BYRD. At this time. And there will be no debate on South Africa at this time.

Mr. DOLE. We do not need an amendment for debate.

Mr. BYRD. I understand the distinguished majority leader to say there would be no debate on South Africa.

I recognize the distinguished Senator's burdens. I know that he has the responsibility of developing the work schedule of the Senate; and when he fills an amendment tree, he certainly is working within the rules. It seems to me that it is going a little bit far, however, if I may say so respectfully to the majority leader, for a majority leader, whether it is on this measure or anything else, to set himself up as a kind of traffic cop and decide that he will be the sole determiner of who will offer an amendment, when an amendment will be offered, and for what purpose an amendment is drawn.

The majority leader has the votes, I assume, on these measures. I can understand his reticence to get into some of these matters. But there are 99 other Senators here, more than half of them on the other side of the aisle, and each Senator has a right to call up amendments.

The distinguished majority leader has bemoaned the fact that this is a debt limit extension bill and implies that we ought not be calling up something that has not been heard by the committee, referring to the South Africa proposal which the distinguished Senator from Massachusetts [Mr. KENNEDY] seeks to bring up. Mr. President, this is the very same kind of resolution—the debt limit extension—to which the Gramm-Rudman measure was attached last year. Gramm-Rudman had had no committee testimony, no committee hearings, no committee markup. Yet, this was the very vehicle on which that amendment was added last year.

I say this knowing something about the distinguished majority leader's problems and burdens. But I would urge him not to go too far. The majority leader has the power of recognition, which is an awesome power—it is the strongest weapon in his arsenal, the power of first recognition—and, second, he has the votes. I would hope he would not go so far as to say: "Well, only this Senator can call up an amendment. He can call it up at this time or another time, and we will go into recess until he has it ready, and it can only be an amendment of this nature." That goes a little far.

I hope the distinguished majority leader would take what I am saying in the spirit in which I am offering it. I certainly have no animus toward the majority leader. I am fond of him and I respect him, and there is nobody in the Senate who respects the office of majority leader more than I do. But even a majority leader can go too far.

I have been majority leader, and there may have been times that I was perceived as having gone too far, as when I acted to break the filibuster on the Natural Gas Act, but we had a filibuster on our hands.

May I ask the distinguished majority leader whether we could agree that the Hart amendment, if that is the majority leader's preference, go first, but that the distinguished Senator from Massachusetts be then recognized upon the disposition of the Hart amendment, so that both the Hart amendment and the amendment by Mr. KENNEDY can be called up.

I am not conversant with the details of Mr. KENNEDY's amendment, but he certainly has a right to call up his amendment.

He has indicated that there are developments which make time somewhat of the essence.

I hope we can agree to some resolution of this, to allow the Senator from Massachusetts to have his amendment called up and debated. The majority leader, I assume, has the votes. He can vote it down; he can table it. Why not call it up and debate it?

I thank the majority leader for his patience and courtesy.

Mr. HEINZ. Mr. President, will the majority leader yield?

Mr. DOLE. Mr. President, while I disagree with the minority leader, I think the majority leader has some obligation to try to do the business of the Senate.

Let us face it: What we have here is a race—who can rush over and offer a bill regarding South Africa first. I happen to believe that it is a very important matter, and I remind my colleagues on both sides that it was resolved last year with the cooperation of the majority leader and others in a bipartisan way.

I am not totally naive. There is a certain amount of domestic politics involved in this effort. It seems to me that when the Foreign Relations Committee is conducting an executive session, when Republicans and Democrats there are focusing on the issue of South Africa, what we have is an effort to upstage the Foreign Relations Committee: We could not do it last night, and we want to do it this morning to demonstrate to someone that we are more concerned than the Foreign Relations Committee.

I have confidence in the chairman and the ranking minority member of the Foreign Relations Committee, and in my view they will probably report a bill. But I do not believe the majority leader has to yield to anybody who wants to offer some amendment that is totally irrelevant to what we are discussing on the Senate floor.

We can start the contest. I can offer a freedom fighter amendment, call up the bill, offer that, and a Senator can offer a motion to recommit, and we can offer other amendments on freedom fighters and spend the next 2 weeks debating South Africa and aid to the Contras on the debt ceiling bill, which in my view in the final analysis will be an exercise in futility. If I understand the House as I believe I do and how they respond to all this material on the debt ceiling extension, it

came from the House without any amendment and that is the way they like it. It does not mean that is the way they are going to get it but that is the way they like it.

I am just looking over the calendar here for the months of August, September, and October.

It just seems to me that we are going to have to either complete the debt ceiling or move on to something else and come back to it again before we recess for the so-called Labor Day recess.

I am not going to negotiate with the Senator from Massachusetts. He has every right as we all have on this floor. But I do not believe the majority leader has to yield just because the Senator from Massachusetts has an amendment he wishes to offer. Maybe other Senators would like to offer amendments. The Senator from Kansas may offer an amendment.

I would hope we could deal with the debt ceiling extension, but obviously that is not the case. It seems to me that we either are going to take up amendments or try to avoid at least foreign policy debate on this issue. We have enough extraneous amendments as it is. At least I know of enough.

Having said that, I yield the floor.

Mr. HEINZ. I thank the majority leader for yielding.

Let me say I am really surprised at the discussion and the effort to take up the South Africa amendment this morning. I thought we put this to bed last night.

The reason I am surprised is that there was a lengthy discussion involving the Senator from Massachusetts, my good friend, Senator KENNEDY, the Senator from Connecticut, Senator WEICKER, other Senators here on the floor. The Senator from Connecticut, who was one of the principal sponsors of the Kennedy-Weicker-Cranston amendment, said that in his view to have a debate on the debt ceiling bill which is, of course, the bill I am managing, and I would like to be able to deal with the debt ceiling issues one of these days, would be, in effect, a debate that we would have to have all over again when the Foreign Relations Committee reported its bill. In view of the fact that there are only about 2½ working weeks left before the August recess and only 4 or 5 working weeks left after that, the Senator from Connecticut said that he did not feel it was right or fair for the Senate to debate the same issue twice and probably come to the same conclusion twice.

Now, I have a vested interest in trying to get this bill completed. We have to complete the debt ceiling bill by August 15, as I understand the Senate's schedule. We have to reconcile our differences with the House, and there is already a big one, Gramm-Rudman. Gramm-Rudman last year, as I recollect, took a month and a half to resolve.

Among the consequences of failing to complete action in a timely manner on this debt limit will be another disinvestment of the Social Security trust fund. This will be used to pay Social Security benefits, but no one should be very enthusiastic about forcing the Government to disinvest the Social Security trust fund. It does not sound too good and indeed it is not good, because it should not have to be necessary. We ought to be able to run our fiscal house and keep it in better order.

Now, there is another aspect to the variety of nongermane amendments, whether it is South Africa or others, that are being offered here.

I have offered nongermane amendments on the debt ceiling. I have offered nongermane amendments to other bills. But I must tell you I have never offered a nongermane amendment when a committee of jurisdiction was in the process of marking up on the very subject about which my nongermane amendment would have been involved.

Just about a year ago, Senator SIMPSON brought up his legislation on immigration reform. I think my colleagues will recollect that I offered a sense-of-the-Senate resolution to that immigration reform bill. The reason that I offered my nongermane amendment to take the Social Security trust funds out of the Federal budget, which at that point was somewhat controversial, was because people did not want to deal with that issue. They wanted that issue to go away. They did not want that issue to get mixed up in decisions involving immigration.

At that point, we did not know that we were going to have a Gramm-Rudman bill. But I pressed that issue even though there was an effort to preclude a vote and after 4 or 5 working days, I moved to table my own amendment. My move to table was overwhelmingly rejected by the Senate. The Senate sent a signal which was that Social Security and its trust funds should be taken out of and set aside from our annual consideration of the budget and of reconciliation, and the consequence of that was that when we dealt with the debt ceiling bill a month or so later, as Gramm-Rudman did evolve, guess what? We did what we should have done years before, what many of us had been striving to do for many years, which was to separate Social Security from the Federal budget; and because it is trust funded, because it is paid into and paid out of to Social Security beneficiaries, we won that fight.

There was a reason to have that fight. It was timely. It was necessary. It was not something anyone wanted to deal with.

Let us contrast that to the issue that the Senator from Massachusetts wants us to deal with, South Africa.

This Senator wants this body to deal with South Africa. This Senator was the first Senator to bring to the floor of the Senate in the closing days of 1984 legislation that actually involved sanctions on South Africa. Most Senators did not even know it. We passed it. We passed it twice in this body as part of the Export Administration Act.

Then the Subcommittee on International Finance and Monetary Policy had hearings on South Africa. Immediately after the July 4 recess, our committee had the first hearings. Senator KENNEDY testified. Senator WEICKER testified. Other interested parties testified. We felt it was important for that legislation to have a proper hearing because it was, and is, a matter of great urgency.

Right now the Foreign Relations Committee, having held hearings last week, is moving with extraordinary rapidity to mark up and present to the Senate free-standing legislation on South Africa.

□ 1030

What more any of us could want the Foreign Relations Committee to do, I do not know. That is fast work. I have no doubt that, while there may be differences over which sanctions should or should not be in, the Foreign Relations Committee will present to us a significant and, from the standpoint of many people, a strong sanctions bill that will send more than just a verbal message to the South Africans and their absolutely intransigent government.

But I do not understand, Mr. President, what purpose we serve by trying to second-guess the committee here today—what purpose we serve by trying to have what will only be a preliminary debate on the legislation that is coming to the Senate floor.

It seems to me that Senators should have a clear purpose in mind when they advocate nongermane legislation on a bill that is on the Senate floor. And I just do not know. Maybe it is something I do not understand. I am willing to learn, but I just do not know what purpose is served by the Senator from Massachusetts continuing to press for consideration today of legislation that could be from the committee on the floor of the Senate next week.

I cannot speak for the majority leader's intentions on that, but my recollection from last night is that the majority leader said that he intended to bring the legislation from the Foreign Relations Committee up as soon as it was reasonably available, but I cannot speak for him.

The fact is that there are going to be plenty of opportunities to address that

issue. As the manager of this legislation, I know there are a lot of other amendments that are germane to Gramm-Rudman and to the debt ceiling. Frankly, I would like to try and get those out of the way.

Now, the Senator from Colorado has a thoroughly gremane amendment. As I understand it, he wants to repeal Gramm-Rudman. I think we should take that up as quickly as possible. I think the Senator from Washington State has an amendment to modify a portion of Gramm-Rudman having to do with COLA's. I happen to have an amendment to reinstate some of the benefits that were, according to Senator RUDMAN, unintentionally taken from railroad retirees who have a parallel system to Social Security. And I am sure there are other amendments like that that are relevant to either Gramm-Rudman or to the debt ceiling.

As the manager of this legislation, I hope, Mr. President, that we could work our will on the germane and relevant amendments to the debt ceiling bill. Now that does not foreclose anybody's rights. It is true the Senator from Massachusetts has a perfect right to offer his amendment. The majority leader has a perfect right to offer amendments of his own. I am simply asking that the Senator from Massachusetts and other Senators allow us to go as far as we possibly can in completing our germane work.

We have got a lot to do on this bill. We have been on this bill, and I have been here as floor manager, for 1 week. I am prepared to stay here another week or the week after that or even the week after that, which means we may not have an August recess come August 15. But I am prepared to stay here for that. I do not have anything I have got to do. Nothing is more important than getting this bill through.

So I say to my colleagues, Mr. President, I hope we can get Senators to come to the floor with their germane amendments. I hope we can dispose of them, vote them up or down as the case may be, and make sure that the Senate does not get itself snarled up.

As I understand what is likely to happen if the Senator from Massachusetts persists, there is going to be a parliamentary maneuver that is going to prevent him, as I understand what the majority leader propounded or said he would do last night, there will be a parliamentary maneuver. The vote on South Africa will not occur. We will get tangled up on Contra aid, and probably two or three other things that I can only guess at.

And, as the manager of this bill, I have no desire to see us get into that kind of a parliamentary snarl. I do not think ultimately getting into it can do anybody any good. It is not going to help the purpose of the Senator from Massachusetts. It is certainly not going to help the Finance Committee and my colleagues who have to deal with the debt ceiling. It is going to frustrate the Senate's effort to amend Gramm-Rudman so we can deal with the Federal budget deficit. All of these would be casualties in getting into a cat's cradle of parliamentary maneuvers. We should proceed with, I think, a clear understanding of where we are going. I hope we will be thoughtful and careful in the way we proceed from here.

Now, the majority leader has yielded the floor to me and I want to thank him.

Mr. KENNEDY. Mr. President, a parliamentary inquiry.

Mr. BYRD. Mr. President, the majority leader cannot yield the floor to anybody. The majority leader yielded the floor.

The PRESIDING OFFICER. No one has the floor at this time.

Mr. HEINZ. I have concluded my remarks. I thank my colleagues.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I am not certain what we have gained in the last 35 minutes, but we have not done anything on the debt extension bill. If it is not possible for the Senator from Colorado to offer his amendment—he is prepared to do that—then I am going to suggest the absence of a quorum and decide what else we can move to. There are some Executive Calendar nominations that we can probably take up today, one on George R. Salem and one on M.D.B. Carlisle that have been on the calendar now for a month or two. There is no reason why we cannot do those. We are going to try to do something today if we can.

We will not attempt to preempt the discussions in the Foreign Relations Committee or the other work they are doing. I do not believe we have reached a point where the leaders are bound to accommodate any one Senator in this body. At least that is not my view of the leadership.

So, I suggest the absence of a quorum.

Mr. BYRD. Will the distinguished majority leader withhold that suggestion?

Mr. DOLE. Yes.

Mr. BYRD. Mr. President, I regret that the distinguished majority leader made the reference to "any one Senator." I am not pleading the case of any one Senator. I am simply saying that we ought to proceed in the normal legislative process and let Senators who have amendments call them up. I have no problem with the Senator from Colorado going first with his amendment.

Incidentally, while I can respect and appreciate the fine arguments that the distinguished Senator from Pennsylvania has made—he is the manager of the resolution and, therefore, has good reason to want to press on and get action on the resolution—but there is no rule in this Senate that would prevent amendments from being called up on this measure on the basis that they are not germane. Senators may call up nongermane amendments. No question about that.

But I simply wish to say again that I hope that the majority leader will not go into recess and will not go to the Executive Calendar. If he wants to go to the Executive Calendar, he can do it. He can also ask unanimous consent or move to go into recess.

But the majority leader himself has recognized that time is marching on. This debt limit resolution needs to be acted upon and placed on the President's desk at some point in early September, I believe. But the debt ceiling has been on the calendar now for over a week.

□ 1040

The debt limit was reported to the Senate on July 18, and the Senate has been on the debt limit since July 23. In that time we have modified the committee amendment, there has been a motion to table, and the recommittal motion with instructions was tabled. The Senate has adopted a Gramm-Rudman "fix" amendment. All of this talk about the need to get on, I agree with that. We have had ample opportunity to work on this debt limit extension resolution. Instead, we have had long quorum calls, and we have not worked too hard at moving the resolution along up to this point. But if we are going to go into recess, if we are going to have long quorum calls simply to keep other Senators from calling up amendments, that is not going to move this debt limit extension along and expedite the work of the Senate.

I certainly have no problem with the Senator from Colorado offering his amendment. Also, if the distinguished majority leader would let Senators call up amendments, I might have an amendment I would like to call up. The majority leader has an amendment on Contra aid.

Mr. DOLE. I do not want to call that up.

Mr. BYRD. He said he would call it up. It is fine with me if he wants to call it up. But I say to the majority leader, if we are really serious with getting on with the business of the Senate, I hope we would not go into a recess and keep the Senate just hanging around, or go into executive session to do nominations on the Executive Calendar.

Mr. DOLE. I thank the distinguished minority leader.

Obviously, it is just a question of judgment on how we can best move.

But I know once the South Africa or freedom fighter amendments—we are not kidding anybody—are offered, the fat is in the fire. We are off for a whole week. Forget about anything else except debate on those amendments. It would seem to me that in this case it is my responsibility to decide if we want to dedicate a week or 2 weeks to either one of those issues.

I heard the Senator from Massachusetts indicate of course he is glad to give us agreement on what he wants but not on what anybody else may want in an effort to move the legislation along. There ought to be some indication that we can resolve both of these issues, including Contra aid which has already passed the Senate. We are bleeding the freedom fighters to death in Nicaragua because of the lack of support.

The House has acted. Fifty-one Democrats were bipartisan, and in this body it was bipartisan with 11 Democratic Senators. We have not turned the tap since March. Now we are told we are going to have a filibuster. But it seems to me that when push comes to shove, the leadership has to make the judgment.

As far as I know, we cannot have it both ways around here. We can try it. But I do not believe that is going to happen.

Mr. KENNEDY. Will the leader be kind enough to yield for a question?

Mr. DOLE. I am happy to yield.

Mr. KENNEDY. Would the leader be willing, if the Senate Foreign Relations Committee were to take action, to give us the assurance that we can lay that legislation down immediately?

Mr. DOLE. If we would couple that with some assurance with respect to what we can do with aid to the Contras.

Mr. KENNEDY. The only point, as I understand the response, is, effectively you are holding hostage the whole debate and discussion on apartheid to the questions on whether the Senate will take up Contra aid. I guess that is what it is.

Mr. DOLE. No. I think it would be the reverse. But, in any event, I think it is a legitimate question to ask. It is a matter not to debate now but we have already acted on it once favorably. But I would not be willing to do that.

Mr. KENNEDY. I did not remember whether the majority leader had a position on economic sanctions in South Africa.

Mr. DOLE. I am talking about the aid to the freedom fighters.

Mr. KENNEDY. Does the Senator have a position on the sanctions in South Africa?

Mr. DOLE. As the Senator recalls, several months ago when we had a bipartisan resolution when the last South African lelgislation came from the House, which did contain some sanctions, I did support it. I did meet with the President a couple of weeks ago along with Senator LUGAR and KASSEBAUM urging the President to be forthright and come forth, as I think I said, as I recall, with at least one credible new initiative. It did not happen. The answer is "yes," depending on which sanctions they are.

Mr. KENNEDY. The President issued the Executive order on that question. So as I understand it, the leader supported that position. So I am trying to understand where we are on the issue. I guess the leader says he supports the President's position.

Mr. DOLE. No. I indicated my view, which I reflected, and was not too well articulated, to the President was that he needed to make a strong statement, he needed to demand the release of Mandela, he needed to indicate other actions that would follow, and that there was some of that in the President's speech, but I think generally the speech left something to be desired.

Mr. KENNEDY. I was inquiring because I know that the chairman of the Foregin Relations Committee, Senator LUGAR, and Senator KASSEBAUM had been disappointed in the President's speech. I had not heard what reaction the majority leader had given on it.

Mr. DOLE. I think I indicated shortly thereafter that it could have been much stronger. But I was disappointed.

Mr. KENNEDY. Is this in terms of the sanctions?

Mr. DOLE. Of the speech.

Mr. KENNEDY. Would the leader support the sanctions? Is the chairman of the Foreign Relations Committee supporting sanctions?

Mr. DOLE. I am not certain. I know they are looking at that right now. I would hate to take a quiz on what they were unless I had help from foreign policy experts in the House.

Mr. KENNEDY. The only point, and I will end now on this, would the majority leader give us assurances should that committee report something out today that it would be before the Senate as freestanding legislation, and be scheduled forthwith?

Mr. DOLE. What I would indicate as I did last night, I think it ought to be freestanding. I really believe that and I share the view of the Senator from Connecticut.

Mr. KENNEDY. That is my view as well, leader, and if we had those assurances, maybe we could have a course of action involved, but without those it does not leave many options. I am in harmony with the Senator from Connecticut and the Senator from California. We think it ought to be freestanding legislation with debate, and permit the President to make whatever judgment he would so desire. But that is why we are inquiring from the majority leader if he would give us assurances that he would lay down that as a result of the Senate Foreign Relations Committee. If he were to give that, I think that would give us some assurance that we would have the opportunity to debate. Then I think the actions on the debt limit are clearly not as great. But I do not hear the assurances from the majority leader that he is prepared to do so.

But I thank the majority leader.

Mr. DOLE. Let me just indicate, as I did last evening, that there are elements of the unanimous-consent agreement that have not been kept secret. I know of a number of staff contacts. In that particular agreement there would be a freestanding 12 hours of debate on South Africa, and final passage. That is South Africa. That would also include MilCon appropriations with 16 hours of debate, no more than 10 of which would be on the contra aid, and then final passage.

We have DOD authorization but I am not certain that even needs to be in that grouping. I know with the DOD authorization there will be an extensive debate on SALT. So the answer is that there is certainly a willingness, put it that way, on the part of this Senator to try to work out some agreement on this issue and others.

But as I get the message of the Senator from Massachusetts, he wants me to give him what he wants and negotiate the balance. I do not really believe that is quite what we had in mind.

Mr. HART. Will the majority leader yield for a comment?

Mr. DOLE. I am happy to yield.

Mr. HART. I thank the majority leader.

The Senator from Colorado is prepared to go forward with the Gramm-Rudman amendment, but it should be made clear that in this matter we have been discussing here this Senator is very strongly on the side of the Senator from Massachusetts. I know the majority leader indeed has a joint leadership responsibility of moving things forward. But we also ought to know that whole issues are not created equal. If we spend a week in this Chamber on the question of what our foreign policy ought to be in South Africa, I think I can think of a lot worse ways that we could spend the week—and have spent many weeks, including the past week. So the suggestion that the Senator from Massachusetts somehow is coming out of left field with something that is not as important as what we are discussing here I think is wrong. I think he is absolutely right.

I think the question of what our policy is with regard to South Africa transcends even the repeal of Gramm-Rudman which I feel strongly about. And so I just want to make it clear that as far as this Senator is concerned, he is not heeding my initiative at all.

I thank the majority leader.

Mr. DOLE. I do not disagree with that. I think there are others who feel—and the Senator from Georgia, Senator NUNN, indicated last night that he felt the DOD authorization bill ought to be somewhere in the priority, that maybe the defense of our country was important, and that we ought to bring that up.

I know the Senator from Colorado has no quarrel with that either. So I suggest it depends on who may have a particular piece of legislation. But I would suggest that we take up the amendment of the Senator from Colorado, which I understand at 10 o'clock would be disposed of by noon. Now it is 10 to 11. So I assume it would be closer to 1 o'clock.

□ 1050

At some time following that this afternoon, I would certainly be willing to sit down with the Senator from Massachusetts, the Senator from Connecticut, and the chairman of the Foreign Relations Committee to discuss not only this issue of South Africa, but perhaps the issue of freedom fighters, to see if we could reach some agreement. We are not doing any good at all this way that I can see. We might as well be in recess as standing here talking to each other.

Mr. KENNEDY. Will the leader yield?

Mr. DOLE. I am happy to.

Mr. KENNEDY. That would be entirely satisfactory to me. I will be in touch with Senator WEICKER.

Mr. DOLE. The only thing is that the Members on the tax conference may have a brief meeting at 2 o'clock.

Mr. BYRD. If the majority leader will yield, I would be happy to join that meeting and hope we can work out an agreement on DOD. We have been asking to bring that up several times.

Also, there is the Boren PAC amendment which has to be woven in between now and August 15. I understand that the distinguished majority leader has an agreement with the distinguished Senator from Oklahoma [Mr. BOREN]. I am a supporter of that amendment.

Then there is SALT II, and there is the military construction appropriations. There are other appropriations bills.

The House is getting appropriations bills over to the Senate more rapidly in these last few days: the legislative appropriations bill, agriculture, District of Columbia, energy-water, commerce, justice, State, the judiciary, and military construction.

I am confident that the distinguished chairman and others on the Appropriations Committee will be acting as promptly as possible to report these now that the House has gotten those appropriations bills over here.

It would seem to me that if we are going to try to expedite the people's business and hope to complete action in a rational, reasonable, and effective way, we ought to sit down and talk about agreements on all of these issues that have been foremost in our discussions of late.

I am ready to be helpful in doing that. I do not think initially that this is something that we can leave up to the staff. I think the Senators have to agree initially.

Both the majority leader and I have good floor staffs to work out details later and contact other Senators.

Mr. DOLE. I certainly would want to have the minority leader present in the meeting. In any event, I appreciate his willingness to volunteer.

I hope to be able to give the minority leader today a list of what we hope to do between now and October 3, even though I cannot predict anything. Things do change.

Right now, I hope to be able to begin the Boren issue on the 11th of August and complete it on the 12th. That is our present intention. That would be before the recess. I have indicated that to Senator BOREN. He also understands that if some other matter delays it, it could be a little later.

Mr. BYRD. I thank the distinguished majority leader. Senator BOREN has called me this morning. I have not had a chance to discuss his call. I thank the majority leader.

THE PAC INFLUENCE

Mr. ROCKEFELLER. Mr. President, in a compelling op-ed piece published recently in the Charleston Daily Mail, my esteemed colleague from West Virginia, Senator BYRD, described in disturbing detail the growing influence Political Action Committees have on the electoral and governmental processes.

In 1974, there were 608 PAC's contributing $12.5 million to congressional candidates. In 1984, the number of PAC's increased to 4,009, and donations rose to a whopping $105.3 million. Even more worrisome is that PAC money now constitutes a greater amount of a candidate's war chest than ever before—29 percent in 1984 as compared to 15.7 percent in 1974. These figures are mind-boggling, and Senator BYRD recognizes this in this commentary.

Senator BYRD correctly believes that PAC's undermine the trust that people have in their elected representatives. This not only adds to the cynicism of the people, but erodes the foundation of our representative government. To this end, Senator Byrd concludes that reform of the present campaign finance laws is imperative if we are to maintain the faith and integrity inherent in our representative Government. For that reason, Senator BYRD is cosponsoring the Boren-Goldwater bill aimed at curbing the influence of PAC's, which I am also cosponsoring.

I ask unanimous consent that Senator BYRD's editioral, "Putting Some Limits on PAC's," be printed in the RECORD at this point.

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

PUTTING SOME LIMITS ON PAC'S

(By Robert C. Byrd)

Most of us have had some contact with the video games that were "the rage" across the country for several years. PAC-MAN was one of the most popular. The game could be won only if the player could control the movement of a screen figure in such a way as to keep it from being devoured by another figure—the PAC-MAN—with an apparently limitless appetite.

By coincidence, both the nature of this popular video game and its name are in many ways analogous to the circumstances in which our democratic system of government finds itself. The objectivity, independent judgment, and absolute allegiance to the well-being of our nation and the majority of its citizens—which our nation's founders demanded of their elected representatives—are being dangerously eroded by the influence of special interest money in the electoral process.

Spending for congressional campaigns is getting to be like the arms race. Each election year, candidates raise and spend greater and greater sums to get elected. And more and more of that money is coming from PACs—or Political Action Committees—representing special interests.

It is time to call a halt to this spiraling explosion of ever-higher campaign cost and the receipt and use of PAC dollars by establishing a system of spending limits for congressional campaigns that is tied to a system of public financing. This would liberate candidates from having to go "hat in hand" to special interest groups to pay for their election races, and would prevent the voice of the average citizen from being drowned out by all of the special interest money.

Although many of the so-called special interests have goals which reflect the sentiments of most Americans, the PAC system tends to give special interests a disproportionate amount of influence in the decision-making process. Therefore, it is with good reason that the focal point of growing public concern is on the floodtide of PAC contributions.

Most PACs concentrate the influence of their particular special interests by collecting money from group members and making large contributions to candidates for office. Given the very high and increasing costs of running for public office in this age of television, many candidates conclude that they have no choice but to accept PAC contributions. Unfortunately, the effort it takes to raise sufficient campaign contributions to run an effective race for federal office saps a candidate's time and energy and interferes with official and family responsibilities.

This "money chase" has additional detrimental effects. Even for the most scrupulous elected officials, taking money for election campaigns and, certainly, actively asking for contributions for campaigns, can

create some sense of obligation to the contributors. Respondents to polls indicate a belief that one of the principal purposes of PAC contributions is to secure access to the candidate once he arrives in Washington.

Our campaign financing laws and the orgy of mega-buck spending which they encourage unquestionably contribute directly to cynicism on the part of many citizens about the integrity of our government and its elected officials.

This is a problem which strikes at the vital underpinnings of our representative form of government. The problem must be addressed. We need to look at extending public financing of campaigns to congressional elections. Public financing is currently used in presidential elections and is the only sure way to minimize the "money chase" that so contorts the election process.

Meanwhile, stricter guidelines and lower limits, must be imposed on contributions from PACs. On this front, I hope we will soon see definitive action. Sen. David Boren of Oklahoma and I are sponsoring legislation that places a population-based ceiling on the total amount of PAC contributions congressional candidates may accept and restricts the capability of PACs to exploit loopholes in the law and, thereby, elude even the current inadequate limitations on PAC contributions.

Ours is a government of representatives elected by the people—representatives who, in their official actions make judgments which, in their view, best serve the national interest and best reflect the wishes of the people who elect them. It doesn't always work as everyone would like.

We Americans continue to put our faith in that system. But, once that faith is undermined, America is in trouble. Our current system of campaign financing undermines that faith, and that is why it must be changed. It will not be easy to achieve the reforms that are badly needed.

It is an effort of such importance to our form of government that it must be faced. And it must be met successfully. That will occur only when the people across this nation demand it from their elected representatives. For the sake of all of us, I hope that occurs soon.

RETIREMENT OF REAR ADM. STEPHEN J. HOSTETTLER

Mr. WARNER. Mr. President, I rise today to acknowledge the distinguished naval career of Rear Adm. Stephen J. Hostettler, who retires tomorrow after over 33 years of service to the Nation.

Admiral Hostettler graduated from the U.S. Naval Academy with the class of 1953, and served on a number of surface combatants. From July 1979 until July 1981, Admiral Hostettler served as Commander, U.S. Naval Forces Korea before coming to the Washington area.

Four years ago, Admiral Hostettler assumed the responsibility of the director, joint cruise missile project, a position in which I, and the subcommittee on which I serve as chairman, have come to know him well and to respect his tremendous abilities. That period, 1982, was a critical juncture in the U.S. Air Force ground launched cruise missile [GLCM] and the U.S. Navy sea launched cruise missile [SLCM] programs, which were being jointly developed. These two critical programs were in the transition from development to production, and to put it bluntly, were in deep trouble. On his arrival, Admiral Hostettler faced challenges posed by poor missile test firing rate, serious performance problems with major contractors, and a potential delay in the politically sensitive GLCM deployment date to name but a few.

Under his strong leadership, a comprehensive restructuring of the program was set in motion. Complex technical problems were confronted and resolved. Quality control measures at major contractor facilities were evaluated, and replaced with methods that now are industry models. And a competitive program was initiated that now purchases 93 percent of the program's hardware competitively, and has created the potential for life cycle cost savings in excess of half a billion dollars.

Perhaps the crowning achievement to Admiral Hostettler's efforts was meeting our Government's commitment to on-time deployment of the GLCM in Europe, notwithstanding a succession of obstacles, often without precedent, which the admiral surmounted with the sure-handed leadership and competence that so characterize his entire career. Following the successful GLCM deployment, the Joint Cruise Missile Project Office under his leadership, accomplished the deployment of both conventionally armed and nuclear armed sea-launched cruise missiles [SLCM's].

Mr. President, I look on the admiral's retirement with some personal reservation, since my colleagues and I on the committee have come to so value his frank advice and counsel. As Rear Admiral Hostettler retires tomorrow, let me join my voice to the chorus of those who have recognized his exceptional contribution to our Nation's security, and who wish him and his family well in retirement.

TRIBUTE TO W. AVERELL HARRIMAN

Mr. JOHNSTON. Mr. President, few men in the history of our Republic have devoted themselves more faithfully to the service of their country than W. Averell Harriman. His death this week at the age of 94 sadly brings to a close an extraordinary career of public service, a career which profoundly influenced the lives of the American people and the course of our Nation in international affairs throughout much of the 20th century.

His role in some of the truly monumental global challenges of his time—the Marshall plan, the NATO alliance, and the Nuclear Test Ban Treaty, to name a few—offers a testament to the faith and trust American Presidents and other world leaders placed in him. And from the success of these undertakings, through which so many citizens of the world have benefited, we know that faith and trust was well deserved.

Very few among us would even aspire to give as much of themselves to their country and their fellow men, as Averell Harriman. And rarer still are those who possess the intellect and vision, the generous spirit and the bold determination required to achieve that goal so splendidly.

The generations who were fortunate to witness the devoted work of this great man, and the future generations who will live in a better world because of him, shall remember Averell Harriman with gratitude.

TRIBUTE TO BEN COLE

Mr. STEVENS. Mr. President, more than a half century ago, the area around 44th Street and College Avenue in Indianapolis was the center of the universe to me and to the man I want to salute today.

Our lives have changed, our world has become larger, and our careers have taken different paths.

But Ben Cole will always be the man who was my first boss.

Ben was a Butler University student and a substation manager for the Indianapolis Times in the neighborhood where I was a Times carrier * * * that was where our lives were centered.

He cared then, as he has continued to care after 37 years in Washington, DC, that the people of his home town should get the news.

Then he made sure the papers landed on their doorsteps. Now, and for all the years he has reported on the inner workings of the Nation's Capital, his written words have brought comprehensive and complete coverage of the news to his readers.

It is good to know the Indianapolis Star and its readers will continue to hear from Ben from time to time. His retirement from regular reporting is not the end of a distinguished career, but the beginning of a new phase.

Ben Cole is the kind of man the people of my State, Alaska, would understand and admire for his fairness, his objectivity and his thoroughness.

As a former Hoosier, and as an Alaskan, I share that same admiration.

I am pleased to recognize my good friend, Ben Cole, as he retires now from the Indianapolis Star.

W. AVERELL HARRIMAN

Mr. CRANSTON. Mr. President, I am saddened by the death last week of a distinguished American, W. Averell Harriman. His wisdom and the

breadth of his experience was extraordinary, and he will be missed.

Yet he leaves a splendid legacy for a world of peace. His art was that of the consumate statesman, the disinterested yet passionate promoter of the public good. His philosophy was that of the compassionate leader, intensely but lovingly focused on humane government as a fully achieveable ideal. His fundamental quest was on behalf of human dignity, and he set for himself a standard of public service that was a benchmark for the diplomatic profession and an inspiration to the world.

Averell Harriman will be regarded as a master of his age. He knew who he was, and in that personal security he could serve selflessly. He cared for individuals, for nations, for the Earth. He believed in democracy and he devoted his life to its profession. He achieved, in a virtuoso career, that rare combination of the ideal and the pragmatic that brings humanity's highest dreams into reality.

Averell Harriman was more than an individual, he was a force: A force for peace, for understanding, for excellence in the affairs of government, for the finest in public service. He served half a dozen Presidents. He was special envoy to Britain, Secretary of Commerce, Under Secretary of State, candidate for President, architect of the Marshall plan, Ambassador to Russia under Stalin, signer of the Limited Test Ban Treaty, Governor of New York. He founded the Harriman Institute for the Advanced Study of the Soviet Union, at Columbia University, a splendid contribution to the cause of peace and a superb living monument to the memory of this great American.

Mr. President, I rise in tribute to this fine man, this great American, whose exemplary career provides a brilliant definition for the art of public service: To his wife, Pamela, and his daughters Kathleen and Shirley, I extend deepest condolences on behalf of myself and Mrs. Cranston.

CONCLUSION OF MORNING BUSINESS

Mr. DOLE. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

INCREASE IN THE STATUTORY LIMIT ON THE PUBLIC DEBT

The PRESIDING OFFICER. The clerk will report the unfinished business.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 668) increasing the statutory limit on the public debt.

The Senate resumed consideration of the joint resolution.

Pending:

Modified committee amendment, to provide a committee substitute on investment and restoration of Social Security funds during debt limit crises.

AMENDMENT NO. 2241

(Purpose: To repeal the Balanced Budget and Emergency Deficit Control Act of 1985)

Mr. HART addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. 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 Colorado [Mr. HART], for himself, Mr. MOYNIHAN, Mr. MATSUNAGA, and Mr. WEICKER, proposes an amendment numbered 2241.

Mr. HART. 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:

At the end of the amendment add the following new section:

SEC. . REPEAL.

Notwithstanding any other provision of this joint resolution,

(a) IN GENERAL.—Except as provided in subsection (b), the Balanced Budget and Emergency Control Act of 1985 (title II of Public Law 99-177) is repealed.

(b) EXCEPTION.—Section 272 of the Balanced Budget and Emergency Deficit Control Act of 1984 (relating to restoration of trust fund investments) and section 274 of such Act (to the extent that it relates to section 272 of such Act) shall not be included in or affected by the repeal of such Act and shall be effective as if this section had not been enacted.

(c) EFFECTIVE DATE.—

(1) The repeal made by subsection (a) shall be effective with respect to fiscal years beginning after September 30, 1986.

(2) Provisions of law amended or repealed by the Balanced Budget and Emergency Deficit Control Act of 1985 are hereby restored or revived and shall be effective as if such Act had not been enacted.

Mr. HART. Mr. President, the amendment which the Senator from Colorado sent to the desk is offered on his own behalf as well as the Senator from New York [Mr. MOYNIHAN], the Senator from Hawaii [Mr. MATSUNAGA], and the Senator from Connecticut [Mr. WEICKER].

Mr. President, this is, in fact, a very simple amendment. The amendment repeals the so-called Gramm-Rudman-Hollings bill as modified by action of the Senate yesterday.

As we all know, what took place here in the Senate yesterday was the so-called fix of what is now called Gramm-Rudman-Hollings I. The fix, as it was described by one of its sponsors, was simply in response to a determination by the U.S. Supreme Court that the law was unconstitutional in certain respects.

According to that sponsor, it simply transferred the power of carrying out automatic cuts of impoundments, or, if you will, sequesters, from the Office of the Comptroller General of the United States to the office of the Director of the Office of Management and Budget. It was said that this was a simple amendment and yet that amendment, the so-called Gramm-Rudman-Hollings II amendment, took 28 pages.

We have found, at our peril, I think, that every time we tried to fix or straighten out or simplify this Gramm-Rudman-Hollings approach to controlling deficit spending and deficit creation, that we simply make the law more complex, more complicated, and less workable. That is simply what happened in the Senate yesterday.

The amendment before the Senate today is indeed a simple amendment. It deletes the entire proposition.

Mr. President, the English poet Samuel Taylor Colleridge once wrote of "that willing suspension of disbelief for the moment, which constitutes poetic faith." For longer than a moment, indeed now for 10 months, we have suspended belief in many of the fundamental principles which underlie our society, our Constitution, and our commitment to progressive government. The belief that Gramm-Rudman I, Gramm-Rudman II, or the fix will solve the deficit crisis is nothing more than poetic faith. And it reveals a troubling lack of confidence in the ability of Congress to steer this Nation effectively and with any kind of a larger vision.

The sponsors of Gramm-Rudman have always been honest with us. They have said Congress does not have the courage to reduce the deficit. They have said we cannot set priorities. They have said, in essence, that we cannot make choices. They have said, quite bluntly and frankly, that we are unprepared to carry out our constitutional oath of office.

Our colleague from New York, Senator MOYNIHAN, probably said it best. He usually does. He said last fall that Gramm-Rudman offends the first principle of responsible government—making choices. Together, we argue that all budget cuts are not created equal. Some programs contribute to our current well-being; others are critical to our future prosperity; some are outdated, worn or purely political. And we all agree these should be terminated.

□ 1100

That simple logic is lost on Gramm-Rudman. To paraphrase Anatole France, this law, in its majestic equality, provides that we cut equally from strength and waste; from the powerless and the powerful; from productive minds and comfortable constituencies.

Arbitrary cuts and deficit targets are dangerous. They cannot be conformed to the dynamic nature of the economy of this nation or indeed, the world. Just as we have seen the deficit picture change, often quite dramatically, sometimes in the space of days, since the Senate began debate on Gramm-Rudman last October, so too has the economy changed.

That point was made clear during a hearing in the House Government Operations Committee by the distinguished economist, Lawrence Chimerine of Chase Econometrics.

Mr. Chimerine termed cuts required under Gramm-Rudman, as much as $46 billion for fiscal year 1987, "an unmitigated disaster for the short-term economic outlook." He suggested that taking such action "would turn economic growth * * * into an outright recession." To avoid such an outcome, he suggested several alternatives, which included: Repealing Gramm-Rudman-Hollings; ignoring its provisions for the coming fiscal year; or using extremely optimistic economic forecasts for the coming year.

Those remarks were made during a hearing called by the distinguished chairman of the House Government Operations Committee, Representative JACK BROOKS.

Mr. President, I ask unanimous consent that, at the conclusion of my remarks, the entire statement by Dr. Chimerine be printed in the RECORD.

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

(See exhibit 1.)

Mr. HART. Mr. President, Representative Brooks has been a leader on budget and constitutional law issues for years. I commend him for caring about the economy and asking advice from economists about what Congress should do about the deficit. The Senate would have been wise to do likewise before the leadership plowed forward with Gramm-Rudman II.

Our deficit situation is serious, as is the outlook for the economy as a whole. This continues to be a searching time for Congress and the country, because we do have to make choices. We must decide whether student loans are more important than Amtrak; whether food stamps are more important than subsidies to corporate farms; whether a tax increase is better economic policy than borrow and spend, and then we must budget accordingly.

Making these kinds of decisions requires leadership and it requires courage. A statutory auto-pilot incapable of making distinctions provides us neither. That is what Gramm-Rudman-Hollings is all about.

It may have been a cathartic to pass this law. But this catharsis will, like those in Greek masterpieces, come at a terrible and senseless cost. It is time to repeal this misguided law, and adopt an economic policy that yields not just a balanced budget—but a balanced economy and a balanced society.

In reply to the Supreme Court decision, we've seen efforts on the floor to fix the "fix," and then to fix the "fix" that was designed to "fix" the "fix." But the history of the last year should tell us something. We can pile on new, mutually enforcing safeguards, more checks and attempts at procedural balances, one on top of another, in an endless search to substitute procedure for courage. There is no substitute for courage. There is no substitute for Presidential leadership. We cannot find courage in procedure. We only find it in ourselves.

It is time to try something else. Under Reaganomics, the national debt doubled. Under Gramm-Rudman I, the deficit climbed higher. Gramm-Rudman II promises more debate, more new procedures, a mascochistic transfer to power from the Congress to the Executive. Let us not make a third mistake.

I believe the amendment being offerd today by the Senator from Colorado and the Senator from New York represents a good first start, a start in a different direction. We should repeal Gramm-Rudman. Later in the debate, I shall offer an amendment that differs dramatically from Gramm-Rudman. If enacted, it would actually lower the deficit. That amendment I shall offer proposes a fee on imported oil, an alternative to arguing about budget process.

Mr. President, given our previous vote on Gramm-Rudman-Hollings II, some will suggest this amendment has no chance.

I might note, however, that since the passage of the original Gramm-Rudman-Hollings Act, 12 Senators yesterday joined those of us opposed in voting against the so-called "fix."

Mr. President, in all our actions, we must be guided by a higher principle than immediate gratification or victory. There are higher principles—honoring the constitutional balance of powers, fulfilling our obligations to our constituents, protecting our national security, our economy and sense of purpose. These higher principles are at stake today.

Some might suggest that supporting the Hart - Moynihan - Matsunaga-Weicker amendment represents a vote thrown away. But to paraphrase our former colleague, Senator George McGovern, speaking under very different circumstances; "Better to throw away a vote than to throw away your conscience."

Mr. President, I urge my colleagues to support this amendment. There are saner, more thoughtful approaches to this problem, and certainly, those approaches are much more constitutional. I hope that today, the Senate will see the error of its ways in enacting the original Gramm-Rudman-Hollings approach and see that that was a very serious error in public policy. It is not too late to correct that mistake and to get on with what we were elected to do. That is to make the difficult choices of governing. I hope the Senate will adopt this amendment.

EXHIBIT 1

STATEMENT BY LAWRENCE CHIMERINE, PH.D., CHAIRMAN AND CHIEF ECONOMIST, CHASE ECONOMETRICS, BALA CYNWYD, PA

My name is Lawrence Chimerine and I am the Chairman and Chief Economist of Chase Econometrics. I appreciate the opportunity to testify before the Legislation and National Security Congressional Subcommittee on the current state of the economy, expected Federal deficits, and how the provisions of the Gramm-Rudman-Hollings legislation will interact with the United States economy.

SUMMARY

In sum, my views are as follows: (a) The slow and erratic economic growth that began in mid-1984 is continuing—if anything, the economy has actually deteriorated somewhat in recent months. Most significantly, there is no sign whatsoever of any acceleration in economic activity. (b) The economy has remained relatively weak despite optimistic forecasts because the stimulative impact of lower oil prices, declines in interest rates, and the weaker dollar have been less in magnitude, and later in coming, than many had expected, and because many other underlying forces are somewhat unfavorable. (c) At best, only a modest pickup in economic activity can be expected this year. Furthermore, the risks are predominantly on the down side—either the absence of any turnaround in trade and/or some retrenchment in consumer spending would prevent any pickup at all, and could actually lead to a mild recession. (d) The outlook for 1987 is clouded with uncertainties related to tax reform and deficit reduction. The most likely outcome is a continuation of very modest economic growth at best, with the risks continuing to be predominantly on the down side. Again, even modest growth will require a substantial improvement in the trade deficit. (e) The Federal budget deficit outlook remains poor—I expect the deficit to be close to $220 billion in the current year, and approximately $190 billion in fiscal year 1987, unless additional spending cuts and/or tax increases are adopted. (f) The options currently available to policymakers are limited as a result of the relative ineffectiveness of monetary policy at this point in the business cycle, and by the need to reduce enormous budget deficits for long-term economic stability. I would suggest, however, a far more gradual approach to reducing the deficit than implied by the current Gramm-Rudman-Hollings (GRH) targets, a further easing in monetary policy, and adoption of a tax reform package that would be less unfavorable for the short term.

CURRENT ECONOMIC SITUATION

The recovery which began near the end of 1982 is now more than three and one-half years old—this makes this recovery period one of the longest on record. However, the health of the economy has nonetheless been overstated because of a lack of understanding of many aspects of the recent economic situation. These include the following:

1. There have been two very distinctly different parts of the recovery period. The

first eighteen months (or all of the 1983 and the first half of 1984) was characterized by extremely rapid growth (over 7 percent at an annual rate as measured by real GNP). However, the two year period since that time has witnessed a dramatic deceleration in the rate of growth to an extremely sluggish 2 percent rate—this is well below the historical average, so that only marginal additional progress at best has been made toward completing the recovery process. This is best illustrated by the fact that unemployment, capacity utilization and other measures of economic performance have shown no additional improvement since mid-1984. And, because of the dramatic slowdown since mid-1984, growth during this recovery in total is now below the rate experienced in most other postwar recovery periods.

2. This period of extremely slow growth has taken place even though the level of economic conditions has not been satisfactory. This reflects the fact that the 1981-82 recession followed closely on the heels of a previous recession, so that economic conditions were extremely depressed when this recovery period began. Therefore, virtually all measures of economic performance are still unacceptable. For example, the 7 percent unemployment rate that has prevailed during the last two years is obviously a significant improvement compared to the near 11 percent of late 1982, but it is still much higher than at anytime in the postwar period prior to the 1980s with the exception of a few months during the 1974-75 recession.

3. The performance of the economy during the past several years has been highly uneven, with many sectors still mired in recessionary conditions. This has created major industry and geographic differences which are causing severe hardships in many areas.

In sum, the performance of the ecnomy in recent years, at least with respect to real economic growth, has been vastly overstated—the recovery in total has not been particularly strong and is far from complete; we have experienced only marginal additional progress in completing the recovery process during the past two years; and the economy is still operating at highly unsatisfactory levels by historical standards.

Despite numerous forcasts that a major pickup was likely during 1986, based on declines in interest rates, the dollar and oil prices, as well as low inventory/sales ratios and other apparently favorable factors, the economy remains mired in this process of slow and erratic growth referred to above. If anything, the economy appears to have completely stagnated in recent months, even though it now appears that economic growth (as measured by GNP) was still close to 2 percent in the first half. First, GNP during the first half has been bolstered by strong growth in real consumption expenditures, which may actually be overstating the strength in consumer spending. This reflects: (a) a weaker pattern for chain store sales than has been indicated by the retail sales reports, (b) a temporary spurt in auto sales due to the latest round of low interest rate financing, (c) a sharp increase in expenditures for brokerage commissions and other financial transactions which are more related to saving and investment than to ongoing consumer spending, (d) the likelihood that recent price indexes are understating inflation and thus exaggerating real expenditures. Furthermore, gains in wages and salaries have decelerated further from the already sluggish rate during most of 1985—this implies that once the favorable effects of lower oil and food prices have passed, real wages will flatten out again. The dramatic slowdown in income growth, especially wages and salaries, is perhaps the most significant development that has taken place in recent years. It reflects not only continued downward pressure on wages in many industries, but a significant shift in the job mix away from high-paying, high-productivity occupations and industries into those with significantly lower wages. This is critical because, in the longer run, income growth is by far the most important determinant of consumer spending and thus living standards. And, unless the recent spending data are revised downward, it appears that most of the added purchasing power from lower oil prices has already been spent because the saving rate is now only slightly above where it was at the start of the year. Consumer spending is also likely to be held down by the reluctance of consumers to increase their already high debt burdens further despite lower interests rates—higher delinquency rates may also cause credit grantors to be more cautious in extending credit to consumers. Second, the GNP data are inconsistent with other economic data (especially industrial production) which indicate a much more sluggish picture. This is reinforced by still declining commodity prices, by the weakness in wage income and profits, and by weak loan demand. Third, orders remained very weak in June, and reports from the field indicate little or no improvement thus far in July. The weakness is relatively widespread, with only appliances and commercial aircraft having experienced any meaningful increases—backlogs are thus still relatively low in most industries.

The sluggishness has continued despite numerous forcecasts that a major acceleration would take place during 1986 because of declines rates, the dollar, and oil prices, and other apparently favorable factors. However, the economy has not picked up for the following reasons:

1. The sharp decline in interest rates that has occurred since late 1984 has had only a small stimulative effect on the economy thus far, since real interests rates were extraordinarily high when these declines began (so that the early portion of the decline had little effect on economic activity). Thus, in effect, rate declines were necessary just to keep the economy in the same place, and in great part have been caused by the weak economy. The only noticable effect of the decline in rates thus far has been on the housing industry—real interest rates for industrials companies are still so high that there has been virtually no impact of recent declines in nominal rates on capital spending plans or on inventory policies. The impact of declining interest rates is also being limited by the age of the recovery, the winding down of previously available pent-up demands, and already high debt burdens, which have reduced the willingness of both corporations and households to incur additional debt. Thus, the Fed is in great part pushing on a string.

2. The economy has not yet experienced any significant benefits from the sharp decline in the value of the dollar. First, the decline which took place during 1985 had little or no effect on U.S. competitiveness in world markets, since it primarily squeezed what had been enormous profit margins of foreign companies selling in U.S. markets. Only in the last few months have prices of imported products begun to rise—as is well known, it will take many months before these price changes begin to affect real trade flows. While these prices increases will eventually slow import penetration somewhat, the impact will be limited by the fact that many imported goods have no domestically produced counterparts, by the perception that some have higher quality than comparable domestically produced products, and by the increased familiarity of American citizens with foreign produced goods. Second, recent increases in imports, and softness in exports, to some extent reflect the impact of earlier outsourcing decisions as many new overseas plants become fully operational. Third, the U.S. trade deficit with Canada, Latin America and the developing countries in the Far East, continues to grow, in part because of weak economic conditions and debt problems in some of those countries, and in part because the currencies of most of those countries have not appreciated relative to the U.S. dollar. Fourth, the sharp decline in the price of oil has caused cutbacks in U.S. oil production—this is already beginning to lead to increases in the volume of imported oil. Furthermore, most OPEC countries and other major oil exporters are beginning to slow their imports from the United States and other countries because of the impact of declining oil prices on their already poor current account positions. Finally, domestic demand is still weak in much of Europe and Japan.

3. The stimulative impact of lower oil prices on the economy will be modest, at best. In great part, this reflects the fact that the United States is a large producer of oil (we produce about 70 percent of our own needs), so that the main benefit to the United States economy of declining oil prices comes from a decline in the price of imported oil. However, oil imports relative to GNP have fallen sharply since the early 1970s (by more than 50%), reflecting the fact that we consume far less energy relative to the size of the economy than we did then, that oil now constitutes a smaller fraction of our total energy consumption than at that time, and that we produce a larger fraction of our internal needs ourselves. The negative effects of lower domestic oil prices on profits in the oil industry is already causing sharp cutbacks in employment, and in exploration and other investment (by $12-$15 billion). These represent very sizable offsets to the gains to consumers, and profits to oil users, that will result from lower domestic oil prices. Furthermore, because of already large current account deficits, most OPEC countries will reduce their imports of military and manufactured goods from the United States and other countries, which will offset part of the favorable effects of the lower cost of imported oil (as mentioned earlier).

4. In my view, the stock market boom in late 1985 and early 1986 does not reflect either current or expected economic strength—in fact, the rise in stock prices is more accurately a sign of weakness, since it largely reflects the sharp decline in interest rates, which in turn is a direct result of the sluggish economy. In effect, what has happened is that the substantial increase in liquidity that has been pumped into the economy by the Federal Reserve has gone into financial assets rather than fixed assets, reflecting the lack of viable fixed investments due in part to overcapacity, overbuilding, etc. Thus, many companies have found it more attractive to buy up their own stock, or someone else, rather than making invest-

ments in plant and equipment. Furthermore, the sharp increase in the value of financial assets held by consumers is also vastly overrated as an economic stimulant, since: (a) ownership of financial assets is concentrated among relatively high income families with a relatively low marginal propensity to consume; (b) most individuals cannot gain access to these funds because they are tied up in pension accounts; and (c) many of those who have experienced capital gains have rolled them over rather than used them to finance consumption. In addition, household debt has risen dramatically during this period, with a far more widespread distribution across the population.

5. Many forecasters had predicted an inventory-led acceleration in economic growth in 1986, reflecting the relatively low inventory/sales ratios which prevailed at the end of 1985. However, inventory/sales ratios have not been low because goods have been jumping off the shelves—they have been deliberately reduced by manufacturers and retailers because of: (a) extremely high real interest rates; (b) large excess capacity; (c) relatively short lead times; (d) the still declining prices of many finished goods and commodities, and the uncertain price outlook; (e) the uncertain sales outlook; and (f) weakness in profits. The downsizing of desired inventory levels has in fact continued during 1986, so that at best, inventories are a neutral to somewhat negative factor in the economic situation.

6. Some forecasters also predicted a surge in the economy as a result of sharp increases in the basic money supply during the last 18 months. However, there is currently almost no relationship between M1 and economic activity, reflecting: (a) continued increases in import penetration, which increases the demand for credit and the money supply without increasing domestic output; (b) declining interest rates, which have reduced the opportunity costs of holding interest free or low interest deposits; and (c) concerns regarding the safety of deposits at various thrifts and other financial institutions, which has caused a shift of savings into M1 types of deposits.

The current economic situation can be summarized as follows: most of manufacturing is experiencing mild recessionary conditions, agriculture and energy are experiencing more severe recessionary conditions, and the housing and financial sectors appear relatively strong. And there is little or no meaningful evidence that any pickup in overall activity is on the horizon.

MAJOR FORECAST ASSUMPTIONS

The outlook for the remainder of this year and 1987 will be affected by a number of key policy and other assumptions:

1. Deficit reduction: The deficit outlook remains very uncertain. The "status quo" deficit outlook is not as favorable as earlier government reports suggested, reflecting the still high cost of farm programs, the likelihood that defense spending will exceed current targets unless appropriations are cut back further, the fact that tax revenues are lagging behind expectations because of weaker-than-expected economic growth, and because the decline in oil prices is actually worsening the deficit somewhat. The Congressional budget resolution for 1987 also substantially understates the likely deficit for these reasons. I assume that about $25 billion of spending cuts (mostly in defense programs) will be adopted. The alternatives of much larger budget actions (either through the budget process or through automatic spending cuts), or even smaller cuts, still cannot be ruled out, however—either would have a significantly different impact on economic activity in 1987. (The budget situation will be discussed further below.)

2. Tax reform: While the impact of tax reform on the economy will depend on the provisions of the final bill, including the specific tax code changes, tax rates, effective dates and grandfathering provisions, it seems quite clear that tax reform could significantly depress the economy in the short run. This reflects the following: (a) It will likely change the tax structure very dramatically—many corporations (and individuals) would find a very sharp change in their tax liabilities and/or, in the demand for their products. This is likely to cause some caution in making many new commitments, although some may be accelerated (i.e., taking of capital gains) to beat unfavorable changes in the tax code. (b) The bill will probably raise taxes in the short term, primarily because many of the base-broadening changes would become effective January 1, 1987 (with some, such as the elimination of the investment tax credit, retroactive to sometime in 1986), while the rate reductions could become effective on July 1, 1987. (c) The changes will dramatically weaken the tax advantages for many types of construction, as well as the incentives for investment. Since these sectors of the economy are already quite weak, changing the tax provisions so sharply will cause new activity in those sectors to decline even further. (d) The "winners" in the business sector (i.e., those which benefit from the reduction in corporate tax rates) are generally less capital intensive than the likely "losers"—it will probably take longer for them to implement new programs than for those who are hurt to cut back (this is similar to the timing problems now being experienced as a result of oil price declines).

The economic impact of tax reform will also depend on whether it is effectively coordinated with deficit reduction—I am assuming that the increase in revenues in 1987 which could result from tax reform will be used to help reduce the budget deficit. If in fact the tax reform bill does raise taxes significantly in 1987 on top of other tax increases and spending cuts which are designed to achieve the GRH deficit target, the combined effect would be an extremely restrictive fiscal policy that could dramatically weaken the economy in late 1986 and/or 1987.

3. Interest rates. I believe that rates will move lower during the rest of the year, with the Fed adopting at least one more easing move as the economic statistics stay soft during the remainder of the summer.

4. Oil Prices: Spot crude oil prices have moved up significantly during the last several days due to: (a) a small pickup in demand, reflecting fuel substitution and higher gasoline consumption; (b) continued declines in oil inventories; and (c) cutbacks in production in the United States and some other countries. While crude prices are likely to remain extremely volatile, I believe that oil prices will eventually stabilize in the mid- to upper teens—this expectation is in part based on the assumption that a production sharing agreement will be reached among the OPEC countries—so that most of the effect of lower oil prices on refined product prices, real incomes, etc., has already taken place.

THE OUTLOOK FOR THE SECOND HALF OF 1986 AND 1987

The factors discussed earlier will continue to hold down economic growth during the second half of this year, as will the following:

1. Capital spending will not contribute significantly to economic growth—this is indicated by recent plant and equipment surveys, appropriation rates, orders, etc. The sluggishness in capital spending reflects: (a) unusually low capacity utilization rates at this stage of the economic expansion, so that there is very little capacity-oriented spending taking place; (b) the downward trend which is now developing in construction of office buildings, hotels, and other commercial structures, reflecting high and rising vacancy rates; (c) continued cutbacks in exploration and other capital expenditures by the energy industry; (d) little or no growth in orders and sales; and (e) the uncertainties being created by tax reform which is slowing the commitment process. In addition, still high real interest rates for industrial companies and weak profits and cash flow have kept the financial environment for capital spending somewhat unfavorable.

2. The housing boom is now peaking. Single-family housing starts are likely to edge down during the remainder of the year, since mortgage rates have at least temporarily bottomed out (and have actually risen somewhat in response to strong demand for refinancing); the demographics are becoming less favorable; housing prices are rising more sharply, undermining affordability somewhat; the bubble created earlier as many families jumped into the market is subsiding; and income growth is sluggish. Multifamily housing starts will likely drop off even more sharply, reflecting less availability of tax-exempt financing; extremely high vacancy rates (especially in the condominium market); and the impact of tax reform. Thus, at least the direct contribution of housing construction to GNP growth will taper off after the next several months.

3. Government spending will grow very slowly at best. Cutbacks at the Federal level, resulting from deficit-reduction programs, and at many state and municipal governments, in response to tighter budget conditions, will hold growth in total government expenditures in real terms to less than a 2.0 percent annual rate during the rest of this year.

Thus, the cutbacks that are now developing in commercial construction, continued weak capital spending, and slower growth in consumer spending in response to anemic income growth, low savings and high debt burdens, will hold down domestic final demand. Furthermore, as mentioned earlier, it is unlikely that any inventory building will take place. Thus, it is now clear that even a modest pickup in economic growth during the remainder of this year will require an improvement in the trade deficit, both to directly stimulate production as well as to help speed up income gains. While a sustained decline has not yet begun, increasing reports of rising export orders, continued delays in new outsourcing and foreign investment plans by U.S. companies, and increases in the prices of many imported goods in recent months, continue to suggest that some improvement will in fact occur late this year. The turnaround in the deficit will be very gradual, however, in view of still extremely sluggish domestic demand in

Japan and most European countries; the still highly overvalued dollar relative to the currencies of most LDCs; likely increases in the volume of imported oil; and lower exports to many oil producing countries.

On balance, therefore, while I believe that the second half of the year will be somewhat stronger than the first half, reflecting an improvment in the trade deficit, the pickup will not begin until late summer. It should be noted that even with an improvement in the trade deficit, economic growth during the second half will only be in the 2.5 percent to 3.0 percent range, still unacceptably low in view of the large amount of idle resources throughout the economy. Furthermore, most of the risks appear to be on the downside—these include the possibility that the trade deficit will remain at current or even higher levels in real terms; that consumers begin to retrench in view of the low savings and high debt burdens that currently prevail; and that the anticipated effects of tax reform are greater than now expected.

The outlook for the economy in 1987 will be primarily determined by the following:

1. The lagged effects of changes in exchange rates will have an increasingly favorable effect on the trade deficit as we move through 1987. Thus, trade will make a significant contribution to economic growth on an annual basis for the first time since the early 1980s.

2. Declines in real interest rates which will take place during the second half of this year will have at least a modestly favorable effect on investment during 1987. These declines will result from an assumed additional round of Fed easing later this summer (including an expected reduction in the discount rate), as well as the modest acceleration in inflation we expect.

These factors will, however, be at least partially offset by the negative short-term effects of tax reform and deficit reduction (as discussed earlier). Thus, economic growth is likely to continue in the 2.5 percent range, although the outlook will remain somewhat uncertain until fiscal policy issues are resolved. I view the risks again to be predominantly on the downside in 1987, so even slower growth is a distinct possibility.

Table 1 summarizes my forecast for the key economic indicators for this period:

Table 1.—FORECAST SUMMARY TABLE

[Percent change]

	1983	1984	1985	1986	1987
Real GNP	−2.5	6.5	2.2	2.1	2.4
Industrial production	5.9	11.6	2.2	0.4	3.0
Real consumption	4.6	4.4	3.3	3.3	2.7
Real fixed investment	−1.8	19.5	9.7	−1.0	0.0
Consumer price index	3.2	4.3	3.5	2.0	3.5
GNP deflator	3.7	4.2	3.3	2.5	3.2
Pre-tax profits	20.9	15.9	−5.2	0.0	12.2
Unemployent rate (percent)	9.6	7.5	7.2	7.1	7.1
Prime rate (percent)	10.8	12.0	9.9	8.2	8.0
Auto sales (million)	9.2	10.4	11.1	10.8	10.7
Housing starts (million)	1.7	1.77	1.74	1.87	1.68

It should be noted that the quarterly GNP pattern is likely to be extremely volatile during the rest of this year and 1987, reflecting erratic movements in the trade deficit; the precise timing of auto production cutbacks and incentive programs; the anticipatory and actual impacts of tax reform; the timing of budget cuts and/or tax increases; and the impact of possible revisions to earlier data. However, while GNP and/or other indicators may rise sharply in any one quarter, a sustained economic boom during the remainder of 1986 and 1987 is extremely unlikely, as discussed earlier. At best, very modest growth on average will take place, with a number of downward risks that could keep the economy even more sluggish—as mentioned earlier, these include the possibility that the turnaround in trade will be weaker (and/or, come later) than now expected, that budget cuts and/or tax reform will be even more restrictive in the short term, or that consumers will attempt to rebuild savings (and cut debt) more quickly.

WHY SUCH SLOW GROWTH?

In my judgment, the extremely slow growth of the last two years, and that still to come, reflects the policy errors of recent years, primarily budget policies. These have been responsible for the high real interest rates, overvalued dollar, and imbalances and distortions which have caused the dramatic slowdown in economic growth. In fact, despite the sharp decline in nominal interest rates in recent years, real interest rates remain extremely high (especially in relation to the industrial deflation that has taken place); furthermore, virtually all of the decline in rates has occurred during periods of subpar growth. Because of the enormous Federal deficits, which are causing sharp increases in the Federal Debt/GNP ratio, interest rates have actually risen each time the economy has picked up during this period. In addition, the overvalued dollar directly reflects the upward pressure of budget deficits on U.S. interest rates. In effect, budget deficits have produced large trade deficits because of the need to attract foreign capital in order to help finance them. Furthermore, as pointed out earlier, the impact of declines in the dollar which are now taking place will not be as dramatic as the impact of the rise in the dollar in earlier years because of the asymetrical relationships already discussed, and because the long period during which the dollar was overvalued produced numerous decisions (including shifting of production overseas by many companies) which may never be reversed. The recovery in the last several years has also in great part been financed by an explosion in debt in all sectors of the economy, and has benefitted from the commercial construction boom—these factors are unsustainable, and thus not only cannot continue to perpetuate economic growth, but are now contributing to the slowdown in the economy. Finally, the enormous imbalances in the system are not conducive to strong economic growth because the extreme weakness in some sectors (such as manufacturing and agriculture) are now dragging down other sectors of the economy, and as discussed earlier, are causing a dramatic slowdown in income growth.

THE DEFICIT OUTLOOK AND GRH

The Federal budget deficit continues to worsen despite some apparently favorable developments—higher-than-projected defense and agricultural spending, along with weaker-than-expected revenues due to slow economic growth, are primarily responsible. Thus, even with the first round of GRH cuts, the unified deficit for the current fiscal year will be in the $215 to $220 billion range. (A lower figure may be eventually reported because the retroactive elimination of the investment tax credit will generate higher corporate tax liabilities in 1986.) In my view, a realistic estimate of the fiscal year 1987 deficit is now near $190 billion when the 1987 budget resolution is adjusted for continued slower-than-expected growth, and more realistic estimates of agricultural and other spending. It is thus now apparent that larger spending cuts and/or tax increases than policymakers previously expected will be necessary to achieve the GRH target for fiscal year 1987. However, the GRH approach is very dangerous in the current environment, because it would cause additional spending cuts to compensate for the added deficit caused by slower economic growth—this would only slow the economy further, and in effect, would circumvent the automatic stabilizers that have served the economy so well for many years. Futhermore, many of the spending cuts in the budget resolution represent accounting changes which are likely to widen the deficit in future years. Deficits beyond fiscal year 1987 will also be increased if tax reform becomes integrated into the budget process, because the likely bulge in tax revenues resulting from tax reform in fiscal year 1987 will be reversed in succeeding years. Finally, it will be diffcult to find additional politically and socially acceptable spending cuts in future years. Thus, sizable tax increases will almost certainly be necessary if the deficit is to be reduced further in the outer years.

POLICY SUGGESTIONS

In my judgment, there is very little that economic policymakers can do to help speed the economy in the near term; this reflects the following: (a) As implied earlier, the Federal Reserve is essentially pushing on a string because of the already high debt burdens, excess capacity and overbuilding which characterize the economy. This limits the impact of declines in interest rates on economic growth at this point in the cycle. The Fed's flexibility has also been reduced by the explosion in money growth in recent years. (b) It is essential that deficits be reduced on a long-term basis, to reverse the current upward trend in the Federal Debt/GNP ratio. If that trend is not reversed, it will mean continued high real interest rates on a long-term basis and/or a continued overvalued dollar and thus poor competitiveness in world markets, and/or a pickup in inflation later in this decade—any or all of these would cause long-term economic stagnation. Furthermore, lower deficits are also necessary to slow the explosion in interest payments, which will feed on itself and produce even higher deficits in the outer years if it is not stopped. Finally, lower deficits are necessary to prevent a sharp increase in the tax burden on future generations. Thus, for all of these reasons, it would not be practical to cut taxes and/or raise spending to stimulate the economy in the short term—thus, fiscal policy must be at least somewhat restrictive in the near term.

While economic policy cannot lead to faster economic growth, it is nonetheless essential that some policy actions be taken to prevent the economy from sliding into a serious recession. These actions include the following: (a) I strongly recommend sizable additional reductions in interest rates—such declines should help to prevent further deterioration in capital spending and may bolster confidence somewhat, thus generating at least a small amount of added stimulus. (b) Because of the poor short-term deficit outlook, the target for FY87 in the GRH legislation will be necessary to achieve the target. Cuts of that magnitude would imply a tremendously restrictive fiscal policy which would have a severely depressing effect on the economy in the short term. I would suggest cuts of less than one-half that amount at most. In effect, the Adminis-

tration and the Congress missed a golden opportunity to cut the deficits in earlier years when the economy was growing more rapidly—a more realistic approach in the current circumstance would be to aim for deficit reduction of approximately $20 billion per year, with the aim of reducing the deficit to about $100 billion by the early 1990s. I also strongly believe that any reductions in expenditures should be accomplished by converting many current entitlement programs into means-tested programs, rather than implementing across-the-board spending cuts. In addition, some tax increases will eventually be necessary—I urge that regressive tax increases be avoided in view of the dramatic shift in the distribution of income and in the distribution of the tax burden which has already taken place in recent years. (c) As mentioned earlier, tax reform is already causing some commitments to be postponed, and the anticipatory and actual dampening effects of tax reform may continue to hold down economic growth later this year and in 1987. I believe that these effects could be minimized if the following were implemented: (i) Some of the major changes, such as the elimination of the investment tax credit and the changes in tax rates, should be phased-in over several years rather than all at once. (ii) Grandfathering of existing provisions to reduce the risk of sizable losses on currently held assets should be considered. (iii) The effective dates should be changed so as to avoid a substantial tax increase in 1987.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I rise in opposition to the amendment. I would like to define for my colleagues where we are and what this amendment represents.

The Senator from Colorado is responding to our predicament basically as follows: In the Gramm-Rudman-Hollings bill, we responded to 5 years of gridlock and 20 years of deficits by imposing discipline on Congress.

I never cease to be amazed, Mr. President, at how people can call imposed discipline which forces choice an escape from choice. Let me say to my distinguished colleague from Colorado that there is one thing that Gramm-Rudman-Hollings I and II do do in terms of the Congress of the United States. It takes away one choice. On that point we agree. It takes away the choice to do nothing. It takes away the choice to engage in this political game of having the President send budgets to Congress which we merrily throw out the window and then we do not do anything.

The system which the distinguished Senator from Colorado proposes that we stay with is a system which has produced $200 billion deficits, doubled the Federal debt, and now imperils a recovery which has brought jobs and hope and opportunity to our people.

The Gramm-Rudman-Hollings bill does take away one choice. The choice it takes away is the choice not to choose, the choice to pass the burden of nonchoice onto our children and grandchildren in terms of higher debt, onto the economy in terms of higher interest rates, onto the working people of America in overvalued dollars that destroy our ability to compete on the world market. Those choices are taken away.

□ 1110

To those who say Congress should not be constrained, let Congress do as it chooses, let me respond that the whole genius of the American system has been the genius to restrain government.

The brilliance of the American system is that it denies Congress the ability to do things. It sets out parameters in which choices occur, and in the best tradition of that system the Gramm-Rudman-Hollings bill sets out parameters and those parameters are that for this 5-year emergency period—and I believe, Mr. President, that people of America believe this is an emergency—we take freedom away from the President. We force the President to submit budgets which over 5 years lower the deficit in equal amounts to zero in fiscal year 1991, calendar year 1990, the third year of the last budget that Ronald Reagan will submit as President. We take away the freedom of Congress to adopt budgets that are meaningless, that are nonbinding, that are nonenforceable, and that do not address the problem we face, because we force Congress through the imposition of rule changes to consider only budgets that meet the targets. We make it not in order to even bring a budget to the floor of the Senate that does not meet the targets. We make amendments zero sum in the deficit.

Is that taking away the necessity of choosing? Quite the contrary, Mr. President. That is forcing choice. In fact, we saw it every day on the tax bill. Because of Gramm-Rudman-Hollings, on the tax bill, when somebody wanted to do something for some special interest group, they faced a problem, and the problem was there is no free lunch. The whole world knows it. Only the U.S. Congress refuses to accept that fact. If somebody wanted to add a benefit for some special interest group, the had to pay for it.

I do not think it is any miracle, Mr. President, when they had to pay for it we had very few amendments adopted, indeed. As a result, we adopted a bill that represents the first step in 40 years for tax fairness for the people who do the work and pay the taxes and pull the wagon and make America work.

Finally, we make the budget binding. Is that refusing to make choices? Quite the contrary, Mr. President. Not only have we written bad budgets for the last 5 years, but we have not enforced those budgets. I hope our colleagues understand that on average we have overspent our budgets by about $2 billion a month every month for the last 5 years.

Making budgets binding is not escaping responsibility. It is imposing responsibility. If the American people really understood the budget process that existed before Gramm-Rudman-Hollings, they would realize what a fraud this whole charade has been.

The budgets are not binding. They do not mean anything in terms of imposing restraints on the individual appropriations and authorization committees. They have absolutely no relevance in the final analysis except on the final figure, so we wait around and pass all the dogs and then we wait for some mother's milk program and we have that program become the one that breaches the deficit, and everybody says, "I'm for fiscal responsibility but I can't vote against this bill." And we bust the budget, the deficit goes on, and the people bear the burden.

Under the Gramm-Rudman-Hollings bill, the budget is binding down to the 302(b) levels, which means down to the subcommittee levels. So we not only make Congress write tough budgets, which is not escaping responsibility—far from it—but we make those budgets binding. Then at the end of the budget process, at the beginning of the fiscal year, we have an assessment as to whether we met the targets. We have a truth-in-budgeting procedure, so that we have a check on Congress in making up solutions to problems by sending them away.

Now, the distinguished Senator from Colorado has said that Gramm-Rudman-Hollings II is imperfect. I do not think that ought to come as a shock. So far as I am aware, all three authors are imperfect, and so the fact that the solution is imperfect should have been expected. But let me say to the Senator from Colorado that the fact that our solution is imperfect does not mean no action is called for. Quite the contrary. It is an imperfect solution, but it is a dramatic improvement on simply pretending that the problem does not exist.

We continually hear, "We are letting bureaucrats make the tough decisions." That is baloney. We set up a green eyeshade function with checks and balances so that a determination is made about the deficit. We set up in law and define in great detail how across-the-board cuts will be made if the deficit number is breached. The bureaucrats do not make the cuts. We made the cuts by adopting Gramm-Rudman-Hollings. The bureaucrats simply provide truth in budgeting in a green eyeshade, technical function. That does not mean the technical function is unimportant. In fact, to say the green eyeshade functions are unimportant is to fail to recognize that the world is dominated by little else than green eyeshade functions. As

government has become more important in our lives, our lives have been run by little else than bureaucrats with green eyeshades. But it is Congress that wrote the law which says if we do not meet the targets, if we do not have the courage to make the decisions, an across-the-board cut goes into effect.

But, my colleagues, that is not the end of the story, because then Congress has 45 days after the cuts are announced before they go into effect, and the procedure is established so that during that period any action we take to lower the deficit counts toward offsetting those automatic cuts.

Now, I ask my colleagues, when an automatic cut has been announced and we have the right, the obligation, the duty and the ability to do something about it, is that escaping responsibility? Quite the contrary. That is putting the fat in the fire where it belongs.

Now. our distinguished colleague from Colorado may think that he can go out and run for President after refusing to do anything and letting an automatic cut go——

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

Mr. GRAMM. I will be happy to yield.

(Mr. SYMMS assumed the chair.)

Mr. HART. The issue is not anyone running for office and the Senator knows that, so I think the debate would further itself if we left that out of it.

Mr. GRAMM. Mr. President, let me rephrase it to make sure that I am referring to everyone in this body.

We can all go out and run for reelection or higher office or for the city council or whatever we choose, and maybe there are those who believe it is going to be an acceptable position to say, "My friends, I faced a difficult decision; an automatic cut was ordered because I didn't deal with the deficit problem and then I had 45 days to do something about it and, quite frankly, I just didn't have the courage. I couldn't take on the special interest groups. I couldn't very well tell this group or that group no. I mean, I get elected by saying yes. And so as a result this across-the-board cut went into effect, but it was a bureaucrat—it wasn't me, it was a bureaucrat. It was OMB, CBO, GAO."

Let me tell you, Mr. President, that will not fly. What Gramm-Rudman-Hollings does is it forces decisions, it forces us to choose. This assertion that we are letting some bureaucrat do our job is totally false. All the bureaucrats are doing through a clearly defined procedure is seeing if we had honesty in budgets. If we did not meet the targets, then they simply certify the deficit number and carry out the law which we wrote, so it will be the Congress, not a bureaucrat, that will make across-the-board cuts, and only the Congress, in working with the President, can offset those cuts in making decisions that will avoid the cuts going into effect.

It is my intention, Mr. President, that there be no across-the-board cut go into effect in 1987. I intend to do everything in my power to work out a budget that will meet the targets. We proposed Gramm-Rudman-Hollings II because we wanted to eliminate uncertainty. The President needs to know, the Congress needs to know, and the American people need to know that we are shooting with real bullets, that we are going to meet the deficit targets, that if we do not meet these targets, across-the-board cuts are going to be ordered. And if that does not give us the backbone to deal with the problem that they will go into effect, the capital markets can then respond with lower interest rates. We can in the process eliminate a legislative train wreck, pull the economy out of the ditch, meet the targets and get on with our job.

I heard all yesterday harangues about we are debating procedure and not substance. Let me say to those who may well be swelled up with ideas, that any Member can offer an amendment suggesting how we meet the targets. I can assure you that I will look at any proposal, and if I think it is reasonable, I will support it. But procedure is important.

Mr. President, our problem here is in a very real sense we are living out a great debate in American history. We are living out the Jefferson-Adams debate.

I remind my colleagues that at the end of their period of service in office, where they had been bitter enemies over issues such as the Alien and Sedition Acts, Jefferson and Adams carried out a correspondence.

□ 1120

Part of that correspondence was a debate in which Adams worried that when people decided that they could use Government to redistribute wealth, they would impose a very heavy burden on productive members; that it would produce a group of people who would try to feed off the productivity of others, and it could destroy our system.

Jefferson argued that Americans, even those who did not own property, would always aspire to own property and to recognize that what Government could take away from somebody else and give to them today, it could take away from them tomorrow to give to somebody else.

Mr. President, I believe Jefferson was right. But the whole way we legislate biases the debate toward the Adams position. When we vote on appropriation bills, individual spending bills, individual amendments, all the special interest groups that benefit will be looking over our right shoulder, sending letters back home, telling people whether we care about the old, the poor, the sick, the tired, the bicycle rider—and the list goes on and on.

More often than not, the people who are doing the work in this country and paying the bills are out doing the work. They are trying to send Johnny and Sarah to college. They are trying to pay for all the stuff we are spending. They do not have a lobbyist in Washington, so they are not looking over the left shoulder.

Asking Members of Congress to be responsible under those circumstances is not even guaranteeing them what we have in a religious sense, that if we do good work, Saint Peter is going to have it in the golden book. Here, you do good work, try to control spending, the special interests remember it, they work against you. you expect the people you work for to know you do it, and nothing is written in the golden book.

Is it a shock that pro-spending dominates Congress, dominates Members of both parties every day in the U.S. Congress? It is not a shock to me.

Mr. President, I remember once, when I was engaged in an election, President Carter, in 1980, as the economy was going to pot, introduced an emergency budget reform. My colleagues remember that. Everyone on the floor here was in Congress at that time. About $8 billion of savings. Most of it was phony. A lot of it was spending money this year, rather than the new budget, which actually made the economic problem worse. Some of it was moving stuff to next year. But one proposal was real. We were at that time paying Federal retirees a COLA twice a year. No private retirees were getting a COLA, period. But we were paying twice-a-year COLAs. President Carter proposed going to a once-a-year COLA.

I remember when we debated the budget. We adopted it. But when a conservative Member of the House, offered an amendment to restore the COLA, because he represented a district that had a lot of Government retirees in it, on a straight up-and-down vote, and I may be wrong on the number, I think there were only about 75 Members of the House—I was not in the Senate—who voted to stay with the savings.

I was running for reelection. I am not claiming the numbers are large enough to have great significance, but I think they make my point. I did a poll in my little, old east Texas rural district. I asked: "Have you heard of this issue?" I asked: "Do you know how your Congressman voted on this issue?"

Let me tell you something I think you will find interesting. Not one

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person polled in my district who was not a Government employee or retired Government employee had heard of the issue, much less knew how I had voted on it. But every Government emplolyee and every Government retiree knew exactly what the issue was and exactly how I voted.

Now, that is the problem. That is why we are going to probably have amendments offered here today to protect somebody from this process. Some of them may be successful. The problem is that the people who are getting the benefits from Government are organized and the people paying for it are not.

The Gramm-Rudman-Hollings effort is simply an effort to try to set out constraints that we understand and agree to and to try to get people looking over the left shoulder. They were looking yesterday. We got 63 votes for Gramm-Rudman-Hollings II, and I think we got it in part because people knew.

I know the headlines: Gramm-Rudman-Hollings cuts, slashes, denies, hurts. Nobody has ever written a headline saying: Gramm-Rudman-Hollings saves. I have never seen that headline. It is as if the people writing the headlines think the money Government spends comes from Heaven; and if it is not spent, the only story is that nobody got it. The money does not come from Heaven. It comes from the pockets of the working men and women of America. When it is not spent, by the Government it is not lost. It stays with families to invest in the American dream, and that is what Gramm-Rudman-Hollings is about.

If we can make this process work, imperfect though it is, a trillion dollars—I do not know how much money that is; it is a lot of money—that would have been borrowed to pay for deficits will not be borrowed. It will not be lost. If Government does not borrow it, it will not be lost. It will go into business, to build new plants and equipment, new technology, new R&D, new products, new wheels of trade and commerce, to make America great again.

It will go back to families. What are they going to do with it? All the things we claim to be doing for them. They are going to send their children to college. They are going to buy automobiles. They are going to buy homes. They are going to invest in their own future. I submit, Mr. President, that they probably are in a better position to know what promotes their own well-being than we are. All those things are going to happen.

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

Mr. GRAMM. I should like to complete my statement, and then I will be happy to yield.

We have before us a proposal today that simply says we were trying to get out of a desert. We had a car, not a perfect car. It rattled; it had problems. We drove by the Supreme Court and we got a flat tire.

We knew there was a problem. We wrote a backup provision. It is hot in the desert. We want to get out. What we have proposed in Gramm-Rudman-Hollings was to put a new tire on it—not a perfect tire. It could run over a nail, could come off, could have a flat. We thought it was a 4-ply, steel-belted radial. We got it on.

The Senator from Colorado says, "Don't put the tire on—blow up the car."

I say, "Don't blow up the car, which is the only car we have. It is not perfect, it will not drive itself. Don't blow it up. Put a tire back on and let us try to drive on."

It is a long walk. We may not make it. America may not have another chance to deal with this deficit problem. Let us not blow up the only car we have. Let us fix the tire.

Others say: "Don't fix the tire, redesign the car. Let's build an airplane or an 18-wheeler." We do not have time to redesign the car.

We had a hard time with the car. I am not sure we can build an airplane or an 18-wheeler. We have to put a tire back on it. We are now going to try to drive out of the desert in it.

Do not blow up the car. Reject this amendment and do it overwhelmingly to let the American people know, not that Gramm-Rudman came down from Mount Sinai, not that it is perfect, but it is the first real commitment that we have made during this whole period of runaway deficits to deal with the problem.

We are making progress with the solution. I did not like the budget that we adopted, quite frankly, but it was an important step in the right direction and, in my opinion, it gets us within striking distance of where we want to go, which is $144 billion, which is no across-the-board cut going into effect.

I urge my colleagues to reject this amendment.

I am happy to yield.

Mr. HART. Mr. President, I will ask a question, but let me just observe that the sponsor of the amendment were not changing the tire but changing the driver. To drive past the Supreme Court with this driver is not acceptable, I wonder who the third driver is going to be.

Nonetheless, does the Senator from Texas believe it is possible to meet the so-called Gramm-Rudman targets without any additional revenues?

Mr. GRAMM. Let me say to my colleague that I not only believe it, I am absolutely convinced that it can be done.

But let me emphasize that Gramm-Rudman-Hollings does not guarantee the outcome that this Senator seeks. There are many people who supported this bill who believe exactly the opposite of me on this issue. Gramm-Rudman does not dictate the solution but it dictates a solution. It does not allow me to simply say to my colleagues I will not consider a tax increase and so you either cut spending or else we have no deal.

What it does is it brings us all together and forces us to come up with a solution.

I can say to my colleagues I intend to fight very hard to control spending. We have yet this year to really cut anything other than defense.

So I could very easily show the Senator where I would like to make savings to meet the targets but the fact that I have that viewpoint does not mean that Gramm-Rudman guarantees that I am going to be successful. It does guarantee that we are going to meet the target.

Mr. HART. So the Senator will support or not support an oil import fee?

Mr. GRAMM. The Senator is opposed to an oil import fee not on a revenue ground, but because an oil import fee would cost the economy far more jobs than it would save the economy because an oil import fee would put us out of business in terms of petroleum exports of refined products. We exported $15 billion worth of petrochemicals, $8 billion between Corpus Christi and Beaumont, in my own State. Those jobs would be lost with an import fee. Every manufacturing job, every farm job, would be disadvantaged if we were paying a one-third premium. For example, with a $10 price of oil and a $5 import fee, every job in America would be disadvantaged relative to our competitors.

So if the Senator is asking me if an oil import fee is politically popular in my State—I am from Texas—it would be popular, but it is wrong and I am not for it.

Mr. HART. I thank the Senator.

Mr. MOYNIHAN. Mr. President, I rise as a cosponsor of the amendment that has been submitted by the Senator from Colorado and our colleagues from Hawaii and Connecticut.

My remarks will not be extensive, but I hope they might be heard somewhere in the recesses of the Senate office buildings. Perhaps my words will carry even beyond these precincts.

I start with a remark which my friend, the principal sponsor of this amendment, made earlier. The Senator from Colorado said you cannot find the courage in procedure; you can only find it in yourselves.

That, in my judgment is the statement of the adult mind, the mature mind, and the balanced mind capable of living with reality and not disposed to either avoid or reject it.

Last October, when this legislation first appeared, suddenly we were in

the crisis situation of a debt limit extension; and now again we are in this same crisis situation. I would like to suggest that we are institutionally dealing with a problem that has aspects of psychological abnormality.

Both times we have found ourselves responding to a crisis that the dominant ethos of the body did not believe could have come about, and therefore had to find some extrarational response to.

I think it is not normal to speak in parliamentary procedure—senatorial procedure—in terms of abnormal psychology. Yet we have seen such events in our society in this Chamber. We saw the denials of reality about slavery that led this body step by step to the most awful crisis the Republic had ever known, the Civil War, that killed 2 percent of our population; we have seen men of outwardly normal qualities and adequate capacities even so blocked from understanding reality and accepting it by a process

I do not want to speak of the debates of the mid-19th century, but I want to speak of the debates of this last year, and something which psychologists have come to call cognitive dissonance. Cognitive dissonance is an idea that has been developed over a good century of experimental psychology. The dictionary simply defines it as "psychological conflict resulting from incongruous attitudes held simultaneously"; which is to say you believe two things which are not campatible—you simultaneously believe them—and after a point your capacity for choice in these matters is lost. You do not know what to do and you tend to become traumatized and passive. The reactions range from passivity to fury to hysteria in one form or another, to particular forms of fantasizing and denial. You see all this in our behavior.

James Q. Wilson, professor of government at Harvard University and the University of California recently described our actions as "madness." In the current issue of "Commentary" he stated:

> The Gramm-Rudman-Hollings deficit-reduction law is not a viable idea either . . . reducing the budget by making deep, indiscriminate across-the-board cuts in everything from the FBI and the Coast Guard to agricultural subsidies and military spending is madness, a fiscal guillotine that reflects no conception whatsoever of what is and what is not in the public interest.

What has happened here, Mr. President, is that in 1981 there came to power a majority in the executive branch which really was persuaded of its capacity to reverse a whole series of events it associated with moral wrongdoing and danger to basic institutions. To a great degree it associated these with deficit spending.

The idea of a deficit as a symbol of moral misdirection in Washington arose in the 1930's in response to the fact that the Federal Government was spending more money for the first time in a kind of semiconscious effort to stimulate the economy, something the Federal Government never did before. The Federal Government never before has explicitly tried to raise employment or lower employment; in fact, we did not know what employment was until in the 1940's when we began to measure it.

□ 1140

But something about the long depression and the need to be careful with household budgets led to the notion that we must be careful with the national budget as well. Franklin D. Roosevelt campaigned against Herbert Hoover on the ground Herbert Hoover was spending too much money. This sort of proposition got deeply into the minds of a certain sort of fundamentalist in American politics. I do not know that I fully understand it. But it acquired a great totemic quality because it was something you needed and could trust. Later, it became associated with Keynesianism; but that is quite wrong.

The Federal Government was not in any way influenced with the writings of John Maynard Keynes in the 1930's. A few seminars at Harvard University were. The first time the Keynesians came to have influence in the Federal Government was during the Second World War when the Keynesian doctrine said the Federal Government must spend less than it acquires in revenues and it must lower inflation. As a matter of fact, that is what happened. And during World War II—something hard to remember—inflation went down, and inflation went down each year the United States was in World War II. And the Keynesians were following a doctrine that said do not spend more, spend less in World War II.

The notion that came to power with the new administration in 1981 was a kind of primitive notion that people with mysterious powers not accessible to ordinary persons had usurped power in Washington and had to be banished.

This group came to office in 1981 to exorcise the demons that had seized the National Government, to return us to the path of virtue and simplicity and the homespun qualities of the early Republic, or what you will.

And then everything this group said its predecessors had done, and it would undo, proceeded to happen on a scale beyond any imagined—talk of debt, debt, debt accumulated by predecessors suddenly turned into a nighmarish experience of the debt now doubling in 5 years. Talk of the improvidence of predecessors now became the astonishing reality of running up unpaid bills to the point where, all of a sudden, the United States became the world's largest debtor nation. The debt itself doubled in 5 years, and interest on the debt, apart from the Social Security fund, became the second largest item in the budget, compounding. Among other things we are not going to do with this legislation, is to affect the compounding aspect of a debt which, as I say, is now one of the largest items in the budget.

And in the face of this experience, which so belied promise and expectation, we began to lose our institutional confidence.

The qualities that are associated with cognitive dissonance began to take effect. Remember the dictionary definition: "Psychological confict resulting from incongruous beliefs and attitudes held simultaneously." The incongrous belief was this body would balance the budget while simultaneously increasing spending and decreasing revenues. This body hoped to balance the budget; but did just the opposite of what was required to balance that budget. And then there came in this context one of the reactions you associate with this incapacity, and that is a rejection of modernity. A rejection of modernity which is a notion you can do a little better than the average in managing your affairs in a macroeconomic sense and the clear awareness of the limitations of that capacity to do a little better than the average.

There is an investment of technology with magical proportions which you constantly see in primitive peoples when they confront modern technology that they do not understand. They invest the technology with qualities which their magic could explain, although it has nothing to do with the technology whatever. For example, for sticks that flash fire in the face of a muzzle holder, the only image was that of a stick burning somehow or other. But it could be turned on and off. The explanation had nothing to do with technology, gunpowder, or anything else, but the only explanation possible.

Another example: This legislation invests economic forecasts with magical properties, properties which anyone involved in economic forecasts knows do not exist. Such forecasts are approximate ideas. People who work at them work at them with the kind of faith that animated the science of atmospheric sciences. For years, anybody involved in weather forecasting would tell you, for the first 50 years of this century, the bet that tomorrow's weather would be the same as today's always outperformed the bet of the Weather Service. It was just that they were learning more, and the day came that the scientists could outperform the bet that tomorrow's weather would be like today's. But it was a very slow process of model building and

measurement and retracting mistakes and finding out how you went right and how you went wrong.

But anybody who knows this subject today knows that it is painfully inadequate as a precise instrument of public policy.

No one knows this better than our distinguished Director of the Congressional Budget Office, Dr. Rudolph Penner, a disciplined economist, chosen by the majority to undo all those previous events which, not having been understood, they did not understand how to undo.

Mr. President, Dr. Penner was testifying on the subject of this legislation last October. Let me read this statement.

Mr. Chairman, given the record of economists, it will not be difficult to convince anyone that economic forecasting is a very uncertain art. Reasonable men and women can differ widely about what the future holds, and even if there is agreement on an economic forecast, there is an added layer of uncertainity involved in translating that forecast into an estimate of budget totals. For example, our economic forecasts may give us a reasonable estimate of the number of people who are eligible for a program, such as food stamps, but there may be considerable uncertainty about how many of those people choose to participate in the program.

In dealing with such uncertainties in our normal budget projections, we have to make a large number of more or less arbitrary choices, and substantial errors are possible. In the context of this bill, we might fail to trigger the process when subsequent events show that the sequester was called for or, perhaps worse, we might trigger a sequester when subsequent events show that it was unnecessary because the economy boomed in an unexpected fashion.

□ 1150

Then Dr. Penner went on to give some numbers. I hope there will be some Members in the Senate who will hear these numbers. Between 1976 and 1984, the GNP forecast issued by the Office of Management and Budget were on average 1.15 percentage points off from the actual GNP. The growth rate was 3.3 percent in those years. As my friend from Colorado would be the first to point out, you have to know just a little bit to know how to read the information that the forecasters were on average 1.15 percentage points off. That means they were one-third off either way. By that, I mean the growth rate was 3.3 percent, and the average error up or down was 1.15 percentage points. That is a third up, a third down.

CBO was a little bit better. They were off 0.98 percentage points which is about 25 percent, a quarter right or wrong in any given year. That is not the error associated with a precise tool of economic policy. But it is the failure of all of the administration's work that has had the curious opposite effect of investing the mechanics and untried procedures with a quality, an almost magical quality they do not have.

Gramm-Rudman-Hollings says we cannot solve the problems. This institution cannot make these choices. The dissonant experience was too much institutionally to handle.

The body said, "Let somebody else do it." That is a form of incapacity and passivity that is psychologically well documented. And you see it right here.

Well, we have institutions for those who have huge problems of that kind. We have tranquilizers and other forms of medication for others but we have no constitutional therapy for this kind of abdication of responsibility.

The Constitution gives this Congress the responsibility to make up a budget to raise the means to provide for Government, and it does not allow it to abdicate that responsibility and ask some father figure in the White House to make the choices for them. No. Adults drew up this Constitution, and adults have to preserve it. What we are doing today is childish. Perhaps we are exhibiting the qualities, I suggest, of adults who run into an experience they cannot interpret and cannot sustain, because we are doing something without precedent in our history.

Observers of great friendship and sympathy ask why, what is happening? Herbert Stein—there is not a finer person in this Capitol—who served Presidents formally and informally for much of a generation, a man of impeccable conservative political judgment, now at the American Enterprise Institute, has this to say in this morning's Washington Post:

Sophisticated people to whom I express my concerns about the idea of cutting expenditures to meet a shortfall of revenue tell me not to worry. The government will not really meet the Gramm-Rudman targets. All Gramm-Rudman requires is that at the beginning of fiscal 1987 there should be an official estimate that the deficit will not exceed $144 billion for the year. The law does not require that the deficit actually be less than $144 billion.

This solution is unsatisfactory for two reasons:

First, the government should not pretend to do what it does not intend to do. This is more than a moral injunction. It has pragmatic significance. The credibility of the government is an asset—more valuable as it becomes scarcer—and it should not be wasted.

Second, while a sharp reduction of expenditures in response to the slowdown of the economy would be unwise, to destroy completely the expectation that the size of the deficit will be brought under sufficient restraint to prevent continued increase in the size of the federal debt relative to the GNP would also be unwise. That could cause an increase in long-term interest rates that would be harmful to economic growth. The de facto abandonment of Gramm-Rudman, without the establishment of any substitute rule of fiscal policy, will destroy all hope of deficit restraint. We find ourselves in a position where we can't live with Gramm-Rudman and can hardly live without it.

My suggestion, Mr. President, is that we can live without it if we resolve to do these things ourselves. And it is within our capacity to do so.

I am reminded of the cheating incident on this floor the first time this legislation came up. When this Senator rose to ask if agriculture was exempt from cuts, it was denied. And later it turned out that CCC expenditures had been exempted, and the bill was subsequently changed. If you remember, the bill was never printed.

I read from the Congressional Quarterly, October 12, 1985, page 2039, "On one of the first days of debate Senator DANIEL PATRICK MOYNIHAN, Democrat from New York, had contemptuously pointed out that Federal farm price supports, one of the fast growing large items in the Federal budget, would be almost wholly exempt from any automatic cuts". It goes on to say that this was so. Of course, the change was made.

But that little episode suggested that not just was there a large renunciation of responsibility, but also the kind of simultaneous indulgence which gets associated with that kind of abnormal state. Indeed, soon after we approved Gramm-Rudman-Hollings, we passed the largest farm bill in history saying it would only cost $20 billion. It is turning out to cost something like $30 billion. It is incredible. That is not mature. People do not behave that way.

□ 1200

This realization is coming upon us. It will not come quickly. I do not know how I would forecast events. I expect we will see a long further evasion of the Office of Management and Budget projecting high rates of growth, inflation, revenue growth, things like that.

We could come to a sequester order. We will flee from it in near panic, just as we are rushing toward it now again. I do note, however, the number of Members from farm States who are beginning to be nervous as they realize they cannot have both these fantasies of unlimited budget restraint and unlimited agricultural programs. Grown-ups that have not become traumatized do not expect to have both things.

I was interested in the five Members of the party on the other side of the aisle who voted yesterday against the measure but who had voted for it in the first instance last November.

Yesterday, in the early evening, the number of Senators voting against, as my friend from Colorado has noted, rose from 24 to 36—a 50-percent increase during a period in which really only very minor things have occurred.

So we are 15 votes from having a majority which knows better. We may yet

get there. We may be there by 1 o'clock.

I do not think that will be speeded up if I keep speaking further. I see my friend from South Carolina in the Chamber, copiously taking notes. Both Senator HART and I should be expecting a sound rejoinder and we look forward to just that.

Mr. President, I will offer a final thought to the Senate. This is the last chance that we will have to assert that we are capable of exercising responsibilities which the oath of office requires us to do.

Mr. President, I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER (Mr. DENTON). The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the presentation by the Senator from Colorado and the Senator from New York to repeal this amendment has been quite an education. I hardly know where to begin to respond to them.

The distinguished Senator from New York, in the last few seconds of his speech, promptly disallowed all of his argument about the abrogation of choice. It was a remarkable ramble of poetry and psychology.

Well, what were those things he said? Cheating, cowardice, civil war, drugs.

The Senator from Colorado had Greek masterpieces, Anatole France, Samuel Coleridge, incapacity, passivity, cognizance, dissidents.

I was writing as fast as I could to keep pace. I had to take lots of notes. I cannot remember those kinds of things.

I think in the field of marine science they tell us all of nature has its protection built in. They say particularly the octopus with neither the sharp teeth nor the cutting fins nor the speed has a unique protection capacity. Once cornered, it will emit this dark fluid and then, once threatened, will escape in the dark ink and the murky waters.

There is no question but what you have seen by the opponents of Gramm-Rudman-Hollings is the octopus approach to responsibility. They feel that if they can squirt this dark ink of cognizance, dissidents, passivity, white mice, cheating, poetry, cowardice, Greek masterpieces, and Samuel Coleridge, and then a couple more thrown in, economists, disciplined economists—that they can blur all elements of responsibility.

I think of my college friend who went back to a class reunion and in visiting his old professor of economics, he picked up something and said, "This is the same exam that you gave us 20 years ago."

He said, "Yes."

I am talking to an economics professor, my cosponsor, Senator GRAMM.

He said, "But don't you know that the class who leaves will give those answers to the next class?"

He said, "Yes, but we do not worry about that, we just change the answers every year."

That is exactly what those economists do, the ones they are quoting.

I have listened to everything from the Laffer curve, supply side, to—I do not know, I cannot remember all of those things. But fundamentally, the Senator from New York said that after the Congress passed Gramm-Rudman, they had taken away the choice, but then they passed the farm bill and it was for several billion dollars. They exercised choice.

On his delivery about how the abdication of choice occurred, he said at the end that again we will abdicate choice, take it away, amend the Constitution, and everything else. But he immediately acknowledges choice on the farm bill.

It doesn't matter whether the farm bill was good or bad or whatever, but Congress chose. Everyone here—all of us as mature individuals should understand that you cannot amend the Constitution by a simple act of the Congress. Gramm-Rudman-Hollings cannot possibly take away the choice.

There is no better authority than the distinguished Senator from New York who says the Constitution says we adults must formulate a budget. And so does Gramm-Rudman-Hollings. We could not take away choice if we wanted to in this vote today on Gramm-Rudman-Hollings, the effort to repeal it.

Going quickly and not to dwell on all of these things, on the question asked by the Senator from Colorado, will I support an oil fee, I will. The distinguished Senator from Texas does not.

There are differences. We explained those differences all last fall.

When I came on as a principal cosponsor to Gramm-Rudman-Hollings I insisted that we keep Social Security off, both as a trust fund and for political reasons.

I insisted on revenues, that we be able to have revenues to reach the deficit target and we be able to pay the bills so you could not say necessarily that Gramm-Rudman-Hollings cut anything or increased anything. If you put the revenues in there, you could have all revenues or a combination of revenues and cuts. I was the one that recommended revenues.

The distinguished Senator from Colorado long ago gave us a lesson in New England when he went there and recommended an oil import fee. It didn't hurt him.

□ 1210

The distinguished chairman of the Budget Committee, Senator DOMENICI, had the same solution last summer when we had a little budget discipline going. An oil fee is nothing new. Senator DOMENICI recommended an oil import fee—revenues—as chairman of the committee, with Senator CHILES. It became a Gorton-Chiles proposal later on.

I recommended it in my budget freeze proposals. Not necessarily that each time but different revenues have been recommended. So our opponents act like they have us cornered and somehow, if we can get rid of Gramm-Rudman-Hollings, we can put up some revenues.

You can put up revenues under Gramm-Rudman-Hollings and you can put up your amendment, I say to the Senator from Colorado. His statement reads:

> Later in the debate, I will offer an amendment that differs dramatically from Gramm-Rudman. If enacted, it would actually lower the deficit. That amendment proposes a fee on imported oil, an alternative to arguing about the budget process.

Put it in now. We have not taken away any choice. Say strike all the words and insert in lieu thereof your program, your revenues. You are not prohibited. What you all are trying to do is to kill Gramm-Rudman-Hollings that lowers the deficit.

The distinguished Senator says the deficits go up under Gramm-Rudman-Hollings. The truth is the deficits go down, they have gone down already $11.7 billion. On March 1, cuts were enacted that extrapolated over the 3-year-period of 1986, 1987, and 1988, a saving of $45.7 billion. That much has gone down. That is the law and a fact of life. And come right here on October 1, if we stay on course, we are going to take a deficit of $220 billion for fiscal year 1986 and bring it down into the neighborhood of $154 billion. We are going to cut some $60 billion.

The day of reckoning is coming and they are trying to escape and we have caught them. They are giving us poetry and abdication and madness and monster elephants and all these other cute little sayings that have no meaning. You have to take notes to remember this kind of stuff—"sense of the crime" and all those other things.

I never heard such fanciful nonsense. We are catching them.

They do not like to get caught. All this courage that they keep giving to themselves, translated, means there is a cowardice here someplace. We are giving cowardice to the Congress. Gramm-Rudman-Hollings is eliminating our courage and our responsibilities and our choice. We have heard talk about drugs. Well, there is a greater drug than cocaine, than heroin, than crack and anything else. It is the drug of deficit spending. This crowd up here has been on it rampant for the last 5 years, a few hundred billion dollars more each year, until we doubled the national debt from $1 tril-

lion to $2 trillion, and the issue at the moment is to take it up to $2.3 trillion. Up, up, gone and away.

Talk about drugs, yes; it is a political drug. You might call it the Roman tonic, bread and circuses with the fruits of the next generation. Buy their votes. That is what has been going on.

They have been getting by with it and we are catching them. We are exposing them. That is what this Gramm-Rudman-Hollings does. It stops the charade, stops the chicanery, exposes misconduct of the Congress. So the people now are seeing it clearly and they do not like it and they give you poetry and all this other stuff.

The deficit goes down, and down, I say to the Senator. I can tell him that. He knows it. That is the fact. That is what he is fighting against.

On guaranteeing a particular solution to the problem, no, I think I have answered that question. With respect to budgets not being created equal, the Senator from Colorado says "some programs contribute to our current well-being, others are critical to our future prosperity, some outdated, worn or purely political." Those would be terminated. Congress has gone through these programs and in a realistic fashion said that, on the face of Gramm-Rudman-Hollings, the law of today, undisturbed by the court, we are making choices in this law.

We are saying Social Security is a trust fund. They pay it in, pay it out and everyone should understand, Social Security should never be affected by Gramm-Rudman-Hollings and there is a law now that protects Social Security. Gramm-Rudman-Hollings.

Veterans' pensions, veterans' compensation; the veterans are protected.

Women's, infants' and children's feeding; we wanted to make sure that was a program that actually reaps benefits, saves money, and that is protected by law.

FOOD STAMPS

All of us know that a Congress of the people of the United States is not going to run out of money in July and tell hungry people, you cannot eat in August and September, you have to wait for the next fiscal year. We never cut that, will not do it and we protected it. We exercised a choice. But the ultimate choice—and in line with the Constitution referred to by my distinguished colleague from New York is still there.

He is absolutely right. The Constitution says that we have this responsibility and no three readings in the House and three readings in the Senate and signature by the President can avoid that constitutional change.

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

Mr. HOLLINGS. I am glad to yield for a question.

Mr. HART. The debate this morning over all cases in which the issue arises has been about who has the courage to cut the spending as if that is the only thing. The reason that the Senator from Colorado persists in saying the deficit has gone up is that I think that is what has happened. If the Senator will indulge me 1 minute, I would like to cite the figures, then make the point and get his response.

The Senator from Colorado had the understanding that the estimate last October for the deficit for 1986 by the CBO was $190 billion. The maximum deficit permitted under Gramm-Rudman-Hollings was $171.9 billion, which led to a sequester of $11.7 billion, as I recall. Now the Director of the Office of Management and Budget, Mr. Miller, as of July 1986, says the current fiscal year deficit will be $220 billion. Those are the numbers that have led the Senator from Colorado to persist in saying that under Gramm-Rudman-Hollings, the deficit goes up. That leads to the question.

We have cut. Gramm-Rudman-Hollings has led the cuts but other factors have increased the deficit, factors that we may or may not even have control over—international economic trends and tides, and trends and tides in terms of unemployment in our country, anticipated revenues that did not come through. My question to the Senator from South Carolina is, and this is asking in good faith, it is not a rhetorical question: What in Gramm-Rudman-Hollings, if anything, addresses those factors beyond the one category, namely, budget cuts?

We have revenues, we have a lot of other factors that go into the question of the size of the deficit. Are there mechanisms in Gramm-Rudman-Hollings that accommodate or address the nonspending aspects of the question that leads to the deficit?

Mr. HOLLINGS. The provisions of Gramm-Rudman-Hollings affects all of the budget, the spending and the revenues, domestic and defense spending. What Gramm-Rudman-Hollings does is puts in law that that deficit shall be $144 billion for 1987—and it will be reduced by $36 billion a year until the budget is balanced. Gramm-Rudman-Hollings does not talk about finance or about droughts or disasters. It is not intended to write a budget. The intent of Gramm-Rudman-Hollings was to bring a discipline, not a budget.

□ 1220

When you use the phrase that under Gramm - Rudman - Hollings deficits have gone up, you mean at the time of but not because of. Because of Gramm-Rudman-Hollings the deficits have gone down. They would have gone up much greater had it not been for Gramm-Rudman-Hollings. And the answer to the question of the Senator is in the amount fixed in law for 1987—$144 billion. It says, "However you get there, however you provide for it, revenues, cuts or otherwise, elimination of programs or new taxes saving programs, the Congress has the choice. It must have the courage." We say: "Congress, you write your own budget but come October 1, if you have not done otherwise, you are going to have a deficit of $144 billion." In other words, we put the Government on a diet, told the Government it is to select its own diet. "You can have nothing but lettuce or eat nothing but ice cream, however you do it is your affair, but by October 1, if you have not lost that weight, those amounts, those billions to bring the deficit down to $144 billion, we are going to wire your jaw and you are not going to eat until you get it down."

Mr. GRAMM. Will the distinguished Senator from South Carolina yield for a moment?

Mr. HOLLINGS. I will be glad to yield to my colleague from Texas. Let me just complete one thought with respect to the budget.

I had misgivings about the fiscal year 1986 budget and it was this Senator—in August of last year—who stood on the floor at the time we adopted the budget and spoke against it and voted against it. I hated to deter from supporting the hard work and leadership of all members of the Budget Committee, particularly the chairman and the ranking member. They had to put up with one heck of a lot in negotiating. You have to know the politics, the influences, and everything else in dealing with the House side, and they had done a credible job. But when it was represented that that the conference had drawn the deficit down to $171.9 billion, I said, "It is going to be nearer $200 billion or over." I had to vote, as a former chairman of that committee, against the budget that had been produced and I did not like it.

Again this year, a month ago, when we brought the 1987 budget back in the conference report and it said the deficit would be $142.5 billion, I refused to sign that conference report. I served on the particular conference. I stated on the floor at that time that the deficit would be nearer $165 billion. Now, the Director of the Office of Management and Budget has projected that rather than $142.5 billion, it is nearer $165 billion. The distinguished Senator from Colorado and I have served on the Budget Committee and worked hard at it. He and I know the process. Gramm-Rudman-Hollings does not write a budget. It sets deficit targets and the mechanism to bring about the discipline, the rules changes, expedited processes and everything else to go about doing it. So what we

are doing is really fixing responsibility.

I have tried all the other ways to reduce the deficit, revenues, growth economics, saving program freezes, everything historically possible for 5 years. I have voted against Reaganomics and all these other phony games of the administration. Now I have banded together with the distinguished Senator from Texas because we have a procedure to reduce the deficit that is workable. He and I still have differences. He thinks we can do it without any revenues whatsoever. We have differed on that since the word go. I think we are going to have to have revenues. Why? For the simple reason we are not looking for $2 billion or $3 billion in savings. We can find that. Or even $10 billion. We are looking for $220 billion. That is how much more we have given in Government than we are willing to pay for. You have $300 billion in defense. You have $300 billion in health care costs, Medicare, Medicaid, and Social Security; $300 billion for entitlements and $300 billion for defense is $600 billion. You can split the other part of the trillion-dollar budget in half, $200 billion for Government and $200 billion for interest costs. The interest costs will soon exceed the cost of general Government. That is how bad off we are.

With a deficit in the balance of payments of $170 billion we have become the largest debtor nation in the world when we used to be the largest creditor nation. A balance of payments of $170 billion and it is going up, up and away. Yes, I went along with this approach with the Senator from Texas because my own experience at the State level is we have done it time and time again. We do it as a discipline. It is not a lack of responsibility, an abdication of choice. It is known as fixing a choice. It is putting us all in the corner, the President and Congress together, and saying the charade is over. We are exposing you now. We are putting all this activity on top of the table where everybody can see exactly who is for reducing the deficit. If they have a better way to do the job, then let them propose it.

Mr. HART. Will the Senator yield?

Mr. HOLLINGS. Let my yield first to the Senator from Texas and then I will yield to the Senator from Colorado.

Mr. GRAMM. I will be brief. The distinguished Senator from South Carolina covered several of the points I wanted to make, but I would like to remind my colleagues that when we went to conference on Gramm-Rudman-Hollings I, the Congress had already adopted a budget that was not adopted under the truth-in-lending provisions of Gramm-Rudman-Hollings. That was not adopted under the binding constraints of Gramm-Rudman-Hollings. I think all three of the authors in conference made it very clear that we did not believe for a moment the budget that was adopted the year before Gramm-Rudman-Hollings went into effect would hold water. We all knew that the deficit was going to be far greater, that the budget was full of phony savings, that it was full of optimistic assumptions, and that it would not hold up. We were not trying to blame anybody. We knew the process did not work. That is why we tried to change it.

Now, we ran into a problem in conference because when we came out with a bill, a lot of people in the House wanted to attack it before they read it, and their attack was, "You are not doing anything now. This is a reelection bill which puts off decisions until after the election."

Well, they conveniently neglected that this forced the writing of the toughest budget in American history in terms of where we have been; that the budget was binding; that if we did not do the job the cuts would go into effect 1 month before the election. In other words, reality did not have anything to do with it.

So we got into this absurd position in conference, but I think we worked out a reasonable compromise, and I praised the leaders on the House side in the conference for the compromise. There were those who said, "Well, let's start Gramm-Rudman right now with a phony budget that we know is $30 billion over what we say it is and let's just have an automatic cut right now." We said, "That is absurd. We want to force choice, not avoid it." And so we worked out a compromise that with only seven-twelfths of the year left the across-the-board cut would be seven-twelfths of a maximum of $20 billion.

Interestingly enough, of all the people who ranted and raved about the cuts, nobody proposed an alternative to them.

So our point is do not blame us for the failure of the system we are trying to replace. Judge us, come October 15, on whether or not we did the job. I think anyone would agree we would have never written a budget that even claimed $144 billion this year without Gramm-Rudman-Hollings.

Mr. HART. Will the Senator yield?

Mr. GRAMM. We would have never prevented the add-ons we did with points of order without Gramm-Rudman-Hollings. In fact, we would not be here even debating the issue without Gramm-Rudman-Hollings. We would be pretending that it did not exist.

I thank the Senator for yielding.

Mr. HOLLINGS. If the Senator has a question of this Senator, yes.

Mr. HART. I would like to engage both Senators if I could. First of all, I think we will be better off, and the country certainly will, if we quit finger-pointing and trying to figure out who is to blame and not to blame. Instead of people opposing Gramm-Rudman pointing their fingers at the sponsors and saying, "It is all your fault," and vice versa, the point the Senator from Colorado is trying to make is there are some factors which contribute to the deficit over and above and apart from the level of Government spending.

□ 1230

We cannot reduce the deficit. We cannot have the goal that we all claim to want, of a balanced budget, without cutting spending, cutting defense spending, cutting domestic spending, cutting entitlements. That is a given. It is how and where we have to do it.

The question the Senator from Colorado asked the Senator from South Carolina a few moments ago is "Are there not factors that contribute to the deficit over and above and apart from and aside from the amount of money we cut?" The answer is "Yes." That is all I am trying to get at.

It is not who is to blame or who can point the finger at somebody else. The fact that the economy has turned down, the fact that there are more people out of work than we thought there would be, the fact that manufacturing does not turn out the revenues we thought there would be. It may have to do with fluctuations in oil prices. We point the finger at each other as to who is to blame. This country is in an international economic tide that may sweep all these cuts aside.

That is the only point the Senator from Colorado would like to make.

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

Mr. HOLLINGS. I yield.

Mr. GRAMM. I could not disagree more with the Senator from Colorado.

Mr. HART. That is that.

Mr. GRAMM. We are not poor victims, that the gods rained these problems down on our heads. Does the Senator think that some mystery force of the universe made the dollar overvalued on the world market?

Mr. HART. No; the tax cuts of 1981 did.

Mr. GRAMM. The Senator yielded to me, and I would like to respond. I heard out the Senator from Colorado.

The gods did not do that. We did it, with the highest deficits in American history. We had to borrow $212 billion. We produced the highest interest rates in American history, and $130 billion of foreign capital came in to get those interest rates. The value of the dollar went up far beyond its purchasing power.

The gods did not produce these problems. We produced these problems. The economy is faltering. The gods did not do that.

Mr. HART. I did not say anything about the gods.

Mr. GRAMM. I would like to make my point.

Mr. HART. Do not mischaracterize my statement.

The PRESIDING OFFICER. The Senator from Texas has the floor.

Mr. GRAMM. What has happened here is that we have not dealt with this deficit problem, and we kept pretending that our rhetoric would let the economy go $212 or $220 billion into debt and that no one would ever have to pay the piper.

The truth is that the deficit produced the trade problem, overvalued the dollar, caused the loss of manufacturing jobs, produced the highest interest rates in American history, and got the economy into a ditch.

While we are talking about pointing the finger, I am not going to read back the statements, since I did not write down the comments that my distinguished colleague from South Carolina wrote down; but I have heard rhetoric all morning and all yesterday about how irresponsible it is, how cowardly it is, to force Congress to make a decision. So I am not interested in pointing fingers. I am interested in getting on with the job.

What we have done is come up with a vehicle that is getting the job done. I rejoice in that despite the fact that everybody wants to blame everything on Gramm-Rudman-Hollings—if the first sergeant at Fort Hood in Texas does not order enough toilet paper or if they do not repair the pothole in front of your house, then the perfect excuse for 5 years will be that Gramm-Rudman-Hollings did it. But the American people are not buying it. They know we have to deal with this problem, that the medicine is bitter but that the disease kills.

That is basically where we are.

Mr. HOLLINGS. Mr. President, in response to my distinguished colleague from Colorado, I say that certainly there are those things affecting the budget outside of Gramm-Rudman-Hollings. The entire budget is outside of Gramm-Rudman-Hollings. I emphasize again and again that there are other factors and cuts—increases in the defense budget or increases in social programs, or cuts in either one.

We in the Budget Committee know the strongest arguments about growth of the GNP. One percent growth, equals somewhere around $20 to $25 billion. One percent in unemployment will equal another $25 billion, up a little or down, either way.

So we have to measure those economic factors. There is no question about it. We have done it regularly.

Gramm-Rudman-Hollings does not project it one way or the other. You can put on 10-percent growth or minus 10-percent growth. It just says pay the bill.

Let me speak from my own experience. I go back to 1959. I came into office as the executive of a State that, next to Mississippi, had perhaps the lowest per capita income in the Nation. The teachers were underpaid; everyone was underpaid; the economy was down, and everything wrong was present.

I heard this argument about the stimulation of the economy. It's a lot of fancy talk. Maybe this is an oversimplification to try to apply to the Federal level. In doubt much of it, I have gone along with few economic stimulations in the 20 years I have been here. It's classroom talk; textbook poetry. But now, just about the time we are to fix a budget discipline, people come running pellmell down the road with stimulation. They do not want the discipline.

You can stimulate the economy with revenues, you can stimulate it with spending, however you want to stimulate it. I took the route of Governor not only cutting spending but also putting in the revenues and getting a balanced budget.

I hear now, some 25 years later, about growth. Growth now is the buzz word in the national economy, that we want a growth budget, a growth economy. The best way I know to get growth is to pay the bills. We paid the bills in South Carolina and got a AAA credit rating in 1959. Then, rather than sitting at the bottom in per capita, in productivity, and in the economic well-being of the people of South Carolina, we began to go forward for the first time.

Generally speaking, until the farm depression and the textile depression, we enjoyed a relatively good expansive movement. We did it by being fiscally responsible. We did it by paying the bills.

You can bring in and line up all the economists you want, because I have heard them all over the past 20 years, and we have done it their way, and look at where we are. You can keep them. So far as I am concerned, I am going back to my hard experience as Governor of the State, to turn it around and pay the bills and start growth. I think if we can pay the bills and turn it around, we can start that growth and go forward with a prosperity unseen in this land of ours. But if we continue to fool ourselves politically with this idea that economically we have to come running with money to any and every program and problem and not pay for it—then the deficit will go from $220 billion up to $240 billion, or to $250 billion and higher. The interest cost then will exceed $200 billion and definitely will be larger than the cost of general government.

We are into that vortex of an inverse spiral going down, down because of the growth, the borrowing, the inability to pay the added cost of interest. And we will be carrying this tremendous $2.3 trillion national debt that we are not even cutting into. This is not austerity.

During the 5-year period of Gramm-Rudman-Hollings, we are adding another one-half trillion dollars to the national debt.

Government is the art of the possible. We have made compromises. We have looked at the economic factors, and we still think we should stay on the course of ridding us of these malignant deficits.

□ 1240

But this is the only way we know to start bringing it down in a deliberate, systematic fashion. To hold the line and begin to pay the bills, to cut out or have a leveling off, let us say, of the interest costs. After we get that, I hope we can propose revenues and spending restraints to eliminate this debt because we ought to be ashamed of ourselves. We are spending $200 billion on nothing that could go to drug treatment, law enforcement, education, student loans, and national defense.

That is $200 billion for absolutely nothing, just for the profligacy, the extravagance, and the irresponsibility of the preceding Congresses here.

This is what Gramm-Rudman-Hollings is trying to stop. Let us not repeal it now.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

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

This has been an interesting debate and it is interesting to me how much has to be said in defense of something, namely Gramm-Rudman-Hollings, because it is not working. If it were working and working effectively we would not be getting all this verbiage that we are getting here today. We are getting it because it is a bad piece of legislation. It was snake oil when it was first proposed, and despite the legislative changes yesterday I would say that it is snake oil today.

Gramm-Rudman-Hollings when it was first enacted provided that the maximum deficit for this fiscal year would be $171.9 billion or essentially $172 billion.

We are now told the deficit for this fiscal year will be in the range of $220 billion and so it has failed its very first test. The budget that the administration sent up to us initially which was said to be designed to meet the Gramm-Rudman targets, when it was actually analyzed by CBO it was found that it was about $16 billion inaccurate. It was $16 billion phony, if you will, I think deliberately, and we have been caught now in that kind of phony numbers game ever since that time.

It is said the Supreme Court has come along and found part of it unconstitutional, as many of us expected that they would find, and now we have this delegation of responsibility in yesterday's action to hand over to OMB, the most dishonest agency in our entire Government, the authority to make these critical decisions as to how automatic cuts are to be made if they are called for in the future.

It is a mindless proposition. It is exactly the kind of thing that Congress does when it wants to duck the responsibility that it properly ought to be facing up to.

It is very interesting as people start to thinking about what the meaning of these automatic cuts is likely to be in terms of today's economic situation. You are getting very serious people, people like Federal Reserve Board Chairman Paul Volcker, Irving Kristol in today's Wall Street Journal, and many others who are expressing a grave concern about what this automatic cutting mechanism will mean in terms of the softness of the economy that we see at the present time, because clearly the economy is in serious difficulty.

We are going into debt and as of now are the No. 1 debtor nation in the world. We are going deeper into debt at the rate of $1 billion every 2½ days. We have now become the No. 1 debtor nation in the world, surpassing Poland, Mexico, and Brazil, but we are adding to that debt or status to the tune of $1 billion every 2½ days. So our situation is one that should cause all thoughtful people to be deeply concerned about it.

In commenting on that today in the Wall Street Journal, Irving Kristol made this observation and he, of course, would be an economist who would normally be in line with the sponsors of this legislation in terms of the thinking and the philosophy that they have expressed to support the legislation. This is what Irving Kristol said today. He said:

> Indeed, cutting the deficit through indiscriminate cuts in government spending—as called for by Gramm-Rudman—may be exactly the wrong prescription for the U.S. economy at this time. Does it make sense, one wonders, to cut spending on defense and thereby weaken one of the healthier sectors of a faltering economy? Eventually, of course, the deficit will have to come down. But in economic policy, as in private investing, doing the right thing at the wrong time can amount doing the wrong thing.

Why would someone like Irving Kristol, who is an eminent and respected conservative economist, one that you would think normally would embrace something like Gramm-Rudman-Hollings if it was a sound proposition, in today's Wall Street Journal be expressing in writing this very serious concern and reservation that he has? It relates directly to this automatic cutting process, this mindless cutting process that we have built in here because Congress and the President have been unwilling to face directly the hard choices that our jobs require us to face.

So rather than making the decisions we should properly do, we have put it off and we have done it on the basis of a formula approach that could, in fact, result in massive deficit cuts at a time that could be the worst possible time with respect to how the economy itself is going.

Just look at the news that we have seen over the last month say, and I am just going to rattle off some of the things that I think are most disturbing. I mentioned the trade deficit. There is a front page story in today's New York Times. They are now estimating our trade deficit this year to be in the range of $170 billion. It has gone up despite the fact of the sharp fall in the value of the dollar.

I have just mentioned the fact that we have become the No. 1 debtor nation in the world and we are adding to our debtor nation status to the tune of $1 billion every 2½ days. We have now become a net importer of agricultrual commodities. This has always been one of our great strengths in that when we had trouble in the manufacturing sector we could count on our farm production and sales abroad to take and help us with respect to our balance of payments. That is now turned the other way. We are now importing more agricultural commodities than we are exporting. It is a terrible condition.

In addition to that, we see all kinds of structural weakness. We certainly see in it the oil sector of the economy. We see it with banks and savings and loans. We have more on the problem list today than we have had at any time since the Great Depression. We have emergency legislation before the Banking Committee right now to strengthen the ability of the regulators to go in and try to save failing banks and also to try to prop up the insurance system and the savings and loan industry and, as I say, we are being asked to consider that on an emergency basis.

In the corporate news, we have watched over the last month, the enormous quarterly loss for Bank of America that no one anticipated would be that large, the bankruptcy of LTV, the fact that other steel companies are in very serious difficulty, with Bethlehem Steel just omitting its dividend and its dividend on its preferred stock as announced yesterday, and so forth. And we look around the economy and see that kind of pattern of difficulty accumulating in area after area.

Our manufacturing base is in serious trouble with respect to the invasion of foreign products coming into our markets.

So as we look at all this information and as it is accumulated by people who pay attention to it, the notion of Congress putting our economic policy decisions on automatic pilot and to say that we are going to take and by formula we are going to decide what is the right mix of fiscal policy, and obviously, related to that the corresponding relationships that will play through on monetary policy and to do that without any careful assessment of where the economy is at the present time is in effect what we are doing.

So Gramm-Rudman-Hollings was a mistake to start with and it is a mistake today.

I want to be very blunt about something else, and that is, why are we even dealing with this kind of legislation, and you have to go back to the early 1980's when we had the original Gramm-Latta proposition in the House of Representatives which was the foundation on the budget that was designed to solve all of our problems. It was misrepresented at the time. It has failed miserably. It has more than doubled the national debt since it has been enacted and also I think has led importantly to the deterioration in our international competitive position.

So when we hear the same voices coming back today that were the ones that had the magic formula back in 1981, the formula that has failed and has put us in this difficulty, I find it very hard to attach much credibility to new schemes, new snake oil, new magic answers, that somehow are going to solve all of our problems today without us having to make any decisions, that all we have to do is stand back and the automatic cutting mechanisms will do the job for us.

□ 1250

Well, that is foolish. That is foolish. And it is us ducking our responsibility if we allow it to stay that way. And when serious people like Irving Kristol today in the Wall Street Journal is expressing his reservations about it, we ought to take some note.

I asked Fed chairman Paul Volcker last Wedenesday when he appeared before the Senate Banking Committee—he came in with a rather anemic growth forecast for the economy, and we discussed the macroeconomic outlook at that time—I asked specifically the question: What happens, from an economic forecasting point of view, and from his professional point of view, if we go from a Federal deficit spending rate of roughly $220 billion, which is what we are running at the present time, and when we click over into the new fiscal year from 1 day to the next to drop from that $220 billion deficit rate down to a rate of $144 billion? I asked the question: What happens if we take $76 billion on an

annual basis out of the economy in terms of fiscal stimulus, what is likely to be the effect on the economy given the fact the economy is as soft as it is, slowing down, with enormous pockets of weakness all across the country?

It was very interesting. I do not have his precise words here today, but he repeated much the same comments the day before yesterday when he testified before the House on the same set of issues. And that is, he has serious reservations as to whether that magnitude of deficit reduction in this time period may be too much. It may be excessive in terms of the economic effect at a time when we have got other very serious economic problems to deal with.

Now, no one challenges the need to bring down deficits. Everybody here is committed to do that and we have to bring them down. But the question is, over what period of time and in what amounts, and do we retain for ourselves, as thinking stewards of this Government's decisionmaking, do we retain for ourselves the ability to make the judgments and act accordingly to the conditions as we find them as these decisions have to be made? Obviously, we should.

But the mechanism that we are now seeing put into place here takes that responsibility out of our hands, improperly, in my view, and, in a sense, becomes an admission of failure or an unwillingness to face the decisions and puts it over to the side and says, "Let's just do it in an automatic way. Let's hold our breath. Let's do it automatically and we will hold our breath and see where we come out."

We did that in 1981. So when I see the same masterminds at work now on a scheme that somehow is going to take and resolve all of these terrible problems, who were the same people who, at the beginning, had the scheme that created all of these economic problems in terms of the terrible financial travail the Government finds itself in today, I am more than a little skeptical. I just think it does not make any sense. I think it is dangerous, to boot.

So I hope that we would face this issue directly. I think it is time that we put what is called Gramm-Rudman-Hollings to the side and, in fact, do what we are here to do, and that is to make the decisions as to how to bring these deficits down directly in terms of the spending cuts and where they are to be and what amounts are needed on the revenue side and in what time frame these can be managed and managed prudently.

Because if we push ourselves into a situation where we get the economy in a position where it cannot function, it cannot recover, and with all the other sectorial problems we have at the present time, I think that would be extremely dangerous and I do not think it is sound.

And when we are hearing people like Paul Volcker and Irving Kristol within the last week tell us that we better measure this very carefully before we just blindly move ahead, I think we ought to pay attention to those comments. I could cite many others.

I spent a day talking with some of the leading financial analysts and managers in New York recently. I heard many of the same comments expressed by them and many others who have come in to talk about legislation before the Banking Committee. When I question them on the economic outlook, they have great concern. They have great concern. There is not a lot of confidence out there today at the top in terms of the major financial managers in this country that I have spoken to. There is great apprehension. There is great apprehension.

They want deficits down, but they understand, and they are frank to say in private conversation, that to try to do this by some automatic, mindless formula, some automatic cutting mechanism that will kick in regardless of what the conditions are, is just unsound, and especially so with all the other structural weaknesses and instability that we see at the present time.

I will put into the RECORD today also the statement that Paul Volcker made before our Senate Banking Committee. I will do so, as I think about it here, because I think it is important for Members to have an opportunity to read it in its entirety. And, in an unusual gesture on his part, when he delivered his statement the other day, he read it word for word. He seldom does that. He usually summarizes. I took that to mean, as I listened to him develop it, that not only had he written it himself but he felt that every part of it was so important that it needed the emphasis of his personal reading of it to the committee.

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

STATEMENT BY PAUL A. VOLCKER

I appreciate the opportunity to report once again on the conduct of monetary policy. I would first like to place that matter in the larger context of the performance of the United States and the world economy.

As you know, there have been marked contrasts in the economic performance of different sectors and regions of this country. Consumption has been strongly maintained, and there have been large increases in employment in the broad service sector. Housing is being built at a high rate. But industrial activity and business investment, which had leveled off last year, have declined over the last six months, and the agricultural and energy industries are under strong pressure. As a consequence activity in some areas of the country has advanced rather strongly, while severe adjustments are taking place in the energy and agricultural belts.

The net result is that the overall economic growth rate in the United States moderated to about 3 percent through 1985 and early 1986, and apparently slackened further in the second quarter of this year. Moreover, growth in other major industrialized countries remained slower than in the United States during 1985 and the early part of this year.

Throughout this period, sizable increases in employment have continued in this country; the unemployment rate has remained generally at a little over 7 percent and, relative to the size of the working age population, more people are employed than ever before recorded. In Europe, unemployment has also remained relatively steady, but at much higher levels.

After more than 3 years of economic expansion, the process of disinflation has continued, reinforced for the time being by sharply lower prices of oil, by far the most important commodity. With industrial prices steady, the average level of wholesale prices has been declining here, and even faster in key countries abroad whose currencies have been sharply appreciating relative to the dollar. Interest rates here and abroad have also declined appreciably, reflecting both the sense of progress against inflation and the fact that growth has been proceeding well within capacity restraints.

The large decline in U.S. interest rates and the sharply higher stock market over the past year suggest the cost of capital has declined. The fall in oil prices has helped bolster the real income of consumers. Meanwhile, the substantial depreciation of the dollar has placed our industry in a decidedly better competitive position vis-a-vis other industrial countries. As many have suggested, these underlying forces should help sustain an economic expansion that has already lasted longer than most.

But I would be remiss in failing to emphasize much less satisfactory aspects of the U.S. and world economic situation. There can be no evading the fact that some fundamental economic adjustments must be made within our economy in the months and years ahead.

The clear challenge is to find the ways and means to work through those adjustments in a context of sustained growth while also consolidating and retaining the progress toward price stability. The conduct of U.S. monetary policy is obviously relevant to that process. But that single policy instrument cannot itself provide the answer. Complementary approaches in the fiscal, trade and other policies of this country, and in the approaches of other countries, will be required as well. The hard fact is that, while the need for complementary actions to achieve the necessary adjustments in the United States and world economy seems to be more widely recognized, progress in coordinating action toward those aims has been limited.

DISEQUILIBRIUM IN THE INDUSTRIAL WORLD

A major "fault line" runs through the economies of the industrialized world. That fault line is evident most of all in the enormous deficit in our external trade and current accounts, and in the counterpart surpluses of a few other countries. Unless dealt with effectively and constructively, growing market and political pressures will, sooner or later, inevitably have much more disturbing consequences.

The problem first clearly emerged some time ago. The powerful thrust of the strong U.S. economic expansion in 1983 and 1984

has spilled out abroad in the form of sharply rising imports, aided and abetted by the exceptional strength of the dollar internationally. There were, for awhile, benefits on all sides. At a time of slack demand at home, exports to us helped Europe and Japan to restore and maintain their growth. The United States also absorbed a disproportionate share of the necessary external adjustment efforts by the heavily indebted countries of Latin America. Those countries have sharply curtailed their imports since 1982, and they have become more competitive in markets for manufactured goods.

At the same time, the United States began to be the recipient of a growing flow of capital from abroad. That inflow, which pushed the dollar so high in the exchange markets until early 1985, had the practical effect of relieving potential pressures on our internal financial markets even in the face of the massive and growing federal deficit. Consequently, private investment and construction could expand. At the same time, the competitive pressure from imports encouraged strong cost-cutting and productivity efforts in the industrial sector. That has been one powerful factor accounting for the near stability of prices of manufactured goods over the past year or more.

We cannot, however, build a lasting foundation for sustained growth and stability on massive international disequilibrium—huge and rising trade deficits in the United States and counterpart surpluses abroad. Nor can we count on satisfying indefinitely so much of our own needs for capital by drawing so heavily on the savings generated elsewhere in the world—savings that have been so freely available in part only because internal growth in Europe and Japan has been relatively slow.

Today the imbalances and strains are clearly showing. The forward momentum of our economy has been sustained almost entirely by consumer spending and housing construction, both of which have been accompanied by unsustainably heavy borrowing. Savings meanwhile have remained at a relatively low level, even by past U.S. standards. For more than a year, industrial production in the United States has not grown appreciably, and there has been some decline in 1986. The pace of business investment has slackened.

Some of the relative weakness in industrial output and investment over the past six months can be attributed to temporary factors and to developments peculiar to the United States. For instance, some investment orders were speeded up late last year in anticipation of tax reform, and the debate on the nature of that reform has apparently led to some deferral of ordering this year. The boom in spending for computers has subsided and commercial construction, in response to large and growing vacancies of office space, is predictably declining. Probably much more important in recent months have been very sharp cutbacks in domestic oil exploration and investment, driving energy producing states into recession-like conditions and affecting production of steel and equipment elsewhere as well.

But a large part of the difficulty stems from the continuing imbalances in the world economy. On the average, growth rates in major European economies and Japan were about ¾ percent less than the reduced growth path of the United States during 1985 and the first quarter of 1986. However, the more disturbing contrast lies in the source of that growth.

In the United States, the rate of growth in domestic demand, while slowing in the third year of expansion, continued to average about 3¾ percent through that period. Domestic demand growth in the industrialized countries of Europe and Japan was significantly less—about 2½ percent. In the early part of this year, when their exports slackened, those countries grew not at all.

The plain implication is that our overall GNP growth rate was reduced by continuing deterioration in our trade and current account balances. With our current account deficit reaching a record $135 billion annual rate in the first quarter of this year, industrial production and investment were restrained. Meanwhile, foreign surpluses continued to build through much of the period, and as their exports have slowed, internal demand has not yet, in most of those countries, picked up the slack.

Prospects for investment and for manufacturing activity in the United States are heavily dependent on an improved trade outlook. The sharp decline in the dollar since its peak in early 1985 should help set the stage for such an improvement. There is evidence that U.S. producers find themselves in a stronger competitive position. However, the deterioration in actual trade in manufactured goods has slowed little

The decline in the dollar is both relatively recent and from a very high level so the absence of a stronger response in trade so far is not entirely surprising. What is of concern is that the domestic markets of our major industrial competitors have remained so sluggish, raising a question as to the buoyancy of the markets for our exports and of their own growth prospects.

You are well aware that the present imbalance among industrial countries is reflected in strong protectionist pressures in the United States. Yet, as the President has so strongly emphasized, to abandon our tradition of relatively open markets would surely be to invite an unravelling of the international trading order. We would then have less trade and more inflation. With that, prospects for sustained growth both here and abroad would clearly be placed in jeopardy.

I know of the complaints about "unfair" trading practices of other countries. We need to deal with them energetically. But I also know the clear lesson of experience is that a protectionist retreat by the United States, the world's leading economic power, would invite recrimination and escalation. Certainly, the most effective and promising avenue for dealing with the trade complaints on all sides will be in the planned round of mulitilateral trade negotiations rather than in a tit-for-tat process of mutual retaliation.

Moreover, I believe it is demonstrable that, as a matter of relative importance, much more fundamental imbalances in the world economy than unfair trading practices are responsible for the present pattern of trade deficits and surpluses. Those underlying imbalances can only be dealt with by complementary economic policies, not protectionism.

Quite clearly it is in no one's interest—not the United States or other countries—that we seek better balance in our external accounts by deliberately restraining further our own growth rate. But it is also true that as things now stand, stronger domestically generated growth in the United States will not reduce the international imbalances. Taken alone, it would aggravate our trade deficit further, posing an even more difficult adjustment problem later.

As I suggested, the recent exchange rate changes can help us to escape that dilemma—they should work to improve our trade position and reduce the surpluses of others. In fact, faced with a combination of appreciating currencies and slower growth in overseas markets, exporters in both Japan and some European contries are experiencing reduced profits and more sluggish orders from abroad. However, in the absence of offsetting internal sources of expansion, those same pressures could dampen their own prospects for growth.

That is one of several reasons we should not rely on exchange rate changes *alone* to produce the needed international adjustments in the world economy. Over a number of years, we in the United States will certainly need to shift more of our resources into exports, and into recovering domestic markets where import penetration has been so high. That, very broadly, implies relatively more growth in manufacturing; relatively less growth in services, in governmental spending, or in other sectors; and more savings and less borrowing. For some of the rest of the world, the opposite shift will need to be at work—less reliance on exports, and more on domestic sources of growth.

Much still needs to be done to ease the way for those adjustments. For one thing, we in the United States are not prepared for a really large improvement in our trade balance. Our financial markets remain dependent on the large capital inflows from abroad that are a necessary counterpart of our trade and current account deficits. Moreover, taken by itself, depreciation of our currency in an effort to redress the trade deficit poses a risk of renewed inflation.

Only as our huge federal deficit is cut can we comfortably contemplate less borrowing abroad and provide assurance against renewed inflation. Put another way, in a growing economy, reductions in the federal deficit will be necessary to release the real and financial resources necessary to improve our trading position in a way consistent with rising investment.

In a few foreign countries, such as Germany, some signs of stronger internal growth have appeared in recent months. But such signs are far from uniform among key countries abroad, and most projections of their growth for this year have been lowered, not raised, as exports have slowed.

With rising currencies and falling oil prices, some of those countries after years of effort have now successfully achieved virtual stability in consumer prices. Moreover, their wholesale prices have declined sharply and are appreciably lower than a year ago.

All of us—and certainly this central banker—can appreciate the importance of maintaining a broad framework of stability and appropriate financial disciplines to sustain that progress. What is at issue for some countries is their ability to achieve and maintain vigorous internal growth at a time of high unemployment and ample resources as external stimulus fades away, as it must if international equilibrium is to be restored. The appreciation of their currencies and the strong deflationary influences of low oil and other commodity prices would appear to offer a prime opportunity for reconciling those goals of domestic growth and stability.

THE INTERNATIONAL DEBT PROBLEM

Four years after the international debt problem broke into our collective consciousness in 1982, when Mexico abruptly lost access to international credit markets, that

threat to our mutual prosperity remains. The renewed difficulties of the oil producing countries today should not, however, obscure the progress that has been made. Collectively, the heavily indebted countries of Latin America and elsewhere have made an enormous effort to adjust their external accounts; in fact in 1984 and 1985 they were in rough current account balance, in contrast to an aggregate deficit of about $50 billion in 1982.

To be sure, that effort for a time was accompanied by sharply lower imports, recession, and lower standards of living as they brought their spending more in line with their internal resources. But it is also true that many of those countries are again growing, in some cases with vigor, as is the case with the largest single debtor, Brazil. Helped by the reduction in world interest rates, external interest burdens have been reduced appreciably in some countries relative to exports or other measures of capacity to pay. A number of Latin American countries have also made striking progress in dealing with ingrained inflation for the first time in many years, in the process gaining political support. There has been considerable, if uneven, progress toward liberalizing their economic structures in ways that should encourage more growth and productivity over time.

In the midst of this progress, the sharp decline in oil prices over the past six months has had an enormous adverse impact on the oil-exporting heavily indebted countries—Venezuela, Nigeria, Ecuador and Mexico. At current oil prices, for instance, Mexico would lose about a third of its 1985 exports, perhaps as much as 15 percent of its government revenues, and the equivalent of some 5 percent of its GNP. Inevitably, that situation poses a new and severe challenge for Mexico—a challenge that will require strong new efforts to make the necessary economic adjustments and to improve the structure of their economy. There is no large cushion of external reserves to buffer the shock. Consequently, a large amount of financial resources will have to be marshalled from abroad to help ease the transition, to maintain continuity in debt service, and to provide a solid base for renewed growth.

That combination of adjustment, structural change, and appropriate financing is, indeed, the essence of the approach announced by the Mexican Government earlier this week. In cooperation with the IMF and the World Bank, Mexico is undertaking a wide range of efforts to deal with both its short- and longer-range economic problems. To my mind, their efforts, in the midst of crisis, to move toward a more open, competitive economy are particularly encouraging. They have joined GATT, import restrictions are being rationalized and liberalized, a good many state-owned enterprises are being made available for sale (or, if too inefficient, shut down), subsidies are being reduced and eliminated, and procedures for approving foreign investment eased. If carried through effectively, those measures promise to work toward fundamental improvement in the efficiency, competitiveness, and creditworthiness of the Mexican economy, thereby enhancing prospects for longer-term growth.

Today, that country is in recession. But the program clearly contemplates economic recovery in 1987 and 1988. Certainly, sizable amounts of financing from abroad will be required to support that effort. About half of that can be committed by the IMF, the World Bank, and the Inter-American Development Bank. But Mexico is calling upon commercial banks, with so much already at stake, to play a large role as well.

In assessing that situation, I would note that the Mexican exposure of commercial banks appears not to have increased for some 18 months. Indeed, there has been little net new lending to Latin America as a whole over the past year.

Taking the entire period since mid-1982, the exposure of American banks to the heavily indebted countries of Latin America relative to their capital has declined appreciably. That ratio fell from about 120 percent of the capital of lending banks to less than 75 percent at the end of last year, a decline of 38 percent. No doubt, there has been a further reduction by now.

Those exposures, in relative terms, are actually considerably less than in 1977 when the data were first collected. For some time, the pace of lending has, in fact, been well below that contemplated by Secretary Baker when he set out a framework for a growth-oriented approach toward the international debt problem at the IMF meetings last autumn.

That initiative—essentially contemplating a combination of strong adjustment efforts and structural reform by the indebted countries with reasonably assured financing by international institutions and private banks—is now being tested. It is being tested in difficult circumstances not foreseen at the time—the sharp break in oil prices. But the basic community of interests among borrowers and lenders—and the world at large—in a coherent, cooperative approach is as strong as ever.

The debtor countries themselves have an enormous stake in maintaining their creditworthiness and in seeking solutions in the framework of open, competitive markets. We all have a strong interest in international financial order—all the more when there are other points of strain in the banking system. And, of course, relationships beyond the purely economic are at stake, for the United States most of all.

The challenge is large, but with cooperation, also manageable. Indeed, the same oil price decline that has undermined the budgetary and trading position of Mexico and other large oil exporters has relieved the pressure on those importing oil. Interest rates have declined. A number of borrowing countries will require significantly less, rather than more, financing than was contemplated a year ago. Given the enormous progress made in adjusting external positions, most of the borrowers can look toward more balanced expansion in their imports and exports as they grow—among other things, providing renewed opportunities for American exporters.

But I must also emphasize one essential ingredient for success beyond the capacity of the indebted countries to manage. Only a stable, growing world economy, with markets open to the developing world, can provide an environment conducive to economic expansion, more normal interest rates, and orderly debt service by the borrowers. That ingredient is plainly the responsibility of the industrialized world alone. It is one of the reasons why we must collectively deal with the obvious imbalances among us.

MONETARY POLICY IN 1986

These larger issues were the background against which the Federal Reserve has conducted monetary policy in 1986 and reviewed its objectives for growth in money and credit this year and next. The results of the review by the Federal Open Market Committee of target ranges for money and credit for 1986 and tentative ranges for 1987 were discussed in the Humphrey-Hawkins Report published and sent to the Committee at the end of last week. That report also sets out projections for real activity and prices of FOMC members and Reserve Bank presidents.

As indicated in the Report, the posture of monetary policy remained broadly accommodative over the past six months. This discount rate has been reduced in three steps this year by 1½ percent, in part responding to and in part facilitating declines in short term interest rates of similar magnitude. Long-term interest rates also moved lower, extending the sharper drops in the second half of last year. The general structure of interest rates is now as low as at any time since 1977.

The reductions in interest rates in 1985 and 1986 have clearly helped support the more interest-sensitive sectors of the economy, reflected in part in the highest level of housing starts since the last 1970s. The declines have also helped ease the debt servicing costs of businesses, farmers, developing countries and the U.S. Government itself.

On the other side of the ledger, as interest rates have declined, the rate of growth in debt has remained at disturbingly high levels, although there are at least faint signs of a slackening in the rate of debt creation after a burst around the turn of the year. The declines in interest rates also clearly helped induce the general public to increase its holdings of its most liquid assets, including public to increase its holdings of its most liquid assets, including demand deposits and NOW accounts included in the narrow measure of the money supply, M1. That reaction was undoubtedly amplified by the fact that interest is paid on NOW accounts, which are now the favored form in which transaction balances are held by individuals. With interest rate spreads currently quite narrow between NOW accounts and other liquid assets, those accounts no doubt have served increasingly as a repository for liquid savings as well as for money held for transactions purposes.

Similarly, there are some indications of a greater willingness of businesses to hold demand deposits at a time of lower interest rates, partly because, with interest rates down, a larger balance is necessary to compensate banks for a given amount of services. To some extent, an environment of more stable prices may also be encouraging larger money holdings.

None of that was predictable with any precision, and the rate of growth in M1, which ran at almost 13 percent over the first half of the year, was far above the FOMC's target range. Action to restrain that growth within the target range—which would have required reducing the provision of reserves and a significant increase in pressures on bank reserve positions—was not deemed desirable in the light of other important considerations.

One of those considerations was that growth in the broader measures of money—M2 and M3—remained well within their respective target ranges of 6-9 percent, ending the second quarter close to their mid-points. That and other evidence suggested that much of the growth of M1 reflected a shifting of the composition of liquid assets rather than excessive, and potentially highly inflationary, money creation. That judgment was, of course, reinforced by the moderate rate of growth for the economy overall, the absence of indications of a

strong acceleration as the year progressed, evidence of greater stability in prices of manufactured goods, and declining commodity prices.

In looking ahead, the Committee decided to retain the existing ranges of 6-9 percent for M2 and M3 this year. The range of 3-8 percent set for M1 early in the year was not recalibrated because of the uncertainties as to the behavior of that aggregate at present. Certainly the inflationary potential of excessive money growth remains a matter of concern. But in current circumstances, the Committee decided that the significance of changes in M1 could only be judged in the context of movements in the broader aggregates, and against the background of movements in interest rates and the economy generally. Taking account of those factors, growth in excess of the target established at the start of the year will be acceptable.

In circumstances of greater economic, price, and interest rate stability, more predictable relationships between M1 and the economy may reemerge over time, although the trend of M1 velocity—the ratio between GNP and M1—will likely be different than earlier in the postwar period. However, a firm conclusion concerning the nature and stability of future velocity characteristics may take years of experience in the new institutional and economic setting. For the time being, in looking to next year, the Committee set out a highly tentative range of M1 growth of 3-8 percent on the assumption that velocity changes will be within the range of most postwar experience. However, that judgment—and indeed the weight to be given any M1 range for 1987—will be carefully reviewed at the start of next year.

The tentative 1987 ranges for M2 and M3 were lowered by one-half percentage point to 5½-8½ percent. That modest reduction, consistent with the long-term objective of achieving a rate of monetary growth compatible with price stability, is judged to be entirely compatible with a somewhat greater rate of economic growth next year, provided that growth is not accompanied by a marked increase in inflationary pressures.

The actual price statistics for some months have, of course, reflected the precipitous drop in the price of oil, and consumer prices have dropped slightly this year. But equally clearly, the price of oil will not continue falling so fast, and at some point could well rise again. More predictably, the large depreciation of the dollar will bring in its wake an increase in import prices of manufactured goods. That impact has been moderated so far by the narrowing of the earlier wide profit margins of many of those exporting to us and by the availability of imports from developing countries, few of which have had any appreciable appreciation of their currencies vis-a-vis the dollar.

The rate of increase in costs of housing and of many services, which account for a large proportion of the economy, has decelerated little if at all in recent years. With demand strong, measured productivity gains limited, and compensation increases in service occupations continuing to average 4½ percent or more, those areas continue to lend a chronic inflationary bias to the general price level.

Those underlying forces are reflected in the projection of FOMC members and Reserve Bank Presidents that the overall inflation rate is likely to be somewhat higher next year. That prospect underscores the need for vigilance in the conduct of monetary policy. We want to assure maintenance of the remarkable progress toward stability as the economy grows more strongly and as a large amount of resources are shifted back to manufacturing industries as our trade balance improves. Without such assurance, there would be no firm basis for expecting the level of interest rates to remain for long at lower levels or to decline further.

In looking toward growth in the 3-3½ percent range next year, considerable emphasis was placed by Committee members on the potential contribution to that growth of a stronger trade balance. As I emphasized earlier, that shift, if it is to take place in the context of sustained and stronger world growth, will require appropriately complementary policies here and abroad. Significant progress toward dealing with our own budget deficit seems to me a key ingredient to that overall policy "mix."

The timing of another important domestic policy instrument—discount rate cuts—has been influenced by international financial and exchange rate considerations. A substantial realignment of the excessively strong dollar exchange rate has been a necessary and constructive part of achieving the necessary adjustment in external trade. But there are clear dangers in placing excessive weight on that approach.

History demonstrates all too clearly that a kind of self-reinforcing cascading depreciation of a nation's currency, undermining confidence and carrying values below equilibrium levels, is not in that nation's interest or that of its trading partners. Among other things, such a movement of the dollar now could transmit strong inflationary pressures to the United States and inhibit the free flow of capital from abroad at reasonable interest rates. Moreover, other countries would find it more difficult to sustain their forward momentum.

In the light of all these considerations, the discount rate reductions in March and April were timed to coincide with similar changes by one or more other key countries, minimizing any impact on the exchange markets and consistent with the desirability of some reduction in interest rates in the industrialized world generally.

SOME LESSONS OF RECENT EXPERIENCE

Experience over the first half of 1986 underscored the difficulty—I would say the impossibility—of conducting monetary policy in current circumstances according to one or two simple, pre-set criteria. For instance, the rapid growth of debt and M1 clearly bear watching because of the potential for aggravating the vulnerability of the financial structure to adversity and because of the inflationary potential. However, the weight of the evidence strongly suggests that M1 alone during this period of economic and institutional transition is not today a reliable measure of future price pressures (or indeed a good short-term "leading indicator" of business activity). The more restrained performance of the broader aggregates, as well as the performance of the economy and prices themselves, point in a different direction.

At the same time there is no escape from the fact that strains on depository institutions are not simply a possible threat for the future but a present reality. Pressures on the oil industry, agriculture, and parts of manufacturing and more general disinflationary process are partly responsible. But so are developments more directly under the control of lenders themselves: excessive leveraging, loose credit standards, and even abuse by some federally insured and protected depository institutions of their responsibility to employ their funds prudently, free of conflicts of interest. A broad array of approaches by the supervisory and regulatory authorities has been necessary to deal with the particular points of pressure in a manner consistent with the stability of the entire fabric of financial institutions and markets.

The present situation certainly makes all the more pointed the need to provide a stronger sense of legislative direction about the evolution of the financial system over time. There are also urgent specific pieces of legislation before you to permit the FDIC and the Federal Reserve to facilitate interstate acquisitions of failed or failing banks and to supplement the resources of the FSLIC.

The difficulties of some financial institutions are one specific example of economic problems that cannot be effectively dealt with by monetary policy alone. It is indeed a strength of monetary policy that it can respond flexibly to changing circumstances. But it is equally true that that single, broad-brush policy instrument cannot, at one and the same time, be called upon to stimulate the economy, protect the dollar, restrain excessive debt creation, and shift resources away from consumption and back into investment, manufacturing and exports—as desirable and important as all those goals may be.

Events of recent years have also heavily underscored how cumbersome fiscal policy can be, and the difficulties of achieving political consensus on such matters as tax reform and the appropriate legislative framework for financial institutions. On an international scale, achieving consensus on appropriate action can be still more difficult.

We have nonetheless come a long way toward restoring growth and stability in this decade. But my sense is that all that progress is in growing jeopardy unless we act—we in the United States, we in the industrialized world, and we in the world as a whole—in mutually supportive ways.

The main directions of that effort seem to me clear enough. The Gramm-Rudman-Hollings legislation is an expression of the sense of urgency surrounding our budgetary effort in the United States. The rest of the industrial world needs to achieve and maintain a momentum of "home-grown" expansion. With strong national and international leadership—and with the cooperation of private and public lenders—a constructive resolution of the economic crisis in Mexico can point the way to a wider resolution of the debt problem in a context of growth.

Hard as it may be to carry through on those efforts, that is what needs to be done if the inexorable pressures building on those fault lines running through the international economy are to be relieved—if we are, in fact, going to be able to sustain the momentum of growth and the progress toward stability. Certainly, the Federal Reserve will play its part in that effort.

And I think in reading that and in understanding the kind of economic instability that exists today and the jeopardy we find ourselves in, we have got to be more prudent than we have been in the past. We cannot just do the kind of things we have done before in terms of avoiding decisions or making bad decisions. We have got to make good decisions, but we have got to make them. And the notion we can

turn them over to Miller at OMB—I mean, if anybody really thinks that is a prudent and sound way to go, I am surprised at that, because it is not. They have not brought us any honest numbers yet. What is going to change? Why are we suddenly going to get from them something that we have not gotten before, and that is accuracy and honesty and evenhandedness. We have not gotten it yet. We did not get it under Stockman and we are not going to get it under this crowd.

That is not where the responsibility lies and I do not think that is where the Constitution resposes that responsibility. I think they repose it right here. I think we ought to make these votes.

We put together a package in the Senate Budget Committee that met the targets, and I think properly so. It was a bipartisan package. I was one of the members on our side of the aisle that worked with the chairman and others on the majority side to put together that package. We made a lot of painful cuts. We had a modest amount of revenue in there. We did it on a bipartisan basis. We had a package that made sense.

I will tell you, there are a lot of people around here that do not want to have a vote on those kinds of issues. Well, too bad. We have voted on them in the Budget Committee. I think we ought to vote on them on the floor. I think we can vote on them again.

But to have the Gramm-Rudman automatic mechanism in the background causes people to step away from the responsibility. The notion that somehow this forces us to come to grips with the issue is not the way it is working. It is going to work in exactly the reverse way, because people will feel—and I think the votes here already bear that out—that if there is the automatic mechanism out here, even if we have to give away our proper job authority to OMB, even if we have to go to even that length to avoid having to face the issue, that that is probably the only way we can function. I reject that thinking. I think it is wrong. I think the American people, if they were able to follow all of the ins and outs of what has happened here—and it is not easy to do because it is very complex; in fact, I think part of the complexity is deliberate so that people cannot follow it. People can follow up or down votes here on the floor and that is exactly how we ought to be deciding these issues, not in this other fashion.

So I think Gramm-Rudman-Hollings has turned out to be an enormous detour around our problems, and our problems are getting worse. I think it is time that we face that fact and put it aside. If we want to set discrete budget targets in terms of deficit reduction, I am willing to do that. I am willing to set those numbers. We have keyed to that in terms of our decisions in the Budget Committee.

But I also think we have to retain the flexibility and the intelligence to say that something we might have done 6 months ago or even 3 months ago, in light of changing conditions, may not be the right number.

I defy anybody here to pick magic numbers 3 years ahead of time for each of 3 years going out into the future and finally even out into the next decade under another President and presumably under entirely new economic circumstances. But that is what we have pretended to do with Gramm-Rudman and that is why it is not working properly.

I will tell you this: the people on Wall Street today are not fooled by this any longer. Most of them were not fooled by it in the beginning. They saw it as a device, a Rube Goldberg-type contraption. That is what it has demonstrated itself to be.

I do not mean that disrespectfully to the people whose names are attached to it, but that is what they have crafted. And that is why it has been popular here. That is why people in the majority have been willing to go for it, because it is an easy way out. It saves the hard votes. Well, I think it is time we made the hard votes. I am prepared to make those votes and I hope a majority will be, and that means cutting things I like.

□ 1300

It means cutting back on UDAG, and it means cutting back on a lot of other things where I would like to see a higher level of funding. It means cutting back on defense. It means cutting back on some things that other people may like or are their preferences. But only by doing that and perhaps in fact, yes, having some small revenue component, you may have to have that as well in order to have the balance that is going to work in terms of economic policy and still put these deficits on a downward declining trend which clearly they need to be.

But that ought to be crafted here. The notion that somehow we can take it out and put in an automatic formula and hand away part of our job to OMB to make sure they do it when we fail is really not the answer. That is why Gramm-Rudman-Hollings has failed to get the deficit under control for this fiscal year, and it is not going to work in the coming fiscal year. It is not going to work then either. We need something that will work. We have that authority and power. That is in our own ability to make these decisions now one by one. That is what we properly ought to do. Put Gramm-Rudman-Hollings to the side, make the decisions on the proper basis, and we will not need that kind of formulation or mechanism which I think is unsound to start with.

I yield the floor.

Mr. GRAMM and Mr. RUDMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I did not intend to step in front of my colleague. But as long as we are talking blunt I would like to talk blunt for a moment. I have stood on this floor and watched my distinguished colleague from Michigan vote time and time again to waive the Budget Act, and increase expenditures. Our distinguished colleague talks about the need to cut something. I have voted consistently to cut things, to cut UDAG, and I wait to be joined by those who are eager to make these hard decisions. And I have to laugh at those who say we have the largest deficit in American history. Maybe the problem is we need more deficits. I reject that, and so do the American people. I also reject the idea that we do not want to vote. We are going to vote in just a minute. We are going to vote on whether we are going to commit ourselves to do something or whether we are going to continue with a rhetoric and avoid the action.

Gramm-Rudman-Hollings forces you to make decisions. And just as our distinguished colleague from South Carolina said, what we have done is we have smoked out the nondecision-makers. As he so aptly put it, they are like the octopuses who have no tools to defend themselves, and so they squirt black ink to confuse the issue. The issue is clear. Do you or do you not want to address the No. 1 issue in the country? I do. So do the American people. That is why we are going to win on this issue.

Mr. MELCHER and Mr. RUDMAN addressed the Chair.

The PRESIDING OFFICER (Mr. McCONNELL). The Senator from New Hampshire.

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

Mr. President, I have sat here and listened to my friend from Michigan describe the economic plight of the country. And I must say that I hardly can believe my own ears. It is true the agricultural economy is in a shambles as the Senator from Montana could attest to who is on the floor. It is true the basic American industries are in shambles as the bankruptcy of the LTV will attest. It is true there are a number of weaknesses in other sectors of the economy. It is certainly true that the trade deficit is going through the roof. And every economist that the Senator from Michigan has referred to, he referred to one and a group of others, and I can refer to every major economist in this country from those on the left to those on the right who lay the entire problem to the burgeoning deficits of the last 10 years, and the last 5 years.

The Senator from Michigan wants to engage in a discussion as to who is to blame. I am not going to engage in that. Some say the President is to blame. I can make a very good case here based on the fiscal 1985 budget resolution passed by the U.S. Senate, albeit 50 to 49, albeit with the Vice President casting a vote, that it is the House of Representatives who is not responsible, and they are not controlled by my party. The Senator from Michigan can make a case for people on his side of the aisle. But, frankly, I think that is counterproductive because the truth of the matter is the American people do not give a tinker's dam who is to blame. They want it fixed.

We are now told that what we ought to be doing is maybe borrowing more money because the economy is in decline. The Senator from Michigan observes that to get from 230 or 220 to 144 in 1 year may be difficult. It may well be impossible, and it may well not happen because if somebody wants to look at this budget process, whatever we do on October 1, even if we say we have met the targets, if in fact the economy continues to slump, spending will stay at whatever level we put it at, but revenue will fall, and that will cause the gap to be greater than whatever we said it was on October 1.

Let us look at last year when the budget resolution was on this floor, it was August 1, 1985, at 3:30 in the afternoon. I remember it very clearly. We were told that the deficit would be $172 billion. It turns out that without Gramm-Rudman-Hollings, the deficit this year is $231 billion, and the statutory cut of $11.7 billion reduces it. So this year our Government will borrow $220 billion to pay its bills.

Let us tell the American people the plain unvarnished truth. For every dollar that this Government spent this year, we borrowed 25 cents. I will say it again because it is mind-boggling. Of every dollar this Government spent this year, we borrowed 25 cents. And the deficit this year is approaching a quarter of a trillion dollars. Whose money is this? I will tell you whose money it is. It is the money of our children, of our grandchildren, and it is the biggest transfer-of-wealth program that anyone ever dreamed up. And the funny thing is that it was dreamed up by liberals because who gets the interest? Do the poor people get the interest? I do not know too many people who are my friends that own Government securities. The interest that we pay goes in the main to people who can afford to buy Government securities. Incidentally, for those who do not know it, 40 percent of those people in the last 5 years have been foreigners, foreign banks, foreign individuals, in England, in France, in Saudi Arabia, in Japan, who buy Government securities, and the American taxpayer, the American family pays through the nose. As a matter of fact, when they make up their tax returns this year, $40 a week for the average family of 4 will go to pay interest.

Now the Senator from Michigan says there ought to be a better way.

I agree with him. I am a fellow who coined the phrase "it is a bad idea whose time has come." But we are facing a crisis. We are on the thin edge. We may well be too late. We are going to be asked this week or next to pass an increase in the debt ceiling to $2.3 trillion, $2.3 trillion of our children's and our grandchildren's money.

I wish that I could agree with the Senator from Michigan that people would come to this floor, do what they ought to do, and cut programs if they want to. If they want to vote to raise taxes and get 51 votes, we can do that, but do something, make some choices. This bill forces choices. For anyone who makes the contention that we disregard our responsibility, let me point out that what we essentially do is to let this Congress do whatever it wants to do from January until October 1, and set any level we want to set but we have a target we set back there voted by this Congress, and signed by the President. That target is $144 billion. This draconian bill allows another $550 billion to be borrowed over the next 5 years of our future generations' money. It says if you do not meet the target, then you have 30 days to fix it to make choices. I am willing to make those choices. But I am not sure the majority of the Congress wants to make the choices.

Mr. President, I will always refer to this amendment in light of this week's news events as the pending amendment to repeal Gramm-Rudman-Hollings. We saw some wonderful pictures this week about the *Titanic*. It just made me think as I looked at this amendent. This is truly the Titanic amendment. We are telling the captain of the *Titanic* who we will hypothetically assume survived the sinking, you can get on another ship, sail back across the Atlantic, if you see any icebergs do not worry about them, all they might do is scrape off a little paint. Gramm-Rudman-Hollings is the last best choice, and the only choice to get these deficits under control. Will we reach $144 billion? I do not know.

□ 1310

Will we reach $154 billion? I do not know. But I know this, that with this bill in place, the deficit in 1987 will be appreciably less than it would have been without the legislation, and nobody disputes that. Rather than coming to this floor and suggesting this bill should be repealed, why does not someone come here and give us a practical way to solve it? Do not tell us that all we have to do is do our jobs.

I have only been here for 5½ years. The Senator from Michigan has been here a great deal longer than that. I am sure he would agree with me this Congress has not done its job with these deficits, nor have a number of Presidents who have sat in the White House.

The American people do not really care anymore who is to blame. The American people do not want to see their children faced with a standard of living where they must pay back $3 or $4 trillion that we spent that we had no right to spend. That is all this debate is about. Nothing more, nothing less.

If people wish to vote for this Titanic amendment, let them vote for it, and let them go down with the ship.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I wanted to add one further reference to Lawrence Chimerine, the chief economist for Chase Econometrics, who said, on July 23, 1986, just a few days ago, on this very subject the following:

> The Gramm-Rudman-Hollings approach is very dangerous in the current environment, because it will cause additional spending cuts to compensate for the added deficit caused by slower economic growth. This would only slow the economy further and, in effect, would circumvent the automatic stabilizers which have served the economy so well for so many years.

There is no question, and I absolutely agree with the Senator from New Hampshire, we have to take deficits down. We have to take them down as much as we prudently can. But that is not to say that we can take them down by these automatic amounts that are spelled out in Gramm-Rudman regardless of what the economic conditions are at the time. That is what Paul Volcker is warning about. That is what this economist from Chase Econometrics is warning about. That is what Irving Kristol is warning about in the Wall Street Journal, and many others.

It is not just the goal about bringing down deficits. They have to be brought down, and the more the better. But they have to be brought down in an amount that will not work the other way and cause deficits to actually increase simply because we take and stall the economy out at a time when it is in serious difficulty anyway.

That is really the issue.

I know the Senator from Montana wishes to speak. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, I have been listening to this debate for the past several hours and have heard the description of the deficit from various Senators. I was particularly attracted to the statement made by the junior Senator from Texas, in part of

which he said the gods did not do this—meaning create the deficit—we did.

The gods did not create this deficit. We did.

That is absolutely correct. That is the truth. Indeed, we have done it. We have done that and we have also permitted this huge trade imbalance that we have in the United States to develop. We did it. We permitted it.

We have the power. We have the authority. We are sent here to act. And we have not acted correctly. We have not acted prudently.

So we have both the red ink of the Federal deficit and the red ink of the trade imbalance.

The Federal deficit, presumably, is approaching $200 billion for this fiscal year, and thought to perhaps exceed that.

The trade imbalance is projected not at last year's level which was horrible, $146 billion or $148 billion, but, unfortunately, it has to be projected now to somewhere between $160 and $170.

Strangely, we also have an imbalance on food imports compared to food exports for both May and June. The first month that has happened in the last 15 to 16 years was May of this year.

Now, tallying up what happened in June, we find it is the second month in a row of a food imbalance in trade. The greatest country in the world in agriculture production and we are importing more food commodities than we are exporting.

As a result of this situation—this bad situation, this dangerous situation, where we have simultaneously a huge Federal deficit and a huge trade imbalance or trade deficit—we are also watching the basic industries of this country suffering mightily. Agriculture, obviously; energy, forest products, minerals.

So this combination of the two red ink items in both trade and in the Federal deficit presents a very dangerous situation for us.

The truth is before us, the facts are out, and we have done it; we have permitted it; we have contrived here in Congress and in the White House—we have contrived to create a situation that is extremely dangerous for the entire economy of the country.

All that is obvious. The real question is, How is it going to be changed and when is it going to be changed? When are we going to start reversing this dual red ink situation?

My votes have been, and will be, for doing some corrections right now, right on this Senate floor.

In the past 5 years, during this administration, there are two major areas where spending has not been cut but has actually been increased, and increased sizably. In fact, it has doubled. First of all, the military-Pentagon arms contract spending is out of line. That bill will be before us on this Senate floor very soon. Indeed, I just saw the senior Senator from Arizona come onto the floor. We welcome him back after his hospitalization. We are pleased to have him here. We anticipate the senior Senator, the Senator from Arizona, chairman of the Armed Services Committee, to be ready to call up the armed services authorization bill soon.

There will have to be amendments to it. There will have to be amendments to it to reduce it, to reduce the spending but still leave a strong national defense; a national defense that is intact.

There are two obvious areas where we have to pay attention if we are going to have that strong defense: Manpower and readiness.

I suspect when we examine the armed services authorization bill we will find that most of us agree with the spending in those two areas, manpower and readiness. I believe they are essential to keep the country strong, and I believe we have to meet those needs.

Let me tell you where I think it should be cut. I think there should be a slowdown in weapons procurement. I think that is part and parcel of helping to correct this red ink situation we are in on deficit spending.

I believe that research and development funds, at about $36 billion to $38 billion, are too high, research and procurement on weapons procurement, new weapons procurement, new weapons systems. I do not believe we can afford it.

I do not believe we can afford to continue doing all that much each year, one year after another, in that particular area—$36 billion to $38 billion of annual spending in that area needs to be cut. Perhaps the bill or perhaps even our old budget carries the star wars proposition in a different category, but I think of it as the same as research and development. While I believe it is absolutely essential to continue with basic research in space and that that basic research should continue, I do not find favor in any proposal that would greatly expand it.

□ 1320

Those are the areas that I feel can be safely cut and leave us with a strong national defense. But the cuts have to come and they have to come in areas where we think we can afford the most. In these two areas that have more than doubled during the past 5 years, after we have made significant cuts in most of the other areas of spending, it seems to me that these are the areas that obviously must have scrutiny by the entire Senate and by the entire House and where significant cuts must be made in order to reduce the deficit.

The second area of these two areas that have doubled over the past 5 years, Mr. President, is foreign aid. We have to look at what we have in this country. What we have is a huge deficit that has to be reduced. What we also have are great quantities of food, great quantities of surplus commodities that cost us two ways. First, because the surplus commodities are so large, they overhang the market. They reduce both the domestic price for the commodity and the world price for the commodity. The effect of that is to increase the deficiency payment to producers.

There is another cost with these huge food surpluses, these huge commodity surpluses, also. That is the storage cost.

So, Mr. President, I think it is time to look at what we have and look at what our problems are and, in foreign aid, substitute food assistance in lieu of cash. The cash we borrow becomes part of the deficit. The commodities or the food that we have in surplus are costs to us if we do not reduce them, both on the one standpoint of the deficiency payment and on the other standpoint of the storage cost.

So it is my intention, Mr. President, to move aggressively on the foreign aid bill this year in an attempt to gain recognition of the problem here, in the Senate, and a majority vote here, in the Senate, to change that, to do just exactly that, to substitute food assistance for cash assistance in foreign aid.

When it comes to these cuts, Mr. President, I have observed that there are all kinds of sunshine soldiers. In the enthusiasm of spring or in the propounding of why we need Gramm-Rudman-Hollings, we find good, strong statements about why we must make these cuts. I have seen this big talk and I have listened to this big talk on spending cuts. It is like spring. We get to talking about this, we are going to make these cuts. It is just like the promise of spring: It is going to be better. When we get around to where these cuts have to be made in these areas, the sunshine soldiers have disappeared. They are gone. The enthusiasm is not there. And disappointingly, sadly, the votes are not there.

Let me reiterate, Mr. President, these two areas: This rapid buildup in arms at a pace we cannot sustain and at a pace so imprudent, must be cut. Research and development for new weapons systems at a pace of $36 billion to $38 billion a year is, too often, we find, not just too much, but a waste, and there must be some restraint. So there must be cuts if we are going to act prudently, both for reducing the deficit and maintaining the elements of a strong national defense and safeguard those areas of manpow-

er and readiness, which I do believe are essential.

On the question of foreign aid, let me recap that. We have the food, we have the commodities in storage, and we are paying for the costs of that storage. And we have the double whammy that because there are those surpluses sitting there, the price sinks and the deficiency payments are larger. We have every reason to prudently, this year in the foreign aid bill, substitute as much as is possible food assistance for cash. It will do more for us and it will help the basic underlying economy by reducing the surpluses.

Mr. President, I hope there are votes to make these types of changes. The exercise we are going through on Gramm-Rudman—please excuse me, I say to my friend from South Carolina, if he is within earshot—Gramm-Rudman-Hollings. We make these statements about how necessary it is to have this in effect and if we do not follow through with cuts, it is all meaningless. Those cuts must come in an area where we can afford to make the cuts and where we can make the largest cuts.

I believe those are the two areas that I have named and my votes will be there to make the cuts. I hope others will be and I hope a majority vote will follow.

□ 1330

Mr. JOHNSTON. Mr. President, I ask for the yeas and nays on the amendment.

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

The yeas and nays were ordered.

Mr. JOHNSTON. I yield to the majority leader.

Mr. DOLE. I know the Senator from Louisiana wants to speak. How long will the Senator's remarks take?

Mr. JOHNSTON. Fifteen minutes.

Mr. DOLE. Does the Senator from Colorado have additional speakers?

Mr. HART. If the majority leader will yield, there are no other speakers on behalf of the amendment I am aware of, and I am prepared to go to a vote following the remarks of the Senator from Louisiana.

Mr. DOLE. We might have a slight problem there until about 2:30 because we have a number of our Members who have gone to visit the President for photo opportunities—a rather large group. If anyone would like to go along, maybe we would work that out. But in any event, if the Senator needs more time, why, feel free.

Mr. LEAHY. They will take more pictures.

Mr. JOHNSTON. Mr. President, I rise an unreconstructed opponent of Gramm-Rudman. I think the mask of the Lone Ranger is soon to be pulled to the side and we are going to see behind all of the rhetoric on Gramm-Rudman that there is very little there, Mr. President.

I think we are going to see that this attempt to get synthetic courage, ersatz backbone, automatic prudence, is going to be a dismal failure.

Mr. President, all I can see thus far from the Gramm-Rudman law is a lot of smoke and mirror cuts, a lot of synthetic readjustments which are not real, things like selling off the assets of the U.S. Government, which does not really result in a cut in the budget at all, things like moving pay dates from September to October, not to cut the budget but to make it appear that we have cut the budget, things like moving the receipt of offshore revenues from one fiscal year to the other, moving it synthetically for accounting purposes, when actually there is no savings at all because the receipts are received when they are received and not 5 months later when we fictionalize their receipt.

So, Mr. President, it seems to me that all we have achieved with Gramm-Rudman is three things. First of all, a delay in the process, because if you take each target date set up under the budget process, this year is substantially later than last year. There has been no cut in the size of the deficit.

Indeed, this year's deficit, Mr. President, is higher than last year's deficit, even after the so-called sequestration.

What the Gramm-Rudman bill does, Mr. President, is assume that the economy can respond to the dictates of some automatic computerized mechanism, that 5 even cuts correspond to the needs of the economy, when in fact the opposite is true. What we should have done, Mr. President, instead of trying to rely upon some automatic mechanism, was to measure up to our responsibility and cut substantially last year when the economy was robust in its recovery, and we should have cut early this year when the recovery was still robust, but now the drumbeat is beginning. Today my colleagues saw the piece by Herbert Stein, earlier this week the testimony by Paul Volcker stating that the economy should not receive the Gramm-Rudman cut at all, the very first real cut in Gramm-Rudman, the first of the 5-year process. They are saying it should not be received at all because the economy has slowed down too much.

So the basic thesis, Mr. President, of Gramm-Rudman that the economy is susceptible of analysis as a computer model which can be cured by five even cuts in 5 years is dead wrong, and we are seeing the fruits of that.

Mr. President, what Gramm-Rudman is at bottom is an attempt by this body and by the other body and by the President to escape the responsibility of governing. Under a representative democracy, it is up to us to make the cuts, to face the music, to accept the responsibility, to be accountable to the voters, to set priorities, and to make judgments, and those cannot be made by automatic mechanisms. In the attempt to do so we do bad things to the economy and bad things to the process. One of those bad things is delay, which we have already seen, without any offsetting cuts to the size of the deficit, which we could use to justify that delay. We have seen the scene set, Mr. President, for a September showdown in which the irresistible force is met by the immovable object, where we have targets which cannot be met and a mechanism which says we must meet it, and the only way we can get by that is either by having dishonest smoke and mirror changes to the budget, such as the sale of assets, such as what amounts to really untruthful estimates of the state of the economy, or other kinds of changes which have been so commonplace these last few years and which were so eloquently stated by Mr. Stockman in his recent book. So either we have the dishonest fudging of the figures or we have sequestration, which everybody thinks is very bad, or else we have a suspension of the act.

The most likely of those things, Mr. President, is probably a continuation of what we have seen these last few years, and that is a dishonest fudging of the figures.

The second most likely thing I think is to come in here in September and in some kind of continuing resolution suspend Gramm-Rudman, enact a continuing resolution for perhaps 60 days with a statement that we are going to come back in the lame duck and correct the mischief.

The most unlikely thing of all is that Gramm-Rudman is actually going to work; that we are actually going to have the $144 billion target really reached and to have that done in a sensible way consistent with the economy. I am sorry that is so, Mr. President. I hope I am wrong on Gramm-Rudman. The hour is late in terms of this fiscal year. The clock continues to tick, being no closer to a resolution of these difficult problems between the Congress and the President of the United States. That fateful time when we have the snapshot and we came back on September 8 to face that awful fiscal picture with so little time to deal with it fast approaches. I hope it will work. I fear it will not. I think the mechanism, Gramm-Rudman, is doing more harm than good.

I will vote for this amendment, Mr. President, not thinking it is going to pass because we know where the votes are on the amendment, but because I think the case is so clear against Gramm-Rudman and it is, unfortu-

nately, getting more clear with each passing day.

I yield the floor.

Mr. DOLE. Mr. President, I indicated earlier it is going to be a little while before I would want to start the vote. I am wondering; there were some Senators here last evening—Senator MATHIAS had an amendment that I understood might be acceptable, and there might be some on that side—if we could use this hour or 50 minutes for some of the minor amendments and then have a vote at that time. Let me suggest that and if there are Members who would come to the floor, I will contact the minority leader and manager on that side and see if that can be arranged. I do not think there will be any objection from the Senator from Massachusetts, for example. We are going to meet later today to see if there is a way we can work out his concern with reference to South Africa and my concern with reference to aid for the freedom fighters, and our joint concern that we can complete action on this bill. So that meeting will take place sometime after 3 o'clock.

□ 1340

Mr. DIXON. Mr. President, will the majority leader yield?

Mr. DOLE. I will be happy to yield the floor.

Mr. DIXON. For a question.

Mr. DOLE. Yes.

Mr. DIXON. I have an amendment pending, I say to the majority leader, an amendment that is a matter of some consequence to one citizen in Illinois but not a major concern that would require a lot of debate, involving a veteran who was exposed to radiation years ago and has been denied benefits because the law with respect to that subject refers to female breast cancer instead of using the generic term "breast cancer." This male individual, as a consequence, has been denied benefits.

The matter has not been heard by the Veterans' Affairs Committee, but I think it is a subject of importance and that we should discuss it. If the majority leader wants to use some time, I might get my file here and refer to that amendment. I think the junior Senator from Alaska might want to come here.

Mr. DOLE. Is there a possibility of having a freestanding measure rather than on the debt ceiling extension?

Mr. DIXON. I would be glad to talk to the majority leader about that. I am not wedded to how we do it.

As a matter of fact, I have suggested to the distinguished junior Senator from Alaska that if we could have a hearing on the question, that would satisfy me for now. He suggested that there is an internal method in the Veterans' Administration to look into these things. I do not like that too well. As a former trial lawyer, I know that there are two sides to how injuries are caused. There is medical support for the idea that male breast cancer can be caused by radiation. Apparently, the Veterans' Administration now thinks otherwise.

I am not too comfortable with permitting all the decisions to be made internally there, and that seems to be the view of the Senator from Alaska. I am not trying to argue the issue on the floor right now, because he is not here. Perhaps we could return to it at another time and could have a hearing, and some doctors could be brought in.

I am just trying to make the law generic and leave out the word "female." I should like to have a hearing, rather than permitting the Veterans' Administration to make the decisions. Bureaucrats have a funny way of getting the result they want in these things many times.

Mr. DOLE. I do not know anything about the bill, other than what I have just heard. I would be sympathetic to the desires of the Senator from Illinois.

I was just handed a note stating that Senator MURKOWSKI, the junior Senator from Alaska, the chairman of the Veterans' Affairs Committee, would unfortunately have to oppose the bill.

Mr. DIXON. Yes.

Mr. DOLE. But perhaps we could arrange the hearing, and I will contact Senator MURKOWSKI.

Mr. DIXON. I would be glad to rest my case that way now, if we could have a hearing. I am not saying in the next several weeks, but in the reasonable future, in the next several months, so that the veterans organization could have an opportunity to bring in spokesmen for our point of view.

Mr. DOLE. I will see what I can do.

Mr. DIXON. I thank the majority leader.

Mr. DOLE. Mr. President, we are waiting for the manager on this side. I think he is available, or will be available.

Mr. HEINZ. Mr. President, I do not see any Senators seeking recognition at this moment, so 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. PELL. 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. PELL. Mr. President, the Gramm-Rudman-Hollings Deficit Reduction Act should in my view be repealed. It should be repealed because it attacks a very, very real problem, the Federal budget, in the wrong way.

The heart of the Gramm-Rudman-Hollings Deficit Reduction Act are provisions for semiautomatic budget cuts based on complex formulas chosen, selected, and administered by nonelected bureaucrats. That budget cutting process in turn is triggered by computer-generated forecasts of economic growth, inflation, unemployment, and interest rates all of which are notoriously inaccurate, and, again, these very formulas and these very points of reference are selected and prepared by nonelected Government bureaucrats.

In my view, the essential public policy choices and priorities of the Federal budget should be the result of reasoned decisions and necessary compromises by the people's elected Representatives right here in Congress. The Gramm-Rudman-Hollings Act attempts to place the economic and budget policy of the Federal Government on automatic pilot, substituting computers, formulas, and bureaucrats for the reasoned judgments of the peoples' representatives.

Supporters of the Gramm-Rudman-Hollings Act contend that this whole complex automatic budget-cutting process is necessary to impose proper fiscal discipline upon we in Congress. In my view, the only real source of discipline for Congress is the American people. The American people know exactly the way to discipline Congress. They do not use computers and formulas and complex methods. They use simply the votes they cast at the ballot box.

As originally enacted, Gramm-Rudman-Hollings tried to permit Congress to escape from its budget responsibilities by giving budget authority to the Comptroller General of the United States. The Supreme Court then ruled that approach unconstitutional. So we have now substituted another bureaucrat—the Director of the Office of Management and Budget—for the Comptroller General.

To my mind the basic underlying act has not been fixed. It is still basically flawed. I voted against enactment of Gramm-Rudman-Hollings last year and I now will vote negatively when it comes to this act at this time.

I yield the floor.

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.

□ 1400

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

The PRESIDING OFFICER (Mr. HELMS). Without objection, it is so ordered.

Mr. ARMSTRONG. Mr. President, have I stepped through the looking glass? What in the world is the Senate

up to this afternoon? I have been off the Hill for a couple of hours taking part in a meeting at another location, and I returned to find that we have under debate some kind of a motion, the effect of which would be to repeal the Gramm-Rudman-Hollings budget balancing procedure.

Now, I thought I had heard everything, but somehow when I learned that Senators were actually proposing to do away with about the only hope we have got left, not the best hope, not the most desirable approach to the problem, but the only hope we have got left to ever get these deficits under control, it just seemed to me like maybe somebody ought to come over and say a word about this.

The only thing that comes to mind, Mr. President, is in the context of something Winston Churchill once said. And, to paraphrase him, I will just tell you that Gramm-Rudman-Hollings is about the worst kind of budget balancing approach that we have ever tried, except everything else we have tried so far.

Mr. President, when the Senator from New Hampshire and the Senator from Texas and the Senator from South Carolina—GRAMM, RUDMAN, and HOLLINGS—came foward with this idea, I thought to myself: if this is not a Rube Goldberg contraption, if this is not making a simple matter more complicated than it really needs to be, I will throw in with it. They have got snapshots, they have got dates, they have got sequesters, they have got all of these fancy approaches to make it unnecessary for Congress to take a stand toward actually cutting spending.

Now, why did they do that? GRAMM, RUDMAN, and HOLLINGS are not stupid. They did not invent this complex, cumbersome, unworkable, and, in many ways, undesirable approach just for the fun of it. They did it because Congress has shown, not once, but over and over and over again, not 10 times or 100 times, but 1,000 times, that there just was not discipline enough, self-restraint enough, to ever get this budget balanced without some sort of external proceedings.

I understand the following arguments have been advanced in support of the motion to repeal Gramm-Rudman-Hollings before it even has a chance to work:

First, that Gramm-Rudman-Hollings reflects a lack of confidence in Congress to make decisions. Well, amen. As far as I am concerned, the verdict is in on Congress and the verdict is: no guts.

I will tell you, Mr. President, I have just been up and down this mountain one too many times—and we have all seen it; every Senator has seen it—where over and over and over again we have tried to marshal a coalition or a constituency or some kind of a group to get a majority to cut spending, and we cannot seem to cut anything.

That is not quite true. I was successful one time in getting one Federal agency abolished. Of course, it only employed six people. But, so far as I am aware, that is the only agency of Government that has ever been abolished. And we are now in the sixth year of the administration of the most conservative President we are ever going to see, and we are serving in what is said to be a highly conservative Senate.

□ 1410

We have not abolished anything really except this one little tiny agency that has sort of outlived its usefulness. We have not curtailed any programs. We have not even been successful in slowing to any noticeable degree the growth of spending in these programs.

Why, just the other day, Mr. President, in this most conservative of legislative bodies in the prime years of a conservative administration, the Senate Banking Committee referred to the floor with favorable recommendation a bill which not only continues programs of notorious extravagence in Federal subsidized housing, but shockingly, I think to the conscience of legislators, provided no limit whatsoever on the dollar amount of the authorizations.

If that were not bad enough, not only did they continue all the existing programs, but the Senate Banking Committee's recommendation creates new programs of subsidized housing that will give interest-free second mortgages for high-income people, people whose income is as much as $40,000 a year.

If that makes sense, or if that lends credence to the idea that somehow Congress should be trusted to make decisions that will lead to a balanced budget, then I do not know what to say.

Is this action on the part of the Senate Banking Committee an isolated case? Of course not. We have seen it from every committee of the Congress. We have seen it over and over again on the floor. When somebody has the temerity to stand up to make a motion to reduce or eliminate spending for programs that have obviously outlived their usefulness or programs that were counterproductive, programs that backfired or failed, it is rare that such a motion can even come close to passage.

I remember a few weeks ago that the distinguished Senator from Wisconsin, the father of the UDAG Program, got up on this floor and he said, "Folks, we tried a noble experiment in revitalizing some of the major areas of our country through Urban Development Action Grants, UDAG. It didn't work. We ought to abolish it." Certainly, the history of the UDAG programs would support his contention.

Do you think he could get a motion passed to actually do what was so clearly obvious to put an end to a program which he, himself, started?

I should note parenthetically that the Senator to whom I refer, the Senator from Wisconsin, has over and over again shown his intellectual integrity by being willing to curtail spending for even popular programs. But we could not cut back on UDAG. We have not been able to cut back on Conrail. We have not been able to cut back on Amtrak. We really have not been able to curb the excess of the Pentagon spending programs or anything. So for somebody to come to the floor and argue we should not have Gramm-Rudman-Hollings because Congress should be trusted to do the job it seems to me is foolhardy in the extreme.

Finally, Mr. President, I cannot help noting that somebody said during the debate that occurred while I was off the floor that we should not even be talking about Gramm-Rudman-Hollings, that after all, that is just an argument about procedure, and what we really ought to do is get down to the substance of things.

Mr. President, that is the straw that breaks the camel's back.

I suppose if we were debating whether or not to continue or to abolish the first amendment to the Constitution, somebody would get up here and say that is just an argument over procedure. I will tell you in the long run these are the issues that really count, the process issues, the issues by which we establish the guidelines, and the ground rules under which we do business around here are far more important than any of the details.

So as Senators come to the floor and vote on this, I hope not only will the motion to strike out and abolish Gramm-Rudman-Hollings before it begins will not only be defeated, I hope it is squashed. I hope the vote on this is so one-sided that we settle once and for all the idea that we are going to backtrack on this because the very notion that somehow we might do away with this last best hope for budget balancing before it has a chance to begin to work really is undermining the integrity of the whole legislative process.

Is this the only way we can balance the budget? Maybe not. Maybe there remains within this body far more courage and self-discipline than I have given the Congress credit for during the course of my remarks this afternoon. I think not. I think it is unlikely that Senators will come forward and offer to support the kind of amendments and discipline that is needed. But if that happens, bear in mind Gramm-Rudman-Hollings will never

go into effect because we do not have to let the sequester occur. We do not have to let an automatic process or an autopilot take over the responsibilities of Congress. All Gramm-Rudman-Hollings does is this: it sets a series of targets that over a long, long period of time will finally get us to a balanced budget. If somebody wants to move faster than that, the Senator from Colorado, at least one, is ready, willing, and able to vote to do that. If somebody has specific proposals they want to offer for spending cuts, by gosh, I am ready to vote for them.

But to suggest that the way to solve our budgetary problem is to abolish the only thing that we have that has even a scintilla of hope that we might somehow get things under control I think would be a mistake of extraordinary magnitude.

Mr. BOSCHWITZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, I want to compliment the junior Senator from Colorado for that speech. I fully agree with him. He and I have served on the Budget Committee since we both came to the Senate 7½ years ago. As a matter of fact, we have voted against a number of programs without much result.

Some years ago I suggested that we have something called the fair play budget. The Senator may recall that. It is not unlike Gramm-Rudman. Though my enforcement tool was going to be reconciliation, Gramm-Rudman went a step further and Gramm-Rudman in fact probably is more efficient than the idea of a fairplay budget that would be enforced by reconciliation which is really the only tool up to this point that the Budget Committee had to enforce the edicts or to bring about a spending format that might lead to a balanced budget.

The fairplay budget I suggested sometime ago, and I suggested it when we had a $50 or $60 billion deficit which today would seem rather modest, but I noted that the revenues of Government were growing at 9½ percent while the spending was growing at 2- or 3-percentage points more than that.

The fairplay budget was that everything should grow but by exactly the same amount. It would be 5 percent a year. Some of the programs are not controllable. But, nevertheless, they would be approached and rules would be written so that they would grow at about 5 percent a year. And the rules of some of these programs could be changed to accommodate that.

My senior Senator from Minnesota has been able to make some changes in the rules with respect to Medicare which was the fastest growing program to halt that explosive growth so that it was possible to do. But that was not passed at that time.

The budget deficit was not thought to be to onerous. So we went forward and the budget deficit grew because of the recession of 1982. When, because of the fact that the economy was in the doldrums, there was no growth in revenues. As a matter of fact, there was a falloff.

In 1981 revenues were $600 billion, and in 1982 they went up a little bit and they fell back again in 1983.

So that during that period of time for a 2-year period we had no growth at all while expenditures continued to grow. That, of course, is the reason we have the deficit at the present time.

But I so agree with the Senator from Colorado, my good friend from Colorado, that this, the Gramm-Rudman bill, is really the first enforcement tool that we have that gives us, as he says, even a scintilla of hope that we will indeed bring about a balance in the budget.

So I hope, as he does, that our colleagues will vote overwhelmingly once again in support of the idea of a ratcheting down of the deficit, and compelling the Senate and compelling the House of Representatives to come within the framework of the goals that are established—not goals but indeed mandates. It is the first time that we have had mandates around here. People do not like that. People do not like to be told what to do. People here want to protect this program and everybody has a different idea for which a program should be cut down or even scuttled.

But nevertheless, the Gramm-Rudman bill is the first bit of discipline that we have had since the Senator from Colorado and I have been here.

So I hope the Senate will vote overwhelmingly to maintain that discipline, to keep it in place, that indeed it will help us reach the goals that all of us talked about but that all of us together cannot reach without it.

I yield the floor.

□ 1420

Mr. EXON addressed the Chair.

The PRESIDING OFFICER (Mr. DURENBERGER). The Senator from Nebraska.

Mr. EXON. Mr. President, I imagine we will be voting soon on the Hart amendment. I think that, despite the concerns of some people here on the floor, there is little question but that the Hart amendment will be overwhelmingly voted down. That has been pretty well established. I do not think we need to make a lot of speeches about that.

I suppose that there are those who would like to take the route that anyone who votes against the Hart amendment is fiscally irresponsible. Some people can put that connotation on this if they want to, but I am not sure that that is entirely fair. I am confident it is not a rational approach to the matter which confronts us.

During debate on the floor yesterday, my friend and colleague, Senator HOLLINGS, one of the main proponents of Gramm-Rudman-Hollings, made some very kind remarks about the role that this Senate has played trying to bring the deficit of the Federal Government and the skyrocketing national debt under control.

I happen to feel exactly as I did when Gramm-Rudman-Hollings was originally born and brought forth, that far too much authority was being given to nonelected officials on reducing the deficit than was contemplated by the Founding Fathers.

I do not know what the eventual court decision will be, but I suspect that this matter is going to be right back in front of the Supreme Court once again on the mindless monster that was passed yesterday which I called Frankenstein II, generally referred to as Gramm-Rudman-Hollings II.

Frankenstein II was passed yesterday, which supposedly was a fix-up mechanism, and with the vote that Frankenstein II received yesterday, I think there is no question whatsoever as to the outcome of the vote on the Hart amendment to repeal Gramm-Rudman in its entirety.

Mr. President, I am amazed sometimes when I see, hear and look at the votes of this body from time to time on various issues. I recall very vividly a matter of 3 years ago when Senator HOLLINGS, of South Carolina, Senator ANDREWS of North Dakota, and this Senator came forth with a plan that did exactly the same thing as Gramm-Rudman-Hollings did, and it got, I think a total of 33 to 36 votes, somewhere in that area, on the floor of the U.S. Senate.

It was fair, it was an across-the-board approach, and it would have gotten the job done 3 years ago by bringing the deficit under control, had we prevailed at that time.

Probably the main reason we did not prevail at that time, and the reason why Gramm-Rudman finally passed in December of last year, was we did not have the convenient mechanism, Mr. President, that Gramm-Rudman had when it was passed last December, and the convenient mechanism that Gramm-Rudman has carrying it today. That is the increase in the debt ceiling limit, this time to $2.3 trillion. Last December when the same mechanism was used to carry Gramm-Rudman-Hollings I, it was an increase in the debt ceiling to $2 trillion.

When Senator HOLLINGS, Senator ANDREWS, and myself introduced our across-the-board freeze 3 years ago, if we had passed it at that time we would

not have to increase the debt ceiling to $2 trillion last December, and we would not have to be facing increasing it further to $2.3 trillion today.

It is a convenient cover mechanism, I suggest, for increasing the debt ceiling.

What you are telling the people, and what some people are led to believe, is if you vote for this magical plan, which I think is basically unfair, then you are fiscally responsible. You are fiscally responsible if you give away, if you will, during its lifetime, the responsibility of the elected officials here to say if we cannot agree we give away our authority, our responsibility, to some faceless, nameless, unelected bureaucrats in the executive department of Government and let them do the cutting for us.

I think that is wrong. It was one of the main reasons that I opposed Gramm-Rudman-Hollings in the first instance and the main reason that I will support the Hart amendment today.

Somewhere along the line I think we will rue the day when this body gives up what I think is our responsibility.

I will just touch for a few moments, Mr. President, if I might, on the basic unfairness of Gramm-Rudman-Hollings I and Frankenstein II that was passed overwhelimingly in this body yesterday and how they differ from the reasonable, fair approach that this Senator and others have sponsored on the floor of this Senate on several different occasions.

That is that that freeze of Hollings, Exon, and Andrews was an across-the-board freeze. Mr. President, as Gramm-Rudman-Hollings did last December, and as we are about to renew that action here this afternoon, we did not at that time eliminate over half of the Federal budget from any cuts whatsoever. I think that singular point should be remembered by each and every one of us as we cast our vote.

We are not making an across-the-board cut; we are making the cuts that have to be made under Gramm-Rudman-Hollings being less than half of the total Federal budget. That is not fair. That is not reasonable. That is not what I think a majority of this body would like to do, had they not gotten themselves into the difficulty they have by passing Gramm-Rudman-Hollings I and Frankenstein II, the follow-on legislation as of yesterday.

Let the record show this Senator was in front of this body every day for a week saying that at least what we should do is to not appoint a new monster, a new mechanical robot that has the responsibility of making cuts if we do not have the courage to vote for them ourselves. I feel very strongly about that.

Had the Exon amendment been accepted, which simply said that we would use the fallback provision written into the original Gramm-Rudman-Hollings act, I might have been persuaded under certain circumstances, and I might have joined those who thought that with the wagon so far out of the barn, drawn by a horse in some cases running in the wrong direction, I might have said, "Let us go ahead with that."

However, on a reasonable amendment, in view of the Supreme Court's decision, and in view of the fact that the Supreme Court in that decision knocked out that sequester or executioner or another Frankenstein monster, had we accepted that, I might have gone along with this.

□ 1430

Had we accepted that, I might have gone along with it. I still have the basic objections to the bill that I expressed when it originally passed this body. I just wanted this brief time, Mr. President, to say why I shall vote for the Hart amendment with some regrets.

That is because, while I have criticized the Gramm-Rudman-Hollings bill and I think it has some serious shortcomings, I recognize that it does have some redeeming features. It does have some of the features that my friend from Colorado and my friend from Minnesota just outlined. But to say all is lost and we have no other way to get the Federal deficit under control without passing the bill as it now presents itself to the U.S. Senate is, in my opinion, an overstatement at best and a decision when and if it is made—and I predict it will be made—by the vote that we will have sometime this afternoon, by turning down the Hart amendment to knock out the bill in its entirety, I think we are going to be making a major mistake.

But we have made mistakes on this floor in the past, and I suppose that we shall do it again. After we have made that major mistake, we are still going to have the responsibility to make the cuts to bring the deficit under control and to stop the skyrocketing national debt that, I remind this body again, has more than doubled in the last 5 years from under $1 trillion to the $2.3 trillion figure that I assume will eventually be approved when we finish with the basic matter before us.

Mr. President, I thank my colleagues for their consideration and for their patience, but in the mind of this Senator, the shortcomings of Gramm-Rudman far outweigh some of the positive things that I support in its intent.

I yield the floor. 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.

□ 1440

Mr. DOLE. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

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

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. BYRD. Mr. President, I cast my vote in support of the amendment that has been offered by Mr. HART and Mr. MOYNIHAN. I am opposed to the Gramm-Rudman legislation. I stated so on many occasions.

Mr. President, just about 7 months ago, the Congress embraced a new deficit reduction elixir called Gramm-Rudman. It was praised by many—criticized by some, including this Senator.

In the end, the substantial support for it probably represented more of an expression of frustration about the seeming intractability of the deficit problem than it did enthusiasm for the new process.

I opposed that measure then because I believe it to be an unwise approach to the business of government and, in particular to the fundamental duties of the Congress under the Constitution. I have not changed my opinion.

Earlier this month, the Supreme Court rejected one of the key features of that law. It struck down the provision by which the Comptroller General calculated exactly where and in what amounts the automatic budget cuts required by the Gramm-Rudman process were to be made. Because of the Court's ruling, there is currently no "automatic" sequestration procedure. The law did provide a backup procedure, however, which was used recently to reaffirm the March 1986 budget cuts.

The passage of the amendment by Senators GRAMM, RUDMAN, and HOLLINGS, as modified, has restored the automatic sequestration process by turning over to the Office of Management and Budget, rather than the General Accounting Office, the authority to determine the amount of the automatic cuts and to order their implementation.

However, as with the original measure, the new version still depends on the process which is essentially an abdication of our responsibility to set the fiscal priorities of the Nation. The original Gramm-Rudman legislation tried to find a means by which Congress, and the President, could avoid making the difficult choices that must be made if the deficit is to be reduced. The so-called Gramm-Rudman II

yields precisely the same product—only with fringe of a different color.

It was thought last year that one easy vote on Gramm-Rudman would replace many difficult votes on individual bills, and amendments. But easy votes rarely make good policy.

No substitute process, even one that can pass constitutional muster, can replace or improve upon the wisdom of the Founding Fathers in placing control of the purse strings in the hands of the Congress through the normal legislative process.

Not surprisingly, that process, especially as it relates to the budget, has proved exceedingly difficult. It is never easy to cut programs that benefit some or many Americans. But, then, there has never been a promise that it would be easy. That, I thought, was why our constituents elect us and send us here—to make tough choices on their behalf.

This year, again, the budget process is proving difficult and contentious. The President's budget was a nonstarter from the very beginning. It was soundly rejected in the Senate Budget Committee, by a vote 16 to 6, and in the House, 312 to 12.

Late last month, Congress adopted its own budget resolution. That budget is a considerable improvement over the President's budget, and it reflects a better mix of fiscal priorities. It is not perfect, but it is a good start. It is the foundation that should be used in formulating the individual spending and revenue bills that ultimately will determine the Nation's fiscal priorities.

That is as it should be. But Congress cannot solve the deficit crisis on its own. The President must be involved. Yet, that involvement will only come about through the legislative process.

Some of the supporters of the Gramm-Rudman process believe that the prospects of deep cuts in military spending as a result of a sequester will force the President onto the playing field. But, in reality, an automatic process predicated on horrendous cuts in defense will surely self-destruct, leaving in its wake not only a higher deficit, but also a higher cynicism about the ability of Government to reduce the deficit.

There can be no single grand gesture, such as Gramm-Rudman, that will work as advertised. Instead, such a process merely serves to take the pressure of when it comes to considering individual bills that will determine what the actual deficit will be.

That is not the least of the faults of Gramm-Rudman II. As did its predecessor, it virtually ignores one of the most fundamental influences on the deficit—the economy. Only a few weeks ago, it was learned that, in the first 6 months of 1986, the economy grew at a paltry 2.5 percent annual rate. That is far below the 4 percent projected by the administration.

A drop of one and one-half percent in real GNP growth can lead to a $30 billion increase in the deficit the following year. What would Gramm-Rudman II do to remove a $30 billion "Extra" deficit? It would require outlay reductions of a like amount. Such reductions, in turn, could translate into cuts of some $30 billion in budget authority for defense programs next year, and nearly $45 billion in budget authority for domestic programs.

Do we really want a budget process that can force such draconian cuts in the armed services? Will we stand by it even if active duty personnel are going to be laid off, procurement programs, even modest ones, cut to the bone, ships kept in port, and aircraft kept on the ground? Speaking as one Senator, I cannot endorse such a process.

Budget cuts of this magnitude would force the Congress to choose between expanding its force structure as planned—with a corresponding severe reduction in daily combat readiness and a return to the days of the alleged "hollow" Army—or cutting back the size of our forces to maintain combat readiness. Either of these alternatives could severely harm our national security.

The needed reductions raise such fundamental questions as whether we can afford to maintain our present strategic triad or must, instead, place more reliance on one system and less on another. Can we afford the Midgetman missile or two new manned bombers? Can we afford SDI without abandoning other major strategic weapons systems? Can we afford an All-Volunteer Army?

And even if such cuts become effective under the new Gramm-Rudman procedure, would the President, citing his constitutional duty as Commander in Chief, permit those cuts to go into effect? I do not konw the answer to that question and, I submit, neither do the supporters of this procedure.

The effect would be similar on domestic programs. Should we reaffirm a process that could make an indiscriminate 10 percent, or greater, cut in the FAA's air traffic control budget? Or in the drug interdiction and enforcement programs? Or in the FBI, cancer research, coal research, and flood or drought relief?

I believe the answer is "No." A sequester of this size is too drastic, and, therefore, is not credible.

Of course, the numbers can be "cooked" to reduce, or even eliminate, the sequester. And the incentive to do that could be overwhelming, now that we have given OMB the authority to figure the cuts. If OMB were successful in avoiding a sequester, it would not solve the problem, it would sow the seed for an even worse sequester the following year, one that would surely cause the self-destruction of the entire process.

Mr. President, the Congress has consumed an enormous amount of time in writing Gramm-Rudman, debating it, amending it, reworking it, and responding to its unconstitutionality—all in order to try to escape the responsibility that properly resides right here, on each of our shoulders, and on the President of the United States. Yet, despite the $11.7 billion in savings mandated by the law last March, the fiscal year 1986 deficit is on its way to setting yet another record—threatening to top $220 billion.

The deficit target set by Gramm-Rudman for fiscal year 1987 is $144 billion. That is $76 billion lower than the projected deficit for fiscal year 1986. There has been a drop even half that size.

Mr. President, I did not support the original Gramm-Rudman measure last December because it was an abdication of the fundamental responsibility of Congress to make the budget decisions. Gramm-Rudman turns decisions over to a computer, or to unelected Government officials. The result is that the automatic cuts, if allowed to happen, could wreak havoc on the national defense, as well as on countless domestic programs that strengthen the Nation from within.

I have not changed my view. Gramm-Rudman, whether the original edition, or the "new and improved" version, is an abdication of our responsibility, and a prescription for potential disaster.

I urge my colleagues to join in supporting this amendment offered by the distinguished senior Senator from Colorado [Mr. HART] and the distinguished senior Senator from New York [Mr. MOYNIHAN], which will repeal Gramm-Rudman and place the responsibility for determining the Federal budget right back where it belongs—on the President and the Congress.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Let me indicate to my colleagues that hopefully when this amendment is disposed of we can move on to other amendments. I hope that Senators who may be listening or staff, if there are additional amendments to be offered to the debt ceiling other than freedom fighters and South Africa—we are going to have a meeting on that later this afternoon—would come to the floor and accommodate the managers of the bill.

Have the yeas and nays been ordered on the amendment?

The PRESIDING OFFICER. The yeas and nays have been ordered. The clerk will call the roll.

Mr. EXON. Will the Senator yield for a question and statement?

Mr. DOLE. Yes.

Mr. EXON. The Senator from Nebraska has an amendment or two that do not fall into the categories that seem to be off limits. I would certainly advise the majority leader that I will be here immediately after the vote to bring up one of those amendments which I think do not fall into the "no-no" category.

Mr. DOLE. They are good?

Mr. EXON. They are clean. I am sure that even the majority leader will agree they can be accepted on voice vote. I am not sure that will be the case.

□ 1450

Mr. DOLE. Maybe after the vote, we can discuss the amendment with the manager on this side. Senator HEINZ is here.

The PRESIDING OFFICER. The question is on agreeing to the amendment by the Senator from Colorado [Mr. HART]. 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. ARMSTRONG. I announce that the Senator from Wyoming [Mr. SIMPSON] is necessarily absent.

The PRESIDING OFFICER (Mr. COCHRAN). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 30, nays 69, as follows:

[Rollcall Vote No. 168 Leg.]

YEAS—30

Andrews	Glenn	Matsunaga
Bingaman	Harkin	Melcher
Bradley	Hart	Metzenbaum
Burdick	Hatfield	Moynihan
Byrd	Hawkins	Pell
Cranston	Inouye	Riegle
DeConcini	Johnston	Roth
Denton	Kassebaum	Sarbanes
Eagleton	Lautenberg	Stafford
Exon	Mathias	Weicker

NAYS—69

Abdnor	Goldwater	Mitchell
Armstrong	Gore	Murkowski
Baucus	Gorton	Nickles
Bentsen	Gramm	Nunn
Biden	Grassley	Packwood
Boren	Hatch	Pressler
Boschwitz	Hecht	Proxmire
Broyhill	Heflin	Pryor
Bumpers	Heinz	Quayle
Chafee	Helms	Rockefeller
Chiles	Hollings	Rudman
Cochran	Humphrey	Sasser
Cohen	Kasten	Simon
D'Amato	Kennedy	Specter
Danforth	Kerry	Stennis
Dixon	Laxalt	Stevens
Dodd	Leahy	Symms
Dole	Levin	Thurmond
Domenici	Long	Trible
Durenberger	Lugar	Wallop
Evans	Mattingly	Warner
Ford	McClure	Wilson
Garn	McConnell	Zorinsky

NOT VOTING—1

Simpson

So the amendment (No. 2241) was rejected.

□ 1510

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will please be in order.

Mr. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will please be in order. Will Senators please take their seats? The Senate will please be in order.

AMENDMENT NO. 2243

(Purpose: To mandate advance deficiency payments in fiscal year 1987)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Nebraska [Mr. EXON], for himself, Mr. ZORINSKY, Mr. HARKIN, Mr. MELCHER, Mr. DIXON, Mr. BURDICK, Mr. HART, and Mr. NICKLES, proposes an amendment numbered 2243.

At the end of the amendment, add the following:

Advance deficiency payments sec. . Notwithstanding any other provision of law, the Secretary of Agriculture shall, in accordance with the criteria in section 107c of the Agriculture Act of 1949, make advance deficiency payments available for the 1987 crops of wheat, feed grains, upland cotton, and rice: *Provided*, That the percentage of the projected payment rate used in computing such payments shall not be less than (1) 40 percent in the case of wheat and feed grains, or (2) 30 percent in the case of rice and upland cotton.

Mr. EXON. Mr. President, I ask for the yeas and nays on the amendment.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator will please suspend until the Senate is in order. The Senator from Nebraska has a right to be heard to discuss his amendment. The Senate will please be in order. Senators will please take their seats.

The Senator from Nebraska.

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

Mr. EXON. I am happy to yield.

Mr. DOMENICI. I might say to my friend, I hope my questions do not indicate that I am opposed to the amendment. I want to be in support of it. But I would like to ask the Senator, the conditions that you put on with reference to the method of determining payment, as I understand it, the advance deficiency payments are in the farm bill. They are discretionary. For the year involved, the Senator's amendment would be saying they are going to happen, mandating them; am I correct at that point?

Mr. EXON. The Senator is correct.

Mr. DOMENICI. Now, with reference to what you are using as the criteria for payment, does that change the existing law to any extent, or is that the existing law?

Mr. EXON. It is the existing law and it is the same procedure that was used when advance deficiency payments were granted in the fall of last year.

Mr. DOMENICI. And the reference to prices for the various commodities are consistent with existing law; is that correct?

Mr. EXON. That is correct; no change in existing law on prices.

Mr. DOMENICI. Might I say, I thank the Senator for his answers. Since we have already provided in the Gramm-Rudman-Hollings amendment that we would be charged for this amount in the sequester snapshot, I believe we have admitted that it is going to happen. So I think the Senator has an amendment that is deserving of support.

Mr. EXON. I thank my friend and colleague, the chairman of the Budget Committee, for his questions and his remarks.

I wish to indicate that Senators ZORINSKY, HARKIN, MELCHER, DIXON, and BURDICK are cosponsors of the amendment.

Mr. President, I have a brief statement on this. Since I know we have many things to consider, I will be prepared then to move for a vote, if there is no further discussion.

Mr. HART. Mr. President, would the Senator add the Senator from Colorado as a cosponsor?

Mr. EXON. Mr. President, the Senator from Colorado, Mr. HART, is also a cosponsor. His name was on my list and I inadvertently overlooked him.

Mr. President, my amendment is simple and I hope noncontroversial. It is a continuation of the work we began last night in regard to advance deficiency payments.

The amendment simply mandates the payments of advance deficiency payments in fiscal year 1987. This is fully consistent with the assumptions of the fiscal year 1987 budget and consistent with the assumptions the Senate made last night with regard to the August 15 "deficit snapshot."

As we discussed lask night, there is little doubt that advance deficiency payments will be made in the 1987 fiscal year. My amendment removes what little doubt remains.

My colleagues certainly know that rural America is in a deep depression. In Nebraska, land values over the last 2 years have dropped more than in any time since the Department of Agriculture started keeping records in 1912. This reduction in land values has combined with a continuing slide in

commodity prices to produce disastrous economic conditions.

Advance deficiency payments would greatly help farmer's with cash-flow. My amendment simply assures the Nation's farmers that advance deficiency payments will be made.

I hope that the Senate will approve this much needed assurance to the Nation's farmers.

□ 1520

I appreciate the cooperation and support of the leadership in this effort.

Mr. President, I yield the floor.

Mr. EXON. Mr. President, I ask unanimous consent that the following Senators be added as cosponsors to the amendment we just voted on: Mr. INOUYE, Mr. BOREN, Mr. GRASSLEY, Mr. HOLLINGS, and Mr. NICKLES.

I also ask unanimous consent to add the Senator from Kansas [Mr. DOLE].

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

Mr. HEINZ. Mr. President, will the Senator be kind enough to add the Senator from Pennsylvania?

Mr. EXON. I should be glad to ask unanimous consent that the Senator from Pennsylvania be added as a cosponsor of the amendment.

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

● Mr. DIXON. Mr. President, I rise today in support of the pending amendment, sponsored by Senator EXON, to mandate advance deficiency payments in fiscal year 1987. I am pleased to be an original cosponsor of the amendment.

Last night, the Senate passed an amendment which required the Office of Management and Budget [OMB] to assume the use of advance deficiency payments when putting together budget predictions for fiscal year 1987. This amendment is simple, Mr. President. The Secretary of Agriculture presently has the discretion to make advance deficiency payments. He has used this authority in 4 out of the past 5 years. This amendment would require that the Secretary make advance deficiency payments next year.

Our agricultural sector is threatened by a severe drought in our Southeastern States and a bulging surplus in the Midwest, our Nation's heartland. It is also in danger due to out rapidly declining U.S. agricultural export markets. Last month, we faced an agricultural trade deficit of over $71.2 billion. It is the second such deficit we have faced since May, and the second in 27 years. The health of our Farm Credit System is also in jeopardy.

Mr. President, it is vital that our farmers get these advance deficiency payments. These payments were made to producers in 1982, 1983, 1985, and this year. They are important to the farmers who must pay for their seed and fertilizer at spring planting.

I urge my colleagues to support this amendment.●

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Nebraska. On this question, the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ARMSTRONG. I announce that the Senator from Wyoming [Mr. SIMPSON] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas [Mr. PRYOR] is necessarily absent.

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

The result was announced—yeas 91, nays 7, as follows:

[Rollcall Vote No. 169 Leg.]

YEAS—91

Abdnor	Ford	McClure
Andrews	Garn	McConnell
Armstrong	Glenn	Melcher
Baucus	Goldwater	Metzenbaum
Bentsen	Gore	Mitchell
Biden	Gorton	Murkowski
Bingaman	Gramm	Nickles
Boren	Grassley	Nunn
Boschwitz	Harkin	Packwood
Bradley	Hart	Pell
Broyhill	Hatch	Pressler
Bumpers	Hawkins	Proxmire
Burdick	Hecht	Quayle
Byrd	Heflin	Riegle
Chafee	Heinz	Roth
Chiles	Helms	Sarbanes
Cochran	Hollings	Sasser
Cohen	Inouye	Simon
Cranston	Johnston	Specter
D'Amato	Kassebaum	Stafford
Danforth	Kasten	Stennis
DeConcini	Kennedy	Stevens
Denton	Kerry	Symms
Dixon	Lautenberg	Thurmond
Dodd	Laxalt	Trible
Dole	Leahy	Wallop
Domenici	Levin	Warner
Durenberger	Long	Wilson
Eagleton	Lugar	Zorinsky
Evans	Matsunaga	
Exon	Mattingly	

NAYS—7

Hatfield	Moynihan	Weicker
Humphrey	Rockefeller	
Mathias	Rudman	

NOT VOTING—2

Pryor	Simpson

So the amendment (No. 2243) was agreed to.

□ 1540

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 2244

(Purpose: To express the sense of the Congress regarding aviation safety and the need for additional air traffic controllers and safety inspectors)

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

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Nebraska [Mr. EXON], for himself, Mrs. KASSEBAUM, and Mr. KASTEN, proposes an amendment numbered 2244.

At the end of the amendment, insert the following:

SEC. . (a) The Congress finds that—

(1) safe and efficient air transportation is essential to the flow of interstate commerce in this Nation;

(2) airline traffic is estimated to increase to a record 400 million passengers aboard United States commercial aircraft in 1986 and the number of aircraft operations is projected by the Federal Aviation Administration to increase by 46 percent through the coming decade;

(3) recent studies by the National Transportation Safety Board and the General Accounting Office have indicated serious concerns with the Federal Aviation Administration's safety-related air traffic control and aircraft inspection and surveillance programs, particularly with respect to the need for additional trained and experienced personnel;

(4) the effect of air traffic controller staffing shortages, increased numbers of aircraft operations, and delays in the installation of automated systems has been a reduction in aviation safety, as evidenced by a record number of near-misses between aircraft, including 14 near-misses recorded thus far this year at Chicago O'Hare Airport, the Nation's busiest airport; and

(5) the growth of the United States commercial airline industry since deregulation and the inability of the Federal Aviation Administration to impose and enforce compliance of airline industry standards for operations and maintenance have further diminished the margin of aviation safety.

(b) It is therefore declared to be the sense of the Congress that the Secretary of Transportation—

(1) should undertake immediate action to ensure the safety of the Nation's air transportation system by increasing the number of qualified air traffic controllers and supervisors to a minimum level of 16,250, consistent with the number employed prior to 1981;

(2) should undertake immediate action to ensure the safe operation of aircraft by expanding further the Federal Aviation Administration's workforce for inspection and enforcement of aircraft operations, maintenance and reporting procedures;

(3) should consider, if necessary, restricting air traffic under the control of the Federal Aviation Administration at certain airports, or limiting the certification of new airlines, if such actions would improve aviation safety; and

(4) shall report to the Congress within 90 days after the date on which this joint resolution is enacted regarding what action will be undertaken to achieve increased air traffic safety staffing levels, the proposed timeframe for completing such actions, and any required additional funding which the Secretary considers necessary to carry out such action.

Mr. EXON. Mr. President, I ask unanimous consent that Senator CRANSTON be added as cosponsor to the amendment.

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

Mr. EXON. Mr. President, I advise my colleague, the Senator from Penn-

sylvania [Mr. HEINZ], the manager of the bill, that we are having a copy of the amendment made. It will be delivered to him and I apologize for not doing that sooner.

Mr. President, this is a simple and straightforward amendment. Senator KASSEBAUM, the chairman of the Aviation Subcommittee, of which this Senator is the ranking member, has held a series of hearings over a considerable number of months with regard to what appears to be a growing concern about air traffic safety in general and with some specific heavily used airport facilities in the United States in particular.

What this amendment simply does is call upon the Secretary of Transportation to report back in the time allocated in the amendment as to what plans are being made by the Department of Transportation to improve airline safety. There are many factors involved in this, but I think that, speaking for both myself and Senator KASSEBAUM and many Members of the U.S. Senate who have testified before our subcommittee, who have talked to each of us individually, as well as members of the Committee on Commerce as a whole, there is general uneasiness about the present situation.

□ 1550

We therefore feel that directing the attention of the Secretary of Transportation to this matter, to report back on the various matters that are raised in this amendment, will speed up and make sure that we are dotting every "i" and crossing every "t" with regard to aviation safety. The concern for safety has been brought about by a number of factors, not the least of which is the explosion of additional airplanes in the air since deregulation. The fact that there seems to be, at least in the opinion of this Senator, not enough qualified air traffic controllers on duty in some of the major terminals, also the fact that some of the testimony that we have received in the Aviation Subcommittee indicates that there may be some laxity with regard to the inspection of planes as to their airworthiness, therefore we are merely directing the Secretary's attention to this and asking the Secretary to make a report back to the Congress at an appropriate time.

I know of no objection to this amendment and before either a rollcall or voice vote, either of which will be acceptable to this Senator, at this time I yield the floor.

Mr. HEINZ. Mr. President, as I understand the amendment of the Senator from Nebraska—and I do understand the amendment, I am a cosponsor of it—it is a sense-of-the-Senate resolution aimed at improving air safety. We obviously have millions upon millions of Americans who believe that our airways can be and should be safe. Indeed, on the whole we have an excellent record of air safety in this country, but without doubt there are some times when that system is under stress and it can always be improved.

The amendment of the Senator from Nebraska does four specific things. One is that it calls for an increase in the number of air traffic controllers. Second, it calls for more assistance in the area of inspections, in the area of better maintenance of aircraft so that those aircraft which do take to the air are in safe operating condition. Thirdly, it calls upon the FAA and the Department of Transportation as required to make any necessary adjustments with respect either to the certification of routes or the reduction of routes and to the limitation of traffic at certain airports until or at such time as any temporary problems, serious in nature, are identified and, if it is thought necessary and desirable, to make those kind of flight restrictions.

Finally, as I recall the amendment, it calls within 90 days for a report from the administration that analyzes the extent to which each and/or any of the steps, the previous three steps proposed is required, and to the extent that they are specifically justified and required, then to set forth a time table that explains in detail how and when those steps will be implemented.

It seems to me that this sense-of-the-Senate resolution, while I might not agree with every jot and tittle of it, as to whether or not 16,250 is either too high or too low a number, is a justified amendment. There is a substantial balance, for example, that has accumulatd in the airport trust fund that many of us believe should have been expended at the least in part on improving air traffic safety. I would certainly not want to send the wrong signal to the administration by not supporting this amendment, so that is why I am a cosponsor of it and intend to urge my colleagues to adopt it.

I know of no further debate on this amendment. It is my understanding that there is no objection on the minority side of the aisle.

Mr. EXON. There is no objection on this side of the aisle, and if I could make a few brief remarks, I would be prepared to vote this through if that is the will of the manager of the bill.

The PRESIDING OFFICER. Does the Senator from Pennsylvania yield the floor?

Mr. HEINZ. Yes.

Mr. EXON. I thank the Senator from Pennsylvania for being a cosponsor. I also ask unanimous consent that the Senator from West Virginia [Mr. BYRD] be added as a cosponsor of the amendment.

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

Mr. EXON. I appreciate very much the remarks by the manager of the bill. He has adequately explained in further detail what this is all about. I simply explain to him that the figure used in the bill was the number of air traffic controllers and supervisors thereof that were employed immediately before the recent strike that has caused some of the difficulties with regard to air traffic controllers. What we are simply saying is that at a minimum—and I emphasize the word "minimum"—it is important that we get the number of air traffic controllers and their supervisors back up to what the figure was before we had the strike. I certainly feel we are being very reasonable with this amendment. We are calling attention to something that is of growing concern to all Americans. I hope it will pass without opposition.

The PRESIDING OFFICER. Is there further debate?

Mr. HEINZ. Mr. President, I move adoption of the amendment.

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

The amendment (No. 2244) was agreed to.

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

Mr. HEINZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2245

(Purpose: To repeal the crude oil windfall profit tax)

Mr. NICKLES. Mr. President, I have an amendment and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES] for himself and others proposes an amendment numbered 2245.

Mr. NICKLES. 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:

At the end of the amendment, insert the following:

SEC. . REPEAL OF THE WINDFALL PROFIT TAX.

(a) IN GENERAL.—Chapter 45 of the Internal Revenue Code of 1954 (relating to windfall profit tax on domestic crude oil) is hereby repealed.

(b) EFFECTIVE DATE.—The repeal made by subsection (a) shall apply to oil removed from the premises after the date of the enactment of this Act.

SEC. . CLARIFICATION OF STATUTE OF LIMITATIONS WITH RESPECT TO UNDERPAYMENTS OF WINDFALL PROFIT TAX.

(a) IN GENERAL.—Subparagraph (A) of section 6501(p)(1) of the Internal Revenue Code of 1954 (relating to special rules for windfall profit tax) is amended by adding at the end thereof the following: "For pur-

poses of the preceding sentence, a return shall not be treated as required with respect to such oil if the amount withheld under section 4995(a) is not less than the amount required to be withheld as shown on the return by the first purchaser of such oil."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply as if included in the amendments made by section 101 of the Crude Oil Windfall Profit Tax Act of 1980.

Mr. NICKLES. Mr. President, today I am offering an amendment on behalf of myself and also Senator BOREN, Senator GRAMM, Senator BENTSEN, Senator DOLE, Senator SYMMS, Senator WALLOP, Senator BUMPERS, and Senator PRYOR to repeal the windfall profit tax.

Mr. President, as most Members are aware, the windfall profit tax was passed in 1980. In this Senator's opinion it was a very ill-conceived tax. It is one that is unfair. It is one that is only a tax on domestic producers. It is not a tax on imports, and so we have had the absurd philosophy as part of our tax policy of basically discouraging domestic production and encouraging imports. As a result, imports have increased substantially both as a percentage of volume and dollars going overseas. It certainly has contributed to the negative balance of payments and negative balance of trade we currently are experiencing in this country—last year over a $50 billion negative balance of trade in oil.

Mr. President, today I am offering an amendment which I think could offer a little help to an oil industry that is hurting and hurting very badly. One of my colleagues asked, "Well, Don, if we repeal the windfall profit tax, how much will that cost the Treasury?"

□ 1600

The response is "nothing." Because oil prices are so low, they are so far below the threshold of where the windfall profit tax triggers in, that the estimates now by Treasury are that it would cost nothing, because we are looking at oil prices on the domestic side in the $11 and $12 range, which is far below the threshold. As the Presiding Officer, Mr. STEVENS, knows, it is $19.41 for tier 1 oil.

We are so far below that that it would not raise any money for Treasury, so we might as well repeal it. We would save a lot of the producers' money, because they have to come up with the tax forms to identify who is not receiving this allocation of income, just for IRS purposes. It would save us money in the Treasury, because they have to have at least several hundred persons involved in the collecting of data which is worthless today.

So I hope the Senate will do a positive thing. We need a positive signal in the energy sector. This industry is hurting badly. This is one thing we can do—to repeal an arcane tax, a tax that was very anti-free enterprise. You do not have to be from an oil State to want this tax repealed, if you believe in the free enterprise system.

When the windfall profit tax was passed, it was the most anti-free enterprise piece of legislation which ever passed Congress, and I believe it probably still is. It needs to be repealed. It should not have been passed in the first place. That is water under the bridge.

Now is the time to repeal it. There has never been a better time to repeal it. There are no windfall profits.

Let us eliminate this false statement by Congress, which said: "Oil industry, you are making too much money, but we're going to sock it to you."

The tax rates, as the Presiding Officer, the Senator from Alaska [Mr. STEVENS], knows, were enormous. Once you crossed the tier one threshold, if you were a major company, you had to pay 70 cents on each dollar of increase to the Federal Government, not to mention that you had to pay a royalty on top of that, which was another 12.5 percent.

If you add those together, you realize that before the companies receive a dime, they are already paying 70 cents in tax of that incremental dollar, a royalty of 12.5 percent, and a State gross production tax in my State of 7 percent. So those in the producing sector in many cases, for each incremental dollar, were receiving as little as 10 or 15 cents.

Now is the time to repeal the windfall profit tax. I hope we will be successful today in repealing this burdensome tax. Now is the time. The prices dictate it. The industry needs some help. It is a provision supported by the administration, and I hope it will be supported by the full Senate today and by the House as well.

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

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

The bill clerk proceeded to call the roll.

□ 1610

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

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

Mr. BUMPERS. Mr. President, I rise to support the pending amendment and have agreed with Senator NICKLES to be a chief cosponsor of this legislation.

I voted for the original windfall profit tax at a time when oil prices were being dictated by, the OPEC cartel—incidentally as they still are—by the Saudis. It did not seem fair to me then to allow our oil industry to benefit from prices which were set by 13 nations sitting around a table fixing prices. But that is history and there is certainly no point in reopening that wound.

I just wanted to make that statement to say that I am here today to say that the windfall profit tax is a burden on the most beleaguered industry in America. I heard one politician say that instead of oil and gas producers coming to his fundraisers they are inviting him to come to theirs. And another story that goes around south Arkansas and Texas and other oil States is "What do you charge a person with who gives each one of his children an oil well?" The answer is "Child abuse."

There is a tremendous amount of paperwork to filling out the forms that the oil industry has to file on the windfall profit tax. Yet, this amendment has a zero budget impact.

The oil industry is not paying a windfall profit tax for two reasons. No. 1, the price is not high enough to trigger the tax; No. 2, they do not have any profits.

Everyone has been wringing their hands around here for the past 6 or 8 months or 1 year wondering what can we do to help an industry that is really depressed. Here is something you can do which will not cost you anything and will help them measurably. We can at least keep them from having to fill out all of these needless returns to report that they do not owe anything.

I have heard that one oil company estimated that the administrative cost of complying with the windfall profit tax would be $20 million a year. No one here would suggest that you can justify a $20 million annual expenditure to fill out forms which have no meaning.

So now is the time to repeal the windfall profit tax, and I trust that my colleagues will agree that this is a timely thing to do and will help them.

In a more topical philosophical vein, it will not hurt at this moment to discuss what we are doing to ourselves by allowing oil prices to reach to the kind of lows that are causing oil wells to be shutdown all over America. The Interstate Oil Compact Commission did a study that showed when oil prices got to $10 a barrel Texas would shut down 51,000 stripper wells.

Now, for the benefit of those who do not follow this, a stripper well is a well that produces 10 barrels of oil a day or less. Almost 65 percent of the wells in my State are stripper wells.

But, in any event, the reports show that at $10 a barrel, Texas would shutdown 51,000 wells, the State of Oklahoma would shutdown 33,000 wells, Kansas would shutdown 18,000 wells, and Arkansas would shutdown almost 2,000 wells.

The problem with that is when you shutdown a stripper well most of the time salt water floods that well and it can never be recovered.

This amendment has come up rather unexpectedly and I have not had a chance to review all those figures that I keep on hand. But I can tell you that there have been hundreds of thousands, maybe millions of barrels of oil produced today in this country from stripper wells.

So you might ask why would anyone shut a well in, why would they discontinue pumping the well. The answer is very simple: In the oil industry they have what they call lifting costs; any well that is not sufficiently pressured by natural gas to create a gravity flow, that is a flow without auxiliary pumping, has to be pumped. You are very lucky in this country if you happen to own oil wells that are pumping themselves because of the amount of natural gas in the well.

Incidentally, you never find oil without gas but you do find gas without oil. But every oil well is accompanied by gas and how much will come out and how fast depends on how much gas there is in that hole.

If you are lucky enough to have a good high producing well where there is not cost to pumping it, then your lifting costs are very small, nothing almost.

But in all of the stripper wells you have those heads out there and you have seen them pump.

I can remember as a child one of the things I was excited about seeing was an oil well on the State capitol grounds in Oklahoma. Just a few years ago that well finally played out. But I can vividly remember seeing that pump of this oil well as a child out on the lawn of the State capitol of Oklahoma.

In Arkansas, the lifting costs range from $9 to $12 a barrel. I have a good friend who I talked to just 2 weeks ago, and I said "Ned, what are your lifting costs?" He said, "My costs are a little bit less than some others, maybe $9 a barrel."

He is continuing to pump his wells even though it is probably unprofitable, considering everything, in the hope that someday prices are going to go back up, because he knows if he shuts the well in, he will probably never be able to recover the oil.

But the average lifting cost in my State is $12 a barrel, and oil is about $10 a barrel, and there are very few people in this country who are willing to pump oil at a cost of $12 a barrel in order to get $10 a barrel for it.

□ 1620

And I can tell you what it has done to the oil industry in this country. Last week, we had barely 700 rigs, oil and gas, operating in the entire United States. Do you know what it was in September 1981? Forty-two hundred rigs. Today, less than 700. And with oil and gas prices like they are right now, do you know how many rigs we are going to have about 6 months from now? None. None.

And so ask yourself: What do we do when we finally get to the point where we do not have one rig operating in this country, where no new reserves are being found? And let us assume that OPEC continues to be in a state of chaos, and they cannot agree to limit production and get the price up and we go along for 3 or 4 years not producing an additional barrel in this country or finding one additional barrel of oil. And suddenly 3 or 4 years from now, OPEC does get its act together and they decide to raise the price of oil to $50 a barrel. And what do we do? I will tell you what we will do. We will pay it, because we will not have any alternative.

So what we are doing here is, as Barbara Tuchman said, the thing that we have done for the past 4,000 years; that is, shoot ourselves in the foot by allowing the demise of this vital industry. And we are going to pay a very heavy price in the not-too-distant future if we do not do something about it.

Now there is another proposal that is going to be made here, and really it is going nowhere. It is an oil import fee.

There are two things that people ought to realize about an oil import fee. No. 1, I would have difficulty with a fee for one reason, and that is because my farmers are now paying about 50 cents to 60 cents a gallon for diesel, where for years they had been paying in excess of $1. It is the first break agriculture has had. Now that is the other side of the coin, and I am not proposing to make that argument now.

But the main thing is the President has said "Never" to an oil import fee. And as long as the President says no, a fee is not going to happen.

And if you have an oil import fee, you are going to exempt farmers, and others are going to want to exempt Canadians and somebody is going to want to exempt Mexico, and you will have the bill so fouled up it will not be worth passing anyway.

But repealing the windfall profits tax is a simple proposal that I am very pleased to be a chief cosponsor of that we can pass and the House can pass just as quickly and give some immediate relief to an industry that is really desperate.

So, Mr. President, I strongly urge my colleagues to join us in rapid passage of this repeal.

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

Mr. BUMPERS. Let me yield to the Senator from Colorado, if the Senator from Oklahoma will indulge me for a moment.

Mr. HART. I wonder, as a strong supporter of the import concept for almost a decade, I wonder if the Senator is absolutely convinced that it is impossible for the Senate and the Congress to enact a straightforward, simple, across-the-board fee on import oil and convince the President that is in the best interest of our country, without the conditions the Senator assumes would be attached.

Mr. BUMPERS. Who are you proposing to convince him? I have never had much luck convincing him.

Mr. HART. I would think an overwhelming vote of the Senate might help.

Mr. BUMPERS. Well, No. 1, if you got an overwhelming vote in the Senate and in the house, that might be persuasive, but I think, when it comes to any kind of a levy, the President is rather intractable on it.

I was interested about 3 months ago when the import fee proposal was gaining some momentum around here, I was interested in what seemed to me like a pretty Shermanesque statement by the President, and that is that he would never agree to one.

Mr. BOREN. Mr. President, I am proud to join with my colleague from Oklahoma, Senator NICKLES, with Senator BUMPERS from Arkansas, and Senator BENTSEN and Senator GRAMM in offering this amendment to repeal the windfall profit tax. All of us in this body know what is going on in terms of domestic energy production.

Eighty-six percent of all of the drilling rigs in this country are stacked today. Drilling levels are at an all-time low. Since they started keeping the figures in 1940, they have never been as low as they are today. Even in the middle of World War II, when we could not get the material, when we were short of iron and steel to build the equipment to explore for badly needed oil and gas during wartime conditions, even during that period, we managed to have more rigs drilling for oil and gas in the United States than we do today. And what is happening is a clear threat to the national security of this country.

Last November, we were importing only 27 percent of the energy needs of this country. Today, we are already, just in this short period of time, importing 36 percent and many experts say we are on our way back to the 50-percent level.

I do not need to convince a single Member of the U.S. Senate that for us to be dependent, for the precious energy sources that are vital to our national security, on foreign sources for 50 percent or more of the production and the needs of this country is certainly not in the national security interrests of the United States.

We have just, in the last few months, just since the first of this year, increased our purchases from Saudi Arabia, for example, from 27,000 barrels a day to 750,000 barrels a day.

We are becoming more and more dependent on those overseas sources.

We all know what that means to the American consumer. We are once again, once again, failing to learn, not only from history, we are failing to learn from even our most recent experiences that every time that we make the American consumer dependent on foreign producers for a significant part of our energy needs we give to those producers the power to again rapidly escalate the price. If we are concerned about the American consumer, we ought to do something to keep that consumer from becoming once again the hostage of the OPEC nations.

So here we are with an energy crisis. The guardians of our national security should be speaking out as we become more and more dependent on foreign imports. The so-called guardians of consumer interests should be speaking out to say we must not again make our consumers so dependent upon OPEC that they become the hostages of the OPEC nations. And the conservationists, above all, should be speaking out.

As the Senator from Arkansas said just a minute ago, we face in this country today the potential tragic waste of millions of barrels of oil production each year, as wells all across this country are prematurely plugged and that oil is lost forever.

The American people have paid the cost of finding that oil. They have paid the environmental costs, as well as the economic costs. Those wells are in production. And if the price stays down at the level of $10 to $12 much longer, thousands of those wells are going to be plugged all across this country and we are going to lose that economic resource forever. And those who are interested in the conservation of our precious natural resources all across this country should be speaking out as loudly and as forcefully as possible at this time.

There are over 400,000, over 450,000, to be exact, marginal wells in this country, those that produce 10 barrels of oil or less each day. They are high-cost operations. Recent studies by the RAM group indicate that, at $10 per barrel in terms of domestic oil prices, 41 percent of all of those 452,000 wells will be plugged. That means throwing away 200,000 producing wells in this country that have already been paid for in essence by the American people. What a tragic waste.

We have thousands of people unemployed. We are discouraging the next generation that we need from going into fields like petroleum engineering and geology.

□ 1630

The supply and service sector is being destroyed and devastated. I realize there are some of those who think, well, you just put the domestic oil industry on ice. You say to all of these geology graduates, go do something else for the next 4 or 5 years. We will call you when we need you. We say to the supply and service companies, go ahead, fold up, get rid of your inventory, close your doors, clang it shut, and in 4 or 5 years from now we will ask you to immediately re-create your business. We say to those in the exploration business, go ahead, stack the rigs, sell them off for salvage, melt down the iron and steel, and in 4 or 5 years from now when the price goes back up and we need you, we will call you back into action.

I think we realize that is impossible. You cannot destroy a whole industry. People cannot stand by without any income and without any source of economic livelihood. Those thousands of unemployed oil workers today are going to have to find work elsewhere, those students who are graduating in those fields are going to try to find work somewhere else, and the supply and service industry is going to be gone. The independent sector of the industry is going to be gone if we do not do something. It is on the ropes now. Yes, we can wait until a few major oil companies can come in and buy off the properties of the independents at fire sale prices. But I do not think it would be good for the United States of America to have an oil industry that is now diverse with small wells as well as large producers, and replace the openings with new international oil companies because of the profits they are making in refining and the profits they are making in their overseas operations they can continue on in existence even though their domestic operations here in the United States are shut down to a bare minimum.

That should not happen. So we face a crisis, Mr. President. What in the world is the Government of the United States doing about this crisis we face? What are they doing about the alarming increase in oil imports that threatens our national security? What is the Government of the United States doing about the premature plugging of hundreds and thousands of wells in this country, and about the lost resource and waste from a conservation point of view? I will tell you what the Government of the United States is doing about it, Mr. President. The Government of the United States is helping preserve domestic energy production by piling on more bureaucratic redtape that costs the producers millions of dollars each year to comply with.

In the midst of this crisis, we keep on the books a tax that is not collecting a single penny. In fact we are told by the Congressional Budget Office if the windfall profit tax continues to stay on the books they will not collect anything. In fact, there will be refunds due and owing under that tax.

So you say to yourself, why keep a tax on the books that is not bringing in a single penny? It does not make any sense, Mr. President. But if that is all there was to it, you might say, well, it is not doing much harm either. The tax is on the books. The tax is not collecting any money. Therefore it is not doing any good for the country but maybe it is not doing any harm. That is not true, Mr. President, because the burden is still there. The paperwork burden is still there.

We have on the books a tax that is not collecting a penny for the national Treasury. Yet, it is costing hundreds of millions of dollars each year to the hard-pressed small producers of this country to do the paperwork and keep the records to comply with that tax. It is estimated that these small independent producers, the ones that are having to lay off thousands of workers—they have laid off 42 percent of all the oil workers in my State, it is causing such a recession in our part of the country that it is threatening the health of the whole national economy according to leading economists. In the midst of all of this trouble we say to them, you continue to spend millions of dollars uselessly to fill out paperwork for a tax that you do not even owe that we are not even collecting.

Mr. President, if you can explain to me that it has been estimated it is costing the independent producers $700 million a year at a minimum to keep the records for the Government on a tax that the Government is not even collecting, if anyone can explain to me how in the world it is in the national interest to kick an independent industry that is already on the road to destruction, that is causing severe strains on the entire national economy by having them keep useless records and fill out useless forms, to form the basis of a tax that is not even being collected, then I will be the most surprised person around.

What do the people complain about in this country? They say American productivity is going down. About the only thing we are increasing our activity in is the paperwork, bureaucracy and redtape. Mr. President, the current situation is the usual situation with our Government. The Government is not providing any solution to the current energy crisis. They have done nothing to stop the waste of our natural resources; nothing to stop this threat to our national security; nothing to stop the massive unemployment; nothing to keep the consumer from becoming a hostage again of the OPEC nations. All they supply is useless paperwork for independent producers and the waste of millions of dollars by an industry that is already hard hit.

When the independent producers and the other producers have to spend those millions of dollars to keep those records for the Government for a tax that is not even being collected, it means that is money that cannot be spent to keep people employed in a useful job, people who need to feed their families. It means that is money that cannot be spent to keep wells in production. It means that is money that cannot be spent to explore for oil and gas that we need for the future needs of this Nation. It means that is money that cannot be used by companies to stay afloat so they will not have to claim bankruptcy, and throw more people out of work.

Mr. President, if there was ever a clear case for anything, there is a clear case for this amendment to stop this useless bureacratic paperwork burden of hundreds of millions of dollars on an industry that is in trouble when not one person in the United States is getting one penny's worth of benefit from that useless expenditure.

Mr. LONG. Will the Senator yield at that point?

Mr. BOREN. I am happy to yield to my colleague from Louisiana.

Mr. LONG. Mr. President, I thoroughly agree with everything my friend said. One additional point for consideration is this enormous amount of bookkeeping. May I say I have seen some of the bookkeeping. It is the most incredible amount of detailed bookkeeping that the mind of man has ever conceived. For all of this enormous amount of bookkeeping to be done requires a great amount of business expense. Of course, that is deductible from the taxes they otherwise would owe the United States. Here is a tax collecting zero. It does not bring one penny. You have to get at least $19 a barrel before you owe any tax. People today are getting $12 a barrel; that is not enough to survive on. Yet here we have this incredible amount of bookkeeping only to show the Government that you do not owe the Government anything, that you are going broke. You cannot afford to drill any more wells, much less owe any money. To bring in this amount of bookkeeping, to tie up personnel, qualified people, who could be doing something useful is a greater waste of time and money than one could conceive, all for no purpose. It is a tax that is obsolete.

When this tax went into effect people were making some money. The industry was doing very well indeed. But now the industry is going out of business with 85 percent of the rigs shut down, as the Senator said. In areas where you used to have a dozen operators, you have only one left, and he is not making any money.

So in this disastrous situation, requiring the industry to collect a windfall profit tax is adding insult to injury, and it is costing the Government money. It is not making a penny. It is costing Government money. All these bookkeeping expenditures are deductible. It is tying up people who could be doing something useful for the country.

Mr. BOREN. I thank my colleague for his comments. We also must have Government auditors sitting here in Washington that are auditing the useless reports, and the private sector is spending millions of dollars to prepare even though everyone involved knows not one penny of tax is going to be collected. The tax is not collected by definition unless the new oil price is above $29 a barrel. Every single American knows it is not even nearly in that range. It is somewhere in the $10 to $12 range over the last few weeks. Yet, we have people busily spending their time, spending their time filling out useless forms, companies that are so strapped for money they do not know if they can open their doors the next morning, spending thousands and millions of dollars to fill out forms so someone here in Washington can audit those forms.

It reminds me of the day one of our colleagues got up on the Senate floor and he had an amendment to reduce waste, fraud, and abuse on the part of the U.S. Government.

□ 1640

He wanted to cut all waste and fraud. Someone got up and said humorously:

> I want to say to my fellow Senator, you better be careful about cutting out all the waste and fraud. There are so many people depending upon it, it may cause an economic dislocation. We should phase it out gradually.

That reminds me of the situation we are in here. There is not a penny to be collected. We wonder why we are not competing in the world market, and what has happened to our productivity. It does not take anyone with a crystal ball to see that when we in Washington continue to impose useless burdens on people, keeping millions of dollars tied up that could be going into something productive, they are filling out forms so that some bureaucrat can have something to look at in Washington.

I once heard a story that would be applicable to this. Someone was referring to some Government agency and said there were people who were correlating and there were people who were looking at the reports. He saw a man with his head on his desk crying, and he said, "Why are you crying?" The man said, "I am going to lose my job because the person I am filling the forms out for died."

I can just imagine if we are not careful one of these days when all the independent oil producers in the country go broke, we will have people all over Washington crying, saying "I do not have a job anymore because those people are broke and they are not sending in the forms anymore that we were making them fill out on a tax we were not collecting."

It really is "Alice in Wonderland."

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

Mr. BOREN. I am happy to yield.

Mr. METZENBAUM. Mr. President, I have heard all the plaintive cries in the oil industry. Now I hear the music being sung because there is concern about all the paperwork. Those who have not been part of government are always prepared to holler about the bureaucrats of government. I did not make them. The Senator from Oklahoma did not make them. Senator LONG did not make them. Ronald Reagan did not make them. But there are there.

If you just want to get rid of the paperwork, perhaps we can work together to get rid of the paperwork. But that does not require repealing the entire tax which would just benefit the largest oil companies in America to the extent of billions of dollars. Not today, but you know as well as I do that oil prices are going to come back up.

This is just coming in now under the cloak of a tax that is not effective at the moment. When we decontrolled the price of oil, they paid the price of a windfall profit tax. Now you are trying to take it away.

Mr. BOREN. Mr. President, I was listening to my colleague from Ohio and he said several things that I am surprised to hear him admit.

First, he talked about giving a great benefit in the decontrol of oil. I think he is making the prediction that when we decontrolled oil, oil prices would shoot through the ceiling.

They have not; they have gone down. I am glad he stated that fact, because he is always on the other side.

The other thing that is interesting is that we all know the price of oil will go back up one of these days.

Well, it will someday, there is no doubt about that. That is the exact point many of us have been making, that if the OPEC nations really want to evolve a strategy that would be intelligent indeed, they would simply manipulate the oil prices downward for a little period of time.

Their cost of production is something like $2. They can drive the price all the way to the ground. They can drive it down until we plug nearly every well in the United States because no well in the United States can produce at that rate.

That would continue until they got rid of our oil production in the United States. Then they can turn their production back on and then the price goes back up, which is exactly what we have been saying.

When the price goes back up, who will the American people be paying for it? The small independent producer in the United States? No. He will not be in existence anymore.

Will they be paying for jobs here in the United States? No, the jobs will not be here anymore.

They will have manipulated the price to destroy the domestic industry over the next 2 or 3 years so when the price goes back up Americans will get no benefit. There will be no jobs left in this country in the oil industry. We will again be having the American people pay whatever price is demanded because of the dismantled domestic industry, and paying it to people overseas instead of paying it to Americans. That does not make sense.

The Senator from Ohio is right, someday it will recover. But let me point out the paperwork burden is a much heavier burden on the small producers than the major oil companies. They are set up for recordkeeping. They are set up many other ways.

Mr. President, there is one other point I would like the Senator from Ohio to comment on. It is why we have to repeal the tax to avoid the paperwork burden.

Here is why: We have so many tiers of oil—tier 1, tier 2, and tier 3.

I used to keep a bottle of oil on my desk. In fact, it was produced by that well at the State Capitol Building in Oklahoma City, which I am sorry to say has quit producing. It seems to be symbolic of our hard times that it quit producing.

I kept that bottle of oil on my desk and when people came in I would have them guess. It used to be we had 12 or 13 categories of oil. I would say, "Look at this oil. Look at it geologically. Look at how it pours around the bottle. Is that $7 oil or is that $14 oil or $30 oil? Is that tier 2? Is that old oil or new oil or new-new oil? Category A, B, C, D, or G?"

People would look at that, even geologists, and turn it upside down and then they would say, "Senator, I cannot tell you whether it is tier 1 or tier 2."

Mr. President, this was only artificial Government system which set up these categories.

Mr. President, here is the problem: As long as these producers have to keep the records, they have to keep a record on every well, and one well can be different from another well, a neighboring well, even on the same lease, based on the day it came into production, on the number of barrels in production, whether it is high viscosity oil, how much water is in it, and so on. They have to keep all those records.

I can see what would happen if they quit keeping all these records, and then they have to revert back in 1990 or 1991 when the tax does expire anyway.

Let us say 1 or 2 years before it goes out, somehow that threshold is crossed and the Government will say, "We will collect a little bit of money in tax on this. Now, where are your records on these wells? Is that a tier 2 well or a tier 3 well? Is that an enhanced production well? What did it do last August? What does it do now?"

They would say, "I am sorry, we stopped keeping old records. They said we did not have to."

Then they would say, "You may have to go to the penitentiary if you cannot produce those records."

Mr. President, there is no way of doing away with the recordkeeping burden unless we repeal the tax. If you put it on standby, then you have to put the records on standby.

I know how able my colleague from Ohio is. We have crossed swords before on this issue, and we have been together on several other issues. He is a very able Senator, very tenacious. I am not worried a bit that the Senator from Ohio will find a way, if we ever have recovery in the oil industry in this country, for the Federal Government to get its share of taxation out of that industry.

I hope he will join us in seeing that it is just absolutely foolish at this point, and unwise and unfair, to impose a paperwork burden on a whole sector of the economy. It is a waste, a waste.

Hundreds of millions of dollars ought to be going into something productive in the economy. This is a waste, to keep records on a tax that is not even being collected. It was bad enough to have this burden imposed on people in the tax system anyway. We are trying to simplify the burden of recordkeeping. But to impose a recordkeeping on taxpayers who do not owe a tax and who are going broke has to be absolutely unsurpassed in the area of what is ludicrous and what is nonsensical for us to be doing.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I am sure that my statement will be inadequate following the statement of the Senator from Oklahoma on an issue like this. I would like to begin by identifying myself with this reform.

Mr. President, I look at the energy problem, and I see the problem in the faces of many people in my home State, and in my experience I have never seen an economic catastrophe to compare with what we have in Texas.

Mr. President, there have been proposals made, strongly supported in my State, which I have opposed because I did not think they would work, because I thought they would end up hurting my State and country.

I have always felt I was elected to try to get things done, not to do what is popular back home.

Mr. President, I would like to say that there is no reason not to do this. First of all, let us go back to 1979 and 1980. Oil prices had gone up. We undertook the most massive exploration and conservation effort in the 20th century. Government went out and spent money on alternatives. What came of it? Wasted money.

The Government spent money on conservation and what came of that? Nothing.

□ 1650

But the market worked. We increased exploration, we offset declining reserves, we generated the greatest conservation effort in the 20th Century, and we did it all with market forces. And, Mr. President, the Government worked against that effort every step of the way. The very profits that could solve the problem ended up in part being taxed away by the Government in the name of windfall profits. And, we had, in my humble opinion, the greatest demagoguery against a national industry in the history of the country, as Jimmy Carter made the oil industry the villian for all of America's problems, when in fact, they were the salvation for those problems, because the free enterprise system with a profit motive worked.

I would like to make it clear, Mr. President, I never was for the windfall profit tax because there never were any windfall profits and it was a counterproductive policy for the Nation. But, Mr. President, there not only are no windfall profits today no matter how you define them; there are no profits today. People are going broke left and right. People who have invested their whole lives in the ability to produce energy for America are going broke. And it is not their fault. They are not bad business people. They did not make irresponsible decisions. It is because of the collapse in world oil prices.

Mr. President, we need to repeal the windfall profit tax because there are no windfall profits, there are no profits. It is insane to spend money complying with recordkeeping.

But the problem goes beyond that. We obviously could raise Federal revenues by eliminating bookkeeping expenses that serve no productive purpose but that are tax deductible and lower the revenues of the country.

But it goes beyond that. When there is not one bright spot on the horizon of the American oil industry, by repealing the windfall profit tax, we eliminate an absurdity, an embarrassment to the whole logic of free government and free enterprise. But we also save the Government money because we do not have to pay all the bureau-

crats, and we do not have to, through tax deductions on other forms of income, pay the bookkeeping costs on taxes not being collected, but instead people can invest today not because of the price today but because of what they think might happen tomorrow.

If we repeal the windfall profit tax, what we are saying is this: "In this dark depression atmosphere in the petroleum industry, if you have the courage to go out and bet on the future, we are going to let you pay your income tax. If you are a corporation, you are going to pay the corporate tax, but you are not going to have to pay a windfall profit tax. You are going to be treated, in short, like every other producer in America."

Mr. President, that can have a dramatic impact on the energy industry today and, quite frankly, that industry needs some good news, some positive action. There is no reason not to repeal the windfall profit tax. It is not collecting revenues, it is costing the Government money, it is a deadweight burden on the industry, and this action today can be a positive step which can change the psychology of the industry.

I am proud to join my colleagues, Senator NICKLES, Senator BOREN, Senator BENTSEN, and others, in this amendment.

I know there are those who will say this does not belong on the debt ceiling bill. Maybe it does not, Mr. President, but this is a crisis. We have an opportunity to deal with it. We can repeal the windfall profit tax here and sent it to the House and give them a vote. If they agree with common sense and reason and logic, then we will have an opportunity to do something positive for a change, to help America generate the investment that we need to produce energy.

There are some who seem to fear here that somebody might make a dollar if they go out and take a risk, that if oil prices go up in the future, somehow, there is something wrong with making money if you are willing to go out and produce energy we are going to need in the future. Quite frankly. Mr. President, that logic never solved a problem in the history of our Nation. We need positive incentives to induce people at this dark moment to go out and begin to operate rigs again. This is an opportunity to do that.

There are a lot of proposals that have been made that do not make sense, that are counterproductive, that would help some and hurt others. One could justify being against many of them. But, Mr. President, there is no logic at all in being against this amendment.

I urge my colleagues to support this amendment, to adopt it, to give us an opportunity to remove an absurdity from the law books, to remove a windfall profit tax on an industry that has no profits, much less windfall profits, a stifling, deadweight burden on the very incentives that are critical to the future of the Nation. I urge my colleagues to vote for this amendment.

Mr. METZENBAUM. Mr. President, this is deja vu. This is crying time for the oil industry. The oil industry gets treated better around the U.S. Congress than any other industry in America.

There is not anybody in the United States who would deny the fact that the oil industry is having some difficult times and I do not think there is anybody in Congress who is not sympathetic to that fact. As a matter of fact, when the junior Senator from Louisiana proposed that trade adjustment assistance be granted to oil workers, on two separate occasions, the U.S. Senate—with my support, I might say—went along and tried to provide for the unemployed oil workers.

We are not talking about unemployed oil workers here; we are talking about big oil. We are talking about taking care of the largest oil companies in America, the largest oil companies in the world. When there was a problem with respect to the small independents, those who were producing less than 10 barrels of oil a day, in 1981, Congress went along with providing an exemption from the windfall profit tax for the small producer. And we provided the exemption as well for the royalty owner.

We always were told, oh, the poor oil industry, we have to do something for the poor oil industry. I do not think any industry has had more tears flow more copiously than has the oil industry by reason of its problems. In fact, they flowed so greatly and there was so much concern about them that in the 1981 tax bill, we provided a $3.877 billion tax reduction. A $3,877 million tax reduction for the oil industry.

(Mr. ROTH assumed the chair.)

Mr. METZENBAUM. As a consequence, the oil industry, which has been reaping billions of dollars, has not been paying its fair share of taxes. Texaco Corp., in the period between 1981 and 1985, made $1.6 billion. And what do you think they paid? The same 20 percent that the lowest level taxpayer in this country pays? No, they did not pay 20 percent. They did not pay 10 percent; they did not pay 5 percent; they did not pay 2 percent. They paid zero percent. They made $1.6 billion and they received $68 million in refunds.

Then there was Ashland Oil Co. Poor Ashland Oil. They only made $504 million during that same 1981-85 period and they got a refund of almost $34 million. That is a rate of minus 6.7 percent.

Along comes Tenneco.

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

Mr. METZENBAUM. No.

Along comes Tenneco. Tenneco made $2,900 million in that period and paid $31 million, for an effective tax rate of 1 percent.

Phillips Oil Co., to whom we just gave a $200 million tax break in the tax bill we just passed, made $2.9 billion, paid $153 million, or an effective tax rate of 5.3 percent. And Mobil Oil Corp.—that is the company that takes out all those ads and tells us how to run the Government at the taxpayers' expense, that is, the ads are at the taxpayers' expense—tells regularly in the newspapers what we should do and what we should not do, and they have been pretty good at telling us what we should do, because they made $2.4 billion and paid $165 million or a low rate of 6.8 percent.

□ 1700

Now, then, we had the tax bill up recently, and as everyone knows that tax bill reportedly was to increase taxes for the business community and make taxes for the individuals fairer than they presently are. What did we do in connection with that tax bill? Again, we carved out a special provision, carved out a special provision—that was the price of getting the bill out of the Finance Committee—and gave the oil industry according to the information I have before me a tax break over a 5-year period of $25.9 billion. Every time you turn around, the oil industry is here saying, "Please take care of us. Please help us." The facts are that this windfall profit tax repeal will not help a single oil company get out of its present economic condition.

I want to repeat that, Mr. President. There is nothing about repealing the windfall profit tax that is going to help the oil industry today. The oil industry is in trouble because the Arab nations and some of the other nations around the world are producing more oil than is being consumed. It has nothing to do with decontrolling the price of oil. It has nothing to do with anything other than the fact that there is too much oil and some conservation measures have been put into effect and as a consequence we are not using as much oil as we once were. But if you repealed the windfall profit tax this afternoon, it would not do a single thing for the oil tax industry today or tomorrow. The only time it will help the oil industry is when oil prices go back up.

Now, let me address myself to that fact. I do not know whether oil prices are going up or not. The smart people seem to indicate that at a certain point they will be going up. I do not know if they will. But if they will not go up, then whether we repeal the windfall profit tax or we do not repeal the windfall profit tax will not make a tinker's dam of a difference.

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. METZENBAUM. No. I will be very happy to take questions. I have been sitting here listening to my colleagues telling me all of the great merits of repealing the windfall profit tax, and I have been very patient and asked a couple short questions, but I have to get off my mind what is on my mind. And on my mind is that this is just another runaway grab by the oil industry and their friends here in the U.S. Senate to repeal the windfall profit tax, which was first put into place—and the oil industry agreed to it—it was a part of the price of decontrolling the price of oil.

Now, nothing is going to happen, nothing is going to happen to the industry to cause more oil to be pumped today or tomorrow until world oil prices go back up. And although I do not know this figure to be accurate, I just heard the Senator from Oklahoma—and I am sure he is accurate—indicate that the windfall profit tax would not trigger in until the price of oil went up to $29 a barrel. I do not know if that is the correct figure. I am willing to accept his representation to that effect. But whatever the price is, nothing about this proposal will help the industry today or tomorrow until the price of oil goes up, and I think that is a given.

This oil industry is not tottering. It is not teetering. It is not in great trouble. Between 1979 and 1984, revenues of the 25 largest oil companies went up $74 billion. Now, did they run out, as they had told the American people and the Congress that they were going to do, and start digging and exploring and developing. Well, they did to the extent of $11 billion out of the total of $74 billion. But I will tell you what they did with their money. They went out and explored about how they could buy up other oil companies.

They were interested in buying those other companies' oil reserves rather than going out and exploring for their own reserves. Nine of the largest 18 mergers in U.S. history involve oil and gas companies, including the Gulf Oil and Standard Oil of California merger amounting to $13.2 billion, including the Texaco merger with Getty, $10.1 billion, Mobil Corp., with Superior Oil, $5.7 billion. In all three of the above mergers, the primary motivation was to buy another company's oil reserves rather than to drill for those oil reserves. In addition to going out and buying other oil companies and not using their reserves to dig and explore and do the research and development, the oil companies have used their assets to get into other areas such as Mobil, who made the mistake in purchasing Montgomery Ward some years ago and is still having trouble making Montgomery Ward into a decent profitmaker. ARCo moved out and bought Anaconda Copper. British Petroleum and Sohio, which is a Cleveland-based and English-based company, bought Kennecott Copper, and that is not working out. Exxon bought Reliance Electric, and that has not been viewed as a successful merger. Reliance Electric is still operating in Ohio but it used to be a viable, strong company. In addition, Exxon bought an office automation company which has not done well.

So what is am saying is this. I am willing to consider any effort to help the oil industry, but I do not know that there is such a way to do that, and certainly the repeal of the windfall profit tax will not do it. We should not be on the floor of the Senate trying to repeal a tax that is budgeted to bring in several billion dollars a year. Now, I am a realist enough to understand that if you are not as a high enough price, it is not going to do that. The fact is the price could go up overnight, but we do not know that.

Why should we be here this afternoon proposing to repeal the windfall profit tax on the debt ceiling bill? I do not believe it makes good logic. I do not believe it makes good sense. I do not believe it makes good Government policy. I do not believe that it will help the oil industry get out of its present doldrums, and I do not believe there is a single reason why the U.S. Senate should adopt this procedure to repeal the windfall profit tax.

Mr. NICKLES. Will the Senator yield?

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

□ 1710

Mr. METZENBAUM. The Senator from Oklahoma asked me first. I yield to him first, and then to the Senator from Louisiana.

Mr. NICKLES. When the Senator mentioned that the oil industry has had it better than any other industry, can he name another industry that has a windfall profit tax on it? Is there any other industry in the United States—period—that has an excise tax called a windfall profit tax that is levied on it?

Mr. METZENBAUM. No.

Mr. NICKLES. Is there any other industry that has a major commodity that is regulated in price like natural gas is?

Mr. METZENBAUM. There are other industries with regulations with respect to their prices. But let me point out to the Senator that we have given to this industry as well as taken. We have given them the oil depletion allowance, the intangible drilling writeoff, the foreign tax credit; and in 1981 we gave them on a platter—on a platter, if you please—$25.9 billion. We repealed the percentage depletion allowance and the expensing—I withdraw that statement. That is not correct. The fact is that we gave them $25.9 billion.

Mr. NICKLES. When the Senator mentioned these companies, oil companies paying no taxes, am I correct in saying that the Senator was talking about corporate income tax? Those companies did pay a windfall profit tax, production taxes, and severance taxes, and so forth.

Mr. METZENBAUM. I was comparing equals with equals. The Senator is correct—they did pay a windfall profit tax. They did not pay income tax. I was comparing their income taxes with income taxes paid by people as well as other corporations in this country.

Mr. NICKLES. The Senator says he is comparing apples and apples, but other corporations did not have a windfall profit tax. Other corporations did not have production taxes. Other corporations did not pay severance taxes, gasoline taxes, and so forth.

Mr. METZENBAUM. But the fact is that the oil industry does pay at a lower rate than most other major industries.

In the last 5 years, the oil industry paid at an 18.8 percent rate income taxes. Textiles certainly are having a tough time fighting for their existence, and they paid 33 percent. Manufacturing generally paid 24 percent, or about a third as much. The construction industry paid 23.4 percent, about a third as much. So the oil industry has no real complaint.

If at some point in the future prices go back up and the windfall profit tax triggers in and the oil industry is hurting, maybe there would be some reason to reexamine this issue. That is not the case at this moment, because the oil industry has been doing exeptionally well.

Mr. NICKLES. That 18-percent tax was only on corporate income tax and did not include windfall profit tax, severance taxes, excise taxes, or gasoline taxes.

Mr. METZENBAUM. That is correct. But other industries pay their share of taxes in a different way, and you should include those taxes as well. You have to compare equals with equals.

Does the Senator from Louisiana have a question?

Mr. JOHNSTON. Yes. I thank the distinguished Senator from Ohio for yielding.

First, I would say that I agree with the Senator that repeal of this tax is not going to bail out the oil industry at this time. It is really in a severe slump. It is not designed to do that. It is designed to help bail out the country in the future.

I have a couple of questions that I think the Senator will agree with me on and that he will come around to my point of view when he sees the facts.

Mr. METZENBAUM. The Senator is optimistic, but go ahead.

Mr. JOHNSTON. Does the Senator know how long it takes from the time you conceive of drilling a well in a hostile environment in Alaska, which is a prolific yielder of hydrocarbons—how long it takes from the time you conceive a well until you bring the crude into the country?

Mr. METZENBAUM. Are we talking about Alaska only?

Mr. JOHNSTON. Alaska, first.

Mr. METZENBAUM. I think we would all agree that drilling and bringing in oil in Alaska is a very challenging undertaking, and moving that oil from there to the lower 48 is a major challenge.

Mr. JOHNSTON. Will the Senator agree with me that it is around 10 years, give or take 2 or 3 years?

Mr. METZENBAUM. I have no idea how long it takes to drill a well and make it more productive in Alaska. I would be more interested in what the Senator from Louisiana would tell me about drilling a well in Louisiana, Texas, or Oklahoma, because there you have more normal weather conditions.

Mr. JOHNSTON. I was going to get to that. I take it that the Senator would not disagree with me, and I submit to him that it is correct at around 10 years.

Mr. METZENBAUM. I neither agree nor disagree.

Mr. JOHNSTON. I mentioned Alaska because it is a very hostile environment, but a very big part of our potential reserves.

Second, would the Senator agree with me that it takes, on the average, more than 5 years—and, as a matter of fact, on an average, about 7 years—on the OCS to get a bid and drill a well, find the field, develop it, get the pipeline, and get the oil on shore? The regular OCS—say California, if we are ever able to drill there—you are talking 7 years, plus or minus.

Mr. METZENBAUM. Is it not a fact that what we are talking about—and it is probably more important than the question of drilling a new well—is that there are wells at the moment that are being shut down and that the issue has to deal with how long it would take to reopen those wells and make them productive? I ask my friend from Louisiana, who is much more knowledgeable about oil drilling than I, whether it is not a much shorter period, assuming that the well is still viable and still has the pressure to push up the oil—is it not a fact that it would take a much shorter period of time in order to reopen wells that may be closed down at the present time?

Mr. JOHNSTON. That is a separate question and a very interesting one and an important one in this connection. But if the Senator would follow me with my logic, because I think he said he would agree with me——

Mr. METZENBAUM. The Senator is more optimistic than I am that I would agree with him. I do want him to answer my question.

Mr. JOHNSTON. I certainly will. But, first, if it is 10 years in Alaska and 7 years on the OCS, and a lesser time but a significant time for deep wells on the overthrust belt, or below 15,000 feet in the continental United States, the point is that a well you drill today, you drill based on what you think the prices might be 10 years, 7 years, 5 years, 2 years from now.

The reason why the repeal of the windfall profit tax is important is not only because of the paperwork that Senator BOREN described so well—which, by the way, is not insignificant.

Mr. METZENBAUM. I am willing to help on the paperwork.

Mr. JOHNSTON. That is progress. But, second, because there is a very big danger—in fact, there is a virtual certainty—there is a fact of no drilling of wells today, no further activity in Alaska or on the OCS. You are not going to get the bids on the leases. You are shutting down the whole industry.

That is not so important for the industry, maybe, but for the country; because if you do not get the well drilled today in Alaska, 7 years from now, whatever the price may be, you have no oil to sell. The same is true in California or off the coast of Louisiana.

Would the Senator not agree with me, therefore, that it is important to the country that we proceed with exploration and development of our resources, so that 5, 7, 10 years from now we will have oil?

Mr. METZENBAUM. I must indicate to my colleague—and I do not like to do this—but I left the Rehnquist hearing in order to come here when I heard this matter had suddenly come up on the debt limit bill.

□ 1720

I am going back there.

It is my understanding Senator PACKWOOD and Senator HEINZ both have an interest in this. It is my understanding that Senator PACKWOOD does not believe this amendment belongs on this bill, but we will let him speak for himself.

When I return, and I expect we will be debating this for a while, I will be very happy to give a full and complete answer.

Mr. JOHNSTON. I understand. The answer in my logic is unassailable, he cannot think of an answer right now, and he will be back.

Mr. METZENBAUM. Not at all. I am told I am about to lose the last round of questions of Justice Rehnquist. I do want to ask those questions.

Mr. PRYOR and Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, does the Senator want me to yield?

Mr. HEINZ. Mr. President, will the Senator yield without losing his right to the floor?

Mr. PRYOR. I am happy to yield.

Mr. HEINZ. Mr. President, just to accommodate my colleagues, and I am not going to do this at this time, I just want to put Senators on notice. I am advised at this time that the amendment that has been offered by the Senator from Oklahoma may indeed violate section 311 of the Budget Act, and at the appropriate time I am going to make a point of order on which the Chair will be required to rule that this does or does not violate section 311 of the Budget Act, that it loses revenues when Congress is at or below the revenue floor in the 1987 budget.

I also advise Senators that I would anticipate that there will then be a motion to appeal the ruling of the Chair, which is a debatable motion. After a reasonable amount of debate, it will be the intention of the Senator from Pennsylvania at the appropriate time, not unduly foreclosing debate, to move to table any such appeal of the ruling of the Chair if the Chair rules as I anticipate, although I cannot predict the Chair will, which in my judgment it would be my guess that the Chair will agree that this amendment does violate section 311 of the Budget Act. I cannot speak for the Chair.

But I do need to pose that hypothetical in case the Chair agrees with that point of order. If the Chair does not agree with that point of order, then we will proceed to consider the amendment on its merits.

I announce this to all Senators.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HEINZ. I thank the Senator from Arkansas for yielding.

Mr. PRYOR. I thank the Senator from Pennsylvania.

I thank the Chair for recognizing me.

Mr. President, there has been quite a discussion this afternoon in the Senate Chamber about what the oil industry is. I am very sorry that my very good friend from Ohio, Senator METZENBAUM, had to go back to the Rehnquist hearings because there are some things that the Senator from Ohio stated that I heartily agree with. For example, I heartily agree with the Senator from Ohio when he states that some of the major oil companies in the United States are not doing so badly. I agree with that statement 100 percent.

All we have to do is look at some of the stocks of the major oil companies,

Mr. President, and I do not think they are faring too badly in this situation.

The Senator from Ohio has stated that the revenues are $74 billion up this year. That is for most of the major oil companies.

So I would concede, not only concede but agree, with my friend from Ohio that the big oil companies frankly are doing very well in this particular period.

But if I might I would like to seek the attention of my colleague from Louisiana, who is on the floor at this time and, just as I thought, posed some good questions to our friend from Ohio. The reason I am glad that our friend from Louisiana is on the floor at this particular moment, Mr. President, is that I want to talk just a moment about a little town that is very near the northern boundary of Louisiana. I want to talk just a moment about Smackover, AR. Smackover, AR, is a very small town in the southern part of our State. It is best known for producing a great all-American football player by the name of Clyde "Smackover" Scott in the 1940's or 50's. He went on to play for the Naval Academy and for the Philadelphia Eagles, and his jersey has now been retired by the University of Arkansas Razorbacks.

The other point about Smackover is—and this is for historic purposes, I say to my friend from Alaska—for historic purposes, Smackover, AR, and not somewhere in Texas, is where H.L. Hunt found his first oil well. In fact, H.L. Hunt was a night clerk in the old Orlando Hotel in Camden, AR, and could not pay his hotel room bill or provide food and lodging for himself. So they allowed Mr. Hunt to work in the oil fields during the day and to night clerk at the hotel.

He got hold of an oil lease, they say through uncertain means, and ultimately found his first oil well in or around Smackover, AR.

The third thing about Smackover, AR, Mr. President, is that Smackover, AR, has one traffic light, only one, and this morning I was talking to my friend the Ford dealer in Smackover, and he said, "Senator PRYOR, our town is so poor, it is so absolutely devastated because of this oil industry crisis that we are going to have to turn off our only traffic light. That is how bad it is."

And my point, Mr. President, in talking about Smackover, AR, is to try to distinguish between the Smackovers in this country and the Magnolias and El Dorados and the Camdens and those areas in Louisiana, Texas, and Oklahoma, that we have heard about—to attempt to distinguish between the real plight of the U.S. oil industry and the Senator from Ohio's description of the industry's situation.

I agree that the big companies are not doing badly. They are making money, Mr. President. Your small independent producers, however, those people who find the oil that runs this country, those are the people today who are in severe financial straits.

Mr. President, I do not think, and I hope I am wrong, but I do not think that during the course of this year on the floor of this Senate any Member of the Senate has ever talked about something called net-back contracts. We are going to hear a lot about net-back contracts very soon, because when we look at the dramatic increase in the number of imported barrels of oil every day coming into this country from Saudia Arabia and all over this world, we are seeing that the net-back contracts on oil refineries and their relationship to Saudi Arabia and other oil-producing countries in my opinion are nothing less than insidious.

We look, yes, at the big oil companies making these big profits on refining. Refining our oil, refining the oil produced in Smackover, AR? No, sir. Refining the oil produced in Saudi Arabia.

In fact, we are seeing such a major glut of imported oil that I would daresay, Mr. President, if we could go to the west coast today and fly over the Pacific Ocean, we would see a line of transport and cargo ships bringing oil into those west coast refineries at an absolutely unprecedented rate. There is a glut of imported oil. Our independent oil producers are going down the drain. They are cutting back all of the drilling operations in Louisiana, Oklahoma, Texas, and South Arkansas at the same time the major oil refineries are reaping major profits.

Mr. President, the net-back contracts that I referred to will be discussed at length on the floor of the Senate some day next week when I will bring articles to the Senate for the RECORD about how the net-back contracts are affecting the oil industry in the United States.

None of us wants to see continued soaring gasoline prices at the pump. But if we think for one instant that today's reduced gasoline price at the pump is going to continue, Mr. President, we are wrong. Those prices are going to rise, and those prices are going to rise dramatically when we see the collusion that is taking place with Saudi Arabia and the major oil refineries, when we see that collusion taking place, working to the detriment of the independent oil producer, who, I repeat, finds most of the oil that keeps this country running.

In closing, Mr. President, let me quote from a May 23 article from the Wall Street Journal written by James Tanner.

> This year's oil price collapse, though substantially benefiting most Americans, may have triggered an irreversible set of forces that will renew U.S. dependence on insecure foreign sources of petroleum. 'The handwriting is on the wall,' says James Ketelsen, Tenneco chairman.

I quote further, Mr. President:

> Oil consumption is going up and domestic production is dropping.

Let us examine what has happened and what has caused this dramatic fall in oil prices since Janaury.

I think that we will see that to a large extent the net-back contracts caused by the imported oil flooding this country today are actually one of those causes.

□ 1730

I rise in support of the amendment of the Senator from Oklahoma. I hope the Senate will support that amendment, and I hope that we will continue this discussion and find an answer to this tremendous problem that is devastating our country.

Mr. STEVENS. Mr. President, I am delighted to be a cosponsor of the amendment of the Senator from Oklahoma. As one who voted against the windfall profit tax, I am pleased to be here on the floor at a time when many people realize that it is a tax that was ill advised at the time and it certainly is one that is placing a great burden on the oil-producing companies now.

Representing a State that is the last hope of the United States as far as achieving any degree of self-sufficiency, I can report to the Senate that exploration of Alaska is at a standstill; that the problem of the industry that has been described in Oklahoma, Texas, and Louisiana, and other places is just a minuscule problem compared to the problem in the State of Alaska with the costs that we have in the State of Alaska in our oil-producing areas and the current price of oil worldwide.

I am quite hopeful the Senate will pass this amendment and that we will not delay in doing so, because it is extremely important to eliminate, at the present time, at least, the current paperwork burden that is imposed upon all oil producers in the country to report the prices of their oil even though they do not have to pay a tax at all. And I think that just the burden itself ought to be sufficient justification.

Mr. NICKLES. Mr. President, I wish to thank my good friend, Senator PRYOR, for his comments and his cosponsorship and efforts to repeal the windfall profit tax and other colleagues who have made similar statements.

I also ask unanimous consent that Senator BURDICK, Senator BOSCHWITZ, Senator DOMENICI, Senator MCCLURE, Senator JOHNSTON, and Senator SIMPSON be added as cosponsors.

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

Mr. NICKLES. Mr. President, to clarify one of the statements that was

made by our colleague, Senator METZENBAUM, that the oil industry is not paying any taxes, that is totally and completely wrong. The facts are that the oil industry, on corporate income tax, paid about a medium amount of tax. But, as I stated before, it is the only industry in the United States, the only one, that pays a windfall profit tax. And in many cases, in some years the windfall profit tax was a very substantial amount of the total corporate income tax for all corporations.

In looking back, in 1981, the total windfall profit tax was $23.4 billion. That equaled 38 percent of all the corporate income taxes for that year. In 1982, the windfall profit tax was $18.5 billion. That is 37 percent of all the corporate income tax that was paid that year.

And I might mention, Mr. President, this is in addition to those oil companies' paying corporate income taxes. This is windfall profit tax on top of their corporate income tax.

In 1983, oil companies paid $12.2 billion. Now when I say oil companies, I am also mentioning oil companies, independent companies, large companies, small companies, and even royalty owners. The total corporate income tax for that year was about $37 billion. So that was 33 percent of all the corporate income tax that year which was paid in windfall profit tax by only the oil industry.

There is no other industry that pays a windfall profit tax. It should not have been passed in the first place. I hope that today we will have a chance to repeal it. I hope that we will repeal it on a straight up or down vote.

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

Mr. DOMENICI. Will the Senator withhold?

Mr. NICKLES. I am happy to withhold.

Mr. DOMENICI. Mr. President, I compliment the junior Senator from Oklahoma, Senator NICKLES. I want to make a few points with reference to, not the technical aspects of the budget, because we can talk about that later, but basically the real impact of this amendment.

Yesterday the Senate, by an overwhelming vote, adopted economic assumptions for the year 1987. We took the Congressional Budget Office economic assumptions and then we took the Office of Management and Budget and, as under the old Gramm-Rudman, we averaged them.

Perhaps Senators are not aware of the fact that in adopting new econmic assumptions for the year 1987 we adopted a new estimated price of oil for 1987. And whether or not that amendment becomes law, there will soon occur an event that will establish the oil prices for 1987 upon which the revenue basis for our country will be established. And they will be unequivocal. It is not a question of whether that amendment clears and the President signs it. It will be one of two numbers because OMB and CBO have to do that. As a matter of fact, OMB will do it very soon, and it will be binding.

Mr. President, the estimated per barrel cost of oil that is figured in this overall budget of the United States, from which many things derive—revenue estimates, costs for defense, when they buy oil during the year—is either $12 per barrel for the whole year or $13.75. One or the other; probably splitting the difference will be the average.

Now, the reason I am telling the Senate this is because either of those numbers will be the official estimates for 1987. There will be not $100 million in revenue that we can expect from windfall, not even $50 million, much less the billion dollars which have been discussed by opponents to this amendment. There will be zero. No revenues will be assumed from that reestimate in the base line. No revenue impact is the year's expectation. Revenue is the issue before us, or anything else in the U.S. Government that is affected by oil prices.

So I hope everyone understands that while there may be technical concerns about whether the repeal of the windfall profit tax adversely affects the revenue expectations of the country, they are technical, because there will not be any revenues that will flow to the Federal Government. As a matter of fact, since there will be no real revenues, there will be negative revenues because we still will have in place significant bureaucratic apparatus that we are going to pay for.

□ 1740

Now we have been talking heretofore about our independent producers having to spend their money to file on stripper wells yielding three barrels a day. But now I am talking about the fact that our bureaucratic apparatus in IRS has a whole establishment for the windfall profits tax. It is going to stay there even though the revenues are zero because the price is between $12 and $13.75. And if we could, we would do away with that bureaucracy. But so long as there is a windfall profit tax on the books, we will not.

Mr. President, there has been a lot of talk about justification for repeal. Let me tell you what I perceive to be the joke of this decade. Perhaps it in and of itself is justification for taking this law off the books.

Would any Senator want to guess? I will not give you a chance to look at anything. When we passed the windfall profit tax that we are here trying to repeal, would any of you like to guess what we put in as the price of oil upon which we would get a windfall profit tax today?

You know our producers are out there, and they are supposed to be paying a windfall profit tax. What did we build into the base when we passed a windfall profit tax? Should I speculate? Forty dollars today? Does it sound high? Fifty dollars? Seventy-six dollars a barrel is what we expected oil to be today, upon which we passed this windfall profit tax that was going to fill the coffers of the U.S. Government with revenues that were allegedly windfall.

Mr. President, Members of the Senate, if we did not have anything else around but that estimate, knowing that instead of $76, our independent producers are out there suffering under a bureaucratic maze that expected the price to be $76, I suggest that we are suffering under a heavy disincentive to invest today. To leave this language over their heads in this kind of a crisis situation is absolutely ridiculous.

I think we ought to support the junior Senator from Oklahoma, Senator NICKLES, and do what everyone knows is right.

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

Mr. DOMENICI. I am pleased to yield.

Mr. JOHNSTON. Mr. President, the repeal of this—I want the attention of the Senator from Oklahoma if he would give it as well—windfall profit tax would have absolutely no effect during the current fiscal year. The problem here is one regarding the Budget Act, and the point of order. I am advised by the Parliamentarian that if we make the effective date of this amendment effective October 1, 1988, instead of the date of enactment, the problem is solved.

So may I ask, Mr. President, a point of order? Am I correct that solves the revenue problem?

The PRESIDING OFFICER. The Senator is correct. The revenue problem would be solved if the amendment takes effect beginning fiscal year 1988.

Mr. GRAMM. Will the distinguished Senator yield?

Mr. JOHNSTON. Yes.

Mr. GRAMM. But fiscal year 1988 begins on October 1, 1987. So if the amendment were amended to the effective date being October 1, 1987, it would cover the fiscal year 1988 problem. Is that not correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. JOHNSTON. Mr. President, if the Senator from Oklahoma is on the floor, I suggest if he agrees with the strategy that we yield to him so he may amend his own amendment and take care of the problem.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I believe the Senator from New Mexico had the floor and yielded to the junior Senator from Louisiana for a question. Am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. Does my friend have another question? I will not yield the floor for the moment.

Mr. JOHNSTON. The question was, Is that a good way to approach this matter?

Mr. DOMENICI. In my opinion, Senator, if the objective of the distinguished Senator from Oklahoma is to repeal the windfall profit tax, and not have a point of order brought against it here on the floor, my opinion is that is what he ought to do. Obviously nobody has to draw any big conclusions from that. It will remain in effect until that date. But it will be off the books from and after that time assuming it becomes law.

Mr. President, while the Senator from Oklahoma thinks about whether he wants to do that, let me discuss it a little longer here.

Mr. President, I strongly suggest to my friend from Oklahoma that he change the amendment as quickly as possible and that he add some language to it with reference to the burden of paperwork that might have to be filed by his and my constitutents and those who are burdened by that law. I think maybe we could draft some language that says it is off the books October 1, 1987, but eliminate the burden for any filing in between.

If we had to assure anyone that we were OK, we could, so long as the price of oil does not exceed the tier I price. The Government would not be losing anything.

Mr. President, let me complete my thoughts. I had made a couple of points. One is we expected the price of oil to be $76 a barrel as of today when we passed the windfall profit tax. I think you already know that in some spot markets, in the North Sea it is $9. Is that correct? I ask my friend from Alaska.

Mr. STEVENS. Alaska is $9.80.

Mr. DOMENICI. I believe it is not much over $10, $11, for domestic oil here in the United States—perhaps $12.

I have just told the Senate that clearly what we are going to assume in our budget for next year is somewhere between $12 and $13.75. There will be absolutely no taxes to the U.S. Government, and it is almost as if leaving this on the books approaches this situation in a way that says we kind of want to rub it in.

I do not agree with my friend from Ohio who talks for 10 or 15 minutes about how bad the oil companies are, and infrequently those of us who support it ought to know better. Frankly, I believe that in my State there are thousands of independents that I am proud to support. I only wish they had their rigs putting some holes in the ground instead of stacked up doing nothing, causing us to get in worse and worse condition.

Frankly, I want to make my last statement about where we are going to be 8 or 9 years from now. I think we are going to be in an enormous crunch if we do not give our oil people every incentive to stay in the business, to hold on for their dear life, to get out there, and do what they can with what is left.

Having said that, Mr. President——

Mr. HEINZ. Will the Senator yield for a comment?

Mr. DOMENICI. I am pleased to.

Mr. HEINZ. The Senator a moment ago suggested that the pending amendment offered by the Senator from Oklahoma ought to be modified to begin as of October 1, 1987. I can support the amendment of the Senator from Oklahoma. I agree fully with the Senator from New Mexico that this is a very important thing to do in order to avoid the problem of a point of order.

I will not get into the problems associated with the point of order. But it is going to be made if the amendment is not modified. There is no sense putting the Senate through a number of votes when we can vote up or down on the merits of the amendment of the Senator from Oklahoma. I think it is to the Senate's advantage for the Senator from Oklahoma to modify his amendment, and if I understand his argument since the windfall profit tax is not going to take in any money in fiscal 1987 there is no reason for him to have it effective in fiscal 1987.

If he makes it effective the beginning of fiscal 1988, he can solve several voting issues that we need not confront.

I thank the Senator for yielding.

Mr. DOMENICI. Mr. President, might I ask my friend, the floor manager of the bill, the distinguished Senator from Pennsylvania if the distinguished junior Senator from Oklahoma does not amend his amendment so as to move the date forward as we have been discussing. Is it the intention of the Senator from Pennsylvania to make a point of order that it is out of order under the section 311 of the Budget Act?

Mr. HEINZ. I say to my good friend from New Mexico that a point of order will be made whether or not by the floor manager of this bill. Senator METZENBAUM has indicated his intention to make a point of order if I do not.

□ 1750

I have indicated that earlier it was my intention to do so. But I hope that that is not necessary, that it will be unnecessary if the amendment of the Senator from Oklahoma is modified.

Mr. DOMENICI. 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. NICKLES. 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. NICKLES. Mr. President, I ask unanimous consent to modify the amendment. I send the modified amendment to the desk.

The PRESIDING OFFICER. The Senator has a right to modify his amendment. The amendment will be so modified.

The amendment, as modified, is as follows:

At the end of the amendment insert the following:

SEC. Repeal of the Windfall Profit Tax.

(a) IN GENERAL.—Chapter 45 of the Internal Revenue Code of 1954 (relating to windfall profit tax on domestic crude oil) is hereby repealed.

(b) EFFECTIVE DATE.—The repeal made by subsection (a) shall apply to oil removed from the premises after October 1, 1987.

SEC. Clarification of Statute of Limitations With Respect to Underpayments of Windfall Profit Tax.

(a) IN GENERAL.—Subparagraph (A) of section 6501(p)(1) of the Internal Revenue Code of 1954 (relating to special rules for windfall profit tax) is amended by adding at the end thereof the following: "For purposes of the preceding sentence, a return shall not be treated as required with respect to such oil if the amount withheld under section 4995(a) is not less than the amount required to be withheld as shown on the return by the first purchaser of such oil."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as of October 1987 and shall apply as if included in the amendments made by section 101 of the Crude Oil Windfall Profit Tax Act of 1980.

(e) Amended further that no reports of any type shall be required in compliance with the windfall profits tax act effective on date of enactment.

Mr. NICKLES. Mr. President, as a brief explanation of our amendment, I am following the suggestion and advice by my good friend and colleague Senator HEINZ.

We moved the effective date to 1987. We also put in a provision for no added paperwork, but the provision would be effective on the date of enactment. So we relieve the requirement for paperwork under the present law.

Mr. President, I am ready to vote on the amendment and I would hope that we would.

The PRESIDING OFFICER. Is there further debate?

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

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

Is there further debate on the amendment?

Mr. HEINZ. Mr. President, this amendment, as I understand it, has been modified, so it does not take effect in fiscal 1987. Is that correct?

Mr. NICKLES. The Senator is correct as far as repealing the windfall profit tax, but we did put in a provision that would repeal the paperwork for them effective on the date of enactment.

Mr. HEINZ. And if oil revenues were to rise, which I am sure the Senator from Oklahoma would like, and which consumers probably would not—if they were to rise unexpectedly next year during fiscal 1987, although the paperwork would not be required, presumably what would happen is that oil producers would nonetheless incur, during fiscal 1987, a tax liability, at which point paperwork would have to be given to them. Is that correct?

Mr. NICKLES. The Senator is correct. If we cross the threshold for tier 1, the lowest threshold price, which is currently $19.40, then, of course, there would be a paperwork requirement for the windfall profit tax.

Mr. HEINZ. So notwithstanding the paperwork requirement, the Senator's amendment as modified does not relieve anyone of any tax liability during fiscal 1987 should oil prices recover, and, in effect, the only practical effect would be on fiscal 1988 and thereafter.

Mr. NICKLES. The Senator is correct.

Mr. HEINZ. I thank the Senator from Oklahoma, first of all, for modifying his amendment. It makes the point of order that was going to be made earlier unnecessary. There is no violation of the Budget Act insofar as this Senator can discern. I certainly will not make a point of order and I would think there would be no useful purpose served by anybody making a point of order with that modification.

Let me just say on behalf of the Senate Finance Committee, which has jurisdiction over this issue, that our committee has not held any hearings on this issue. Senator PACKWOOD, the chairman of the committee, opposes the repeal proposed by the Senator from Oklahoma. As floor manager of the bill I, too, oppose it, although were we to hold hearings I would have an open mind on the issue and I do not wish to prejudge it.

I do want to say that I think that we had ample opportunity during consideration of tax reform in the Senate Finance Committee for Senators to have raised that issue. We started considering the tax bill for markup back in the early spring of this year and we completed our markup only after 2 or 3 months.

Mr. President, there are many Senators who do a very good job of representing their constituents who are from so-called oil and gas States. The Senator from Louisiana, the ranking member, is from Louisiana, one of the premier oil producers in the United States. Senator BENTSEN is, of course, from a very important oil producing State.

The senior Senator from Oklahoma, Senator BOREN, is of course, from another premier oil and gas producing State.

I want to point out that none of those Senators I have just mentioned offered an amendment to repeal the windfall profit tax and, as a result, there was no effort to hold hearings in the committee, there was no effort to press any such issue to a determination by the committee, there was no debate in the committee. Those of us on the committee are very, very reluctant to agree to any change in the law, no matter how persuasive the arguments are of the Senator from Oklahoma, to repeal the windfall profit tax.

There is just one comment I would like to make. It is this:

I have heard the argument here today on the floor that the reason the windfall tax ought to be repealed is because it is not raising any revenue.

Mr. President, regardless of where you stand on the issue of whether a windfall profit tax is good policy or bad policy—and I have heard people argue persuasively on both sides and I supported the imposition of the windfall profit tax so people know where I am coming from—the fact is that the argument that is given to repeal the tax because it is not raising any revenue is about as phony an argument as I have every heard. I suppose if we accepted that argument and one of these days the stock market should fall so that we are not collecting any capital gains taxes from wealthy people, the argument would be made, "Let us repeal the capital gains tax because this year since the stock market fell we did not raise any money by it."

Well, if that is the basis on which we are going to legislate around here, we ought to think twice, because we should not try to run our tax system on a year-to-year basis.

□ 1800

Mr. President, earlier, when we considered the tax reform bill, there was an amendment offered by a number of Senators that was a version of the standstill tax act. I voted for the amendment. As I recollect, 80 or 90 Senators voted for an amendment that said we do not want to make any major changes in the tax bill after we pass tax reform. We are all entitled to change our minds on that. I guess some of our colleagues are. But what I suggest is that if we are going to change the Tax Code every year just because one provision or another is not raising the money that we expected from it, then, Mr. President, it is Katy-bar-the-door. It is to descend into a catacomb of changes in the Tax Code from which we will never emerge. I suggest that that argument is a red herring and it really is one that is beneath the dignity of this body.

I say again in terms of the merits of the issue, I think everyone can make up his own mind, but it seems to me that we do not want to say that because there are a lot of farmers, for example, who are not making any money, we ought to repeal the income tax on farmers for the next millennium. I hope that that is not a reason for people to vote in favor of this amendment.

Again, I oppose the amendment; I want to see it defeated. I think we are prepared to vote on the amendment.

Mr. NICKLES. Mr. President, I ask unanimous consent that the distinguished Senator from Alaska [Mr. MURKOWSKI] be added as a cosponsor.

The PRESIDING OFFICER (Mr. MATTINGLY). Without objection, it is so ordered.

Mr. DOLE. Mr. President, I am pleased to cosponsor the amendment of the distinguished Senator from Oklahoma. I thought the windfall profit tax was ill-conceived when it was enacted and spoke and voted against it at that time. Events since 1980 have only reinforced my opinion.

The domestic oil industry is now on its knees. The tax can raise no revenue when there is no profit, let alone any so-called windfall.

By repealing the tax, we can provide some real relief to our financially troubled producers. It won't cost the Government anything to repeal the tax because oil prices are not likely to rise to a level which will trigger the tax in the foreseeable future. But it will save producers the cost of hiring an accountant to fill out the paperwork. Maybe we can't provide any other relief at this time, but we should be able to relieve producers of this irrelevant, but costly, administrative expense. I cannot see any argument to require producers to pay for these forms to be filled out when they, and we, know that they have no windfall profit to tax.

I urge the adoption of this amendment.

Mr. LEVIN. Mr. President, I sympathize with the plight of the oil industry, not only because of the personal hardships which are being suffered, but also because of the threat it poses to our long-term energy security. I fear that what may look like a gift

from the Saudi's now—cheaper foreign oil—is in a reality a Trojan horse which will make us weaker in the 1990's as our dependence on foreign oil grows again.

I understand that, given current price levels, the windfall profits tax is an administrative burden without a compensating revenue benefit for the Treasury. At most, however, this would appear to justify suspending the windfall profits tax until the price of oil rises. I remain convinced that a windfall profits tax would still be appropriate if the price of oil increased again far above the cost of production. To repeal it entirely now, in the hopes of reinstating it when market conditions change, is unrealistic.

Therefore, since the choice is between repeal of the windfall profits tax and keeping it on the books, I vote to retain it.

Mr. NICKLES. Mr. President, I am ready to vote; I think everybody is ready to vote. First, a quick response to Senator HEINZ.

There were several people who wanted to offer the amendment, both in the Finance Committee and on the floor. The reason they did not is that they had CBO projections of a $7.4 billion loss of revenue that was based on oil price of $24, $26, and $27. They also put in a line that said:

> Current posted prices for West Texas Intermediate approximate $15.00 per barrel, with spot market prices averaging several dollars per barrel less. If current prices were to increase at the rate of inflation through 1991 it is doubtful that there would be any significant revenue loss from repeal.

That is from David Brockaway.

They will come out with revised estimates, I believe, on August 4 that will show a zero loss from revenue for the next 7 years.

I hope we will repeal the tax. I hope we will vote. It is time we repealed the windfall profit tax, and I hope we do so tonight.

Mr. JOHNSTON. Mr. President, the Senator from Ohio will soon be on the floor to make an objection. I just want to say one word in very strong support of this amendment.

Those who claim oil companies are making a lot a money today I think, first of all, are not familiar with the latest figure. Second, to say that they are making money really misconstrues the point because they are not making money on exploration; they are losing money on exploration and production. They are making money, to the extent that they do make money, on refining and distribution. That is where all of the profit is today. They will continue to do that whether it is Saudi Arabia oil or whether it comes from the Persian Gulf or from wherever around the world they import it from. That is the only place where there is profit today.

There are in fact no exploration wells being drilled today. What this amendment will do is give some slight incentive for the future so that with the hostile environments like Alaska, like the OCS, where the leadtimes are 5 to 7 years, there will be some hope that America's future energy supply will be enhanced by drilling and the repeal of the windfall profit tax will help that immensely. I congratulate the Senator from Oklahoma for proposing this amendment.

I yield the floor.

Mr. HEINZ. 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. METZENBAUM. 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. METZENBAUM. Mr. President, I have a question to ask of the author of the bill. It looks to me as if he has written one of those special tax exemptions into this measure in addition to the repeal of the windfall profit tax, which in itself is bad enough. It reads:

> SEC. . Clarification of Statute of Limitations With Respect to Underpayments of Windfall Profit Tax.
>
> (a) IN GENERAL.—Subparagraph (A) of section 6501(p)(1) of the Internal Revenue Code of 1954 (relating to special rules for windfall profit tax) is amended by adding at the end thereof the following: "For purposes of the preceding sentence, a return shall not be treated as required with respect to such oil if the amount withheld under section 4995(a) is not less than the amount required to be withheld as shown on the return by the first purchaser of such oil."

I do not know what that means, and I do not think we have been able to find section 6501(p)(1). It looks to me like one of those special provisions that was in the tax bill we passed a few weeks ago.

It certainly does not deal with the subject of the repeal itself, because that is dealt with in separate language in this amendment. I believe that this body is entitled to a full explanation as to whether one or more people are getting special privileges under this language. I am not saying they are. I certainly would like to know the facts. Would the Senator from Oklahoma be good enough to explain to the Senator from Ohio what that language dealing with section 6501(p)(1) of the Internal Revenue Code of 1954 is? If it is windfall profit tax repeal, it looks as though it is something special for somebody special. I might say we have asked the Finance Committee. They were not able to advise us.

Mr. NICKLES. Could the Senator repeat his question? I have been involved in about three conversations at the same time.

Mr. METZENBAUM. Mr. President, the question is that the bill provides that

> Subparagraph (A) of section 6501(p)(1) of the Internal Revenue Code of 1954 (relating to special rules for windfall profit tax) is amended by adding at the end thereof the following: "For purposes of the preceding sentence, a return shall not be treated as required with respect to such oil if the amount withheld under section 4995(a) is not less than the amount required to be withheld as shown on the return by the first purchaser of such oil."

That sounds like a special provision in the tax bill they called the transition rules. This looks like a special provision carved out for somebody special, and I would like to know what it is all about.

Mr. NICKLES. If the Senator will yield, as I understand it, basically what it would do is put the windfall profit tax section statute of limitations in conformity with the rest of the code. When it was drafted in 1980, for some reason, that was left out. This would be consistent with other provisions that would provide for that limitation.

Mr. METZENBAUM. I have to point out to my colleague from Oklahoma that that is not the way the language reads: It reads:

> A return shall not be treated as required with respect to such oil if the amount withheld under section 4995(a) is not less than the amount required to be withheld as shown on the return by the first purchaser of such oil.

□ 1810

That is not a matter of conforming it with other provisions of the code. That is carving out something special. I do not know what it is, but I am entitled to know and so are the rest of the Members of this body before being asked to vote on this particular proposal.

One part we know is bad. That is the repeal of the windfall profit tax. But this is something over and beyond that.

Mr. NICKLES. Mr. President, did the Senator ask a question?

Mr. METZENBAUM. I am, indeed, asking a question. I am just saying I do not know what that is. The Finance Committee does not know what it is. It is the Senator's amendment. I think we are entitled to a full explanation as to why that is there. We can understand the provisions in the first part of it where it says that chapter 45 relating to windfall profit tax and domestic crude oil is waived and then the provision for the effective date. But then there is another section, and it seems it has carved something special out and I do not know what it is. I think we are entitled to know that.

Mr. NICKLES. To again respond to the Senator, as I understand what it basically says is that IRS cannot come against that taxpayer after the 3-year statute of limitations. If we did not have that, IRS could continue to come back and that is basically consistent with other provisions in the code.

Mr. METZENBAUM. Mr. President, 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.

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. BENTSEN. Mr. President, I ask that further proceedings under the quorum call be dispensed with.

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

Mr. BENTSEN. Mr. President, I heard one of the speakers on this bill saying deja vu.

Well, in one respect it is. I think back to 1974 and the time when 47 percent of the oil consumption in this country was from foreign sources, and then we had the embargo at the pumps. Then we had the long lines at the gasoline pumps, and if we had had an international crisis at that time, I do not know how in the world we would have resolved it.

I hear the statement made that this is really academic, that the price of oil has gone so low that you are not going to have an application of a windfall profit tax. That is true. I think that is right. But one great thing is overlooked and that is the paperwork involved. The estimate we have is that the accounting work alone will amount to some $700 million a year. That is nonproductive work in this regard.

Mr. President, I wonder if I could have the attention of this body.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BENTSEN. And that others might resolve their differences in another place.

Mr. President, there is no sense in our continuing with that kind of nonproductive paperwork, that kind of an additional burden on the economy, if it does not make any contribution to what we are trying to accomplish. I hear a lot of talk about windfall profits, but I do not hear much about windfall losses. Some want to be sure that the oil industry does not get too much of a profit as those prices are going up.

I heard it also said that that was a part of the price of being in tow. I do not remember it that way.

I was very much involved in this at that time, and when I hear statements that the oil industry was for this, they were the farthest thing from being in support of this particular tax. They fought it tooth and toenail and they lost. The oil industry is not politically popular and I understand that, and I understand that the TV show "Dallas" has a great audience and that a lot of people still think that that is just the way it is, but it is not.

I represent a State, but I feel like I am representing a war zone. I have never seen the kind of economic travails and problems such as we are having at the present time. We have a lot of people in my State who did not think they were in the oil and gas business, and all of a sudden they find that they are whether they are renting rooms, running a restaurant, or they have a cleaning shop. The entire economy suffers.

□ 1820

We had a special session of the State legislature because we have a $3 billion deficit. We have the highest unemployment rate since the Great Depression. Go back to my hometown. That metropolitan area has a 17.2-percent unemployment rate. That is the highest of any metropolitan district in the entire Nation.

I can take you to Starr County, and there is 42 percent unemployment.

So what we are talking about is not beating on an industry that is already in trouble and trying to get rid of some of this paperwork. I have no illusions about what will happen if the price of oil goes up again. If we were to repeal the windfall profit tax tonight and get rid of all the paperwork and some $700 million of expenditures that are nonproductive for our country—if we were to do that and then the price of oil went back up to $30 or $35, I promise you that this body would pass another tax to try to limit those profits.

So, at least in the interval, let us see if we can get rid of some of that paperwork; see if we can save that $700 million for the economy.

I congratulate my friends from Oklahoma for support of this amendment and I am delighted to be a cosponsor of it. I urge strongly that we accept the amendment and that we bring about the repeal of what has been a very onerous tax for an industry that is having severe problems and is having an excessive drain on capital today.

I urge the adoption of the amendment and the repeal of the legislation.

Mr. WALLOP. Mr. President, I wish to compliment my friend from Texas.

This was bad tax law when it was put into place. It was structured out of a sense of revenge, the windfall profit tax was. Congress, unwilling to blame itself for not being able to come to grips with energy policy, was striking out in 1979 and could not find anybody but itself to blame for the large increases in the price of oil, brought about by the ability of the OPEC cartel to exploit markets dependent upon overseas oil.

I must say that I came to Congress in a period of time when all prices were high compared to what they had been in the 1970's. Yet, they were stable. Some of us then thought that energy policy would be a useful topic of congressional conversation. Although the Carter administration mouthed a great deal about it, no one was really interested in engaging in the topic.

Then came the very effective and devastating ability of OPEC to drive the price of oil up and up and up. Americans suffered. So Congress wanted to prove to the American people that their suffering was somebody else's fault.

You may recall at the time the reports of obscene profits of oil companies; Mobil up 115 percent, Conoco up 105 percent, somebody up 200 percent, somebody up 80 percent.

The flurry of blood-lust that was raised in Congress by these daily reports of profits resulted in a lot of unwise decisions and even more unwise conversation.

You may recall that the first Secretary of Energy claimed that we would not be at or above $70 a barrel by this year. He also claimed that we had discovered all the natural gas in America and we had but to democratize the misery of sharing what remained. Taxes were on their mind, revenge was on their mind, and we structured the windfall profit tax to fund the cockamamy scheme that we have finally put to rest in this last year, the Synthetic Fuels Corporation and a few other things.

Make no mistake about it—it was never designed to ascertain profit. It was only designed to extract revenge, and it had nothing to do with whether you make money from a well or not, regardless of the price. It was an excise tax. It was not a profit tax. It was bad tax law to fund a bad proposition. The bad proposition is gone; the bad tax law remains. It raises no revenue. It hangs heavily over the consumer price of oil and gas because, make no mistake about it, one day prices will rise again.

What we could do in the meantime to stabilize the oil and gas industry to become not so dependent upon OPEC and foreign sources are small gestures such as this; because, as those prices rise again and the windfall profit tax kicks in, it remains on the books, Americans are not only going to have the effect of inflation and the rising price of oil and gas, but also, they are going to have the effects of the windfall profit tax suddenly reengaging. And, that will mean a big jump in one moment in time, about $17 a barrel, in

the cost of living, with all that entails, and that entails beaucoup tax dollars. Why? Because the cost-of-living adjustments come in.

So the windfall profit tax itself is going to cost us money, as it triggers in when prices rise again. It is bad tax law. It was bad tax law when it was instituted. It was unrelated to profits. It is unrelated to profits today. It raises no money for us.

There is no better time to get rid of it, when such an action is revenue neutral and we do not trigger double expenses to the Treasury and the American people, until the day comes—God willing, it will come—when oil prices rise to that level again.

I urge the repeal of the windfall profit tax. It is a good amendment. I salute the Senator from Oklahoma for raising it.

Mr. DOLE. Mr. President, I have put a statement in the RECORD on this matter.

This was a bad idea when we did it, and it is a good idea now to repeal it.

Mr. MURKOWSKI. I thank the majority leader.

Mr. President, I commend the majority leader for putting into very few words what has already been said by many of my colleagues.

I would like to share a few particular points with regard to the advantages to our Nation and our oil industry as a whole to repeal the windfall profit tax. From the standpoint of oil prices today, this tax has little, if any, relevance.

□ 1830

The significance is, though, we have an industry that is attempting to go through some very difficult readjustment periods, an industry that is as American you might say as traditional apple pie. We have some problems with this industry and the question is how can we rectify by legislative action some of those problems.

One way to do it, Mr. President, is to repeal the windfall profit tax.

It has already been evidenced in this body that projected oil prices when the windfall profit tax was put on were substantially in excess of a figure that they ever achieved. Mention has been made of nearly $76 a barrel. The fact remains that the market price is substantially different.

It is appropriate, Mr. President, we take this action now. Congress can always reestablish the windfall profit tax if indeed in its wisdom it is justified as a consequence of market price increases that could and may indeed occur at a future time.

So, Mr. President, I think it is significant that we recognize that we have a responsibility to address some of the internal concerns within the industry, the reflection that the free market system is what has built this country. We have already seen the effects of partial deregulation and we have seen a statement from our President with regard to his attitude toward the repeal of the windfall profit tax, the repeal of the Fuel Use Act, the decontrol of natural gas. The decontrol of oil has brought about a free market approach and as a consequence of that, it has been certainly in the national interest.

To suggest that the public has been harmed by this I think is absolutely incorrect, and I would certainly take issue with my friend, the Senator from Ohio, who suggests that somehow the public will stand to suffer from the repeal of the windfall profit tax.

So, Mr. President, I urge my colleagues to recognize that there are certain adjustments that have to be made that should appropriately be made to ensure that we have and maintain a viable industry within our marketplace, and one way to do it is to start off with the repeal of the windfall profit tax.

Mr. HEINZ. Mr. President, I move to table the Nickles amendment.

Mr. DOLE. Mr. President, 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 to lay on the table the amendment of the Senator from Oklahoma. 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. ARMSTRONG. I announce that the Senator from Arizona [Mr. GOLDWATER] and the Senator from Wyoming [Mr. SIMPSON] are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. SIMPSON] would vote "nay."

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

The result was announced—yeas 47, nays 51, as follows:

[Rollcall Vote No. 170 Leg.]

YEAS—47

Abdnor	Gore	Moynihan
Biden	Grassley	Packwood
Bradley	Harkin	Pell
Broyhill	Hatfield	Pressler
Byrd	Hawkins	Proxmire
Chafee	Heinz	Riegle
Chiles	Inouye	Rockefeller
Cohen	Kasten	Roth
Cranston	Kennedy	Rudman
D'Amato	Kerry	Sarbanes
Danforth	Lautenberg	Sasser
DeConcini	Leahy	Simon
Dodd	Levin	Specter
Durenberger	Mathias	Stafford
Eagleton	Metzenbaum	Weicker
Glenn	Mitchell	

NAYS—51

Andrews	Baucus	Bingaman
Armstrong	Bentsen	Boren
Boschwitz	Hatch	Melcher
Bumpers	Hecht	Murkowski
Burdick	Heflin	Nickles
Cochran	Helms	Nunn
Denton	Hollings	Pryor
Dixon	Humphrey	Quayle
Dole	Johnston	Stennis
Domenici	Kassebaum	Stevens
Evans	Laxalt	Symms
Exon	Long	Thurmond
Ford	Lugar	Trible
Garn	Matsunaga	Wallop
Gorton	Mattingly	Warner
Gramm	McClure	Wilson
Hart	McConnell	Zorinsky

NOT VOTING—2

Goldwater	Simpson

So the motion to lay on the table amendment No. 2245 was rejected.

□ 1850

Mr. DOLE. The question is on the amendment.

SEVERAL SENATORS addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Does the question now recur on the amendment?

The PRESIDING OFFICER. The question recurs on the amendment. The question is on the amendment.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. 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.

□ 1900

Mr. STEVENS. 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. STEVENS. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside so that I may offer an amendment which I believe is technical in nature.

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

AMENDMENT NO. 2246

(Purpose: To restore the point of order that was applicable, under certain circumstances, against consideration of any resolution providing for adjournment sine die of the Congress under section 310(f) of the Congressional Budget Act of 1974 (as in effect on the day before the date of the enactment of the Balanced Budget and Emergency Control Act of 1985))

Mr. STEVENS. 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 Alaska [Mr. STEVENS] proposes an amendment numbered 2246.

Mr. STEVENS. Mr. President, I ask unanimous consent that further read-

ing 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 amendment, insert the following new section:

SEC. . POINT OF ORDER.

(a) IN GENERAL.—Section 310(f) of the Congressional Budget Act of 1974 is amended by adding at the end thereof the following new paragraph:

"(3) It shall not be in order in either the House of Representatives or the Senate to consider any resolution providing for the adjournment sine die of either House unless action has been completed on the concurrent resolution on the budget required to be reported under section 301(a) for the fiscal year beginning on October 1 of such year, and, if a reconciliation bill or resolution, or both, is required to be reported under subsection (b) of this section for such fiscal year, unless the Congress has completed action on that bill or resolution, or both.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this joint resolution.

Mr. STEVENS. Mr. President, this amendment will restore the point of order that existed under the original Budget Act that prevented either House from adjourning sine die unless the Reconciliation Act had been passed.

At the time of the enrollment of the changes in the Budget Act last year, the existing provision, which is subsection 310(f), was left out when the agreed-to language, which now appears in the Budget Act as 310(f) (1) and (2) were put into the enrolled bill.

I raised the question at that time when we discovered it and because of the circumstances we all agreed that there had been a clerical error and we should not enter into the problem of sending the bill back to the conference, which would have delayed us at that time.

I indicated at that time that I would take action to restore the point of order, which I think is extremely important to us now. We should not allow either House to adjourn unless the Reconciliation Act has been passed. To do so would automatically trigger a Gramm-Rudman-Hollings sequester.

I do hope that this will be accepted on the basis that it is technical in nature. I have discussed it with the majority leader and he concurs and recalls the discussion we had last year, I am sure.

I have cleared it with the chairman of the Budget Committee and the ranking member of the Budget Committee. I have discussed it with my good friend, Senator HEINZ, the manager of the bill who is now on the floor.

It will restore the point of order that was unintentionally dropped when the budget process was streamlined last year.

I will be glad to answer any questions anyone has.

Mr. HEINZ. Mr. President, we have examined the amendment. It is exactly as the Senator from Alaska has described it. I am convinced it was never the intent of the Congress to drop this language and I urge its adoption.

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

The amendment (No. 2246) was agreed to.

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

Mr. HEINZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. METZENBAUM. Mr. President, this is not my ball game, but a bill came out of the Judiciary Committee this morning cosponsored by Senator BIDEN and I forget who else, a number of other members of the committee. It is my understanding that Senator BIDEN may be agreeable to the Senator from New York proceeding at this point, but until such time as I can check that out——

Mr. D'AMATO. If I might respond to my distinguished colleague, Senator BIDEN has given me statements, understanding that I will be proceeding with this. They support it. I will move at the appropriate time to substitute their amendment for mine, once I call it up, and I will be privileged to introduce and respond to the great work the committee has done.

Mr. METZENBAUM. In view of the representation, I am advised by a member of the staff that Senator BIDEN has sent word that he does not have objection. I will not object.

AMENDMENT NO. 2230

(Purpose: To increase penalties for money laundering, and for other purposes)

Mr. D'AMATO. Mr. President, I have an amendment at the desk, No. 2230, which I call up at this time. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO] proposes an amendment numbered 2230.

Mr. D'AMATO. 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:

At the end of the amendment, add the following:

TITLE II—MONEY LAUNDERING

SEC. 201. SHORT TITLE.

This Act may be cited as the "Comprehensive Money Laundering Prevention Act".

SEC. 202. STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENTS PROHIBITED.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions) is amended by adding at the end thereof the following new section:

"§ 5324. Structuring transactions to evade reporting requirement prohibited

"No person for the purpose of evading the reporting requirements of section 5313(a) shall—

"(1) cause or attempt to cause a domestic financial institution to fail to file a report under section 5313(a);

"(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code is amended by adding at the end thereof the following new item:

"5324. Structuring transactions to evade reporting requirement prohibited.".

SEC. 203. SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS.

(a) FAILURE TO REPORT EXPORT OR IMPORT OF MONETARY INSTRUMENT.—The first sentence of section 5317(c) of title 31, United States Code (relating to seizure and forfeiture of monetary instruments in foreign commerce) is amended to read as follows: "If a report required under section 5316 with respect to any monetary instrument is not filed or, if filed, contains a material omission or misstatement of fact, the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government.".

"(b) SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS INVOLVED IN STRUCTURED TRANSACTION VIOLATION.—Section 5317 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS INVOLVED IN STRUCTURAL TRANSACTION VIOLATION.—

"(1) IN GENERAL.—Any United States coins or currency (or such other monetary instrument as the Secretary of the Treasury may by regulation prescribe) involved in any violation of section 5313(a) or 5324 and any interest in property, including a deposit in a financial institution, traceable to such coins or currency (or other monetary instrument) may be seized and forfeited to the United States Government in the manner provided in subchapter C of chapter 75 of the Internal Revenue Code of 1954.

"(2) EXCEPTION.—Paragraph (1) shall not apply if the owner of the property or the interest in property otherwise subject to seizure and forfeiture under paragraph (1) is—

"(A) a bona fide purchaser for value who took without notice of the violation;

"(B) a depository institution (as such term is defined in section 19(b)(1)(A) of the Federal Reserve Act); or

"(C) a financial institution regulated by the Securities and Exchange Commission.

"(3) HOLDS ON PROPERTY HELD BY FINANCIAL INSTITUTIONS.—Any United States coin or currency (and such other monetary instruments as the Secretary of the Treasury may be regulation prescribe) and any other interest in property, including any deposit, which is in the possession or custody of any financial institution shall be held by such financial institution for a period of 15 days upon receipt of notice (in such form and in such manner as the Secretary shall prescribe) from the Secretary of the Secretary's intent to seize such coin or currency, instrument, or other property under this subsection. The Secretary upon the issuance of a hold order: must disclose the following information to the institution subject to the hold order: the name, account or account numbers if known, taxpayer identification number, and such other information as may be necessary to locate the account or accounts or other property held by the institution.

"(4) SEIZURE OF PROPERTY HELD BY FINANCIAL INSTITUTIONS.—Upon a showing by the Secretary of the Treasury that there is probable cause to believe that any coin or currency, monetary instrument or other interest in property, including any deposit, which is in the possession or custody of any financial institution is subject to forfeiture under paragraph (1), the district court of the United States for the district in which such property is held may issue an order authorizing the Secretary to seize such property.

"(5) EXEMPTION FROM LIABILITY FOR IMPOSITION OF HOLD.—The United States, any agency, department, or employee of the United States, any financial institution, and any officer, director, or employees of a financial institution shall be exempt from any liability to any other person which may otherwise arise for interest, damages, or any other type of compensation or relief, including injunctive and declaratory relief, in connection with or as a result of a hold being placed upon any property under paragraph (3).

"(6) LIABILITY OF FINANCIAL INSTITUTION TO THE UNITED STATES FOR FAILURE TO COMPLY.—Any financial institution which—

"(A) receives a notice under paragraph (3) with respect to any property or interest in property; and

"(B) after receipt of such notice, fails or refuses to hold such property or interests without reasonable cause until the earlier of—

"(i) the expiration of the 15-day period described in such paragraph; or

"(ii) the presentation by the Secretary of a court order issued under paragraph (4),

shall be liable to the United States for an amount which is equal to the value of the property or interests which such institution failed or refused to hold.".

(c) TECHNICAL AND CONFORMING AMENDMENTS TO INTERNAL REVENUE CODE OF 1954.—

(1) Section 7302 of the Internal Revenue Code of 1954 (relating to property used in violation of internal revenue laws) is amended by adding at the end thereof the following new sentence: "The second and fourth sentences are hereby extended to coins, currency, and other monetary instruments (and to interests in property traceable to such instruments) seized pursuant to section 5317 of title 31, United States Code.".

(2) The heading for such section 7302 is amended by inserting "OR TITLE 31, UNITED STATES CODE" after "REVENUE LAWS".

(3) Section 7321 of the Internal Revenue Code of 1954 (relating to authority to seize property subject to forfeiture) is amended by inserting "and any coins, currency, or other monetary instrument (and any interest in property traceable to such instrument) subject to forfeiture under section 5317 of title 31, United States Code," after "this title".

(4) Section 7327 of the Internal Revenue Code of 1954 (relating to applicability of customs laws) is amended by inserting "and to forfeitures of coins, currency, and other monetary instruments (or interests in property traceable to such instruments) incurred or alleged to have been incurred under section 5317 of title 31, United States Code (except that, in the case of forfeitures under such section 5317, the customs laws shall apply only to the extent such laws are not inconsistent with any applicable provision of such section)" before the period.

(5) Section 7608(b)(1) of the Internal Revenue Code of 1954 (relating to authority of internal revenue enforcement officers to enforce certain internal revenue laws) is amended—

(A) by striking out "internal revenue laws or" and inserting in lieu thereof "internal revenue laws,"; and

(B) by inserting ", or any provision of section 5317 of title 31, United States Code, relating to seizures and forfeitures of coins, currency, and other monetary instruments (and interests in proprety traceable to such instruments)" after "responsible".

(6) Section 7608(b)(2) of the Internal Revenue Code of 1954 (relating to functions authorized to be performed by internal revenue enforcement officers) is amended—

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

"(D) to make seizures of coins, currency, and other monetary instruments (and interests in property traceable to such instruments) subject to forfeiture under section 5317 of title 31, United States Code.";

(B) by striking out "and" at the end of subparagraph (B); and

(C) by striking out the period at the end of subparagraph (c) and inserting in lieu threof "; and".

(7) The item relating to section 7302 in the table of sections for part I of subchapter C of chapter 75 of the Internal Revenue Code of 1954 is amended by inserting "or title 31, United States Code" after "revenue laws".

SEC. 204. CIVIL MONEY PENALTY FOR STRUCTURED TRANSACTION VIOLATION.

(a) IN GENERAL.—Section 5321(a) of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) STRUCTURED TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who knowingly violates any provision of section 5324.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

"(C) COORDINATION WITH FORFEITURE PROVISION.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States under section 5317(d) in connection with the transaction with respect to which such penalty is imposed.".

(b) CONFORMING AMENDMENT.—Section 5321(c) of title 31, United States Code, is amended by striking out "section 5317(b)" and inserting in lieu thereof "subsection (c) or (d) of section 5317".

SEC. 205. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT.

(a) RIGHT TO REPORT.—Section 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following: "Such information may include only the name or names of and other identifying information concerning the individuals and accounts involved in and the nature of the suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any constitution, law, or regulation of the United States or any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.".

(b) DELAYED NOTIFICATION.—Section 1113(i) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(i)) is amended by inserting immediately before the period at the end thereof a comma and the following: "except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, to delay notifying the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409)".

(c) FINANCIAL RECORDS OF INSIDERS.—Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by adding at the end thereof the following new subsection:

"(1) CRIMES AGAINST FINANCIAL INSTITUTIONS BY INSIDERS.—Nothing in this title shall prohibit any financial institution or supervisory agency from providing any financial record of any officer, director, employer, or controlling shareholder (within the meaning of section 408(a)(2) (A) and (B) of the National Housing Act or section 2(a)(2) (A) and (B) of the Bank Holding Company Act of 1956) of such institution to the Attorney General of the United States, to a State law enforcement agency, or, in the case of a possible violation of subchapter II of chapter 53 of title 31, United States Code, to the Secretary of the Treasury if there is reason to believe the such record is relevant to a possible violation by such individual for—

"(1) any law relating to crimes against financial institutions or supervisory agencies by directors, officers, employees, or controlling shareholders of financial institutions; or

"(2) any provision of subchapter II of chapter 53 of title 31, United States Code.".

SEC. 206. COMPLIANCE AUTHORITY FOR SECRETARY OF THE TREASURY AND RELATED MATTERS.

(a) IN GENERAL.—Section 5318 of title 31, United States Code, is amended—

(1) by inserting "(a) General Powers of Secretary.—" before "The Secretary of the Treasury";

(2) in paragraph (1), by inserting "except as provided in subsection (b)(2)," before "delegate";

(3) by striking out "and" at the end of paragraph (2);

(4) by inserting after paragraph (2) the following:

"(3) examine any books, papers, records, or other data of financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

"(4) summon a financial institution or an officer or employee of a financial institution, or a former officer or employee, or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b); and";

(5) by redesignating paragraph (3) as paragraph (5); and

(6) by adding at the end thereof the following new subsections:

"(b) LIMITATIONS ON SUMMONS POWER.—

"(1) SCOPE OF POWER.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

"(2) AUTHORITY TO ISSUE.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

"(c) ADMINISTRATIVE ASPECTS OF SUMMONS.—

"(1) PRODUCTION AT DESIGNATED SITE.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution operates or conducts business in the United States.

"(2) FEES AND TRAVEL EXPENSES.—Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States.

"(3) NO LIABILITY FOR EXPENSES.—The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, records, or other data under this section.

"(d) SERVICE OF SUMMONS.—Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

"(e) CONTUMACY OR REFUSAL.—

"(1) REFERRAL TO ATTORNEY GENERAL.—In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such person to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

"(2) JURISDICTION OF COURT.—The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which—

"(A) the investigation which gave rise to the summons is being or has been carried on;

"(B) the person summoned is an inhabitant; or

"(C) the person summoned carries on business or may be found,

to compel compliance with the summons.

"(3) COURT ORDER.—The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding.

"(4) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(5) SERVICE OF PROCESS.—All process in any case under this subsection may be served in any judicial district in which such person may be found.".

(b) CONFORMING AMENDMENT.—Sections 5321 and 5322 of title 31, United States Code, are each amended by striking out "5318(2)" each place such term appears and inserting in lieu thereof "5318(a)(2)".

SEC. 207. AMENDMENTS RELATING TO THE DEFINITION OF FINANCIAL INSTITUTIONS.

Section 5312(a)(2) of title 31, United States Code (defining financial institutions) is amended—

(1) by redesignating subparagraphs (T) and (U) as subparagraphs (U) and (V), respectively; and

(2) by inserting after subparagraph (S) the following new subparagraph:

"(T) any foreign subsidiary or affiliate, as defined by the Secretary of the Treasury, of any entity described in this paragraph; however, any foreign subsidiary or affiliate shall comply with the provisions of this subchapter only to the extent that compliance does not violate the law of the host country of such subsidiary or affiliate, except that such foreign subsidiary or affiliate shall require United States citizens, who enter into a financial transaction subsequent to the date of enactment of the Comprehensive Money Laundering Prevention Act, to waive any rights to the bank secrecy or blocking laws of the host country to which they may be entitled;"

SEC. 208. AMENDMENTS RELATING TO EXEMPTIONS GRANTED FOR MONETARY TRANSACTION REPORTING REQUIREMENTS.

Section 5318 of title 31, United States Code (as amended by section 206) is amended by adding at the end thereof the following new subsections:

"(f) REVIEW OF EXEMPTIONS.—In any case in which there is a change in management or control of a financial institution, the Secretary of the Treasury shall review each currently outstanding exemption granted by such institution under subsection (a)(5) not later than 30 days after the date such change in management or control occurs.

"(g) WRITTEN AND SIGNED STATEMENT REQUIRED.—No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution prepares and maintains a statement which—

"(1) describes in detail the reasons why such person is qualified for such exemption; and

"(2) contains the signature of such person.".

SEC. 209. EXTENSION OF TIME LIMITATIONS FOR ASSESSMENT OF CIVIL PENALTY.

Section 5321(b) of title 31, United States Code, is amended as to read as follows:

"(b) TIME LIMITATIONS FOR ASSESSMENTS AND COMMENCEMENT OF CIVIL ACTIONS.—

"(1) ASSESSMENTS.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

"(2) CIVIL ACTIONS.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

"(A) the date the penalty was assessed; or

"(B) the date any judgment becomes final in any criminal action under section 4322 in connection with the same transaction with respect to which the penalty is assessed.".

SEC. 210. DISCUSSIONS TO DEVELOP INTERNATIONAL INFORMATION EXCHANGE SYSTEM TO ELIMINATE MONEY LAUNDERING.

(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Board of Governors of the Federal Reserve System, shall initiate discussions with the central banks or other appropriate governmental authorities of other countries and propose that an information exchange system be established to assist the efforts of each participating country to eliminate the international flow of money derived from illicit drug operations and other criminal activities.

(b) REPORT REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prepare and transmit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the results of negotiations initiated pursuant to subsection (a).

SEC. 211. INCREASE IN MAXIMUM CRIMINAL FINE FOR CERTAIN OFFENSES.

Section 5322(b) of title 31, United States Code, is amended by striking out "$500,000" and inserting in lieu thereof "$1,000,000 if the person is an individual (and not more than $5,000,000 in any other case)".

SEC. 212. REGULATIONS RELATING TO CUMULATION OF OFFENSES FOR FAILURE TO REPORT EXPORT OR IMPORT OF MONEY.

Section 5316 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) CUMULATION OF CLOSELY RELATED EVENTS.—The Secretary of the Treasury may prescribe regulations under this section defining the term 'at one time' for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for the purposes of such subsection (a).".

SEC. 213. EFFECTIVE DATES.

(a) The amendments made by section 202 shall apply with respect to transactions for the payment, receipt, or transfer of United States coins or currency or other monetary instruments completed after the end of the 3-month period beginning on the date of the enactment of this Act.

(b) The amendments made by sections 203 and 204 shall apply with respect to violations committed after the end of the 3-month period beginning on the date of the enactment of this Act.

(c) The amendment made by section 209 shall apply with respect to violations committed after the date of the enactment of this Act.

Mr. D'AMATO. Mr. President, originally the distinguished chairman of the Judiciary Committee had intended to be here to offer a modification to my amendment, and I was prepared to accept it. The only difference with this modification is that, because it is a Judiciary Committee bill, it creates the crime of money laundering and provides for criminal as well as civil forfeiture of laundering money. As the author of the first such bill this year making money laundering a crime, S. 572, I enthusiastically endorse these provisions.

Because the hearing on the Rehnquist nomination prevents Senator THURMOND from being here at this time, at this point I wish to modify my amendment as he would have, so as to incorporate the text of S. 2683, the consensus Money Laundering Crimes Act. This is the bill introduced last week by the distinguished chairman of the Judiciary Committee; the ranking minority member, Senator BIDEN; and the Senator from Arizona, Senator DECONCINI. As an original cosponsor of this bill, I want to commend these gentlemen for their efforts in this area. These Senators have worked a near miracle in forging this bipartisan consensus legislation. I urge my colleagues to give this amendment their full support.

Mr. President, this is the money laundering initiative that has the best chance of becoming law this year. It has five key provisions.

First. Under this amendment, we are creating a new crime of money laundering. Violators who intend to facilitate the carrying on of criminal activity, or who know that the transaction involved is designed to conceal certain facts regarding criminal proceeds—nature, location, source, ownership, or control—can be fined up to $250,000, or twice the value of the property involved, whichever is greater, and can be imprisoned for up to 20 years, or both.

Second. This amendment creates the offense of structuring financial transactions to evade the reporting requirements of current law. This provision is almost identical to section 202 of my original amendment. With this new provision, we can close the so-called smurfing loophole, by which money launderers make multiple transactions of under $10,000 each to evade the Bank Secrecy Act's reporting requirements.

Third. This modification also authorizes forfeiture of property obtained through the new crime of money laundering, and property involved in a transaction the owner knew to be conducted in violation of the new money laundering offense or the reporting rules of the Bank Secrecy Act. The civil forfeiture rules in this modification are very similar to section 203 of my original amendment.

Fourth. This amendment grants the Treasury Department a subpoena power to improve enforcement of the Bank Secrecy Act. In this regard, it is similar to section 206 of the amendment I filed on Friday, and to legislation I have been urging my colleagues to enact since April 1984.

Fifth. The provision of this modification relating to the Right to Financial Privacy Act is identical to section 205 of the amendment I filed last week. This modest amendment merely permits the limited good faith disclosure of limited identifying information in cases of suspected criminal activity. It also permits courts to order financial institutions, when a grand jury subpoena has been served, to delay notifying the cusotmer of the existence of the subpoena or information that has been furnished to the grand jury, according to existing rules and procedures established by the Right to Financial Privacy Act.

□ 1910

As I stated on the Senate floor last week, efforts to enact S. 2683 as a separate bill may succeed. I very much hope that they will. However, time is running short and, as the majority leader has frequently advised the Senate, there are many other items the Senate must act on in the few remaining working days of this Congress. The most prudent course, therefore, seems to be to amend the debt ceiling extension with the strongest money laundering bill possible.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER (Mr. GORTON). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. THURMOND. Mr. President, I rise today in support of the money laundering amendment, as proposed by the distinguished Senator from New York, Senator D'AMATO. He has succinctly pointed out the critical need for such legislation. As a matter of fact, recognizing the urgent need for Congress to pass legislation in this session to create a Federal crime against money laundering, the Judiciary Committee has just favorably reported S. 2683, the "Money Laundering Crimes Act of 1986."

The bill approved by the Judiciary Committee was introduced by Senators BIDEN, DECONCINI, D'AMATO, and myself last week. The administration, the American Bar Association, the American Bankers Association, and the ACLU have all been involved in drafting this bill, and I am pleased that this legislation enjoys support from those organizations. I appreciate that the Senator from New York has seen fit to modify his amendment by substituting the text of S. 2683 and for his efforts in this important area. I would also like to praise Senators BIDEN and DECONCINI for their significant contributions relative to S. 2683, which is the product of months of hard work and negotiations.

Many call money laundering the lifeblood of organized crime. Illegal drugs, racketeering activities, and vice generate $150 billion annually, and it is only through increasingly complex laundering schemes that criminals are able to conceal the true source and nature of their ill-gotten gains.

It is for these reasons that I urge my colleagues to support this amendment, as modified.

Mr. BIDEN. Mr. President, last week, I was pleased to join the distinguished chairman of the Judiciary Committee, Senator THURMOND, the junior Senator from Arizona, Senator DECONCINI, and the junior Senator from New York, Senator D'AMATO, in introducing S. 2683, the Money Laundering Crimes Act of 1986. Our bill is designed to impose stiff new criminal and civil penalties on money laundering, one of the crucial financial underpinnings of drug trafficking and organzed crime in this country. Our bill represents weeks of bipartisan effort to craft an effective bill to attack this critical problem, and has been praised by groups ranging from the Justice Department to the American Civil Liberties Union.

On Friday, the junior Senator from New York introduced an amendment to the debt ceiling bill that also addresses the problem of money laundering. I applaud his interest in money laundering and his zeal in seeing that we pass legislation to combat money laundering in this Congress. However, I urge that we adopt the approach to the problem that my colleagues and I in the Judiciary Committee have worked out.

There are several important differences between our bill and Senator D'AMATO's amendment. Our bill, unlike the pending amendment, creates an entirely new crime of money laundering in the Federal criminal code. Our bill, unlike the pending amendment, also applies to money launderers the forfeiture provisions that my colleagues and I in the Judiciary Committee have worked out over several years, provisions that we know will work and work well. Our bill has also been praised by numerous groups that will be affected by the bill as a consensus approach to the money laundering problem.

Therefore, Mr. President, I wish to join in substituting the text of our bill

in Senator D'AMATO's amendment, and urge that that language be promptly adopted.

Mr. DECONCINI. Mr. President, I would like to take this opportunity to praise Chairman THURMOND, ranking member BIDEN, and Senator D'AMATO for their cooperation and interest in working out a compromise between S. 1385, the money laundering bill I had introduced on June 27, 1985; S. 1335, the administration's money laundering bill, and S. 571 and S. 572, introduced by Senator D'AMATO.

Money laundering is one of the most costly ills infecting our Nation. In 1984, the President's Commission on Organized Crime reported that it was possible to launder $100 million in a single transaction. Moreover, violations of tax laws are an inevitable byproduct of laundering schemes, and this costs the Nation millions of dollars in public revenue.

Modern, sophisticated money laundering techniques have contributed to the financial success of organized crime in recent years, particularly in the narcotics trade. Without the means to launder money, thereby making cash generated by a criminal enterprise appear to come from a legitimate source, organized crime could not flourish as it now does. Studies cite narcotics trafficking as one of the growth industries within the underworld, and it is impossible for any American city, social or ethnic group to inoculate itself from the drug epidemic. As long as organized crime continues to successfully conceal enormous amounts of illegally generated income, our law enforcement agencies will continue to do battle with the narcotics traffickers from a position of weakness.

Money-laundering techniques are used by large legitimate businesses as well. The President's Commission discovered that American corporations, such as Gulf Oil, Lockheed Aircraft, and McDonnell Douglas, have engaged in illegal money laundering. Each corporation was involved in schemes to make illegal payments to foreign government officials in order to win lucrative overseas contracts. The broad array of groups participating in money laundering illustrates how widespread the problem has become.

As a solution to the problem, this amendment will make money laundering a Federal crime. It will enable law enforcement agencies to begin eliminating the huge profits reaped by those who deal in crime by making the proceeds of money laundering subject to forfeiture. The bill also clarifies and reforms the reporting requirements for financial institutions. It contains modest amendments to the Right to Financial Privacy Act in order to clarify inconsistent court interpretations as to what information may be reported by financial institutions to law enforcement agencies. This consensus amendment has the support of the Justice Department; the American Bankers' Association; and, on privacy issues, the ACLU.

I am pleased to have been a part of the bipartisan effort, and I urge my colleagues to support this amendment.

Thank you.

● Mr. HATCH. Mr. President, As a cosponsor of this important legislation, I want to express my support of S. 2683, introduced as the Money Laundering Crimes Act of 1986. This bill will enable us to deal a crippling blow to the money-laundering activities that underlie much of the criminal behavior in this country.

Money laundering is the process by which one conceals the existence, illegal source, or illegal application of income and camouflages the source of that income to make it appear legitimate.

Nearly all of the most lucrative criminal activities such as narcotics, gambling, prostitution, and loan sharking are by necessity cash businesses. Cash is generated in order to avoid a "paper trail" which investigators can follow. However for these operations to properly function they need an effective means to convert the huge amounts of cash—the Wall Street Journal estimates $150 billion annually—into more safely portable means. Criminals today accomplish this result through a highly complex and intricate web of domestic and foreign bank accounts, shell corporations, and other business entities through which these funds are moved by high-speed electronic transfers.

Attorney General Meese correctly summed up this topic earlier this year when he described money laundering as "The lifeblood of the drug syndicate and traditional organized crime." For without the means to launder money, thereby making cash generated by criminal enterprise to appear to come from a legitimate source, organized crime could not flourish as it now does.

It is unfortunate but nevertheless true that professionals including attorneys, accountants, and bankers at all levels of employment are active participants in money-laundering schemes. Those who are entrusted with money are in the best position to spot illegal activity. It is a gross neglect of their civic duty when they fail to do so. It is therefore incumbent upon this body to enact an effective measure to punish those who lend their support to such criminal activity by actively participating in money-laundering schemes.

The Money Laundering Crimes Act of 1986 promises to be the tool that law enforcement officials need to effectively combat this problem, without on the other hand giving the Government potentially oppressive power to impinge upon the privacy of innocent people.

This bill will create a new substantive offense of money laundering in the Federal criminal code. Also, this bill amends the Right to Financial Privacy Act by protecting banks which voluntarily participate in the detection of money laundering.

The Bank Secrecy Act is also amended to remedy former deficiencies, thus fortifying the Secretary of the Treasury's ability to meaningfully participate in efforts to stop laundering by expediting the timespan in which information on reported transactions reach law enforcement officials.

This bill has evolved into a balanced, wisely crafted compromise. The views of all parties have been solicited and heard from: The American Bar Association, the American Bankers Association, the Department of Justice, the Treasury Department, the American Civil Liberties Union, among others. Each has contributed positively toward the balanced approach which this bill adopts and each group now embraces the finished product.

I commend Senators THURMOND, BIDEN, DECONCINI and D'AMATO for their outstanding leadership in effecting a strong bill, while at the same time responding to those which had initial concerns of potential law enforcement abuse.●

Mr. D'AMATO. Mr. President, let me make this plea. I am asking for a recorded vote on this. I hope that the Senate will come together, as this has been a bipartisan effort, coming from the Judiciary Committee and other Members who have contributed; that we pass this bill overwhelmingly and inform our colleagues in the House that we hope that, rather than just talk about the war against crime, we demonstrate that this is a real initiative that will give to our law enforcement officers the opportunity to really begin to break the major area of concern; to be able to penetrate the international laundering of billions of dollars a year, money that facilitates the drug empire.

If we are serious, then we have to give our law enforcement officers the tools with which to deal with this problem. If we are serious, then we shall undertake this war and give our law enforcement officials the tools with which to successfully conduct this battle.

Mr. President, I ask unanimous consent that Senator HEINZ and Senator WILSON be added as original cosponsors, as well as Senator STEVENS.

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

Mr. D'AMATO. Mr. President, I yield the floor.

Mrs. HAWKINS addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ARMSTRONG. I announce that the Senator from Arizona [Mr. GOLDWATER], and the Senator from Wyoming [Mr. SIMPSON] are necessarily absent.

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

The result was announced—yeas 98, nays 0—as follows:

[Rollcall Vote No. 171 Leg.]

YEAS—98

Abdnor	Glenn	Melcher
Andrews	Gore	Metzenbaum
Armstrong	Gorton	Mitchell
Baucus	Gramm	Moynihan
Bentsen	Grassley	Murkowski
Biden	Harkin	Nickles
Bingaman	Hart	Nunn
Boren	Hatch	Packwood
Boschwitz	Hatfield	Pell
Bradley	Hawkins	Pressler
Broyhill	Hecht	Proxmire
Bumpers	Heflin	Pryor
Burdick	Heinz	Quayle
Byrd	Helms	Riegle
Chafee	Hollings	Rockefeller
Chiles	Humphrey	Roth
Cochran	Inouye	Rudman
Cohen	Johnston	Sarbanes
Cranston	Kassebaum	Sasser
D'Amato	Kasten	Simon
Danforth	Kennedy	Specter
DeConcini	Kerry	Stafford
Denton	Lautenberg	Stennis
Dixon	Laxalt	Stevens
Dodd	Leahy	Symms
Dole	Levin	Thurmond
Domenici	Long	Trible
Durenberger	Lugar	Wallop
Eagleton	Mathias	Warner
Evans	Matsunaga	Weicker
Exon	Mattingly	Wilson
Ford	McClure	Zorinsky
Garn	McConnell	

NAYS—0

NOT VOTING—2

Goldwater Simpson

So the amendment (No. 2230) was agreed to.

□ 1940

Mr. D'AMATO. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HEINZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. HART. Mr. President, I ask unanimous consent to temporarily set aside the pending matter.

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

AMENDMENT NO. 2248

(Purpose: To increase the tariff on petroleum and petroleum products by $10 per barrel)

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

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Colorado [Mr. HART] proposes an amendment numbered 2248.

Mr. HART. Mr. President, I ask unanimous consent that the 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 joint resolution, add the following:

SEC. . INCREASE IN TARIFFS ON PETROLEUM AND PETROLEUM PRODUCTS.

(a) Item 475.05 of the Tariff Schedules of the United States is amended—

(1) by striking out "0.125¢ per gal." and inserting in lieu thereof "$10.0525 per Bbl.", and

(2) by striking out "0.5¢ per gal." and inserting in lieu thereof "10.21 per Bbl.".

(b) Item 475.10 of such Schedules is amended—

(1) by striking out "0.25¢ per gal." and inserting in lieu thereof "$10.105 per Bbl.", and

(2) by striking out "0.5¢ per gal." and inserting in lieu thereof "$10.21 per Bbl.".

(c) Item 475.25 of such Schedules is amended—

(1) by striking out "1.25¢ per gal." and inserting in lieu thereof "$10.525 per Bbl.", and

(2) by striking out "2.5¢ per gal." and inserting in lieu thereof "$11.05 per Bbl.".

(d) Items 475.30, 475.35, and 475.65 of such Schedules are each amended—

(1) by striking out "0.25¢ per gal." and inserting in lieu thereof "$10.105 per Bbl.", and

(2) by striking out "0.5¢ per gal." and inserting in lieu thereof "$10.21 per Bbl.".

(e) Item 475.45 of such Schedules is amended—

(1) by striking out "2¢ per gal." and inserting in lieu thereof "$10.84 per Bbl.", and

(2) by striking out "4¢ per gal." and inserting in lieu thereof "$11.68 per Bbl.".

(f) There is authorized to be appropriated to the President for the purpose of providing or increasing funding for any program of the United States under which financial assistance (including loans and loan guarantees) is provided to lower income individuals and families adversely affected by increased energy costs, an amount equal to the monetary effect on such individuals and families of the increases in duties imposed by this section. The monetary effect of such increases on such individuals and families is to be jointly determined by the Secretary of Health and Human Services and the Secretary of Energy. Amounts appropriated pursuant to the preceding sentence shall be obligated or expended only in connection with such programs as may be otherwise provided for by law.

(g) The amendments made by this section shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after the date that is 15 days after the date of enactment of this Act.

Mr. HART. Mr. President, this amendment is directly related to the matter presently before the Senate in that it imposed a fee on oil imported into this country and would, therefore, relieve the Federal budget by imposing a $10 fee on each barrel of imported petroleum—crude or refined.

Mr. President, this fee at current import levels would yield more than $20 billion to the Federal Treasury in its first year. The Congressional Budget Office has estimated that such a fee would yield a net reduction in the deficit of about $18 billion.

The annual extension of the debt limit has become an annual confrontation with yet another record deficit. Despite all the 1985 promises of growth and fiscal restraint, we once again find $200 billion of fresh red ink on our hands.

The need to extend the debt limit should force a debate on our fiscal policy. But the debate has been sadly reduced to a squabble over mechanisms and gimmicks and bells and whistles. Do we really think we can find salvation from our responsibilities in some miracle machine? Or are we ready to do what we must? The obvious agenda demands unpopular cuts in spending and realistic increases in non-income-tax revenue.

But we have shrunk from this agenda. And now we learn that our budget resolution for fiscal 1987 will not reduce the deficit enough to avoid a sequester. We are told we are $20 billion short. Let me suggest that we do not need another scheme designed to furnish courage later—we need to close the gap now. And we have before us a means of doing just that.

The amendment this Senator offers would not only close that deficit gap, it would derive much of its revenue from foreign oil producers instead of American taxpayers. And it would provide the wake-up call that this country desperately needs in energy policy.

When we debated this issue on the Senate floor last November, one of my colleagues called oil imports "a phantom problem." We were told the fee was a bail-out for big oil, unfair to the poor and unfair to the Northeast. We heard it would not reduce the deficit but that it would hurt the economy. But since that debate, we have received a new report from the CBO that alleviates or dispels each of these concerns.

The report is dated April 1986 and entitled "The Budgetary and Economic Effects of Oil Taxes." I commend it to my colleagues. Above all, the report recognizes the threat that imports pose to this Nation's security.

The CBO warns that imports will reach 7.3 million barrels a day next year—an increase of nearly 50 percent over last year. We are already importing 35 percent more crude oil than we did a year ago. Moreover, the CBO predicts we will import more than half of our oil in 1991, a degree of dependency worse than the darkest days of the 1970's.

But there is an alternative. The new CBO study said that a fee such as I have proposed could cut imports by as

much as 2 million barrels a day. Quoting the CBO directly:

An oil tariff would be superior to other energy taxes on this score. It would encourage all the activities that could substitute for imports: domestic production, production of substitutes, conservation and substitution of other fuels.

The world of oil has changed radically since last November when we last debated this question. The Saudis have created chaos in the market so as to curtail marginal production and regain market control. Oil drilling in this country has fallen to one-seventh of its 1981 levels. Tens of thousands of smaller wells are being permanently shut in. And our oil consumption, which we had painstakingly reduced over a decade of sacrifice, could increase by as much as a third in the next 5 years.

□ 1950

A year ago, the Saudis ranked eighth among our sources of foreign oil. Today they are third. By substituting cheap foreign oil for our own production capacity, we are taking the bait. When the hook has been swallowed, no one doubts the next round of price increases will once again begin.

Some have said the import fee is too expensive a weapon. But the CBO tells us that the oil exporters could not pass the full cost of the fee through to American consumers. In fact, so intense is the world competition that the CBO predicts exporters would have to absorb as much as 40 percent of the fee themselves. Forty percent of this fee, according to the Congressional Budget Office, would be absorbed not by American consumers, but by exporters and producers themselves.

As for the remainder, some in Congress seem to oppose any increase in energy production incentives. They confuse the profits of the multinational oil companies with the economics of domestic drilling and exploration. The question is not where big oil will make its money but where the United States will get its oil. Besides, most—if not all—the major domestic oil companies oppose this measure.

It has been argued that an import fee would force higher prices on those least able to pay. But this amendment is designed to counter any such effect.

Funds from the fee would be directed to the Low-Income Energy Assistance Program to maintain our commitment to the disadvantaged. Moreover, the CBO has found the effects of such a fee would be both manageable and relatively equitable in their distribution across income groups. The CBO reached a similar conclusion regarding the fee's relative effect on the several regions of the Nation—especially if the fee for crude matches the fee on products.

Finally, the CBO report confounds the fee's critics on macroeconomics. While noting potential negatives, the report cites the offsetting benefits of a smaller trade deficit and a smaller Federal budget deficit. The CBO concludes that macroeconomic effects are "likely to be rather small" and that nominal GNP would "remain approximately constant."

In the end, any sector adversely affected by the fee would be penalized far more by the next oil disruption—or by the next spike in oil prices. Anyone in business knows that insurance carries a premium. Every American knows it will cost us something to be energy secure, just as it costs us billions now for rapid deployment military forces we created to defend our petroleum lifeline in the Persian Gulf.

It is estimated that next year's military budget will contain between $13 billion and $15 billion simply for the rapid deployment force designed to maintain that supply of oil if it were to be disrupted. It costs us something today to rely on that foreign oil.

Ultimately, energy security is national security. Ultimately, relying on someone else's oil means sacrificing American lives to protect it. We can avoid this deadly transaction only if we shun oil dependency.

We should be thankful we can still make this choice ourselves. Current trends are taking this power away from us. The administration responds to crisis by repeating its slogan about a "free market." The oil market was not free in the 1970's, and it is not free today. Seventy percent of the world's oil production is controlled by national governments. Our government sees its energy independence under siege and offers no defense.

No wonder that Sheik Yamani, the Saudi oil minister, says: "The golden age of Arab oil was not in the 1970's but will be in the 1990's."

Let me repeat that, Mr. President, so Senators will pay attention.

Sheik Yamani, the Saudi oil minister, says: "The golden age of Arab oil was not in the 1970's but will be in the 1990's."

The real challenge for America is to assure adequate energy for the future without sending our sons to die for someone else's oil.

We can do it, but we need a forthright and foresighted policy of self-reliance. The oil import fee is the cornerstone for such a policy.

Mr. President, after years of discussion and debate over this measure, it seems now is the time when this country's economy not only can afford this fee but we can impose most of it on the exporters and the producers. We can make this country energy secure and energy independent, save young American lives in the process, and make this country's economy stronger in the long term.

Mr. President, I hope my colleagues in all parts of this country will join in what is and should be the cornerstone of the new energy independence policy.

Mr. JOHNSTON. Mr. President, I want to congratulate my distinguished colleague from Colorado for putting in one of the most important pieces of legislation to come through this Senate this year. I think the public and this Senate are beginning finally to measure the depth and the breadth and the dimensions of the terrible oil crisis that we are facing.

Mr. President, in one short year, we have seen an increase in oil imports of 25 percent. More than a third of our oil is now being imported. It was only about one-fourth last year. We have seen our drilling rigs drop to one-seventh, almost, of what they were in 1981, just a few short years ago.

Mr. President, when the price goes up, as surely it will, the question is: Will there be an American industry there to call upon to produce that 10 million barrels a day which we were producing when last the price went up.

At the rate we are going, Mr. President, there will be no such American industry to call upon. It will be gone. It will be closed up. The people will have moved into new occupations, moved into new endeavors. There will be no future drilling rig companies, drill bit companies, helicopter companies, geologists, land men, mud salesmen. The whole panoply of people necessary to supply the oil industry will simply not be in business and it will not be possible to recreate that industry within any reasonable time to respond to the crisis.

Moreover, if they were in place, the wells that they would not have drilled, the geology they would not have put together, the lease sales which would not have been made in the ensuing years and months would make it impossible for the American industry to respond.

So, Mr. President, I very, very strongly support the position of my distinguished colleague from Colorado. And, of course, the obvious thing about this bill is, it is what we call a twofer. Not only do you preserve an American industry for when it is needed, but you gather up the necessary revenue to meet the terrible budget crisis of this country. No other tax that I know of meets that criteria of saving an American industry and at the same time raising the necessary revenue to meet our Gramm-Rudman targets.

Mr. President, there is only one problem with the amendment, and that is that it does make a distinction between cruide oil, on the one hand, and refined petroleum products, on the other hand. It is necessary to make such a distinction, Mr. Presi-

dent, because if you do not provide a higher import fee for refined petreleum products, then it makes it impossible for the independent refiner in this country to compete, because if he must buy his oil at the same price that a major oil company can import refined products, then, obviously, he cannot pay the cost of refining that product.

□ 2000

(Mr. HECHT assumed the chair.)

The cost of refining the product varies of course by location, by grade of oil, by a number of different factors, chemical composition, but in general it is about $3 per barrel. So therefore, Mr. President, I have an amendment prepared which states that notwithstanding any other provision of this section the tariff imposed upon imported refined petroleum products, which in turn is a word of art under EPA, shall equal $14 per barrel, and the $14 per barrel translates to about $3 per barrel differential as against the amendment of the distinguished Senator from Colorado.

The amendment of the Senator from Colorado averages out at about $10 per barrel because there is a distinction between quality, gravity, and chemical composition of the crude oil.

Mr. President, at this time I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment pending is a second-degree amendment. No amendment to it is in order.

Mr. JOHNSTON. Mr. President, I wonder if the distinguished Senator from Colorado would be of a mind to modify his amendment.

Mr. HART. Mr. President, if the Senator will yield, it had been the intent of the Senator from Colorado to keep these proposals as simple as possible for the obvious reasons. It is much more understandable. It is much more straightforward. It avoids any of the complexities that appeared such as variable tariffs of various kinds, and getting involved in speculations as to what their effects would be. I think the Senator from Louisiana today as before has made a very valid argument about the differential and the impact on some elements of our industry—very important arguments.

At the risk of adding a layer of complexity that may not be all that great, I would be more than happy to cooperate with the Senator and offer the language as a modification to my own amendment if certainly that would ensure the Senator's support for this proposal.

Mr. JOHNSTON. Mr. President, I say to the distinguished Senator from Colorado, I will support it either way because I think this differential amendment would find its way in through the legislative process at some point before final signature by the President. But I do believe it enhances the attraction of the amendment if he would accept it as a modification at this point instead of waiting until later. I would very much appreciate it if he would. In either event, I will support this legislation of the distinguished Senator from Colorado.

Mr. HART. Mr. President, a parliamentary inquiry. Would it be in order for the Senator from Colorado to modify his own amendment?

The PRESIDING OFFICER. It would be.

Mr. HART. I send the modification to the desk.

Mr. JOHNSTON. Mr. President, I thank the Senator from Colorado.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 2248), as modified, is as follows:

At the end of the committee amendment, add the following:

SEC. . INCREASE IN TARIFFS ON PETROLEUM AND PETROLEUM PRODUCTS.

(a) Item 475.05 of the Tariff Schedules of the United States is amended—

(1) by striking out "0.125¢ per gal." and inserting in lieu thereof "$10.0525 per Bbl.", and

(2) by striking out "0.5¢ per gal." and inserting in lieu thereof "$10.21 per Bbl.".

(b) Item 475.10 of such Schedules is amended—

(1) by striking out "0.25¢ per gal." and inserting in lieu thereof "$10.105 per Bbl.", and

(2) by striking out "0.5¢ per gal." and inserting in lieu thereof "$10.21 per Bbl.".

(c) Item 475.25 of such Schedules is amended—

(1) by striking out "1.25¢ per gal." and inserting in lieu thereof "$10.525 per Bbl.", and

(2) by striking out "2.5¢ per gal." and inserting in lieu thereof "$11.05 per Bbl.".

(d) Items 475.30, 475.35, and 475.65 of such Schedules are each amended—

(1) by striking out "0.25¢ per gal." and inserting in lieu thereof "$10.105 per Bbl.", and

(2) by striking out "0.5¢ per gal." and inserting in lieu thereof "$10.21 per Bbl.".

(e) Item 475.45 of such Schedules is amended—

(1) by striking out "2¢ per gal." and inserting in lieu thereof "$10.84 per Bbl.", and

(2) by striking out "4¢ per gal." and inserting in lieu thereof "$11.68 per Bbl.".

(f) Notwithstanding any other provision of this section, the tariff imposed upon imported refined petroleum products shall equal $14.00 per Bbl. For purposes of this section the term "refined petroleum products" shall have the same meaning as that in section (3)(5) of the Emergency Petroleum Allocation Act of 1973 * * *

(g) * * * appropriated to the President for the purpose of providing or increasing funding for any program of the United States under which financial assistance (including loans and loan guarantees) is provided to lower income individuals and families adversely affected by increased energy costs, an amount equal to the monetary effect on such individuals and families of the increases in duties imposed by this section. The monetary effect of such increases on such individuals and families is to be jointly determined by the Secretary of Health and Human Services and the Secretary of Energy. Amounts appropriated pursuant to the preceding sentence shall be obligated or expended only in connection with such programs as may be otherwise provided for by law.

(h) The amendments made by this section shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after the date that is 15 days after the date of enactment of this Act.

Mr. HART. Mr. President, I ask for the yeas and nays on the modified amendment.

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

The yeas and nays were ordered.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I have great affection and regard for the Senator from Colorado. I think he and the Senator from Louisiana have very articulately presented the case for an import oil fee. If I came from Colorado or Louisiana, I think I would be for it, too. But the problem with this approach is it really puts the burden on another portion of the country, the Northeast, New England. In my part of the country my recollection is that 70 percent of the very energy we have there comes from oil. And of that 70 percent, I know that 70 percent is imported oil. The statistics across the country show that about 40 percent of the energy used in other parts of the country comes from imported oil against the 70 percent that we use.

What this means, to be very specific, to a family in Rhode Island, is that they would have to pay 25 cents a gallon more, or about $275 per family. I think this is quite a load for our section to carry. Historically, we have always been at a disadvantage when it came to the high cost of energy.

Rhode Island has made an exemplary contribution in the field of energy conservation. Rhode Island has also been making a strong and determined effort to encourage economic and business growth. We know that to persuade business to remain in our State, to expand in our State, and to come to our State, we must be competitive with other States and regions. In that effort, the State of Rhode Island has cut taxes, made painful and difficult revisions in labor laws, and worked hard to provide attractive sites and financing to industry.

But surveys, studies, and my own conversations with business leaders all confirm that the most serious problem confronting business in Rhode Island is high energy costs. An oil import fee, further increasing energy costs, would be an economic disaster for industry, workers, and business in Rhode Island.

I can understand why Senators from other regions might consider an oil import fee as a good way to reduce the Federal budget deficit. After all, it would provide another huge subsidy to the domestic oil industry which could and would increase the price of domestic oil by the amount of the oil import fee. With higher oil prices, the oil producing States would receive more money from their severance taxes—money that is paid by the consumers in Rhode Island, and other oil-consuming States.

In connection with the reasoning of the Senator from Louisiana that we need to increase our revenue, to reduce our deficit, and I agree with him that we should, let us do it with a gasoline tax which spreads the burden evenly across the whole country. I believe I am correct in saying that for every penny of tax imposed, one raises about $850 or $900 million. This would be a fair and equitable way of raising revenue and would, I think, secure much more support from the country as a whole.

I hope this oil import fee amendment, which has been considered in the past, will not prevail. I remember when I was first here in the early sixties, it was a big issue when President Kennedy took over our helm. The oil import fee or its equivalent was removed at that time. Now it has come to rear its head again as so many things do in Government over cycles of 20 or 15 or 25 years.

So I hope this amendment will be defeated.

I ask unanimous consent to have printed in the RECORD an open editorial which I wrote some time ago entitled "Business, Workers, Homeowners: The Case Against an Oil Import Fee."

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

[From the Providence Journal-Bulletin, Feb. 14, 1986]

BUSINESS, WORKERS, HOMEOWNERS: THE CASE AGAINST AN OIL IMPORT FEE

(By Claiborne Pell)

Just as the world is now awash in cheap oil, so the Congress today is awash with proposals to impose an import fee of $5 or $10 a barrel on oil imported into the United States.

The reasons for the wave of support for an oil import fee are clear: an oil import fee would provide a bundle of money for the federal government. It could be used to help reduce the federal budget deficit—and avoid the horrendous budget cuts threatened by the Gramm-Rudman Act. Or the money could be used to patch up the tax reform bill, offsetting some costly changes that President Reagan wants made in it.

And, proponents argue, the import fee would be almost painless. With world oil prices plummeting, the import fee wouldn't actually raise oil costs in the United States, it would just confiscate for the government part of the price cuts that otherwise would produce lower gasoline, heating oil, and electric costs for consumers.

The truth, however, is that an oil import fee is not a good idea, and it would not be painless. For Rhode Island and all of New England, an oil import fee would be a serious economic blow. And nationally, the oil import fee would impose a handicap on industry, making it less competitive in world markets.

Why would an oil import fee be particularly harmful to the business, workers and homeowners in Rhode Island? In Rhode Island about 54 to 70 percent of all energy used for all purposes comes from oil. Nationally, oil is the source of about 40 percent of all energy used. So a higher price for oil and oil products hurts Rhode Island nearly twice as much as it hurts other areas that have ready access to cheaper natural gas, coal and hydroelectric power.

Here in Rhode Island, energy costs are much higher than the national average, and that is one of the biggest problems confronting Rhode Island business. Time after time, businessmen have told me that their biggest problem is not government regulation, high taxes, or even foreign competition, but high energy costs.

For years, as world crude oil prices soared to $30 a barrel, we in Rhode Island and the Northern paid the price. While the oil-producing regions of our country boomed, we saw businesses close or leave the state, costing us thousands of jobs. Now, when the price of our prime energy source is declining, we are told that it is in the national interest to push the price back up with an oil import fee—to reduce the deficit or to make the tax reform bill more palatable to special interests.

An oil import fee would be bad for Rhode Island because it would reimpose a competitive disadvantage with other regions.

But an oil import fee also would be harmful nationally. A study conducted by economists of the Federal Reserve Bank of Dallas concluded that even with a decline in world oil prices, a $5 a barrel import fee would have these economic effects:

Gross national product would be one percent lower at the end of two years than without the import fee.

There would be 400,000 fewer jobs, and:

There would be an immediate acceleration of inflation with the wholesale price index for fuels jumping by 12 percent.

For all of these reasons, I recently introduced in the Senate a resolution opposing any oil import fee. I was joined in this effort by my colleague Senator Chafee, by Senators Kennedy and Kerry of Massachusetts, by Senator Weicker of Connecticut, and nine other senators from the Northeast.

The resolution is part of an effort to let senators from other regions know that an oil import fee is not painless and will face strong and vigorous opposition in the Senate.

In his State of the Union Address to the nation, President Reagan spoke eloquently of his opposition to protective trade legislation, saying he will "oppose legislation touted as providing protection that in reality pits one American worker against another, one industry against another, one community against another, and that raises prices for us all."

That, I think, is a perfect description of the impact of proposals for an oil import fee. It would protect the United States oil industry by placing a floor under oil prices; it would pit our oil-consuming industries against industry in other areas that use other energy sources, pit our workers against workers in oil-producing states, and cost us all money.

I favor tax reform, and I believe we must have new revenue to help balance the federal budget. But for those of us in the Northeast, an oil import fee would be the least fair way to increase revenues.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, it seems to me around here some bad ideas never seem to die.

They are like Lazarus. They come back from the dead, reappear on this floor, and we vote on them time and time again as we have in this particular matter. The oil import fee suggested is a bad idea for four particular reasons. First, it discriminates against one section of the Nation; second, it imposes a burden on American industry that our competitors abroad do not have. Third, it discriminates against the American farmer who is struggling under extremely onerous conditions at the present time and is desperate to regain his markets in the world. Fourth, it is a very bad way to raise revenue. It is a very bad tax measure.

Let me deal specifically with each of these four measures. First, it discriminates against one section of the Nation. As my distinguished senior colleague has just pointed out, the Northeast, the North, and in particular in our section, New England, is penalized by this onerous tax that the other sections of the country are not. As he stated so accurately, 70 percent of our energy comes from oil. You might say, oh, well, only 70 percent of that is imported. The other 30 percent is not imported. The point some make, Mr. President, is that with this oil import fee the price of all oil will rise. After all, that is the purpose of it. The domestic oil will rise to meet that price. That is why it is being imposed. The $10 per barrel, or whatever is proposed eventually is settled on, if it is indeed settled on, means that the domestic oil will rise to that of the imported oil price.

So for our section of the country, 70 percent of our energy will rise to a new level that is not presently in force, way above that in other sections of the Nation that have hydroelectric power, that have nuclear power, and that have natural gas that we are not fortunate enough to have.

Second, it imposes a burden on American industry. I think everyone is aware of the desperate international competitive position that American industry is currently in. Here is a copy of today's New York Times. "U.S. Trade Deficit Continues To Soar at a Record Pace. A $14 billion Gap in June. At the Current Rate Imports for the Full Year Will Exceed Exports by $170 billion."

Mr. President, that dazzles the mind—$170 billion trade deficit. What we are saying and what is being suggested in this legislation is that we

impose an added burden on American industry. If the differential in the price of the dollar were not enough, if their high wage costs are not enough, on top of it we compound this problem with an increased price of fuel which our competitors do not have.

□ 2010

They will buy at the world price. We will buy at the world price, plus whatever is added per barrel, $10 per barrel.

As was pointed out, it is extremely important to remember that the price of all our oil will rise, not just the imported oil.

The American farmer, on the third point, Mr. President, our American farmer—I do not think we have to outline in this body the problems that the American farmer is undergoing. Indeed, it is in the agricultural sections of the Nation that the worst suffering is occurring at the present time, compounded in some sections by the drought. To say to our American farmer that we are going to increase the price of his fertilizer, we are going to increase the price of his operation of his tractors, his equipment, by adding to the prices he is currently paying, that his competitors worldwide do not pay makes no sense at all to me.

Fourth, this is a very, very poor way to raise a tax. The price of all oil rises, yet we collect the tax on only that imported portion of it. So everybody pays an increased price for all the oil that they buy, but the U.S. Government only collects a tax on one-third of that, namely the imported portion.

Some suggestion has been made that Sheik Yamani had made threats that the great future of Arabian oil was going to be in the 1990's, not the 1970's. Well, I do not think we have to trim our sails by threats by Sheik Yamani.

Mr. President, it seems to me we have here the old story, the old story of trying to help one industry by penalizing all American industry and, indeed, American farmers.

When we are talking American industry, we are talking jobs, Mr. President. When our exports have a $14 billion gap in June a $170 billion gap for the year, that is just not some industry that is hurt, those are human beings, those are American jobs.

If the oil industry is suffering, and indeed, we recognize this, then let us specifically target something for that industry as we have attempted to help the agricultural industry in our Nation. But let us not impose a burden on all the rest of American industry.

Some have suggested an overall Btu tax, some have suggested a gasoline tax. All of these perhaps should be up for consideration. But not a tax that imposes a burden on the balance of American competitiveness, that is directed more onerously to one section of the Nation more than others. That is a poor way to raise revenue.

Mr. WEICKER. Will the Senator yield?

Mr. CHAFEE. I have completed my statement. I am glad to yield.

Mr. WEICKER. I commend the Senator from Rhode Island for addressing the issue and speaking so clearly to the amendment being offered.

What I find interesting, as I am sure does the Senator from Rhode Island, after listening to the words of the distinguished Senator from Louisiana, is this is the same reasoning that opposed any mandatory conservation, opposed any sort of a gasoline tax that would enhance conservation, who was out on the floor advocating tax shelters, if you will, for the oil and gas industry because of impoverished times.

But now the resolution is to sock it to the rest of the country by virtue of an oil import fee, and by the rest that specifically being New England.

Mr. HART. Will the Senator yield?

Mr. WEICKER. I will in a moment.

Mr. HART. I supported the gasoline tax.

Mr. WEICKER. I believe the Senator did. I believe my comments were directed to the reasoning of my distinguished colleague from Louisiana who has not been in favor of a gasoline tax, who has not been in favor of mandatory conservation, who supported the tax shelters because now his industries are impoverished.

Mr. JOHNSTON. Will the Senator yield?

Mr. WEICKER. I will in a moment.

He now seeks as a remedy to go ahead and impose a tax which will have its impact on those people in the Northeastern part of the United States, plus those alluded to by the Senator from Rhode Island.

If we are to address the problem, and the problem needs attention in terms of conservation so that we do not end up behind the OPEC 8-ball again, let us have strict enforcement of the 55-mile-per-hour speed limit, let us have mandatory conservation, let us have a national fuel tax, let us have all of these things.

If I have ever seen parochial politics played it has been played out here on the floor where we protect the interests of the oil and gas interests, but not the national interest.

Mr. JOHNSTON. Will the Senator yield?

Mr. WEICKER. I do not yield to the distinguished Senator from Louisiana at this time. He has made his statement. He has made his statements over the years. He has done very well, I might add, by the interests that he represents. But there are also national interests involved here.

I have to commend the Senator from Colorado. I disagree with him on this amendment, but nobody has been in the forefront of conservation more than he has, and I commend him for it.

But I will not take as logic those who have consistently opposed every conservation measure that has reached the floor of the U.S. Senate and now come along with something which has no impact in a political sense on the constituencies they represent, especially when it means foisting that burden off on others.

I think this is a good time and a good place to debate the matter of our national conservation effort, but let us do so in a way whereby everybody fairly shoulders the burden.

I would vote, I might add, for those special measures which, again, the Senator from Louisiana has advocated, which I am for, that would help those who have been dislocated by the economic tragedies of his region. I have no problem with that. We all have those difficulties. But energy is a national matter and a national crisis that deserves a national response. That is the only way we can respond to it. Not by something which penalizes one section of the country and goes ahead and gives benefit to another. That is not a national response to a national problem.

I thank the distinguished Senator from Rhode Island because I think he has indicated some very serious problems. I do not think the Senator from Rhode Island has necessarily supported the measures I have supported in the past because indeed he has pointed out some valid points in opposition to the matters I have raised. It does raise the cost of energy, there is no question about it. But I have felt it was worth it in terms of conservation effort because indeed in the long run, once OPEC gets back on its feet, and it will, and once the United States treats energy like going through it as if it was water, and it will, we will be back in the same pickle again.

That is why I have spoken so strongly in favor of conservation measures on this floor.

I also have to indicate, though, that I am almost insulted considering the rhetoric that I have been subjected to when I have suggested conservation and now to hear that this is some sort of method of raising money and also is conservation. I think that is not so.

I hope the amendment of the distinguished Senator from Colorado will be defeated.

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

Mr. WEICKER. I yield for a question.

Mr. CHAFEE. I have some statistics here that perhaps the Senator is not familiar with. I wonder if he is familiar with them. They are as follows:

First of all, I will preface this by saying there is a good deal of talk here

on the floor about OPEC and about the Arabs. Somehow this is looked on as a great way to bash the Arabs. We are going to fix them up.

To quote Sheik Yamani, he said that the great days of the Arab oil were not in the 1960's or 1970's but will be in the 1990's.

Here are statistics which I think the Senator might be interested in.

In 1984, only 35 percent of imports were from OPEC, that is, total OPEC, but less than 9 percent of the imports in 1984 were supplied by Arab member countries of OPEC.

So the suggestion that somehow this is doing something to the Arabs is not accurate. It is Mexico, Canada, and Venezuela who supplied the largest share of the imports in 1984. That, it seems to me, is the important point.

If somebody is suggesting that we are going to nip the Arabs in the heels with this kind of measure, that is not accurate.

Mr. WEICKER. I think the Senator from Rhode Island is entirely correct. What is proposed here is meant to nip New England, period, pure and simple. Very frankly, I stood up against my own political interests when I supported decontrol and a free market. That was very unpopular in Connecticut and very unpopular in New England. I did it because I thought it was economically correct. Frankly, I think facts have proven me out to be correct.

□ 1820

It was the correct policy to follow. So I was with the Senator from Louisiana and the Senators from Texas and Colorado, wherever. Indeed, in my last election campaign, I was referred to by my Democratic opponent as the third Senator from Texas. How do you like that for a political——

Mr. BENTSEN. Well, Mr. President, I think that is a compliment.

Mr. WEICKER. In any event, it absolutely accurately describes the abuse I took politically as I stood with the Senators from the oil States. They deserved a free market, they got a free market, and they enjoyed that free market. Now times might be a little tough as they have been for a long period of time elsewhere, and I will work with the Senators as to how we get out of it. We do not get out of it by penalizing New England any more than New England had the right to penalize the Southwestern States by imposing controls on oil.

Mr. JOHNSTON. Mr. President, I shall not respond to the ad hominem attack of my distinguished colleague from Connecticut at this time except to point out that I think it is common courtesy on the floor of the Senate that when one does use the name of another Senator and then the other Senator asks for a question in order to set the record straight, this ought to be done.

I do not know why my distinguished friend from Connecticut has fallen from his usual courtesy, but I am sure there is some reason and I shall forgive him in advance for that——

Mr. WEICKER. What is the Senator's question.

Mr. JOHNSTON (continuing). As difficult as that may be. Mr. President, I have the floor and I am not asking a question. I asked to ask a question earlier and was refused that permission.

Nevertheless, Mr. President, it has been said, first, that the Senator from Louisiana has consistently opposed a gasoline tax. That is simply factually wrong. As a matter of fact, Mr. President, in 1978, much to my own political embarrassment, I proposed a bill as the sole author, having been told by many of my friends that it was the wrong thing to do, providing for a 50-cent gasoline tax phased in 10 cents a year over 5 years.

Has the Senator from Louisiana always opposed a gasoline tax? I can tell you in the election of 1978, he wished he had. But he had not. It is factually not correct to say I had always opposed the gasoline tax.

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

Mr. JOHNSTON. Not at this point. I will in a moment. But let me set the RECORD straight.

Second, it was said that the Senator from Louisiana always opposed every conservation bill that has come down the pike. That is factually not correct. Not only did I vote for the Fuel Use Act, but I was the floor manager of the Fuel Use Act. I had as much to do with the passage of the Fuel Use Act, preventing the use of natural gas; the same thing for Power Plant Conservation Act; the same for—I think, Mr. President, during that period, when we passed all those conservation bills, I believe I floor managed every single one of them.

If the Senator can tell me a major conservation act, other than the Auto Standards Act, which I voted for, that I did not floor manage, vote for, support, I shall stand corrected. I think I have not only voted for them all but floor managed them.

Now, to say that the Senator from Louisiana has been against every conservation act factually is not only not correct, not accurate, it is about 180 degrees out of sync.

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

Mr. JOHNSTON. Does that mean that I have voted for every—and I shall not characterize them other than to say occasionally unwise—amendment that the Senator from Connecticut has put up in the Energy Committee, which has been voted down by overwhelming margins? No, I did not always vote for the amendments of the Senator from Connecticut because I thought they were unwise then and I think there are unwise now.

That ad hominem attack, which I thought was totally unnecessary and out of place and factually wrong, does not have anything to do with the issue here before the Senate right now, which is a concern of vital importance to this Nation. It concerns whether or not we will have an energy industry to conserve.

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

Mr. JOHNSTON. Now I shall yield for a question.

Mr. WEICKER. Since the Senator is not prone to vote for amendments of the Senator from Connecticut, did he support the amendment of the Senator from New Jersey [Mr. BRADLEY] in the Gramm-Rudman bill proposing a gasoline tax?

Mr. JOHNSTON. In the Gramm-Rudman——

Mr. WEICKER. Did the Senator from Louisiana vote for Senator BRADLEY's amendment imposing a gasoline tax? Because it was a major piece of legislation on the floor last year.

Mr. JOHNSTON. I voted against that gasoline tax.

Mr. WEICKER. I am sure he did because he voted against every other gasoline tax.

Mr. JOHNSTON. That gasoline tax, as I recall, was voted down by 90-something to something like 2 votes.

Mr. WEICKER. It takes courage to vote for any tax.

Mr. HART. Will the Senator yield?

Mr. JOHNSTON. Because I failed to vote for something that was voted down by 90-something to 2, I did not——

Mr. WEICKER. Did the Senator from Louisiana vote for the mandatory rationing proposed by this Senator during the energy crisis and voted down overwhelmingly on the floor of the Senate?

Mr. JOHNSTON. No, Mr. President, but that is quite a different thing. To vote against mandatory rationing and vote against something that was voted down 90-something to 2 or 3, there is quite a difference between that and saying the Senator from Louisiana has opposed every conservation bill.

I might have opposed the Senator from Connecticut on his gasoline tax or his mandatory rationing, but so did everybody else.

Mr. WEICKER. And the amendment of the Senator from New Jersey? He opposed that. How else do we conserve if we do not do it by law or tax? I would like to know how we conserve.

Mr. JOHNSTON. There are a lot of ways to do it and we have enacted a lot of that into law, but we did not have to do it with mandatory rationing and we did not have to do it last year by a gasoline tax.

Mr. HART. Will the Senator from Louisiana yield?

Mr. JOHNSTON. Yes, Mr. President, the point is made. I shall not bear a grudge against the Senator from Connecticut. He is ordinarily very courteous and very gentlemanly and I am sure he did not mean to offend the Senator from Louisiana. I was not very offended because it was so easy to prove the untruth—not the untruth, the inaccuracy—of the statement of the Senator from Connecticut.

I hope that next time he and I will be on the same side. If he will come up with better amendments, some which really do some conservation and do the country some good, I will vote with him.

Mr. BENTSEN. Mr. President, I have been trying to get into this fight now for some 20 minutes. I am delighted to recognize the cooperation and good will of the third Senator from Texas. I understand why, once he got that designation, he won by such an overwhelming margin in the State of Connecticut. But let us deal with the gasoline tax for a minute.

I believe very much in this amendment by the Senator from Colorado. I recall in 1973-74 my going to the Democratic Policy Committee and telling them we ought to put on a 20-cent tax—that is a fellow from Texas, an oil- and gas-producing State. We had to have it for conservation. I remember the Senator from Rhode Island saying, "Not by a darn sight." I have cleaned it up a little.

I asked him why he felt so strongly about it. He said,

> When I was Governor of Rhode Island, I put on a 1-cent gasoline tax and they named the thing after me. Never again am I going to be caught in that posture.

When I was on the Environment and Public Works Committee, I led the fight to put on a gasoline tax. The Senator from Washington [Mr. EVANS] helped lead the fight to see if we could have restrictions on a requirement to have better gasoline mileage.

□ 2030

I was over here speaking from this side supporting that kind of measure. When the GSA says you do not have to pay any attention to thermostats in public buildings, I think that it is an absolute outrage. What is happening is that we are seeing an incredible increase in the use of gasoline and oil in this country. You have already seen an increase of 515,000 barrels per day this year. That is the way we are headed. I heard the comment earlier that we do not want to bash Arabs. I do not want to bash them either. I just do not want them to bash us. I heard the comment earlier that the Saudi Arabians really are not producing that much oil, that last year they were 15th in supplying oil to this country. This year they are already among the top four suppliers and they are on the way to being No. 1. I will tell you what is happening to the rest of the world. Canadian production is supposed to go down next year. North Sea production and Norwegian production start down the year after that. Production in Mexico and Venezuela already has plateaued. That is where we are headed. What is happening in this country? In 1981, you had 30 new production wells, wildcat wells, every week. Last year, there were 10 a week. What are you seeing this year? Less than three a week. That is what is happening to us. Unemployment? The highest unemployment in the United States for a metropolitan area is in Texas—Mc Allen, Mission, Edinburg. It is 17 percent. I can take you up to Starr County, which is not a metropolitan area, and it is 42 percent. Tell me any place else in the country where you have that. Statewide, it is 10.7 percent That is the most we have ever had.

Mr. WEICKER. Will the Senator yield?

Mr. BENTSEN. No. I listened to the Senator. I did not try to interrupt. I want to finish my thoughts and reply to some of the things that the Senator has stated. I listen to what is happening back home and I feel like I am representing a war zone. Last month we had 2,000 home foreclosures in Houston, TX. That is as much as we normally have in a year. That is what we are going through. We have real concerns about banks and S&L's. I spent a good part of the day with the chairman of the board of the Federal home loan bank talking about some of those concerns. People back home who thought they were not in the oil and gas business all of a sudden find that they are, whether they are renting hotel rooms or trying to provide meals in a restaurant or trying to sell automobiles. Let us not fool ourselves. The new oil is going to be OPEC oil. That is where it is going to be coming from. Do not ever get the idea OPEC is driving down the price of oil because it is trying to take care of the consumers in this country.

OPEC is driving it down because it wants to whip the other oil producers into line, and once they are in line, then the price will go up fast. A comment was made earlier that we want a free market system, and I appreciate that. But it did not turn out to be a totally free market on the way up. We put on a windfall profit tax.

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

Mr. BENTSEN. No. I am trying to finish my process of thinking. But I did not hear anything about a windfall loss. What are we trying to do is stabilize the oil industry. I understand that the oil industry is not politically popular. Bashing oil is a lot of fun for a lot of folks. A lot of folks think that the oil business is what they see on the TV show Dallas, but those are just not the realities in Texas today.

I think that it is just as important for this country to have a reasonably stable oil industry as it is to have a steel industry. Now, what do we do on steel? We say, "Let us put allotments on," and we do that. I have to admit that add allotments to the cost of those thing that we make in this country using steel.

I have to say to the Senator that when we put that import fee on oil, it adds to cost. I understand that. But all these economists who were testifying and saying what a great thing it is to get down the price of oil, how is it going to be a real boon for our country and how we are going to see GNP growth 4.5 percent—were just plain wrong. It did not work out that way. They said we were going to have a real increase in capital spending in this country. It did not work out that way. Why not? Because of the devastation in the oil and gas producing States.

Service industries are going bankrupt. Independent producers are going out of the business.

Now, what we see in the tax bill coming over from the House is another hit. They are on the way down, but hit them again.

It is terribly important we continue to have adequate oil reserves in this country. It is important that we do not get hooked again on foreign oil. What did we use last year in the way of foreign oil as compared to our consumption? Twenty-seven percent. What was it at the time of the embargo? Forty-seven percent. What a marvelous job we did on conservation, and during the same process we were able to keep up the oil reserves of this country by drilling deeper wells, more expensive wells, going farther out at sea, taking the high risks. We kept the oil reserves up.

Now it is going the other way-increasing foreign consumption, decreasing domestic production. That is where we are headed. We are being wiped out of the business because we cannot live with these prices. Look at what is happening on stripper wells. You have 442,000 stripper wells in this country. Over 100,00 of them have already closed down, and once you close them down, the environmental requirements are such that you have to plug them, and once you plug them you do not bring them back. So the oil is lost. I think OPEC played its oil card a decade ago and it is getting ready to do it again. I do not like an import fee, buy I do not see any other way to defend ourselves, and I think it helps stablize an industry that I believe is important to our country.

Mr. WEICKER. Will the Senator yield?

Mr. BENTSEN. I hear people say it will not work. In 1959 President Eisenhower imposed quotas on imported oil. Now, that was a serious move. The quotas were mandatory. He acted under what is known as section 232 of the Trade Expansion Act. And that authority still exists. He took that step to stem rapid increases in the imports of cheap foreign oil so that those increases in imports would not threaten or impair the national security, and it worked.

We were able to keep our domestic industry in place. But once you lose the rigs, once you lose the service companies, they go out of business and you do not put them back into business overnight. I think the oil import fee will work, and I think it will be helpful. I do not think in this instance, I would say to the Senator, I am being parochial, but I am also speaking to what I sincerely believe is the national interest of my country. I believe it is important that we have a stable oil industry in the country. Where we have to make some exceptions for heating in the Northeast, of course we will. I understand the fact that we had regulations that many people did not like, but we had a stable oil industry.

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

Mr. BENTSEN. Yes; I will be glad to yield.

Mr. WEICKER. Will the Senator support a gasoline tax at the pump?

Mr. BENTSEN. Well, I supported it many times in the past, and I may support it again depending on what we are trying to accomplish. And let me say that the Lieutenant Governor of my State, in going before a special session of the legislature, is calling for an increase in the gasoline tax in the State of Texas.

Mr. WEICKER. Is the Senator from Texas calling for a tax at the pump?

Mr. BENTSEN. It depends on what we are going to get for it.

Mr. WEICKER. Did the Senator from Texas support——

Mr. BENTSEN. I have done it many times in the past and been a leader in it.

Mr. WEICKER. Did the Senator from Texas support the amendment of the Senator from New Jersey [Mr. BRADLEY] when he proposed such a gasoline tax last year?

Mr. BENTSEN. I do not remember the context of it, but I have told the Senator repeatedly that I did so, and I have proven that, and I have spoken on the floor in favor of those measures. I think I have answered the Senator.

Mr. WEICKER. I just have two more questions.

Mr. BENTSEN. One more question, and then I would like to continue.

Mr. WEICKER. Did the oil industry benefit—the distinguished Senator from Texas referred to the fact that the market was on the way up due to the pressures of OPEC a few years back. Did not the producers in Texas benefit from that rise in prices?

Mr. BENTSEN. Of course it did. I am not quarreling with that. But I told the Senator earlier I really want to finish my comments.

Mr. WEICKER. I just have two short questions.

Mr. BENTSEN. I did not yield for a series of questions.

But I also stated it at that time, when the windfall tax was put on.

□ 2040

On the other side, if you put a damper on the profit side, I would like to see some concern about the loss side—that we have a stable price for oil and that we keep a reasonable oil industry going in this country. I think if you do not do that, the national security is seriously jeopardized.

Mr. WEICKER. Will the Senator yield for one last question?

Mr. BENTSEN. Yes, one last question—which, I must say, the Senator did not do for others.

Mr. WEICKER. I am delighted to go ahead and do it at the end of my statement.

Mr. BENTSEN. I am not through with my statement, but you have kept interrupting me. I will let you have one more question.

Mr. WEICKER. Will the distinguished Senator from Texas tell me what the unemployment rates were in New England when the prices of oil were high and everybody was flush in Texas. They were staggering. I will answer the question.

Mr. BENTSEN. Let me answer the distinguished Senator from Connecticut.

That was when New England was in trouble and asked for help, and this Senator tried to help. When the city of New York was in trouble, this Senator tried to help. When the steel industry was in trouble in Ohio and States such as that, this Senator went in and supported the allotment on steel because I thought it was important in the national interest. So this Senator has responded.

Mr. WEICKER. This is a——

Mr. BENTSEN. We had an agreement as to the number of questions, and you have continued to interrupt.

Mr. President, I really believe that in this kind of situation, if we are going to have stability and some economic growth in this country, we have to have a stable oil industry. I believe the oil import fee would contribute to that, and I strongly support the amendment by the Senator from Colorado and hope it will be adopted.

Indeed, I commend the Senator from Colorado for offering his amendment. As I understand his comments, the amendment would impose a $10 per barrel import fee on imported crude oil and products. A portion of the resulting revenues would be used to expand protection for the elderly and low-income families through the Energy Assistance Program. And the balance of the revenue would flow through to the general fund and aid in efforts to reduce the ballooning budget deficit.

I have worked long and hard on the idea of an oil import fee. I have looked at the issue from every conceivable perspective. While I would prefer an oil import fee with a sliding scale based on a "survival price" of $22 per barrel, I support the approach of the Senator from Colorado and urge the adoption of his amendment.

Let me note first that this amendment implicitly acknowledges that the Congress and the administration face an enormously challenging task in skrinking the budget.

We have put into place system after system to reduce the budget deficit. We were told that the reformed budget system in the seventies would expedite elimination of deficits. And we were told that the newer Gramm-Rudman-Hollings system would do it too. Yet, the deficits have grown larger, not smaller. And they have done so because the Congress and the administration, more often than not, have been unable to agree where to wield the budget ax. We all have our own budget priorities—programs we wish to protect. And I am not optimistic that the budget will shrink until we can forge a bipartisan consensus with Congress and the administration—whether it is through the Gramm-Rudman-Hollings system or any other system we devise.

The amendment has two positive features. First, it will reduce the Federal deficit. The largest budget deficit in our history was marked up last year when it swelled to $212 billion. The deficit this year may be larger despite the $11.7 billion cut we made under Gramm-Rudman-Hollings. But that is history. What concerns me even more is the prospect that despite all our huffing and puffing, the deficit threatens to grow still larger.

And the major cause is the slowing of the economic growth as the recovery winds into its final phase. The recovery is 44 months long now. It is beginning to show considerable signs of wear and tear. Despite the dramatic decline in interest rates in the past year and a half, housing and auto sales have plateaued. They are robust, but they are unlikely to rise markedly above current levels.

Our foreign trade sector continues to rob the economy of 2 percentage points of growth month after month. Indeed, our failure to produce an effective trade policy designed to balance imports and exports is the primary reason the economy grew 2.4

percent during the first half of this year instead of the 4-percent target of the administration. We had high hopes that the declining dollar would spark an export boom. I believe that hope is gone now.

Other more potent factors like growing protectionism abroad have sharply diminished the role on our trade balance played by changes in the dollar's value on foreign exchange markets. Moreover, our major trading partners in Germany and Japan, despite implicit promises made at the plaza meeting last fall, have refused to expand their own economies and buy more United States exports. They prefer a world of slow growth in which they can continue to achieve trade surpluses.

Slower growth spells higher budget deficits. Indeed, we are facing the prospects of continued sluggish growth ahead. Real GNP slumped to a bare 1.1-percent growth rate in the second quarter of this year. And both the blue chip economic indicators and Chase Econometric are forecasting growth to hover around 2.5 percent for the balance of this year. If that occurs, we are facing yet another record deficit in fiscal year 1986 and, again, in fiscal year 1987. And the cuts we need to make in order to satisfy the Gramm-Rudman-Hollings targets are more than twice what we have heretofore been told by OMB.

This amendment has a second feature which recommends it as well. Our Nation has gone on an oil binge as prices have fallen over 60 percent to range near $10 per barrel.

Consumption this year is up sharply. At the same time production is dwindling because many oil companies cannot meet their production costs at today's depression prices. Stripper oil well production is particularly hard hit.

Strippers account for 73 percent of all U.S. oil wells. They are the backbone of our oil production mechanism. Yet, strippers are economically fragile.

They each produce barely 2.9 barrels a day, and many rely on expensive teritiary recovery techniques which cost an average of $14.59 per barrel. They are the most price sensitive, and they are being shut down in ever increasing numbers. Philips Petroleum, for example, is closing its strippers in the Permian Basin as maintenance becomes necessary. And Texaco is now predicting that we will lose 640,000 barrels per day of stripper production in the near future.

Promising new fields on the North Slope and offshore are not being explored or developed because high production costs cannot be recovered at current prices.

Declining production and rising demand spells rising oil imports. And imports have soared this year. Since January, crude and oil product imports have leaped an amazing 750,000 barrels per day above the same period last year.

And our dependence has jumped to 39 percent now, from 27 percent then. The trend is even more alarming. During June, oil imports rose even faster and accounted for nearly 40 percent of all U.S. demand. The peak year of our dependence was 1977 when we relied on foreign oil for 47 percent of our consumption.

And oil experts in CBO, OMB, and the Department of Energy agree that we will exceed that level and become dependent on foreign oil for one-half of our consumption sometime before 1990 or 1991.

The only major untapped source of oil to meet our rising demand is OPEC—which is why Saudi Arabia has once again moved up to join Mexico and Canada as major U.S. suppliers.

We need an energy policy in this country which will move us away from undue reliance on oil imports. We need an energy policy which promotes national security rather than diminishing it.

And we need an energy policy which enables us to conduct foreign policy free of the heavy hand of OPEC or the fear of oil blackmail. After all, the Nation faced perhaps its greatest economic threat in many years when OPEC ran up oil prices a decade ago.

In short, our national security interests demand steps to limit oil imports to a reasonable level. And an oil import fee is one proven and effective technique to do that.

Mr. President, there is nothing at all extraordinary in this amendment. Actions like those that we would have the Senate take today have been taken in the past, and will be taken again in the future no matter what we do today.

As I have already noted, President Eisenhower imposed quotas on imported oil in 1959.

Another example is closer to home. In 1973, President Nixon suspended the Eisenhower quotas and replaced them with a new system of fees on imported oil.

The fees stayed in effect until 1979 and were altered from time to time by Presidents Ford and Carter to enhance the national security. The system of fees itself was revoked by President Reagan, but only in 1983.

President Reagan has the right idea, you say? I don't believe for a minute that President Reagan does not recognize the recurring need for the Federal Government to intervene in the oil market to protect the United States. He has done so himself.

In 1982, for example, President Reagan invoked section 232 to prevent imports of Libyan crude oil from coming into this country. In 1985, he followed up and took action under the International Security and Development Cooperation Act to bar imports of Libyan refined product. I have no doubt that he would interfere again in the oil market if he thought the security of America depended on it.

Let me return once again to the question of exceptions. We often hear that an oil import fee is unworkable because there must be exemptions for home heating oil, the petrochemical industry, and so forth. The quotas and fees that I have just described were altered and modified some 50 times over two decades. Exemptions are possible and can be made to work.

Presidents Eisenhower, Nixon, Ford, Carter, and Reagan all recognized the truth that we are trying to highlight in this amendment. Sometimes it is necessary for the Federal Government to control oil imports in the name of national security. We differ with President Reagan only in one regard: We believe that imported oil is putting the United States at grave risk today, and we want to act now before it is too late.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I rise to speak on this subject because I think it is important to clarify why I oppose the amendment, though I must say that the Senator from Connecticut almost talked me into voting for it. [Laughter.]

The issue here has nothing to do with sales taxes. Sales taxes are a bad idea. I never voted for a sales tax on gasoline and I do not expect to.

Mr. President, this is not a regional issue. The Senator from Connecticut is dead wrong in saying that this is one region against another.

In fact, if we are really talking about adopting this amendment here tonight, instead of letting people know our position or making a statement about whether we are concerned about the oil industry or not, let us talk about real policy and its impact. This amendment will eliminate the differential between the oil-producing States and the non-oil-producing States, but it will do it by decimating the entire economy.

I am opposed to this amendment for what it will do to Texas, for what it will do to America. I do not suffer under any delusions. If there has ever been an issue more popular in my State than the import fee, I am not aware of it. But I want to explain why I am against this.

The first problem with it is that if the amendment became law, you might argue the following scenario: We will have an import fee on oil. It will roughly double the price of oil on the domestic market. We will collect taxes. We can spend the money and we can do a lot of good with the money. Consumers will never know

the difference, because prices will be only $20 a barrel. Producers will never know the difference, because they were paying $30 a barrel 2 years ago, and everything will be great.

The only problem is that this scenario is totally false. Not one of those statements is true. Let me explain why.

Everywhere in the world today, in terms of raw material used in the production process, oil is selling basically for the same price. To make the arithmetic simple, let us say oil is $10 a barrel. If we adopted this amendment and it became law, oil would sell at $20 a barrel.

Let us first consider petroleum-based product exports. We sell about 15 billion dollars' worth of petrochemicals on the world market. About half of those chemicals are produced between Corpus Christi and Beaumont in my own State. If the price of our feedstock were twice the world competitive price, we would lose every one of those 15 billion dollars' sales, and the people who are engaged in petrochemical refining would lose their jobs, to the degree that they are exporting the product. But the problem does not end with those $15 billion worth of sales, because petroleum is a basic product in the production of everything from plastics, a huge American export, to polyester.

So what we have here is an amendment that would make the feedstock cost of crude petroleum in the United States twice the price our competitors pay; and whether we are talking about petrochemicals or plastics or polyester, we would become noncompetitive on the world market and all those jobs would be lost.

The PRESIDING OFFICER. The Senate will be in order.

Mr. GRAMM. But the problem does not end there, because crude petroleum is a feedstock in the production of fuel. So every industrial job that is a significant user of petroleum-based products, every farmer in America, will be paying more for his fuel than our competitors all over the world, and the net impact will be a loss of competitiveness on the world market.

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

Mr. GRAMM. Let me go through the litany of problems inherent with the fee and then I will be happy to yield.

So we are talking about the loss, literally, of millions of American jobs in terms of producing, a noncompetitive situation, because of doubling the price of a primary product.

You might say: "Well, we could fix that if we accommodated the petrochemical manufacturers." My colleagues can be assured that if we were serious about this, the petrochemical manufacturers would be knocking down our door and we would be talking about rebating this tax to them, based on the distillate content of exports, and we would start down the list of exemptions.

The Senator from Connecticut would offer an amendment to exempt home heating oil. I am sure that we would have a proposal to exempt the farmer. But you have a dilemma, which is why this is not viable policy, and the dilemma is this: If you start making exemptions, you end up with an entitlement program such as we had under President Carter, and you have an absolutely unworkable program. On the other hand, if you do not make exceptions, you end up decimating huge elements of the American economy.

The point was made that we had a quota in 1959, and we did. But let me remind my colleagues that the world is different today from what it was in 1959.

When Eisenhower was President in 1959, we had a virtual monopoly on world technology. In fact, that was still the era of the so-called dollar shortage, where the great debate in international trade was whether or not our trading partners would ever be able to compete with the United States. I think that debate is over. I think they are competing with us all over the world.

I would like very much to be for this amendment, but I cannot be for it because it will not work. It will not be good for my State, though we are obviously the Nation's largest petroleum producer in the Continental United States. But we are also the largest user of crude petroleum in terms of petrochemicals, huge exports, agriculture, and industry. All those areas of our economy would be decimated by this policy.

I am not saying let us not do anything to address the problem. In fact, I will vigorously support and cosponsor the amendment to repeal the windfall profit tax. I think we should also deregulate natural gas.

□ 2050

I think we ought to repeal the Fuel Use Act and incremental prices so we can eliminate provisions of law that were written in the Carter administration when everyone was saying we are not going to find any more oil and gas.

I think quite frankly we have to begin now to make some hard decisions about looking at the taxation of crude petroleum, looking at percentage depletion, deciding what kind of policy we are going to have; if we are looking at a decade of $10 or $15 oil, what kind of policy ought we to have if we are looking at a 3- or 4-year dip.

But my point is that whatever policy we have, this is the most inefficient way of implementing this policy because this policy hurts the whole country. It especially hurts the parts of the country that one initially views as benefiting because these are the biggest users of crude petroleum and all the industries related to it.

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

Mr. GRAMM. I am happy to yield.

Mr. HART. Is the Senator aware of the study done by the CBO of April 1986 that contains the following statements, and I think it is pertinent to the point the Senator is making. The study is entitled, "The Budgetary and Economic Effects of Oil Taxes." There is this sentence, "Nominal GNP remains approximately constant in response to a tax."

Further, the report says oil taxes could lead to a lower world price of oil. If they did the taxes would in effect be paid in part by foreign oil producers.

Finally, these statements in the same study on page 38:

> The CBO concludes that the oil import fee would have its most effect if we were to get cooperation with other importing or consuming nations.

But let me make the statement: Such concerted action is hindered by the fact that the United States has been the only major oil consumer not to implement sizable oil taxes since the first oil price shocks in 1973.

The fact of the matter is we have been living in the comparative advantage. We will not fall into disadvantage with our foreign competitors because they have already put taxes on and the CBO says some of these countries have already begun——

Mr. GRAMM. I yielded for what I believe was a question.

Mr. HART. I am finishing. Some of these countries already have begun to place additional taxes on oil and energy in response to recent oil price drops.

Does that not respond to the point the Senator from Texas made?

Mr. GRAMM. Let me first say to my distinguished colleague from Colorado, I have spent most of my life writing studies, and I know exactly what goes into them.

Anyone who wants to tell me that doubling the price of crude petroleum in the United States would not decimate the petrochemical industry, would not wipe us out of the plastics industry, would not decimate even an industry like textiles that is dependent on crude petroleum, that would not disadvantage every farmer, every manufacturer in American is absolutely talking through his hat.

Yours is a study that is written by people who want an easy source of revenue.

Obviously, this is going to be appealing as an amendment to the Senators who want to say, "I am concerned about the petroleum industry, we have

a crisis, we have to do something," and I understand that.

I represent, with my distinguished senior Senator, the Nation's historically greatest petroleum producers.

But I am not swayed by that, because a crisis does not call for inefficient action. It calls for efficient action and of all ways to deal with this problem in terms of the cost on the economy and the working men and women of America, this is absolutely the worst way and would, in my opinion, hurt Texas and hurt America, and I am against it.

To those who are looking for an easy source of revenue, let me say that there is no doubt about the fact you can get CBO to claim this amendment will save money because they are basically going to make some simple assumptions about elasticity of demand. They are going to assume there is not a whole lot of change. They are going to assume some absorption and they are going to give you a big chunk of revenues. But do not believe it. We are getting revenues from 15 billion dollars' worth of petrochemicals sold on the world market. How are we going to compete with other petrochemical manufacturers when we are paying $20 a barrel for feedstock and they are paying $10 a barrel? No way we are going to compete.

We are generating revenues from our foreign sales of agricultural products and, as I am sure the distinguished spokesman for agriculture who speaks more eloquently than I can will tell you, we are not doing too well right now. How are you going to do well when you are paying more for gasoline and diesel fuel than your competitors? You are not going to do very well.

We have heard talk about steel tariffs. What did that do for the steel industry? It did not do anything for the steel industry. They are going broke left and right.

What did it do for the automobile industry? Ask the Japanese. Ask the Koreans. Ask the people who are producing the automobiles we are not producing because we have protective tariffs, because we have labor unions that demand wages beyond productivity, because we have inefficient management.

Do not hold up steel as an example of how we have benefited from protective tariffs. It is a litany and proof that protectionism kills industry, kills the economy, decimates the very people it is supposed to help.

So this is not a diatribe for free trade or free markets. I am not claiming there is a free market in crude petroleum. But I am saying that we are in a competitive world. We have lost our competitive edge and we are having a very difficult time producing and selling anything.

If you come in and double the price of crude petroleum on the American economy, you are going to wipe out our ability to compete on everything from petrochemicals to agriculture, to petroleum-based textiles.

This is not a good amendment and I urge my colleagues to defeat it.

It has absolutely nothing to do with gasoline taxes. It has nothing to do with regionalism.

There is a problem. There is a crisis that worries me a great deal about my own State. But this is not the way to solve that crisis. This is a way to rub everybody's nose in the problem and make the crisis worse.

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

Mr. GRAMM. I am happy to yield.

Mr. HEINZ. Mr. President, I thank the Senator for yielding because I want to compliment him on the position he has taken on this amendment.

The fact is that Senator GRAMM, a Senator from Texas, has courageously said and he has explained his argument—I will not repeat it—that he is opposed to this oil import fee.

Let me tell you, that is a tough position to take if you are from Texas, and he has reasoned his argument out in a way that everyone can understand it. He has explained why in the case of this amendment a few people benefit and many people are hurt. In the case of those people who benefit, it is not the Government, the taxpayers who benefit for most of the revenues this amendment is going to raise.

I commend the Senator from Texas for his excellent position, for his courageousness and integrity, and I wish we had even more of it on the floor than we do.

Mr. GRAMM. I thank the distinguished Senator from Pennsylvania and I will yield back my time making one final point:

□ 2100

Because your State may produce oil, do not think you are going to really benefit from this amendment. Because, if your State produces oil, it uses oil to produce other products. And our ability to be competitive in the world market would be decimated.

I am convinced that you may well lose far more jobs than you gain. So I urge my colleagues: do not say there is no problem, there is a terrible problem, a national problem, a national crisis. This is not the solution.

Mr. MITCHELL. Mr. President, I strongly oppose the pending amendment.

An oil import fee is a regressive tax that will impose an unequal burden on different income groups and regions across the country. It is an inefficient means of raising revenue that will impose new burdens on the economy.

The inconsistency between this amendment and the earlier amendment on the windfall profit tax should not be lost on any Member of the Senate. Earlier, the Senate tentatively decided to repeal the windfall profit tax. That means that when prices rise, as they inevitably will, the oil industry can earn unlimited profits, regardless of how high the price goes, even when those price increases are caused by the acts of foreign governments and foreign cartels. That Senate action asks that the Government renounce its interest in protecting its citizens from oil price increases, no matter what the cause of those increases, no matter what the amount of those increases.

Now, on the very same evening, the Senate is asked to take the exact opposit position. Now, the Government is asked to step in and protect the domestic oil industry from the vicissitudes of the market.

Well, they cannot have it both ways. They cannot ask, on the one hand, that the Federal Government remove itself from the market by repealing the windfall profit tax, and then, on the other hand, that the Federal Government intervene in the market by imposing an oil import fee to protect domestic producers.

I supported retention of the windfall profit tax because I believe the Government does have a responsibility to protect its citizens from the market distorting actions of foreign governments. At the same time, I believe the Federal Government should take action today to help our ailing domestic oil industry. But the solution should not impose disproportionate burdens on another region of the country.

The oil producing States of the Nation are undergoing extraordinarily difficult times today that are even more extreme than the good times they experienced when oil prices were rising. The politics of oil have tended to divide this Nation between those regions that produce oil and those that do not.

Nevertheless, in times like this we should all come together as Americans in sympathy with the different dislocations that oil producing States are experiencing as a result of the precipitous decline in oil prices. The toll this is taking in human misery must be responded to.

And just as importantly, the implications the current price decline has for future oil production, particularly from marginal wells, must be of concern. Oil is a basic resource of strategic importance to this Nation and we should not be unmindful of the implications the current crisis has for our future energy needs. Whether the price drop results from intentional policies of foreign governments, or is an indirect consequence of those policies, this Nation should respond.

But concern for the effects of the oil price decline does not mean that the Congress must adopt policies that will impose unnecessary tax and price burdens on other parts of the country.

And yet, that would be the effect of an oil import fee. At a time when we need to unite, this proposal divides. It sets region against region. It asks one part of the country to shoulder the entire burden for helping another part of the country.

My objections to this amendment are simple. An oil import fee would have an adverse impact on our national economy. It represents a regressive, inefficient method of raising revenues.

Mr. President, the last extended serious debate on oil import fees occurred in early 1982. That debate generated a number of studies on the economic and revenue impacts of an oil import fee. Several stand out, specifically the ones prepared by the Congressional Budget Office, the Congressional Research Service, the Consumer Energy Council of America Research Foundation, and the American Gas Association.

We can benefit today from a review of what those studies projected then from a $5 per barrel fee on imported oil.

Probably the most dramatic impact would be seen in the 8 to 12 cents a gallon increase in the price of gasoline and other petroleum products as domestic producers increased the price of their products to match the import fee.

The studies projected that the increased cost of petroleum would reduce the gross national product by between four-tenths of 1 percent and 1 percent, as higher gasoline and energy costs flowed throughout the economy.

In addition, the studies indicated that following the imposition of an import fee, inflation would increase immediately by a rate ranging from four-tenths of a percentage point to 1 percentage point.

And last, we should expect to see the number of unemployed Americans rise by 100,000 to 400,000, from the resulting economic slowdown.

There has been no evidence, and no one has offered any, that the assumptions, projections, and conclusions in those studies do not remain valid today.

Mr. HART. Will the Senator yield just on that point?

Mr. MITCHELL. Yes, I yield.

Mr. HART. Earlier in the evening, the Senator from Colorado cited the most recent Congressional Budget Office study, April 1986, which directly disputes those figures.

Mr. MITCHELL. I thank the Senator.

There is a key point, however, which must be considered in this debate. The studies considered the economic impacts resulting from the imposition of the $5 per barrel import fee.

The present amendment proposes a fee twice that amount, $10 a barrel. Thus, the impact would be twice as adverse as the figures that I mentioned earlier.

If so, then enactment of the fee proposed in this amendment would result in a drop in the gross national product of between 1 and 2 percentage points. And I understand the Senator has information which he suggests to the contrary, and I respect that. But I believe it would mean an increase in the Nation's inflation rate of between 1 and 2 percentage points and would result in increasing unemployment in America by between 400,000 and 800,000 persons. Those effects, I believe, are unacceptable.

A second major disadvantage of an oil import fee is that it is the least efficient revenue-raising option being considered by the Congress.

It would, of course, raise revenues, but the revenues generated by a $5 a barrel fee would be in the range of $9 billion a year over the next 5 years. The cost to consumers would be between $20 billion and $30 billion. So, with a $10 a barrel fee, we are talking about increasing the revenues to the Government by $19 billion at a cost to American consumers of between $40 billion and $60 billion.

Because domestic oil prices would rise to match the increase in imported oil prices, oil companies would, of course, realize higher revenues. The windfall profit and corporate income tax, if the windfall profit tax is still with us, would not recoup all of these revenues, as is acknowledged by the author of this amendment who again proposes a rebate scheme. But that scheme is without merit. Such rebates were promised to offset the effects of the windfall profit tax in 1979. But the program that was implemented, the Low-Income Home Energy Assistance Program, did not fulfill the promise.

Instead, it provided assistance without regard to whether a recipient heats with oil, gas, or electricity. It is unfair to tax oil consumers and provide relief to others who do not use oil.

But, despite the rebate scheme, domestic oil companies would reap tremendous benefits from an oil import fee. We would face again, in the 1980's, the probelms with which the Nation grappled through the 1970's, as Government-induced distortions in our economy artificially created favorable investment opportunities in some sectors and not in others.

It is ironic that, at a time when we are seeking to eliminate Government-induced distortions into our capital investment market through a major tax overhaul, we should be asked to consider a measure which would have the effect of creating significant new distortions.

A final disadvantage—and I am nearly completed. I know the leader would like to get to a vote—is that the burden of this fee cannot be fairly spread among industries, regions or income classes.

I can state categorically that the residents of my State of Maine would be among those most adversely affected by an oil import fee.

Oil accounts for 80 percent of the total energy consumption in Maine. In comparison, the rest of the Northeast States utilize oil for 50 percent of their energy, and the country as a whole, uses oil for 44 percent of its energy.

Alternatives to oil for home heating in Maine—a major and significant component of the cost of living in New England—are limited to wood and electricity. Our electricity in Maine is largely generated by hydro, coal, and nuclear fuels, but oil still accounts for 19 percent of generating capacity—a proportion roughly three times the national average.

Not only, therefore, does my State rely disproportionately on oil for direct heating, but a principal alternative heat source is also highly dependent on oil.

An import fee on that product therefore is certain to impose an enormous burden on the citizens of Maine and an enormous and unfair burden I might say.

To sum up, Mr. President, a fee on imported oil would adversely affect our national economy. It would serve as an inefficient and regressive means of raising revenues, and it would adversely impact oil consumers, particularly those in the Northeastern States. It is a very, very unfair proposal, and I urge its defeat.

Thank you, Mr. President.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER (Mr. MURKOWSKI). The majority leader.

Mr. DOLE. Mr. President, as I understand, there are two more speakers. As far as I know, there are no more speakers on that side. I wonder if we might agree to a vote.

The Senator from Oklahoma would like 5 minutes, the Senator from Maine wants 5 minutes, the Senator from Idaho wants 5 minues, and the Senator from Colorado will close with 2 minutes.

I ask unanimous consent that the time be allotted, and that we vote on the amendment, either vote or whatever the managers want. They may want to table or vote at 9:30.

Mr. HART. Will the majority leader yield?

I am instructed that our side is trying to check with the minority leader. I have no objection to that at all.

Mr. DOLE. I will reserve that. We will go ahead and use up part of the time.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I rise in support of the amendment of the Senator from Colorado. I will be the first to say I do not think the amendment is perfect. I personally think instead of having a $5 or $10 fee, whatever it should be, we should phase out after the price gets to a certain level. What that level would be would be subject to debate—start phasing it out at $20, $25, or some other level, but yet I think it is important.

We have heard a lot of things about what is going on in the international market. I hope our colleagues and the American people realize when they are clapping and applauding about the decline of oil prices that it is not the free marketplace at work. Actually we have a manipulated market. It is being manipulated primarily by OPEC countries and primarily by the Saudis. They are doing it for a purpose. Their purpose is to increase their percentage of world exports. They are being successful. Their percentage of world exports has increased dramatically. The amount the United States is buying from those countries has also increased dramatically, and the amount we produce domestically has declined.

I think it is important for people to understand that, when we have seen the price of oil fall in November from $28 to the last 4 weeks where we are looking at a price of $9 and we are seeing that price even erode further where we are seeing spot prices from the Saudis in the $6 to $7 range, we know what is happening, and to also know there is an expense involved with it.

That expense is basically our national security and our dependence on foreign sources. Nevertheless, months ago, when the Senator from Colorado had his original amendment up, we imported about 27 percent. Oil prices were at $30. They called for a $10 oil import fee. I did not support it. I think you will find most people in the industry, API, IPAA, and others were opposed to it. They said we did not need it. Times are different now. We are looking at the domestic prices of $11 and coming down lower toward a $9 or $8 figure. We are looking at bankruptcies across the board. We are looking at almost no drilling whatsoever in this country. There are 680 rigs running in the country today compared to over 4,000 just 5 years ago. We are basically seeing the domestic industry being devastated. Our dependency on foreign sources has increased dramatically in this last 8 months alone.

Eight months ago we were importing about 27 or 29 percent. Today it is 39 percent of our total production or total energy needs, and 39 percent is now being provided by imports. The trend is continuing to accelerate and within the next few years, probably the next couple of years we will be exceeding the 50-percent level. That is very dangerous for the Northeast. It is very dangerous for all sectors of the country.

When we had the previous embargoes in 1973 we were importing 35 percent. In 1979, we were importing about 44 or 45 percent. Today we are importing 39 percent and increasing. That makes us very vulnerable to shutoffs from other sources, particularly the Middle East sources.

One final comment. We have heard a lot of people say wait a minute, this would punish or be particularly detrimental to the Northeast or to the consuming State. They said, well, it did not punish the Southwestern States or the energy States when oil prices were going up. The windfall profit tax did punish the producing States. It did selectively single those States out. It did raise taxes on the producing States, $77 billion from a handful of States. That tax was not paid by other States. It was paid only by those few States.

So they were singled out. We did not allow the free marketplace to work as it should have. We placed the windfall profit tax to take those benefits and share those with the country. I think we likewise should be cognizant of the fact that we have some very serious problems here by Saudi manipulation, by OPEC manipulation, that this fee would help correct.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. After consulting with the minority leader and other Senators, I think we are prepared to put a unanimous-consent request that a vote occur no later than 9:30 with the proviso that up to 5 minutes be reserved for the Senator from Maine, that 5 minutes be reserved for the Senator from Idaho, and with 2 minutes being reserved for the Senator from Colorado. I think the Senator from Arkansas is seeking time as well.

Mr. President, I amend my request to make it 9:35 so that the Senator from Arkansas may be reserved up to 3 minutes.

I renew my request.

The PRESIDING OFFICER. Is there objection?

Mr. BUMPERS. Reserving the right to object, I think the Senator listed 22 minutes and a vote at 9:30.

Mr. HEINZ. Will the Senator yield? I say to the Senator three Senators are seeking 5 minutes and one seeking 3 minutes.

Mr. BUMPERS. After which the vote will occur.

Mr. HEINZ. Yes.

Mr. BUMPERS. I have no objection.

Mr. HEINZ. I thank all Senators.

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

The Senator from Maine.

Mr. COHEN. Mr. President, I will not take the full 5 minutes. I am sure my colleague from Arkansas can use whatever time I do not consume.

First, I would like to commend my colleague, the senior Senator from Texas. If we are talking about a profile in courage, I say he has to be entered into that particular arena. I assume that within minutes after he made that very powerful and persuasive speech on this floor his lines were probably ringing off the hook in his office. It is probably hard to contest the notion that somehow one cannot be from Texas and not support an oil import fee. But I think he demonstrated with the kind of clear thinking logic and power of persuasion as to why it is the wrong thing to do under the circumstances.

So I think one person with courage hopefully will become a majority in this institution on this particular vote.

I also would like to extend my comments to the Senator from Colorado, Senator HART, and to make just one other point about Senator HART's amendment. No. 1, it is not political nor is it regional in nature. I would point out that 2 years ago when Senator HART was pursuing higher aspirations, some might say aberrations, he was pursuing the Presidency, he also proposed at that time that we have an oil import fee. It was not a politically popular thing for him to do at that time because he was campaigning in the Northeast. So I want to commend him for offering the initiative even though I think it is the wrong solution to the current problem. Nonetheless, his single motivation from my experience in working with him has been one issue and that is to somehow instill a conservation ethic in this society. Because what he and the senior Senator from Texas have been saying is absolutely true.

We have a serious absence of conservation in this country. That is how we got into this problem when the war broke out in the Middle East and we had a shutoff of oil. That is when we got into great difficulty and started talking about allocation formulas which everyone agreed was a disaster for the country itself.

The senior Senator from Texas is also correct that the Saudis are not looking out for the interests of our consumers.

□ 2120

They are trying to undercut the market with the hope that eventually they can drive our own domestic producers out of business and then capture the marketplace once again and then start driving the price up.

It is difficult to really come to a conclusion as to what the right solution to the problem is. At the time we had the Mideast war going on, what we saw was the foreign competitors in the automobile industry were way ahead of the domestic producers in this country. They started building smaller and more fuel efficient cars while we were hooked on the big gas guzzlers.

I know that when I was a Member of the House of Representatives, I was struggling for a solution at that point. I even offered an amendment putting a higher excise tax on the larger cars. I do not think I have received more mail in my history of 14 years than when I proposed that particular amendment. I was equated as being a Communist for wanting to take away the large cars that Americans had become so dependent upon. Yet all of us were struggling in one fashion or another to try to come to grips with how we reduce the consumption of foreign energy in this country.

We have yet to do that. As a matter of fact, the consumption is going up again and the foreign auto makers are following that trend.

Look at the cars being made today. Honda is now producing a luxury model selling at $20,000 or $22,000. It is creeping up because they are following the consumption trends once again in this country.

The Middle East is no more stable today than it was in 1973. We face, a very, very fragile supply situation.

So I want to commend Senator HART for at least raising the issue on how we come to grips with this, at the same time coming to an opposite conclusion for the reasons so well articulated by the junior Senator from Maine [Mr. MITCHELL].

Statistically he has laid out the case it would be bad for the economy and, No. 2, it would be particularly devastating for our region on the effect on the price it would have there.

I would conclude on an observation raised by the Senator from New Hampshire on another issue. He recently was confronted by a group of citizens who urged him to impose higher business taxes so that we could have a tax reform bill that would benefit the lower and middle-income tax for the people of this country. His response was good. He looked at the audience and said, "I have some good news and some bad news. The good news is that we can probably produce a tax bill that will lower the tax to middle- and low-income people. And on the higher taxes to businesses, the bad news is that you will probably be out of a job."

That is what the junior Senator is saying here tonight, that we can impose an import fee but the economy would be seriously jeopardized as a result.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. I rise somewhat reluctantly, Mr. President, to oppose the amendment, and I say reluctantly because I do not think it requires any explanation or delineation of the great difficulties that the oil and gas industry have in this country today. I am not rising because I am blind to those problems; I am rising because I think that the amendment is the wrong answer to that question.

I think there is a great problem. I am sorry that we have New England against the oil producing States, and I am sorry that to the oil producing States this is the only salvation for the oil producing States because I think they have glossed over the problem which this amendment does nothing about. It exacerbates some problems without clearing others at all.

The primary reason that I am hesitant is that I do not blame people in the oil and gas industry for having a tremendous frustration that we cannot come to grips with the problem, and find some solution which will allow them to stay alive. All we can say is no, this is not the right answer. Yet that is what I have to say.

Yes, I understand the dilemma. Yes, I understand why they are seeking answers to their problems. But this is not the right answer.

This is one of the largest tax increases on the American public in one package that I can remember. If you look at total domestic oil consumption, and that is exactly what it would effect, not just imports, the increased burden on the American taxpayer would be somewhere in the range of $70 billion to $80 billion per year; $70 billion to $80 billion per year means about $1,400 per year for a family of four.

I cannot believe that the solution that we seek can cost $70 billion to $80 billion a year and not impose a burden on the American taxpayers.

While I am very much aware of and concerned about the problems in the oil patch, for those reasons, this is not the answer.

Mr. President, as I stated, I oppose the amendment offered by the senior Senator from Colorado [Mr. HART] to add $10 per barrel to the tariff schedules already present on imported crude oil and $14 per barrel on refined petroleum products. The proposed tariff is a mechanical add on. It is not related to the current situation in the world or the domestic oil markets, nor does it provide any mechanism for adjustment in case change is needed. This amendment is not energy policy, it is just a way of raising enormous amounts of revenues.

Mr. President, if this amendment were adopted it would seriously harm consumers, our economy, and our international relations. It would be a major tax increase. It would increase the price consumers pay for petroleum products, such as gasoline and heating oil. It would throw people out of work. It would increase the Federal deficit. It would add to the rate of inflation. And it would slow the growth of our economy.

I would like to note, Mr. President, that neither the Senate Finance Committee nor the Senate Energy Committee have held any hearings on the Senator's proposal. Right now, we simply do not know how much revenue it would raise; or what impact it might have on our economy; or how it would affect or energy situation; or what it would do to U.S. energy intensive industries, such as petrochemicals and steel; or how it would affect our relations with other nations. In my opinion, until we fully review the proposed tariff increase and get the answers to these and many other important questions, it would be most unwise to act.

The one thing that is absolutely clear about this amendment, however, is that it would impose an enormous new tax on the American people. Rough calculations indicate that this new tax would be in the range of $70 to $80 billion per year. That would be one of the largest tax increases in my memory. The proposed amendment would have this enormous impact because imported oil is the marginal barrel which sets the price for all oil consumed in the United States. Last year Americans consumed 5.7 billion barrels of domestic and imported petroleum products. Hence, the proposed tariff would cost U.S. consumers somewhere in the range of $70 to $80 billion per year in higher oil prices—or about $1,400 per year for a family of four.

Although it may only be small comfort, I would like to point out for the benefit of the Senate that not all regions of the United States would be hurt by the proposed tariff increase as much as would be New England. It is well known that the Northeast region of the United States is more dependent on oil—particularly imported heating oil—than the rest of the Nation. As a result, Northeast residents would suffer disproportionately greater from the amendment than would those located elsewhere in the United States.

The proposed tariff increase would also have serious negative macroeconomic consequences, although as I noted earlier we can not fully fathom its potential impact as hearings have not yet been held. However, we can qualitatively assess its potential impact.

First, the proposed tariff increase would adversely affect Federal and State budgets, both reducing revenues and increasing outlays. Higher oil prices lead to reduced economic activi-

ty, which translate into lower overall corporate and personal income taxes collected. On the outlay side, a tariff increases the Consumer Price Index which would automatically trigger increases in Government expenditures, such as for Social Security.

A 1982 CBO study indicates that a $10 per barrel tariff increase would reduce personal and nonoil corporate income taxes by as much as $18 billion per year in out years, and it would increase Federal expenditures by as much as $15 billion per year in out years.

The CBO study also concluded that an increase in the import tariff increases inflation, slows the economy, reduces the growth of our gross national product, and worsens unemployment. The CBO study indicated that a $10 per barrel import tariff would result in a loss of 1 percent of real GNP in the first year following adoption. It also indicated that such a tariff increase would add 200,000 to the ranks of the unemployed.

I would also like to point out that the proposed tariff would have a devastating impact on U.S. energy intensive industries, such as plastics and petrochemicals. These U.S.-located industries are in stiff competition both here and abroad with companies located offshore. If U.S. companies are forced to pay an additional $10 to $14 per barrel for the oil it consumes or employs as a feedstock in the manufacture of products, they will become uncompetitive. If that were to happen, we would see a massive increase of imported energy intensive products, and the decimation of our domestic industries. Those energy intensive industries that are located in the United States will either flee over the border to Canada or Mexico, or go out of business. I can assure you, American workers would not be happy when they find their jobs exported as a result of the amendment.

Mr. President, before we increase the tariff on the oil we import from our important trading partners and friendly nations, such as Canada, Mexico, Venezuela and the United Kingdom, we better make sure we fully understand what this may do to their economies, and what economic, financial and diplomatic repercussions it will have for the United States. For example, if the proposed import tariff makes a country unable to service their debts to U.S. creditors, we may bankrupt a number of U.S. banks. Most importantly, we must pay careful attention to the impact of such action on our international relations with oil exporting nations. We simply cannot afford to bankrupt a foreign nation and drive that nation into the Soviet Union's sphere of influence.

Mr. President, it is for these reasons that I oppose the pending amendment and urge the other Members of the Senate to vote against it.

Mr. WEICKER. Mr. President, I commend the distinguished Senator from Idaho for his statement.

The PRESIDING OFFICER. The Senator from Arkansas and the Senator from Colorado are also seeking recognition.

Mr. HEINZ. Mr. President, I believe there is still unused time.

The PRESIDING OFFICER. The Senator is correct.

Mr. HEINZ. I think the Senator from Connecticut is entitled to time.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. WEICKER. Mr. President, I want to commend the distinguished Senator from Idaho, the chairman of the Senate Energy Committee, for both his leadership in the Energy Committee, which has been a fair and impartial leadership, and for the statement indicating another one of the deficiencies in the amendment before us.

Having said that, I want to reiterate my admiration of the Senator from Colorado who in the past has always been in the forefront of conservation measures.

I repeat what was alluded to by the Senator from Idaho in this sense: What faces us is a national problem, and it is of enormous dimensions. It will not find its resolution in any parochial attitude, whether it was the parochial attitude of my part of the country when it wanted controls, or in the sense of this import fee, which is going to impact on my part of the country and have little impact on those who live in the oil producing States.

I would hope that we would continue to pursue the conservation effort, whether by virtue of fuel efficient engines, whether by virtue of the 55-mile-per-hour speed limit, whether by virtue of the petroleum reserve, which the Senator from Idaho has been pointed out. We have been talking about letting things slide. We have let that slide.

I could go down a whole list of measures that should be taken if indeed we are to avoid any sort of an impact by outside nations, be they Arab or Canada or Mexico. I do not care. I want our own domestic industry to be strong and to be able to weather any kind of a challenge posed to the United States.

But this is not the answer. The answer is going to have to be a national answer. I would hope that would come to pass very soon. I would hope this amendment is defeated.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I rise to state that I cannot support the amendment of my very good friend, the distinguished Senator from Colorado [Mr. HART].

□ 2130

It is a very difficult vote for me. I am torn between a keen desire to help a destitute industry in the Nation and in my State and the fear I have of an import fee, particularly one of this magnitude, the impact it is going to have, for example, on my farmers who are equally destitute.

The first break farmers of this country have had of any size at all has been a decline in diesel prices from roughly $1 a gallon to 50 cents a gallon. Twelve percent of all the farmers' cost is in the use of energy. With commodity prices declining and their profits declining, to raise their price back up to even 80 cents would be almost a mortal blow to agriculture in my State.

When I go into south Arkansas and I talk to my friends there, particularly the independents, they are desperate, too. But, you know, Mr. President, the President has said that he would not, completely aside from all the economic arguments on this, that there is not going to be an oil import fee; do not pass one because he will veto it if we do. So really, we are going through a sort of exercise here. No. 1, the amendment is not going to be adopted; two, the President is going to veto it if he keeps his word, and I suspect he will.

I think the Senator from Texas [Mr. GRAMM] made the point. When you consider that in the past 2 months, agricultural imports have exceeded exports for the first time in modern history, a really unusual phenomenon. The trade bill last month, if I am not mistaken, when it is annualized, means that we would have $170 billion trade deficit this year. If you double the price of oil just overnight, what would that do to industry in the country? What would it do to textiles? We are trying to protect our textile industry from imports and they are totally dependent on the petroleum industry.

So, for all of those reasons, I feel compelled, with great reluctance, to oppose this amendment.

I might also say that a smaller import fee, which is likely to come before this body in the reconciliation bill, might be acceptable, something that I think we could absorb without having all of the adverse impact on the economy that I just talked about.

So, Mr. President, as I say, I know the Senator from Colorado has offered this amendment many times. I have always opposed it. There is not any question that he has been purely motivated by trying to conserve energy in this country. At the same time, there is not any doubt that the country could use the revenue, $18 billion. But that ought not to be the test right

now on this issue. So, Mr. President, I shall vote no on this amendment.

Mr. LEAHY. Mr. President, I oppose Senator HART's amendment to impose tax on imported oil.

The amendment is bad policy. It will not reduce the Federal deficit and it will cost Vermont families dearly.

Mr. President, earlier this year I cosponsored legislation opposing an oil impact fee, because such a new tax would cost the average Vermont family $200 in added heating oil and gasoline costs each year.

On March 6, 1986, I joined a bipartisan group of New England Senators in writing to President Reagan, urging him to oppose this new tax that would hurt New England most.

On April 30, President Reagan's Assistant, William Ball, wrote back to say that the President agrees and also opposes an oil import fee.

Mr. Ball informed me that President Reagan and I agree that an oil import fee would hurt consumers by priming inflation and raising prices for most goods. The President also agrees that such a tax would hurt farmers by inflating the price of fertilizer and farm energy costs. And the President agrees that an oil import fee would hurt New England most.

Finally, an oil import fee will not reduce the deficit. The Congressional Budget Office reports that this new tax will reverse the dramatic decline in oil prices which will reduce the deficit by $129 billion over the next 5 years, through increased economic growth. In other words, the declining price of oil has fueled economic growth, adding increased revenues to the Treasury. Increasing oil prices through a new tax would slow the little economic growth we have seen in recent months and add even more to the Federal deficit by drying up these important new revenues.

Mr. President, I urge the Senate to defeat this amendment.

Mr. DOLE. Mr. President, my colleagues are well aware of my concern about the condition of our domestic oil industry and our increasing dependence on foreign oil. I believe that we should consider and enact an import fee to address these very serious problems.

However, I must vote against this amendment. A balanced approach which can be justified on economic, energy, or foreign policy grounds should be one that phases out as oil prices rise.

Others have pointed out the technical problems inherent in this amendment. I will not take the Senate's time to repeat them now.

I hope we will have the opportunity to address an import fee which is pegged to a reasonable price which will allow our domestic industry to recover its costs and make a modest profit while protecting American consumers from unreasonable price increases.

Mr. KERRY. Mr. President, the junior Senator from Rhode Island said it best when he said that there seems to be a glut of bad ideas that keep on coming back over and over again. This is clearly one of them.

New England depends a great deal on oil to heat its homes and businesses. The largest State in that region is Massachusetts and the citizens of my State should not have to now suffer the perils of the oil market.

The supporters of this amendment seem to think that the citizens of New England should assume an inordinate share of the burden that falling oil prices have placed on the oil-producing States of this country.

We have heard in times past that the oil import fee is an ingenious deficit reduction tool. The primary focus of any ingenious idea is that there be some fairness and equity associated with it—that essential element is fundamentally missing from an oil import fee.

This amendment is very clearly a hidden tax that, in addition to raising the New England's home and business heating prices, will also raise the price of goods and services in the United States by billions of dollars each year.

And as if that is not enough to lead us to turn it down, we must also realize the disastrous effects this would have on our already alarming trade deficit. It would virtually handicap the agricultural, petrochemical and plastics industries in world trade and make U.S. firms even less competitive to imports in domestic markets.

In my short time here, I have had many opportunities to oppose this proposal. Tonight is as appropriate a time as any to have the Senate once again defeat this misbegotten idea.

Mr. LEVIN. Mr. President, I am pleased to hear the Senator's assurance that he would support adding to his amendment a phaseout of the oil import fee if the price of oil increases. I believe that such a phaseout is essential as a matter of equity.

An oil import fee is a reasonable response to two challenges facing this Nation. First, it would raise billions of dollars a year which could be used to reduce the huge Federal deficit, which threatens our national economic health. I would prefer a more modest fee than the one being proposed now, but even a fee of $5 per barrel would raise almost $10 billion a year. This amount, combined with selective spending cuts and other revenues from measures such as a strengthened minimum tax on profitable corporations and wealthy individuals, would allow us to meet the Gramm-Rudman deficit reduction goals.

Second, an oil import fee is an essential step in protecting our national energy security. The cheap foreign oil now flooding the market would seem to be a cause for rejoicing. However, it is really having the effect of shutting down our domestic oil industry. We hated the feeling in the 1970's of being a hostage to foreign oil. Now it might appear as if the chains have fallen to the ground. But if the effect of cheaper foreign oil is to hamstring our own domestic production capacity, then in a few years the chains will again be binding us, and tighter than before. We cannot allow that to happen.

Mr. HART addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, I first proposed an import fee in 1977. That is almost 9 years ago. That was at a time when oil was about $40 a barrel. I was told that it was a bad idea, bad policy. I should not do it. I have heard many of the same arguments tonight. First, if I may, Mr. President, very briefly, let me respond to many of those arguments.

The most recent analysis, and I think it is an unbiased analysis despite what others have said, is by our Congressional Budget Office 90 days ago. The CBO, contrary to what has been alleged here this evening, has said that the purported massive negative impact on our economy would be nil, that, in fact, our gross national product would remain relatively the same.

The Congressional Budget Office, in this same report, said oil prices would not double. They said probably world oil prices will decline, will go down, if we were to impose this fee.

The Congressional Budget Office said not only would we be not put in a negative position with regard to trade, and I quote their conclusion "An oil import tariff or an excise tax on crude oil could improve the balance of trade for this country."

Finally, Mr. President, with regard to our competitiveness with foreign countries, the fact of the matter is other industrialized nations have more energy consumption taxes than we do or would have even if we impose this fee. So all of the allegations about the terrible impact on our economy from this tariff is just factually incorrect.

Mr. President, let me tell you what this tax is not, since we have heard a lot of debate about that this evening. This proposal is not an attempt to rescue any industry, including the oil industry. I have no idea what the position of the lobbying entities of the oil industry are on this proposal tonight. All I know is that virtually all of those lobbying entities have opposed an oil import fee for the past 10 years I have been for it. So the suggestion that this is put forward to bail out an industry, even the oil industry, in terms of this Senator's motivation, is just not true.

Is this an attack on one region of this country? The answer is "No."

This Senator has never supported and will never support any import fee or any measure of this sort that negatively impacts on any region of this country or does not contain within it a provision to offset any negative impact, and this amendment does.

Is this a measure to balance the budget? the answer is "No." This is not a measure principally put forward to balance our budget, even though it would have a substantial positive effect in that regard.

Is this an energy policy? The answer is "No." I think it is the cornerstone and the centerpiece of what could and should be a national energy policy, but that is not its principal purpose.

Mr. President, the author of this amendment has one single purpose. I confess it is a selfish one. The author of this amendment has a 20-year-old son, a son of draft age. I do not intend for my son to lose his life in an unnecessary war in the Persian Gulf for someone else's oil. That is why this amendment is offered.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. All time has expired.

The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I ask unanimous consent that I may proceed for 30 seconds.

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

Mr. LEVIN. Mr. President, could I add to that request a unanimous-consent request that I be allowed to proceed for 1 minute?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HEINZ. I reserve the remainder of my time.

Mr. LEVIN. I thank my friend from Pennsylvania.

Mr. President, when this proposal was up in November of last year, I raised the problem of the lack of a phaseout provision in this amendment. I think the Senator from Oklahoma has raised a similar concern tonight, and others have raised a similar concern. I tend to favor a modest fee provided there is a phaseout provision so that it phases out as oil prices go up.

I wonder if the author and the chief sponsor of this amendment has considered a phaseout provision and, if in the event this is adopted, he would support a phaseout provision so the fee would be eliminated if oil prices go up.

Mr. HEINZ. Mr. President, I think we have had an extensive debate on this amendment. For my part, I strongly oppose the amendment and I am going to move to lay the amendment on the table in a minute.

In sum and substance, this amendment is going to be bad for many more industries than the one it is going to help. It is going to hurt the fertilizer industry, it is going to hurt manufacturers, going to hurt the chemical industry, it is going to hurt the farmers who depend upon fertilizer. It is going to hurt all energy-dependent industries. In short, I believe this amendment is bad for America and that it carries with it extraordinary costs that would be visited on all Americans.

I move to lay the Hart amendment on the table.

Mr. LEVIN. Would the Senator from Pennsylvania withhold? I would like to use my balance of 20 seconds to get an answer from the Senator from Colorado. Would he allow him to answer my question in the 20 seconds remaining?

Mr. HEINZ. Mr. President, I thought the Senator had used his time.

Mr. LEVIN. No, there were 20 seconds remaining.

Mr. HEINZ. Go ahead.

Mr. HART. Will the Senator yield?

Mr. LEVIN. Yes.

Mr. HART. The answer is "Yes."

Mr. HEINZ. Does the Senator from Michigan wish to reserve the remainder of his time?

Mr. LEVIN. I do not, Mr. President.

Mr. HEINZ. Mr. President, 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 the amendment of the Senator from Colorado on the table. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ARMSTRONG. I announce that the Senator from Arizona [Mr. GOLDWATER] and the Senator from Wyoming [Mr. SIMPSON] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Mississippi [Mr. STENNIS] is necessarily absent.

The result was announced—yeas 82, nays 15, as follows:

[Rollcall Vote No. 172 Leg.]

YEAS—82

Abdnor	Evans	Leahy
Andrews	Exon	Lugar
Armstrong	Ford	Matsunaga
Baucus	Garn	Mattingly
Biden	Glenn	McClure
Boschwitz	Gore	McConnell
Bradley	Gorton	Metzenbaum
Broyhill	Gramm	Mitchell
Bumpers	Grassley	Moynihan
Burdick	Harkin	Murkowski
Byrd	Hatch	Nunn
Chafee	Hawkins	Packwood
Chiles	Hecht	Pell
Cochran	Heflin	Pressler
Cohen	Heinz	Proxmire
Cranston	Helms	Pryor
D'Amato	Humphrey	Quayle
Danforth	Inouye	Riegle
DeConcini	Kassebaum	Rockefeller
Denton	Kasten	Roth
Dixon	Kennedy	Rudman
Dodd	Kerry	Sarbanes
Dole	Lautenberg	Sasser
Durenberger	Laxalt	Specter
Stafford	Tribble	Wilson
Stevens	Wallop	Zorinsky
Symms	Warner	
Thurmond	Weicker	

NAYS—15

Bentsen	Hart	Long
Bingaman	Hatfield	Mathias
Boren	Hollings	Melcher
Domenici	Johnston	Nickles
Eagleton	Levin	Simon

NOT VOTING—3

Goldwater	Simpson	Stennis

So the motion to lay on the table the amendment (No. 2248) was agreed to.

□ 2200

The PRESIDING OFFICER (Mr. ABDNOR). The Senator from Tennessee.

Mr. SASSER. Mr. President, I send an amendment to the desk for myself and——

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Oklahoma.

Mr. SASSER. Mr. President, I ask unanimous consent that the pending amendment be set-aside.

Mr. GRAMM. I object.

The PRESIDING OFFICER. Objection is heard.

The majority leader.

Mr. DOLE. Mr. President, let me indicate the Senator from Tennessee has been waiting for some time. I think they can resolve that little amendment in about 30 seconds, I understand, the one you have to set-aside.

Mr. SASSER. All right.

Mr. METZENBAUM. Mr. President, the Senator from Ohio seeks recognition.

AMENDMENT NO. 2245

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, when this amendment was last on the floor there was a motion to table it, and that motion failed by a vote of 51 to 47.

One does not have to be an expert or a genius in order to understand that when a vote is 51 to 47 and it has to do with an amendment on the debt limit bill that the opportunities are available to discuss the subject for a number of hours and maybe days in order to preclude passage of the amendment.

I have given some consideration to that because I am strongly opposed to repeal of the windfall profit tax. It is not logical. It is not right. It is not fair, and it will not help the oil industry, which I admit does have some problems at the moment, but repealing the windfall profit tax will not solve those problems.

But I have been in discussions with the chairman of the Finance Committee, who in turn has been in discussions with the chairman of the Ways and Means Committee, and I have been assured that notwithstanding

such action as the Senate may take in connection with this bill, the House does not expect to accept it, and, therefore, I believe that final passage will not become a reality.

Under those circumstances, I do not deem it advisable just to tie up the Senate while we go through a number of parliamentary procedures on this issue.

I believe it will not become law. I believe the windfall profit tax will not be repealed, notwithstanding the enthusiastic support for the measure by my distinguished colleague from Oklahoma, standing immediately to my left, and my other distinguished colleague from Oklahoma, standing across the aisle.

That being the case, I have discussed the subject with both of the managers of the bill, Senator BOREN and Senator NICKLES, and I have pointed out to them that even though I do not expect the bill to pass in final form, for the House to accept it, I still believe that the bill in its present form goes farther than is appropriate. It contains some additional amendments over and beyond the matter of repealing the windfall profit tax and they have agreed, after some negotiations, to strike the additional language having to do with the matter of reports not having to be filed and that amendment being effective on a retroactive basis to 1980, and they have agreed to eliminate another amendment which was so complicated that I am not certain that they or I understood exactly what it meant, but I am certain it meant no good for the overall taxpayers of this country.

Instead of that, they have indicated their willingness to accept an amendment, and that amendment is along the lines of the subject that I discussed originally, and that is the elimination of some of the paperwork for those who are not really obligated to pay any taxes. It does not make any sense. It is not logical for people to have to do a lot of paperwork if there are no taxes to be paid.

So I am about to send to the desk an amendment that will provide that no reports will have to be filed on and after the effective date of this act until the triggering intake of the windfall profit tax repealer, which is October 1, 1987, and until such time as the price of oil exceeds the trigger price for tier 1 base price, which I believe is $19 a barrel, and we all know it is quite a way from that at the present time.

Under those circumstances, Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The second-degree amendment is not in order.

Mr. METZENBAUM. Would the Chair be good enough to explain why?

The PRESIDING OFFICER. The Nickles amendment is a second-degree amendment.

The yeas and nays have been ordered.

The Senator from Oklahoma.

Mr. BOREN. Mr. President, I have discussed this with my colleague who is the principal author of this amendment.

I ask unanimous consent that his original amendment be modified to strike the original section 2 and insert in lieu thereof the language which Senator METZENBAUM just sent to the desk.

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

The amendment is so modified.

The amendment, as modified, is as follows:

At the end of the amendment, insert the following:

SEC. — Repeal of the Windfall Profit Tax

(a) IN GENERAL.—Chapter 45 of the Internal Revenue Code of 1954 (relating to windfall profit tax on domestic crude oil) is hereby repealed.

(b) EFFECTIVE DATE.—The repeal made by subsection (a) shall apply to oil removed from the premises after October 1, 1987.

As modified further.

(c) *Provided further*, that reports or filings required under Chapter 45 of the Internal Revenue Code of 1954 relating to Windfall Profit Tax on Domestic Crude Oil for oil removed from the premises after the date of enactment shall not be required as provided in the Act from and after the date of enactment of this Act unless and until the wellhead price of domestic crude oil reaches or exceeds the tier one base price as defined in the Crude Oil Windfall Profit Tax Act of 1980.

Mr. NICKLES. Mr. President, one, I wish to compliment and congratulate Senator METZENBAUM, Senator BOREN, Senator DOMENICI, and also Senator STEVENS for their persistence in working this out. We have worked it out. I think it is a positive amendment, a good amendment, and I am pleased we are able to go forward with it.

I hope my good friend and colleague, the Senator from Ohio, was wrong. I hope the conferees will adopt this amendment. I think it is a very positive amendment and one that should be passed.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. METZENBAUM. Mr. President, the Senator from Ohio originally asked for the yeas and nays. I think it would be an imposition on the body at this point. I see no particular useful purpose of having the yeas and nays and, therefore, ask unanimous consent that the yeas and nays vote be vitiated.

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

□ 2210

The question is on agreeing to the amendment offered by Senator NICKLES, as modified.

The amendment (No. 2245), as modified, was agreed to.

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

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

AMENDMENT NO. 2249

(Purpose: To amend title II of the Social Security Act to remove permanently the 3 percent threshold requirement for cost-of-living increases)

Mrs. HAWKINS. 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 Florida [Mrs. HAWKINS], for herself, Mr. HEINZ, Mr. ABDNOR, Mr. D'AMATO, Mr. ANDREWS, Mr. GRASSLEY, Mr. GLENN, Mr. KASTEN, Mr. ROTH, and Mr. BROYHILL, proposes an amendment numbered 2249.

Mrs. HAWKINS. 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 read as follows:

At the end of the amendment, add the following:

SEC . REMOVAL OF THREE PERCENT THRESHOLD FOR COST-OF-LIVING ADJUSTMENTS.

(a) SHORT TITLE.—This section may be cited as the "Cost-of-Living-Adjustment Reform Act of 1986".

(b) IN GENERAL.—

(1) Section 215(i) of the Social Security Act is amended by striking out "is 3 percent or more" in paragraph (1)(B) and inserting in lieu thereof "is greater than zero".

(2) Section 215(i)(1)(B) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978, is amended by striking out "exceeds, by not less than 3 per centum, such Index" and inserting in lieu thereof "exceeds such Index".

(3) Section 215(i)(2)(C) of such Act is amended—

(A) by striking out clause (i) and redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(B) by striking out "under clause (ii)" in clause (ii) as so redesignated and inserting in lieu thereof "under clause (i)".

(4) Section 215(i)(2)(C) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978, is amended by striking out clause (i) and by striking out "(ii)".

(5) Section 215(i)(4) of such Act is amended by inserting "and by the Cost-of-Living Adjustment Reform Act of 1986" after "Social Security Amendments of 1983".

(6) Section 215(i)(5)(A)(i) of such Act is amended by striking out "because the wage percentage increase was less than 3 percent" and inserting in lieu thereof "because there was no wage percentage increase greater than zero".

(c) EFFECTIVE DATE.—

(1) Except as otherwise provided in this subsection, the amendments made by this section shall apply with respect to cost-of-living increases determined in 1986 and all subsequent years.

(2) The amendments made by paragraphs (3) and (4) of subsection (b) shall apply with respect to months beginning after September 1986.

Mrs. HAWKINS. Mr. President, for too long millions of this country's Social Security recipients have been held hostage as they eagerly await news of whether or not they will receive their cost-of-living adjustment. To these Americans on fixed incomes the COLA they receive to supplement their Social Security is a matter of life and death. My amendment will take away the anxiety by permanently removing the 3-percent COLA trigger which currently must be met before any COLA can be paid to Social Security recipients.

A little over a week ago, I met with President Reagan and was able to obtain his endorsement for paying this year's COLA for all Social Security recipients.

Under current law, a cost-of-living adjustment is made each January only if the Consumer Price Index [CPI] in the previous year or the last year in which a COLA was paid rose over 3 percent. Because the inflation rate for 1986 is likely to be below 3 percent, no COLA would be paid in 1987. However, by voting for this amendment, Senators can assure their COLA recipients of an orderly and fair COLA distribution this January.

The cost effects of this legislation will save money in the coming years. First, it eliminates the unfair windfall which may accrue to new retirees. Whenever the COLA is skipped for a year, new retirees coming onto the rolls automatically receive the catch-up windfall increase the year the COLA is paid. The cost of this windfall has been estimated to be around $300 million over the next 5 years in addition to another $1.5 billion in new revenues which could be gained because of a new 1987 wage base calculation that would be implemented following enactment of this bill, if the CPI remains near 1 percent.

Mr. President, this is a good amendment. It is cost effective, it is equitable to those recipients requiring the COLA and it provides for an orderly distribution to millions of this Nation's elderly. It has the support of President Reagan, OMB Director Jim Miller which may make some circumspect, and the Social Security Administration.

Over the last 3 years Members of both Houses have urged the removal of the COLA trigger, not for any other reason but that it has outlived its usefulness. The trigger is old, it is outdated, and it is no longer necessary. Second, the argument that the trigger was used as a bookkeeping delay tactic for paying the COLA in the 1970's no longer holds water. The Social Security Administration is now fully computerized and the time delays are no longer necessary.

Finally, the fact is that the trigger is costly, inequitable, and difficult for the Social Security Administration to administer. The trigger artificially shielded benefits from the true impact of inflation, by eliminating the trigger retirees will receive a true COLA without the anxiety of guessing at the rate of inflation. I ask my colleagues to support this amendment to ensure that millions of America's elderly receive their COLA this January.

Mr. President, I would especially like to thank Senator HEINZ for his knowledgeable assistance in this area.

I understand that the chairman, Mr. HEINZ, is a cosponsor, as is Mr. GRASSLEY, Mr. ABDNOR, Mr. D'AMATO, Mr. ANDREWS, and others have asked to be cosponsors.

I was going to ask for the yeas and nays, however, at this late hour, it may be that the leadership would decide on a voice vote. I stand willing to do the body's wishes.

Mr. LONG. Will the Senator from Florida yield for a question?

Mrs. HAWKINS. Yes.

Mr. LONG. Does this amendment include an increase in the tax to pay the cost of the program, or is it intended that the benefits be paid without a tax?

Mrs. HAWKINS. It covers all recipients of COLA's.

Mr. LONG. I mean, is there a tax included in this to pay for the amendment? It would increase the cost of the program, would it not?

Mrs. HAWKINS. There is no cost of the program. It produces a long-range net saving of 1 percent. The 1 percent would allow for about a $1.7 billion gain over 5 years. There is no cost associated with this. It really is a net savings over the next 5 years.

Mr. RIEGLE. Mr. President, will the Senator from Florida yield to the Senator from Michigan?

Mr. HEINZ. Mr. President, I was engaged in a discussion off the floor and I was not attending to the discussion here on the floor. But I am quite familiar with the amendment offered by the Senator from Florida, because it is an amendment that both she and I have been working on for quite some time to bring to the attention of the administration. I want to apologize to the Senator from Florida. Was she addressing a question to me?

Mrs. HAWKINS. Is there not a cost savings?

Mr. HEINZ. The Senator from Florida is correct that over the 5 years of the amendment, it has been established that there would be a savings with the amendment. It is my understanding that is why the administration is in support of it.

Mrs. HAWKINS. Does the Senator wish me to yield?

Mr. RIEGLE. I was going to ask the Senator to yield, but I would just as soon seek the floor in my own right when she is finished.

Mrs. HAWKINS. I was going to ask for immediate consideration of this amendment and ask for the yeas and nays.

Mr. SARBANES. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Florida has the floor. She has not yielded it yet.

Mr. RIEGLE. Mr. President, if the Senator from Florida has yielded the floor, I seek the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I rise in support of this amendment and I ask unanimous consent to be added as a cosponsor of the amendment.

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

Mr. RIEGLE. Mr. President, I think that this is a very significant change in attitude that we are seeing from the Reagan administration. If one looks at the pattern and history over the last 5 years with respect to Social Security, on a number of occasions the Reagan administration, despite promises that they would protect Social Security, has turned around and made efforts to make major cuts in Social Security, cuts in the cost-of-living adjustment, cuts in the early retirement benefits, and other cuts. And some of those have been a matter of law.

Now, as I understand it, the administration has changed its view and, rather than try to make further cuts in the cost-of-living adjustment, they are prepared to support the removal of the trigger level so that Social Security recipients will receive a cost-of-living adjustment even if the inflation rate is relatively low. The rate may be 2 percent or 2½ percent, but below 3 percent, but they would still be eligible to receive their COLA increases.

The PRESIDING OFFICER. Will the Senator yield one moment?

Mr. RIEGLE. Yes.

The PRESIDING OFFICER. The Senate is not in order. The Senator deserves to be heard.

□ 2220

Mr. RIEGLE. I thank the Chair.

I think it is a valuable change of mind the administration has made. I am inclined to think it may have something to do with the fact that it is a national election year, and we are coming down the home stretch in the elections with Congress, the entire House of Representatives, and a third of the Senate standing for election in November. So I think the timing of this change of heart by the administration has something to do with that election timetable.

Be that as it may, I am happy to see the administration change its position, and rather than trying to make cuts in Social Security which has been the pattern over 5 years to now say they are prepared to see these COLA adjustments take place each year based on the inflation rate as it exists.

So I am hopeful the Senate will adopt this amendment. I think it will help our seniors across the country. Many of them are living on very low incomes, and they are finding it very difficult to get by. In fact I even question whether the way we now calculate the consumer price index is adequate for really measuring the rate of inflation that is being felt by senior citizens. They are hit with rising utility bills. We know phone bills have gone up. We know the cost of utilities in terms of heat or air-conditioning in the summer in the warmer areas of the country particularly has gone up. We know prescription drugs are going up in price. There was a story today in the paper that groceries have gone up, particularly in this region of the country because of drought conditions and so forth.

So in many areas because medical expenses and other things that constitute the bulk of the expenditures of senior citizens they are experiencing an inflation rate that is actually in many cases higher than the CPI. So at a minimum they should get the CPI adjustment so they do not fall further behind in terms of their real income.

So, as I say, I support the amendment. I think it has been some time in coming in terms of the administration support. Better late than never, and I hope it will pass the Senate overwhelmingly.

Mr. PRESSLER. Mr. President, I ask unanimous consent that I be made a cosponsor of the amendment, and I want to compliment the author, our colleague from Florida.

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

Mr. PRESSLER. Mr. President, I think this is a very important amendment because for a long time it has been offered. If the CPI does not reach 3 percent then the senior citizens do not get an increase. I think the Senator from Florida has done a great service to this Nation by offering an amendment to change this. It is 1 percent or 2 percent for senior citizens that will go into effect.

What has occurred is that there is great pressure to change the CPI index because, as my colleague from Michigan has eloquently stated, the cost of drugs for the elderly is going up, the cost of housing is going up, the cost of heat and air-conditioning is going up, and many of the factors that affect them have increased dramatically. I think the way we calculate the CPI should be changed. I think it is very important to the senior citizens of this country that this amendment pass. It is a fair amendment. I am proud to be a cosponsor of it.

Mrs. HAWKINS addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mrs. HAWKINS. Mr. President, I ask unanimous consent that Senator BYRD, Senator DENTON, Senator MOYNIHAN, and Senator CRANSTON be added as cosponsors.

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

SOCIAL SECURITY COLA

Mr. CRANSTON. Mr. President, I strongly support this amendment which would remove an anachronism from the Social Security Act which, if left unchanged, could very well result in an unjustified delay in payment of the 1987 social security cost-of-living adjustment [COLA] as well as future adjustments. I was an original cosponsor of S. 2450, the legislation this amendment is based on when it was introduced on May 14. Unfortunately, no action has taken place on that measure. This legislation would permanently eliminate the so-called COLA trigger which provides that the adjustment will not be paid in any year where the inflation rate falls below 3 percent. This trigger does not cancel the COLA; it merely postpones its payment until a subsequent year.

Mr. President, it is important to understand that the trigger was originally put into the Social Security Act for administrative purposes. It was intended to alleviate the administrative burden—in a precomputerization era—of calculating a small adjustment. Obviously, that rationale no longer exists. The Social Security Administration is now perfectly capable of efficiently making adjustments below 3 percent.

Mr. President, the Social Security COLA is intended to adjust Social Security benefits in order to keep up with inflation so that the real value of benefits does not decline over time. There is no logical reason why Social Security beneficiaries should receive a COLA if inflation is at 3 percent but have to wait another year to receive the adjustment if inflation runs at 2.9 percent. Social Security recipients need the COLA in the year that they experience an increase in their cost of living—when their housing, food, and other living expenses increase—not a year later.

According to a report issued by the office of the Social Security actuary, because of the interplay between the COLA and other aspects of the Social Security Program, the elimination of the 3-percent trigger would actually result in a long-term savings to the Social Security System.

Mr. President, I would also note that the Senate has already gone on record in the Senate-passed budget resolution in assuming that the trigger will be eliminated for fiscal year 1987 so that Social Security recipients would receive a COLA next January. We ought to make sure it happens by adopting this amendment tonight.

I hope this amendment will receive bipartisan support so that we can ensure that Social Security recipients receive the cost-of-living adjustments which help ensure that senior citizens living on fixed incomes do not lose the real dollar value of the Social Security benefits they have earned over a lifetime of work. We must move swiftly to eliminate this anachronism in the law.

Mr. BYRD. Mr. President, I am pleased to join as a sponsor of this amendment to assure that there will be a Social Security COLA in the next fiscal year.

We assume, and the budget resolution passed by the Senate assumes, that it is likely that the actual cost-of-living index for the current year—on which a decision will be made to pay or not pay a COLA in January 1987—may fall below 3 percent. If this turns out to be the case, then, under current law, there automatically would be no COLA's in the Social Security program—even if the cost-of-living increase actually had been 2.9 percent, or 2.6 percent, or any other number under 3 percent. There is currently a 3-percent minimum trigger for payment of Social Security COLA's.

This is unfair and unjust to the one out of every six Americans who currently receives a monthly Social Security check.

Mr. President, the abstract, impersonal cost-of-living statistics translate for America's elderly citizens into very real factors affecting their standards of living. Those effects do not magically stop at a 3-percent threshold. We in the Senate have acted before to assure that a Social Security COLA will be paid when it looked as if the actual cost-of-living index at the time would not reach the 3-percent minimum. The amendment today will remove that minimum, once and for all.

We all must remember that we have acted to assure that the Social Security trust funds are solvent. The funds' income in 1984 was at least $6 billion more than expenses under the program. We have also acted to assure that the Social Security Program will not be a pool of money used to balance the budget. We have stated that we will not abuse the trust funds—money paid specifically for the Social Security Program by millions of American workers and employers—in order to pay debts not related to Social Security. Today, we go one step further, eliminating an obscure section of law that can place the load of inflation, so long as inflation is less than 3 percent, on America's elderly.

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I encourage all my colleagues to support this important amendment.

Mr. HEINZ. Mr. President, I will speak very briefly. I have addressed this issue on many occasions before the Senate.

I want to compliment the Senator from Florida, Senator HAWKINS, for her leadership in this amendment.

I said a few minutes ago that we had for a number of months been trying to get the President of the United States to endorse the repeal of the Social Security trigger. As it has been explained, I think quite accurately, the Social Security trigger is an appendix to the Social Security law that is really from another age. It was established at the time when we first implemented the Social Security COLA. We did not have the computers we have now. As a result, it was not really cost effective and feasible to pay COLA's that were less than 3 percent. Taking that into account, and being the intention of Congress not at any point in time to deprive Social Security beneficiaries of their proper benefit, it was decided that any COLA less than 3 percent would be added to the next year's COLA and any calculations determined by that 3 percent or less COLA would be frozen.

It so happens that because of the mathematics of freezing the Social Security wage base for calculation purposes, for taxation purposes because of the fact that people coming into the system between the time benefits are frozen for the year and the time new benefits are increased by 3-plus or 4 or 5 or 6 percent, the first year and the second would be adding together being presumably larger than 3 percent, a lot of people come into the system. And they get an unintended high cost-of-living increase that they really were not entitled to.

As a result of that, the Social Security System actually ends up over several years losing money, sometimes even in the first year quite a bit. Under every study that has been done by the Social Security actuary it will mean as much as .02 percent of taxable payroll, which is a very considerable sum indeed for each and every year for as far as the eye can see. The equity—Mr. President, could we have order?

The PRESIDING OFFICER. The Senator is right. The Senate is not in order.

The Senator from Pennsylvania.

Mr. HEINZ. The equity in the amendment of the Senator is more than just taxpayer equity. It is also a question of fairness to senior citizens. If in fact prices go up 2 percent or 2.5 percent and you are a Social Security beneficiary getting, let us say, $400 a month or $500 a month, Mr. President, you are not exactly rich. Also, $400 a month is $4,800 a year and $500 a month is $6,000 a year. Both of those are below the poverty line.

What seems like a very small amount, let us say 2 percent, 2 percent of $4,800 is going to be $96. Whereas it may not be the largest amount of money in the world to many people, but to that individual who is below the poverty line, it is a lot of money. It means whether they are going to be able to pay for their food bills that month, whether they are going to be able to pay their utility bills, whether they are going to be able to meet their out-of-pocket medical expenses maybe for medication. We are talking about senior citizens who have a lot of unexpected costs.

So, simply repealing the COLA trigger will allow people to get on time what we promised them; namely their Social Security benefits plus whatever cost-of-living increase they are entitled to, and that is why this is a matter of equity to our senior citizens as well as to our taxpayers.

I commend the Senator from Florida on her amendment. As she has indicated, the President of the United States supports this amendment. I frankly do not know of any objection to this amendment. I hope it is adopted.

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

The amendment (No. 2249) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

AMENDMENT NO. 2250

(Purpose: To provide emergency assistance to farmers and ranchers adversely affected by this year's drought and excessively hot weather)

Mr. SASSER. Mr. President, I send an amendment to the desk on behalf of myself, Senator GORE, Senator BUMPERS, Senator PRYOR, Senator HEFLIN, Senator HOLLINGS, Senator ZORINSKY, Senator METZENBAUM, Senator ROCKEFELLER, Senator NUNN, and Senator DIXON, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. SASSER], for himself and Mr. GORE, Mr. BUMPERS, Mr. PRYOR, Mr. HEFLIN, Mr. HOLLINGS, Mr. ZORINSKY, Mr. METZENBAUM, Mr. ROCKEFELLER, Mr. NUNN, and Mr. DIXON proposes an amendment numbered 2250.

Mr. SASSER. 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:

At the appropriate place in the committee amendment, as amended, add the following new section:

"SEC. . (a) Notwithstanding any other provision of law, the President and the Secretary of Agriculture shall make emergency disaster assistance available, as provided in this Act, to farmers and ranchers in drought disaster areas.

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) the term "drought disaster areas" includes any area in the United States in which farming and ranching operations have been adversely affected by a drought or excessively hot weather disaster such that assistance is available in the area under subtitle C of the Consolidated Farm and Rural Development Act for such disaster; and

(2) the term "livestock" includes all classes of beef and dairy cattle, sheep, goats, and swine.

EMERGENCY FEED DONATIONS

SEC. 3. Notwithstanding any other provision of law:

(a) The Secretary of Agriculture shall make available to farmers and ranchers in each drought disaster area, at no cost, surplus stocks of commodities held by the Community Credit Corporation (in the area or in the State in which the area is located or an adjoining State), for the purpose of, and under the conditions set out in, subsection (b) of this section.

(b)(1) The Secretary shall make such commodities available, in any drought disaster area in which the Secretary determines there is a critical need for livestock or poultry feed, in amounts necessary to preserve livestock herds and poulty flocks in the area. For purposes of this section, the phrase "critical need for livestock or poultry feed" means that (A) the total supply of feed grains and forage available to livestock and poultry producers in the area involved is insufficient to cover the combined feed needs of such producers for more than 72 hours or such other period, determined by the Secretary, reasonably needed for supplies of feed to arrive in the area for commercial use from feed surplus areas, whichever is a longer period; and (B) as a result of such deficient supply levels, it reasonably can be expected that, without the assistance made available under this section, farmers and ranchers in the area will suffer significant losses of livestock or poultry due to mortality.

(2) Subject to section 8(b), the Secretary shall cover any costs involved in transporting such surplus commodities to the drought disaster area, using the funds, facilities, and authorities of the Commodity Credit Corporation for such purposes.

(3) The Secretary shall continue to make commodities available under this section until there no longer is a critical need for livestock or poultry feed, as determined by the Secretary.

(4) In determining the feed needs of producers in an area and the amount of commodities to be made available in the area under this section, the Secretary shall use the regulations issued under section 1105 of the Food and Agriculture Act of 1977 (7 C.F.R. 1475.52(n) and 1475.55(f)(1)) and comparable rules for poultry.

(5) Donations under this section shall be made available during the period beginning 3 days after the date of enactment of this Act and ending March 31, 1987, or the date, as determined by the Secretary, on which the emergency created by the drought, or excessively hot weather no longer exists, whichever is earlier.

EMERGENCY LIVESTOCK FEED ASSISTANCE

SEC. 4. (a) Notwithstanding any other provision of law:

(1) The Secretary of Agriculture shall make emergency livestock and poultry feed assistance under section 1105 of the Food and Agriculture Act of 1977 to farmers and ranchers in drought disaster areas. Reimbursement for purchased feed provided to such farmers and ranchers under section 1105 shall be made in kind, as provided in section 8(a) of this Act, using surplus stocks of commodities held by the Commodity Credit Corporation. Whenever, under any export development program conducted by the Secretary of Agriculture, a feed grain or other commodity used for animal feed is made available to foreign purchasers at prices less than the average domestic market price for the commodity, as determined by the Secretary, reimbursement under this paragraph for purchases of such commodity shall be made at a level in excess of 50 percent of the cost of the purchased commodity if necessary to ensure that the net cost to the producer for such commodity (taking into account the reimbursement under this paragraph) is not in excess of the average price at which the commodity is made available to foreign purchasers under such export development program.

(2) The Secretary of Agriculture shall permit any producer of the 1986 crop of wheat, feed grains, upland cotton, or rice (A) who is participating in the program under the Agricultural Act of 1949 for such crop, and (B) whose farm is located in a drought disaster area, to devote acreage on the farm diverted from the production of the crop under such program to hay or grazing without regard to limitations on when haying or grazing may take place otherwise imposed under the Agricultural Act of 1949.

(3)(A) In carrying out any emergency assistance program, for farmers and ranchers in a drought disaster area under the Disaster Relief Act of 1974, subject to subparagraph (B), the President shall direct the Secretary of Agriculture to implement an emergency hay program to assist such farmers and ranchers in obtaining hay to feed their livestock. Under such program, the Secretary, subject to section 8(b), shall pay 80 percent of the cost of transporting hay from areas in which hay is in plentiful supply to the area in which the farmers and ranchers are located.

(B) The President shall take the action required under subparagraph (A) only if the Secretary of Agriculture reports to the President that—

(i) as a result of the drought or excessively hot weather, the amount of hay readily available to such farmers and ranchers at reasonable prices to feed their livestock is substantially below the amount normally available; and

(ii) the assistance to be made available under paragraph (1) and haying or grazing permitted under paragraph (2) together will be insufficient to prevent substantial losses of livestock or liquidation of herds by such farmers and ranchers in such area.

(C) The Secretary of Agriculture shall determine whether the conditions described in clauses (i) and (ii) of subparagraph (B) exist for each drought disaster area, and if such conditions exist so report to the President, within 30 days after the date of enactment of this Act and after reasonable intervals of time thereafter.

(D) Prior to making any determination under subparagraph (B), the Secretary of Agriculture shall consult with the Governor and the Secretary of Agriculture (or comparable official) of the State involved, and give due consideration to the views of the such persons.

(4) Paragraphs (1) and (3) shall become effective 15 days after the date of enactment; and assistance under such subsections shall be available until March 30, 1987, or the date, as determined by the Secretary of Agriculture, on which the emergency created by the drought or excessively hot weather no longer exists, whichever is earlier.

(b) Effective October 1, 1986, section 1105 of the Food and Agriculture Act of 1977 (7 U.S.C. 2267) is amended by adding at the end thereof the following:

"(h) If—

"(1) the Secretary of Agriculture makes emergency livestock or poultry feed assistance available to producers in a county under section 407 of the Agricultural Act of 1949, or comparable law; but

"(2) surplus commodities of adequate nutritive value are not made available under such program for distribution to such producers within ten days after the announcement of the program for such county,

the Secretary shall make assistance available to such producers under this section until such time as surplus commodities are made available under the announced program.".

DISASTER PAYMENT PROGRAM

SEC. 5. Notwithstanding any other provision of law:

(a) The Secretary of Agriculture shall make disaster payments available, at the request of the producer, on the 1986 crops of wheat, feed grains, upland cotton, rice, and soybeans and peanuts under sections 107D(c)(2)(D), 105C(c)(2)(D), 103A(c)(2)(D), 101A(c)(2)(D), and 201(k) of the Agricultural Act of 1949, respectively, to producers located in natural disaster areas.

(b) For the purposes of this section, the conditions set out in sections 107D(c)(2)(D)(i), 105C(c)(2)(D)(i), 103A(c)(2) (D)(i), and 101A(c)(2)(D)(i) of the Agricultural Act of 1949 shall be considered as having been met.

(c) Payments under this section shall be made in kind, as provided in section 8(a) of this Act, using surplus stocks held by the Commodity Credit Corporation.

(d) The total amount of in kind payments that a producer shall be entitled to receive for the producer's crops of wheat, feed grains, upland cotton, rice, peanuts, and soybeans under this section shall not exceed an amount of commodities of a combined value of more than $100,000.

MILK PROGRAM PRODUCER ASSESSMENTS

SEC. 6. Notwithstanding any other provision of law:

(a)(1) At the option of the producer, no reductions in the price received by producers for milk marketed for commercial use under section 201(d)(2)(A) of the Agricultural Act of 1949 shall be made on milk produced by producers in drought disaster areas and marketed for commercial use during the period beginning October 1, 1986, and ending December 31, 1986.

(2) The reductions in the price of milk required under section 10 of the Food Security Improvements Act of 1987 shall not be increased as a result of the implementation of the temporary prohibition on reductions in the price of milk provided for under paragraph (1).

(b) The Secretary of Agriculture shall increase the amount of the reduction in the price received by producers in drought disaster areas for milk produced and marketed by such producers for commercial use under section 201(d)(2)(A) of the Agricultural Act of 1949 during the period beginning January 1, 1987, and ending September 30, 1987, by an amount that will ensure that, to the extent practicable, the aggregate amount of reductions applicable to milk of such producers for the period beginning October 1, 1986, and ending September 30, 1987, will be the same aggregate amount of reductions that would have been made if the prohibition of reductions under subsection (a) had not been in force.

COST-SHARING FOR SOIL CONSERVATION MEASURES AND TIMBER STAND RESEEDING EXPENSES

SEC. 7. Notwithstanding any other provision of law,

(a) The Secretary of Agriculture shall make available—

(1) cost-share payments under the agricultural conservation program to producers in drought disaster areas for conservation measures designed to prevent anticipated soil erosion due to loss of vegetative cover; and

(2) cost-share payments under the forestry incentives program to forest landowners in drought disaster areas for the reestablishment of stands of pine trees lost to drought conditions.

(b) The Secretary shall share not less than 50 percent of the cost of such measures or reestablishment of timber stands; and such cost-share payments shall be made in kind, as provided in section 8(a) of this Act, using surplus stocks of commodities held by the Commodity Credit Corporation.

(c) Payments made under this section shall be in addition to, and not in lieu of, payments made under the Soil Conservation and Domestic Allotment Act or the Cooperative Forestry Assistance Act of 1978 using funds appropriated for such purposes.

(d) Assistance under this section shall be made available to persons in drought disaster areas during the period beginning 15 days after the date of enactment of this Act and ending March 30, 1987.

PAYMENTS

SEC. 8. Notwithstanding any other provision of law:

(a)(1) In making in-kind payments under section 4(a)(1), 5, or 7, or subsection (b) of this section, the Secretary of Agriculture may—

(A) acquire and use commodities that have been pledged to the Commodity Credit Corporation as security for price support loans under the Agricultural Act of 1949, including loans made to producers under section 110 of such Act; and

(B) use other commodities owned by the Commodity Credit Corporation.

(2) The Secretary may make in-kind payments by—

(A) if requested by the producer, delivery of the commodity to the producer at a warehouse or other similar facility, as determined by the Secretary; or

(B)(i) the transfer of negotiable warehouse receipts;

(ii) the issuance of negotiable certificates that the Commodity Credit Corporation shall redeem for a commodity in accordance

with regulations prescribed by the Secretary; or

(iii) such other methods as the Secretary determines appropriate to enable the producer to receive payments in an efficient, equitable, and expeditious manner so as to ensure that the producer receives the same total return as if the payments had been made in cash.

(3) In carrying out this subsection, the Secretary, to the maximum extent practicable, shall use Commodity Credit Corporation commodities stored in storage deficient areas such as the midwestern United States.

(b) Transportation cost payments made under section 3(b)(2) or 4(a)(3) of this Act prior to October 1, 1986, shall be made in kind, as provided in subsection (a), using surplus stocks of commodities held by the Commodity Credit Corporation. Such payments made after September 30, 1986, may be made in kind or in cash. The Secretary of Agriculture shall assist recipients of in-kind payments in marketing warehouse receipts, certificates, or other documents representing such in-kind payments.

CREDIT FORBEARANCE

SEC. 9. It is the sense of Congress that, with respect to farm borrowers who are adversely affected by drought disaster conditions in 1986—

(1) the Secretary of Agriculture should exercise the authority provided under section 331A of the Consolidated Farm and Rural Development Act and instruct the Farmers Home Administration to defer loan repayments and forgo foreclosures in cases where such farm borrowers are unable to make loan payments in full due to no fault of their own; and

(2) the lending institutions of the Farm Credit system and commercial lending institutions are encouraged, insofar as practicable, to adopt lenient lending, forbearance, and foreclosure policies, and to the maximum extent possible participate and cooperate with Federal and State lenders in assistance programs, with respect to such borrowers who are under financial stress due to no fault of their own.

COORDINATION OF ASSISTANCE EFFORTS

SEC. 10. It is the sense of Congress that, with respect to the provision of Federal assistance to farmers and ranchers in drought disaster areas, the Secretary of Agriculture should take steps immediately to—

(1) establish an overall coordinating mechanism within the Department of Agriculture to ensure that the assistance provided by each agency within the Executive Branch is coordinated with, and complements, the assistance provided by other agencies;

(2) ensure that government and voluntary agencies, and the farmers and ranchers, in each drought disaster area are provided a single contact person or unit for Federal assistance, and that a similar such Federal contact person or unit is provided for government and voluntary agencies, farmers and ranchers, and other persons outside drought disaster areas who wish to contribute additional assistance to drought disaster areas; and

(3) consult with the Governors, Secretaries of agriculture (or comparable officials), and the State disaster relief agency in each State in which a drought disaster area is located, on the disaster assistance needs of farmers and ranchers located in the State.

Amend the title to read: "A bill to provide emergency assistance to farmers and ranchers adversely affected by drought disasters in 1986.".

ASSISTANCE UNDER DISASTER RELIEF ACT

SEC. 11. Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.) is amended by adding at the end the following new section:

"FEDERAL SHARE OF ASSISTANCE

"SEC. 420. (a)(1) The Federal share of assistance under section 402 or 403 of this Act—

"(A) shall be at least 75 percent of the actual cost of providing assistance under such section, and

"(B) shall be made only on condition that the remaining portion of such cost is paid from funds made available by a State or local government.

"(2) Where a State or local government is unable immediately to pay its share the President is authorized to advance to such government such 25 percent share, and any such advance shall be repaid to the United States.

"(b) The Federal share of assistance under sections 404, 407, and 413 shall be equal to 100 percent of the actual cost of providing assistance under such sections.

"(c) No State shall be ruled ineligible to receive assistance under subsections (a) and (b) of this section by virtue of an arithmetic formula based on income or population if such State has qualified for Federal disaster assistance within the past 24 months."

Mr. SASSER. Mr. President, up until this year the great southern drought of 1924 and 1925 appeared to be the worst drought in the region since colonial times.

□ 2250

Many southerners still vividly recall that painful period. Yet, National Weather Service records now show that this year's rainfall deficit is far greater than that experienced in the 1925 drought. For example, in 1925, only 35 inches of rain fell in Atlanta. So far this year, Atlanta has only received 13 inches of rain, one-third as much as in the great drought of 1925. Even with normal rainfall for the remainder of the year, projections indicate rainfall in areas of the South this year will remain substantially below 35 inches.

Mr. President, I ask for the yeas and nays on my amendment.

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

The yeas and nays were ordered.

Mr. SASSER. So clearly, we are dealing with a drought of tragically historic proportions. The drought now stretches from southern Pennsylvania to eastern Mississippi. Its path of greatest destruction—at the moment—is confined to Georgia, Alabama, the western Carolinas, east Kentucky, and middle and east Tennessee. However, requests from affected States for emergency assistance grow daily. Already, the Governors of Virginia, Maryland, and Delaware have added their States to the burgeoning list of potential disaster areas. And without further rainfall in the near future, the path of devastation may widen and the list of affected regions will grow longer.

Parts of Tennessee are among the hardest hit by the drought. In east Tennessee, several counties are running a rainfall deficit of 15 inches so far this year, and a cumulative deficit for the past 2 years of 35 inches. The Tennessee Valley Authority estimates hydropower production losses this year alone of $100 million. Moreover, in many parts of the South this drought is not simply a 1-year phenomenon but the third consecutive year of unprecedented dry weather the long-term consequences of which have only begun to be realized.

Mr. President, anyone who has followed the news knows that our farmers in the Southeast are bearing the brunt of the drought's destruction. To be sure, many are being affected, but our farmers are being hit hard in the pocketbook with each passing day in drought's grip. The Secretary of Agriculture recently suggested that estimated crop losses would exceed $1 billion.

I would submit, Mr. President, that that estimate is overly conservative.

The Washington Post this morning reported a revised estimate of over $2 billion in crop losses alone. And this estimate does not even include livestock losses. The Secretary was certainly correct in his statement that economic losses of this magnitude will "seriously and dramatically" affect the region's economy.

The Secretary also acknowledged the critical hay shortage almost all across the Southeast. I have seen firsthand the decimated hay and pasture crops wrought by the scorching heat. Damage assessment reports filed last week by several east Tennessee counties show actual hay yield losses ranging from 70 to 80 percent. Pasture losses range from 70 to 90 percent. Feed crop loss estimates exceed 50 percent. And estimates on feed crop losses do not reflect the fact that total feed crop acreage planted is already down 30 to 40 percent as a result of drought conditions at planting time.

With these extensive losses, dairy and livestock farmers throughout the region are being forced to purchase scarce hay at inflated prices. I am told by farmers in middle Tennessee that hay has nearly doubled in price over the past month. They tell me they fear they will not be able to afford to feed their herds in the very near future. Without some assistance, these farmers are facing the prospect of wholesale slaughter of vast numbers of cattle, ranging considerably in excess of hundreds of thousands in my State alone. This would decimate breeding stocks and further depress beef prices.

Our problems are not simply in the short term, either. The State of Tennessee needs, on average, 60 million tons of hay to feed its 2.5 million cows over the winter. The current supply of hay on hand in the State is only about 1.6 million tons, about one-thirtieth of what we need. Given the extent of middle and east Tennessee hay losses, it is obvious that Tennessee farmers will be forced to continue to acquire costly out-of-State hay throughout the winter. This situation exists in other States in the Southeast.

It is clear that we need to act and act now to combat the devastating consequences of this drought. The Federal Government has always stood ready to assist farmers stung by disaster. The much-publicized hay lifts that have occurred in recent weeks have brought welcome relief to some areas in the Southeast. But we cannot kid ourselves that already hard-pressed farmers throughout our country will be able to afford to donate the quantities of hay that will be necessary to carry the Southeast through this winter. We in Congress cannot forsake our responsibility for shaping a comprehensive solution to this critical situation.

Mr. President, this amendment offers such a comprehensive solution—a solution not being offered by this administration. Only this past week President Reagan maintained that he would use authorities within his power to provide relief for drought-stricken areas. Secretary Lyng, too, indicated that disaster assistance would be forthcoming, and that it would be done using existing authorities. Yet, is disaster assistance forthcoming from the department? No.

I agree completely with the Secretary of Agriculture that he should make use of his existing authorities, and there is no necessity to be creating new programs. That is why this amendment creates no new authorities, and no new programs. This amendment simply requires the Secretary to use authorities he has regrettably chosen not to use to date.

Our amendment has several critical sections. First, our amendment directs the Secretary of Agriculture to make available, to farmers in counties where there is a critical lack of feed grain or forage needed to keep livestock or poultry alive, CCC surplus stocks of feed grains being stored in the State affected by drought or an adjoining State.

Our amendment also directs the Secretary to provide assistance to farmers who have been forced to buy hay and feed grain supplies to replace their decimated crops of hay and feed grains. Specifically, the amendment requires the Secretary of Agriculture to implement the Emergency Feed Program for a 1-year period. The Emergency Feed Program enacted in the 1977 farm bill was used from 1977 to 1981 and provides Federal cost-sharing to eligible farmers. The eligibility requirements are determined on a formula basis, taking into account the actual hay and pasture losses, hay and feed grain supplies on hand, and number of cattle.

Mr. President, I ask unanimous consent that the distinguished Senator from Nebraska [Mr. EXON] be added as cosponsor.

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

Mr. SASSER. Eligible farmers may buy replacement feed stocks on the open market and are reimbursed by the Department of Agriculture for 50 percent of the hay or roughage cost to keep the costs of the program to a minimum. To further keep the cost of the program to a minimum, reimbursement shall be made in kind to the extent practicable, using surplus stocks of the Commodity Credit Corporation commodities.

In addition, the amendment requires the Secretary to permit haying and grazing on set-aside acres under the 1986 Wheat, Feed Grain, Upland Cotton, and Rice Programs.

The amendment also provides for hay transportation payments if the other assistance programs described above are not sufficient to prevent substantial losses of livestock or liquidation of beef cattle herds or dairy herds.

This amendment requires the Secretary of Agriculture to make disaster payments for 1986 crops of wheat, feed grains, upland cotton, rice, soybeans, and peanuts—again, using payment in commodities, not cash, to the extent practicable.

There are several other provisions to this amendment. One would temporarily exempt dairy farmers from assessments under the Milk Price Support Program for a 3-month period, but would require later payment of those assessments to catch up those months they have been excused due to the drought. Another would provide Federal cost-share payments, to be paid in kind, for conservation measures designed to mitigate drought-induced soil erosion, and for reestablishment of decimated pine stands under the Forestry Assistance Program.

In addition, the amendment expresses the sense of Congress that the Farmers Home Administration should defer loan repayments and forgo foreclosures in cases where farm borrowers are unable to make payments in full on account of the drought. It also suggests that lending institutions of the Farm Credit System and commercial lenders should, for farm borrowers adversely affected by the drought, adopt lenient lending, forbearance, and foreclosure policies for those borrowers who are under financial stress due to the drought.

Finally, the amendment also expresses the sense of Congress that the Secretary of Agriculture should take immediate steps to establish an overall coordinating mechanism within the Department of Agriculture to ensure that government and voluntary agencies, as well as farmers and ranchers, are provided a single contact person or unit for Federal assistance.

This amendment is very similar to a bill reported by the House Agriculture Committee yesterday with broad bipartisan support. It is my understanding that the committee hopes to bring this bill to the floor next week. Of the legislative proposals being suggested addressing the drought, I believe this amendment provides the most cost effective, most efficient, and most comprehensive safety net we can give our farmers through this period of almost unparalleled devastation in this century.

Mr. President, we cannot afford to forgo action on this drought any longer. As I stated at the outset of my remarks, our farmers need action now. I recall, Mr. President, that our Federal bureaucrats swiftly cut through miles of redtape to bail out the Continental Illinois Bank in a space of just a few hours. We need to show the same decisiveness now to come to the assistance of the hard-pressed American farmer in the Southeastern region of the United States.

Mr. RIEGLE. Mr. President, would the Senator yield?

Mr. SASSER. I shall yield to the Senator briefly. Then I mean to yield to my colleague.

Mr. RIEGLE. Mr. President, I thank the Senator for yielding. I commend the Senator for the amendment he has drafted. I ask unanimous consent to be listed as a cosponsor of the amendment.

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

Mr. RIEGLE. Mr. President, I further say that people in my region of the country, where we are not hit by the drought, are very much of a desire to help. Today, in Grand Rapids, MI, we loaded several dozen tons of volunteered hay, given by farmers of Michigan and carried by Conrail, down into the region in the South that is hit by all this dry weather and the lack of water. But volunteer effort alone cannot solve this problem. We need governmental response. I think it ought to be on the scale that the Senator has described here and I hope the Senate will adopt his amendment.

Mr. SASSER. I thank the Senator from Michigan and I yield to my colleague from Tennessee.

Mr. GORE. Mr. President, I am honored to join my senior colleague from Tennessee in offering this amendment. I commend his leadership and his quickness to recognize how serious

this problem is. In fact, several months ago, my senior colleague was out walking in the fields in Tennessee, recognizing what effect the drought was having and calling for help for the farmers in Tennessee and in other areas in the Southeast.

Mr. President, we are offering an amendment which will address the desperate plight of American farmers, especially in the Southeast, who have experienced huge losses due to extreme drought conditions. Farmers in our part of the country have seen hard times before, but for many, this is the worst situation they have ever seen.

That may sound like an exaggeration, but it is absolutely true. If you come to the Southeastern part of our country today and talk to farmers, you will find how true it is. Crops are ruined, dairy and beef herds are starving, farm families are seeing their livelihoods and their hopes for the future dry up before their very eyes.

The Nation is facing a $2 billion loss to the farm economy. All across Tennessee and other States in the Southeast, farmers are literally crying out for assistance. I hear the question again and again—not just from farmers and livestock producers, but also from Tennesseans and other Americans who are not involved in farming but know how much farming matters. They are asking, What is being done to help?

The Department of Agriculture has tools at hand to deal with this crisis. They were given to them years ago by Congress. Unfortunately, those tools are not being utilized. For example, last week, the distinguished senior Senator and I asked the Secretary of Agriculture to use his authority to reinstate the Emergency Feed Program, abandoned in 1982, to make badly needed hay available to those who need it. To date, we have received no response to that request.

□ 2250

Our legislation requires the Secretary to make emergency assistance available to farmers and ranchers in drought disaster areas. It creates no substantial new authority, but mandates the use of the authority that already exists and is being ignored by this Department of Agriculture. It implements the Emergency Feed Program, which will provide hay that is needed to keep cattle alive. In Tennessee alone, we have lost half the hay crop—1.2 million tons—and sales of livestock in my State were double the norm last week.

Transporting the hay is an added financial burden, because transport costs often run ahead of the cost of the hay itself. For the hardest hit farmers, 80 percent of transport costs will be picked up if other forms of assistance are not sufficient to prevent substantial losses of livestock or liquidation of herds.

Additionally, disaster payments will be available on the 1986 crops of wheat, feed grains, upland cotton, rice, soybeans, and peanuts. The cost will be borne by the use of surplus commodities already paid for and available for use by the Commodity Credit Corporation.

Mr. President, I want to emphasize this feature of the bill for my colleagues. We have already paid for enormous surpluses that are in storage. We can choose one of two courses of action. We can let those surpluses sit there and rot and we can let the farmers go bankrupt in the face of this drought, or we can take the surpluses out of storage, redeem them, and use them to pay for the hay that these farmers need and the other assistance that they need to avoid bankruptcy during this period of temporary crisis. To me that choice seems to be very clear, and I strongly urge my colleagues on both sides of the center aisle to support this legislation.

This legislation addresses the needs of milk producers as well. Dairy farmers in disaster areas would be temporarily exempted from assessments under the Milk Price Support Program until November 15. The cost would be recouped, however, over the next 10½ months.

And for the land itself, cost share assistance would be made available for soil conservation measures and timber stand reseeding expenses.

Mr. President, we want to make another point. We assume in making the adjustments required by section 5, the Disaster Payment Program, the Secretary shall not reduce any payment which would otherwise be made to take into account payments made through the Federal Crop Insurance Act.

Mr. President, this legislation is desperately needed. It is cost effective. It will save a $2 billion investment by Americans in their land, their crops and their livestock. We cannot afford not to act. We must act immediately. As we speak, the effects of the drought grow worse. In my State, 19 counties have been found by State authorities as disaster eligible, and Senator SASSER and I have asked the President to move without delay to make the appropriate declaration. Other Southeastern States are suffering as well. Many of them have a larger number of counties affected by the drought.

I urge my colleagues to approve this amendment. To do so will send a clear signal, not only to Tennessee but to the entire Nation, that the Government of the United States intends to stand by our farmers and pull them through this crisis.

Mr. SARBANES. Will the Senator yield?

Mr. GORE. I will be glad to yield to my colleague, the Senator from Maryland.

Mr. SARBANES. Mr. President, I commend the two distinguished Senators from Tennessee for taking the leadership in offering this amendment. I think it is urgent that the Senate act upon it. I ask unanimous consent to be added as a cosponsor.

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

Mr. SARBANES. I simply say to Senators SASSER and GORE that their quickness in moving to seek a remedy to this problem which is confronting so many of our farmers across the Southeast of this country is urgently needed. The authorities are there. They are not being exercised. The Secretary of Agriculture is not exercising the powers that he has under existing laws to come to the assistance of people who are about to lose their whole life's work in many of our Southeastern States. I think it is urgent that the Senate act on this legislation and I am happy to be added as a cosponsor.

Mr. LEVIN. Mr. President, I commend Senators SASSER, GORE, and others for their very speedy action in bringing finally the public sector into the relief for the victims of the drought in the Southeast of this country. The private sector has been active. We see voluntary efforts all around the country. We see people opening up their hearts and pocketbooks to try to help people who have been devastated by this drought. This is not just a problem in the Southeast. This is a problem which will affect all of us ultimately. Every one of my constituents is already affected emotionally by what they see and read about the devastation in the Southeast, and so the private sector has acted. It is time now, indeed it is overdue, that the Department of Agriculture use its authority. They have the power. This amendment tells them to use it in a very balanced and a very moderate way. I ask unanimous consent, Mr. President, that I be added as a cosponsor of this amendment.

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

Mr. LEVIN. Again, let me say I believe this amendment will be supported by a broad cross section of Senators across this country just the way constituents across the country have opened up their hearts to try to bring a short-term solution to this problem.

Mr. MATTINGLY. Mr. President, I would like to ask the sponsor of the amendment, the Senator from Tennessee, if this is the same amendment that I filed at the desk 2 days ago, amendment 2235 to the debt-ceiling bill?

Mr. SASSER. Will the Senator repeat that question? I was interrupted.

Mr. MATTINGLY. I would like to know if the amendment the Senator is offering is the same amendment that this Senator offered 2 days ago, amendment 2235, or is it a very similar amendment?

Mr. SASSER. No. I am advised that it is not the same and that there at least originally were not substantial similarities. We have changed it. We do not know if there may be more or not.

Mr. MATTINGLY. The Senator changed this Senator's amendment or changed his amendment?

Mr. SASSER. The Senator changed his?

Mr. MATTINGLY. No. Mine is pending at the desk. I just asked if that is the same amendment that the Senator from Tennessee offered.

Mr. SASSER. No, it is not.

Mr. MATTINGLY. Does it use CCC commodities that are stored to pay excessive payments?

Mr. SASSER. That is correct, yes.

Mr. MATTINGLY. That is similar. That is the same.

Mr. SASSER. It is aimed at correcting the same problem, I am sure, I say to the Senator from Georgia. Both States share the same problem, as he knows.

Mr. MATTINGLY. That is not what I am asking. I am asking, is it the same amendment?

Mr. SASSER. No, it is not.

Mr. MATTINGLY. I would like to know where if differs substantially from the amendment that is pending at the desk.

□ 2300

Mr. SASSER. I cannot answer that precisely, because I do not know precisely what the Senator's amendment consists of which is pending at the desk. I do not know what it is. But I would be delighted to furnish the Senator with a copy of this amendment so that he could compare them, if he wishes.

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

Mr. MATTINGLY. I yield.

Mr. GORE. I cite four provisions that differ from the amendment previously filed at the desk by our colleague.

First, emergency feed donations, under which the Secretary of Agriculture would be required to make available at no cost CCC stocks of feed grains being stored in the affected State or an adjoining State. It is my understanding that that is a difference. I will stand to be corrected if it is not.

Second—and to my mind most important—this amendment we are offering provides for a paid transportation program for the most severely afflicted livestock producers of the kind that are in abundance both in the Senator's State and in our State.

As I mentioned previously in my remarks a moment ago, hay transport, because of the bulk of hay, can often run more than the hay itself. This is an extremely vital provision.

Third, our amendment provides a delay in payments on the milk program assistance. Dairy farmers are among the hardest hit, and this is a no-cost provision. Subsequent increases would make up for the temporary loss to the program.

Fourth, our amendment, unlike the one filed at the desk, expresses the sense of Congress that the Secretary should act immediately to establish an overall coordinating mechanism for Federal assistance.

I do not think it can be emphasized enough that immediate help is absolutely necessary for our farm economy. This amendment, in short, is nothing but common sense, designed to help farmers who cannot get seed and designed to save a $2 billion investment.

In conclusion, let me say that the problems being faced by our neighboring State of Georgia are very similar to the problems we are facing in the eastern and southeastern part of our State. We want to work with our colleague in addressing this problem.

Mr. MATTINGLY. You are very magnanimous. I think the main thing is using the CCC commodities payments.

Mr. GORE. Yes, it does. It saves money by that method.

Mr. MATTINGLY. I think that is what I said in my floor speech 2 days ago.

Mr. GORE. It is the same thing the House of Representatives passed.

Mr. MATTINGLY. You are right. But I think you will admit that the major thing is that it assists farmers, the ones who have really had a tremendous drought, have no crops, or most of the crops have been destroyed, to be able to get disaster payments in the form of either generic-type certificates or commodity payments. Is this not the major part of it?

Mr. GORE. That is one portion of the bill, and I urge the Senator to support that and the rest of the bill.

Mr. MATTINGLY. That was in my bill. Would you not admit that that would be the major portion of it—that what the farmer is looking for now is not new loans? I think your State and my State agree with that. But what we are trying to do is to get disaster assistance, and a major way to get disaster assistance is to respect the use of surplus commodities we have stored, which I said in my floor speech 3 days ago.

I think it is the major part of this legislation that you have, other than the four or five small odds and ends in the bill. The major thing is the mandating to the Secretary of Agriculture, not leaving it to the discretion of the Secretary of Agriculture, which I assume your amendment does, the same as the Mattingly amendment, to make certain we do not leave it to the discretion of the Secretary of Agriculture. Is that correct?

Mr. GORE. I think the Senator is on the right track.

Mr. MATTINGLY. Does your amendment make it discretionary or mandatory?

Mr. GORE. We make it mandatory.

Mr. MATTINGLY. That is exactly right. It is the same as 2235.

Mr. GORE. It is the same as my colleague and I announced last week, and we welcome the support from as many people as possible who care about the problem that is being created by this drought.

Mr. MATTINGLY. I want to make the point that it is the same as the amendment that was filed at the desk some 48 to 72 hours ago.

I thank the Senator.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. HECHT). The Senator from Tennessee.

Mr. GORE. Mr. President, I will be very brief, and then I will yield the floor.

I just wanted to say, partially repeating the comments I made earlier, that it is not the same as the amendment that was filed earlier. There is a difference in many significant aspects, four major aspects which I recited in my statement a moment ago. But let me say that in particular it tracks with the approach that our colleague from Georgia has recommended, and I believe he is on the right track. We want support from everyone who will support this legislation.

The fact is that the farmers of this country, particularly those in the Southeast, are experiencing unprecedented disaster. They need help; the Secretary of Agriculture has authority to help. It is discretionary and not being used. This amendment would simply require the Secretary of Agriculture to use the discretionary authority he already has at his disposal.

So I urge my colleagues on both sides of the aisle to support it.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

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

Mr. GORE. I yield.

The PRESIDING OFFICER. The Senator from South Dakota has been recognized.

Mr. ABDNOR. I yield to the Senator.

Mr. MATTINGLY. There are probably good parts of both pieces of legis-

lation. Rather than have a point of order raised against the legislation, it seems that it would make good sense to try to work out some way that we could get a negotiated agreement between ourselves—not only ourselves, but also with the USDA, where they would not object to this, so that we could make certain it happens and that it is not subject to a point of order and would finally be defeated.

Mr. GORE. If the Senator wants to raise a point of order against the amendment——

Mr. MATTINGLY. Not I.

Mr. GORE. I would be prepared to ask unanimous consent that the name of the Senator be added as a cosponsor of the amendment.

Mr. MATTINGLY. No, thanks. I am already a sponsor of one.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. ABDNOR. I yield to the Senator from Pennsylvania.

Mr. HEINZ. I thank the Senator from South Dakota for yielding.

Mr. President, I just want to make an inquiry of the authors of the amendment regarding section 11. Is section 11 substantially the legislation that the Senator from Pennsylvania introduced?

Mr. SASSER. It is, and I will say to the Senator——

Mr. HEINZ. Just 1 minute.

The Senator from Pennsylvania asked the Senator from Tennessee earlier this evening, as floor manager of the bill, if he could advise the Senator from Pennsylvania as to the substance of his amendment, and the Senator from Tennessee said he could not and did not.

I am flattered that the Senator included my amendment. Thank you very much for that. But I do think that when I ask a colleague whether or not he is going to offer an amendment and it includes my amendment, he really ought to tell me.

Mr. SASSER. I say to the Senator from Pennsylvania that this was added to this amendment at the request of the Senator from Ohio, who indicated at that time that this was legislation sponsored by both himself and the distinguished Senator from Pennsylvania.

My assumption at that time was that this had been discussed with the distinguished Senator from Pennsylvania and that our colleague from Ohio was acting on behalf of both of us.

If I can refresh my colleague's memory, I did not refuse to divulge to the Senator from Pennsylvania the contents of this amendment.

□ 2310

The Senator simply asked me "What is your amendment about?" And I said "Something that I think will not be objectionable to the majority leader."

At that time there was a chuckle and we both went our ways.

Mr. HEINZ. I thank the Senator for his response. Let me just say to him—and I realize we are on the time of the Senator from South Dakota—that I find this discussion interesting.

What interests me is that I did discuss the substance of my amendment with the Senator from Ohio. We were discussing including it with the amendment of the Senator from Georgia. That is what the Senator from Ohio and I and the Senator from Georgia were talking about.

It is interesting to me that all of a sudden my bill ends up in the Senator's amendment. Maybe it is just coincidence and maybe the Senator from Ohio was trying to facilitate matters, but it seems to me that at some point it would be helpful to me, particularly as it is (a) my bill and (b) I am the floor manager of this legislation, if some time when the author of an amendment is going to include my legislation he would tell me that my legislation is in his amendment, irrespective of any conversations they may have had with anyone else.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from South Dakota has the floor.

Mr. METZENBAUM. Will the Senator yield?

Mr. ABDNOR. First, I would like to say a few words, if I might.

Mr. METZENBAUM. Mr. President, will the Senator from South Dakota yield so I might clarify this matter without losing his right to the floor?

Mr. ABDNOR. I yield a few seconds. All right.

Mr. METZENBAUM. I appreciate it.

The Senator from Pennsylvania is 100 percent correct. The Senator from Tennessee is not responsible at all. I accept full responsibility. I discussed this matter with the Senator from Tennessee earlier in the evening. It was my understanding that Senator MATTINGLY was going to go with his amendment prior to the amendment of the Senator from Tennessee when at that point I discussed with the Senator from Georgia, Senator MATTINGLY, the matter of including the amendment in his amendment and he indicated he was going to go with it tomorrow.

I then learned that Senator SASSER was moving with the amendment this evening and had included my amendment in his amendment.

I was trying to protect myself in both respects.

But let me make it clear. It is not my amendment. The original bill was the bill of the Senator from Pennsylvania [Senator HEINZ]. I am a cosponsor of that.

If the Senator from Pennsylvania feels that it is unfair or inappropriate that it be included as part of the Sasser amendment then I would ask the Senator from Tennessee to remove it because it is indeed the original initiative of the Senator from Pennsylvania and I do not want to in any way trample upon his rights nor in any way to be discourteous to him. There was no intention to do so.

Mr. HEINZ. Mr. President, will the Senator yield further?

The PRESIDING OFFICER. The Senator from South Dakota has the floor.

Mr. HEINZ. Will the Senator yield for 30 seconds more?

Mr. ABDNOR. I yield, without losing the floor.

Mr. HEINZ. I thank my friend, the Senator from South Dakota. He has been most kind.

The Senator from Ohio was not present on the floor when we discussed this at the beginning. I said to the Senator from Tennessee I was most flattered, most flattered indeed that his amendment was included in my bill and Senator SPECTER's bill of which the Senator from Ohio is a cosponsor. I remain flattered.

But I did not know until the amendment was being read that it was in there.

Mr. METZENBAUM. I accept full responsibility, and I apologize to the Senator from Pennsylvania.

Mr. HEINZ. There is no need for the Senator to apologize. I thank him for clarifying the record.

Mr. ABDNOR. Mr. President, if I may, I would like to take a few seconds.

The PRESIDING OFFICER. The Senator from South Dakota has the floor.

Mr. ABDNOR. Mr. President, I am trying to determine at the moment whether we are talking about one, two, or three amendments. But let us talk about the one that the Senator from Tennessee offered, the amendment he offered a moment ago.

Let me ask the Senator one thing. Is this permanent legislation for all drought-stricken areas from here on into eternity, or is this designed only for this particular area that the drought is occurring at the moment?

Mr. DOMENICI. Is the Senator through, Mr. President?

Mr. ABDNOR. No; I am asking a question.

I asked the Senator from Tennessee who offered the amendment is the amendment only for the drought-stricken area that we have before us today or is it permanent legislation to go into effect for all future drought areas?

Mr. SASSER. I say to the Senator from South Dakota that the legisla-

tion expires as of April 1987 or if the drought conditions cease, sooner.

Mr. ABDNOR. Mr. President, I do not want to appear heartless because I certainly am well aware of what a drought-stricken area can be like. I have been in them many, many times. As recently as last year, my State had a drought, over half of the State, I guarantee you equal to what you are witnessing today. And while I agree it is only half a State and not one that probably covers 10 States, it was equally as bad for that particular area.

This is certainly going to set a precedent.

Let me ask the Senator again. As I understand this, all Government-owned grain will be free, plus the transportation, and half of the hay; is that the way I heard? Half of the cost of the hay and trucking?

Mr. SASSER. Let me respond to my distinguished friend from South Dakota by saying that it is discretionary with the Secretary of Agriculture in consultation with the Governors of the affected States and whether or not there will be reimbursement for transportation. If the Secretary of Agriculture determines after consultation with the Governors of the affected States there shall be reimbursement, then there shall be reimbursement up to 80 percent of the transportation costs.

Mr. ABDNOR. Let me say I do not want to be heartless but I recall many, many droughts, even since I have been in this Congress let alone long before I came in. I thought we had a monumental law passed last year in the farm bill when we said that commodities in the drought-declared areas, if they did not have any of the CCC grain available, the Government should be required to deliver that grain to the counties where the disaster occurred and they should pay the going rate of what the Government charges for disaster grain.

I just want everyone to know and again I certainly feel for the farmers. I am a farmer myself and have been when the droughts have hit. I just want to say that I hope we all remember that if we do this because this is going to occur almost every year somewhere, maybe not to the degree and to the extent and the vastness of this particular drought, but one equally as bad for wherever it hits, and it is going to be a program that I think we better well understand. If we are going to take care of this situation we certainly owe it to all agricultural areas of the future who are equally hit.

I yield to the Senator from North Carolina.

Mr. HELMS. Mr. President, I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator form North Carolina.

Mr. HELMS. I thank the Chair.

I was wondering if we were going to get an affirmation of this old saying about there being a little bit of larceny in every soul. I do not know whether it be grand larceny or petty larceny.

But in any case, speaking as chairman of the Senate Agriculture Committee, I do hope that somewhere along the line we can put an end to this business of one-upmanship in trying to tell the farmers how much we love them and how sorry we are for them.

Now, having said that, some of us have been working with the Secretary of Agriculture all week long about the very thing covered by the Mattingly amendment which was filed 2 days ago and which suddenly reappears as a reincarnation in another piece of legislation.

Tomorrow afternoon at 3 o'clock, the Secretary of Agriculture is going to announce almost precisely what is being talked about here tonight.

Now I do not care who gets the credit. I just want us to do everything we can for the farmers.

But I have noticed Senators and Congressmen and others scurrying around breaking their legs to get in front of a truck to pose before a load of hay. That is not doing the farmers any good.

The thing that the farmer needs is a little rational contemplation of what can be done without setting the very precedent that the Senator from South Dakota was talking about.

So I hope we can put to rest this business of one-upmanship, looking at another guy's amendment or amendments and proceed along an orderly course.

I thank the Chair and I thank the Senator from South Dakota.

Mr. ABDNOR. I would like to say to the chairman of the Agriculture Committee I am not necessarily objecting, but I just want to say there are a lot of us who have this sort of situation occur maybe not in such a large area but equally as bad for those who are in the drought and I hope it is more permanent so everyone in the future who has such a drought will be remembered when it occurs in other places throughout the Nation.

That is the one point I did want to make here today.

□ 2320

Mr. METZENBAUM. Mr. President, let me just take a moment to rise in support of the Sasser amendment and also to speak just for a moment in connection with the Heinz amendment which is now a part of the amendment, which I cosponsor as well as a number of other of my colleagues in this body.

The Heinz amendment would have the effect of negating FEMA rules proposed on April 18, 1986. Now those proposed FEMA rules would reduce the Federal share of public assistance from 75 percent and would deny eligibility for assistance to any community in the State if the uninsured damages in the State are less than $1 per capita. The only justification for the rules is that they would reduce the number of declared disasters by over 70 percent.

Of the 18 declared disasters in Ohio over the past 22 years, only one would qualify under the new rules.

The intent of the amendment is simply to maintain our current policy on disaster assistance to States and local communities. It has no economic impact, because the budget resolution itself originally contemplated the 75-percent figure. The 50-percent figure is a regulation of FEMA which was not in effect nor even contemplated at the time the budget resolution was adopted.

I commend both Senators from Tennessee for their leadership on this issue. I commend the Senator from Pennsylvania for his legislation that many of us have cosponsored. I hope the Senate will see fit to act promptly in connection with the entire matter.

Mr. STEVENS. Mr. President, I wonder if the sponsors of the amendment would tell me what it costs.

Mr. SASSER. I would say to my friend from Alaska that we have received preliminary cost figures, somewhere in the neighborhood of $300 million. Now, I would contest those figures to a considerable extent based on the matter in which the budget scoring was carried out. Principally, the payments will be made by in-kind payments from the Commodity Credit Corporation which will not require outlays of Federal moneys. Still, the cost of these Commodity Credit products are scored against in the budget process as an actual cost. But the cash outlays, I think, will be considerably less than that.

Mr. STEVENS. Mr. President, I thank the Senator for his response.

I would ask one other question, and that is are the sponsors of the amendment aware of the solutions that are to be offered tomorrow by the Secretary of Agriculture and the fact that they are within the scope of funds already available to the Department of Agriculture?

Mr. SASSER. Well, I would say to my friend from Alaska that we have been waiting in vain for the Secretary of Agriculture to act for some time. Time is of the essence. And with each passing day, the situation becomes more critical and more desperate.

What we are offering here this evening in actuality really effects many of the provisions that were passed in the 1985 farm bill. We are mandating the Secretary of Agriculture to act, whereas before he has had the discretion and chose not to act.

Mr. STEVENS. Mr. President, I hope that Members of the Senate will observe the rules and not address one another as we have been doing here this evening. I think that is inclined to change debate in the Senate.

But I would hope that the Senators would consider the impact of this amendment on the actions that are going to be taken tomorrow. As I understand, this amendment would go beyond the actions that the distinguished Senator from North Carolina has suggested are going to be taken, and I assume other members of the Agriculture Committee have been working with him. These actions, as I understand, are within the scope of existing law and within the scope of existing funds.

I have been informed by reliable sources that there are some people who estimate this between $600 million and $1½ billion.

Again, Mr. President, my second question is, where did the sponsors of the amendment get the cost figures? Are they from the Congressional Budget Office?

Mr. SASSER. I would say to my distinguished friend from Alaska that they are cost figures gotten from the Congressional Budget Office and we got these figures late this evening.

Mr. STEVENS. Mr. President, I still have the floor and I will give it up in a minute.

I come from a State, Mr. President, that has a great many disasters and I am very reluctant to deal with something that is labeled as disaster relief in a way that would be misinterpreted.

Mr. President, I think the Senator from Tennessee ought to understand that those of us who have to come here to the Congress and represent areas that have disasters have in the past done so in a bipartisan way and we have done so very deliberately to get the administration, no matter what party was involved, totally involved with the solution to the disaster.

It appears to me that is not the case this time, Mr. President; that, as the Senator from North Carolina has said, there is a little bit of too much one-upmanship in this matter.

I think it would set a very bad precedent if we started a race to the desk in any attempt to solve disasters. I hope the proponents of this concept will regroup and present us a bipartisan solution that is consistent with some support, at least, from the administration and not present a plight that, in the final analysis, would be unacceptable to the administration. This is not going to help the farmers, it is not going to help the people who suffer disasters to start a process of divisiveness at the time we are seeking a solution to the problems.

I very seldom would comment in this vein, but I do because of the number of times since I have been in the Senate that I have had to come here and ask for help because of disasters in my State, be it flood or earthquake or other things, and we have had bipartisan support. I remember the great problem in the State of Washington and my good friends, the late Senator from Washington, Senator Jackson, and former Senator Magnuson, how we all worked together to solve the problems related to Mount St. Helen's. This does not look like a togetherness solution for the farmers.

I hope the Senate would reflect on what it is about to do and that we would have the proponents of this concept regroup and give us a bipartisan solution that meets with some kind of acceptance on the part of the administration.

Mr. SASSER. Mr. President, I must say that I am somewhat amazed at the controversy that seems to greet this amendment here this evening, which is aimed solely at bringing aid to drought stricken farmers in the Southeast. This situation has dominated the national news for a period now of almost 2 weeks.

What myself and a number of my colleagues have sought to do this evening is simply present to this body legislation which was adopted today or yesterday by the House Agriculture Committee in a broad bipartisan vote. We are simply seeking here this evening to expedite the process.

I would think that our colleagues from all sections of the country and from both sides of the aisle would examine this thing carefully and dispassionately. I think if they do so they will find that this amendment has merit and ought to be supported.

Mr. GORE. Will my colleague yield?

Mr. SASSER. I yield to my colleague from Tennessee.

Mr. GORE. I appreciate my colleague yielding. I just want to add to these remarks, because a couple of our colleagues have spoken in a way to give the impression that somehow there has been some race to the desk to come out with an amendment to address the drought relief problem.

□ 2330

As my senior colleague from Tennessee has noted this problem has been well known in our part of the country and in the entire country for a long, long time. My colleague and I addressed this matter publicly last week. We sent around a Dear Colleague letter saying we were going to offer an amendment on this subject. We served notice on it. We had it on the list when the debt limit resolution first came up. The fact that one concept in the amendment bears some similarity to one concept in another amendment that has been filed is not grounds for somebody to say it is somehow lacking in bipartisanship. The yeas and nays have been ordered.

This amendment addresses a problem of national importance. Are we going to try to help the farmers in the Southeast of this country or not? The administration has failed to do so. It has the authority on the books right now. In 1982 it made a public statement that it was not going to use that authority. What this legislation says is you have to use the authority. Help the farmers out. The House of Representatives, the other body, I should say, passed this same language yesterday out of the Agriculture Committee. So what is the controversy about? All we have to do is vote up or down. If you want to help the farmers in a time of real emergency, then vote yes for the amendment. If you want to get mired down in some kind of petty controversy, about where this concept or that concept first originated, if you do not want to help the farmers then vote against the amendment. The choice is very clear.

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

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I have listened with a good deal of interest. I would like to go to a question in a moment, if I may, for the senior Senator from Tennessee regarding this amendment that I am a cosponsor of. Let me ask that question at this time. I would like to yield to him for an answer without losing my right to the floor.

I heard the word of partisanship raised in this debate. The reason that I cosponsored the amendment is that when our farmers have been in trouble, we have had the help and support of people on both sides of the aisle on previous occasions. We have no drought in Nebraska at the present time. I think it is particularly important, though, that we work in a cooperative fashion. The farmers in the Senator's part of the United States are in dire difficulties today. Maybe I did not understand the debate here. But does not the amendment that the Senator offered that I cosponsored help both Democratic and Republican farmers and Independent farmers? It is not limited, is it, to one political party or the other?

Mr. SASSER. The distinguished Senator from Nebraska it entirely correct. There is no language in this amendment that would delineate between farmers on a partisan basis.

Mr. EXON. I thank my colleague. I suspected that was going to be the answer.

I was also on the floor hearing talk about rushing to judgment. I was on the floor not too long ago when the distinguished Senator from Florida,

the junior Senator from Florida, offered an amendment that some people might think was political with regard to paying Social Security recipients even if the CPI does not reach 3 percent as was previous law. As far as I know, there was no charge at that time that the junior Senator from Florida was rushing to judgment without due consideration. I would simply say I am just amazed that there is even this much argument on the excellent amendment offered by my colleague from Tennessee, which merely directs the Department of Agriculture to do what the Congress has already authorized it to do to meet these kinds of emergencies.

Therefore, I suggest that this is not a partisan issue. I would think and hope that the Senator from Tennessee would invite all the Members on that side of the aisle if necessary to join in as cosponsors of the legislation. That is the way to make it nonpartisan. I hope we would move on with this matter and stay away from the matter that this should be set aside because it is partisan. It is not partisan. It is designed to help the farmers in the Southeast that are in dire straits. I think we are not serving Democratic or Republican or Independent farmers by any further delay.

Mr. RIEGLE. Will the Senator yield to the Senator from Michigan?

Mr. EXON. I am glad to yield.

Mr. RIEGLE. I thank the Senator.

I do not know if the Senator is aware or not but across this country citizens are coming forward on their own to try to help what is clearly a desperate situation. In my State of Michigan we have had now literally hundreds of farmers volunteer hay to move south. We loaded several tons of hay today on Conrail trains in Grand Rapids. We were loading hay all day long to go down south. It has been coming from other States, from Indiana, and coming from Massachusetts. But what the people of my State are saying they are doing is what they can do on a voluntary basis but this problem is so large that there is a need for a national response. This is a scale of disaster that is without precedent in modern history.

So voluntary effort alone will help but it cannot solve this problem. That is why we have a National Government. I do not understand for the life of me why it is when we have people in extreme circumstances that need help that we cannot respond as a Nation. I think we should respond. I wanted to respond and voted to respond when we had the Mount St. Helens tragedy out on the west coast where people were caught in a situation that they could not manage. I am prepared to respond to other disaster situations in other parts of the country. But what I do not understand now is why there is this reluctance of the Senate when there is this clear and pressing need, and the people of the country want to see a response. We ought to help the farmers in the South that are in a situation where it is beyond their capacity to respond. Our Government has an obligation, and frankly this administration has done next to nothing about it.

The President time and again has said he wants to help but there has been no help. We have a new Secretary of Agriculture. He is relatively new. He could put a plan together. He has not done it. There has been no concerted response. This is an effort to get a response. The House of Representatives acted yesterday on this very measure. We ought to act on it tonight. We are here on other things that are even less important. If we can take the time on those things, we can take the time on this. People out there need this help. They ought to get it.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. BYRD. Mr. President, I ask unanimous consent that my name be added as a cosponsor of the amendment offered by Senator SASSER.

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

Mr. BYRD. Mr. President, I am pleased to be a cosponsor of this amendment. Two counties in my State of West Virginia have been severely affected by the drought that is gripping the Southeast. This amendment contains several provisions that will be particularly helpful to the farmers in Berkeley and Jefferson Counties.

This amendment includes provisions on emergency feed donations, emergency feed purchase assistance, hay transportation payments, and delay of milk assessment payments. These provisions will be of help to the farmers of West Virginia who have suffered loss of pasture land and forage crops, and face the loss of their livestock and dairy cattle.

I commend the Senators from Tennessee for their leadership on this amendment, and I urge my colleagues to support its enactment.

● Mr. ZORINSKY. Mr. President, I am pleased to cosponsor this amendment that can provide much needed assistance to farmers in drought-stricken areas of our Nation.

Each day newspaper and television reports give accounts of the tragedy that afflicts producers, primarily in the Southeast. Because of the drought, many farmers and rural businesses will face bankruptcy unless assistance is forthcoming. This amendment will stave off the worst effects of the drought and provide many farmers with the ability to stay in business.

The amendment specifies that, under certain conditions, the Secretary of Agriculture shall make available to drought-stricken farmers and ranchers, at no cost, surplus stocks of commodities owned by the Commodity Credit Corporation. The surplus commodities would be made available in areas in which the Secretary of Agriculture determines there is a critical need for livestock or poultry feed, in amounts necessary to preserve livestock herds and poultry flocks in the area. I would hope that use of this authority will dispose of surplus commodities that would not be sold in any case and currently accrue large storage costs.

The amendment also requires the Secretary of Agriculture to make livestock and poultry feed assistance available to farmers and ranchers in disaster areas. Farmers and ranchers will receive reimbursement for purchased feed with inkind payments, using the surplus stocks of commodities held by the Commodity Credit Corporation.

Inkind payments will also be used to make disaster payments, under existing authorities, to producers of wheat, feed grains, upland cotton, rice, and soybeans for the 1986 crops of those commodities. The total amount of inkind payments that a producer would be entitled to receive under the disaster payment program will not exceed a combined value of $100,000. In making inkind payments, the Secretary of Agriculture would be required—to the maximum extent practicable—to use CCC commodities stored in storage deficient areas such as the Midwest.

The amendment also postpones payment of assessments by milk producers in disaster areas, at the discretion of the producer. By postponing payment of assessments, the total amount of contributions by dairy farmers—used to partially offset the cost of the current milk price support program—would remain the same. However, the contribution of an individual producer could be postponed until next year. In this way, dairy farmers who may be near bankruptcy and would not be paying any assessment will be able to stay in business.

The amendment also expresses the sense of Congress that, with respect to farm borrowers who are adversely affected by natural disaster conditions in 1986, the Secretary of Agriculture should exercise the authority provided under existing authorities to defer loan repayments to the Farmers Home Administration and forgo foreclosures in cases where such farm borrowers are unable to make loans payments in full through no fault of their own because of natural disaster conditions.

Mr. President, this amendment is important to farmers who may need immediate assistance to avoid bankruptcy and I urge the Senate to adopt it.●

Mr. MATTINGLY. Mr. President, I would like to say the Senator from

Tennessee has a fantastic idea, and I support it.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I think it is time for a little history lesson around here. It is time for a little history lesson on Gramm-Rudman. I would like to ask under this proposed amendment, does a point of order lie under section 302 of this amendment?

Mr. SASSER addressed the Chair.

Mr. HARKIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. Will the Senator please repeat the parliamentary inquiry?

Mr. HARKIN. Does a point of order lie under the provisions of Gramm-Rudman-Hollings under section 302 insofar as the amendment exceeds the levels of Gramm-Rudman by a set amount of money? I do not know whether it is $300 million or $600 million, but whatever it is.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The answer to the parliamentary inquiry is that the amendment is subject to a point of order as in violation of section 302.

Mr. SASSER. Mr. President, pursuant to section 904, I move to waive the provisions of section 302, and I ask for the yeas and nays.

Mr. HARKIN. Mr. President, I have the floor.

The PRESIDING OFFICER. The Senator from Iowa has the floor.

Mr. SASSER. Point of order, Mr. President.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Thank you, Mr. President.

I understand that a point of order in fact lies against this amendment.

The PRESIDING OFFICER. That is correct.

Mr. HARKIN. Mr. President, again I join with those in excoriating this administration for what they have done to the disaster payments program. In 1981 under the farm program they did away with the disaster payments program. It was done voluntarily by the Secretary of Agriculture. Immediately thereafter, the Secretary of Agriculture began using the disaster payments program blatantly in a political manner. In 1983 we had a drought in Iowa which was devastating Iowa. Did we get disaster payments? No way. But the year before, in 1982, they had a drought down in the Southwest, and they got disaster payments. But we did not get any disaster payments.

The history of the disaster payments program, since it was taken out of the mandatory section and made voluntary, has been used only in a blatantly political manner.

Last year, the distinguished Senator from Arkansas, [Senator BUMPERS] offered an amendment to extend the Small Business Administration disaster loan program, one which I supported and which 45 other Members of the Senate supported. But it was defeated 52 to 45.

□ 2340

They claimed that the SBA could come in and extend low interest loans to farmers suffering from disaster.

It is important to remember these things because this administration has used these programs in a blatantly political manner.

I do not mean to raise a point of order. I did not vote for Gramm-Rudman. I am opposed to Gramm-Rudman. I voted today to repeal it. But I find it very curious that many of the people who are proposing this amendment voted for Gramm-Rudman, supported it.

Someone accused me of getting into the barleycorn liquor earlier this year and now he is supporting violations of his own provision.

As I said, I will not raise a point of order because I do not agree with Gramm-Rudman.

Am I for this amendment? Sure I am for it, but in an evenhanded manner.

I want to echo what the distinguished Senator from South Dakota just said. We cannot be dealing with disasters on a piecemeal basis. Because farmers in one part of the country got hurt, if they have enough political clout, if they have enough support, they get the disaster payments. Perhaps if their party is in power and some people are running for reelection in that State, they get disaster payments. But that does not happen the next year in another State.

That is why we need a national program as we had in the past, a national program of disaster payments to farmers, low interest loans by both the Farmers Home and SBA. The program worked in the past because it was fair and equitable and covered every farmer in the country whether they were in Alabama, Iowa, Georgia or anywhere else.

Now we have a situation if there is a disaster, where the farmers are at the mercy of the Secretary of Agriculture and whatever he wants to do. That ought not to be so.

So on this amendment, I have every reason to support the farmers in the Southeast who are hit by a drought. We had it in Iowa in 1983. Let me tell you it was as bad in Iowa in 1983 as it is in North Carolina or Georgia this year, and we did not get anything. We did not get disaster payments. I would like to amend this amendment, but I know I cannot amend it. I would like to throw in 1983 where it says 1986.

I would like to get disaster payments for the farmers that were hurt in Iowa. I know that will not happen.

I guess what I am saying is that this, again, ought to be reason for us to go back to the farm bill and have a disaster program that is fair and equitable and covers all farmers and which is mandatory and is not discretionary at the whim of the Secretary of Agriculture, whether it is a Democrat or Republican.

We ought to have a national disaster payments program for these farmers. We ought to have low interest loans available when they are hit by a national disaster, regardless of where they live and whatever year it may happen.

I will not raise a point of order because I do not believe in Gramm-Rudman. But I say to those who raised the point of order earlier this year when I tried to get advance CCC loans for our farmers, which did not cost anything over a 2-year period of time according to CBO because it shifted funds from fiscal year 1987 to fiscal year 1986, a point of order did lie under Gramm-Rudman so a point of order was raised, if I am not mistaken, by the distinguished Senator from New Mexico at that time.

Mr. DOMENICI. Will the Senator yield so I can respond?

Mr. HARKIN. Without losing my right to the floor, I will yield.

Mr. DOMENICI. The reason I did not raise the point of order to explain what it means and what the Senator's rights are to waive it is because I have not had the opportunity to get the floor. If you will yield, I will explain that there is a process in the law which will permit us to vote for extraordinary relief by waiving, so long as everybody understands, and we will pay for it from some source.

I thank the Senator for yielding.

Mr. HARKIN. I will say that I am opposed to waiver because I think those farmers deserve to have help. I do not agree with Gramm-Rudman anyway. Again, I wonder why those who have been so strong in supporting Gramm-Rudman have not been here on the floor raising Cain like they did earlier this year on advance CCC payments.

Mr. President, I will end my remarks by saying once again this ought to be again proof to all of us that we do not just represent farmers from the Southeast or the Midwest or Kansas or Iowa or anywhere else. We represent a national constituency. This disaster that has hit the Southeast may hit the West next year or it may hit Minnesota, Wisconsin, or Michigan, just as it hit Iowa in 1983.

We ought not to have a program that the Secretary uses only at his discretion to reward those he likes and to punish those he does not like.

Mr. President, again, I compliment the Senator from Tennessee and the others who have devised this amend-

ment to try to help the farmers in the Southeast. I just hope that they will help us when we try to make changes in the farm bill to provide for a disaster payments program that is fair and equitable and covers all farmers under disaster conditions no matter when they happen, no matter where they happen.

RELATIVE TO ADJOURNMENT TO A DATE CERTAIN DURING THE REMAINDER OF THE 99TH CONGRESS

Mr. DOLE. Mr. President, I am advised by the Parliamentarian that if we do not take action by midnight and pass a House concurrent resolution, we have to adjourn sine die by some law that was passed—when?

The PRESIDING OFFICER. 1946.

Mr. DOLE. Mr. President, I do not think anything happens if we do not pass it, but the House has sent it over here as House Concurrent Resolution 374. I would not want to be in violation. I would not want to go home early this year.

Mr. President, I ask unanimous consent if we might just temporarily set this amendment aside and move to House Concurrent Resolution 374 and pass it. I think I have the support of the distinguished minority leader in this very important matter.

Mr. BYRD. Will the distinguished majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. The majority leader is right that the law requires this to be done. This concurrent resolution allows the Congress to proceed with the public's business in violation of the law.

It is an impractical law and I have never seen such language as I have seen in this concurrent resolution. If anybody can explain it to me, I would be happy to have them do so.

Anyhow, this is a concurrent resolution that the House passed and they thought we could get around the law. I would say we better do something soon or we will be in violation.

Mr. DOLE. If we did not pass this, I do not know that it would make any difference, but it is something we could say we have completed this week.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 374) relative to adjournment to a date certain during the remainder of the 99th Congress.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 374) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. I want to thank our colleagues. That was on our must list. We had to do this before we can recess on the August 15.

INCREASE IN THE STATUTORY LIMIT ON THE PUBLIC DEBT

The Senate continued with consideration of the joint resolution.

Mr. DOMENICI. Mr. President, let me see if I can explain in my way what the Budget Act says about this amendment. There has already been a parliamentary inquiry as to whether or not it violates the Budget Act. The answer that the Chair made was that it does.

In the Budget Act, what you do is to allocate to each of the committees what they are expected to spend during the year, the sum total of which, when you add up their allocations, frequently called crosswalks, gets you to the total expenditures of the Government. You put the revenues up alongside of that and what is left over, if there is some left over, is the deficit.

Where we are now is we have allocated all of the expected expenditures of our Government. All of that that is appropriated is in appropriations waiting for them to allocate it. Then those committees that have direct spending or entitlement spending, and that is what this is, I say to the Senator, direct spending not subject to appropriations, that goes to the authorizing committee. They are supposed to allocate in their committee the expenditures that they have within their jurisdiction.

The Agriculture Committee has some $22 billion that they expect to be spent under their allocation of their portion of this trillion dollar budget.

The point of it is that the Agriculture Committee does not have room in theirs for this because obviously it was not expected. I am not passing judgment on whether we ought to do it or not, but the point of it is that they have not yet allocated their $22.04 billion. But if you look through it, there is not room if they did.

□ 2350

But it violates the Budget Act to offer a spending amendment if they have not made the allocation. If they had made it, it violated it anyway, because it would be over the amount. So the point of order that will be made by me as chairman of the Budget Committee—and I want everybody to understand—is because as a matter of fact, whether this amendment costs $300 million, which is the lowest estimate I can get, or $600 million, which is the middle ground I can get, or $1.5 billion, which is the outside amount the OMB says—whatever it is—let us take $600 million. Obviously, there is a provision to waive the point of order that I am going to make. I assume the Senator from Tennessee is going to move to waive. That is some section called 904 of the Budget Act.

That waiver is contemplated to be voted on by the Senate. That is one of those provisions that expects the Senate to take an act if they want to waive that provision, and it only requires 51 votes—a majority, let me say; not 51, but a majority. It is not one of those supermajority votes.

So I think I am obligated as Budget Committee chairman to make the point of order because you all ought to know, if this is 600—and again, I do not pass judgment on whether this is a good program, whether it is absolutely needed with reference to all the rest of Government, whether you want to do it—what really happens is this: If it is $600 million, then you have added $600 million to the expected deficit and one way to look at it is you have added $600 million to the sequester prospect that will occur if we do not get the budget under control.

It cannot be taken out of agriculture, so you are just adding it to the overall expenditures, which will put you in a position where you are going to probably add $600 million to any sequester that you are going to have. Or you will have to find some way to cut the budget or raise revenue so that you do not have that added $600 million impediment to meeting the targets.

The reason I cannot ask the Agriculture Committee to go find the money is that the entire allocation to that committee is entitlements and direct spending. It is not like saying to the appropriators, go through all your litany and inventory and see if you can save. They already will have used all of theirs because the 22.04 is all entitlement and direct spending money that is not appropriated.

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

Mr. DOMENICI. I shall be pleased to yield.

Mr. CHILES. I just want to say to the chairman of the Budget Committee and the author of the amendment I will join with the chairman of the Budget Committee in making the point of order. I would have done that whether it was this amendment or the Mattingly amendment or any other amendment. This is not a Gramm-Rudman point of order. This is a

Budget Committee point of order out of the super points of order that came up.

I think what the body ought to know, because I think the Senator from Tennessee will move to waive this provision of the Budget Act, which is contemplated in the act so the body can be able to say this is something we want to do in spite of the fact—the body can make that decision. But again, I think they need to understand that we are talking about the fact that we had a budget total as we came out of conference committee of $142.6 billion. Remember our ceiling of $144 billion. Our reconciliation bill that we bring to the floor is $1.1 billion short of what we had contemplated getting in our savings. So we are now at $143.7 billion.

So if this is 300 right on the head, maybe we can hit it right on the head and if it goes over 300, then we could be over the $144 billion.

What people need to realize and contemplate is that this means in effect that you could be taking this money partly out of defense, partly out of other domestic programs and it would be up to this body to pass judgment on that, but I think it is the responsibility of the Budget Committee to raise this on this bill or other bills and do this thing, whether it is a drought situation that happens to be in the Southeast that we are all vitally concerned about or whatever else it is. And the body has to consciously know what it is doing. So I shall join with the Senator when he makes the point of order.

Mr. SASSER. Mr. President, will the distinguished chairman of the Budget Committee yield to me?

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. I thank the Chair.

Does the distinguished Senator from Tennessee ask that I yield?

Mr. SASSER. Yes; I ask if he will yield.

Mr. DOMENICI. I yield without losing my right to the floor.

Mr. SASSER. Mr. President, this morning in the military construction appropriations subcommittee, we appropriated $300 million to three countries in Central America in addition to the $100 million we were appropriating for aid to the so-called Contras. That $300 million was appropriated to sweeten the pot in aid to those countries in Central America.

I submit, Mr. President, if we can summarily find an additional $300 million in aid to countries in Central America, we can certainly find $300 million to aid the drought-stricken farmers of the Southeastern United States, who are already fighting for their very economic lives and have been now for a period of years, caught in the worst farm depression in this country since the late 1920's. I think that point ought to be made.

I thank the distinguished chairman for yielding.

Mr. BUMPERS. Will the Senator from New Mexico yield for a question?

Mr. DOMENICI. Let me say to my friend from Tennessee that the reason I want to go ahead and make my point of order, I want the Senator to know that it is my understanding that his motion is debatable. So I am not in any way, with my point of order, trying to preclude him from making a 10-minute speech. I did not mean to make him make it in 1. He has as much time as he wants, as I understand the rules. His motion is debatable.

Mr. President, a parliamentary inquiry: Is the motion that the Senator from Tennessee has indicated he is going to make, to waive the Budget Act under the appropriate section whereby 302(c) would be waived, debatable?

The PRESIDING OFFICER. It is debatable.

Mr. DOMENICI. So the Senator will have all the time he needs.

Mr. President, I make a point of order that the amendment violates section 302(c) of the Budget Act.

Mr. SASSER. Mr. President, pursuant to section 904, I move to waive that provision of section 302 which renders this amendment out of order, for the purpose only of this amendment.

Mr. BUMPERS addressed the Chair.

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

Mr. BUMPERS. Mr. President, is that a debatable motion?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BUMPERS. Mr. President, a parliamentary inquiry: Is that a debatable motion or not?

The PRESIDING OFFICER. Does the Senator from New Mexico yield?

Mr. DOMENICI. I would be pleased to yield, but I say the Chair just ruled it was.

Mr. BUMPERS. I asked the simple question after the appeal was made of the ruling of the Chair. You made the motion, he appealed the ruling of the Chair. I asked is that debatable.

The PRESIDING OFFICER. The motion——

Mr. STEVENS. Mr. President, a point of order: Members must not address one another. They must address the Chair and not one another in the third person.

The PRESIDING OFFICER. The Senator's point is well taken.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, I yield to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I hope nobody understands that the Senator from New Mexico, in making the point of order which is now before the Senate, by making a motion to waive, which requires only a majority vote, the Senator from New Mexico made that point of order because I am against the amendment. I have not even decided what I am going to do. What I believe we must understand is that there is a process and that everyone should know that somewhere between $600 million and a billion and a half is going to have to be found somewhere within the budget or it will add to the deficit and to the prospect for a sequester.

□ 2400

That is precisely why it is subject to a point of order, so that we can look at that, and there is no way within the rules that I am aware of or the prescriptions in the Budget Act to here and now substitute anything for this expenditure that will arise if this becomes law. It is for that reason that I believe the Senate must know that. If you vote the point of order is gone. It is prescribed that you have that right to vote; so long as everyone understands the extent of the expenditure and what will happen in the next couple of months, clearly it is our prerogative to do what we wish. I yield the floor.

[The following proceedings occurred after midnight:]

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I hope we can voice vote the waiver. I have a list here of 20 more amendments to the debt ceiling. I had hoped to finish this before morning, but we have been about 2 hours on this matter. I know some of these amendments will not take long but there are at least three or four others that will take some time. I have just about concluded we are not going to finish this. I do not see any reason to keep people here all night long. I think after this amendment and Senator HELMS has an amendment and then a couple amendments are going to be taken as I understand the Senator from New Jersey, that may be about enough until, say, 8:30 or 9 o'clock tomorrow morning. But I hope we could speed it up as much as we can.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I can be brief. I vigorously oppose waiving the Budget Act. We face a difficult decision. I believe that it would be a mistake to commit ourselves to another $200 million to $1.5 billion of deficits. I think it is vitally important that we vote this down. We need to recognize that potentially half of this money is

coming out of defense, half out of nondefense. So the question is not do we want to do this, but are willing to pay for it in that way. I am not, and therefore I oppose waiving the Budget Act.

Mr. BUMPERS and Mr. MATTINGLY addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I listened very carefully to the chairman of the Budget Committee a moment ago, and without losing my right to the floor I would like to ask this question of the chairman, who stated that there was a little over $22 billion in the Agriculture budget and that it was all entitlement and direct spending and therefore there was no room for this amendment in the Agriculture Committee's budget. Is that correct?

Mr. DOMENICI. That is my understanding.

Mr. BUMPERS. So if we vote against the motion of the Senator from Tennessee to waive the Budget Act, we are not only setting a precedent, but what we are saying is that the most devastated section of this country, perhaps in this century, which has suffered a $2.3 billion agricultural loss already—we are not trying to make them whole—what we are saying is that we cannot do anything for that ravaged section of this country now or at any time in the future.

Now, obviously, the Congress has the right, the Senate has a right, to change its mind somewhere between now and October 2. But I want to tell my colleagues when you vote this way, you can either add it to the agriculture budget or you can find it someplace else, and that is my understanding of the way this budget process works. You can find someplace else to refurbish the Department of Agriculture for expending these moneys, and if you vote against the motion to waive, you are saying to the farmers in a five-State region there will be no help from Congress. The Senator from South Dakota said he knows what drought is. South Dakota has been ravaged by drought in the past. This is not a much worse drought than Oklahoma, Arkansas, Missouri, and Louisiana suffered in 1980. We had 111 deaths in Arkansas in 1980. So you are saying there will be no relief now or at any time. I am not prepared to do that. So I intend to support the motion to waive, Mr. President.

Mr. MATTINGLY addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MATTINGLY. We probably would not have had this much of a problem if we could have included one part in the Senator's amendment that would have said that "The aggregate amount expended for such disaster payments, including any payments made under normal price support activities, would not exceed the total which the Secretary would otherwise be obligated to expend for price support activities for all program crops in the affected counties for the 1986 crop year if such crops had produced an average yield." It is one thing not included in the amendment which really would have taken care of I think the majority of the costs that the chairman and the ranking member of the Budget Committee were talking to. And also, lastly, if the program would have been for 1 year and not in perpetuity, which this program is.

Mr. DOMENICI and Mr. HEFLIN addressed the Chair.

Mr. SASSER. Mr. President, I call for the question.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I had come to the floor this evening with two speeches, one to be supportive of Senator MATTINGLY, the other to be supportive of Senator SASSER's amendment that might be offered. In my judgment, they do not vary a great deal. Senator SASSER's follows the language that was approved by the House Agriculture Committee. I think it perhaps is a little bit better. I do not want to argue between the two.

Mr. President, I join with my colleagues in offering this amendment to provide some relief to the drought-stricken farmers of Alabama and other Southeastern States.

The amendment offered today is almost identical to the bill reported out of the House Agriculture Committee, yesterday. First, the amendment would require the Secretary of Agriculture to make available surplus commodities to producers in counties where there is a critical lack of feed grain or forage needed to keep livestock or poultry alive. This emergency feed donation program appears to be a commonsense approach to a critical situation facing our drought-stricken livestock producers and the problem we have as policymakers in finding a place to store surplus CCC commodities.

The amendment also directs the Secretary of Agriculture to implement the Emergency Feed Program that was included in the 1977 farm bill. Basically, this program would allow livestock and poultry producers to purchase the type of feed they need for their particular situation and be reimbursed by the local ASCS office for some portion of the cost. Historically this reimbursement rate has been 50 percent of the cost. This program would also allow the livestock producer the flexibility of buying mixed feed. hay, or even range pellets.

I have talked with the Secretary and asked him to make Federal assistance available to our hard-hit livestock producers. He has the authority, but USDA appears to be caught up in redtape.

Assistance is being provided to the livestock producers in a few counties that have been declared a disaster county through the Emergency Feed Assistance; however, this assistance is very limited and restricted to feed grains. Hay and pasture yields are running about 75 percent below normal throughout the region because of the drought. If pasture is no longer available to livestock, they must be fed hay or other roughage. Most livestock producers have no hay available. The few farmers that have hay are rapidly depleting their small inventory.

Federal assistance is not being made available to farmers for the purchase of hay and roughage. The well-publicized hay lifts that have occurred show the true American spirit of compassion and cooperation to help a neighbor in the time of need. While these hay lifts are of temporary help in some areas, they do not offer a comprehensive solution to the situation. Already hard-pressed farmers throughout the country cannot afford to give much more. It is a Federal responsibility to provide disaster assistance when and where necessary. The amendment directs the Secretary to implement an emergency hay program to assist farmers in finding and obtaining. The Department of Agriculture will pay 80 percent of the transportation cost under the emergency hay program.

Farmers that produce program crops such as cotton, wheat, soybeans, peanuts, and feed grains will be eligible for direct disaster payments. Disaster payment programs contained in current law will be implemented and paid with PIK certificates, not cash, to the extent practicable. Such a payment provision will not result in actual CCC outlays and will minimize the budget impact.

Dairy farmers in disaster areas would be temporarily exempted from assessments under the milk price support program. Hopefully, dairy farmers can use the extra cash to purchase much-needed feed.

Cost share assistance will also be made available to farmers in drought areas, under the agriculture conservation program, to replant pasture and other vegetative cover to prevent anticipated soil erosion. The cost share would not be less than 50 percent of the cost to the landowner.

Mr. President, on May 19, 1986, I contacted the Secretary of Agriculture and asked him to make available all disaster assistance within his authority to the farmers of Alabama. It is now August and he has not acted. Our farmers are in a desperate situation, they do not have time for high level task forces to skip around the country. The farmers of Alabama do not have

time for damage assessment reports to be finalized. Our drought-stricken farmers do not have time for bureaucrats to fiddle with more redtape. It is time to act.

I urge my colleagues to join me in supporting this amendment.

Mr. President, in response to statements being made that the administration is going to do something about it, we have had this drought now for several months. On May 19 of this year I contacted the Secretary of Agriculture and asked him to make available disaster assistance within his authority to the farmers of Alabama. It is now August and he has not acted.

Now, he has also sent his emissary down. Newly appointed Assistant Secretary George Dunlop 2 weeks ago, I believe, went down and surveyed the damage, and he came back saying he had never seen such devastation.

Now, it seems to me that it is time we move and it is time that Congress act on this. In the past when there have been droughts in foreign countries we have rightfully come to their aid. I can remember in Ethiopia; I can remember in Bangladesh and other places. There was a lot more human suffering involved. I think our coming to their relief and assistance then was good. But I think it is time we take care of our own.

Now, we can fiddle around with bureaucracy and rules and attempt to help, but back home they are saying, "You cannot feed cows on redtape." And we have had a lot of redtape thus far. It is time, in my judgment, that we take action. I urge that this waiver which Senator SASSER has moved be adopted and that this amendment be adopted.

Mr. DOMENICI. Mr. President, the distinguished Senator from Arkansas raised the point of whether our processes permit us to do this or to do anything else when you have a disaster, and let me just say to the Senator that we could provide for a sum of money for disaster based upon some averages. We have done that, but only within certain areas that we have been using. It does not happen to be this one.

□ 0010

So this is a brandnew expenditure of money. One way to do it and be logical and follow a normal process, because we have to have our eye on how much we are spending as a nation sooner or later—you did it as Governor—obviously, we have to know what we are doing, or at least try. This is one way. A 51-vote waiver says we have not changed what you expect to spend overall, but you are saying that, in all events, you are going to spend this. That is one way.

If that is what we want to do, it is a reasonable conclusion for the body to come up with, if they think the legislation is substantively sound.

For those who think there is no method to this process, you can add to deficit targets if you like. If you want to waive the whole act and say we want 60 votes and we want to add to the total we can come up with by way of a deficit—even that process is in the law.

What I am saying is that we have tied our hands. We have to make up our minds what we want to do, whether it is the right priority and whether we want to do that versus the other, because we are committed to do that, also.

The Senator from Texas is right—ultimately, if we have a $154 billion deficit, with a little added, we will have a sequester; and if this causes it, half will come out of defense and half out of domestic programs.

There is the other process, to waive it all with 60 votes and add it to the deficit. Nobody is suggesting that, and I hope they do not.

I want you to know that there is some methods to it, and there is no other way to handle it, unless you set up a fund in advance, saying we are going to have disasters every year, and this is how much we should put into the budget. I think the processes are better than that.

Mr. GRAMM. Mr. President, I want to ask a final question of the distinguished chairman of the Agriculture Committee.

The point has been made here that if we do not do this, there is not going to be anything done. I should like to ask the distinguished chairman if he believes that something is going to be done and, if so, when.

Mr. HELMS. Of course, it is going to be done, and I alluded to that earlier this evening. But when the wind of rhetoric went across the Chamber, I gave up and sat down.

I said earlier, and I say it again, that I have been working with the Secretary of Agriculture for the past week or more, formulating a program that is going to be announced tomorrow afternoon at 3 o'clock; and most of the things proposed by both the Sasser amendment and the Mattingly amendment will be taken care of. But to try at 10 minutes to 12 to persuade Senators to approach it at a normal basis, I find it impossible.

I say to Senators that they can sit here all night. I have been waiting here for 5 hours to call up an amendment. I said earlier, and I say it again, that the rhetoric is doing the farmers no good. The one-upmanship is doing the farmers no good. But the planning that has been done and will be announced at 3 o'clock tomorrow afternoon will do the farmers good.

Mr. GRAMM. Mr. President, I urge my colleagues to reject this waiver of the Budget Act, to allow an opportunity to move ahead with a program that has been thought out, that has been weighed in budget terms as to what can be done efficiently. I urge my colleagues to reject this amendment so that we may get on with our business.

Mr. BUMPERS. Mr. President, will the distinguished Senator from North Carolina yield for a question?

Mr. HELMS. I yield.

Mr. BUMPERS. First of all, I do not know what the program is going to be tomorrow afternoon. I do know what the Sasser amendment contains. My question is this: If it is a substantive program, and I assume it is, why does that action also not violate the budget, even though it is being done in a bureaucratic way by the Secretary? Why does it not also bust the budget, just as the amendment of the Senator from Tennessee does?

Mr. HELMS. That is a good question, and the answer is that the Secretary has discretionary funds.

The statement has been made over and over, in the typical USDA rhetoric, that nothing has been done, and that is not so, and I say that with all respect to Senators. The Secretary does have funds of a discretionary nature.

SEVERAL SENATORS. Vote! Vote!

Mr. STEVENS. Mr. President, I think someone should answer some questions about the waiver of existing law contained in this amendment.

I call the attention of the sponsors to page 8 of the amendment:

> For the purposes of this section, the conditions set out in sections 107, 105, 103, and 101 of the Agricultural Act of 1949 shall be considered as having been met.

What are they?

As I read this amendment, it mandates the Secretary of Agriculture to take action, to deliver commodities, and does not give him the authority to determine the eligibility of the people who receive the money. It provides $100,000 minimum for each person who is in the area.

It takes away a consideration amount of the Secretary's discretion in determining what is to be done.

It also deals with timber stand reseeding expenses. I would like to know how that got in there. We have had more forest fires in my State this year than I think in all the rest of the country put together, and we have not asked for disaster money to replace that.

This says "cost-share payments under the forestry incentives program to forest landowners in drought disaster areas for the reestablishment of stands of pine trees lost to drought conditions." Not less than 50 percent of the cost to replace them.

I would like to have a little explanation about this. What are those sections that these people need not comply with and that, for the purpose of the section, the conditions are met? What kind of payments in kind can

meet the landowner's situation? I do not think we have any stocks of trees for reforestation.

Mr. SASSER. Mr. President, in response to the questions of the distinguished Senator from Alaska, I say that the amendment we offer this evening simply makes mandatory some of the things—in fact, all the things—that are contained in this amendment which are discretionary now with the Secretary of Agriculture.

Mr. STEVENS. What are these conditions? I want to know what these conditions are that are met.

Mr. SASSER. If the Senator will allow me to answer, we find that the Secretary has been lax in exercising this discretion, and we are now making certain provisions in previous legislation mandatory, until and including April 1987, or until such time that there is a finding that the drought conditions have ceased.

With regard to payment in kind, this is accomplished simply by providing the farmer with a certificate that says he is entitled to so much of a commodity payment in kind. This certificate can then be negotiated by the farmer with a commodity trader who will purchase it, and the farmer can then get his cash. So the cash does not come directly from the Federal Government. It comes from the sale of commodities that the Federal Government presently holds, that have already been paid for, that the Federal Government presently is paying to store.

□ 2420

Mr. STEVENS. Mr. President, I have no answer.

What are the conditions that are now considered to be met under the provisions of the law that is addressed in the disaster payment program and under what conditions should the Secretary be required to use surplus stocks of commodities held by the Commodity Credit Corporation to assist in the cost of reforestation of pine trees lost to the drought conditions?

Incidentally, it is not limited to pine trees. It is limited to vegetation cover. What is the vegetation cover that has been lost in the area of timber stands that would be satisfied or be met in the disaster to be alleviated by using surplus stocks and commodities?

Am I to understand that we are to give the people who had timber stands that may have been affected by this drought peanuts to make up for their loss and how do we determine what that loss is? I am being very serious. That is what it looks like.

Mr. SASSER. Mr. President, if I might respond, the method of determining loss is set out in this amendment identical to the method for determining loss in law in the 1985 farm bill and payment is made through the Commodity Credit Corporation by a certificate which is then negotiated and the farmer may receive cash to purchase the hay, to purchase the feed grain or if he so qualifies also purchase trees.

Mr. STEVENS. The Senator did not answer the question about the timber stand receding expenses. If nothing else I wish to get an answer to the question that I am asking.

We have the allegation and to start off I am always suspicious of this "notwithstanding any other provision of law." What is being waived by that? Why should we have surplus stocks of commodities held by the Commodity Credit Corporation go to people who claim cost share payments under forestry incentive programs to forest land owners for reestablishment of stands of pine trees? No one has come out and given the people who have timber stands in my State peanuts to meet their problems this year, and I am being very serious now, or any other surplus commodities.

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

Mr. STEVENS. I yield.

Mr. MELCHER. I thank the Senator for yielding.

First of all, he stated correctly the forest incentive plan is for private landowners and that is something different than what we generally have in my State and perhaps even in Alaska.

Mr. STEVENS. We have substantial stands of private timber.

Mr. MELCHER. We have substantial but that is not run of the mill.

Mr. STEVENS. No, it is not.

Mr. MELCHER. But the forestry incentive program, as the Senator from Alaska is aware, is a well-founded provision of law that is utilized on a cost share basis to replace grains that are lost for one reason or another.

Mr. STEVENS. I have supported that program and assisted the Senator from Montana. I have forgotten how many years we worked on that. This is a disaster program trying to deal with a specific area and making commodities available.

Mr. MELCHER. Then I would like to further answer the Senator.

Mr. MOYNIHAN. Mr. President, a point of order. Senators are expected to address the Chair.

Mr. MELCHER. Will the Senator from Alaska yield to me for a further answer?

Mr. STEVENS. Mr. President, I was thinking that I was addressing the Chair and I apologize to the Chair if I was not.

But I yield to the Senator.

Mr. MELCHER. I thank the Senator for yielding.

Peanuts are not available. Wheat might be available. Corn might be available. And the provision here obviously is to give the Secretary the ability to pay out of stocks that are already owned by the CCC—the Credit Commodity Corporation—to avoid having to dip into the Treasury till but to provide the payment which is a good way of doing it and one we have provided several places in the farm bill to give the Secretary that authority. This is an extension of that. It is nothing new.

Mr. STEVENS. If I still have the floor, I am delighted to have the response, Mr. President, of the Senator from Montana.

The PRESIDING OFFICER. The Senator has the floor.

Mr. STEVENS. Why do we have to waive all other provisions of existing law to have this disaster relief from this kind for timber stands reseeding expenses?

Mr. MELCHER. Mr. President, will the Senator from Alaska yield?

Mr. STEVENS. I yield to the Senator.

Mr. MELCHER. I thank the Senator for yielding.

I will tell the Senator why I think it is in there and I think it is wise to have it in there.

This takes away any doubt but what the Secretary will provide the assistance through this mechanism. He does not have to fight his way through the Office of Management and Budget or anything else. This just says the Secretary shall do it. It is that simple.

Mr. STEVENS. Mr. President, that is no answer to me, under existing circumstances that we should take away entirely the discretion that exists under disaster relief programs and mandates the Secretary to provide assistance like that, "notwithstanding any other provision of law." I know of no one who has come here and said there is some impediment in existing law that has to be waived by such a sweeping provision.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The question is on the motion to waive.

All those in favor say "aye."

All those opposed, "no."

Mr. GRAMM. Mr. President, I ask for the yeas.

Mr. MELCHER. 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 to waive the Budget Act. On this question, the yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ARMSTRONG. I announce that the Senator from Arizona [Mr. GOLDWATER], the Senator from Florida [Mrs. HAWKINS], the Senator from Nevada [Mr. LAXALT], and the Senator

from Wyoming [Mr. SIMPSON] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Mississippi [Mr. STENNIS] is necessarily absent.

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

The result was announced—yeas 55, nays 40, as follows:

[Rollcall Vote No. 173 Leg.]

YEAS—55

Abdnor	Ford	Metzenbaum
Andrews	Glenn	Mitchell
Baucus	Gore	Moynihan
Bentsen	Harkin	Nickles
Biden	Hart	Nunn
Bingaman	Heflin	Pell
Boren	Hollings	Pressler
Bradley	Inouye	Pryor
Broyhill	Johnston	Riegle
Bumpers	Kasten	Rockefeller
Burdick	Kennedy	Sarbanes
Byrd	Kerry	Sasser
Cochran	Lautenberg	Simon
Cranston	Leahy	Thurmond
Denton	Levin	Trible
Dixon	Long	Warner
Dodd	Matsunaga	Zorinsky
Eagleton	Mattingly	
Exon	Melcher	

NAYS—40

Armstrong	Gramm	Packwood
Boschwitz	Grassley	Proxmire
Chafee	Hatch	Quayle
Chiles	Hatfield	Roth
Cohen	Hecht	Rudman
D'Amato	Heinz	Specter
Danforth	Helms	Stafford
DeConcini	Humphrey	Stevens
Dole	Kassebaum	Symms
Domenici	Lugar	Wallop
Durenberger	Mathias	Weicker
Evans	McClure	Wilson
Garn	McConnell	
Gorton	Murkowski	

NOT VOTING—5

Goldwater	Laxalt	Stennis
Hawkins	Simpson	

So the motion was agreed to.

□ 0040

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

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

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, let me indicate that there will be a request for the yeas and nays on this amendment. Let me also indicate that following disposition of this, an amendment by the distinguished Senator from North Carolina will be laid down. There is a time agreement.

I also understand there is an amendment by Senator BRADLEY and Senator EVANS which will be accepted, and then that is followed by an amendment to be laid down by Senator HELMS.

The time agreement with the distinguished Senator from Missouri, Senator EAGLETON, is 45 minutes with 15 minutes to Senator EAGLETON and 30 minutes to Senator HELMS. And the vote will occur tomorrow morning I would say about 10:30.

There are a number of amendments. We will finish the bill tomorrow.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. I want to be sure that Senator EAGLETON is agreeable to taking 15 minutes.

Mr. EAGLETON. I am. I thank the minority leader.

□ 0050

Mr. DOLE. Yes, I will make that request. The amendment to be offered by Senator HELMS dealing with insurance discrimination will have a time limitation of 45 minutes, 30 minutes to Senator HELMS and 15 minutes to the distinguished Senator from Missouri, Senator EAGLETON.

Mr. WEICKER. Reserving the right to object, Mr. President. I want to make sure that Senator MATHIAS, who I know to be in opposition, has his rights protected.

The PRESIDING OFFICER. Let there be order in the Chamber.

Mr. WEICKER. Might I suggest, in order to expedite matters, if Senator EAGLETON wants 15 minutes, that 15 minutes also be allotted to either Senator MATHIAS or myself.

Mr. EAGLETON. Let us make it 30 and 30.

Mr. DOLE. I will modify the request, 1 hour equally divided, with 30 minutes under the control of Senator HELMS or his designee and 30 minutes under the control of Senator EAGLETON and Senator MATHIAS.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Reserving the right to object, there will be no second-degree amendments in order?

Mr. DOLE. That is correct.

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

Mr. DOLE. Mr. President, let me make it clear. There will be one additional vote. I think the distinguished Senator from Alaska has one question to propound.

Mr. STEVENS. Mr. President, if the Senator will yield, I would like to ask the sponsor one last question. That is, as I read this amendment there is only a limitation of $100,000 on one section. Will the very large feedlots and commercial operations be able to get these? Are these intended only for those who are producers, the farmers or operators of the tree farms? Do they go to commercial operations in any way under this amendment?

Mr. SASSER. Mr. President, these provisions are intended for producers. They are being used to control soil erosion in areas where drought has killed trees.

Mr. STEVENS. What about the feedlots? Does this provide assistance to feedlots or just to the farmers?

Mr. SASSER. Mr. President, this amendment is intended and aimed to assist small farmers.

The PRESIDING OFFICER. Will the Senator suspend? The Senate is not in order. Senators will please take their seats or take their conversations into the Cloakrooms.

The Senator from Tennessee.

Mr. SASSER. Mr. President, in response to the inquiry from my distinguished friend from Alaska, the relief contained in our amendment is intended to go to producers who have suffered from the drought. There is no intention for such relief to go to feedlot operators.

Mr. STEVENS. Mr. President, I hope that will be clarified in conference. As I read it, there are no limitations on such activity. The multimillion dollar commercial operations associated with this type of production, either in the milk area, the timber area, or the cattle area, would be covered.

I have asked the majority leader to have a vote. I want to tell the Senate I have belabored this. I can never remember voting against a natural disaster provision because of the problems of my State in terms of disaster, but I do not think this is the way to present disaster legislation. I think the end result will be the people who suffer from disasters are likely to suffer twice because they will not get disaster relief if we start legislating in this fashion.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Could I direct one question to the principal sponsor, Senator SASSER?

As I understand, the maximum amount is $100,000 per farmer. Is that correct?

Mr. SASSER. That is correct.

Mr. DOLE. What would he have to do to get $100,000? We may have discovered here in which a lot of people would like to participate.

Mr. SASSER. Mr. President, in order for a farmer to qualify for the maximum, he or she would have to prove losses in that amount. For example, the losses are calculated in such a way that there has to be first a showing of 40-percent loss of yield. Then the producers would be paid 50 percent on the 40-percent loss of yield. So, in essence, the payments here would come nowhere close to making the producer whole. I think it would simply alleviate the economic pains.

Mr. DOLE. How much would a farmer have to lose before he got to the $100,000? I guess that is the question.

Mr. SASSER. It would have to be a quick calculation, Mr. President. In

ballpark figures he would have to lose somewhere in the neighborhood of $220,000 to $240,000.

Mr. DOLE. So if he were able to demonstrate that he had a loss of $240,000 or $220,000, he would be entitled to a grant of $100,000 and not repayable, just a gift, a grant?

Mr. SASSER. Mr. President, he would have to be in a drought area, first. There would have to be a showing or a determination that the loss was occasioned by the drought. There would have to be a showing that he has no other recourse. Then, at that point, at the discretion of the Department of Agriculture, he would qualify for payments.

Mr. DOLE. Would that amount be taxable? Is that income to the producer?

Mr. SASSER. Mr. President, it is my information that it would be taxable as income to the producer. It could be offset against the losses in the producer's operations.

I believe it would be income to the producer. However, overall, the producer is going to have to sustain a much larger loss before he realizes this income. So the producer would, in essence, have no net income. He would have a net loss.

Mr. DOLE. The farmer would be able to deduct, as I understand, under present law, if he had any income to deduct it from, his losses, his crop losses. That would be deductible.

I want to make certain. I am not trying to quarrel with the Senator from Tennessee.

I think what we are demonstrating here is that there are a lot of questions that we probably do not have the answers to. I do not have the answers. I do not know. I am trying to find information.

This would lead me to believe that sometime between now and the time that this may or may not become law, hopefully the U.S. Department of Agriculture, working with Senators on both sides, will announce a program, perhaps they will do it later today, that will satisfy the concerns expressed by Senator SASSER, Senator MATTINGLY, and others.

I think whenever we start passing major legislation without hearings we may end up creating more of a problem.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. I will be very brief. I come from a State that does not have this problem, but I will tell my friends here from the Southeast that I would like to vote for a meaningful piece of legislation to help those who are drought stricken in those States because we are one Nation. We ought to help each other.

I do not know much about agriculture, but I think I know how to read law and I read that amendment during the last half hour. I looked up some of the footnotes.

I will tell you what we are doing. Maybe you want to fix it in conference.

I will say to the leader I do not think we ought to vote on this tonight. I will support an effort to do what the Senator from Georgia and the Senator from Tennessee want to do. I have read this and I will make a prediction. If you want to have your experts read it overnight and look at it in the morning, here is what we have done: We have created a mechanism to totally take away from the Department of Agriculture any discretion to assess whether or not the need is there.

□ 0100

I am sure there are farmers in the Southeast in the majority where the need is there. But I have read this amendment and maybe that is not the intention of the sponsor. What we have done here is almost created an entitlement by region by eliminating discretion under a whole series of carefully crafted agricultural sections, which I never looked at until an hour ago.

I think what we ought to do, if anybody is willing—and if we are not, we ought to vote. I am not going to stand here and hold the floor. What we ought to do tonight is put the best staff people together with the best people from Agriculture, craft a program even if we have to waive the Budget Act, and I will vote for that under the circumstances, to give to those who need it in reasonable amounts. Make sure those who have feedlots and have not been hurt do not get the money, and we will be able to say to our people, we have done something meaningful in the Southeast. I will vote for that.

If we are going to vote for this, we are going to vote for something that creates an entitlement, that is going to cost $1 billion or $1.5 billion, and help people who do not need to be helped—which of course, is what the American agriculture program does today, help 20 percent of the farmers. Eighty percent of the people do not get the help who need it. Anyway people want to agree, let us think about it, let us craft it with professionalism and let us be able to vote unanimously tomorrow to help the farmers of the Southeast.

That is a much better suggestion, it seems to me, than voting for a new $500 million entitlement program.

Mr. DOLE. Mr. President, let me indicate we are all getting a lot of criticism right now about the $50,000 payment limitation. I think the Senator from South Dakota is going to offer an amendment later that says you cannot subdivide and everybody collect $50,000. I do not know if there is some provision in here that says you cannot subdivide and everybody get $100,000.

I think we ought to know what we are doing. I have taken enough heat in my State of Kansas on the $50,000 payment limitations. Here we are not saying $50,000, unlimited; it is up to $100,000. Maybe that is a loss. But that is what hurts the farm program right now, big payments.

Maybe many are not going to achieve a $100,000 payment. Maybe the losses are so great that only a few will receive $100,000. But I do believe at least those who are going to vote for this, and I may be one of them, should fully understand that maybe we are opening up a little Pandora's box here that we have not tightened up enough. I do not fault anybody for it. Maybe it is a legitimate amendment; it is a legitimate concern. But those of us who deal with it on a daily basis in the Agriculture Committee, anybody who says they have not gotten letters on $10 million payments to Boswell in California and big payments to cotton producers, to wheat producers—I have. I shall be glad to share them with you. Wool—I forgot about wool.

In any event, this is another thing. I hope we understand that by trying to help the farmers, we may be helping a lot who may not be in need.

Mr. DOMENICI. Mr. President, I do not know what the distinguished majority leader desires to do. I would like to tell another problem as I see it.

The amendment's proponents—I hold them to this and say they are saying it in good faith. They are saying they are only mandating the Secretary to do what the Secretary has discretion to do. I am having a great deal of difficulty trying to price this out. I will tell you what my first guess is, Mr. President: If all we are doing is mandating the Secretary to do what he has discretion to do, there will be a zero cost, because I believe that is already charged to the Secretary and to the Department of Agriculture.

I believe what the Congressional Budget Office is saying is that that is not the case; that there is $600 million in new aid beyond the authority; that we are trying to tell the Secretary, if we know how, you go ahead and exercise even though you have discretion.

It could be that maybe they would not charge the discretionary accounts. But my hunch is that they would, that they would already be in the agriculture cost and this new one is for something else that is not in the Agriculture Disaster Relief Act.

The last point I want to make is when you change something from discretionary to mandatory, it is one thing to say, "Mr. Secretary, go do it."

It is another to say, "You do not have any discretion in doing it." Those are very different things. That could be one of the reasons for the cost. And maybe we ought to find out what it is that we are mandating him to do, what he had discretion to do, and not do it so quickly because we are angry, somebody is angry at the Secretary. Because we may be telling him to do some things that are not disaster relief.

Mr. LONG. Would the Senator yield at that point?

Mr. DOMENICI. I would be pleased to yield. In fact, I yield the floor.

Mr. LONG. Mr. President, I claim the floor in my own right.

Let me say this: This was not my amendment. I had no idea what the amendment was going to be when it was called up. I thought the Senator was going to offer an amendment of an entirely different nature.

I would not ordinarily advocate that we pass something of this magnitude in the fashion we did, even though I supported the Senator's motion to waive because people are suffering.

But, Mr. President we still have the time in conference to consider it. I hope that the majority leader will be on the conference. We have the time in the conference to consider all these things.

For example, whatever presentation someone can develop overnight to show defects in the measure could certainly be considered in conference. I do not think any of us want the sort of things the majority leader warned us against.

I would think that, among the conferees, he would be the first to suggest that we did not have in mind, when we passed the amendment, to have someone claiming the benefit 10 times and things of that sort.

While, of course, this is a hasty way to do it, the things about which we are being warned are not the kind of things that need to be agreed to in conference.

We do not go to conference tonight. I assume there will be a few days before we finally act on the measure. Should it pass the Senate, we will have an opportunity for those in the department, as well as those on the committees, to study it. The Secretary of Agriculture knows he can give us advice. So I really do not think we need to take something as poorly considered as this at this moment with the thought that it cannot be changed in the conference.

Mr. GORE. Mr. President, I would like briefly to respond to the question posed a moment ago by the chairman of the Budget Committee, who wondered why it might be that the amounts were not included in the Department of Agriculture account if the authority were already vested in the Secretary on a discretionary basis.

The answer is that the Congressional Budget Office did not have any way to anticipate this drought and its severity when the calculations were made earlier. As a result, the amounts that would be called for under the discretionary authority to deal with the unexpected, unanticipated drought were not scored against that account.

The opinion here, let me say again, is very simple. We have had an unprecedented disaster in the Southeastern part of the United States. The question before us is, are we going to help or are we not going to help? If you want to help, vote "yes." If you do not, vote "no."

Mr. MATTINGLY addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MATTINGLY. Mr. President, I think the amendment should be adopted. What I would also like to do tomorrow is offer the Mattingly amendment and get it also adopted, then let them go to conference and let them pick out the good parts and the bad parts. I think possibly the method we may have structured will cost considerably less and be directed more toward 1 year as we have crafted it. Also it says it is supposed to stay within the bounds of the fiscal year 1987 or the moneys already currently in the bill and cannot exceed those amounts in that bill.

My thinking right now is probably to offer that amendment tomorrow and have them both adopted, let them both go to conference, let CBO or OMB or whoever else is going to score these things try to come up and maybe we can try to craft something that is really going to be necessary.

□ 0110

I think the bottom line is that we have a disaster in the agriculture area. It is not only in the agriculture area but other areas where the drought has happend. If we had an earthquake, we would send aid. If we had any other kind of disaster in this country, we would try to help. Hay is being sent down South, but the cattle down there cannot tell whether it is a Republican bale of hay or a Democratic bale of hay. They do not care. I think we should not care in this body either. What we should care about is trying to structure something that is going to help the farmers, that is going to help agriculture, that is not going to destroy the taxpayer at the same time. I think that we should go ahead and adopt this amendment and tomorrow morning I will offer the Mattingly amendment also and hopefully the chairman of the committee will take them both over there and see if they will not consider them.

Mr. CHAFEE. Mr. President, I do not think this has been correctly portrayed this evening, that if you want to help vote now and vote yes; if you do not want to help, you will vote no. I just do not think that is a fair presentation of the situation. I do not think a vote at 10 minutes past 1 on Friday morning is going to make the difference in who receives the checks first as opposed to waiting and trying to do this in a constructive manner. I think it is a shame that the U.S. Senate proceeds to vote on a measure that we really do not know what it does, and indeed the explanation of what it does is contrary to the language of the bill. The intent is there and I will not argue with the intent, but that is not apparently what the legislation says. We have the opportunity to do this thing and do it correctly. I also do not think it is quite proper to say throw it into the conference and something good might come out of there; it might be straightened out. We do not even know what is going into the conference from the other side.

I think the wise thing to do would be to lay it over. We are going to be here tomorrow.

Mr. DOLE. We may be here tomorrow, too. We are here today.

Mr. CHAFEE. We are going to be here today. All right, whatever the day is. But nobody is going to be able to leave here at 8 a.m. today and have no votes. The charitable leader is keeping us here for quite a while.

There is a lot of brains in the various staffs here and they will be rested up and they can construct this thing in a decent fashion so that we will know what we are doing. Everybody here wants to do the right thing to help the farmers in the Southeast. I will vote for it and I think everybody else will, but let us vote on something that is right.

The PRESIDING OFFICER (Mr. NICKLES). The Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, as I look at this amendment, I do not see in here what the senior Senator from Tennessee was talking about that one would receive 40 percent of his loss in payment. He seems to indicate that if you had $240,000 worth of losses, then you would get the $100,000. It seems to say that if you have a 40-percent loss, then you get a dollar-for-dollar type of relief. You get emergency feed donations from CCC stocks, you get emergency livestock assistance from CCC stocks.

And you also get assistance if you are a soybean, cotton, wheat, or rice producer in CCC stocks. Time and again as those on the Agriculture Committee know when we give CCC stocks out and we flood the market, we drive the prices down, we drive the national prices down very frankly, which, of course, extends the whole liability of the Government with respect to the deficiency payments. We also have

found over the years that when you do that, yes, you give a lot of stocks out the front door that you may have already paid for that you have in the CCC but they come back in the back door because you then have to acquire these stocks when the crop comes in and there is no place to go with that crop. So we find that when you get CCC stock out one side, they simply come back in the back door at the time of harvest.

I submit to the Senator from Tennessee that I think the idea of the Senator from New Hampshire of looking at this a little bit more is very much in order because the impact of releasing those stocks onto the market and driving prices down and increasing the deficiency payments and driving the price down below the loan rate so that the CCC will later on acquire more stocks is something that really should be examined. Frankly, as in so many of the agricultural programs in which I have participated, there are a lot of surprises and there are a lot of costs that are not anticipated. We are seeing that in the 1985 farm bill, and frankly as I look at this on rather first and second impression and having listened to the Senator describe the amendment, I think this is going to be very costly, not only with respect to the stocks that we give out but with respect to the entire crop that suddenly is worthless, with deficiency payments.

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

Mr. BOSCHWITZ. Yes, I yield the floor.

Mr. GRAMM. Is it not true—and may I ask this, Mr. President, to the distinguished Senator with the floor and the distinguished chairman—that no matter what we do tonight, even if it became law nobody is going to get any payment until harvest time?

Mr. HELMS. That is correct. That is the point, I say to the Senator.

Mr. GRAMM. Nobody is getting money until harvest time. We are here at 1:15 in the morning, and nobody knows what is in this bill. If the distinguished Senator understands it, he kept it to himself. I say we do not vote on it. We look at it. We decide if it makes sense and then we tomorrow accept it or reject it.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Mr. President, let me say that our amendment has emergency provisions that take effect prior to harvest time. Now, we have a situation in the southeastern United States where cattle are literally starving to death because there is no hay. There are 2½ million cattle in my State of Tennessee. Many farmers do not have hay to feed their herds. They do not have available forage. These farmers cannot wait for harvest time to get hay. We have to get some action. We have to get some action now.

Now, we can flyspeck this amendment all evening like a group of petty nitpickers who are looking for something wrong, some little minute problem here or there. We can continue to delay and we can continue to drag our feet.

But I say, Mr. President, this amendment is modeled almost word for word after legislation passed by the House Committee on Agriculture. These statements that are made here this evening about the amendments shortcomings are causing undue delay. I would say to my colleagues our amendment language is excerpted from the farm bill that this body passed last year. The particular limitation, in question as I understand it, has been in the law for a number of years.

Now, I submit, Mr. President, that perhaps this legislation could be improved; if we worked on it day after day, week after week, we finally might arrive at an absolutely perfect, bulletproof piece of legislation. But what we would see in the southeastern United States are thousands of cattle gone, dead. Those that are sold would be depressing already severely depressed cattle markets. I would add this affects farmers not just in the southeastern United States but cattle farmers all across these United States.

Those of you from States that raise cattle, ask your cattlemen, do they want the beef prices driven down by thousands of cows flooding the market because the southeastern United States has no hay or forage?

I expect some of my colleagues would find that the cattle farmers in their States are among those who are so eager to get hay in the Southeastern United States. They do not want to see cattle being forced on the market and driving prices down. So I say to my colleagues, time is of the essence. We cannot wait until harvest time. We want to help these farmers in the Southeastern United States who are in desperate, dire need. I say let us act this evening.

□ 0120

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, we might as well talk about this a little while.

It seems to me that there is no point in doing something foolish here. This claim that everything has to be completed in 10 minutes or 150,000 cattle are going to die is absolutely ridiculous. I think we ought to proceed in a deliberate manner and come up with some legislation that makes some sense. That is my proposal, and I would like to discuss it in some detail.

Mr. MELCHER. Mr. President, will the Senator yield for one statement?

Mr. CHAFEE. I do not want to lose my right to the floor.

Mr. MELCHER. Mr. President, I ask unanimous consent that the Senator from Rhode Island may yield for one simple statement, without losing his right to the floor.

The PRESIDING OFFICER. Is there objection?

Mr. BOSCHWITZ. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. CHAFEE. Mr. President, it seems to me that there are several questions we have to find answers to in connection with this legislation.

First of all, is it permanent? How long is it going to last? As I understand the legislation, there is not a time limitation to it.

Mr. GORE. Mr. President, will the Senator yield for an answer to the question?

Mr. CHAFEE. For a brief answer to the question.

Mr. GORE. It is not permanent. It lasts less than one year.

Mr. CHAFEE. Is that stated clearly in the legislation?

Mr. GORE. Yes; it is.

Mr. CHAFEE. The next question is, who is going to get the payments? The statement was that it was only going to be the small farmers, the producers. The question is, is that clearly set forth in the legislation?

Mr. GORE. If the Senator will yield, the answer is "yes." It is set forth clearly in the legislation. It is limited to producers who are within areas declared eligible for disaster relief, who prove their losses.

Mr. DOLE addressed the Chair.

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

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

Mr. CHAFEE. I yield.

(Note: At this point in the proceedings, Mr. DOLE requested unanimous consent that the Senate recess until 10 a.m. this morning, as appears at the conclusion of today's RECORD. During the Senate proceedings today statements were submitted and routine morning business was transacted, as follows:)

● Mr. KERRY. Mr. President, I oppose the Rudman amendment which is an effort to address the Supreme Court's decision on the role of the Government Accounting Office in a sequester. Although I cannot support it, I commend those who have worked hard and long to perfect this amendment. While it may indeed solve the problem addressed by the Court, it raises another problem; namely, whether the Office of Management and Budget can administer a fair, independent and policy-neutral sequester.

My support for Gramm-Rudman-Hollings last year was based on a deep

concern for escalating national deficits. The monstrous Reagan debt adversely affects the long term economic growth and stability of this Nation and mortgages all of our futures for generations to come. Nothing threatens our national security more.

The Gramm-Rudman-Hollings amendment we approved last December is an extensive, complex process for dealing with these deficits. I believed that the legislation would help to establish a more realistic focus on program priorities and deficit reduction as well as a shift in the Reagan policy of an ever escalating military budget at the expense of domestic programs. That has proven to be the case. Gramm-Rudman-Hollings is not perfect, but it is working.

One particular part of the legislation, the sequester, has been the major focus for the public, the Congress and the Court. Because of its irrevocable nature and far reaching implications, any sequester must be reasonable, fair, independent and policy neutral. I believe the original process accomplished that objective. This amendment does not. The Office of Management and Budget as final arbiter of a sequester is not an acceptable solution to the constitutional issues raised by the Court.

I am particularly concerned about the latitude left to OMB under the Rudman amendment, particularly regarding economic assumptions and the leeway on Budget Authority and Outlays. The provisions for this first year are adequate, that is averaging any difference between OMB and CBO economic assumptions. However, in the subsequent four years, OMB will be able to establish its own economic assumptions unchallenged except by a Joint Resolution of Congress. Since the President could veto that resolution, a veto override would be necessary for Congress to express its will. This is far too stringent a requirement upon the Congress.

As we all know, the Office of Management and Budget is the President's Budget Office. OMB by its nature reflects the partisanship of a President's goals and programs. This has never been more clear than during the Reagan administration. Former OMB Director, David Stockman, documents the case more than adequately in "The Triumph of Politics." The book outlines in chilling detail the extent to which OMB cooked predictions, calculations, and hard numbers to make its budgetary programs work. With all due respect to the current Director, the track record of this executive agency does not justify a virtually unchecked charter on such a critical element of sequester as the economic assumptions.

The original Gramm-Rudman-Hollings legislation anticipated the possibility of the Court's ruling on constitutionality and provided a fall back process for sequester action. In opposing this amendment, Mr. President, I suggest that we perfect the fall back and use that provision for sequester if such action is in order. There is no walking away from the need to meet deficit reduction targets. I am ready to vote on the hard choices necessary in revenue and expenditure to meet the deficit reduction targets and I believe that most of my colleagues are prepared to do the same.●

● Mr. LEAHY. Mr. President, yesterday, I voted to set the Gramm-Rudman-Hollings deficit reduction law back on track.

Last year we passed the Gramm-Rudman-Hollings balanced budget and emergency deficit reduction law, which requires Congress to reduce the deficit below legal limits each year until the budget is balanced, or face automatic across-the-board cuts in federal spending to bring the deficit in line.

We passed Gramm-Rudman-Hollings to put a gun to the head of every Member of Congress, to force all of us to make the tough choices to reduce the deficit or face cuts in programs we all support. For some, that means casting the hard votes or accepting cuts in national defense. For advocates of social programs, that means getting tough on the deficit or accepting cuts in programs important to them. Gramm-Rudman-Hollings put the feet of the President, the Senate, the House of Representatives, Democrats and Republicans to the fire.

On July 7, 1986, the Supreme Court took the bullet out of the Gramm-Rudman-Hollings gun, and rightfully so from a constitutional point of view. The Court held that the so-called sequester mechanism in Gramm-Rudman-Hollings—the automatic across-the-board cuts—is unconstitutional because it empowered the Comptroller General, a legislative officer, to implement the cuts. The Court found that the Constitution requires and executive officer to implement a sequester. The executive must carry out the laws passed by the legislature.

As a result of the Supreme Court's ruling, the Gramm-Rudman-Hollings gun was left unloaded.

The problem now is how to reload the gun.

Yesterday, I first voted for Senator Exon's amendment which would require Congress to approve a sequester, in the event that the deficit exceeds legal limits. I have always said that Congress ought to vote up or down on budget cuts, and under Senator Exon's amendment Congress would do just that.

Under the Exon amendment, if the deficit exceeds legal limits, Congress would have a choice of voting for across-the-board cuts in Gramm-Rudman-Hollings or coming up with a better, more responsible way of reducing the deficit. The Exon amendment is consistent with the original Gramm-Rudman-Hollings law and, in fact, restates the intention of that law that Congress should take responsibility for passing sequesters, in the event that the Supreme Court struck down the Comptroller General's ability to carry out these cuts.

This month, the House and Senate lived up to that responsibility when we passed a resolution affirming the sequester which occurred on March 1, 1986.

Senator Exon's amendment was not perfect, but it was headed in the right direction.

The Exon amendment was one way to reload the Gramm-Rudman-Hollings gun. But, the Senate refused to accept Senator Exon's solution.

Senators Gramm, Rudman, and Hollings then proposed a method for fixing the sequester mechanism, which requires the Director of the Office of Management and Budget [OMB] to implement the across-the-board cuts, in the event that Congress fails to reduce the deficit below legal limits.

The amendment gives OMB the power to carry out the cuts written into the Gramm-Rudman-Hollings law. Those cuts, which only occur if Congress fails to find a more responsible way of reducing the deficit, must be implemented according to a strict formula. Fifty percent of the total cut must come from defense spending and 50 percent from domestic programs. Low income, veterans and many health programs are excluded from the cuts.

The so-called Gramm-Rudman-Hollings II amendment does not change any of these important protections. The amendment does, however, transfer authority for reporting the cuts to the President for final action from the Comptroller General to OMB.

Giving OMB the power to carry out a sequester causes me great concern. The original intention of Gramm-Rudman-Hollings was to give the sequester power to a neutral party. OMB is not a neutral organization. It serves the President. It is, in effect, the President's budget office.

That is why this amendment severely restricts the discretion of OMB in carrying out a sequester, especially in fiscal year 1987.

Next year, OMB would not be permitted to manipulate the size or scope of a sequester, because this amendment writes into law the economic assumptions that would determine their size and breadth. In addition, OMB could not manipulate the 50-50 cuts in defense and domestic spending, because we wrote into this amendment exactly what that ratio will be and

how it will affect every program, project, and activity of Government.

After the sequester occurs, the General Accounting Office is required to provide a detailed report to Congress listing every change OMB made in the automatic cuts.

In the first year, this amendment puts a straightjacket on OMB.

I am troubled, however, by the way this amendment attempts to restrain OMB in the 4 years after fiscal year 1987. The straitjacket is not nearly so tight. The amendment reserves the right of Congress to overturn any changes OMB may make in a sequester order, but by procedural necessity, such an effort to overrule OMB might require a two-thirds vote of both Houses of Congress. This mechanism for congressional oversight is awkward and again raises constitutional concerns.

The restraints Gramm-Rudman-Hollings II places on OMB in the 4 years following 1987 must be vastly improved. The House and Senate conferees who will hammer out the final amendment to Gramm-Rudman-Hollings must find a better way to limit the power of OMB to manipulate a sequester of funds in the years following fiscal year 1987. And, I will do everything I can to see that this happens.

Better yet, the conferees should find a way to toughen up Senator EXON's amendment to make Congress vote up or down on a sequester, leaving no wiggle room.

Yesterday, we voted to reload the Gramm-Rudman-Hollings gun.

Failing Senate approval of the Exon amendment, we were left with little choice other than attempting to fix the automatic cutting mechanism in Gramm-Rudman-Hollings, to answer the Supreme Court's constitutional objections.

Leaving the gun unloaded and letting the deficit increase yet another year was simply not an option.

House and Senate conferees face a considerable challenge: To improve on our efforts to set Gramm-Rudman-Hollings back on track. We must not, however, let the search for an appropriate sequester mechanism deter us from performing our No. 1 economic duty.

Our first responsibility is to get down to the business of reducing the deficit to avoid a sequester altogether. In the next 2 months, Congress must make the tough choices to reduce the deficit to prevent an across-the-board cut in Federal spending. It will not be easy, but it must be our first priority.

On the day he introduced the original Gramm-Rudman-Hollings legislation, Senator GRAMM said, "No one need suffer from an across-the-board cut if Congress does its job." Our job is to reduce the deficit between now and October 1, to avoid the automatic cuts. Yesterday, we restored the discipline, in the next 2 months we will test our courage.●

THE AFRICAN NATIONAL CONGRESS IS A COMMUNIST FRONT

Mr. HELMS. Mr. President, I am deeply concerned that the Congress, the administration, and the media have failed to understand what is really behind the outbreak of violence and bloodshed in South Africa. We all know that there are social, economic, and ethnic tensions in that country—tensions which are aggravated by the existence side-by-side of two distinct economies, one developed and one undeveloped, one a modern Western society, and the other a Third World society.

It is perhaps inevitable that groups seeking the destruction of the Western society, and seeking to bring about its downfall, would use the resentment and perceived injustice of the less-developed society as instruments of psychological manipulation to destroy the progress that has been made, and to prevent the evolution of a unified society in which Western ideas of culture and economy predominate. But is it inevitable that the West would side with the groups seeking to install a minority government. By a minority government, I mean a Communist government, because that is what a Communist government is: a minority government.

The chief instrument of the Communist movement today in South Africa is the African National Congress. I do not mean that the ANC is led by some idealistic, but fuzzy minded people who are the innocent dupes of the world Communist movement. I mean that the executive committee of the ANC is actually composed of Communists, a majority of them being actual members of the Communist Party of South Africa. Yet we are being faced with a vast propaganda campaign from the media, the Marxists, and the State Department to convince America that the ANC is the legitimate heir to rule in South Africa.

Every time that I hear praise for the African National Congress in South Africa as a positive factor and a force to be negotiated with, I wonder why there has been almost no effort to inform the American people as to the real history and aims of the African National Congress.

We have to face the facts: It is time that the true nature of the African National Congress in South Africa be understood. It is a Communist front controlled by the South African Communist Party, which itself is under the control of the Communist Party of the Soviet Union.

The real question before South Africans, whether black, white, Indian, Cape Coloured, and other minorities, is whether they will have a Communist future or a free future. It is not for the United States nor for the Europeans nor for the Soviet Bloc nor anyone else to try to impose solutions upon the people of South Africa. It is for the South Africans to decide how they will fashion constitutional and political solutions for their unique situation in order to promote peace, prosperity, and justice for all citizens.

Mr. President, recently I appeared on the Meet the Press program on NBC. I was disturbed that one of the press representatives, Carl Rowan, whom I respect, implied that the ANC was not a Communist front organization. He should know better and I was sorry that he had not taken the time to research the issue better. Perhaps Mr. Rowan's attitude is symptomatic of the press in this country which has declined to fully analyze the ANC and the implications of its being Communist dominated.

The fact is that the ANC has been transformed from its original role as established in 1912 as a nationalist, but non-Communist, organization for blacks in South Africa into a front organization for the South African Communist Party. It is widely recognized that the South African Communist Party is a Soviet line orthodox Marxist-Leninist party completely under Moscow's guidance and control.

The South African Communist Party admitted this fundamental point in a recent article in its regularly published journal entitled "Umsebenzi." In the issue which appeared as volume 2, No. 1 for 1986, in an article entitled "History of the South African Communist Party," it was pointed out that the 6th Congress of the Communist International, COMINTERN, which occurred in 1928, gave guidance on the relationship between the South African Communist Party and the ANC. The article stated, and I quote, "The South African Communist Party should pay particular attention to the ANC. Our aim should be to transform the ANC into a fighting nationalist revolutionary organization."

Mr. President, the Subcommittee on Security and Terrorism under the able leadership of the distinguished Senator from Alabama [Mr. DENTON] held extensive hearings in March 1982 which documented the Communist penetration and domination of the ANC organization.

I commend our distinguished colleague for his determined efforts to inform our colleagues as well as the American people about the real nature of international terrorism. The hearings to which I just referred appear in two volumes which were published by the subcommittee and I recommend the hearings and the report to Senators who wish to be informed on the matter.

Mr. President, these hearings revealed that, as of 1982, at least 12 members of the 22 member national executive committee of the ANC organization were known members of the South African Communist Party. Seven more members were suspected members of the South African Communist Party. That was in 1982, before the more recent changes which I shall discuss shortly.

Those who were identified by the Senate Security and Terrorism Subcommittee in 1982 as known members of the South African Communist Party were: Yusuf Dadoo, the vice-president of ANC; Alfred Nzo, the secretary general; Dan Tloome, the deputy secretary general; Joe Slovo, the deputy chief of the Umkhonto We Sizwe ("Spear of the Nation," the armed terrorist branch of the ANC); Josiah Jele, director of international affairs; Reginald September; Thabo Mbeki, chief of the political department; Moses Mabhita, secretary general of the South African Communist Party; Stephen Dlamini; Hector Nkula; John Nkadimeng; and Mziwandile Piliso, chief of personnel and security.

Those who were identified as suspected members of the South African Communist Party were: Oliver Tambo, president of ANC; Joe Modise, chief of the Umkhonto we Sizwe; Sizakele Sigxashe, director of information and publicity; Henry Makgothi; Jacob Zuma; Andrew Masondo; and Edward Dilinga.

It is quite clear from this analysis that the national executive committee of the ANC was, as of 1982, fully penetrated by the South African Communist Party and that the party has a dominant influence on the organization. There is no excuse for not recognizing this simple fact in light of the extensive testimony presented at the subcommittee's hearings.

However, Mr. President, since 1982 the situation has become even more transparent. The executive committee of the ANC has been enlarged to 30, and there are even more Communists on its rolls.

In June 1985, at Kabwe, Zambia, the Second National Congress of the African National Congress was held and a 30 member national executive committee was appointed. According to information made available to my office by the Subcommittee on Security and Terrorism there are 19 members who have been identified as members of the South African Communist Party and there are 6 additional members who are suspected of being members of the South African Communist Party.

Those who have been identified as known members of the South African Communist Party are: Alfred Nzo, the secretary general of ANC; Dan Tloome, deputy secretary general and deputy treasurer general of the ANC; Joe Modise, commander of the Umkhonto we Sizwe; Joe Slovo, deputy chief of the Umkhonto we Sizwe; Reginald September, former London representative of the ANC currently in Zambia; Thabo Mbeki, secretary for publicity; Moses Mabhida, secretary general of the South African Communist Party, deceased March 8, 1986; Stephen Dlamini, president of the South African Congress of Trade Unions; Henry Makgothi, secretary of the education department; Mziwandile Piliso, special aide to Oliver Tambo, president of ANC; Chris Hani, political commissar of the Umkhonto we Sizwe; Pallo Jordan, senior member of the department of information and publicity; Mac Maharaj, member of political and economic committees; Cassius Make, senior commander of the Umkhonto we Sizwe; Francis Meli, editor of Sechaba, the ANC monthly magazine; Anthony Mongalo, ANC representative in East Germany; Aziz Pahad, senior ANC member in London office; and James Stuart, ANC representative in Zambia.

Mr. President, I think it is quite clear from this information that after the 1985 reorganization of the ANC national executive committee it remains fully penetrated and dominated by members of the South African Communist Party. It is inconceivable to me that the media in the United States have not presented an analysis of the composition of the ANC to the American people.

Finally, Mr. President, I note that the Central Intelligence Agency is fully aware of this information. I hope that the CIA has passed it on to the State Department, and I hope that the Bureau of Intelligence and Research has passed the information on to the Secretary of State. At any rate, I asked Mr. William Casey, the CIA Director, to declassify the CIA's biographies on the executive committee. Yesterday, he kindly granted my request for biographies of 16 of the executive committee members.

Mr. President, I ask unanimous consent that the biographies declassified by the CIA be printed in the RECORD at this point.

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

BIOGRAPHIES OF SELECTED ANC OFFICIALS

(Made Available to Senator Helms on a Declassified Basis by the Central Intelligence Agency)

STEPHEN DLAMINI

Stephen Dlamini, president of the South African Congress of Trade Unions (SACTU) and a member of the ANC National Executive Committee, has opposed South Africa's white government for several decades. A Communist, he has described his activities against Pretoria as directed not only against the government but also against imperialist powers in general and multinational monopolies.

Dlamini, 73, has been a member of the ANC and SACTU since the early 1950s. He was convicted in 1964 of antigovernment activities and spent the next six years in prison. Dlamini was elected president of SACTU while in prison. He left South Africa in 1977.

MARTIN (CHRIS) HANI

Chris Hani, a member of the National Executive Committee since 1985, is deputy commander and political commissar of the military wing of the ANC. He has had nearly seven years of military training in the Soviet Union. Hani believes that the only way to change South Africa is through the intensification of the armed struggle. He has accused Pretoria of avoiding serious negotiations in order to "buy time."

Hani served as ANC representative to Lesotho during the early 1980s. While he was in Lesotho, his home there was bombed several times. Hani is about 42 years old.

PALLO JORDAN

A member of the National Executive Committee, Pallo Jordan is director of research in the ANC's Department of Information and Publicity. The South African Government has publicly stated that Jordan, 44, is either a Communist or an active supporter of Communism. He has made several visits to the United States on ANC business.

S. R. (MAC) MAHARAJ

Mac Maharaj, an Indian and a longtime member of the South African Communist Party, plays a major role in ANC military and intelligence activities. He also has a hand in the formulation of the ANC's political strategy; he has been a leading participant in the ANC's recent meetings with delegations of White South African businessmen, students, and opposition parliamentarians.

Maharaj, who studied law at the University of Natal, has been associated with the ANC and the SACP since at least the mid-1950s. He left South Africa in 1957 for the United Kingdom, where he taught for several years. He joined the Communist Party of Great Britain in the 1950s and subsequently became a member of its executive committee. In 1964, Maharaj was convicted of sabotage and of furthering the aims of Communism and was imprisoned on Robben Island. Immediately after his release in 1976 he was banned for five years. He fled the country in 1977 and resumed his political activities. He was elected to the ANC's National Executive Committee in 1985. He is 51 years old.

CASSIUS MAKE

Cassius Make, a member of the National Executive Committee, is political commissar of the military wing of the ANC. He is about 45 years old.

HENRY MAKGOTHI

A longtime member of the National Executive Committee, Henry Makgothi is secretary of education in the ANC. (The education department is under the office of secretary general Alfred Nzo.) He has received training in the Soviet Union. Makgothi has been a member of the ANC since at least the 1970s. Makgothi is 57 years old.

THABO MBEKI

Thabo Mbeki, a member of the National Executive Committee, is one of the most visible officials in the ANC. He is the son of imprisoned ANC and South African Communist Party leader Govan Mbeki. Thabo Mbeki is hostile to many nonblack SACP members, such as Joe Slovo, because he resents their influence in the ANC.

Mbeki left South Africa in 1962 for the United Kingdom, where he attended Sussex University and later became an officer of the ANC's Youth Section. During the 1960s he was associated with the World Federation of Democratic Youth (a Communist-front organization). He held several posts in the ANC during the 1970s, including assignments as a political officer in the military wing and political secretary in the president's office. Mbeki, 44, has two brothers who are also prominent ANC members.

FRANCIS MELI

Francis Meli, a member of the National Executive Committee, is editor of Sechaba, an ANC magazine funded and published by the East Germans. The South African Government has publicly stated that he is either a Communist or a supporter of Communism. A member of the ANC for more than a decade, he was educated in East Germany. Meli now lives in London and makes frequent trips abroad, including to the United States.

JOE MODISE

Joe Modise is a member of the National Executive Committee and the commander of the ANC's military wing. Modise has belonged to the ANC since at least the late 1950s. Before leaving South Africa in 1964 he was involved in political activities in the Johannesburg area. Modise is about 53 years old.

ANTHONY MONGALO

Anthony Mongalo, a member of the National Executive Committee, has been the ANC representative to East Germany since 1978. He previously served as the ANC representative in Italy. Mongalo, 49 has stressed that the "socialist community" has proved itself as an ally of the ANC.

JOHN NKADIMENG

John Nkadimeng, a member of the National Executive Committee, is general secretary of the South African Council of Trade Unions. Nkadimeng is a Communist. He has described the Eastern bloc as the true ally of those struggling for national liberation and economic independence. Nkadimeng, who is now about 60, fled South Africa in 1976. During the late 1970s he served as ANC representative in Swaziland. In 1982 he was reassigned to Mozambique. His son was killed by a car bomb in 1985.

ALFRED NZO

Alfred Nzo, a self-avowed Communist, is the ANC's contact point with the Soviet Union and he frequently visits that country. A longtime member of the National Executive Committee, he has been secretary general of the ANC since 1969.

Nzo worked as a health inspector before joining the ANC in 1957. His subsequent political activism led to his banning in 1959 and detention in 1963. After fleeing South Africa in 1964, he served first as the ANC representative in Cairo (1964-67) and later in New Delhi (1967-69). He is a vice president of the World Peace Council and last year received a Soviet award, the Order of Friendship of Peoples. Nzo is 60 years old.

AZIZ PAHAD

Aziz Pahad has served on the National Executive Committee since 1985. He is one of two committee members who are of Indian ancestry. He also served on the ANC's Political Secretariat. A South African political scientist who writes about the ANC lists Pahad as a possible member of the South African Communist Party. Pahad has written articles for the African Communist, the SACP publication. He has represented the ANC in London.

MZWANDILE (MZWAI) PILISO

Mzwai Piliso, a longtime member of the National Executive Committee, works out of ANC headquarters in Lusaka. Piliso, a Communist, has been a member of the ANC for more than 30 years. He has a long history of contacts with Communist-front organizations, including the Afro-Asian Peoples' Solidarity Organization. During the 1960s he served as ANC representative in Egypt (sharing the post with Alfred Nzo) and Tanzania.

REGINALD SEPTEMBER

Reginald September, a Colored South African, has been a member of the National Executive Committee since 1985. He is a Communist. In 1961 September was jailed in South Africa for organizing a general strike. He went into exile in 1963.

JOE SLOVO

Joe Slovo is a longtime member of the South African Communist Party and the only white on the National Executive Committee. He plans military strategy for the ANC. Slovo advocates the violent overthrow of the South African Government and has publicly acknowledged his involvement in numerous terrorist actions directed against the white regime. He frequently visits the Soviet Union and strongly supports its position on all issues.

Slovo, a Lithuanian Jew, immigrated to South Africa with his parents in 1935, when he was 9 years old. He was already a Communist when he joined the South African Army in 1944. After serving in Italy and Egypt during the war, he returned home, where he subsequently earned a law degree from the University of Witwatersrand. Associated with the ANC since the late 1940s, Slovo helped draft its Freedom Charter in 1955 and was defense counsel at numerous treason trials during the 1950s. He himself was tried on treason charges in 1960, but he was acquitted. He fled South Africa in 1963. Slovo's wife, Ruth First, a prominent historian and Communist propagandist, was killed by a parcel bomb in 1982. Slovo was elected to the National Executive Committee last year.

JAMES STUART

James Stuart, a Colored South African, has served on the National Executive Committee since 1985. Stuart has long been associated with Communist front groups, including the South African Congress of Trade Unions (affiliated with the Prague-based World Federation of Trade Unions) and the World Peace Council.

Since 1972 Stuart has lived in exile, initially in Zambia and Tanzania. For about five years, he has been the ANC representative in Madagascar. He is 50 years old.

DAN TLOOME

Deputy secretary general of the ANC, Dan Tloome, is a longtime member of the National Executive Committee and a high-ranking official of the South African Communist Party. During the early 1950s Tloome was the editor of the SACP magazine Liberation. In 1961 he was served with a banning order by the South African Government. Three years later he fled to Botswana. Tloome is 65 years old.

A CONSERVATIVE EXPERT WARNS CONGRESS NOT TO CUT FEDERAL SPENDING

Mr. PROXMIRE. Mr. President, one of the wisest commentators on the American economy is Herbert Stein. Herbert Stein served with distinction as Chairman of the Council of Economic Advisers in the Nixon administration. He was an esteemed teacher of economics as a professor at the University of Virginia. He is now a senior fellow at the conservative American Enterprise Institute. On Thursday, July 31, an article headlined "The Wrong Time To Cut Government Spending," by Herbert Stein appeared in the Washington Post. This Senator was startled by the headline and deeply impressed by the article. Herbert Stein has been a strong, consistent conservative. He has been a leading critic of excessive and wasteful Federal spending. He understands, as well as anyone, the serious dangers of irresponsible fiscal policies that lead to huge triple digit deficits and an exploding national debt.

And yet this conservative expert who has ably served Republican administrations and has pleaded for responsible fiscal policy now tells us that we should recognize what he obviously would call the stupidity of cutting spending under the present circumstances of the economy. You might expect this kind of advice from Walter Heller or Robert Eisner or John Kenneth Galbraith. But from Herbert Stein? No way.

Frankly, this Senator believes deeply in cutting Federal Government spending at every opportunity for whatever reason this Senator can think of. But I am troubled by the same nightmare that apparently haunts Herbert Stein. In our commitment to comply with Gramm-Rudman-Hollings will we deliberately slow the economy? Will we bring on a super recession by making whatever reductions in Government spending are required to balance the budget by 1991? As Stein points out, Gramm-Rudman-Hollings itself recognizes this dilemma by lifting the requirement for meeting deficit targets if the economy fails to grow at more than a 1-percent annual rate for two successive quarters. Why doesn't that provision meet our present problem?

If we do, in fact, drift into a recession, even a short and mild recession, the law lets the Congress off the hook. Why doesn't this do the trick? Answer: This recognition will come too late. The law says the Congress can reverse the fiscal policy that pushed the country into a recession, but it can only do so after the recession is virtually an accomplished fact. What's wrong with that? What's wrong is that by the time the recession is here—it's too late. Mr. President, once this country sinks into a recession it will take—not months—

but years to turn it around. With our massive personal debt—our massive corporate debt, and our massive Federal debt, we can expect a long and deep recession. Then we can expect at best not only a long climb back, but several years of truly king-size deficits. From that experience we will inherit a heavy legacy. It will include a national debt far larger than our present $2 trillion monster. It will require interest payments that will exceed any other cost of Government.

Stein concluded that "the de facto abandonment of Gramm-Rudman without the establishment of any substitute rule of fiscal policy, will destroy all hope of fiscal restraint. We find ourselves in a position where we can't live with Gramm-Rudman and can hardly live without it."

Stein offers no real solution. Neither does this Senator. But the first step this Congress must take is to recognize that we have a problem. That problem is more serious and challenging than any economic problem that has ever confronted this Nation. It is not enough to say there are no easy solutions. To date there are no solutions, period, hard or easy. In the many years this Senator has served in this body—including 25 years on the Joint Congressional Economic Committee, there have usually been more solutions than there were problems. But not now. There haven't even been any feeble attempts. Few Members of Congress and few economists even want to look at or recognize the problem. It's time we do. The Stein article provides an excellent beginning of that understanding. I commend it to my colleagues in the Congress of whatever economic persuasion.

I ask unanimous consent that the article to which I have referred by Herbert Stein be printed in the RECORD.

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

THE WRONG TIME TO CUT GOVERNMENT SPENDING

(By Herbert Stein)

Grown men with responsible positions stand up before television cameras and make this statement: Since the economy is rising less than expected earlier in the year, and inflation is also lower than expected, federal revenues will be less than expected and it is therefore necessary to cut federal expenditures below the level planned previously.

I do not understand it. Why are we punishing ourselves in this way? Does the slowdown in the U.S. economy mean that the Russians are weaker or more amiable and the buildup of our military strength is therefore less urgent? Is the need to look after the poor and homeless diminished? (Is the ebbing tide lifting all the boats?) Whatever was the previous justification for spending $30 billion on aid to agriculture—is that justification now weaker? Obviously not.

With both less output and less inflation than we previously forecast are we now less able to afford those things we previously thought we needed? Surely the answer to that is no. On the contrary, there will now be more unutilized productive capacity with which to meet the government's requirements, and less risk of inflation. The answer would be different if the economy were lagging behind previous forecasts because output was bumping up against a ceiling of capacity, but that does not seem to be the case.

Is our revulsion against the economics of Keynes so great that we not only deny what he said but assert with confidence that the opposite is true? That is, do we now think that cutting government expenditures is a reliable way to stimulate a sluggish economy or prevent a threatened recession?

The question may be put more concretely: In the past year output increased by 2.7 percent, which is probably somewhat below our potential growth rate, and unemployment was fairly steady at around 7 percent. Now there is an expectation that output will rise in the next year at about the same rate, or possibly less. In these circumstances, is it prudent to cut expenditures below the president's budget level in order to reduce the deficit from $210 billion in fiscal year 1986 to $144 billion in fiscal year 1987? (That figure, $144 billion, is the Gramm-Rudman target for the 1987 deficit. Because of the peculiarities of Gramm-Rudman accounting, it appears that about $25 billion of taxes collected in 1987 will not be counted and about $15 billion of expenditures will not be counted. Thus, if the "Gramm-Rudman deficit" is $144 billion the "real" deficit may be $134 billion.)

My pre-Keynesian and anti-Keynesian professors knew better than that. Even Herbert Hoover knew better than that. A thoroughgoing classicist or monetarist might deny that increasing government expenditures would have even a short-run stimulating effect on the economy. He would not say that cutting expenditures would have a short-run stimulating effect on the economy, so that it was necessary to cut otherwise worthwhile expenditures in order to fend off a recession.

What leads to the present foolish talk about the budget is Gramm-Rudman. But even Gramm-Rudman does not imply that cutting expenditures is a good prescription for dealing with economic sluggishness. The Gramm-Rudman law provides that if the real GNP rises at less than an annual rate of 1 percent for two consecutive quarters the deficit limits are suspended for the current and following fiscal year.

This is recognition that cutting spending does not cure recessions. Once the GNP growth rate falls below 1 percent for two consecutive quarters the ceiling on the deficit is off. But as long as the growth rate remains at 1.1 percent—as it was in the second quarter of 1986—or higher, the targets must be met. They must be met even if, with the economy sluggish and revenues rising slowly, that requires holding expenditures below levels that are worthwhile, that are well within the economy's capacity, and that are not harmful but possibly helpful to the health of the economy.

Sophisticated people to whom I express my concerns about the idea of cutting expenditures to meet a shortfall of revenue tell me not to worry. The government will not really meet the Gramm-Rudman targets. All Gramm-Rudman requires is that at the beginning of fiscal 1987 there should be an official estimate that the deficit will not exceed $144 billion for the year. The law does not require that the deficit actually be less than $144 billion.

This solution is unsatisfactory for two reasons:

First, the government should not pretend to do what it does not intend to do. This is more that a moral injunction. It has pragmatic significance. The credibility of the government is an asset—more valuable as it becomes scarcer—and it should not be wasted.

Second, while a sharp reduction of expenditures in response to the slowdown of the economy would be unwise to destroy completely the expectation that the size of the deficit will be brought under sufficient restraint to prevent continued increase in the size of the federal debt relative to the GNP would also be unwise. That could cause an increase in long-term interest rates that would be harmful to economic growth. The de facto abandonment of Gramm-Rudman without the establishment of any substitute rule of fiscal policy, would destroy all hope of deficit restraint. We find ourselves in a position where we can't live with Gramm-Rudman and can hardly live without it.

We need a fiscal policy that will limit the long-run growth of the deficit and the debt which not enforcing inefficient and probably destabilizing changes of government expenditures in response to fluctuations of the economy. Fifty years ago people talked about balancing the budget over the business cycle as a solution to this problem. Forty years ago the Committee for Economic Development proposed the policy of balancing the budget at high employment for the same purpose. Even a few years ago people were talking about the difference between the "structural" deficit and the actual deficit, which was a way of distinguishing between our long-run position and our cyclical position.

The attractive nuisance of Gramm-Rudman diverted attention from all that, but our present situation shows the urgency of returning to the problem of reconciling our long-run and short-run fiscal requirements.

SEMICONDUCTORS

Mr. DOLE. Mr. President, I want to offer congratulations to the administration on what I understand is a successful conclusion of its intensive talks with the Japanese on the issue of semiconductors.

USTR has announced today an agreement by which Japan has committed itself to a substantial increase in United States access to the Japanese semiconductor market. In addition, the Japanese have agreed that they will not engage in the dumping of semiconductor products in either the United States or third markets.

U.S. high technology exports are critical to our international trade capability. They represent an area in which we excel and in which our products are extremely competitive. That we have enjoyed only about an 8-percent share of the Japanese market instead of something closer to 20 percent had caused serious skepticism about the willingness of Japan to open its markets to foreign goods. At the

same time, the charge that Japanese semiconductor products were being dumped in the United States was a cause of great concern to a U.S. industry already in distress.

This agreement gives us an indication of the administration's willingness and ability to employ trade law and its own adept negotiating abilities to assure freedom and fairness in international trade. It is my understanding that the industry supports this agreement. If so, it's a good precedent for the types of agreements we're going to be looking for in many other areas.

SENATOR BYRD QUESTIONS AIR SAFETY STANDARDS

Mr. SARBANES. Mr. President, the Subcommittee on Investment, Jobs and Prices of the Joint Economic Committee is currently holding a series of hearings on the state of the Nation's health and safety standards in the areas of air transportation, fire protection, child health, and hospital disinfectants. At the first hearing, which was held July 21, to review the serious questions which have arisen about equipment maintenance, air traffic control, and related problems, our distinguished minority leader, Senator ROBERT BYRD, presented thorough and disturbing testimony. I ask unanimous consent to have the minority leader's statement included in the RECORD:

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

STATEMENT OF SENATOR ROBERT C. BYRD BEFORE THE JOINT ECONOMIC COMMITTEE, WASHINGTON, DC, JULY 21, 1986

Mr. Chairman, let me commend you for scheduling this hearing on the issue of aviation safety, an issue about which there has been growing public concern since the enactment of the Airline Deregulation Act of 1978 (P.L. 95-504). With each report of a commercial air carrier crash, as well as reports of other safety-related incidents, the American public has become increasingly concerned about aviation safety.

There is reason for concern. According to the National Transportation Safety Board (NTSB), 1985 was the worst year for domestic commercial aviation since 1977. Last year, there were 526 fatalities from all U.S. air carriers, compared to 655 fatalities in 1977.

The FAA and representatives of the airline industry have argued that the safety of the domestic passenger carriers has improved in the years since deregulation. However, this assessment is based solely upon the number of accidents and fatal accidents in any given year.

That approach is not necessarily the most useful indicator of the current status of aviation safety. Focusing exclusively on accidents is of limited usefulness because it ignores any consideration of incidents which did not become accidents. It is often only luck that separates incidents and accidents. For example, on May 17, 1986, an American Airlines 727 passenger jet and a US Air DC-9 came very close to a disastrous collision at Chicago's O'Hare Airport. Both aircraft were cleared by an air traffic controller for take-off at the same time from intersecting runways. It was only because the US Air copilot happened to notice the oncoming American Airlines jet, and the pilot was able to take last-minute emergency action, that a disaster was avoided for the 224 passengers and crew on board the two aircraft.

There are other data which should be included in any consideration of the status of aviation safety. A more complete picture of aviation safety is provided by considering data regarding accidents, as well as data on near midair collisions and surface operational errors (for example, runway incursions). Such data, collected and reported by the FAA, indicate that the number of near midair collisions increased from 568 in 1980 to 758 in 1985, an increase of 33%. There are similar indications that the number of surface operational errors increased from 87 in 1980 to 103 in 1985, a 21% increase.

I believe that a more complete assessment of the status of aviation safety can be rendered by considering what I will call "aviation safety incidents." This broader concept includes all reported aviation accidents, reported near midair collisions, and reported surface operational errors involving section 121 and 135 certificated air carriers.

From this perspective, since the enactment of the Airline Deregulation Act of 1978, FAA data—when adjusted to take into account the increases in traffic volume since airline deregulation—indicate a dramatic decline in the margin of aviation safety. Specifically, the indications are that aviation safety incidents have been occurring more frequently since deregulation, relative to departures, aircraft miles, and aircraft hours.

These data are presented graphically in charts 1 through 3 of my testimony. The charts present data for three key indicators of airline activity—number of revenue aircraft departures, revenue aircraft miles, and revenue hours flown. Aviation safety incidents are plotted against these indicators to provide a picture of the margin of safety.

However, it is important to point out that these graphs were based on very limited FAA data, and that the quality of the data which is available from the FAA may be limited as well. Indeed, FAA's data collection, verification, and data base maintenance and management practices have been identified by the NTSB and GAO as a problem area. Without an adequate data base, FAA is severly limited in its ability to anticipate potential aviation safety problems, and to define approaches to the resolution of such problems.

Unfortunately, for the time being, anyone attempting to assess the status of aviation safety must use FAA data. Any such assessment must acknowledge the serious limitations in the quality and quantity of that data. With those caveats in mind, I believe that the data do provide an indication of the margin of aviation safety. Let me turn to the charts in my testimony.

Chart 1 presents data from 1975 to 1985 on the number of airline departures per incident. The chart shows that, in 1975, an incident was reported for every 12,805 departures. By 1980, an incident was reported for every 7,377 departures, a 42 percent decline in the number of departures between incidents during the period 1975-1980. However, during the period 1980-1982, the number of departures per incident increased from 7,377 in 1980, to 12,031 in 1982, a 63% increase. This is an indication that the margin of safety improved during that period. Then, during the period 1982-1985, the margin of safety declined again as the number of departures per incident decreased from 12,031 in 1982, to 5,323 in 1985, a 56% decline over the period.

Chart 2 presents a similar picture during the same time period, based on the number of airline revenue aircraft miles per incident. The chart shows that during the period, 1975-1980, the margin of safety declined as indicated by the 38% decrease in the number of miles between incidents. That is, in 1975, an incident was reported for every 5.6 million revenue aircraft miles. By 1980, there were 3.5 million aircraft miles per incident. From 1980 to 1982, there was an improvement in the margin of safety as the number of miles per incident increased from 3.6 million miles in 1980, to 6.0 million miles in 1982, about a 71% increase. During the period 1982-1985, the margin of safety eroded again as the number of miles between incidents declined from 6.0 million miles in 1982, to 2.9 million miles in 1985, a 56% decline.

Chart 3 presents the decline in the margin of safety in terms of the number of revenue aircraft hours per incident. The data indicate a declining margin of safety as the number of hours per incident decreased from 13,868 hours in 1975, to 8,825 hours in 1980, a decrease of 36%. Once again, there was a noticeable improvement in the margin of safety as the number of hours per incident increased from 8,825 hours in 1980, to 14,758 hours in 1982. After 1982, however, there is a 53% decline in the number of hours per incident from 1982 to 1985. In 1982, there were 14,758 hours per incident. In 1985, there were 6,987 hours per incident.

The data suggest an improvement in the margin of safety from 1980 to 1982. This may be a reflection of the 1981 PATCO strike when the FAA reduced the volume of air traffic by imposing limits on the number of flights at the busiest airports to compensate for the reduction in the number of air traffic controllers manning the towers during the strike. The result of such controls appears to have been a significant improvement in the margin of safety.

That has some interesting implications for the present situation. Indeed, based upon its assessment of the status of the Nation's air traffic controller workforce, the GAO has suggested that FAA should consider imposing controls on the growth of air traffic until that workforce is adequately staffed. The data I have presented here indicate that such an approach might have beneficial results.

Mr. Chairman, I believe the data I have presented here indicate that the margin of aviation safety has declined significantly. Simply put, the problem is that the skies have gotten more crowded since dregulation, and there is no indication that the future will bring less crowded skies.

Since 1978, there has been significant growth in the number of commercial passenger airlines, as well as the number of aircraft operated by such carriers. For example, prior to the enactment of the Airline Deregulation Act of 1978, there were a total of 29 carriers, including 10 major carriers and 19 commuter airlines. In 1985, according to FAA information, there were a total of 220 air carriers, including 60 major carriers, and 160 commuter airlines. In 1986 there are 307 passenger air carriers, an increase of almost 40% over the previous year. Of the 307 passenger air carriers, 116 are major air carriers, and 191 are commuters.

In addition, the number of aircraft operated by the major air carriers and the com-

muter airlines has increased steadily since deregulation. In 1984, the total commercial passenger fleet was 3,824 aircraft, a 78% increase over the 2,145 aircraft operated in 1978.

The largest growth in the number of aircraft has occurred in the commuter fleet. In 1978, commuter airlines operated a fleet of about 500 aircraft 1984, commuter airlines operated a fleet of 1,132 aircraft, an increase of 126%.

In addition, I should mention the approximately 220,940 general aviation aircraft estimated by FAA to be in operation in 1984, 24% more than the 177,964 general aviation aircraft operated in 1978.

One disturbing phenomenon closely related to the growth of the airline industry is the declining level of pilot experience. The rapid expansion of the industry has resulted in record levels of pilot hiring by the airlines. For example, in 1985, the airlines hired more than 8,000 pilots, putting a severe strain on the existing pool of available experienced pilots.

The declining level of pilot experience is attributed in large measure to high pilot turnover at commuter airlines. Commuter airlines have been experiencing high pilot turnover as their pilots, trained at the expense of the commuter airline, are moving to jobs with the major air carriers. For example, Henson Airlines is reported to have lost an average of one pilot per week to the major airlines. In 1985, Henson lost 70 of its 220 pilots.

In an effort to cope with high pilot turnover, the commuter airlines have been lowering hiring standards. It would appear, based on comments made by former NTSB chairman, Jim Burnette, on March 19, 1986, before the Transportation Appropriations Subcommittee, that the Nation's commuter airlines have been "scraping the bottom of the barrel" in their search for pilots.

A key indicator of the declining level of pilot experience is the number of hours a pilot or first officer has spent in the cockpit. In 1983, only 8% of the pilots flying for commuter airlines had fewer than 2,000 flight hours. By 1985, 23% of commuter pilots had fewer than 2,000 hours.

It should also be noted, that the problem of pilot experience is not confined to commuter airlines. According to Future Aviation Professionals of America, there has also been a steady decline in the experience of pilots hired by the major airlines. For example, in 1983, pilots flying for major airlines had an average of 2,342 hours of flight experience in jet aircraft. In 1985, they had only 818 hours in jet aircraft. Compounding the problem is the fact that over the next 20 years, approximately 70% of the pilots employed by the major airlines are expected to retire.

The question for the future, then, is where, and how, will an expanding passenger airline industry find new pilots? Traditionally, the major airlines have relied on the American military for pilots. At one time, almost 75% of the pilots employed by the major airlines were former Navy or Air Force pilots. Today, less than one-third of the pilots employed by major airlines are former military pilots, in part because the military is training fewer pilots.

In view of the prospects for continued growth of the airline industry, declining levels of pilots experience may gain increasing prominence as a significant factor in aviation safety incidents.

According to FAA's long-term forecast, the domestic airline industry is expected to continue the strong growth enjoyed since deregulation. For example, the FAA expects that enplanements for major domestic carriers will increase almost 62% during the forecast period of 1985-1997. Enplanements for commuter airlines are expected to increase 102% over the forecast period.

The growth expected by the FAA in the airline industry will bring increased burdens on FAA traffic control systems, and other services necessary to manage the increasing volume of air traffic which will be using the Nation's airspace. For example, the FAA expects the number of aircraft operations at FAA towered airports to increase 46 percent over the forecast period of 1985-1997.

The question is whether the FAA has the resources and capability to handle the challenges posed by the growth in the domestic airline industry. For example, serious concern has been expressed by GAO about whether the air traffic control system is adequate to handle the greater workloads resulting from the increases in air traffic volume expected to occur between now and 1997. Indeed, there is concern that even at current levels of air traffic, the Nation's aviation safety system has been pushed to—and sometimes beyond—its limits.

Consider, for example, that although air traffic volume has increased in the years since airline deregulation, the number of air traffic controllers has decreased. Prior to the PATCO strike on July 31, 1981, the Air Traffic Control System employed 13,205 "full performance level" (FPL) controllers. As of April 30, 1986, according to the FAA, the system employed 8,861 full performance level controllers—4,344 fewer controllers than before the PATCO strike.

FAA officials have expressed confidence in the Air Traffic Control System, and the FAA is in the process of trying to add 500 controllers per year to its workforce for fiscal years 1986 and 1987. Nevertheless, GAO's analysis of the FAA's air traffic controller workforce suggests doubts about whether the Air Traffic Control system will have an adequate number of full performance level controllers to handle the increases in air traffic expected from now until the end of the decade and beyond.

The March 7, 1986, issue of the Washington Post, contained a report on the results of a study of the Nation's air traffic controllers by the General Accounting Office. The GAO report is based upon a survey of 4,500 radar qualified controllers and other personnel with the Air Traffic Control System. According to the Post story, the GAO found:

1. "70 percent of controllers in a systemwide survey reported that they are handling more traffic than they should handle."

2. "The FAA has met its goal of about 12,500 controllers, compared with 16,200 before the strike, but has *fewer controllers at the highest experience level—8,300 today compared with 13,200 in July 1981*" (emphasis added).

3. "Retirement of experienced controllers will be a greater problem than the FAA has estimated, because of controller disgust with management and fears of changes under way in the Federal retirement system." According to the Post account, *"84 percent of controllers and 81 percent of supervisors eligible to retire in the next two years said they will do so"* (emphasis added).

4. Air traffic is growing rapidly so controller workload will likely continue to be a concern for some time."

5. "Sixty percent of controllers said they are working too long daily without a break. A substantial number of supervisors agreed."

6. "The FAA is heavily dependent on controller overtime—908,000 hours in fiscal 1985 compared with 377,000 hours in fiscal 1980."

Based on these findings, the GAO has suggested that it would be prudent to limit the growth in air traffic before the air traffic control system loses "its proper margin of safety."

The GAO report confirms the uneasy picture emerging from other studies done on the air traffic control system since the PATCO strike in 1981.

What is the FAA's response to the GAO report? The New York Times of March 18, 1986, carried a story which bore the headline "air safety chief minimizes survey findings." The Times story indicated that the FAA has essentially disregarded the GAO study. Indeed, GAO representatives who conducted the study of air traffic controllers told a House subcommittee that "officials of the FAA had belittled their study of the air traffic control workforce and later *dismissed the findings of the study as just another survey*" (Emphasis added).

At the beginning of its study, GAO presented the questionnaire to be used to gather information to the FAA for comments and suggestions. According to the Times story, FAA's response was "that the FAA could derive nothing of value from the questionnaire." Incredibly, FAA apparently dismissed the GSA findings as just another survey, and FAA officials said that "controllers were predictable complainers."

So there we have it. There is nothing wrong with the air traffic control system, except that the controllers are "predictable complainers"!

I have been concerned about what appears to be the deteriorating condition of the Nation's air safety system. I know many of my colleagues share my concern that the safety of the American public may be threatened by the weakening of the Nation's air safety systems as the result of overworked personnel, attrition, and other factors.

In addition, concern has been expressed that the competitive economic environment established by airline deregulation has created incentives for cost-conscious airlines to cut costs, and improve profits, by cutting aircraft maintenance budgets and maintenance personnel. The growth in the number of airlines and the number of aircraft in the commercial passenger fleet makes it difficult for FAA to ensure that the airlines are conducting proper aircraft maintenance practices. The problem is compounded by the decreases in the number of FAA inspectors to do that job. In fact, in 1986, there are 30 percent fewer FAA inspectors than in 1978. This decrease in the number of inspectors has occurred while the number of air carriers have increased over 100 percent.

Indeed, in testimony before the Transportation Subcommittee of the Appropriations Committee on March 19, 1986, Jim Burnette, then Chairman of the National Transportation Safety Board, commented that the FAA does not have an adequate airline maintenance surveillance system in place. Mr. Burnette noted that while FAA has improved its efforts in airline inspections, without more inspectors, it is difficult for the FAA to be more aggressive.

It is clear that FAA is facing significant challenges in the face of the explosive growth of the commercial passenger airline industry since airline deregulation. The adequacy of the FAA's efforts to conduct sur-

veillance of the airline industry to ensure compliance with Federal regulations regarding aircraft maintenance and airline operations have been called into question by GAO and others.

Over the years, FAA officials have reiterated the Agency's policy that safety is a major responsibility and goal of the FAA. However, a statement of policy and its implementation are often not the same. When the Airline Deregulation Act was enacted in 1978, Congress affirmed, as a matter of policy, that the implementation of the act "result in no diminution of the high standard of safety in air transportation attained in the United States at the time of the enactment of such act." (Section 107) Clearly, 8 years after the enactment of Public Law 95-504, that essential policy goal has yet to be achieved.

Part of the difficulty may be the conflicting statutory duties given to the FAA. These duties, to promote commercial aviation and aviation safety, form the core of the Nation's aviation policy. Section 103(a) of the Federal Aviation Act of 1958 (P.L. 85-726) directs the FAA Administrator to consider the "regulation of air commerce in such manner as to best promote its development *and* safety." (Emphasis added) The Administration is to consider the "promotion, encouragement, and development of civil aeronautics" to be in the public interest.

Shortly after the enactment of the Airline Deregulation Act, Congress expressed concern that the conflict between FAA's responsibility to ensure safety and promote "civil aeronautics" could adversely affect avilation safety. A 1980 congressional report, entitled "A Through Critique of Certification Transport Category Aircraft by the Federal Aviation Administration" (Committee on Government Operations, May 7, 1980), questioned whether FAA's dual responsibilities are appropriate to the Agency's mission, or whether they present contradictions that impair proper Agency function in the context of the historical evolution of the airline industry. The report concluded that the FAA's conflicting policy goals were providing inadequate policy direction, and that this was "hurting Government efforts and could eventually lead to a situation that would endanger public safety."

Mr. Chairman, since that report was published 6 years ago, there is still reason for concern. For example, In January 1984, the General Accounting Office released a report which was critical of FAA's safety standards for small passenger aircraft. The report found that FAA standards for such aircraft were lower than for larger commercial passenger aircraft. The GAO report indicated that FAA did not impose more stringent safety standards on small passenger craft because the cost of such standards would be too financially burdensome on the industry. The report included an FAA comment which noted that the imposition of such a burden would frustrate one of the basic purposes of the FAA—to promote aviation in this country.

Indeed, there are indications that FAA provides assistance to the very air carriers it shuts down for safety-related violations. A report on the FAA and its inspections of commuter airlines, in the June 10, 1985, issue of U.S. News and World Report, reviewed several cases where FAA had extended its help to the very airlines which the agency had cited for serious safety-related deficiencies. When the FAA shuts down a carrier, the U.S. News report noted, "the FAA will try to get it back in operation."

In particular, the report noted that the FAA had played a major role in helping Provincetown-Boston Airlines back in service after the carrier's operating license was lifted for deliberately falsifying records. According to the U.S. News story, the airline resumed operations in a short period of time, and then was involved in a crash near Jacksonville, FL, which killed 13 persons on December 6, 1984.

Mr. Chairman, in view of the growing concerns about the adequacy of FAA resources in the face of significant growth in air traffic volume, let me raise one other important issue which will have a direct bearing on the future of aviation safety.

On February 3, 1986, the Aviation Subcommittee of the Commerce Committee held a hearing on the impact of Gramm-Rudman on the FAA budget and aviation safety. At that hearing, FAA Administrator Donald Engen was asked to assess the impact on the FAA and aviation safety if, under Gramm-Rudman, the Agency were forced to reduce its fiscal year 1986 operating budget by 15 to 20 percent. Mr. Engen testified that there would be "no reasonable way in which the FAA could absorb that kind of reduction overall *without serious deterioration of the current levels of safety devices*" provided by the FAA (emphasis added).

On March 1, 1986, under the terms of Gramm-Rudman, the FAA was forced to achieve an initial reduction of its fiscal year 1986 operating budget, a cut of about $115 million. Mr. Engen testified that, in adjusting its operations to accommodate the required Gramm-Rudman cut, the FAA's top priority was "to minimize any adverse impacts on safety and system personnel." However, several months later FAA requested an additional appropriation of $80 million to avoid furloughs for air traffic controllers, safety inspectors, and other FAA employees. In response to FAA's request, those funds were appropriated by the Congress in the FY 1986 supplemental appropriations bill (P.L. 99-349).

The congressional response to FAA's request underscores, once again, the willingness of the Congress to provide FAA with the resources necessary to ensure aviation safety. Indeed, Congress has consistently appropriated funds to meet the levels requested by the FAA for its operating budget. For example, in fiscal year 1985 the FAA requested $2.7 billion for FAA operations, and the Congress appropriated $2.8 billion. In fiscal year 1986, the FAA requested $2.7 billion, and the Congress appropriated $2.8 billion.

In view of the declining margin of aviation safety, and the questions raised about the ability of the FAA to meet the challenges brought by airline deregulation, I believe it is time for an intensive, objective reexamination of the FAA, the Nation's aviation safety policy, and the impact of airline deregulation on aviation safety. In particular, it is time to consider whether FAA has been provided adequate resources, and has used such resources effectively and efficiently to ensure aviation safety; and whether the conflict between the FAA's responsibilities defined in section 103 of the Federal Aviation Act of 1958 (P.L. 85-726) impedes aviation safety.

These concerns prompted me to introduce S. 2417, "The Aviation Safety Commission Act," to address the issues I have raised here today. The bill was introduced on May 7, 1986, and has 15 cosponsors, including Senator KASSEBUAM, the able and distinguished chairman of the Aviation Subcommittee, the distinguished ranking member, Senator EXON; as well as other distinguished members of the subcommittee, such as Senators GOLDWATER, and FORD.

In addition, the bill is cosponsored by several members of the Commerce Committee, including the distinguished ranking member of the committee, Senator HOLLINGS; as well as Senators ROCKEFELLER, KASTEN, LONG, and RIEGLE. It should be noted that the chairman of the Appropriations Subcommittee on Transportation, Senator ANDREWS; and the ranking member, Senator CHILES, are also cosponsors of this legislation.

My bill directs the President to appoint a seven-member "Blue ribbon" Commission, the "Aviation Safety Commission," to make a complete study of the organization and functions of the Federal Aviation Administration and the means by which the FAA may most efficiently and effectively enhance aviation safety.

The members of the Commission are to possess extensive experience and expertise at the highest levels of corporate management. To ensure the independence of the Commission's deliberations and judgment, my bill provides that members of the Commission shall have no ties to the commercial aviation industry, or to the Federal Aviation Administration.

The Commission is directed to consider whether the FAA has been provided adequate resources to ensure aviation safety; and to consider whether the dual responsibilities of the FAA are in conflict, and whether any such conflict impedes aviation safety. The Commission is also to consider whether the FAA should be reorganized as an independent Federal Agency with aviation safety as its sole responsibility, and whether airline deregulation has had an adverse impact on the margin of safety. This should include a review of whether the practice of airline self-compliance with maintenance standards is an outmoded approach in an environment designated to maximize cost-savings.

The Commission is directed to consider whether it is desirable to require that, when the National Transportation Safety Board issues recommendations related to aviation safety, some or all of those recommendations be made mandatory.

In the exercise of its duties, the Commission is to consult with a broad spectrum of representatives of the aviation industry, and to consult with the National Transportation Safety Board.

One year from the date of enactment, the Commission is to submit a report to the President and the Congress containing the Commission's findings and recommendations, including any recommendations for legislation.

Finally, my bill authorizes $2.5 million to support the activities of the Commission.

Mr. Chairman, I believe the time has come for a thorough, independent examination of the aviation safety issues I have raised here today. Such an assessment will make a valuable contribution to congressional efforts during the consideration of aviation issues which will begin next year with the reauthorization of the Airport and Airway Improvement Act of 1982 (title V of P.L. 97-248).

I thank the members of the committee for the opportunity to express my concerns on this important issue. That concludes my

statement. I will be glad to answer any questions you may have.

(The charts referred to are not reproducible in the RECORD.)

THE 1986 RECONCILIATION—COMMITTEE REPORTS

● Mr. DOMENICI. Mr. President, today the Senate Budget Committee reported out the 1986 reconciliation bill. While a report has been filed with the bill, I think it would be helpful to my colleagues if the report language prepared by the reconciled committees were made available as soon as possible.

Therefore, I am inserting for the RECORD explanatory materials prepared by nine Senate committees, outlining their titles in the reconciliation bill.

Explanatory materials provided by reconciled committees follows:

VIEWS OF THE COMMITTEE ON THE BUDGET

Reconciliation is an important tool to restrain Federal spending. It is authorized and described in Title III of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344). The reconciliation procedure allows Congress to consider changes in spending and revenues within the purview of several committees in a single bill, while reserving to those committees the power to determine what changes will be made in laws within their respective jurisdictions.

On July 26, 1986, Congress adopted S. Con. Res. 120, the Concurrent Resolution on the Budget for Fiscal Year 1987. That resolution mandated major reductions in the staggering budget deficits now facing the United States. Revenue and spending targets for the fiscal years 1987 through 1989 contained in the resolution will lower deficits over the next 3 years by $157.4 billion.

In order to realize the fiscal policy set forth in S. Con. Res. 120, Congress included in that resolution instructions to eight Senate committees and nine House committees to recommend changes in laws in their jurisdictions which would reduce Federal spending by $10.2 billion in authority and $11.6 billion in outlays during FY 1987 through FY 1989. In addition, the Senate Finance Committee was instructed to recommend legislation to reduce outlays by $4.1 billion and to increase revenues to $8.5 billion over that 3-year period, and the House Ways and Means Committee was instructed to recommend legislation to reduce the deficit by $12.6 billion over the same period.

All reconciled committees that were instructed to submit their recommendations to the Senate Budget Committee have met their deadlines. The Senate Budget Committee is responsible for combining these legislative recommendations into a single bill and for reporting these recommendations to the Senate without substantive revision. This report summarizes the views of the Committee on the Budget on the material submitted by the individual committees.

RECONCILIATION IS A NECESSARY TOOL TO ACHIEVE SAVINGS

The Senate Budget Committee believes that the reconciliation process as used by the Congress since 1981 is a necessary procedure through which to achieve many of the dramatic reductions in Federal spending mandated by the Congress when it approved S. Con. Res. 120, the Concurrent Budget Resolution for FY 1987. Reconciliation allows the individual authorizing committees to work their will on programs within their jurisdiction, as the rules of the Senate provide. This safeguard insures that the Senate will have the best judgment of individual committees on restraint of Federal programs.

THIS BILL AND REPORT

Pursuant to section 310(b)(2) of the Budget Act, the Budget Committee reports herewith the recommendation of 9 Senate committees, without any substantive revision, and with a recommendation that the bill do pass.

NONBUDGETARY PROVISIONS

The Budget Committee believes that the inclusion of non-budgetary provisions in a reconciliation bill is inconsistent with the spirit and letter of the Budget Act, damages the credibility of the budget process, and could have the effect of circumventing Rule XXII of the Standing Rules of the Senate.

The problem of so-called "extraneous matters" first became a major issue in 1981, during Senate consideration of S. 1377, the Omnibus Reconciliation Act of 1981. A number of provisions which were determined to be clearly extraneous were stricken from that bill. A special time agreement was entered into with respect to other provisions which some Senators contended were extraneous. The problem of extraneous provisions has increased in gravity since that time.

On April 7, 1986, with the enactment of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Public Law 99-272), a new procedure was instituted for the identification and elimination of extraneous material.

Section 20001 of COBRA provides a point of order against extraneous material. A provision will be considered extraneous if it (1) produces no change in outlays or revenues (with certain exceptions), (2) increases outlays or decreases revenues, and the committee's title does not meet its instructions, (3) is within the jurisdiction of another committee, or (4) produces changes in outlays or revenues which are "merely incidential" to its non-budgetary components.

This point of order can be waived only by the vote of 60 Senators. The same voting margin is also necessary to successfully appeal the ruling of the Chair on this issue.

The Committee intends to pursue the remedy provided by section 20001, in the interest of preventing further abuse of the reconciliation process, and to protect the institutional traditions of the Senate.

RECONCILIATION PROCEDURE

Just as the Budget Act provides for the reconciliation procedure, it provides in sections 310(e) and 305 special rules for the consideration of reconciliation bills.

The following rules apply to the consideration of a reconciliation bill in the Senate:

First, debate on any reconciliation bill and all amendments thereto and debatable motions and appeals in connection therewith is limited to 20 hours.

Second, debate on the bill (including amendments, debatable motions, and appeals) shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

Third, debate on any amendment is limited to 2 hours, divided between the mover of the amendment and the manager of the bill.

Fourth, debate on any amendment to an amendment, debatable motion, or appeal is limited to 1 hour, divided between the mover and the manager.

Fifth, a motion to limit debate to less than 20 hours is not debatable.

Sixth, a motion to recommit is not in order unless it contains instructions to report back within a specified time, not to exceed 3 days, and debate on such a motion is limited to 1 hour, divided between the mover and the manager.

Seventh, any germane amendment which amends the bill in more than one place and which achieves or maintains mathematical consistency is always in order.

Eighth, amendments to the bill must be "germane to the provisions of" the legislation. The "germaneness rule" has been interpreted as prohibiting any amendment which introduces "new subject matter."

The instructed committees, therefore, set the parameters of germaneness, as the Budget Committee reports what is submitted to it without any substantive revision.

The "germaneness rule" does not apply to a motion to recommit the bill with instructions to report a specific amendment, if a committee has not complied with its reconciliation instructions, and if the effect of the motion would be to bring the bill into compliance with the reconciliation instructions.

Ninth, an amendment which would cause the bill to reduce outlays by less than the amount instructed, or which would cause the bill to increase revenues by less than the amount instructed, is not in order. An amendment to strike is always in order.

Tenth, an amendment affecting social security benefits is not in order.

Eleventh, floor consideration of the conference report on a reconciliation bill is in order any time after the third day following the day on which the conference report is reported and is available to Senators. Debate on the conference report is limited to 10 hours, divided equally, with debate on any appeal or motion limited to 1 hour divided between the mover and the manager.

SUMMARY OF RECONCILIATION RECOMMENDATIONS

The following tables summarize the savings achieved by the committees instructed by the Congress to make changes in programs in their jurisdiction in order to reduce spending and increase revenues in fiscal years 1987-89. The tables compare the legislation reported by the committees to the reconciliation instruction they received from the Congress.

Table 1 provides an overall comparison of the reported bill to the reconciliation instructions. It shows that the recommendations in the bill achieved $8.1 billion in deficit reductions in fiscal year 1987, which is $1.1 billion less than the instruction to the committees. Over three years, the recommendations save $21.8 billion, which is $2.4 billion below the reconciliation target. Table 2 provides a summary of outlay reductions and revenue increases by Senate committee. Table 3 provides details of the savings within each committee submission.

The dollar amounts in the tables have been estimated by the Congressional Budget Office based on the submissions of the nine committees to the Budget Committee.

TABLE 1.—SUMMARY OF SAVINGS

[In millions of dollars]

	FY 1987	FY 1988	FY 1989	Total FY 1987–89
Recommendations in bill:				
Reductions in budget authority	−831	−3,400	−3,613	−7,844
Reductions in outlays	−5,655	−2,599	−3,469	−11,723
Increase in revenues	2,422	3,835	3,862	10,119
Reduction in deficit	−8,077	−6,434	−7,331	−21,842
Reconciliation instructions to committees:				
Reductions in budget authority	−2,934	−3,491	−3,725	−10,150
Reductions in outlays	−5,668	−4,765	−5,270	−15,703
Increase in revenues	3,500	2,600	2,400	8,500
Reduction in deficit	−9,168	−7,365	−7,670	−24,203

TABLE 2.—SUMMARY OF RECONCILIATION SAVINGS BY COMMITTEE

[In millions of dollars]

	FY 1987	FY 1988	FY 1989	Total FY 1987–89
Agriculture, Nutrition and Forestry:				
Budget authority	0	−118	−122	−240
Outlays	−555	−549	−543	−1,647
Banking, Housing, and Urban Affairs:				
Budget authority	762	−470	236	528
Outlays	−1,658	−381	−390	−2,429
Commerce, Science, and Transportation:				
Budget authority	−50	−86	−56	−192
Outlays	−50	−86	−56	−192
Energy and Natural Resources:				
Budget authority	125	200	200	525
Outlays	−67	179	188	300
Environment and Public Works:				
Budget authority	−2,277	−2,748	−3,224	−8,249
Outlays	−277	−931	−1,534	−2,742
Finance—spending:				
Budget authority				
Outlays	−2,234	−360	−599	−3,193
Finance—revenues	2,422	3,835	3,862	10,119
Governmental Affairs:				
Budget authority	664	64	−144	584
Outlays	−205	20	−175	−360
Labor and Human Resources:				
Budget authority	−55	−250	−514	−819
Outlays	−609	−499	−371	−1,479
Small Business:				
Budget authority		8	11	19
Outlays		8	11	19

TABLE 3.—DETAIL OF RECONCILIATION SAVINGS BY COMMITTEE

[In millions of dollars]

	FY 1987	FY 1988	FY 1989	Total FY 1987–89
TITLE I: AGRICULTURE, NUTRITION AND FORESTRY				
RDIF loan asset sales:				
Budget authority	0	−118	−122	−240
Outlays	−555	−549	−543	−1,647
Total spending reduction:				
Budget authority		−118	−122	−240
Outlays	−555	−549	−543	−1,647
Total spending instruction:				
Budget authority	−55	−49	−43	−147
Outlays	−555	−549	−543	−1,647
TITLE II: BANKING, HOUSING, AND URBAN AFFAIRS				
Rural housing loan asset sales:				
Budget authority	642		236	878
Outlays	−1,158	−500	−500	−2,158
Export-Import bank loan asset sales:				
Budget authority	120	−470		−350
Outlays	−500	119	110	−271
Total spending reduction:				
Budget authority	762	−470	236	528
Outlays	−1,658	−381	−390	−2,429
Total spending instruction:				
Budget authority	642		164	806
Outlays	−1,658	−523	−546	−2,727

TABLE 3.—DETAIL OF RECONCILIATION SAVINGS BY COMMITTEE—Continued

[In millions of dollars]

	FY 1987	FY 1988	FY 1989	Total FY 1987–89
TITLE III: COMMERCE, SCIENCE, AND TRANSPORTATION				
Coast Guard user fees:				
Budget authority	−38	−50	−50	−138
Outlays	−38	−50	−50	−138
Maritime Title II loan guarantees:				
Budget authority	−12	−36	−6	−54
Outlays	−12	−36	−6	−54
Total spending reduction:				
Budget authority	−50	−86	−56	−192
Outlays	−50	−86	−56	−192
Total spending instruction:				
Budget authority	−50	−50	−50	−150
Outlays	−50	−50	−50	−150
TITLE IV: ENERGY AND NATURAL RESOURCES				
Oil overcharge fund:				
Budget authority	−100			−100
Outlays	−100			−100
Energy conservation programs:				
Budget authority	256	256	256	768
Outlays	64	235	244	543
FERC fees:				
Budget authority	−31	−56	−56	−143
Outlays	−31	−56	−56	−143
Total spending reduction:				
Budget authority	125	200	200	525
Outlays	−67	179	188	300
Total spending instruction: [1]				
Budget authority	−1,025	−400	−400	−1,825
Outlays	−1,217	−421	−412	−2,050
TITLE V: ENVIRONMENT AND PUBLIC WORKS				
Federal-aid highways:				
Budget authority	−2,240	−2,700	−3,180	−8,120
Outlays	−190	−910	−1,490	−2,590
EPA fees:				
Budget authority	−10	−20	−20	−50
Outlays	−10	−20	−20	−50
NRC fees: [2]				
Budget authority	−27	−28	−24	−79
Outlays	−27	−28	−24	−79
Sale of EDA notes:				
Budget authority				
Outlays	−50	27		−23
Total spending reduction:				
Budget authority	−2,277	−2,748	−3,224	−8,249
Outlays	−277	−931	−1,534	−2,742
Total spending isntruction:				
Budget authority	−1,883	−2,343	−2,823	−7,049
Outlays	−291	−1,123	−1,674	−3,088
TITLE VI: FINANCE COMMITTEE: SPENDING PROVISIONS [3]				
Medicare:				
Budget authority				
Outlays	−2,369	−617	−950	−3,936
Medicaid:				
Budget authority				
Outlays	135	257	351	743
Total spending reduction:				
Budget authority				
Outlays	−2,234	−360	−599	−3,193
Total spending instruction:				
Budget authority				
Outlays	−850	−1,495	−1,790	−4,135
TITLE VI–A: FINANCE COMMITTEE: REVENUE PROVISIONS				
Extend medicare coverage	829	2,151	2,169	5,149
Cigarette tax	1,593	1,684	1,693	4,970
Total revenue increases	2,422	3,835	3,862	10,119
Total revenue instruction	3,500	2,600	2,400	8,500
Total Finance	−4,656	−4,195	−4,461	−13,312
Total Finance instruction	−4,350	−4,095	−4,190	−12,635
TITLE VII: GOVERNMENTAL AFFAIRS				
Federal employee retirement: [4]				
Budget authority	664	64	66	794
Outlays	−205	20	35	−150
Postal subsidy reforms:				
Budget authority			−210	−210
Outlays			−210	−210

TABLE 3.—DETAIL OF RECONCILIATION SAVINGS BY COMMITTEE—Continued

[In millions of dollars]

	FY 1987	FY 1988	FY 1989	Total FY 1987–89
Total spending reduction:				
Budget authority	664	64	−144	584
Outlays	−205	20	−175	−360
Total spending instruction:				
Budget authority	−100	−100	−100	−300
Outlays	−100	−100	−100	−300
TITLE VIII: LABOR AND HUMAN RESOURCES				
Guaranteed student loan program:				
Budget authority	−55	−235	−505	−795
Outlays	−30	−185	−465	−680
Education loan asset sales:				
Budget authority		−15	−9	−24
Outlays	−579	−314	94	−799
Total spending reduction:				
Budget authority	−55	−250	−514	−819
Outlays	−609	−499	−371	−1,479
Total spending instruction:				
Budget authority	−25	−150	−250	−425
Outlays	−604	−449	−141	−1,194
TITLE IX: SMALL BUSINESS				
Section 503 loan asset sales:				
Budget authority		8	11	19
Outlays		8	11	19
Total spending reduction:				
Budget authority		8	11	19
Outlays		8	11	19
Total spending instruction:				
Budget authority	−438	−399	−223	−1,060
Outlays	−343	−55	−14	−412

[1] The budget resolution reconciliation instruction to the Senate Energy and Natural Resources Committee assumed legislation would be enacted to recover $1.9 billion in oil overcharge funds over the next three years. On July 7th, the United States District Court for Kansas approved the Stripper Well settlement, which will result in the immediate distribution of a portion of these overcharge funds to the States. In accordance with language included in the conference report on the FY 1986 budget resolution, the Energy Committee will not be held accountable for the full amount of their instruction.

[2] CBO scores NRC fees as a revenue increase. They are shown on this table as an offsetting receipt to maintain comparability with the Committee instruction.

[3] The Finance Committee did not receive instructions to reconcile budget authority.

[4] Savings include a small revenue decrease in FY 1987, which is shown as an outlay increase on this table to maintain comparability with the committee instruction.

RULE XXVI

In compliance with Rule XXVI, paragraphs 11(b) (regulatory impact) and 12 (comparative prints of proposed legislation) of the Standing Rules of the Senate, it is the opinion of the Budget Committee that it is necessary to dispense with these requirements of the rule in order to expedite the business of the Senate.

However, with respect to any committee which has submitted reconciliation recommendations and has transmitted to the Budget committee a regulatory impact statement or a comparative print of proposed legislation, this material is incorporated in this report without revision in the title-by-title analysis.

ROLLCALL VOTES IN COMMITTEE

Votes taken during Committee consideration of this legislation were as follows:

Domenici motion to report to the Senate the Sixth Omnibus Budget Reconciliation Act, 1986 with a favorable recommendation.

YEAS

Mr. Domenici, Mr. Armstrong, Mr. Boschwitz, Mr. Hatch, Mr. Andrews, Mr. Grassley, Mr. Kasten, Mr. Quayle, Mr. Gorton, Mr. Danforth, Mr. Chiles, Mr. Johnston, Mr. Sasser, Mr. Hart (by proxy), Mr. Riegle (by proxy), Mr. Moynihan (by proxy), Mr. Exon (by proxy), Mr. Lautenberg.

NAYS

Mr. Hollings (by proxy).

ADDITIONAL VIEWS OF SENATOR JIM SASSER

The bill before the Committee represents a significant effort to reduce the federal budget deficit. Over the next three years, this reconciliation bill will realize over $21.8 billion in deficit reduction savings, more than $8 billion in FY 1987 alone.

Although these savings are somewhat short of the $24 billion reconciliation target envisioned in the recently passed budget resolution, it does represent a crucial step in getting our runaway deficit under control.

The Budget Committee has voted to report this reconciliation package to the Senate floor with a favorable recommendation. Since I have serious reservations over some provisions in the bill I would have preferred to have reported the bill out of committee with no recommendation at all. Let there be no mistake, my vote in favor of reporting this bill out of committee should in no way be construed to indicate support for the bill in its entirety. However, I have been assured that there will be ample opportunity on the Senate floor to address what appear to be some gross inequities in the current bill. For this reason, I will support getting it to the Senate floor.

I am very concerned over the proposed eight cents per pack increase in the excise tax on cigarettes. Since tobacco plays a central role in the economic well-being of Tennessee, I have a special interest in this matter. It is clear to me that the more than 38,000 tobacco farmers in Tennessee will suffer because of this increase. These farm families are already struggling with some of the hardest economic times in memory. Tobacco farmers are also caught in the grip of the worst drought in over a century. This tax increase will only aggravate the economic devastation which is occurring throughout much of the southeastern United States.

In addition, this proposal makes a mockery of the tax reform rhetoric which has swept the Nation. We lent our support to the Senate's tax reform proposal because it promised tax relief to millions of middle-income American taxpayers. This fundamental underpinning of tax reform seems to have been quickly forgotten by many. The ink is not yet dry on a tax reform bill and already we are seeing a highly regressive tax increase contained in this reconciliation bill.

The proposed increase in the cigarette excise tax is both unsound economic policy and an undercutting of the goals of the tax reform bill recently approved by the Senate. It is my hope that we will strike this offensive provision from the reconciliation package when it is considered on the Senate floor.

TITLE-BY-TITLE ANALYSIS

The following is a title-by-title analysis of the legislation. In each case, the analyses of the respective committees are presented without revision. In some instances, the final cost estimates by the Congressional Budget Office were not available to the committees when they made their submissions to the Budget Committee. In those cases, the CBO cost estimates have been added to the materials submitted by the committees.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

TITLE I

U.S. SENATE, COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY, WASHINGTON, DC, JULY 25, 1986.

Hon. PETE V. DOMENICI,
Chairman, Senate Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Enclosed pursuant to the reconciliation instructions in section 2(1) of the First Concurrent Resolution on the Budget for Fiscal Year 1987 (S. Con. Res. 120) are the recommendations of the Senate Committee on Agriculture, Nutrition, and Forestry for reducing spending under laws within its jurisdiction.

In accordance with the instructions, this Committee has prepared (1) the legislative language to effect the reductions in budget authority and outlays as required by the resolution, and (2) an explanation of those reductions for inclusion in your report on the reconciliation legislation.

The Congressional Budget Office estimates the changes in law adopted by this Committee, and included in this recommendation, would reduce spending in the following manner per fiscal year:

	Budget Authority	Outlays
Fiscal year:		
1987		$555,000,000
1988	$118,000,000	549,000,000
1989	122,000,000	543,000,000

S. Con. Res. 120 instructed this Committee to make changes in legislation that would result in outlay savings of $1.647 billion over the three fiscal years, 1987 through 1989, and savings in budget authority of $147 million over the same period. As the preceding table demonstrates, the recommendations for savings adopted by this Committee on July 16 are estimated by the Congressional Budget Office to meet the instructions and, in the case of budget authority, to exceed the instructions.

Sincerely,

EDWARD ZORINSKY,
Ranking minority member.
JESSE HELMS,
Chairman.

SUMMARY OF PROVISIONS

Title I of the bill would require the Secretary of Agriculture to sell notes and other obligations held in the Rural Development Insurance Fund in such amounts as to realize net proceeds not less than $550,000,000 during fiscal year 1987, $549,000,000 during fiscal year 1988, and $543,000,000 during fiscal year 1989. Title I also makes clear that these sales would be made on a nonrecourse basis and that Farm Credit System institutions would be eligible to purchase and service such notes and other obligations, subject to such terms and conditions as may be agreed to by the Secretary of Agriculture and the purchasing institution and as are approved by the Farm Credit Administration.

BACKGROUND

The Farms Home Administration makes insured loans from three revolving funds: the Agricultural Credit Insurance Fund (ACIF), the Rural Development Insurance Fund (RDIF), and the Rural Housing Insurance Fund (RHIF). The programs funded through the ACIF and the RDIF are under the jurisdiction of the Senate Committee on Agriculture, Nutrition, and Forestry.

The revolving funds are maintained by moneys coming from three sources: (1) collections on previous loans, which are then reloaned; (2) appropriations from Congress to make up losses incurred through interest rates subsidies and loan defaults; and (3) the "sale" of loans, including their interest earnings, to the Federal Financing Bank.

Two insured loan programs are operated from the Rural Development Insurance Fund: the water and waste disposal program and the community facilities program.

The Farmers Home Administration and its predecessor agencies have financed construction of approximately 13,195 water and waste disposal systems in rural areas and towns having populations of up to 20,000 people. Public bodies, corporations operated on a nonprofit basis, and Indian tribes that are unable to obtain credit from other sources at reasonable rates and terms are eligible to borrow funds at below market interest rates under these loan programs. The repayment of such loans can be scheduled over a period of up to 40 years or over the useful life of the facility, whichever is less. Loan applicants have the option of choosing the interest rate in effect at the time of approval of the loan or at the closing. Grants can be made to reduce the cost of water and sewer projects in low income areas.

The Rural Development Act of 1972 expanded the lending authority of the Farmers Home Administration to include loans to public bodies or nonprofit organizations for community facilities providing essential services to rural residents. Fire protection, community halls, hospitals, nursing homes, medical clinics, libraries, and schools are among the more than 30 types of community facilities eligible for financing.

The facilities financed with these loans may be located in the rural countryside or in towns with populations of up to 20,000 persons. Loan repayment can be scheduled over a period of up to 40 years. Additional interest charges may apply to loans made to finance projects located on prime or unique farmland.

Applications for loans to finance public safety, such as rescue or fire protection facilities and equipment, receive priority for funding. Joint funding of projects with other lending sources is encouraged in order to obtain maximum benefit from program resources.

The interest rates charged for both the water and waste and the community facility loans are set on a sliding scale, from a low of 5 percent up to a level equal to market rates for comparable municipal tax-exempt obligations, depending on the nonmetropolitan median household income of the community.

Three insured loan programs are operated from the Agricultural Credit Insurance Fund. These programs are the farm ownership loan program, the farm operating loan program, and the disaster emergency loan program.

Farm ownership loans are made to family-size farmers who lack other sources of credit. These loans are made for the purpose of buying, improving, or refinancing farm real estate. The limit on such loans is $200,000, and they can be repaid over a period of up to 40 years. The interest rate for loans made under the regular farm ownership program is a fixed rate and is set by the Secretary to reflect the cost of Government borrowing. Borrowers who are eligible for low-income, limited-resource, farm-ownership loans pay a rate of interest equal to one-half the regular farm ownership loan rate. When financially able, borrowers must "graduate", or refinance with conventional lenders.

Farm operating loans are made for production financing to family farmers and

ranchers unable to secure credit elsewhere. As is the case with the real estate loan program, the loan limit is $200,000, with a fixed interest rate set by the Secretary to reflect the cost of government borrowing. Limited resource borrowers of farm operating loans pay an interest rate that is 3 percent below the regular interest rate charged on farm operating loans. The term of the loans usually ranges from a period of 1 to 7 years, with a maximum repayment period of 15 years for consolidated or rescheduled loans. Operating loans are secured by chattel mortgages on crops, livestock, machinery, or other non-real estate resources.

Emergency disaster loans aid farmers in recovering from the effects of actual production or other physical losses that occur as a result of natural disasters. Eligibility for such loans results when a farm is located in a county, or in a county contiguous to a county, that the President declares has been substantially affected by an emergency or major disaster or that has been determined to be a natural disaster area by the Secretary of Agriculture. Farmers are ineligible for loans to cover crop losses if the losses could have been insured against under the Federal crop insurance program.

Farmers unable to obtain credit elsewhere may receive loans to cover 80 percent of their actual losses, up to $500,000. The interest rate on such loans is set by the Secretary, but cannot exceed 8 percent. The Secretary has discretion to set the length of the loan repayment period, but cannot provide for a period longer than that set for real estate or operating loans.

PURPOSE AND NEED

The bill requires the Secretary of Agriculture to sell notes and other obligations from the Rural Development Insurance Fund on a nonrecourse basis, in such quantities as are necessary to realize net proceeds of at least $555,000,000 in fiscal year 1987; $549,000,000 in fiscal year 1988; and $543,000,000 in fiscal year 1989. The Committee believes these sales are a proper method of achieving the necessary spending reductions mandated by its budget reconciliation instructions. Spending reductions will be achieved as the sale proceeds are returned to the Rural Development Insurance Fund, consequently reducing the need for the appropriation of these amounts to the fund.

The Committee believes the required savings can be achieved by mandating the sale of notes and other obligations held in the Rural Development Insurance Fund (RDIF). This revolving fund currently holds notes having a face value of approximately $8 billion, most of which have been generated through loans made under the water and waste disposal program. The RDIF portfolio is attractive and saleable, as is evidenced by inquiries made by several private lenders concerning possible purchase of portions of the portfolio.

The administrative and servicing burdens associated with these obligations will be transferred from the Farmers Home Administration to the private purchasers, reducing the burden on FmHA personnel and management resources, and permitting those resources to be transferred to serve FmHA's remaining borrowers.

Although the Secretary has authority under current law to make nonrecourse sales of notes from the revolving funds under the Committee's jurisdiction, the Committee believes that an explicit statement is necessary to remove any possible uncertainty in the minds of potential purchasers. Any such uncertainty could reduce the value of the notes and other obligations, making such sales difficult. Consequently, the bill explicitly provides that sales of notes and other obligations from the Rural Development Insurance Fund will be made on a nonrecourse basis.

Generally, purchasers of such notes and other obligations in the secondary market need the assurance that they can adequately service these obligations. Certain administrative policies and procedures that the Secretary has implemented under the Consolidated Farm and Rural Development Act, and which are not available to borrowers in the private sector, would greatly restrict prudent servicing of these loans by potential purchasers. Consequently, the Committee included the nonrecourse provision, which makes explicit that both the purchaser of the notes and the Secretary are relieved of responsibilities that might have been imposed, had the borrower remained indebted to the Secretary.

The contractual terms of the obligations, such as the interest rates and other specified terms, will not change as a result of the sale.

The Committee also notes that the purchasers of the notes receive no warranties or indemnities from the Secretary or any other agent of the Federal Government. Any credit enhancement measures undertaken, such as insurance or reserve funds, will be the sole responsibility of the purchaser.

The Committee realizes that the value of the notes will be enhanced insofar as the pool of potential buyers is increased. In order to obtain maximum value for the notes and other obligations sold from the fund, the Committee believes it is vital to have no restriction on the pool of eligible buyers.

In an effort to ensure the purchase eligibility of certain potential buyers, subsection (c) makes explicit that Farm Credit System institutions will be eligible to purchase and service notes and other obligations sold from the Rural Development Insurance Fund. To provide the flexibility necessary to facilitate the purchase of such notes, the subsection provides that the purchase, servicing, collection, and disposition of such notes by System institutions shall be governed by the terms and conditions agreed to by the Secretary of Agriculture and the purchasing institutions and as are approved by the Farm Credit Administration.

COMMITTEE CONSIDERATION

On Wednesday, July 16, 1986, the Committee met to consider action necessary to make spending reductions to meet the budget reconciliation instructions issued under the First Concurrent Resolution on the Budget for Fiscal Year 1987.

Chairman Helms explained that the Committee's reconciliation instructions were to achieve budget savings of $1.647 billion dollars over a 3-year period. He noted that although the Conference Committee on the budget resolution assumed that the budget savings would be made through the sale of loan assets, each Committee has sole discretion to determine how its budget savings will be made.

Chairman Helms then proposed that the budget savings be achieved by requiring the Secretary of Agriculture to make sales of loan assets on a nonrecourse basis out of the Rural Development Insurance Fund (RDIF) and the Agricultural Credit Insurance Fund (ACIF) in such amounts as would be necessary to realize net proceeds of $555,000,000 in fiscal year 1987; $549,000,000 in fiscal year 1988; and $543,000,000 in fiscal year 1989.

Senator Andrews asked whether the makers of notes and other obligations sold to private investors would continue to receive the same protections regarding interest rates and payback provisions. Committee counsel explained that the contractual rights, which include interest rates and other contractual terms, would remain the same after purchase, but that the notes and other obligations would be sold without recourse to the Federal Government.

Senator Zorinsky then offered an amendment to the Helms proposal to strike references to the Agricultural Credit Insurance Fund, thus limiting the mandated sales to notes and other obligations held in the Rural Development Insurance Fund. He explained that borrowers from the Agricultural Credit Insurance Fund are often farmers in adverse financial circumstances and that it is important to protect their procedural rights. He stated that the Congressional Budget Office had assured him that the required savings could be achieved through sales of RDIF notes and obligations.

Senator Zorinsky's amendment also expressly stated that Farm Credit System institutions would be eligible to purchase notes and other obligations sold from the Rural Development Insurance Fund and to service these obligations. Senator Zorinsky stated that this provision was necessary to facilitate the sale of notes and other obligations from the RDIF, while not unduly expanding the authority of system institutions to make loans.

Chairman Helms then called on a representative of the Congressional Budget Office, who advised the Committee that CBO estimates indicated there were sufficient assets in the Rural Development Insurance Fund that could be sold to achieve the necessary budget savings.

The Committee understands that the assets in the water and waste program as of March 30, 1985, were $6.538 billion, and those in the community facilities program were $1.552 billion, for a total of $8.090 billion.

On a voice vote, the Committee then adopted the Helms proposal as amended by the Zorinsky amendment

SECTION-BY-SECTION ANALYSIS

Section 101(a) provides that the Secretary of Agriculture must, under such terms as the Secretary may prescribe, sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a) in such amounts as to realize net proceeds of not less than—

(a) $555,000,000 from such sales during fiscal year 1987;

(b) $549,000,000 from such sales during fiscal year 1988; and

(c) $543,000,000 from such sales during fiscal year 1989.

Section 101(b) amends section 309A(e) of the Consolidated Farm and Rural Development Act to make explicit that the Secretary may sell notes and other obligations from the Rural Development Insurance Fund on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes and other obligations sold by the Secretary on a nonrecourse basis will be relieved of

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any responsibilities that might have been imposed had the borrower remained indebted to the Secretary.

The Committee intends that there be no Federal governmental liability to either the makers or purchasers of notes held in the Rural Development Insurance Fund once any sale of such notes is complete. By the use of the term "nonrecourse", the Committee intends that there be no Federal guarantees of principal and interest payments, repurchase contracts, agreements to replace bad loans with good loans, warranties relating to collateral value, or any other agreements requiring continued Federal involvement or contingent liability. Any credit or note enhancement mesures, such as reserve funds, over collateralization, or insurance, shall be the responsibility of the purchaser.

Section 101(c) provides that institutions of the Farm Credit System operating under the Farm Credit Act of 1971 (12 U.S.C. 2001) will be eligible to purchase notes and other obligations held in the Rural Development Insurance Fund and to service (including the extension of additional credit and all other actions necessary to preserve, conserve, or protect the institutions' interests in such notes and other obligations), collect, and dispose of such notes and other obligations, subject only to such terms and conditions as may be agreed to by the Secretary of Agriculture and such purchasing institutions and as are approved by the Farm Credit Administration.

The Committee recognizes that the servicing of notes and other obligations purchased by Farm Credit System institutions may entail the extension of additional credit to the makers of the notes or other obligations and that such extensions of credit may be made to borrowers not eligible, under current law, to borrow from system institutions.

CBO COST ESTIMATE

At the request of the Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, the Congressional Budget Office prepared a cost estimate of the provisions in title I. The cost estimate follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 21, 1986.

Hon. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for a bill to require the Secretary of Agriculture to sell Rural Development Insurance Fund loans in amounts sufficient to meet reconciliation savings assigned in the fiscal year 1987 budget resolution.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: A bill to require the Secretary of Agriculture to sell Rural Development Insurance Fund loans in amounts sufficient to meet reconciliation savings assigned in the fiscal year 1987 budget resolution.

3. Bill status: As ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, July 16, 1986.

4. Bill purpose: This bill requires the Secretary of Agriculture to sell loans held by the Rural Development Insurance Fund (RDIF) in amounts sufficient to meet the Committee's reconciliation targets. The bill also clarifies the authority of Farm Credit System institutions to purchase RDIF loans.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Estimated borrowing authority		−118	−122	292	292
Estimated outlays	−555	−549	−543	292	292

The costs of this bill fall within budget function 450.

Basis of estimate: The bill sets certain targets for the net proceeds from the sale of RDIF loans. These proceeds offset borrowing authority, where it is estimated to be required, and outlays. CBO estimates that, in fiscal years 1987 through 1989, sales of loans with face value of about $1.0 billion, $1.2 billion, and $1.3 billion, respectively, will be required in order to meet the targets specified in the bill. These amounts were estimated using the market yields of Moody's Aaa securities of comparable maturity. The sale of loans results in the loss of future annual principal and interest payments estimated at $292 million for fiscal years 1990 and beyond, which increases estimated borrowing authority and outlays in those years by the same amount. CBO assumes that all loans will be sold without recourse to the federal government. Consequently, proceeds from the sale would be counted as offsetting receipt and would offset borrowing authority and outlays. Were the loans to be sold with recourse, CBO would count the proceeds as borrowing, which would not offset borrowing authority or outlays.

There is some speculation that the interest from these loans would be exempt from federal taxation. No bond counsel opinion exists stating that these loans would be tax-exempt, but should this be the case, then loans of lower face value would need to be sold each year to meet the targets. This would result in reduced federal tax revenues, but would also reduce the loss from forgone principal and interest payments.

6. Estimated cost to State and local governments: None.

7. Estimate Comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Paul DiNardo.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with section 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact associated with the implementation of title I as reported.

Section 101 of title I directs the Secretary of Agriculture to sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act to realize net proceeds of $555 million, $549 million, and $543 million, during fiscal years 1987, 1988, and 1989, respectively. Institutions of the Farm Credit System would be eligible to purchase the notes and other obligations held in the Rural Development Insurance Fund and subsequently service, collect, and dispose of the obligations.

This provision will have little regulatory impact on the individuals and communities that have issued the notes and obligations held in the Rural Development Insurance Fund. Under the terms of the provision, these notes and obligations will be sold to private purchasers without recourse. Neither the makers nor the subsequent purchasers will have any rights against the Secretary of Agriculture subsequent to the sale of the obligations. Other than a limitation on the ability of the private purchaser to force the maker of the obligation to obtain financing elsewhere and pay off the obligation, all rights between the maker and the purchaser and contractual in nature and are fixed by the language of the repsective note.

This title will have little effect on the personal privacy of borrowers and purchasers and on the amount of governmental paperwork performed by the members of these groups. The servicing practices of the purchasers may differ from those of the Farmers Home Administration, but should not materially affect the borrowers. To the extent that the obligations are no longer serviced by the Farmers Home Administration, agency personnel will be available to handle the servicing of FmHA farm real estate and operating loans.

CHANGES IN EXISTING TITLE I

Changes in existing law made by title I are shown as follows (existing law proposed to be deleted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

* * * * *

SUBTITLE A.—REAL ESTATE LOANS

* * * * *

SEC. 309A. * * *

* * * * *

(e) Notes and security acquired by the Secretary in connection with rural development loans made, guaranteed, or insured under this title or transferred by subsection (b) of this section shall become a part of the Insurance Fund. Notes *and other obligations* may be held in the Insurance Fund and collected in accordance with their terms or may be sold by the Secretary with or without agreements for insurance thereof at the balance due thereon, or on such other basis as the Secretary may determine from time to time[.], *including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes and other obligations sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed, had the borrower remained indebted to the Secretary.* All net proceeds from such collections, including sales of notes or property, shall be deposited in and become a part of the Insurance Fund.

* * * * *

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

TITLE II

UNITED STATES SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,

Washington, DC, July 29, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

Hon. LAWTON CHILES,
Ranking Minority Member, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR SENATORS DOMENICI AND CHILES: As requested, attached herewith is legislative and report language comprising the Senate Banking, Housing and Urban Affairs Committee's response to the reconciliation requirements of the Budget Resolution for Fiscal year 1987, as adopted during our markup today.

Sincerely,

JAKE GARN,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate.

WILLIAM PROXMIRE,
Ranking Minority Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate.

REPORT LANGUAGE TO ACCOMPANY THE RECONCILIATION RECOMMENDATIONS OF THE SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS FOR FISCAL YEARS 1987, 1988, AND 1989

The Committee on Banking, Housing and Urban Affairs met on July 29, 1986 to consider legislation to make savings in accordance with the reconciliation instructions of subsections (a) and (m) of Section 2 of the concurrent resolution on the budget for fiscal year 1987. Without objection, the Committee ordered the following recommendations to be made to the Committee on the Budget for inclusion in reconciliation legislation to be reported to the Senate.

First, the Committee has acted to require the sale of rural housing loans to the public in an amount that shall be sufficient to provide $1,158,000,000 in net receipts to offset federal outlays in fiscal year 1987, $500,000,000 in fiscal year 1988, and $500,000,000 in fiscal year 1989. The Committee would like to make clear that the sale of these loans will reduce the assets of the United States by the amount of the principal and the income from the interest that would otherwise accrue to the federal government. While the amount of loans necessary to sell in order to achieve the stated outlay reduction will be only a small portion of the entire rural housing portfolio, it is assumed that this portion contains the better loans in the entire portfolio. Therefore, it is with reluctance that this action is taken and only because the alternative of reducing assisted housing program levels for very low- and low-income families in dire need of housing assistance is considered as the only other alternative under the debt reduction imperatives with which the Committee is faced. Accordingly, the Secretary of Agriculture is directed to sell from the Farmers Home Administration portfolio of housing loans those loans that would be expected to be most easily sold to the public with the least cost to the government. The Committee is aware that such loans are more likely to be noninterest subsidy loans with relatively high note rates and substantial remaining terms. The Committee is also aware that the Secretary shall have to redeem the Certificates of Beneficial Ownership held by the Federal Financing Bank (FFB) in order to free these loans so that he may sell them to the public. Such redemptions will involve an interest penalty cost to hold the FFB harmless. The authority to redeem these loans is already within the power of the Secretary of Agriculture and the Committee expects that the FFB will expeditiously and fully cooperate with the Secretary in such actions necessary to achieve the purposes of this section.

The Committee is also concerned that the Secretary of Agriculture, to the maximum extent practicable, give consideration to the protection due the borrowers when setting forth the guidelines that govern the sale of these loans. While it may not be possible to extend every protection afforded borrowers when the loan was made by the Secretary, all such protection that may be extended without adversely affecting the expeditious sale of these loans to the public should be provided. In addition, the Committee has included certain reporting requirements among the provisions to assure that the fiscal year 1987 outlay reduction intended by this action is actually achieved. The Secretary is required to report to the House Banking, Finance and Urban Affairs and the Senate Banking, Housing and Urban Affairs Committees 90 days following enactment of this section and each subsequent 90-day period throughout fiscal year 1987 on the progress made in actually realizing the required proceeds from the sale of rural housing loans so that the Congress may be alerted in a timely manner to any problems that prevent its intended outlay requirements for the Comptroller General to audit and evaluate the progress and results of the Secretary of Agriculture in the subject loan sale activities in order to further assist the Committees in achieving the objectives intended in this section.

Second, the Committee has acted to require the sale of Export-Import Bank (Exim) loans to the public in an amount that shall be sufficient to provide $500,000,000 in net receipts to offset federal outlays in fiscal year 1987. While it is likely that only 5 percent of Exim's total portfolio will have to be sold, it is assumed that this portion will contain the highest quality loans in the portfolio in order to ensure the highest return to the federal government. These would include loans such as those to the developed economies of Europe, Japan and Canada, bearing average coupon rates of roughly 8.75 percent.

Despite the relative attractiveness of these loans compared to Exim's overall portfolio, there is no existing secondary market for these loans and it is likely that they will sell in the market at a substantial discount. Without remedial action, this discount will be borne by Exim reserves and capital. In addition, since Exim would return the proceeds of sale to the treasury through its transactions with the FFB, Exim prepayment of the liabilities underlying the assets sold would result in a "prepayment penalty" charged by FFB (based on the current value of scheduled repayments in light of present interest rates) that would also hit Bank capital.

The Committee recognizes that the combination of the loss of the Bank's highest quality assets and the large hit to Bank capital would impair the standing of the Bank in capital markets. The effectiveness and the value of Exim's guarantees would be adversely affected, complicating its mission of supporting U.S. exports. In order to avoid such damage, the Committee therefore authorizes the Bank to issue new capital stock in an amount equal to any reduction in capital and reserves arising from the asset sale and related transactions described above. The Committee further authorizes and directs the Secretary of the Treasury to purchase such stock on behalf of the U.S. Government.

This provision will ensure that the Export-Import Bank does not suffer a loss of capital and impairment of its ability to support U.S. exports as a result of extraordinary measures to provide resources to the General Fund to reduce the budget deficit. The total capital position of the Bank will be unchanged, but Treasury holdings of capital stock will be increased by an amount equal to the loss of reserves from the above described transactions.

CBO COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 31, 1986.

Hon. JAKE GARN,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached table analyzing the budget impact of the reconciliation recommendations of the Senate Committee on Banking, Housing and Urban Affairs, as ordered reported on July 29, 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

RECONCILIATION RECOMMENDATIONS FOR FISCAL YEAR 1987—SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

FEDERAL BUDGET IMPACT RELATIVE TO CURRENT LAW AND THE BUDGET RESOLUTION BASELINE

[By fiscal year, in million of dollars]

	1987	1988	1989	1990	1991
Direct spending:					
Sale of Rural Housing loans: [1]					
Function 370:					
Estimated budget authority	642	.....	236	−88	−114
Estimated outlays	−1,158	−500	−500	−88	−101
Function 900 (interest):					
Estimated budget authority	−247	120	205	422	435
Estimated outlays	−247	120	205	422	435
Sale of Eximbank loans: [2]					
Function 150:					
Estimated budget authority [3]	120	−470	.....	.....	.....
Estimated outlays	−500	119	110	93	65
Function 900 (interest):					
Estimated budget authority	.....	39	39	39	39
Estimated outlays	.....	39	39	39	39
Total—direct spending:					
Estimated budget authority	515	−311	480	373	360
Estimated outlays	−1,905	−222	−146	466	438

[1] The reconciliation recommendations would require the Farmers Home Administration [FmHA] to sell loan assets in amounts sufficient to lower net outlays (increase receipts) by $1,158 million in fiscal year 1987, $500 million in 1988, and $500 million in 1989. The terms and conditions of the sales would be determined by the Secretary of Agriculture. The amount of loans that would ultimately be sold would depend upon the loans chosen for sale and the market response. For this estimate, it was assumed that high quality loans bearing interest rates comparable to the current market would be chosen. It was further assumed that the sales would be made without recourse to the Federal Government. Under the assumptions used, an estimated $3,329 million of loans would have to be sold over the 3-year period.

[2] The committee's recommendations would require the Export-Import Bank to sell sufficient loan assets to reduce outlays by $500 million in 1987. The terms and conditions of the sales would be determined by the Board of Directors of the Bank. The loans are assumed to be sold without recourse to the Federal Government. An estimated $643 million of loans would be sold in order to meet the savings specified in the legislation.

[3] Section 2002(c) provides a permanent, indefinite appropriation for the Secretary of the Treasury to purchase capital stock in the Eximbank equal to

the losses realized from the sale of its load assets. The estimate assumes $65 million in losses from sale of assets and $55 million in prepayment penalties on the Eximbank's liabilities to the Federal Financing Bank.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

TITLE III

U.S. SENATE,
COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION,
Washington, DC, July 25, 1986.

Hon. PETE DOMENICI,
Committee on the Budget, U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: We are submitting herewith the legislative changes in programs within the jurisdiction of the Committee on Commerce, Science, and Transportation to achieve savings of $150 million in budget authority and outlays for the three year period of FY 1978-1989 as required under the reconciliation instructions contained in S. Con. Res. 120, the First Budget Resolution for 1987.

We are recommending legislative changes in programs within the Committee's jurisdiction which will achieve a savings of $192 million in budget authority and $192 million in outlays during fiscal years 1987-1989.

If you should have any questions, please feel free to contact us.

Sincerely,

JOHN C. DANFORTH,
Chairman,
ERNEST F. HOLLINGS,
Ranking Minority Member,
Committee on Commerce, Science, and Transportation.

TITLE III: SECTION 301—COAST GUARD USER FEES

This section directs the Secretary of the department in which the Coast Guard is operating to collect receipts from payments by users of Coast Guard services during fiscal years 1987 through 1989.

The Secretary is directed to establish and implement a system for collection of payments based upon sale of Support of Services (SOS) Stamps for specified services and fees to be charged to persons who utilize those services and have not purchased a SOS Stamp.

It is intended that SOS Stamps be sold at modest prices and be designed to serve as both a voluntary means of contributing to the Coast Guard and as a type of insurance, entitling the purchaser to specified services without charge. Those uninsured persons who have not purchased a SOS Stamp would pay fees for the services whenever they utilize them and would, therefore, pay a greater price for the same services.

The Secretary is given discretion to develop several different SOS Stamps, each providing coverage for different classes of services. Stamps and fees for non-emergency as well as other Coast Guard services should be considered and designed to minimize adverse economic effects upon the users as well as upon dependent and related commercial activities. It would not, for example, be appropriate to impose fees upon the barge industry at this time, since such fees would exacerbate its already severe economic depression.

The Secretary is directed to develop, by January 1, 1987, a schedule of fees to be charged to persons who utilize services and have not purchased a SOS Stamp for those same services. The Secretary is not authorized to issue regulations or collect fees under this section for any services for which there is not a corresponding and less expensive SOS Stamp available for sale. The fees are to be established by regulation under the General User Fee Statute (31 U.S.C. 9701). Such fees must, therefore, be set at a level no higher than the actual cost of the service and value to the individual to be charged a fee, and they must satisfy the other requirements of that Statute.

The Secretary is directed to report to Congress by December 1, 1986, prior to implementing the system and again after one year of experience with the system. The Committee intends to monitor the Secretary's efforts closely and to scrutinize the implementation of the system and its effects carefully.

SECTION 302—TITLE XI LOAN GUARANTEES

This section provides the Secretaries of Commerce and Transportation with authority to foreclose on vessels secured by title XI of the Merchant Marine Act, 1936 loan guarantees that are held by defaulting debtors in chapter 11 reorganization bankruptcy proceedings. It provides exemptions from the automatic stay provision of the Bankruptcy Code (11 U.S.C. 362), which would otherwise apply to such vessels and impede foreclosure by the Secretaries.

Background

Prior to the Bankruptcy Reform Act of 1978, the Federal Government was not subject to an automatic stay and could foreclose on a vessel in which it had a secured interest at any time during a bankruptcy proceeding. The Bankruptcy Reform Act modified prior law by providing the Federal Government with only a limited exemption from the stay for secured interests in vessels which were certificated by the Interstate Commerce Commission (ICC) (11 U.S.C. 1110). The government was not granted an exemption for other vessels subject to title XI loan guarantees.

The title XI loan guarantee program (46 App. U.S.C. 1271 et seq.) is currently experiencing financial difficulties. There are very few vessels financed under title XI that are certificated by the ICC. The Federal Government has guarantees in excess of $6 billion, of which approximately $1.25 billion are in default. Approximately $715 million of the defaulted loans are in bankruptcy proceedings, and a substantial number of additional bankruptcies are anticipated. The Secretaries of Commerce and Transportation maintain that it is in the public interest to provide the Federal Government with the authority to foreclose on vessels secured by title XI loan guarantees involved in bankruptcy proceedings, rather than forcing the government to await the conclusion of those proceedings.

Legislative history

S. 1992 and S. 1993 were introduced by Senator Stevens on behalf of the administration on December 19, 1985. The Subcommittee on Merchant Marine conducted a hearing on March 21, 1986, to review the administration's proposals. At that time, alternative language was offered to narrow the scope of the legislation, and this was introduced by Senator STEVENS upon request as S. 2436.

Summary of major provisions

Section 302 contains four key features:

Preferred Creditor Status

The original administration proposals, S. 1992 and S. 1993, provided an exemption from the automatic stay for all creditors who had secured interests in vessels subject to bankruptcy proceedings. This section limits the preferred creditor class to the Secretaries of Commerce and Transportation for vessels guaranteed under the title XI program. This feature eliminates the potential for creditors other than the Secretaries to impede a bankruptcy proceeding when the Secretary may have determined that it is in the public interest to permit a reorganization under chapter 11 to occur.

Retroactive Application

It was unclear from the language of S. 1992 and S. 1993 whether the exemption from the automatic stay provision would apply to the bankruptcy proceedings initiated prior to the date of enactment of that legislation. The Committee determined that retroactive application of the exemption would be fundamentally unfair to debtors already in bankruptcy due to the difficult business decisions that would have been made in reliance upon the protection of the existing Bankruptcy Code from foreclosure on assets. This section makes the authority to foreclose applicable only to those bankruptcy proceedings initiated after August 1, 1986.

Limited Duration

The authority to foreclose expires on December 31, 1989. This exemption of limited duration will provide Congress an opportunity to review the exercise of discretion by the Secretaries in implementing the bill's foreclosure authority over the three-year period and its effects on the bankruptcy proceedings and maritime interests.

Chapter 13 Proceedings

S. 1993 and S. 2436 would have provided the Secretaries with an exemption from the automatic stay provision in chapter 13 bankruptcy proceedings involving the adjustment of debts of individuals as well as in chapter 11 proceedings involving corporate reorganization. Information provided by the Department of Commerce indicates that the level of defaults and related borrowing from the Treasury associated with individuals is minuscule compared to corporate defaults. For these reasons, this section does not provide authority to foreclose on title XI guaranteed vessels involved in chapter 13 proceedings.

Section-by-seciton analysis

Section 302(a) adds two exemptions to the eleven exemptions form the automatic stay on foreclosure proceedings set forth in section 362(b) of title 11, United States Code. New exemption (12) provides the Secretary of Transportation with foreclosure authority and new exemption (13) provides the same authority to the Secretary of Commerce. These exemptions are available only with respect to debtors in chapter 11 reorganization proceedings.

The respective Secretaries are required to file a petition with the bankruptcy court for relief from the automatic stay and a 90-day grace period is provided before the stay is lifted. The exemption from the automatic stay provision is applicable to the commencement, continuation, and conclusion to the entry of final judgment of the foreclosure action. It is intended that all stages of the litigation be exempt from the operation of the stay, including those stages which extend beyond December 31, 1989, provided the action is commenced before that date. This section is also intended to permit district courts sitting in admiralty to distribute the proceeds from any liquidation once the stay has been lifted.

Reference is made to section 207 of the Merchant Marine Act, 1936 because it provides the Secretary with the general author-

ity to enter into contracts including, but not limited to, title XI loan guarantees. The reference to "applicable State law" applies to those situations in which the Secretary holds a secuirty interest in a vessel under construction. This security interest is evidenced by a Uniform Commercial Code filing, accomplished pursuant to State law.

Section 302(b) provides that the exemptions from the automatic stay apply in only those chapter 11 proceedings initiated by petitions filed under section 362 of title 11, United States Code, after August 1, 1986.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, July 29, 1986.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached table analyzing Title III of the Omnibus Reconciliation Act of 1986, as ordered reported by the Senate Committee on Commerce, Science and Transportation, July 23, 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

FEDERAL BUDGET IMPACT RELATIVE TO CURRENT LAW AND THE BUDGET RESOLUTION BASELINE ADJUSTED FOR ENACTED LEGISLATION

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Direct spending:					
Section 301—Coast Guard user fees:					
Estimated budget authority	−38	−50	−50		
Estimated outlays	−38	−50	−50		
Section 302—Title 11 loan guarantees: [1]					
Estimated budget authority	−12	−36	−6	27	16
Estimated outlays	−12	−36	−6	27	16
Total—Direct spending:					
Estimated budget authority	−50	−86	−56	27	16
Estimated outlays	−50	−86	−56	27	16

[1] Section 302 would enable the Maritime Administration to take possession (and title) to a vessel that has defaulted on its loans to the agency and declares bankruptcy after August 1, 1986. The primary impact of this title is essentially one of timing: under current law, MARAD is able to recover its losses on court-protected vessels only after lengthy bankruptcy proceedings that can delay the transfer of title by several years. The CBO estimate assumes that the effect of this section would be to speed up recoveries on assets of bankrupt defaulters by about 2 years. In the first 3 years, this would result in savings, but in later years this provision would result in outlay increases, because defaults and (correspondingly) recoveries fall in later years, and recoveries that are moved forward become smaller. The net impact of section 302 over 5 years is a savings of $11 million.

Any estimate of savings from enactment of this section depends on assumptions regarding market conditions, MARAD policies, and other very uncertain factors. The results of this analysis depends heavily on the assumption that ships obtained by MARAD under this bill will be sold in a timely fashion. If the agency does not sell its assets for any reason—including further deterioration of market conditions or industrial policy considerations—the bill could result in cost rather than savings. This would occur because the Government, by taking control of the asset, would forgo bankruptcy protection payments to which it would otherwise be entitled and, in addition, would incur maintenance and other custodial costs from a much earlier date than under current law.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

TITLE IV

COMMITTEE ON
ENERGY AND NATURAL RESOURCES,
Washington, DC, July 29, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In accordance with the reconciliation instruction contained in the Concurrent Resolution on the Budget, Fiscal Year 1987 (S. Con. Res. 120, H. Rept. 99-664), enclosed are the legislation and report language of the Committee on Energy and Natural Resources. The recommendations of the Committee include changes in existing laws within its jurisdiction to reflect the assumptions in the Committee's reconciliation instruction. The recommendations of the Committee achieve changes in spending authority for fiscal year 1987, and for the aggregate three-year period of fiscal years 1987 through 1989.

On behalf of the Committee, we look forward to working with your Committee to achieve early Senate approval of the Omnibus Budget Reconciliation Act of 1987.

Sincerely,

JAMES A. MCCLURE,
Chairman.

J. BENNETT JOHNSTON,
Ranking Minority Member.

[Committee on Energy and Natural Resources]

RECONCILIATION RECOMMENDATIONS PURSUANT TO S. CON. RES. 120

July 29, 1986

Mr. McClure, reported by the Committee on July 29, 1986, and transmitted to the Senate Budget Committee pursuant to S. Con. Res. 120.

SHORT EXPLANATION

In accordance with the reconciliation instruction contained in the Concurrent Resolution on the Budget—Fiscal Year 1987 (S. Con. Res. 120, H. Rept. 99-664), the Committee on Energy and Natural Resources recommends, as discussed herein, changes in laws within its jurisdiction which provide spending authority so as to achieve the savings in budget authority and outlays for fiscal year 1987, and for the aggregate 3-year period of fiscal years 1987 through 1989 (See table 4.1).

In summary, the recommendations of the Committee result in estimated savings in budget authority and outlays compared to the Senate Budget Resolution assumptions, as follows:

For fiscal year 1987, the Committee estimates that its recommendations would achieve savings in spending of $132 million in budget authority and $132 million in outlays compared to the SBC Baseline (See table 4.1);

For the three-year period fiscal years 1986 through 1989, the Committee estimates that its recommendations would achieve aggregate savings in spending of $246 million in budget authority and $246 million in outlays (See table 4.1);

Consistent with the assumptions in the reconciliation instruction to the Committee, the recommendations of the Committee include: (1) the recoupment of additional petroleum overcharge funds over the next three years; and (2) recovery by the Federal Energy Regulatory Commission of its direct and indirect costs through the use of fees and annual charges assessed against all companies that are subject to FERC's jurisdiction.

In addition, the recommendations of the Committee achieve savings in spending in four areas not assumed in its reconciliation instruction: (1) Federal Energy management; (2) DOE Manufacturers Energy Consumption Survey; (3) DOE Study of Crude Oil Production and Refining Capacity in the United States; and (4) DOI Great Swamp National Wildlife Refuge.

Following Congressional approval of the Budget Resolution, the United States District Court for Kansas approved, on July 7, 1986, the settlement in the Department of Energy Stripper Well Exemption Litigation (MDL No. 378). As discussed below, the settlement accomplished three things: First, it provides for the distribution of the overcharge funds currently held in escrow in the *Stripper Well* case. Second, it addresses the distribution of future overcharge funds collected in other crude oil overcharge cases. Third, it resolves litigation arising from the failure of the Department to issue final buy and sell lists for the crude oil entitlements program for the months immediately prior to decontrol in January 1981.

In summary, the Committee bill as amended preserves fully the agreement and judgment while at the same time recouping for the Federal Treasury all crude oil overcharge funds not subject to the agreement and judgment. The legislation does not expand or reduce in any way the scope of the funds covered by the Stripper Well settlement agreement or the court's judgment, including the escrowed and deficiency funds in MDL 378, the funds currently in DOE or other escrow accounts, and any other funds in which rights were created or vested by the agreement or judgment. (See Committee Action for further discussion.)

TABLE 4.1—COMMITTEE ACTION

[In millions of dollars]

Program	Spending savings for fiscal year—			
	1987	1988	1989	Total
Reconciliation instruction:				
Budget authority	−1,025	−400	−400	−1,825
Outlays	−1,217	−421	−412	−2,050
Department of Energy:				
Petroleum overcharge funds:				
Budget authority	−100			−100
Outlays	−100			−100
State energy conservation programs:				
Budget authority				
Outlays				
Federal energy management programs:				
Budget authority	−0.1	−0.1	−0.1	−0.3
Outlays	−0.1	−0.1	−0.1	−0.3
Manufacturers energy consumption survey:				
Budget authority	−0.3	−0.3	−0.3	−1
Outlays	−0.3	−0.3	−0.3	−1
Study of domestic production and refining:				
Budget authority	−0.3	−0.3	−0.3	−1
Outlays	−0.3	−0.3	−0.3	−1
Federal Energy Regulatory Commission:				
Fees and annual charges:				
Budget authority	−31	−56	−56	−143
Outlays	−31	−56	−56	−143
Total:				
Budget authority	−132	−57	−57	−246
Outlays	−132	−57	−57	−246

SUMMARY OF MAJOR PROVISIONS

The recommendations of the Committee on Energy and Natural Resources encompass programs and activities of the following Departments and agencies within the jurisdiction of the Committee:

Department of Energy; and

Federal Energy Regulatory Commission.

Consistent with the assumptions in the reconciliation instruction to the Committee, as discussed below, its recommendations include: (1) the recoupment of additional petroleum overcharge funds over the next three years; and (2) recovery by the Federal Energy Regulatory Commission of its direct and indirect costs through the use of fees and annual charges assessed against all companies that are subject to its jurisdiction.

In addition, the recommendations of the Committee achieve savings in spending in four areas not assumed in its reconciliation instruction: (1) Federal Energy management; (2) DOE Manufacturers Energy Consumption Survey; (2) DOE Study of Crude Oil Production and Refining Capacity in the United States; and (4) DOI Great Swamp National Wildlife Refuge.

These recommendations encompass only two of the broad functional areas utilized by the Congressional budget process, namely: function 270: Energy; and function 950: Undistributed Offsetting Receipts.

DEPARTMENT OF ENERGY

Petroleum overcharge funds

Background: From August 18, 1973, until January 27, 1981, there was in effect mandatory petroleum price and allocation controls under the Emergency Petroleum Allocation Act of 1973. During that period overcharges occurred under various types of often complex situations.

Subsequently, on the basis of audits performed by the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), violators of the regulations have been identified and enforcement actions have been brought against the violators. Many of these overcharge cases have either been successfully adjudicated administratively by the DOE's Office of Hearings and Appeals, or appealed, litigated and brought to judgment in the courts, or have been settled by the Department and affected parties. Nevertheless many cases are still pending and more may be initiated in the future.

This has been an enormous and costly effort over more than a decade.

Often these cases were resolved through consent orders with the companies. The consent order might provide for various types of remedies, including direct cash refund to customers. If it was difficult to identify injured parties, the consent order might specify the amount to be paid into an escrow account, until a just and equitable method could be determined for distribution of the funds to overcharged parties. Those determinations frequently have been very difficult because of an inability to determine to what extent firms in the distribution chain actually may have absorbed, rather than passed on, any overcharges. Consequently, because few customers have the records necessary to document overcharges, approximately 90 percent of the recovered overcharge funds are typically unclaimed.

In such circumstances, where the economically injured parties could not be identified or distribution to injured parties was not practical, several attempts were made to fashion methods of indirect restitution to distribute these unclaimed monies. Until enactment in 1982 of the Warner Amendment (Sec. 155 of P.L. 97-337), which provided for the one time distribution of $200 million to the States for certain energy programs, there was no Congressional guidance as to what remedies might be preferred as a matter of public policy. Consequently, disputes arose over the appropriate method for disbursing indirect restitution which resulted in protracted and costly litigation.

Over the years the Department had employed a variety of forms of indirect restitution as a means of affording general compensation to persons thought to have been adversely affected by alleged overcharges. These remedies included company administered claims funds, price rollbacks, payments in the form of crude oil provided to the Strategic Petroleum Reserve, price reductions on fuel sold to utilities and transportation entities, payments to low-income heating oil consumers through charities, payments to State governments for general energy purposes, and payments directly to the U.S. Treasury.

However, following enactment of the Warner Amendment, the courts began to fashion their own remedies. For example, in 1983 the U.S. District Court for the District of Columbia in the *Exxon* case adopted the approach in the Warner Amendment and ordered that the overcharge funds amounting to nearly $2.1 billion (including interest) be made available directly to the States for distribution to consumers under the five specific Federal energy programs specified in the Warner Amendment. The judge chose the approach in the Warner Amendment as a Congressionally sanctioned method. The *Exxon* judgment, when it became final in January 1986 following appeal which was denied, resulted in distribution to the States of approxmiately $2 billion.

Following this precedent, on July 7, 1986, the United States District Court for Kansas approved the settlement in the Department of Energy Stripper Well Exemption Litigation (MDL No. 378). According to the Department of Energy, under this *Stripper Well* settlement the Department anticipates the ultimate recovery and disposition of approximately $4.5 bilion in its remaining crude oil cases.

The settlement accomplished three things: First, the *Stripper Well* agreement provides for the distribution of the escrow funds already collected and those yet to be collected in the Stripper Well Exemption case itself. $525 million of this money is to be distributed to refiners, resellers, retailers, agricultural cooperatives, airlines, surface, rail and water transporters and utilities, in settlement of their claims to the overcharge funds. In return, all parties waive all future claims to crude oil refunds of any kind for this period. After this disbursement and the payment of all individual claimants who can document specific crude oil overcharges, the remaining money currently in escrow and due to be deposited in escrow—about $1.3 billion—will be split equally between the States and the Federal government.

Money will be distributed among the States according to the Warner Amendment formula, but under the *Stripper Well* order the States are permitted to spend this money on a broader range of programs than the five programs specified in the Warner Amendment. Money designated for the Federal government will be deposited in the Treasury as miscellaneous receipts.

Second, the *Stripper Well* settlement specifies that money currently in escrow in other crude oil cases—about $640 million—and to be recovered in all other future crude oil cases—estimated roughly at about $2 billion—will, after payment of direct restitution, also be split equally between the States and the Federal government. The States will have the same latitude in the use of this future money as is the case with the *Stripper Well* overcharges.

Finally, it resolves ongoing litigation arising from the failure of the Department to issue final buy and sell lists for the crude oil entitlements program. These lists were to have been published subsequent to President Reagan's January 1981 order removing the last vestiges of controls from petroleum. The purpose of the lists was to provide for the exchange of cash to approximately equalize crude oil costs among refiners for January 1981 and to "clean up" discrepancies, errors, ommissions and data deficiencies that had accumulated over the life of the program.

Because the crude oil entitlements program evolved over the period of controls into a very complex web of transactions involving refiners, importers, producers and other firms in the petroleum industry, specification of the final clean up list would be very complex and controversial. At issue in the final lists was an estimated $420 million that would be paid by entitlements buyers to entitlements sellers. Extensive litigation of the outcome was assumed.

The *Stripper Well* order settles this issue by providing for the redistribution among refiners, in light of their entitlements claims, of the $293 million which they will receive pursuant to the settlement. In return, all claims and litigation relating to the final entitlements notices will be dismissed.

Recommendation: The recommendations of the Committee would (a) in the case of any crude oil overcharge settlement, order, or judgment entered into prior to the date of enactment, credit to the general fund of the Treasury any funds to which the Federal government is expressly entitled; (b) otherwise exempt such prior settlements and judgments, including the *Stripper Well* settlement and judgment, from the coverage of this legislation to the extent that any persons or classes of persons have an enforceable right, created or vested as of the date of enactment of this Act, pursuant to such a settlement, order, or judgment; and (c) in the event that there are other crude oil overcharge funds, credit to the general fund the full amount which remains after restitution to persons who have sustained economic injury.

The recommendation of the Committee also establishes a statute of limitations for the commencement of enforcement actions under the Emergency Petroleum Allocation Act of 1973. The recommendation provides that such enforcement actions would be barred unless commencement of such action is filed before the later of January 1, 1987 or six years after the date of the violation upon which the action is based.

The recommendation also earmarks up to $256 million of the Federal share of petroleum overcharge funds to be available for each of fiscal years 1987, 1988, and 1989 to supplement appropriations for the four DOE State Energy Conservation programs.

Federal energy management

Background: Currently the Federal Energy Management Program is required to use "marginal fuel costs" in calculating the energy cost savings of conservation investments in Federal buildings. Such cost estimates are difficult and expensive to calculate, but more importantly, they overstate the cost of electricity by factoring in the high cost of adding new capacity. This results in an overemphasis on efforts to save electricity rather than other fuels such as oil and gas.

Recommendation: The recommendation of the Committee would modify this requirement to permit the use of "average market" energy costs in these calculations. This change would make such calculations simpler, more accurate, and less costly to make. This change also would result in more cost effective investments in Federal building conservation projects.

The estimated savings from this change for fiscal year 1987 are $100 to $150 thousand; fiscal year 1988, $75 to $125 thousand; and fiscal year 1989, $75 to $125 thousand. The estimated three year savings are $250 to $400 thousand.

Manufacturers energy consumption survey

Background: The Energy Efficiency Improvement Program of the Department of Energy's Office of Conservation and Renewable Energy is currently required to collect industrial energy consumption data under the Energy Policy and Conservation Act (EPCA). However, this data is of questionable statistical value because of gaps in certain industries and because it is collected in a way that does not permit the extraction of data by geographical area or in certain other important subsets.

Recently the Office of Management and Budget (OMB) approved, and the DOE initiated, a new Manufacturing Energy Consumption Survey (MECS) that will collect more useful data, more efficiently through the Bureau of Census. For example, the new MECS survey will be conducted every three years rather than annually. DOE has stated that the data generated by this new survey will be more useful that the data currently required to be collected by the Office of Conservation and Renewable Energy.

Instead of maintaining two surveys, DOE and OMB are seeking to phase out the old survey (CE-189) and replace it with the new MECS survey. This new survey is already provided for in the Energy Information Administration's base program costs.

Recommendation: The recommendation of the committee would authorize the Energy Information Administration to conduct the new Manufacturers Energy Consumption Survey. In addition, it would repeal the existing survey.

The estimated annual savings are $300 thousand, or $900 thousand over three years.

Study of crude oil production and refining capacity in the United States

Recommendation: The recommendation of the committee would provide for the Secretary of Energy, acting through the Energy Information Administration (EIA) to conduct a study of domestic crude oil production and petroleum refining capacity and the effect of imports thereon. Within 60 days of enactment, the Secretary is directed to transmit to the President and the Congress such study including his findings and conclusions. The President, within 45 days thereafter, is directed to advise the Congress on his views on those levels at which imports of crude oil and refined petroleum products become a threat to national security. In addition, the President is to advise the Congress on those legislative or administrative actions, or both, required to prevent imports of crude oil and refined petroleum products from exceeding those import levels which threaten our national security.

In conducting this study it is expected that the EIA will consider all relevant factors as they relate to the domestic petroleum industry and its ability to produce crude oil and refined petroleum products, including such appropriate factors as domestic production needed for national defense and the impact of foreign competition on the economic welfare of domestic industries. The EIA shall provide notice and a reasonable opportunity for public comment on the matters within the scope of the study directed by this section, taking into account the need for the report within the time period authorized.

TABLE 4.2.—RECOUPMENT OF PETROLEUM OVERCHARGE FUNDS

[In millions of dollars, and fiscal year]

	Spending savings			Total
	1986	1987	1988	
Reconciliation instruction:				
Budget authority	−994	−344	−344	−1,682
Outlays	−1,186	−365	−356	−1,907
Committee:				
Budget authority	−100	0	0	−100
Outlays	−100	0	0	−100

FEDERAL ENERGY REGULATORY COMMISSION

User fees and annual charges.

Background: The existing authority of the Federal Energy Regulatory Commission (FERC) to recover its costs varies. For example, in the case of natural gas pipelines, its authority under the Independent Offices Approprations Act to assess fees is limited to recovering the costs of providing regulatory "benefits," such as granting certificates permitting the construction of new facilities. By comparison, in the case of hydroelectric licenses, its authority under the Federal Power Act extends to the full recovery of all costs associated with granting licenses for hydroelectric projects and regulating the operation of such projects.

Recommendation: The recommendation of the Committee would grant to the FERC generic authority to collect fees and annual charges in amounts sufficient to reimburse all the costs incurred by the Commission. FERC would have the discretion to determine the most equitable means for recovering its costs through a combination of annual charges and fees. (See table 4.3)

TABLE 4.3.—FERC FEES AND ANNUAL CHARGES

[In millions of dollars and fiscal year]

	Spending savings			Total
	1986	1987	1988	
Reconciliation instruction:				
Budget authority	−31	−56	−56	−143
Outlays	−31	−56	−56	−143
FERC appropriations:				
Budget authority	95	95	95	285
Outlays	95	94	95	284
Existing fees:				
Budget authority	−47	−48	−49	−144
Outlays	−47	−47	−47	−144
Committee recommendation:				
Budget authority	−31	−56	−56	−153
Outlays	−31	−56	−56	−153

DEPARTMENT OF THE INTERIOR

GREAT SWAMP NATIONAL WILDLIFE REFUGE

Recommendation.—The recommendation of the Committee provides for the Secretary of the Interior to appoint an interagency task force to develop a systematic and comprehensive environmental clean-up plan for the Great Swamp National Wildlife Refuge in New Jersey. No later than 240 days after enactment, the Secretary shall transmit to the Congress a report on progress in establishing such a task force and implementing the clean-up efforts. Development of such a plan shall be carried out with unobligated funds available to the U.S. Fish and Wildlife Service.

LEGISLATIVE HISTORY

On Wednesday, February 5, 1986, President Reagan transmitted to the Congress his budget for fiscal year 1987. Beginning on February 18, the Committee on Energy and Natural Resources commenced 3 days of hearings on the Administration's proposed budget. Subsequently the Committee transmitted its report to the Budget Committee on February 25.

On June 26, 1986, this process concluded, and reconciliation began, with Congressional approval of S. Con. Res. 120, the Concurrent Resolution on the Budget—Fiscal Year 1987. The Budget Resolution sets forth the Congressional budget for the Federal Government for fiscal years 1987 through 1989.

The conference agreement meets the $144 billion deficit reduction target required by the Gramm-Rudman-Hollings Act. the conference agreement projects deficits of $142.60 billion in FY87, $115.65 billion in FY88 and $77.90 billion in FY89.

As approved, the Budget Resolution contains reconciliation instructions to 9 authorization committees to effect savings in spending authority by changes in (a) existing statutory authorizations and (b) direct spending accounts, within their respective jurisdictions. These committees also were required to report such changes by July 25, 1986.

RECONCILIATION INSTRUCTION

The budget resolution contains reconciliation instructions to nine Senate committees, including the Energy and Natural Resources Committee, which are required to submit their recommendations to the Senate Budget Committee not later than July 25, 1986. In the aggregate, the reconciliation instructions require savings of $24.2 billion over three years, including $9.168 billion in fiscal year 1987.

The instruction to the Committee on Energy and Natural Resources (section 2(o)) would require the Committee to make changes in laws within its jurisdiction which provide spending authority (as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974) sufficient to reduce budget authority and outlays; (2) changes in laws within its jurisdiction which provide spending authority other than as defined in section 401(c)(2)(C) of the Act, sufficient to achieve savings in budget authority and outlays; or (3) any combination thereof, as follows: decrease budget authority by $1,025,000,000 and outlays by $1,217,000,000 in fiscal year 1987; decrease budget authority by $400,000,000 and outlays by $421,000,000 in fiscal year 1988; and decrease budget authority by $400,000,000 and outlays by $412,000,000 in fiscal year 1989.

RECONCILIATION ASSUMPTIONS

Although not binding, two specific assumptions were made as the basis for the reconciliation instruction to the Committee: First, the budget resolution assumes that all direct and indirect FERC costs will be recovered through user fees. Second, the budget resolution assumes Federal recoupment of $2.45 billion in additional petroleum overcharge funds over the next three years, of which $1.25 billion will be recovered in FY87. (See table 4.4)

Recoupment of petroleum overcharge funds.—The reconciliation instruction to the Committee assumes enactment of legislation to recover $2.45 billion in additional oil overcharge funds over the next three years, of which $1.25 billion will be recovered in FY87. These recouped funds are to be treated as undistributed offsetting receipts (function 950).

The amounts in the reconciliation instruction do not reflect the full amounts assumed from Federal recoupment of additional oil overcharge funds due to different interpretations by the Senate and House conferees of the disposition of these funds following recoupment. The House conferees assumed

that $256 million per year will be distributed to the States to provide overcharged persons with indirect restitution in appropriate administrative and judicial proceedings. Although the Senate conferees did not agree with this assumption, it nevertheless is reflected in the reconciliation instruction to the Committee.

Following Congressional approval of the Budget Resolution, the United States District Court for Kansas approved, on July 7, 1986, the settlement in the Department of Energy Stripper Well Exemption Litigation (MDL No. 378). According to the Department of Energy, under this Stripper Well settlement and judgment the Department anticipates the ultimate recovery and disposition of approximately $4.5 billion in its remaining crude oil cases and thus addresses all crude oil funds, including funds in other administrative and judicial proceedings "regardless of whether such funds are currently in escrow or whether such cases have commenced on the date of this Order", as noted by Judge Theis in approving the Agreement (See Appendix A for opinion by Judge Theis). The DOE anticipates that the Court, pursuant to the agreement, will order disbursement of funds in mid-August and estimates that it will receive approximately $295 million in FY86 for deposit in the Federal Treasury. In FY87, DOE currently estimates Federal receipts of approximately $375 million. The additional monies collected for deposit in the Federal Treasury, which DOE anticipates will take years to recover, should be approximately $800 million. There are sufficient differences between these DOE estimates of funds currently available in escrow following Court approval of the Settlement and the assumptions in the Budget Resolution that the Senate's earlier position on being held harmless for the purpose of compliance with its reconciliation instruction is critical to the Committee meeting its instruction.

The legislative history on the Budget Resolution anticipated such a court action. The House conferees assumed that in the event that "actions beyond the control of Congress or the Administration make part of these savings unachievable, the committees of jurisdiction would be held harmless for the savings that could not be achieved, if any." This is consistent with a colloquy between Senators McClure, Domenici, Rudman and Chiles during consideration of the Senate Budget Resolution. Senator McClure asked that it be clarified that it was not the intention of the budget resolution to require the Energy Committee to comply with this reconciliation assumption should funds no longer be available for recoupment due to the court settlement of this matter. At the time, Senator McClure was assured by Budget Committee Chairman Domenici that neither the Appropriations Committee nor the Energy Committee would be obliged to achieve comparable savings elsewhere within the Committee jurisdiction should recoupment no longer be feasible.

Thus there was apparent agreement on this point despite the fact that the conference report states that the Senate conferees did not accept the House assumption for function 950. But equally important, absent a conference agreement on this assumption, the position of the Senate at the time of passage of the Budget Resolution would govern Senate action. If the Committee would have to distrub or disrupt the Stripper Well settlement in order for the Committee to achieve the assumed savings in the reconciliation instruction, the legislative history on the Budget Resolution indicates that the Committee would not be expected to do so. Moreover, the consequence would be extensive delay in the Federal government's receipt of the funds to which it is entitled under the agreement. Such delays would be contrary to the balanced budget objectives of the Gramm-Rudman-Hollings Act.

Federal Energy Regulatory Commission Fees.—The budget resolution assumes that FERC will be funded at the current program level. The reconciliation instruction to the Committee assumes that FERC will be funded at the current program level, and that all of FERC's direct and indirect costs will be recovered through the use of charges and fees assessed against all companies that are subject to FERC's jurisdiction.

TABLE 4.4.—RECONCILIATION INSTRUCTION ASSUMPTIONS IN SENATE CONCURRENT RESOLUTION 120 FOR COMMITTEE ON ENERGY AND NATURAL RESOURCES

[In millions of dollars and fiscal year]

Program	Assumed savings			
	1987	1988	1989	Total
FERC user fees (270):				
Budget authority	−31	−56	−56	−143
Outlays	−31	−56	−56	−143
Petroleum overcharge funds (950):				
Budget authority	−994	−344	−344	−1,682
Outlays	−1,186	−365	−356	−1,907
Total:				
Budget authority	−1,025	−400	−400	−1,825
Outlays	−1,217	−421	−412	−2,050

COMMITTEE ACTION

The Committee on Energy and Natural Resources met in open business session on July 29 to consider its recommendations to the Budget Committee in compliance with its reconciliation instruction in S. Con. Res. 120. On July 29, the Committee, in open business session by majority vote of a quorum present approved the legislative provisions described herein, in compliance with its reconciliation instruction.

Following Congressional approval of the Budget Resolution, the United States District Court for Kansas approved, on July 7, 1986, the settlement in the Department of Energy Stripper Well Exemption Litigation (MDL No. 378).

The Committee adopted an amendment offered by the Chairman to clarify the Committee's intent with respect to the *Stripper Well* settlement agreement and the July 7, 1986 judgment of the Kansas U.S. District Court approving that settlement. The Committee bill as amended preserves fully the agreement and judgment while at the same time recouping for the Federal Treasury all crude oil overcharge funds not subject to the agreement and judgment. The legislation does not expand or reduce in any way the scope of the funds covered by the *Stripper Well* settlement agreement or the court's judgment, including the escrowed and deficiency funds in MDL 378, the funds currently in DOE or other escrow accounts, and any other funds in which rights were created or vested by the agreement or judgment. The Committee is aware of the opinion of the Comptroller General that the court did not have the authority to address the disposition of the amounts recovered in the future. To the extent that the agreement or judgment did not cover overcharge funds to be received from future cases, or if the court did not have the legal authority to allocate such funds, the Committee intends that such future overcharge funds be deposited in the Federal Treasury. The Committee believes however that the opinion of the Comptroller is in error and that the settlement agreement does cover such funds and that the court had the legal authority to determine the distribution of such funds. The court's authority and intent, of course, is a matter which will be determined by the courts.

The rollcall vote on reporting its recommendations was 18 yeas and 0 nays, as follows:

Yeas: McClure, Hatfield,* Weicker,* Domenici,* Wallop,* Warner,* Murkowski,* Nickles, Hecht, Evans, Johnston, Bumpers,* Ford,* Metzenbaum,* Melcher, Bradley,* Bingaman,* Rockefeller.*

Nays—0.

SECTION-BY-SECTION ANALYSIS

The recommendations of the Committee appear as title IV of the Omnibus Budget Reconciliation Act of 1986.

TITLE IV—COMMITTEE ON ENERGY AND NATURAL RESOURCES

SUBTITLE A—DEPARTMENT OF ENERGY PROGRAMS

RECOUPMENT OF PETROLEUM OVERCHARGE FUNDS

Crude oil overcharge funds (Sec. 401)

Subsection 401(a) defines "restitutionary amount" for the purpose of sections 402 and 403. Sections 402 and 403 specify the procedure for distribution of restitutionary amounts which are held or received as a result of a settlement, order, or judgment (including a declaratory judgment) involving overcharges resulting from alleged crude oil pricing violations under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970.

Statute of limitations (Sec. 402(b)): Subsection 402(b) amends section 18 of the Emergency Petroleum Allocation Act of 1973 to establish a statute of limitations for the commencement of enforcement actions. A new paragraph 18(b)(1) provides that such enforcement actions would be barred unless commencement of such action is filed before the later of January 1, 1987 or six years after the date of the violation upon which the action is based.

Distribution of restitutionary amounts (Sec. 402)

Subsection 402(a) provides for crediting to the general fund of the Treasury any restitutionary amounts to which the Federal government is entitled pursuant to the express terms of a settlement, order, or judgment entered into prior to the date of enactment.

The provision further provides that nothing in the subtitle shall affect any amounts to which persons or classes of persons, other than the Federal government, have an enforceable right, created or vested as of the date of enactment of this Act, under such a settlement, order, or judgment, including the *Stripper Well* Settlement (MDL No. 378) and judgment.

For the purpose of petroleum overcharge cases under the Emergency Petroleum Allocation Act the Department of Energy regulations define "person" to include any "governmental unit or instrumentality thereof," (10 CFR 205.2). The phrase "persons" or "classes of persons" as used in section 402 is

* Indicates vote by proxy.

intended to include States, territories and possessions of the United States who are parties to such settlements or court order.

Subsection 402(b) direct that, effective on the date of enactment, any restitutionary amounts, other than those governed by subsection (a), shall be credited to the Treasury after identification of an restitution to those persons who have sustained economic injury.

State energy conservation programs (Sec. 403)

Section 403 earmarks up to $256 million of the Federal share of petroleum overcharge funds to be available for each of fiscal years 1987, 1988, and 1989 to supplement funding for the four DOE State Energy Conservation programs.

FEDERAL ENERGY MANAGEMENT

Section 404 amends paragraph 544(a)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8255(a)(2)), relating to Federal energy management, to permit the use of "average market" energy costs, rather than "marginal fuel costs", in calculating the energy cost savings of conservation investments in Federal buildings.

MANUFACTURERS ENERGY CONSUMPTION SURVEY

Section 406 amends section 205 of the Deparment of Energy Organization Act (42 U.S.C. 7135) to authorize the Administrator of the Energy Information Administration to conduct the new Manufacturers Energy Consumption Survey (MECS). Details are provided in the statutory language. Nothing in this section affects the existing authority of the EIA to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).

Section 406(b) repeals the authority for the old "CE-189" survey being conducted by the DOE Office of Conservation and Renewable Energy under Part E of title III of the Energy Policy and Conservation Act (42 U.S.C. 6341-6346).

STUDY OF CRUDE OIL PRODUCTION AND REFINING CAPACITY IN THE UNITED STATES

Section 407(a) directs the Secretary of Energy, acting through the Energy Information Administration, to conduct a study of domestic crude oil production and petroleum refining capacity and the effects of imports thereon. The findings and conclusions of the Secretary must be transmitted to the President and the Congress within 60 days of enactment (subsection (c)). Subsection (b) provides for notice and reasonable opportunity for public comment.

Within 45 days after transmission to the President of the report of the Secretary, the President shall advise the Congress what his views are on what those legislative or administrative actions, or both, that will be required to prevent imports of crude oil and refined petroleum products from exceeding those import levels which threaten our national security.

SUBTITLE B—FEDERAL ENERGY REGULATORY COMMISSION

FERC fees and annual charges (Sec. 411)

Subsection 402 authorizes the Federal Energy Regulatory Commission (FERC) to assess and collect fees and annual charges sufficient to reimburse the United States for all of the costs incurred by the Commission. Such fees or annual charges shall be computed by methods that the Commission determines, by rule, to be fair and equitable. Any monies received under this section shall be credited to the general fund of the Treasury. The Commisssion may, by rule or order, waive any fee or annual charge for good cause shown.

The Committee anticipates that the Commission will establish a mechanism whereby regulated companies may include these fees and annual charges in their rates. Such a mechanism should allow recovery of these costs on a timely basis.

SUBTITLE C—DEPARTMENT OF THE INTERIOR PROGRAM

GREAT SWAMP NATIONAL WILDLIFE REFUGE

Section 422(a) directs the Secretary of the Interior to appoint an interagency task force to develop a systematic and comprehensive environmental clean-up plan for the Great Swamp National Wildlife Refuge in New Jersey. Details of the plan are specified in the statute. Within 240 days of enactment, the Secretary must transmit to the Congress a report on progress in establishing such a task force and implementing the clean-up efforts (subsection (b)). Subsection (c) provides that development of the plan is to be carried out with unobligated funds available to the U.S. Fish and Wildlife Service.

COST AND BUDGETARY CONSIDERATIONS

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following estimate of the costs of the measure has been provided by the Congressional Budget Office:

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, July 30, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR. MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Committee print entitled "Title IV, Omnibus Budget Reconciliation Act of 1986".

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

JULY 30, 1986.

1. Bill number: Not yet assigned.

2. Bill title: Title IV, Omnibus Budget Reconciliation Act of 1986.

3. Bill status: Committee print adopted by the Senate Committee on Energy and Natural Resources, July 29, 1986.

4. Bill purpose: The bill specifies a procedure for the distribution of funds received as a result of a settlement, order, or judgment involving overcharges resulting from actual or alleged crude oil pricing violations. The bill establishes fees and annual charges for the Federal Energy Regulatory Commission, and authorizes the creation of an interagency task force for the development of a clean-up plan for the Great Swamp National Wildlife Refuge in New Jersey.

5. Estimated cost to the Federal Government: The table on the following page summarizes the bill's estimated impact on the federal budget, relative to both current law and the budget resolution baseline as adjusted for enacted legislation.

Basis of Estimate: Subtitle A of the bill specifies the procedure for the distribution of restitutionary amounts involving actual or alleged crude oil pricing violations. The bill directs all restitutionary amounts to which the federal government is entitled to be credited to the general fund of the Treasury. The bill states that nothing in subtitle a shall affect any amounts to which persons or classes of persons currently have an enforceable right, pursuant to existing settlements, orders, or judgments. Such settlements are specified to include the settlement, approved on July 7, 1986, in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, in the United States District Court for the District of Kansas.

Based on information provided by the Department of Energy, CBO estimates that crude oil overcharges not governed by the Stripper Well agreement will total $250 million. For the purpose of the estimate, CBO assumes that $50 million the remaining $250 million in crude oil overcharges will be disbursed to injured parties under the existing provisions for direct restitution, (which are not changed by the proposed legislation). Under current policies, the federal government is expected to receive 50 percent of remaining funds, or $100 million, with the states receiving the other 50 percent. CBO estimates that government of this bill will result in additional receipts, and hence reduced outlays, of $100 million in fiscal year 1987, relative to the resolution baseline.

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—CHANGE FROM CURRENT LAW AND FROM THE RESOLUTION BASELINE ADJUSTED FOR ENACTED LAW

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
CHANGES IN DIRECT SPENDING					
Crude oil overcharges:[1]					
Estimated budget authority	−100				
Estimated outlays	−100				
Conservation programs:					
Estimated budget authority	256	256	256		
Estimated outlays	64	235	244	192	21
FERC fees:					
Estimated budget authority	−31	−56	−56	−56	−56
Estimated outlays	−31	−56	−56	−56	−56
Total direct spending:					
Estimated budget authority	125	200	200	−56	−56
Estimated outlays	−67	179	188	136	−35
CHANGES IN AUTHORIZATIONS					
Conservation grants:					
Authorization level	−256	−256	−256		
Estimated outlays	−64	−235	−244	−192	−21
Other DOE programs:					
Authorization level	(2)	(2)	(2)	(2)	(2)
Estimated outlays	(2)	(2)	(2)	(2)	(2)
Great Swamp Wildlife Refuge:					
Authorization level	(2)	(2)	(2)	(2)	(2)
Estimated outlays	(2)	(2)	(2)	(2)	(2)
Total authorizations:					
Authorization level	−256	−256	−256		
Estimated outlays	−64	−235	−244	−192	−21

[1] The amount of funds to be obtained from future oil overcharge settlements or judgments is highly uncertain. The bill language pertaining to any "enforceable right, created or vested," is subject to potential litigation. Such litigation, if it occurs, may affect the timing of overcharges distribution and the amount of funds collecled by the Federal Government for deposit in the Treasury.

[2] Less than $500,000.

Note.—The budget impact of this bill falls within budget functions 270 and 950.

The CBO estimates assumes that, if this legislation is enacted, the stripper well litigation agreement will remain in force, governing the distribtuion of all but about $250 million in crude oil overcharges. This assumption is made because the bill does not repudiate that agreement or driect that the terms of the agreement should not be met—nor does the bill specify that any parties to the agreement do not have enforceable rights under the agreement. If further liti-

gation or judicial reviews alters the distribution scheme established by the stripper well agreements, then the additional funds collected by the federal government as a result of this bill could increase from $100 million (as shown in the above table) to as much as $1,500 million. CBO does not project either the occurrance or the outcome of any future litigation concerning the existing agreement.

Subtitle A also contains a provision that makes restitutionary amounts recovered by the federal government for crude oil overcharges available to the Secretary of Energy for direct disbursement to states for energy conservation programs. The amounts to be disbursed under this provision shall be the lesser of: (1) $256 million less any amounts appropriated for such programs, and (2) the total of restitutionary amounts available. This provision shall apply to fiscal years 1987, 1988, and 1989. CBO estimates that the amounts available, under current law and the other provisions of subtitle A, will be sufficient to fund the conservation programs at the level of $256 million for all these fiscal years. This provision of the bill creates permanent spending authority for the next three fiscal years, where none currently exists; hence it is an increase in direct spending relative to both the baseline and current law. However, the creation of this permanent authority simultaneously reduces the amount of appropriations that would be necessary to reach baseline funding levels by $256 million per year. This change is equivalent to a reduction in authorizations, as shown in the above table. Taken together, the direct spending and the authorization changes for energy conservation program produce no net change in spending relative to the baseline or current law.

Subtitle A contains three additional provisions concerning Department of Energy programs: (1) a revision in the Federal Energy Management Program's procedure for calculating the energy cost savings of conservation investments, (2) an amendment to the Energy Policy and Conservation Act that strikes a requirement to conduct certain energy consumption studies, and (3) a requirement that the Department conduct a study of domestic crude oil production and petroleum refining capacity. These three provisions are expected to reduce federal outlays by less than $500,000 per year, if appropriations are correspondingly reduced.

Subtitle B of the bill requires the Federal Energy Regulatory Commission to assess and collect fees and annual charges to recover all costs incurred by the commission. Under current policies, the commission collects fees that offset approximately 50 precent of its costs. Based on information provided by the commission, CBO estimates that enactment of this bill will result in additional collections, and hence reductions in federal outlays, of $31 million in fiscal year 1987, and $56 million per year for subsequent fiscal years.

Subtitle C of the bill provides for the appointment of an interagency task force to develop a systematic and comprehensive clean-up plan for the Great Swamp National Wildlife Refuge in New Jersey. This provision is not expected to have a significant impact on federal outlays.

6. Estimated cost to state and local governments:

The provision for distribution of crude oil overcharge funds is expected to decrease the distribution of such funds to states by $100 million in fiscal year 1987, relative to current law and the resolution baseline. Under this bill, CBO estimates that the states will still receive funds from crude oil overcharge cases that are governed by the stripper well litigation agreement, approved on July 7, 1986.

The annual charges for the Federal Energy Regulatory Commission authorized by this bill would affect electric utility rates, and thus indirectly increase the utility costs of state and local governments. This increase is not expected to be significant.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Peter Fontaine (226-2860).

10. Estimate approved by:

C.G. NICKOLS
(For James L. Blum, Assistant Director for Budget Analysis).

[In the United States District Court for the District of Kansas]

IN RE: THE DEPARTMENT OF ENERGY STRIPPER WELL EXEMPTION LITIGATION

OPINION AND ORDER

Before the Court is a settlement agreement of historic proportions, which represents the culmination of substantial efforts on the part of the litigants involved. This monumental multidistrict litigation has spanned eight years, involved hundreds of parties, entailed voluminous pleadings and concerned a variety of factually and legally complex issues of substance and procedure. At this juncture, the task of the Court is the appropriate distribution of over one billion dollars in escrowed stripper well overcharge funds. The settlement agreement currently before the Court represents a comprehensive charter for the resolution of the immediate matter of satisfactory disbursement of the escrow held under the Court's direction, as well as two related matters; distribution of crude oil overchange funds in other cases, and settlement of litigation concerning the Department of Energy ("DOE") Entitlements Program.

History of the litigation

The history of the liability portion of the litigation was summarized in this Court's memorandum and order of September 13, 1983:

"This action is a consolidation of a number of cases brought by oil producers to enjoin the Federal Energy Administration (FEA), now the Department of Energy (DOE), from enforcing Ruling 1974-29, concerning low production oil wells, commonly called 'stripper wells.' The Court enjoined enforcement of the regulations in question, but ordered the oil producers to deposit into escrow the difference between the stripper well price and the controlled price of crude oil affected by the injunction. As of October 31, 1982, the escrow fund, including interest, contained over one billion dollars.

"The issue of the validity of the regulations and Rulings was finally settled in *In re The Department of Energy Stripper Well Exemption Litigation*, 690 F. 2d 1375 (Em. App. 1982), *cert. denied*, [459 U.S. 1127] (1983), in which the Temporary Emergency Court of Appeals (TECA) reversed this Court's decision and upheld the rulings and regulations as valid. TECA remanded this action to this court, with instructions to enter judgment for DOE, which judgment has been entered. The effect of TECA's decision is to declare the funds deposited in escrow to be overcharges recovered due to violations of the petroleum pricing regulations. The remaining task is the appropriate dispensation of the escrowed funds—in effect a monumental interpleader action with potential classes and subclasses."

In re the Department of Energy stripper well exemption litigation

[578 F. Supp. 586, 589 (D. Kan. 1983)]

TECA's decision made it clear that the escrowed funds represented crude oil overcharges and would need to be distributed to or for the benefit of injured parties. Beginning in the months following the TECA decision and continuing until the present time, this Court has received motions for intervention from scores of private and governmental entities and groups, at every level of the crude oil production and distribution chain, who have claimed to be the parties injured by the overcharges. As a result of the Court's orders granting permissive intervention, the parties to this litigation include, in addition to the Department of Energy and the plaintiff-producers:

1. a number of refiners, that claimed injury as a result of the impact of the overcharges on the Entitlements Program, as well as, in some cases, by virtue of their direct purchases of crude oil;

2. groups of petroleum product resellers and retailers, that claimed injury as a result of having paid, but having been unable to pass on, a portion of the overcharges;

3. a number of individual customers and consumer groups (including airlines, truckers and other motor vehicle users, and utilities), that claimed the overcharge costs had been passed along to them; and

4. states and territories that claimed the funds at issue as representatives of their citizens who allegedly paid higher prices as a result of the overcharges.

On September 13, 1983, this Court granted the motion of the Department of Energy to refer the issue of who was injured by the overcharges to the Office of Hearings and Appeals ("OHA") to conduct factfinding and attempt to trace the impact of the overcharges. On December 30, 1983, the OHA published in the Federal Register a public notice concerning the factfinding referral, which notice discussed the background of the litigation and inviting public comments on all aspects of the referral, including the impact of the overcharges and possible refund distribution mechanisms. 46 Fed Reg. 57608. In response to the notice, the OHA received over one hundred comments, including many comments from entities and groups not parties to this litigation. See Report of the Office of Hearings and Appeals on the Department of Energy, In Re Department of Energy Stripper Well Exemption Litigation, at Appendices A and B (June 19, 1985) ("OHA Report").

On May 9, 1984, the OHA published another notice in the Federal Register, announcing that it would hold an evidentiary hearing on the feasibility of tracing the impact of the overcharges. 49 Fed. Reg. 19718. That hearing was held over a period of twenty-two days, between June and October of 1984. Sixty-four public and private entities, representing thousands of members, participated actively in the hearing. Over thirty witnesses, most of whom were nationally recognized economists, econometricians and statisticians, testified, and a record of almost 13,000 pages of written and oral presentations was compiled.

On June 21, 1985, the DOE submitted the OHA Report, together with the DOE's Statement of Restitutionary Policy, to this Court. Based on the evidence which it had received and evaluated, the OHA concluded

that it was impossible to trace directly the impact of the overcharges. OHA Report at 25. However, with respect to the Entitlements Program participants, the OHA estimated that 2.7 to 8.1 percent of the overcharges were absorbed by the refiners as a class, while an estimated 91.9 to 97.3 percent of the overcharges were borne by resellers and consumers, in the aggregate. Id. at 77-83.

The DOE's Statement of Restitutionary Policy, which was published in the Federal Register, recommended that the funds remain in escrow while the Congress was given an opportunity, during its next session, to select appropriate means for restitution. 50 Fed. Reg. 27400 (July 2, 1985). If Congress did not enact legislation providing a specific means of distribution, the DOE Statement recommended that the escrowed money should be paid to the general fund of the United States Treasury. Further, the DOE proposed to apply this restitutionary policy to other overcharge funds in crude oil cases in which it was impossible to trace the effects of the overcharges.

On June 14, 1985, and September 20, 1985, respectively, the National Council of Farmer Cooperatives and Consumers Power Company moved to intervene in this multidistrict litigation. On October 3, 1985, the Court permitted their intervention because both parties had participated in the OHA factfinding process. The Court stated that unless potential intervenors had appeared before the OHA intervention would be denied absent extraordinary circumstances. On January 23, 1986, a number of groups purporting to represent low-income persons who used energy for home heating during the overcharge period filed an application to intervene. The Court denied this application on February 27, 1986, on the grounds that (i) several of the groups had failed to participate in the OHA proceedings and (ii) with respect to those groups which had participated before the OHA, the groups had not made a claim for the escrowed funds and the interests of their consumer constituents were "fully protected by the longstanding and active participation of the States and the Department of Energy" in this litigation. Dk. no. 746, p.2. In the past several months the Court has received, but has not yet ruled on, applications for intervention from a number of additional groups which had not previously appeared before the Court and which did not participate before the OHA: the Association of American Railroads, the American Waterways Operators, Inc., the Council of American Flag-Ship Operators, the National Congress of American Indians, and Southland Royalty. These applications for intervention were filed only after settlement negotiations had been conducted for several months and had culminated in a proposed settlement agreement, the existence of which was widely publicized.

On August 8, 1985, the Court held a status conference to establish a schedule for filing comments on the OHA Report and the DOE Statement. At that hearing a number of parties indicated their opposition to the findings and conclusions contained in the OHA Report. The parties also informed the Court that efforts were underway to settle the restitutionary issues in this litigation. The Court set September 23, 1985, as the deadline for the parties to submit written comments.

On September 12, 1985, the Court was informed that the OHA had prepared a draft version of its final report. Because of disputes concerning the draft report, the Court extended the deadline for filing comments on the OHA Report. Thereafter, the Court postponed the deadline several times because of the pendency of settlement negotiations. Upon the submission of the proposed settlement agreement to the Court, further proceedings regarding the OHA factfinding and the DOE Statement were postponed and the order setting a date for the submission of comments was vacated.

THE SETTLEMENT AGREEMENT

The parties to the settlement agreement include the Department of Energy, the fifty States and six Territories and Possessions ("the States"), the Refiners, the Resellers, the Retailers, the Agricultural Cooperatives, the Airlines, the Surface Transporters, and the Utilities. Vigorously contested negotiations were conducted by the representatives of each of these parties from November of 1985 through May 21, 1986, when the DOE signed the settlement agreement.

The agreement addresses three distinct matters: distribution of the Court's escrow and other funds relating to the injection well issue; distribution of crude oil overcharge funds in cases unrelated to the instant action; and resolution of extensive litigation concerning the DOE Entitlement Program. The distribution of the escrow monies, monies attributable to the injection well issue but not yet deposited into the escrow (deficiency funds), and monies in unrelated cases is predicated upon the DOE's estimate that the total of all such funds will be between four and five billion dollars. That amount includes the Court's escrow, which amounts to over one billion dollars, and an additional $333 million collected and held by the DOE as a result of a prior settlement of a case involving the injection well funds previously deposited with this court. *See* 51 Fed. Reg. 56 (January 2, 1986).

The agreement authorizes, in Parts II.A and B, the distribution of escrow funds to the Refiners and the Intervenors other than the States in specified amounts, as follows:

Refiners	$298,514,000
Retailers	58,460,694
Resellers	58,460,694
Agricultural Cooperatives	45,476,983
Airlines	38,987,129
Surface Transporters	10,750,000
Rail and Water Transporters	9,750,000
Utilities	5,250,000

The balance in the escrow, including whatever deficiency funds are collected in the future, will be divided between the United States and the States for energy-related uses for the public benefit.

The Refiners will distribute their escrow in order to effectuate a settlement of other pending litigation concerning the Entitlements Program. To achieve that end, the funds received by the Refiners will be distributed according to the Refiners Escrow Agreement. *See* Final Settlement Agreement, Exhibit A, Dk. no. 814. Of the $298,514,000 to be distributed to the Refiners, $257,238,800 will be distributed among those refiners who would have had the right to sell entitlements if the remaining entitlements notices had been issued; $19,787,600 will be distributed, based on "runs-to-stills" (volume refined), among refiners who would have had to buy entitlements; another $19,787,600 will be distributed among all refiners based on runs-to-stills; and $1.7 million will be paid to Consumers Power, a cooperative utility that operates a refinery.

Many elements of the distributions of Resellers, Retailers, Airlines and Co-ops are essentially identical and are summarized here. An Initial Distribution will be made to each of the parties' escrow accounts in the following amounts:

Resellers	$44,690,371
Retailers	44,690,371
Airlines	29,793,581
Co-ops	34,751,177

One year from the date of this Order, provided a sufficient amount of deficiency funds have been collected, each escrow account will receive a Second Distribution, as follows:

Resellers	$13,790,323
Retailers	13,790,323
Airlines	9,193,548
Co-ops	10,725,806

The States and the DOE will divide all residual funds currently available on the date of the Order, and subject to payment of the Second Distribution, all future funds deposited in the Court's escrow. As discussed below, the States and the DOE will also divide cured oil funds administered by the OHA, and other crude oil overcharge funds. Initially, the DOE will advance $200 million to the States to be repaid from future crude oil funds. Furthermore, $50 million from funds in the Court's escrow which would otherwise be distributed to the DOE will be reserved to assure the payment of the first $50 million from funds administered by the OHA to the States. When the DOE disburses those funds pursuant to the agreement, the $50 million reserve will be paid to the DOE. Thus, assuming $1.433 billion in this Court's escrow and payment to all other parties, the States will receive $660 million and the DOE will receive $260 million, assuming payment of the $50 million from the OHA's funds. After repayment of the DOE advance, all further funds will be divided equally between the DOE and the States.

The fifty-six jurisdictions to receive funds include the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, the Northern Marianas, Guam and American Samoa. The funds are allocated based on consumption of petroleum products during the period of controls, as determined by the DOE. *See* Final Settlement Agreement, Exhibit H. After the disbursements are made on the Payment Date established by the agreement, and after the Second Distributions to the Resellers, Retailers, Airlines and Co-ops have been funded, there will be a distribution every ninety days or when the escrow thereafter reaches $10 million. Further payments to the States from deficiency funds will reflect an apportionment to assure repayments to the DOE of the funds advanced by the DOE to the States.

Each State has discretion to select among energy-related programs identified in the agreement of otherwise approved by an appropriate court or the OHA, that are designed to benefit consumers of petroleum within the States (which may include motor vehicle operators, electric utility customers, home heating oil customers and other end-users of petroleum products). Before receiving the funds, the Governor of each jurisdiction must assure that they will be utilized for such programs, and must identify the programs prior to spending the funds. Among the approved programs are the five identified by Congress in the Warner Amendment, Section 155 of the Further Continuing Appropriations Act of 1983, Pub. L. No. 97-377, and the programs identified in Exhibit J to the Agreement. Each State must provide public notice and a public

hearing prior to selecting the programs for which it will spend the funds. The States may use a portion of the funds received, up to the amount permitted by legislation or up to five percent, for program administrative expenses, attorney fees and other litigation costs.

The DOE will receive the funds discussed above and will obtain repayment of the amount advanced to the States, identified above, from deficiency funds and from the OHA funds. Funds received by the DOE will be deposited in the United States Treasury or will be held in reserve to meet the DOE's obligation to fund entitlements exception relief.

Under the settlement agreement, the DOE will modify its June 21, 1985, Statement of Restitutionary Policy governing crude oil funds by providing an opportunity in special refund proceedings pursuant to 10 C.F.R. Subpart V for non-settling waiving claimants to submit any claims of injury from an alleged crude oil violation, and by dividing between the federal government and the States all funds not distributed to successful claimants. Funds received by the States under such proceedings will be allocated and used for the same purposes and in the same manner as funds received from the Court's escrow. The requirements for letters of assurance from the Governors, public hearings, identification of programs prior to expenditures, limitations on programs and reporting requirements are identical to those which apply to funds from the Court's escrow. Funds received by the DOE as a result of this policy will be subject to the same limitations on uses as described above, i.e., for deposit in the Treasury or to fund entitlements exception relief. The DOE will recommend that all judicial cases involving crude oil be resolved similarly.

All parties and claimants receiving funds under the agreement will waive any further claims to crude oil refunds. In light of the waivers which have already been signed and the tens of thousands of additional waivers which are expected to be signed, few claims by non-waiving individuals asserting injury are likely to be filed at the OHA in other crude oil cases. As a result, the policy to be adopted by the DOE will be to establish an initial reserve for such claims amounting to twenty percent of the funds received by the DOE and to disburse the remaining eighty percent in advance of the implementation of a claims procedure. The reserve in the OHA will assure the availability of adequate funds for successful claimants. The DOE will issue the modified policy statement twenty days from the date of the Court's Order, and will distribute the available OHA crude oil funds, amounting to at least $100 million, ten working days later.

The question of the deficiency funds to be paid to the Court's escrow is not resolved by this agreement. As to most of the firms involved, discovery has not been completed. These matters must be resolved on a company by company basis. While the agreement does not resolve any of the deficiency issues, it calls for cooperation among the parties to the agreement to expedite resolution of discovery issues, for the payment of uncontested amounts of deficiencies, for the waiver of penalties and for dismissal of any producer party when its deficiency has been satisfied.

There are two cases before the Court which are not part of M.D.L. No. 378: *Kerr-McGee Corp.* v. *Gulf Oil Corp.*, Civil Action No. 84-1061, and *Total Petroleum Corp.* v. *Muskegon Oil Co.*, Civil Action No. 85-1968. Gulf and Muskegon have paid funds into the Court's escrow. The agreement establishes reserves within the escrow in the amounts of $30 million for *Kerr-McGee* and $10 million for *Total*, in the event the Court determines that any judgment should be satisfied from such funds. *See* Final Settlement Agreement, ¶ II.C.2. However, the parties to the agreement retain the right to challenge the position that judgments in these cases may be paid from the Court's escrow.

COMMENTS REGARDING THE SETTLEMENT AGREEMENT

The parties to M.D.L. No. 378 (with one exception) and to the settlement filed a joint memorandum in support of the settlement agreement. Several other interested parties, such as Shell Oil Company and the American Trucking Association, Inc., also filed individual supporting memoranda. Only one party to M.D.L. No. 378 which made a claim before the DOE for the escrowed funds did not sign the agreement. That party, Total Petroleum, initially filed an objection to the agreement. Total's concerns have been resolved by the parties and Total has withdrawn its objection. The Association of American Railroads, the American Waterways Operators, Inc., and the Council of American Flag Ship Operators (previously listed generically as "Rail and Water Transporters") originally filed objections to the proposed settlement, which objections were later withdrawn.

The Georgia Poverty Rights Organization ("GPRO") and the National Congress of American Indians ("NCAI") both submitted letters to the Court which reflected their particular concerns. The GPRO requested that the settlement agreement mandate that each State expend a proportionate share of its funds on identifiable low-income programs, depending on the percentage of low-income households in the State. The NCAI requested a similar apportionment for tribal programs, based on the percentage of Native Americans within each State. As a result of negotiations, the signatories to the agreement and NCAI agreed that NCAI would withdraw its motion to intervene in exchange for the States conferring on the tribal governments and their citizens an appropriate equitable share of the benefits from State energy-related restitutionary programs either as a part of the programs benefitting the general population or otherwise. Dk. no. 846. The GPRO has agreed to dismiss its appeal in exchange for similar considerations. Dk. no. 843. In both cases, the concerns expressed by these groups were directed solely at the conditions governing the States' uses of the funds under the agreement; and in both cases, stipulations as to language and criteria resolved the incipient obstacles.

Muskegon Development filed comments supporting the settlement, but asked that an additional amount of $573,132.48, plus interest since February 28, 1986, be added to the set-aside for *Total Petroleum Corp.* v. *Muskegon Development Co.*, Civil Action No. 85-1968-T, since the $10 million called for in the agreement is no longer adequate to cover fully the claims made in that case. The parties to the agreement have indicated that they have no objections to this addition.

Southland Royalty Company filed an opposition to the agreement, alleging that the settlement would adversely affect Southland's claim that Gulf Oil Corporation erroneously deposited in the Court's escrow monies owed to Southland. Specifically, Southland claims that Gulf deposited funds into the escrow which properly qualified for uncontrolled prices under the DOE's tertiary incentive regulations, a petroleum production matter which was not before this Court in M.D.L. No. 378. DOE has opposed any withdrawal of escrowed funds deposited by Gulf because the DOE asserts that Gulf has not paid all that it owes. If Southland can substantiate its claims, the DOE has no objection to paying Southland once all of Gulf's deficiencies are satisfied. The parties to the agreement have proposed to establish a set-aside of $6 million. Southland has accepted this offer.

Congressman John Dingell, Chairman of the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, wrote a letter to the Court delineating certain objections to the settlement agreement. Later in this opinion the Court will address in detail Congressman Dingell's concerns.

Finally, on June 12, 1986, this Court held an open hearing on the settlement agreement. Over seventy attorneys attended the proceedings. At this hearing, parties in favor of and opposed to the settlement agreement were given the opportunity to comment on the agreement. A number of parties spoke in favor of the agreement. Because of its concerns regarding the set-aside, Southland spoke in opposition to the agreement.

COURT APPROVAL OF THE SETTLEMENT AGREEMENT

In its review of the settlement agreement, the Court is guided by a number of principles. As a matter of public policy, the law favors and encourages settlements. *Bass* v. *Phoenix Seadrill/78, Ltd.*, 749 F.2d 1154 (5th Cir. 1985); *Amoco Production Co.* v. *Federal Power Commission*, 465 F.2d 1350 (10th Cir. 1972). The settlement of actions should be fostered to avoid protracted, wasteful and expensive litigation. *Pfizer. Inc.* v. *Lord*, 456 F.2d 532 (8th Cir.), *cert denied*, 406 U.S. 976 (1972). Particularly in complex cases the litigants should be encouraged to determine their respective rights between themselves. *See Manual for Complex Litigation. Second*, § 23.11 (1985). It is in the interests of the courts and the parties that there should be an end to litigation, and the law favors the peaceful settlement of controversies.

Before the Court can approve a proposed settlement, it must find that the agreement is fair, adequate and reasonable, and is not the product of fraud by or collusion among the negotiating parties. *Ficalora* v. *Lockheed California Co.*, 751 F.2d 995 (9th Cir. 1985). In the context of government enforcement consent decrees, courts have held that "[u]nless a consent decree is unfair, inadequate or unreasonable, it ought to be approved." *SEC.* v. *Randolph*, 736 F.2d 525, 529 (9th Cir. 1984). The approval of a settlement agreement does not depend on an exact determination of the merits of the dispute. There is no talismanic formula for ascertaining when a settlement is reasonable. Rather, "[t]he evaluation of a proposed settlement requires an amalgam of delicate balancing, gross approximations and rough justice." *City of Detroit* v. *Grinnell*, 495 F.2d 448, 468 (2nd Cir. 1974).

A determination of whether a settlement is fair, adequate and reasonable requires an analysis of the risks and potential rewards of continued litigation compared to the actual benefits achieved by the proposed termination. The factors a court must consider include the complexity, expense and likely duration of the litigation, the stage of

the proceedings and the amount of discovery completed, the opinions of the negotiating parties' counsel, the arms-length nature of the negotiations and the reaction of parties opposing the settlement. *See Reed* v. *General Motors Corp.*, 703 F.2d 172 (5th Cir. 1983); *Walsh* v. *Great Atlantic & Pacific Tea Co., Inc.*, 96 F.R.D. 632 (D.N.J. 1983); *Susquehanna Corp.* v. *Korholz*, 84 F.R.D. 316 (D. Ill. 1979.)

An assessment of these factors convinces the Court that the settlement agreement, taken as a whole, if fair, reasonable and adequate to all concerned parties. The agreement was reached after arms-length negotiations among a wide range of groups representing competing interests. The negotiations were extensive and hard-fought. The very fact that objections to the agreement were lodged in the record and later withdrawn attests to the process of compromise. Counsel entered into the negotiations well-versed in the merits of their client's claims. Although the Court has independently evaluated the proposed settlement, the professional judgment of counsel involved in the litigation—who have made a determination that the settlement represents a fair allotment for their clients—is entitled to significant weight. *Johnson* v. *Montgomery County Sheriff's Dept.*, 604 F. Supp. 1346 (D. Ala. 1985); *In re Baldwin-United Corp.*, 105 F.R.D. 475 (S.D.N.Y. 1984).

Moreover, that a government agency, which is committed to the protection of the public interest, has participated in the compromise negotiations and endorsed their results is a factor in favor of settlement approval. *Marshall* v. *Holiday Magic, Inc.*, 550 F.2d 1173 (9th Cir. 1977); *Jones* v. *Amalgamated Warbasse Houses, Inc.*, 97 F.R.D. 355 (E.D.N.Y. 1983). The Department of Energy has participated extensively throughout the liability, damages and settlement phases of this complex and protracted litigation. Furthermore, pursuant to government procedures, the settlement agreement was scrutinized and approved by both the Department of Justice and the Office of Management and Budget ("OMB").

Finally, the near-unanimous support for the settlement agreement is a factor favoring approval by the Court. While a settlement stands or falls on its merits and not on a head count between its proponents and objectors, the overwhelming support for the settlement carries some persuasive force. The joint motion in support of the settlement agreement is signed by representatives of the DOE, the fifty-six States and Territories, over ninety-eight percent of the participants to the DOE entitlements program, the refiners, resellers, retailers, airlines, agricultural cooperatives, surface transporters and utilities. Equitably also the other major non-parties or intervenors who were primary industrial on users of petroleum products during the price-control period, viz., the railroads, steamship lines and barge lines, have been included in the distribution contemplated by the settlement and have withdrawn their objections and joined the settlement. There is no opposition to the settlement agreement by any party to the litigation.

The agreement provides substantial benefits for all parties and for the public, and it represents a fair compromise of the parties' competing positions. The agreement provides a significant amount and major portion of the funds to the States and to the federal government on behalf of the consuming public. The Temporary Emergency Court of Appeals has approved the form of relief in which restitutionary funds are channeled through the States for use in enumerated energy programs designed to benefit the public. *United States* v. *Exxon Corp.*, 773 F.2d 1240 (TECA 1985), *cert. denied, 106 S.Ct. 892 (1986). By according the States latitude in selecting the programs that will best meet the needs of their* particular citizens, the agreement allows the States to benefit various categories of petroleum consumers who may not receive direct refunds under the agreement. In addition, the agreement provides for payments to the United States Treasury, which will "fulfill the restitutionary goal of requiring plaintiffs to disgorge their judicially-determined illegal gains." *In Re Department of Energy Stripper Well Exemption Litigation*, 578 F. Supp. at 595. At the same time, the agreement reserves to the DOE the prosecutorial discretion necessary for it to complete pending and future enforcement actions rising from the era of petroleum price controls.

The ratio of apportionments to the refining industry under the settlement agreement falls within the range of overcharge estimates established in the OHA Report. Assuming that the total amount of crude oil overcharges will be between four and five billion dollars, the $298 million to be divided among the Entitlements Program participants is between 6 and 7.5 percent of the total, which is within the 2.7 to 8.1 percent range of overcharges the OHA determined that the refiners absorbed as a group. In exchange for this apportionment, a number of refiners have compromised other claims they asserted to the fund as first purchasers. Similarly, the distribution through a claims procedure of $215 million to petroleum resellers and retailers, agricultural cooperatives, airlines, surface transporters and utilities, will fairly and adequately compensate the members of these groups. While these groups originally requested a much larger percentage share of the escrowed funds, the Court agrees with the parties' own assessments that the settlement is in their best interests.

The risks of continued litigation are substantial for all of the parties. If the remedy issues were not resolved by agreement, each of the parties would face the risk of a significantly reduced recovery or no recovery at all. Since the OHA Report concluded that the refiners as a class were injured and that the remainder of the overcharges were passed on to resellers and consumers, the recoveries obtained by the DOE and the States under the agreement would not have been assured otherwise. Likewise, the private parties to the litigation faced the risk that the Court would direct all of the funds to the United States Treasury and the States. Thus, the benefits accruing to parties under the agreement outweigh the risks of continued litigation.

In addition, the agreement protects the interests of non-parties and of parties to other pending litigation. Insofar as the agreement provides set-asides to satisfy final judgments in private overcharge actions, it secures the rights of parties to that litigation. The agreement also allows the OHA to reserve amounts to satisfy claims of injury from overcharges by non-parties. Furthermore, the settlement will immediately free funds held by the OHA for the benefit of injured consumers.

The agreement will permit the resolution of (i) claims to other crude oil overcharge funds which have been or will be recovered by the DOE in a great many administrative or judicial proceedings; and (ii) the litigation between the DOE and numerous refiners over the termination of the Entitlements Program, which has been pending in some cases for more than five years. Thus, after payment of the specified amounts referred to above, the agreement provides for an equal division between the DOE and the States of crude oil overcharge refunds to be recovered in all other administrative and judicial proceedings, regardless of whether such funds are currently in escrow or whether such cases have commenced on the date of this Order. Futhermore, the agreement will release most private crude oil overcharge claims among and against the parties, thereby avoiding additional litigation.

Muskegon has requested a modification of the agreement. The parties anticipated that the $10 million set-aside created in paragraph II.C.2. of the agreement would be sufficient to satisfy any judgment obtained by Total in its action against Muskegon. The parties have stated that they would have no objection to the set-aside being increased by $573,132.48, plus interest from February 28, 1986, to reflect the full amount of escrowed funds attributable to Muskegon's sales to Total as of February 28, 1986. The Court finds that this adjustment is appropriate and in accord with the agreement.

Similarly, the set-aside proposed for Southland fully satisfies any claim Southland might have against the escrowed funds. The parties were able to arrive at an agreement with respect to terms and conditions. However, the Court notes that much of the dispute between the DOE and Southland involved concerns not germane to the litigation surrounding the escrowed funds. The Court finds that the interests of Southland are adequately provided for by the set-aside.

The public interest will be advanced by the value of an immediate recovery, which will avoid the delay and expense of further litigation. This litigation has been pending since 1978. Numerous issues would remain to be resolved by this Court in the absence of a settlement agreement. In addition, the agreement's release of most private crude oil overcharge claims among the parties will avoid additional litigation. By conserving the very substantial amount of time and resources which the courts, the DOE, the States and numerous private parties would otherwise be required to expend in these proceedings, the agreement promotes the public interest in a very broad sense.

The only extant opposition to the fundamental mechanics of the settlement agreement comes to the Court in the form of a letter from Congressman John Dingell, Chairman of the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, which letter the Court has ordered to be made a part of the court file in this case. Because the Subcommittee on Oversight and Investigations represents the public interest, and both in the past and in the present has and is performing a very praiseworthy function in oversight of federal governmental policies and actions, the Court believes it is important to address the concerns raised by Congressman Dingell.

First, Congressman Dingell contends that the settlement agreement has not been subject to public scrutiny. Initially, there is some confusion with respect to what the DOE regulations require in the form of public comment. See 10 C.F.R. § 205.199J. However, the Court need not pass upon whether the DOE regulations apply to court-approved settlement agreements or

only to consent orders and administrative documents for two significant reasons. If the DOE regulations have not been adhered to, that is an internal matter for the DOE and Congress to resolve in a forum other than the present one. More importantly, though, the Court believes the final settlement agreement has undergone adequate public scrutiny.

The most interested parties have either signed the settlement agreement or have expressed their concerns to the Court. The Court has received numerous letters regarding the settlement, from groups such as the Associated Catholic Charities of Baltimore, the Georgia Poverty Rights Organization, Project Independence, and the Public Utility Law Project of New York, Inc., to name but a few. Furthermore, groups and entities specifically designated to represent the public interest—such as the Department of Energy and the fifty States' attorneys general—have participated extensively in these proceedings and have subjected the settlement agreement to the closest scrutiny. Additionally, it is a prime function of the Court in reviewing the settlement agreement to determine whether the settlement adequately protects the public interest. See *United States* v. *Hooker Chemical & Plastics Corp.*, 607 F.Supp. 1052, 1057 (W.D.N.Y. 1985). To that end, on June 12, 1986, the Court conducted a publicly visible settlement conference, which was attended by over seventy attorneys and numerous representatives of the press. As the history of the Court's referral of the overcharge issues to the CHA demonstrates, there has been public participation at every step of these proceedings. In addition, the settlement agreement itself requires a public hearing process in advance of any State's distribution of funds. See Final Settlement Agreement at II.B.3.f.i.

Finally, public scrutiny is but a means to the end of insuring that public interests are protected. The Court is convinced that the proposed settlement agreement will inure to the public good. The Court delineated many of the benefits of the settlement above. Any lingering doubts regarding the protection of the public are dispelled by the provisions of the settlement agreement itself. The programs to which the States may target their funds are specifically detailed in the agreement. Final Settlement Agreement at II.B.3.f.ii. The funding for state programs may only be used to supplement, not to supplant, other funds directed at those state programs. Such funding would require decisional authority of the highest state executive officials, i.e., the Governor and Attorney General, with latitude for state legislative input. *Id.* at II.B.3.f. Finally, the settlement agreement provides for both DOE and Court oversight of State expenditures. The settlement agreement, which affords significant public benefits, has been and will continue to be subjected to the most searching public scrutiny.

Second, Congressman Dingell suggests that the settlement agreement is inconsistent with House Concurrent Resolution 337, which required that reconciliation legislation concerning oil overcharge matters be enacted by the 99th Congress. The Court appreciates being apprised of legislative actions. However, a House Resolution is not tantamount to legislation passed by both chambers and signed by the President of the United States.

A House Committee Report regarding the Resolution assumed this Court would take no action on the proposed settlement agreement so that Congress could act in its stead. In light of the separation of powers, and with utmost respect for Congress as a primary source of "the supreme law of the Land" under Article VI, the Court declines to remain dormant. One purpose of the separation of powers is to prevent an unnecessary and dangerous concentration of power in one branch. *Chadha* v. *Immigration and Naturalization Service*, 634 F.2d 408, 422 (9th Cir. 1980), *aff'd*, 103 S.Ct. 2764 (1982). The separation of powers was not instituted with the idea that it would promote governmental efficiency, but was looked to instead as a bulwark against tyranny. *United States* v. *Brown*, 381 U.S. 437, 443 (1965); Federalists 48, 51 and 71.

Inaction on the part of this Court would be an abdication of its constitutional responsibilities. Conversely, any action taken by this Court would resolve a matter particularly within the province of the judiciary: eight years of multidistrict litigation. Furthermore, action on the part of this Court will not impede or impair the legislature from performing its constitutionally assigned function. Congress possesses full authority to pass any legislation it deems wise and proper. But the task of adjudication of matters which are ripe for decision must be left to Article III tribunals, of which this Court is one, acting additionally with multidistrict authority under Congressional legislation with appellate court review.

Third, Congressman Dingell complains that the settlement agreement improperly links the stripper well cases with litigation pending in another court concerning entitlements. The negotiated settlement gives the refiners a percentage of the overcharges within the range of the estimates contained in the OHA Report. Since the OHA Report could not trace specific overcharges, if the refiners choose to distribute their allotment along the lines of standards set in the entitlements litigation, that is entirely permissible. Furthermore, there is no improper linkage of petroleum cases. That the settlement paints with a broad brush does not persuade the Court that the agreement is unreasonable. On the contrary, compromise is the essence of settlement, and parties may settle more than one case at a time *Nelson* v. *Waring*, 602 F.Supp. 410 (D. Miss. 1983).

Fourth, Congressman Dingell contends that the settlement agreement would moot the proposed restitutionary policy that the DOE submitted to this Court. It should be noted the referral of this matter to the DOE was limited to factfinding regarding tracing of the payment of the overcharges for the ultimate purpose of assisting the Court in the exercise of its restitutionary jurisdictional power. The DOE's policy proposal was not binding on the Court or cloven in stone for Congress. The Court does not agree with Congressman Dingell's view that changes in position are inherently mischievous:

> Although perhaps irritating to a court and grounds for skepticism, such changes are not impermissible. As noted in *Montana Power Co.* v. *EPA*, 608 F.2d 334, 349 (9th Cir. 1979), "it does not matter that [a party] 'switched horses in midstream' as long as it 'was astraddle a good horse when it reached the other side.'" *See also Public Service Comm'n.* v. *FPC*, 511 F.2d 338, 353 (D.C. Cir. 1975) (agency may "switch rather than fight the lessons of experience").

Texaco, Inc. v. *Department of Energy*, Nos. 3-44 through 3-49, at 3 n. 6 (TECA, *unpublished*, May 30, 1986). In the instant case, the DOE policy, as modified by the settlement agreement, provides a claims procedure and protects the rights of nonparties who have not participated in the court process—changes which the Court perceives are for the better.

Fifth, according to Congressman Dingell, a number of the agreement's terms are contrary to an opinion of the General Accounting Office ("GAO"). However, many of the GAO's complaints concern the settlement of the entitlements litigation in tandem with the stripper well litigation, an issue the Court previously addressed. In Congressman Dingell's statement in opposition to the motion to approve the settlement agreement, he states that "[a]pproval of the Settlement Agreement would put this Court in the position of appearing, at least, to overrule the GAO without ever hearing from that agency." Dk. no. 836, p. 13. As the Court explained above, the principle of separation of powers prohibits judicial subservience to the various sentiments of coordinate branches. Furthermore, this Court is without jurisdiction to pass upon the policy statements of the GAO. With respect to the substance of Congressman Dingell's contention, the Court chooses to rely on the expertise of the DOE—which has participated in these multidistrict proceedings since their inception—in determining when it should compromise its stances in various cases to bring about a salutary resolution of the greatest amount of litigation. The DOE decision is buttressed by approval of the Justice Department and the OMB.

Finally, Congressman Dingell questions the administrative and attorneys fees that will come from the oil overcharge money under the terms of the settlement agreement. While the simultaneous negotiation and deduction of fees from a settlement fund is not to be encouraged, it is not improper. *Piambino* v. *Bailey*, 757 F.2d 1112 (11th Cir. 1985); *Mendoza* v. *Tucson School District No. 1*, 623 F.2d 1338 (9th Cir. 1980), *cert. denied, sub nom Sanches* v. *Tucson Unified School District No. 1*, 450 U.S. 912 (1981); *In Re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 410 F.Supp. 706 (D. Minn. 1975). Because of the arms-length nature of the bargaining and the presence in the negotiations of participants designated to represent the public interest, the Court is persuaded that the allocation of administrative and attorneys fees involved no improper arrangements or sweetheart deals. The administration of the proposed settlement will entail a great deal of management and accounting expenses. Furthermore, a number of safeguards contained in the agreement will prevent any possible excesses. The amounts of administrative expenditures the States are permitted to make are subject to legislative and regulatory caps or to a limit of five percent of the funds allocated to the States. Final Settlement Agreement at II.B.3.f.iii. Thus, the States' fee requests are reasonable in terms of the percentage they represent of the total overcharge. *See Blum* v. *Stetson*, 104 S. Ct. 1541, 1549-50, n.16 (1984). The Attorneys general must file with the disbursing officials written notices of the amount and manner of direct disbursements for payment or reimbursement of litigation expenses. *Id.* Prior to the expenditure of any funds or payments permissible under the agreement, the States must submit reports to this Court and to the Secretary of Energy identifying the programs or payments for which such funds will be expended. *Id.* at II.B.3.f.iv. Thus, the Court interprets this provision as authorizing Court

oversight of the expenditures for administrative and attorneys fees. With respect to the surface transporters and the utilities, the disbursement of attorneys fees is specifically made subject to Court approval. *Id.* at Exhibits F and G. In light of the built-in checks on the propriety of expenditures, the Court finds that the allotments for administrative and attorneys fees are proper.

In conclusion, the Court finds that the benefits of the settlement agreement far outweigh the burdens that continued litigation would entail. The terms of the agreement equitably provide for the concerns of the parties and the public. The agreement contains within it adequate mechanisms for insuring the just distribution of funds, including oversight authority and the obligation to make public reports—and this is subject to the Court's continuing equity power to insure compliance. The Court concludes that the proposed settlement of this difficult and intricate multidistrict litigation is fair, adequate and reasonable.

It is therefore ordered that the final settlement agreement, with the modifications noted herein, shall be approved. The Court shall execute separately the necessary orders of disbursement.

At Wichita, Kansas, this 7th day of July, 1986.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

TITLE V

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS,
Washington, DC, July 25, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

Hon. LAWTON CHILES,
Ranking Minority Member, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR PETE AND LAWTON: Enclosed is proposed legislation and accompanying report language required by S. Con. Res. 120, the Concurrent Resolution on the Budget for fiscal year 1987. The resolution requires the Committee on Environment and Public Works to achieve savings of $7 billion in budget authority and $3.1 billion in outlays in its programs over the next three fiscal years. Reconciliation instructions assumed that savings would be derived from a combination of reductions in budget authority and outlays from the Federal-Aid Highway program and adoption of $100 million in user fees.

The Committee has taken extraordinary steps to comply with assigned reconciliation instructions. The Committee voted to levy user fees through the Environmental Protection Agency and to increase the fees imposed by the Nuclear Regulatory Commission. The reported legislation also removes a prohibition in current law to allow liquidation of a portion of the Economic Development Administration loan portfolio as part of the effort to meet budget targets. We further agreed to achieve substantial savings in the Federal-Aid Highway program and increase fees collected through the Nuclear Regulatory Commission.

The Committee voted to report S. 2405 the Federal-Aid Highway Act of 1986 on July 23, 1986. This measure achieves savings in budget authority of $1.3 billion beyond the level contained in reconciliation instructions and approximates the assigned level in outlays. Contrasted with the Congressional Budget Office current services baseline projection, this measure represents a savings of $8.1 billion in budget authority and $2.6 billion in outlays over the next three fiscal years.

The Committee agreed to several proposals to meet the additional required savings in fiscal year 1987. If adopted, the Nuclear Regulatory Commission is directed to collect an additional 5% of its annual appropriation or $20 million in user fees above the current level of $132 million or 33% of its budget. The Environmental Protection Agency is directed to collect approximately $20 million dollars in fees applied to Federal registration and permit programs. Proposed legislation specifies that the revenues raised will be returned to the Agency to support its programs. The Economic Development Administration is directed to sell $50 million in defaulted loans.

The Committee had made every effort to comply with reconciliation instructions. We look forward to working with you to see that the enclosed proposals are enacted to further reduce deficit spending.

Sincerely,

ROBERT T. STAFFORD,
Chairman.

LLOYD BENTSEN,
Ranking Minority Member.

FEES OF THE ENVIRONMENTAL PROTECTION AGENCY

As a part of the 1987 budget process the Environmental Protection Agency prepared a proposal to raise off-setting receipts by charging fees for various services and regulatory activities conducted by the Agency. The President's 1987 budget recommended fees in three areas: pesticide registrations; pre-manufacturing notice review under the Toxic Substances Control Act; and ocean disposal permits. The total amount of the EPA fees proposed in the President's budget was $21 million.

The Administrator of the Environmental Protection Agency has created a task force to look at fees across all of the programs administered by the Agency. In addition to the three items listed above, the task force identified one other fee that would be available in the 1987 fiscal year—that is a fee imposed by the Office of Research and Development for various quality assurance and quality control services that they provide for the private sector.

The Committee is reporting language which authorizes EPA to assess and collect fees and charges in these four areas for fiscal years 1987, 1988 and 1989. The amount of the fees collected in each of the next three fiscal years is estimated to be $20 million annually. This amount is not a cap on the total fees that the Agency can collect and is in addition to authority that the Agency has under other statutes to collect fees and assess charges.

The task force identified seven other possible areas where fees might be appropriate. The Administrator has determined that each of these areas should be studied in-depth. A report on each of these items and on other possibilities is expected in late 1987. These areas include: certification of air emission standards for mobile sources; corporate average fuel economy tests; emissions equipment on luxury automobiles; processing petitions for exemptions and variances under various statutes. The combined total revenue from these seven sources is estimated to be $15 million per year.

The task force also looked at charging fees for various permit programs (NPDES permits, RCRA permits) that are available for delegation to the states. No recommendation was made until further study, but the states have registered strong opposition to fees that would be preemptive in these areas, since many states already use permit fees to support their own programs. The legislation reported by the Committee requires EPA to prepare a report on the implementation of the fee authority granted here and to consider other fees and charges. A draft of that report is to be circulated to state and local government officials for their review and the final report transmitted to the Congress is to include a summary of the comments made by these state and local officials.

One problem noted by the task force is that under current law any fee raised by the Agency would be deposited in the general fund and would not be available to directly support Agency programs. The language reported by the Committee would provide that all revenues received would be placed in a special fund within the U.S. Treasury to be available for appropriation to support the programmatic activities for which the fee was levied.

FEES OF THE NUCLEAR REGULATORY COMMISSION

SUMMARY

Section 2 authorizes the Nuclear Regulatory Commission to assess and collect annual charges from its licensees on a fiscal year basis for fiscal years 1987, 1988, and 1989, for costs incurred by the Commission with respect to such licensees, if the Commission can demonstrate that—(1) the fee to be assessed a given licensee is reasonably related to the regulatory service provided by the Commission to the licensee from whom the Commission proposes to collect the fee; and (2) the fee fairly reflects the actual cost to the Commission of providing such service to each such individual licensee.

The fees collected pursuant to this provision may not, when added to other amounts collected by the Commission pursuant to other provisions of law, exceed 38 percent of the funds appropriated to the Commission each such fiscal year.

Finally, this section provides that the amount of fees to be assessed shall be established by rule, after reasonable opportunity for notice and comment by all interested persons.

DISCUSSION

Section 7601 of Public Law 99-272 (42 U.S.C. 2213), enacted into law on April 7, 1986, authorizes the Commission to assess and collect annual charges from its licensees, on a fiscal year basis, in an amount up to 33 percent of the annual costs incurred by the Commission, provided that the Commission can demonstrate that the charges assessed are reasonably related to the regulatory service provided by the Commission and fairly reflect the cost to the Commission of providing such service. Section 7601 further provides that the Commission shall submit a report to Congress evaluating the feasibility and necessity of establishing a system for the assessment and collection of annual charges. Finally, section 7601 provides that any assessments imposed pursuant to this provision shall be established by rule.

On July 1, 1986, the Commission published proposed regulations to implement section 7601 (51 Fed. Reg. 24078). On July 7, 1986, the Commission submitted to the Committee on Environment and Public Works a "Report on the Assessment and

Collection of Annual Charges", as required by subsection (a) of section 7601.

In light of the information contained in the report submitted by the Commission to this Committee, and in view of the regulations that the Commission has proposed to adopt to implement section 7601 of Public Law 99-272, further clarification and guidance appears to be necessary, to ensure that the Commission properly carries out the intent of section 7601. Accordingly, section 2, which amends section 7601 of Public Law 99-272, provides this further clarification of the scope and intent of the Commission's authority to collect annual fees. In addition, this provision increases the maximum amount of fees that the Commission is authorized to assess, from the current limit of 33% to 38%.

The approach that the Commission has proposed to take in implementing section 7601, as set forth in the proposed rule published on July 1, 1986, does not meet this standard. In fact, the Commision, in proposing a uniform annual assessment for all nuclear power reactors—regardless of the variance in the regulatory service provided each individual licensee and the corresponding variance in the cost of providing such service—has virtually disregarded the directive contained in section 7601. Similarly, the approach that the Commission has proposed for the Commission's large materials licensees suffers from the same legal infirmity. And finally, the Commission has excluded a large number of licensees from consideration citing "the administration costs for administering such a collection program."

Section 2 authorizes, but does not direct, the Commission to collect 38% of its annual budget from fees on Commission licensees. The report provided to the Committee by the Commission, indicates that the Commission should be able to collect the full amount authorized under section 2, and do so consistent with the standards and procedures established in section 2. But this provision does not authorize the Commission to collect any fees if the Commission is unable to demonstrate that—(1) the fee to be assessed a given licensee is reasonably related to the regulatory service provided by the Commission to the licensee from whom the Commission proposes to collect the fee; and (2) the fee fairly reflects the actual cost to the Commission of providing such service to each such individual licensee.

Section 2 requires the Commission to demonstrate *on a licensee-specific basis* that the fee to be assessed is reasonably related to the actual cost of the regulatory service provided. Thus, for example, where the Commission devotes substantial resources to a given licensee—such as a "problem plant" or a plant applying for an operating license—the fee assessed should reflect such actual costs. On the other hand, where the Commission devotes lesser resources to a given licensee, that, too, should be reflected in the fee collected from that licensee. As expresed in the Statement of Managers accompanying section 7601, because certain Commission licensees, such as uranium producers and others, have limited ability to pass through the costs of these charges to the ultimate consumer, the Commission should take this factor into account in determining whether to modify the Commission's current fee schedule for such licensees.

Section 2 establishes the factors that the Commission may consider in assessing fees pursuant to this provision. The section does not authorize the Commission to assess fees or some licensees and not others based upon the administrative costs to the Commission of collecting such fees. If further information from the Commission justifies it, appropriate modification to the legislation can be made to ensure that the administrative costs of the Commission's fee program remain within reasonable bounds.

Finally, section 2 provides that the Commission shall conduct a notice and comment rulemaking to establish the amount of any fees to be assessed, *with reasonable opportunity for notice and comment by all interested persons.* The Committee expects the Commission, at a minimum, to allow for at least 45 days for the public to comment on any proposed rule.

Sales of Notes

The Committee has reported legislation which authorizes the Secretary of Commerce to sell defaulted loans which have been accumulated in the Revolving Fund of the Economic Development Administration. The Secretary is instructed by this language to sell notes sufficient to achieve budget savings of $50 million in fiscal year 1987.

Under current law there is a prohibition on the sale of such notes. This legislation would explicitly overturn that current law prohibition. In February, 1985 the Department of Commerce transmitted to the Congress a legislative proposal to the same effect. The justification for that proposal which accompanied the draft bill is reprinted below.

Highway Programs

On July 23, 1986, the Committee voted to report S. 2405, the Federal-Aid Highway Act of 1986. This measure is a comprehensive reauthorization of Federal-Aid Highway programs through fiscal year 1990.

This program is funded entirely through highway user fees collected into the Highway Trust Fund, and must be expended on highway projects. When authorization, or contract authority, is created for this program out of the Highway Trust Fund, the funds are apportioned or allocated to the States. The States can then immediately obligate these funds without any further appropriations process.

The argument has been put forward that the highway program is a dedicated user fee program financed from a trust fund that has a $9 billion balance and should, therefore, be immune from any efforts to control Federal spending. The Highway Trust Fund is, however, part of the unified budget and the level of highway spending does have an impact on the Federal budget.

In recognition of the need to control spending as part of Federal deficit reduction efforts, the Committee agreed to restrain spending from the Highway Trust Fund. Accordingly, the Committee adopted an obligation limitation of $12.350 billion in each fiscal year 1987 through 1990. This is a further reduction from levels contained in P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985, yielding a net savings of $3 billion in fiscal years 1987 and 1988. The obligation limitation determines the amount that States can obligate from the fund in any given year and therefore controls outlays from the Highway Trust Fund.

The following chart shows total spending levels contained in S. 2405 for fiscal years 1987 through 1989.

S. 2405 AS REPORTED

[In millions of dollars]

	Fiscal year 1987	Fiscal year 88	Fiscal year 89
BA	13,082	13,082	13,082
OT	13,740	13,170	13,280

Statement of Purpose and Need

The Department of Commerce and Related Agencies Appropriation Act, 1985 (Pub. L. No. 98-411, 98 Stat. 1545) prohibits the Secretary of Commerce from using appropriations to

"sell to private interests, except with the consent of the borrower, or contract with private interests to sell or administer, any loans made under the Public Works and Economic Development Act of 1965 or any loans made under section 254 of the Trade Act of 1974."

The Department believes that this limitation hampers the ability of the Secretary to take actions which are in the best interest of the United States. Accordingly, we recommend that the Congress repeal this limitation.

Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. § 3141) and section 254 of the Trade Act of 1974 (19 U.S.C. § 2344) authorize the Secretary of Commerce to extend financial assistance in the form of direct loans and guarantees of loans made by private lenders.[1] As of September 30, 1984, the Economic Development Administration (EDA) had business development loans oustanding in the amount of $521 million and public works loans outstanding in the amount of $249 million (including loans under the Community Emergency Drought Relief Act of 1977 (42 U.S.C. § 5184)). In addition, EDA has entered into guarantees with a total contingent liability of $380 million.[2] Despite a series of management reforms designed to improve the condition of the portfolio begun by EDA in FY 1982, the delinquency rate of the business development portfolio has remained too high—a troublesome 55% as of September 30, 1984.[3]

In order to manage a portfolio the size of EDA's and to protect the Government's interest, EDA needs flexibility to take necessary actions to address widely varying circumstances. In enacting the Public Works and Economic Development Act (PWEDA), Congress recognized this need by providing the Secretary of Commerce with broad

[1] Until September 20, 1981, the Secretary of Commerce had delegated authority to extend financial assistance under these acts to the Assistant Secretary for Economic Development. On September 20, 1981, the Secretary re-delegated his authority under Section 254 of the Trade Act of 1974 to the Under Secretary for International Trade.

[2] With respect to the section 254 program since it was transferred to the International Trade Administration, as of September 30, 1984, ITA had $4.9 million in direct loans outstanding and $19.8 million in contingent liability. The Government's liability under these guarantees is contingent in that no Federal payment is required unless the borrower defaults and the lender demands payment under the guarantee.

[3] The delinquency rate on the public works loan portfolio was 9% as of September 30, 1984. These delinquency rates do not take into account amounts which have been written off over the years as uncollectible. As of September 30, 1984, EDA has written off $386 million worth of nonperforming loans.

powers under section 701 (42 U.S.C. § 3211) to

(1) deal with, complete, renovate, insure, rent or sell property conveyed or acquired under the Act (section 701(8)); [S 10176-B762]

(2) pursue to final collection all claims against third parties assigned to the Secretary in connection with loans (section 701(7));

(3) acquire property deemed necessary to conduct activities under sections 201, 202, 301, 403 and 503 of the Act (section 701(8)); and

(4) take any and all actions necessary or desirable in making, purchasing, servicing, compromising, modifying, liquidating or otherwise administratively dealing with or realizing on loans made under the Act (section 701(9)).

In addition to these powers, section 701(4) of the Act also authorizes the Secretary to "sell at public or private sale . . . in his discretion and upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt . . . assigned to him or held by him in connection with loans made . . . under this Act, and collect or compromise all obligations assigned to him or held by him in connection with such loans. . . ." (Similar authority is provided under section 257 of the Trade Act of 1974, 19 U.S.C. § 2347(a)(2))

During fiscal years 1983, 1984 and 1985, Congress has limited the Secretary's broad authority under section 701 by including a prohibition in the Appropriations Act against the use of funds to sell any loans to private interests except with the consent of the borrower. Congress added this provision to preclude EDA from selling loans on the basis of a public offering as it had in the latter half of 1982 when it sold 12 loans to private interests. Because individual borrowers are reluctant to consent to a sale of their loans unless they know the identity of the purchaser beforehand, this limitation has effectively eliminated EDA's authority to conduct a public sale of these loans.

With the business development portfolio experiencing a delinquency rate of 55 percent, the Department believes it is essential for the Secretary to have available the full range of authorities provided in PWEDA and the Trade Act of 1974. While the 1982 public offering did not generate as many bids as anticipated due generally to the low quality of the loans offered, the Department believes it demonstrated the feasibility of conducting a sale of this type. The sale was also beneficial in that it increased the awareness of other borrowers of EDA's renewed emphasis on debt collection.

The Department believes the ability to consider additonal sales is clearly in the Government's interest. First, a bulk disposition of a portion of the portfolio reduces the administrative burden of loan servicing and monitoring by shrinking the size of the portfolio. With a smaller portfolio, the Department can use its resources to work with other borrowers more intensively and assist them in meeting their obligations to the Government.

Second, a bulk disposition enables the Department to avoid the delays and expenses of conventional liquidations and other collection procedures. In many cases, the only alternative to a public sale is conventional liquidation.[4] In conventional liquidations, the Government's recovery of funds is stretched out over time as the Government must undertake formal proceedings to acquire and then sell project assets. A bulk disposition of the loan paper, on the other hand, gives the Government proceeds from the sale immediately upon completion of the sale.

The Department will continue to use the full range of powers provided to the Secretary under PWEDA and the Trade Act of 1974. Whenever possible, we will work with delinquent borrowers to develop reasonable workout plans which retain the economic development benefits of the projects. When borrowers are unable to meet their obligations to the United States, the Department must act to protect the Govenment's interest. Enactment of the proposal will restore to the Secretary an important power so that the Department can use the most efficient means to ensure maximum protection of the Government's interest.

[4] Forty-three percent of the loans in the business development portfolio are already in some stage of liquidation.

CBO COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 30, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached estimate of the budget impact of the reconciliation recommendations ordered reported by the Senate Committee on Environment and Public Works on July 29, 1986. Table 1 summarizes the budgetary effects relative to current law. Table 2 summarizes the effects relative to the budget resolution baseline, as adjusted for enacted legislation.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Committee recommendations for the Budget Reconciliation Act of 1986

3. Bill status: Committee print adopted by the Senate Committee on Environment and Public Works, July 29, 1986.

4. Bill purpose: The bill contains four provisions that are recommended for inclusion in the Budget Reconciliation Act of 1986: (1) fees of the Environmental Protection Agency; (2) Nuclear Regulatory Commission charges; (3) sale of defaulted notes held in the Economic Development Administration's revolving fund; and (4) authorization for federal highway programs.

5. Estimated cost to the Federal Government:

TABLE 1.—ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—CHANGE FROM CURRENT LAW

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
DIRECT SPENDING					
EPA fees:					
Estimated budget authority	−10	−20	−20		
Estimated outlays	−10	−20	−20		
Sale of EDA notes:					
Estimated budget authority					
Estimated outlays	−50	27			
Highway programs:					
Estimated budget authority	8,972	8,972	8,972		
Estimated outlays	−140	−640	1,480	6,680	2,100
AUTHORIZATIONS					
Highway programs:					
Authorization level	10	10	10	10	10
Estimated outlays	2	7	8	8	3
REVENUES					
NRC annual charges	27	28	24		

TABLE 2.—ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—CHANGE FROM RESOLUTION BASELINE ADJUSTED FOR ENACTED LEGISLATION

[By fiscal year, in millions of dollars]

	1987	1988	1989
DIRECT SPENDING			
EPA fees:			
Estimated budet authority	−10	−20	−20
Estimated outlays	−10	−20	−20
Sale of EDA notes:			
Estimated budet authority			
Estimated outlays	−50	27	
Highway programs:			
Estimated budet authority	−2,240	−2,700	−3,180
Estimated outlays	−190	−910	−1,490
Total—Direct spending:			
Estimated budet authority	−2,250	−2,720	−3,200
Estimated outlays	−250	−903	−1,510
AUTHORIZATIONS			
Highway programs:			
Estimated budget authority			
Estimated outlays			
REVENUES			
NRC annual charges	27	28	24

The budget impact of this bill falls within budget functions 270, 300, 400, and 450. Federal revenues are also affected.

Basis of Estimates:

Section 1 of the bill authorizes the Environmental Protection Agency to assess and collect fees amounting to $20 million annually for services and activities carried out pursuant to the statutes administered by the agency. Collections in 1987 would be lower, because it is likely to take several months to promulgate the necessary regulations.

Section 2 of the bill would authorize the Nuclear Regulatory Commission (NRC) to increase the annual charges for licenses for the fiscal years 1987, 1988, and 1989. The annual charges are to be assessed and collected for costs incurred by the commission and shall not exceed 38 percent of the funds appropriated to the commission for each fiscal year. Under current law, the NRC is authorized to collect annual charges for 33 percent of its costs. CBO estimates that enactment of this bill will result in additional revenues of $27 million in fiscal year 1987, $28 million in fiscal year 1988, and $24 million in fiscal year 1989, assuming funding at baseline levels.

Section 3 requires the Secretary of Commerce to sell defaulted loans of the Economic Development Revolving Fund in such amounts necessary to generate net proceeds of at least $50 million in 1987. The Economic Development Administration (EDA) estimates that loans with face value of about $220 million are in default. Based upon information provided by major investment banks, CBO estimates that these loans can be sold without recourse to the federal government for about 60 percent of their face value. Recent liquidation experience at EDA has resulted in about a 40 percent return on face value. CBO estimates that the same return would be expected on future liquidations and that, barring any sale, all loans currently in default would be liquidated within two years.

Assuming a 60 percent return on face value from the sale without recourse of defaulted loans and a 40 percent return if those loans had been liquidated by EDA, CBO estimates that the sale of defaulted loans with face value of about $130 million would generate net proceeds of $50 million in 1987. The sale of loans is estimated to increase fiscal year 1988 outlays, relative to the CBO baseline, by about $27 million. This estimate also assumes that the language of Section 3 is sufficient to remove current statutory prohibitions concerning the sale of EDA loans and the release of financial information on borrowers to potential purchasers.

Section 4 of the bill authorizes appropriations for federal-aid highways and highway safety construction programs of $13.082 billion annually in fiscal years 1987 through 1989. Based on information from the Committee staff, CBO assumes that the funding levels in this bill reflect the specific authorizations included in S. 2405, the Federal-Aid Highway Act of 1986, as ordered reported by the Committee. Therefore, this estimate assumes that the total amount authorized includes contract authority of $13.072 billion in each of fiscal years 1987 through 1989 for federal-aid highways and highway-related safety grants, and an authorization of $10 million annually for highway safety research and development.

Outlays for federal-aid highways are controlled primarily by a ceiling on obligations. This bill establishes annual ceilings of $12.35 billion for fiscal years 1987 through 1989. In estimating the effect of this legislation on outlays, the obligation ceilings are compared to those established by the 1985 Reconciliation Act (COBRA)—$13.525 billion for 1987 and $14.1 billion for 1988. For comparison with the baseline, a 1989 baseline obligation ceiling of $14.5 billion is assumed, the 1988 COBRA ceiling adjusted for inflation. The level of obligations under this bill for the minimum allocation program, which is exempt from the ceiling, is assumed to be that reflected in CBO's baseline.

6. Estimated cost to state and local governments: The annual charges for the NRC authorized by this bill would affect electric utility rates, and thus indirectly increase the utility costs of state and local governments. This increase is not expected to be significant.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deb Reis, Pete Fontaine, Paul DiNardo, and Marge Miller (226-2860).

10. Estimate approved by:

C.G. NUCKOLS
(for James L. Blum, Assistant Director for Budget Analysis).

MINORITY VIEWS OF SENATOR FRANK R. LAUTENBERG

The Concurrent Budget Resolution for FY 1987 required the Committee on Environment and Public Works to make savings through the reconciliation process. The Budget Resolution called for achieving part of these savings through $100 million of user fees. The Committee Report includes $20 million in EPA fees, with $4 million of these fees to generated from ocean disposal permits. I have reservations about these fees.

I have sponsored several bills aimed at bringing an end to ocean disposal of wastes. However, in the short term, municipalities in New Jersey still depend on ocean disposal for sewage sludge. The proposed permitting fees will increase the costs to municipalities seeking permitting for ocean disposal of sewage sludge. This increased cost comes at a time when municipalities are already experiencing a cutback in funds from federally assisted programs which have traditionally helped our cities and towns provide for basic services. For this reason, I oppose these proposed ocean disposal permitting fees. But should such a fee be adopted, it should be capped at a level that takes account of these severe burdens on our municipalities.

The ocean disposal fees, unlike the other EPA fees in the Committee Report, have a disproportionate effect on states, such as New Jersey, that still rely on ocean disposal of sewage sludge. If we are going to pursue EPA fees, we should select agency programs that are national in scope, and do not unfairly focus on particular states and regions.

COMMITTEE ON FINANCE

TITLE VI

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC, July 30, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR PETE: We hereby submit the statutory language implementing the recommendations of the Committee on Finance to meet its reconciliation instructions under S. Con. Res. 120, the concurrent resolution on the budget for fiscal year 1987. Also enclosed are materials which explain these provisions.

These statutory provisions will reduce outlays for programs within the jurisdiction of the Committee on Finance by $3.2 billion over fiscal years 1987-1989. In addition, the revenue provisions will increase Federal receipts by $10.1 billion over the same period.

Sincerely,

RUSSELL B. LONG,
Ranking Minority Member.
BOB PACKWOOD,
Chairman.

TITLE VI

A. MEDICARE PROVISIONS

Payments for inpatient hospital services

Current law.—The Social Security Amendments of 1983 (P.L. 98-21) authorized the Secretary of Health and Human Services (HHS) to determine the rate of increase in the prospective payment system (PPS) rates for FY 1986 and thereafter, taking into account the recommendations of the Prospective Payment Assessment Commission (ProPAC). The Deficit Reduction Act of 1984, P.L. 98-369 (DEFRA), limited the FY 1986 rate of increase to be determined by the Secretary to the rate of increase in the hospital marketbasket plus one-quarter of one percentage point. HHS issued final rules on September 3, 1985 freezing the PPS payment rates for FY 1986. However, these rules were not implemented because of the enactment of the Emergency Extension Act of 1985 (P.L. 99-107, as amended by P.L. 99-201), which provided that from October 1, 1985 through March 14, 1986, the FY1986 PPS rates would be frozen at FY 1985 levels.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provided that the FY 1986 rate freeze continue until May 1, 1986, when the PPS rates would be increased one-half percent for the remainder of the year. In addition, for FY 1987 and FY 1988, it provided that the Secretary could determine any change in the PPS payment rates, taking into account the recommendations of the ProPAC, not to exceed the marketbasket index change. The rate of increase for PPS-exempt hospitals was $\frac{5}{24}$ of one percent, effective for hospital cost reporting periods beginning October 1, 1985, but before October 1, 1986. The Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177) reduced the FY 1986 Medicare payments to hospitals by one percent beginning March 1, 1986.

In proposed rules issued June 3, 1986, HHS provided for an increase of 0.5 percent in the FY 1987 PPS rates and in the target amounts per discharge for PPS-exempt hospitals. In its July 2, 1986 report to HCFA, ProPAC recommended a 2.2 percent rate of increase in FY 1987 PPS rates, a rate of increase for children's hospitals of 3.2 percent, and a rate of increase for other PPS-exempt hospitals and units of 3.5 percent.

PPS hospitals are paid, in part, on the basis of regional and national standardized amounts per discharge. Separate urban and rural standardized amounts are calculated for each of the nine census regions and for the nation. These standardized amounts represent the urban or rural operating cost per discharge averaged across all hospitals in the region (or nation). This results in amounts that represent the operating cost per discharge for the average hospital.

Additional amounts are paid to PPS hospitals for "outliers"—a typical cases which have extraordinarily high costs or involve extraordinarily long hospital stays compared to most patients classified in the same DRG. The law requires that total outlier payments to all hospitals represent no less than 5 percent and no more than 6 percent of the total estimated Medicare prospective payments based on the DRG payment rates for the fiscal year.

Rural hospitals may apply for designation as rural referral centers. In order to qualify, hospitals must meet criteria based on bed size or national or regional criteria based on case mix, admission volume, or patient referrals. Hospitals meeting these criteria are paid prospective payments based on the applicable urban payment rates, rather then the rural rates, as adjusted by the hospital's area wage index.

EXPLANATION OF PROVISION

The provision would provide an increase in the payment rates for PPS hospitals and in the target amounts for PPS-exempt hospitals in FY 1987 of 1.5 percent.

Although the Committee is recommending a 1.5 percent increase for both PPS and PPS-exempt hospitals, the Committee understands there are presently two distinct Medicare hospital payment systems in operation—hospitals paid under PPS and hospitals paid under the TEFRA per case cost limits. It is the Committee's view that the criteria utlized to develop an update factor for PPS-exempt hospitals should be specific to the operation of these facilities. Therefore, the Committee recommends that the Secretary consider the ProPAC recommendations regarding a separate update factor for PPS-exempt hospitals and urges the Secretary for FY 1988 and for subsequent fiscal years to utilize those criteria that are specific to the operation of PPS-exempt hospitals in developing an update factor for those facilities.

The current formula used to calculate the average standardized amounts for urban and for rural hospitals under PPS would be changed to be based on the number of pa-

tients discharged rather than the number of hospitals. This would result in amounts that represent the operating cost per discharge for the average patient as opposed to the average hospital. The effect of this provision would be to shift payments from urban hospitals to rural hospitals.

Medicare law would be amended so that the total amount of payments for outliers to sole community hospitals, with an average occupancy of 50 beds or less, and to small rural hospitals would be required to be not less than 5 percent nor more than 6 percent of the total payments based on DRG prospective payment rates projected or estimated to be made to such hospitals in a given year.

The Prospective Payment Assessment Commission (ProPAC) would be required to include in its annual report an assessment of whether the outlier thresholds established by the Secretary each year (both the generally applicable thresholds and the new thresholds for small rural hospitals) are being set at the appropriate levels to insure that between 5 and 6 percent of the PPS payments are made for outliers.

Hospitals designated as rural referral centers as of the date of enactment of this Act shall retain that designation for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989.

Effective date.—October 1, 1986.

Payments for hospital capital-related costs

Current law.—The Social Security Amendments of 1983 (P.L. 98-21) established a prospective payment system (PPS) for making payments to hospitals for the operating costs of inpatient services provided to Medicare beneficiaries. Payments for operating costs are made on the basis of fixed rates per discharge. Hospital capital-related costs of inpatient services (including depreciation, leases and rentals, interest, and a return on equity for proprietary hospitals) are excluded from PPS and are reimbursed on a reasonable cost basis. This exclusion was to expire on October 1, 1986, but enactment of the Urgent Supplemental Appropriations Act (P.L. 99-349) extended the exclusion until October 1, 1987.

In addition, under prior law, if Congress did not enact legislation by October 1, 1986 to include capital-related costs under PPS, Medicare payment for capital costs would be prohibited unless a State has a capital expenditure review agreement with the Secretary (under section 1122 of the Social Security Act) and the State has recommended approval of the specific capital expenditure. P.L. 99-349 extended the deadline for congressional action to October 1, 1987.

Explanation of provision.—The provision would reduce reimbursements to PPS hospitals for capital costs of inpatient services, otherwise payable under current law, by 3 percent in FY 1987, 5 percent in FY 1988 and 6 percent in FY 1989.

A hospital which is a sole community hospital pursuant to section 1886(d)(5)(C)(ii) of the Social Security Act would be exempt from the reductions. Under current law, a hospital which is paid as a sole community provider voluntarily may relinquish such status, and be paid in the same manner as other prospective payment system (PPS) hospitals. This provision would continue to apply, but any hospital which relinquished its status as sole community provider prior to the date of enactment of this capital provision could reapply and requalify for sole community provider status.

It is the intent of the Committee to consider the issue of payment for capital-related costs next year, and to develop a capital payment proposal which moves to a prospective payment system, but also continues cost-based reimbursement for capital-related financial obligations incurred, or enforceable agreements entered into, prior to January 1, 1986. Such, a proposal would also include a requirement that a payment adjustment for new capital (those capital-related costs "grandfathered" under cost-based reimbursement) would be included for hospitals which serve a disproportionate share of low-income patients (if such an adjustment for disproportionate share is included in law for operating costs).

Effective date.—Hospital cost reporting periods beginning on or after October 1, 1986.

Medicare as secondary payer; coverage requirements for certain other payers

Current law.—The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) required employers to offer their employees aged 65 through 69 the same group health plan offered to their employees under age 65. DEFRA extended the provision to beneficiaries covered under a working spouse's employer-based health plan when that spouse is under age 65. COBRA extended this provision to the working aged and spouses over age 69. When the beneficiary elects such coverage, Medicare becomes the secondary payer. The beneficiary retains the option to be covered only by Medicare.

Explanation of provision.—The provision would make Medicare the secondary payer for all beneficiaries (including the disabled and those who buy into Medicare) who receive employment-based health benefits as a current employee (or family member) of an employer with 20 or more employees, and would explicitly include an employer, anyone associated with the employer in a business relations (such as an agent or contractor) who is covered by the employer's health plan, and former employees who have not reached age 65. The provision would not otherwise enlarge the obligations of employers under current law. The provision also states explicitly that these group health plan requirements (and similar ones for end stage renal disease (ESRD) and for workers' compensation and liability and related insurance) would be enforceable by private action or by the Federal Government (with double the damages payable), and would impose an excise tax equal to 25 percent of group health plan expenses if the requirements were not met. Federal Medicaid payments to a State would be reduced by 25 percent of group health plan expenses of a State (or State or local governmental entity) that did not comply. Enforcement though the Equal Employment Opportunity Commission (EEOC) would be eliminated.

Finally, the provision would provide uniform rules as to the benefits Medicare pays when other payers are primary but do not pay the full charge. In particular, payment under workers' compensation or liability and related insurance is not now counted toward the Medicare deductible, but would be under this provision.

It is the Committee's intent that the Department of Health and Human Services would consult with the Departments of Treasury and Labor in implementing this provision.

Effective date.—October 1, 1986.

Payments for physicians' services

Current law.—Payments are made to physicians on the basis of reasonable charges. The reasonable charge for a service is the lowest of the actual charge, the physician's customary charge for the service or the prevailing charge for the service in the community.

DEFRA froze physician fees for the 15 month period July 1, 1984 through September 30, 1985. The Emergency Extension Act (P.L. 99-107), as amended, and COBRA extended this freeze through April 30, 1986 for participating physicians and December 31, 1986 for nonparticipating physicians.

Current law permits the Secretary certain flexibility in determining reasonable charges. Regulations allow the use of "other factors that may be found necessary and appropriate with respect to a specific item or service . . . in judging whether the charge is inherently reasonable." COBRA requires the Secretary to promulgate regulations which specify explicitly the criteria of "inherent reasonableness." HHS issued proposed regulations on February 18, 1986, summarizing the conditions under which the Secretary could use the "inherent reasonableness" authority to establish either special methodologies or specific dollar limits when fees paid under current methods are determined to be inherently unreasonable.

Explanation of provision.—The provision would identify instances where inherent reasonableness limitations could be applied though use of the limitations would not be limited to the identified instances. If the Secretary applies the inherent reasonableness authority, the provision specifies the factors that would be considered in determining the inherent reasonableness of charges. The identified factors would include cases where: prevailing charges are significantly different from those in comparable localities; Medicare and Medicaid are the main sources of payment; the marketplace for the service is not truly competitive because of the limited number of physicians performing the service; there have been increases in charges not explained by inflation; charges do not reflect changing technology or reduction in acquisition or production costs, or the prevailing charges are substantially higher than payments made by other purchasers. The Secretary must review the ten most costly procedures with respect to the aggregate cost to Medicare.

The provision would provide that regional differences in fees would be taken into account unless there is substantial economic justification for a uniform national fee or payment limit. The Secretary would be required to use the rule-making process in any case where he or she proposes to establish a new reasonable charge, or a methodology for a new reasonable charge, based on inherent reasonableness determinations. The notice must include the impact of the change or methodology proposed to be established with respect to changes in the accessibility of, and beneficiary liability for, the service. The provision would require a public comment period and comments by the Physician Payment Review Commission. The provision would require final regulations to explain the factors and the date the Secretary considered in making the final determinations.

The provision would require the Secretary both to develop an index for adjusting relative value scale (RVS) payment levels to reflect justifiable geographic cost differences and to examine a possible adjustment to encourage physicians to locate in medically underserved areas. The provision also would change the date by which the Secretary is to develop an RVS to July 1, 1989 to allow

for completion of research currently being funded by HCFA. The provision would require the consolidation of the payment methodology under HCFA's Common Procedures Coding System (HCPCS) and mandate its use for hospital outpatient services.

Effective date.—Applies to final regulations issued after July 1, 1986.

Medicare economic index for physicians' services

Current law.—Prior to 1984, the increase in the prevailing charge level was updated annually. This update has been limited by the Medicare economic index (MEI). Expressed as a maximum allowable percentage increase, this index reflects changes in physicians' operating expenses and earnings levels.

Explanation of provision.—The provision would modify the MEI to account for a historical overstatement of housing costs. A "rental equivalence" component would be substituted for the housing "home ownership component" of the Consumer Price Index (CPI). This proposed change is patterned after a comparable change made in the CPI in 1983. The provision would adjust the MEI retroactively to 1973, the base year for the MEI.

The provision would provide that the adjustment of the MEI would be made in two stages with one-half of the adjustment becoming effective January 1, 1987, and the other half January 1, 1988. The provision would require the Secretary to utilize the rulemaking process for proposed changes in the methodology, basis, or elements of the MEI.

Effective date.—January 1, 1987.

End-stage renal disease payments

Current law.—Under the end-stage renal disease (ESRD) program, patients with kidney failure can receive dialysis treatments and physician care. For these services, Medicare will pay:

(a) to a dialysis facility, a so-called "composite rate" for routine kidney dialysis performed on an outpatient basis; and

(b) to a renal physician, a predetermined amount per patient per month for physician services. This amount is called the "monthly capitation payment" (MCP).

Explanation of provision.—The provision would modify the physician payment rates as set forth in the notice in the Federal Register of July 2, 1986. The current methodology used to compute the MCP reflects an assumption that physicians care for 10 patients who dialyze at home for every 7 patients that are dialyzed in a facility during a given period of time. This is a ratio of 10:7.

Based on a recent General Accounting Office study of actual physician services furnished, that ratio would be reduced from 10:7 to about 4:1. As a result of correcting the ratio, the average MCP rate would be reduced from approximately $187 to $173 per patient per month.

In addition, this provision would reduce the current renal facility rates by $1.00 rather than by $11.00 as proposed by the Administration. The provision would require an independent study of the appropriateness of the facility rate to be completed within one year by the General Accounting Office.

Effective date.—August 1, 1986 for physicians payments; and for facilities October 1, 1986 through September 30, 1988.

Payments for ambulatory surgery

Current law.—The Omnibus Reconciliation Act of 1980 (P.L. 96-499) authorized payments for facility services furnished in connection with ambulatory surgical procedures specified by the Secretary of Health and Human Services (HHS). Payments are made on the basis of prospectively set known rates as the "standard overhead amounts."

HHS issued final regulations and an accompanying notice, August 5, 1982, identifying four groups of surgical procedures and the payment amount for each group. The payment amounts and the list of procedures have not been updated. The rates do not include payments for physicians' services, prosthetic devices, or laboratory services.

No beneficiary cost-sharing is required in connection with services provided in ambulatory surgical centers.

Explanation of provision.—The provision would extend the ambulatory surgical center (ASC) prospective payment approach to hospital outpatient department (OPD) surgery. For all surgeries approved for performance in an ASC, Medicare-participating hospitals would receive the lesser of (a) Medicare's reasonable costs for surgery minus 20 percent of the actual charge, or (b) Medicare's propsective rate for ASC's minus 20 percent of that rate. The provision would be effective for hospital accounting years that begin on or after July 1, 1987.

The provision would require the Secretary, no later than July 1, 1987, to update the 1982 ASC rates that are currently in use. Thereafter, the Secretary annually would review the ASC and OPD rates and revise the list of procedures which are approved for ASC performance and reimbursement.

The provision would impose the standard part B coinsurance (20 percent) and deductible ($75) for ambulatory surgery services.

Utilizing the HCPCS data that will be available after July 1, 1987, the Secretary would be required to: (a) develop packages of pre- and post-operative services for different procedures that are appropriate for application of a prospective payment system, and (b) develop a PS methodology for all outpatient procedures. The Secretary would be required to report to Congress on these packages and the PPS methodology by January 1, 1991.

For contracts entered into or renewed after January 1, 1987, the Secretary would be required to add to each Utilization and Quality Control Peer Review Organization (PRO) scope of work the requirement that PROs review the medical necessity and quality of surgery in OPD and ASC settings. The percentage of cases to be reviewed, and whether there is to be pre- and post-procedure review, is left to the Secretary's discretion. Payments for the cost of outpatient certified registered nurse anesthetist (CRNA) services and direct medical education would continue to be made as under current law. The Secretary would be required to conduct a two-year study on educational activities in hospital outpatient settings and report back to Congress with recommendations about a proper payment for graduate medical education (GME) related to outpatient hospital services.

Effective date.—July 1, 1987.

Payment of medicare claims

Current law.—Hospitals, skilled nursing facilities and home health agencies who meet certain requirements may receive Medicare periodic interim payments (PIP) every two weeks, based on estimated annual costs without regard to the submission of individual bills. At the end of the year, a settlement is made so that the provider receives the actual payment amounts for treating Medicare beneficiaries. In proposed fiscal year 1987 regulations for the prospective payment system (PPS), the Department of Health and Human Services proposed to end PIP for most PPS and PPS-exempt hospitals, effective July 1, 1987, except in the event a beneficiary is an inpatient for more than 45 Medicare-covered days.

The Health Care Financing Administration (HCFA) recently issued guidelines requiring each part A intermediary and part B carrier to process at least 95 percent of "clean" Medicare claims within 27 days of receipt. "Clean" Medicare claims are those not requiring development for payment safeguard activities or additional information. The guidelines apply to Medicare claims submitted by beneficiaries, physicians, providers, and suppliers of health care.

Explanation of provision.—The provision would eliminate periodic interim payments for all PPS hospitals. Qualified non-PPS hospitals, skilled nursing facilities, and home health agencies (all of which are paid on the basis of costs) would continue to receive such payments.

The provision also would require each part A intermediary and part B carrier to process and pay at least 95 percent of all "clean" Medicare claims within 24 days of receipt. The 24 day limit would be a ceiling. Providers who received payments during the first half of 1986 for their clean Medicare claims within a shorter time period should not have their payments delayed beyond the claims processing time frames they experienced during the first six months of 1986 in order to meet the requirements of this provision. The committee intends that the 24 day standard be applied without differentiation between electronically transmitted and conventional "paper" claims.

The elimination of PIP for PPS hospitals would be delayed until an intermediary had demonstrated that it had complied with the prompt payment provision for at least three consecutive months. The Committee intends that the Secretary would establish, on a temporary basis, interim payments during any period in which claims processing is suspended. If an intermediary fails to meet the prompt payment criterion for three consecutive months, all the hospitals it serves may choose to be placed on PIP. Once an intermediary has reestablished compliance with the prompt payment rule for three consecutive months, the reinstatement of PIP would be discontinued.

If the carrier fails to pay 95 percent of clean part B claims within 24 days, interest will be assessed on delayed claims for each day beginning with the 25th day (at the usual government prompt payment rate) until the claim is paid. To allow time for carriers to develop new processing systems, the interest requirement would be delayed 6 months and there would be a 15-day grace period (i.e., the penalties would only be applied to claims on or after the 40th day) for one year.

Effective date.—October 1, 1986.

Changes in inpatient hospital deductible

Current law.—Medicare's inpatient hospital deductible must, by law, be adjusted each January based on a formula which reflects the average cost of a day of hospital care.

In recent years lengths of stay have been decreasing faster than costs per stay. Total costs now are divided by a smaller denominator; this results in a higher per-day figure. The deductible was $400 in 1985, and

is $492 in 1986. The Administration estimates that the deductible will increase by 16 percent to $572 in 1987.

Explanation of provision.—This provision would set the deductible at $520 in 1987. In future years, the annual increase in the deductible would be tied to the annual increase in the average cost of a Medicare hospital discharge instead of the cost of an average day of hospital care.

Effective date.—January 1, 1987.

Provider representation of beneficiaries on appeals

Current law.—In 1984, manual instructions prohibited providers (e.g., hospitals and home health agencies) from representing a beneficiary in an appeal where a payment has been denied for a service they provided.

Explanation of provision.—The provision would broaden the appeal authority to include provider representation of beneficiaries for all Medicare part A and part B appeals of claims denials. Providers would not be allowed to claim the costs of unsuccessful appeals on the cost report. Beneficiaries would not be responsible for the costs of successful or unsuccessful appeals filed on their behalf.

Effective date.—Enactment.

Notice of hospital discharge rights; discharge planning

Current law.—Under the Medicare prospective payment system hospitals are reimbursed on a per case basis according to a patient's diagnosis. The payment rates reflect the average cost of providing care for patients in the same diagnostic category. Hospitals and/or physicians determine when it is medically appropriate to discharge a Medicare beneficiary from inpatient care. In February 1986, the Health Care Financing Administration arranged for voluntary distribution to patients through hospitals of a notice of patient rights which includes information concerning financial liability for continued inpatient stay and procedures to appeal a discharge notice.

Beneficiaries who have been in the hospital three days and require additional skilled care are eligible for up to 100 days of care in a Medicare approved skilled nursing facility (SNF). Beneficiaries who must remain at home but still require skilled nursing care on an intermittent basis are eligible for home health services. In May 1986, regulations were issued to require hospitals which participate in Medicare to have a discharge planning program to facilitate the provision of follow-up care after discharge from the hospital. Fiscal intermediaries determine whether claims for these services meet Medicare coverage criteria after a claim has been submitted.

Explanation of provision.—The provision would amend Medicare's conditions of participation for hospitals to require that beneficiaries receive a notice of patient rights at the time of admission to the hospital. The notice would include information concerning rights to inpatient and post-hospital care under Medicare, financial liability, and appeal rights.

The provision would require a hospital, as a condition of participation in Medicare, to provide a timely discharge planning evaluation for beneficiaries that would meet guidelines to be established by the Secretary. The discharge evaluation would asssess the patient's need for post-hospital services and the availability of these services. The Committee intends that the Secretary exercise flexibility in establishing the standards and guidelines for discharge planning so as not to place undue hardship on small hospitals, particularly those in rural areas. In establishing conditions of participation for hospitals not accredited by the Joint Commission on Accreditation of Hospitals, the Secretary did provide flexibility in the discharge planning requirements, including flexibility for the hospital to determine the appropriate personnel to carry out the discharge planning. The Committee expects the Secretary to allow for similar flexibility under the discharge planning requirements of this provision.

The Secretary would be required to implement a pilot program to test prior and concurrent authorization for SNF and home health services as an alternative to the waiver of liability provision. The results of the pilot program would be due to the Congress April 1988.

Effective date.—The notice of patient rights would be required no later than six months after enactment. The discharge planning requirement would be effective one year after the date of enactment.

PRO review of discharge appeals

Current law.—If a Medicare beneficiary believes that his or her discharge decision is premature, he or she may appeal to a Utilization and Quality Control Peer Review Organization (PRO). The PRO must make a determination within three working days of receipt of the appeal. In the event of an adverse decision, the beneficiary may be financially liable for several days of continued stay before receiving notice of the PRO's decision.

Explanation of provision.—The PRO would be required to make the appeal decision within two calendar days after receipt of an appeal. A beneficiary who appeals his or her discharge notice and loses the appeal would not be liable for charges for a continued inpatient hospital stay until the day following receipt of the PRO's adverse decision on appeal. This financial protection could apply only up to four days after the discharge notice.

Effective date.—The expedited PRO review of hospital denial notices would be effective 30 days after enactment.

PRO review of inpatient hospital services and readmissions

Current law.—Utilization and Quality Control Peer Review Organizations (PRO's) review cases of all patients that have been readmitted to the same hospital within 15 days of discharge.

Explanation of provision.—Review of cases that have been readmitted to the hospital will include at least a sample of readmissions occurring within 31 days of discharge.

The provision would require the Secretary to take measures needed to ensure that PROs receive necessary patient information. This information should be transmitted directly from the hospital if the fiscal intermediary unnecessarily delays forwarding the data.

Effective date.—Intensified readmission review would apply to PRO contracts entered into or renewed on or after January 1, 1987. The timely data and information sharing requirements would be effective within six months of the date of enactment.

PRO review of quality of care

Current law.—Utilization and Quality Control Peer Review Organizations (PROs) are required to review at least a sample of the professional activities of physicians and other health care practitioners and of institutional and noninstitutional providers (including health maintenance organizations and competitive medical plans) for purposes of determining whether the services provided were medically necessary and met professionally recognized standards of care. However, PRO contracts limit required review to inpatient hospital services. PROs are also responsible for assuring confidentiality of patient information.

Explanation of provision.—The provision would require each PRO to devote a reasonable proportion of its efforts to quality of care reviews. In addition, each PRO would be required to provide that a reasonable allocation of its quality of care review activities is made among the different cases and settings (including postacute care settings, ambulatory settings, and health maintenance organizations) for which potential problems of quality have been identified. The provision would require the Secretary of Health and Human Services to identify methods to assist PROs in identifying those cases which are more likely than others to be associated with quality care problems.

PROs would be required to acknowledge formally all written beneficiary complaints about the quality of Medicare covered services. This acknowledgement would advise the beneficiary that appropriate action would be taken. The PRO will determine the appropriate course of action which may include a formal investigation. The PRO would be expected to establish a process to account for each request and its disposition.

In addition, PROs would be required to share confidential information related to quality of care with state licensing authorities and national accrediting bodies acting pursuant to section 1865 of the Social Security Act.

Effective date.—The provision relative to PRO requirements would apply to PRO contracts entered into or renewed on or after January 1, 1987. The amendment relating to the Secretary's responsibilities to help PROs identify quality problems would be effective on enactment. Beneficiary complaints received nine months after the date of enactment must be acknowledged. PROs are required to share confidential information for requests received six months after enactment.

Payment for home health services

Current law.—Under regulations published July 5, 1985, reimbursement for home health services is limited to 120 percent of the mean cost per visit incurred by all home health agencies. For cost reporting periods beginning on or after July 1, 1986 the limits are set at 115 percent of the mean, and for such periods beginning on or after July 1, 1987 the limits are set at 112 percent of the mean. Separate limits are established for and applied to each type of service (e.g., skilled nursing, home health aide, and physical therapy services).

Explanation of provision.—The provision would allow home health agencies to apply the per service limits in the aggregate rather than to each type of home health service. The General Accounting Office would be required to report on the appropriateness of applying the limits on a service-by-service basis.

Effective date.—Cost reporting periods beginning on or after October 1, 1986.

Occupational therapy services

Current law.—Part B coverage of occupational therapy services is limited to treatment in a hospital outpatient department, comprehensive outpatient rehabilitation fa-

cility, home health agency, or when provided incident to physicians' services.

Explanation of provision.—The provision would extend reimbursement under part B of Medicare for occupational therapy services. This therapy would be covered when provided in a skilled nursing facility (when part A coverage is exhausted), in a clinic, or a rehabilitation agency. Payment would be made on a reasonable cost basis.

The provision would provide part B coverage of occupational therapy services when furnished in a therapist's office or a beneficiary's home. The independently practicing therapist would have to meet licensing and other standards prescribed by the Secretary. No more than $500 in incurred expenses would be eligible for coverage in a calendar year per beneficiary. Payment would be based on 80 percent of reasonable charges.

Effective date.—October 1, 1986.

Modify waiver of liability and appeals for home health services

Current law.—Home health agencies can receive payments for items or services which are not deemed reasonable and necessary or are determined to be custodial in nature, if neither the beneficiary nor the provider knew (or could reasonably be expected to have known) that they were not covered. Home health care agencies can be presumed to meet this test if their claims denial rate falls below 2.5 percent. CORBA maintained this favorable presumption criteria for home health agencies until 12 months after claims processing for home health agencies has been consolidated under 10 regional intermediaries (as required by law).

Beneficiaries who are homebound and require (a) skilled nursing services on an intermittent basis or (b) physical or speech therapy are eligible for home health services. Program guidelines specify that intermittent care is care usually provided a few hours a day several times a week. These guidelines also specify that intermittent care can include reasonable and necessary daily care (7 days a week) for a short period of time (2-3 weeks) and, in a few cases involving unusual circumstances, an additional period when certified by a physician. The manuals classify denials of coverage under the intermittent or homebound criteria as "technical denials". Technical denials cannot be appealed.

Explanation of provision.—The provision would amend the waiver of liability provision. The provision would allow the payment for home health services if the provider did not or could not have been expected to know that payment would be denied on the basis that the individual was not homebound or did not require care on an intermittent basis. By removing these coverage criteria from "technical denial" status, all home health service claims could be appealed. The Secretary would be required to issue regulations which specify the limitations that were applied through manuals and guidelines as of January 1, 1986 to be applied to homebound and intermittent status for covered home health services. Final regulations must be published by July 1, 1987.

Effective date.—The expansion of the appeal and waiver of liability provisions would apply to coverage denials occurring after July 1, 1987.

Establishement of patient outcome assessment project

Current law.—No provision.

Explanation of provision.—The Committee is concerned about the wide variation in medical practice patterns throughout the country. The provision would require the Secretary of Health and Human Services to study nationwide variations in medical practice patterns for certain medical procedures. Further, the Secretary would be required to study the relationship between these variations and health status outcomes, with primary emphasis on Medicare beneficiaries.

Effective date.—October 1, 1986.

B. MEDICAID PROVISIONS

1. Optional coverage of poor pregnant women, infants, and children

Current law.—States are required to provide Medicaid coverage to all children receiving assistance under the federally assisted Aid to Families with Dependent Children (AFDC) program and may provide coverage for children who would be eligible for AFDC except for income requirements (known as the medically needy). In addition, States may cover all or reasonable categories of children under age 18 or 19 or 20 or 21 who do not meet the AFDC definition of dependent children (known as Ribicoff children). States are required to cover all children born after October 1, 1983 up to age five who meet the AFDC income and resources requirements and may extend coverage to all such children under age five immediately. States are also required to cover pregnant women meeting AFDC income and resources standards. The January 1986 AFDC levels in the 48 contiguous States and the District of Columbia were all below the poverty line.

Explanation of provision.—The provision would give States the option to expand Medicaid eligibility to cover: (1) pregnant women with incomes up to the Federal poverty level; and (2) young children with family incomes up to the Federal poverty level. Initially the States could cover children under age one. Beginning in fiscal year 1988 the age level would increase by one in each fiscal year until all children up to age five were included. Under the provision, States would be permitted, but not required, to impose an assets test for both pregnant women and children equal to that used under the current AFDC, Supplemental Security Income (SSI), or the State medically needy program.

The provision would specify that election of expanded Medicaid coverage would be optional with the States. Covered services would include prenatal, delivery, and 60-days of post-partum care services for pregnant women and all Medicaid services for covered children.

The provision is intended to promote reductions in infant mortality and incidence of low birthweight. Accordingly, States will be able to elect to cover women and certain children with incomes up to the poverty line for services that would be designed to achieve these goals.

The Committee believes that to ensure the effectiveness of this provision, States should conduct outreach efforts to insure that potentially eligible women are aware of the availability of this coverage. Without such outreach and care, this amendment might merely result in substitution of Federal funds for State or local funds now spent on hospital-based deliveries without any concomitant reduction in infant mortality or incidence of low birthweight. This provision is not intended to permit States or localities to reduce their current levels of services to pregnant women and children.

Effective date.—April 1, 1987.

2. Optional coverage of elderly and disabled poor and poor medicare beneficiaries

Current law.—Eligibility of the elderly and the disabled for Medicaid is linked to actual or potential receipt of cash assistance under the Federal Supplemental Security Income (SSI) program. The elderly and the disabled covered under Medicaid generally are persons receiving Federal and/or State SSI payments, residing in a skilled nursing facility or intermediate care facility, or incurring substantial medical expenses. The income and resources eligibility criteria differ substantially among the States.

Proposal.—The States would have the option to expand Medicaid eligibility to cover the elderly and disabled with an income threshold up to the Federal poverty level for (1) all Medicaid services; or (2) only the cost of the Medicare part A deductible and coinsurance, and the part B premium, deductible, and coinsurance. The resource limit would be the same as under the SSI program for States which restrict coverage to the categorically needy; States having medically needy programs could use the medically needy resource levels.

The provision would provide that election of expanded coverage would be optional with the States. However, the election could only be made where the State had expanded its Medicaid coverage for children up to one year of age and pregnant women as authorized under the Committee bill. States would not be required to use the same income levels for newly eligible children and pregnant women as they use for the newly eligible aged and disabled.

Effective date.—July 1, 1987.

3. Hold-harmless provison for change in Federal medical assistance percentage

Current law.—COBRA provided that beginning in fiscal year 1987, the Federal Medical Assistance Percentage (FMAP) is to be calculated on an annual rather than a biennial basis. The FMAP, which represents the Federal share of Medicaid expenditures in the State, is tied to a formula inversely related to the per capita income of the State.

Explanation of provision.—The provision would specify that any State which would be adversely affected in FY 1987 by the change from a biennial to annual calculation of the FMAP, would be permitted to continue to use the FY 1986 matching rate for FY 1987 for Medicaid.

Effective date.—October 1, 1986.

4. Respiratory care services for ventilator-dependent individuals

Current law.—States are required to cover home health services for Medicaid beneficiaries who are over 21 and categorically needy under 21 if they are eligible to receive skilled nursing facility services. They may also offer such services to the medically needy.

Medicaid will pay for ventilator dependent services in the home only if the State has elected to provide such coverage on a statewide basis or if the State is offering the services to a target population group under a home and community-based services waiver.

Explanation of provision.—The provision would require States to cover respiratory services in the home for individuals who (1) are medically dependent on a ventilator for life support at least 6 hours per day; (2) have been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less), as inpatients, and who,

but for home respiratory care, would require respiratory care on an inpatient basis paid for by Medicaid in these institutions; (3) have adequate social support services to be cared for at home; and (4) wish to be cared for at home. The requirements under (2) may be satisfied by a continuous stay in any one or more of the following facilities: hospitals, skilled nursing facilities, or intermediate care facilities.

Effective date.—Service performed on or after October 1, 1986.

5. Respite care pilot project in New Jersey

Current law.—Medicaid does not currently cover respite care services except where provided under a home- and community-based services waiver.

Explanation of provision.—The provision would fund a respite care project in the State of New Jersey now operated by the New Jersey Department of Health. All families would be eligible for the project but priority would be given to Medicaid recipients, with others paying on a sliding scale for services. Highest priority will go to elderly beneficiaries who will become Medicaid eligible if they become institutionalized. Half of the funding for the respite care program would come from the State and half from Medicaid. In no case will Federal outlays exceed $1,000,000 in FY 1987, and $2,000,000 in each of FYs 1988, 1989, and 1990. Federal funding will cease to be available after September 30, 1990.

Effective date.—Enactment.

6. Presumption of eligibility for pregnant women

Current law.—Title XIX of the Social Security Act allows for a three month retroactive eligibility period prior to the date on which application for medical assistance is made. Medicaid regulations further require State agencies to determine eligibility within 45 days from the day of the application for beneifits. If the application is approved, medical expenses incurred during those 45 days would be reimbursed under the normal Medicaid rules. If the application is denied, medical expenses incurred during those 45 days would be the responsibility of the individual.

Explanation of provision.—The provision would permit State agencies to accelerate Medicaid eligibility for ambulatory prenatal care. Under the program, the agency may for any one pregnancy, grant presumptive eligibility for a period not to exceed 45 days if: (1) the woman has begun maternity care with a qualified Medicaid provider eligible to participate in the presumptive eligibility program; (2) the provider determines that the woman's family income falls below the applicable Medicaid standard; (3) the provider notifies the State agency within 5 working days of the woman's eligibility; and (4) the individual applies for program benefits within 14 calendar days of the beginning date of the presumed eligibility period.

A qualified Medicaid provider for purposes of this provision is an organization which provides outpatient hospital rural health, or Medicaid clinic services as defined under Title XIX of the Social Security Act. In addition, the provider must be receiving funding from certain other Federal programs or be a State-approved perinatal clinic.

States must provide guidelines to these clinics on how to determine this presumptive Medicaid eligibility. Clinics that do not perform this eligibility function to the satisfaction of the State can be barred from participating from this presumptive eligibility program.

Federal medical assistance payments made on behalf of pregnant women during the accelerated eligibility period would be at the same rate applicable for other beneficiaries in the State regardless of whether such women are ultimately determined to be eligible for medical assistance.

State agencies would be responsible for processing the normal application for benefits. This application would include all the information otherwise required for all State Medicaid applicants, such as third party liability information, social security number, establishment of paternity, assignment of rights to payments, and all information related to income and resources.

Effective date.—April 1, 1987.

C. MISCELLANEOUS PROVISIONS

1. Retroactive modification of child support arrearages

Current law.—In most States, a child support order can be modified only prospectively; that is, the terms of the modification do not take effect until after the date on which it becomes final. Thus, only future child support payments would be affected. However, a number of States permit the child support award to be retroactively modified. In such States, the court (or administrative entity) has the authority to reduce or nullify arrearages. Further, under the Uniform Reciprocal Enforcement of Support Act (URESA), in interstate cases, the court in the noncustodial parent's State may modify the child support order of the custodial parent's State to the same extent the order could be modified in the State that issued the order.

Explanation of provision.—The provision adds to the child support enforcement program established by title IV of the Social Security Act a new requirement which States must meet to be in compliance with that program. To meet this new requirement, State laws relating to the enforcement of child support orders must prohibit changes in those orders which are effective on a retroactive basis. The Committee recognizes that a person's financial circumstances change. The noncustodial parent may lose his or her job or face other circumstances that cause him or her not to be able to afford the original child support award. The amendment is not intended to prevent changes in future child support payments if the financial situation of the noncustodial parent changes. What the Committee is seeking to prevent is the purposeful noncompliance by the noncustodial parent, because of his hope that his child support obligation will be retroactively forgiven. If the noncustodial parent's circumstances change because of unemployment, illness or another such reason, the amendment puts the burden on the noncustodial parent to notify the custodial parent and the court or entity which issued the child support order of his changed circumstances and his intent to have his child support order modified. No modification would be permitted before the date of this notification.

2. Hold-harmless provision for change in Federal medical assistance percentage for purposes of the AFDC Program

Current law.—COBRA provided that beginning in fiscal year 1987, the Federal Medical Assistance Percentage (FMAP) is to be calculated on an annual rather than a biennial basis. The FMAP is tied to a formula inversely related to the per capita income of the State. The FMAP may also be used for AFDC.

Explanation of provisions.—The provision would specify that any State which would be adversely affected in FY 1987 by the change from a biennial to annual calculation of the FMAP, would be permitted to continue to use the FY1986 matching rate for FY1987 for AFDC.

Effective date.—October 1, 1986.

TITLE VI—A: REVENUE PROVISIONS

1. Extend Medicare coverage and hospital insurance tax to all State and local government employees (sec. 661 of the bill)

Present law.—Prior to enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), P.L. 99-272, State and local government employees were covered for social security and Medicare benefits only if the State and the Secretary of Health and Human Services (HHS) entered into a voluntary agreement providing such coverage. In COBRA, the Congress extended Medicare coverage (and the corresponding hospital insurance payroll tax) on a mandatory basis to State and local government employees hired after March 31, 1986, for services performed after that date.

COBRA also authorized States to elect to extend Medicare coverage to State and local government employees hired prior to April 1, 1986, by voluntary agreement with HHS. Under present law, however, Medicare coverage is not mandatory for State and local government employees hired prior to April 1, 1986 unless such a voluntary agreement is in effect. Medicare coverage (and the hospital insurance payroll tax) is mandatory for Federal employees.

For wages paid in 1986 to Medicare-covered employees, the combined employer-employee hospital insurance tax rate is 2.9 percent (1.45 percent on each) of the first $42,000 of wages (Code secs. 3101, 3111, and 3121(a)).

Reasons for change.—Individuals who have worked in State and local government employment that is excluded from Medicare coverage often qualify for Medicare benefits. These individuals qualify as a result of work performed in other employment covered under the program or through the entitlement of a spouse. By and large, individuals who qualify after having worked in excluded State and local government employment have contributed signficantly less in FICA payroll taxes than others who become entitled to benefits having had comparable lifetime earnings all of which were subject to FICA. Such individuals thus represent an inequitable financial drain on the Medicare hospital insurance program.

Unlike monthly social security benefits, where minimal covered earnings and tax contributions result in minimal benefit amounts, entitlement to Medicare is entitlement for the full range of benefits. The benefits are the same regardless of whether the insured worker has made significant tax contributions over his or her working lifetime or whether the individual has qualified with the minimum number of quarters of coverage. The committee believes that this anomaly should be corrected.

Explanation of provision.—The provision extends hospital insurance (Medicare) coverage on a mandatory basis to all employees of State and local governments not otherwise covered for Medicare under present law.[1] The employers and their employees

[1] As under present law, Medicare coverage and the hospital insurance tax are not extended to individuals hired by a State or political subdivision to

will become liable for the hospital insurance portion of the FICA tax, and the employees will earn credit toward Medicare eligibility based on their covered earnings.[2] (The optional Medicare coverage provision enacted in COBRA is terminated.) The collection of the hospital insurance tax with respect to State and local government employees to whom the provision applies is to be carried out in the same manner as provided in COBRA with respect to employees hired after March 31, 1986.

Effective date.—Medicare coverage and the corresponding hospital insurance payroll tax are extended to all State and local employees (not otherwise covered by present law) effective after April 30, 1987, for services performed after that date.

2. Increase in cigarette excise tax rates (sec. 662 of the bill)

Present law.—An excise tax is imposed on cigarettes manufactured in or imported into the United States (Code sec. 5701). In COBRA, the Congress made permanent the tax rate on small cigarettes at $8 per thousand (i.e., 16 cents per pack of 20 cigarettes), and the tax on large cigarettes at $16.80 per thousand. (Proportionately higher rates apply to large cigarettes that exceed 6.5 inches in length.) Most cigarettes are classified as small cigarettes (i.e., weigh not more than three pounds per thousand) and thus are taxable at 16 cents per pack.

Reasons for change.—The committee determined that the present budgetary situation requires an increase in cigarette excise tax rates. The committee further believes that an increase in cigarette taxes should help to discourage smoking, particularly among younger Americans, and reduce associated health risks.

The committee took into consideration that cigarette excise tax rates were unchanged between 1951 and 1982. Because the tax is imposed at a flat rate, rather than as a percentage of sale price, the effective rate of the tax declined steadily during this period. Even with the increase made by the bill, the tax rate will remain lower than it would have been had the 1951 tax rate been indexed for changes since 1951 in the consumer price index.

Explanation of provision.—The bill increases the excise tax rate on small cigarettes to $12 per thousand (i.e., from 16 to 24 cents per pack of 20 cigarettes). Large cigarettes not exceeding 6.5 inches in length are to be taxed at a rate of $25.20 per thousand; proportionate increases apply for large cigarettes that exceed 6.5 inches in length.

As in the case of the 1982 rate increase, the increased rates under the bill apply to certain cigarette floor stocks. Under the bill, an additional tax is imposed on each person holding cigarettes for sale (other than certain retail stocks) on October 1, 1986, if the cigarette were removed from bonded premises before that date and taxes were paid on removal at the present-law rates. The additional tax (which is treated as a tax imposed under sec. 5701) equals the excess of the tax that would apply to removal of the cigarettes from bonded premises on or after October 1, 1986, over the present-law tax rates on such cigarettes (e.g., the additional tax on small cigarettes is $4 per thousand). This additional tax is due and payable on November 17, 1986.

The bill expressly provides that cigarettes that are held in a foreign trade zone on October 1, 1986 and that are entered into the customs territory of the United States on or after October 1, 1986 are treated as held for sale on October 1, 1986 and are subject to the floor stocks tax. This includes both foreign articles on which taxes have been determined or customs duties liquidated by a customs officer at the present-law rate, and also domestic articles as to which tax liability has attached at the present-law rate and which have been placed under supervision of a customs officer, if such foreign or domestic articles are held in a foreign trade zone on October 1, 1986 and are entered or re-entered into the customs territory of the United States on or after October 1, 1986.

An exemption from the floor stocks tax is provided only for cigarettes held for sale by a retailer on October 1, 1986 at the place where intended to be sold at retail. For example, cigarettes held for sale on October 1, 1986 on the shelves of a retail store will be exempt as held by a retailer, but cigarettes held on October 1, 1986 in warehouses or other similar facilities where retail consumers do not have regular access to them or in a foreign trade zone are not to be treated as retail stocks held by a retailer and hence are not eligible for the exemption.

Effective date.—The provision is effective for cigarettes removed from bonded premises after September 30, 1986, and for floor stocks (other than exempted retail floor stocks) held or treated as held on October 1, 1986.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, July 29, 1986.

Hon. BOB PACKWOOD,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimates of the provisions in the Senate Committee on Finance's reconciliation package. Provisions with no outlay or revenue effect are not listed in the tables. The estimates are shown in two separate attachments—one showing estimated outlay effects and one showing estimated revenue effects.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

TABLE 1.—THE ESTIMATED REVENUE EFFECTS OF THE SENATE FINANCE COMMITTEE RECONCILIATION PROVISIONS RELATIVE TO THE BUDGET RESOLUTION BASE

[Fiscal years, in billions of dollars]

	1987	1988	1989	3-year total
Increase cigarette excise tax by 8 cents per pack, net [1]	1.593	1.684	1.693	4.970
Extend Medicare coverage to State and local government employees hired prior to April 1, 1986 [2]	0.829	2.151	2.169	5.149
Total revenue effect, net	2.422	3.835	3.862	10.119

[1] Effective October 1, 1986.
[2] Effective May 1, 1987.

TABLE 2.—FINANCE RECONCILIATION PROVISIONS

[In millions of dollars]

SUBTITLE A—OUTLAY PROVISIONS

Sections	FY 1987	FY 1988	FY 1989	3-year total
Part 1—Provisions relating to the Medicare Program				
Subpart A—Provisions relating to part A of Medicare:				
601—Payments for inpatient hospital services: [1]				
Budget authority	10	30	55	95
Outlays	−180	−230	−260	−670
602—Payments for capital related costs:				
Budget authority	5	15	40	60
Outlays	−75	−205	−310	−590
603—Changes in inpatient hospital deductible:				
Budget authority	−40	−105	−175	−320
Outlays	420	660	630	1,710
604—Requiring notice of hospital discharge rights:				
Budget authority	0	−1	−1	−2
Outlays	3	5	7	15
Subtotal for subpart A:				
Budget authority	−25	−61	−81	−167
Outlays	168	230	67	465
Subpart B—Provisions relating to parts A and B of Medicare:				
611—Medicare coverage as secondary payor:				
Budget authority	−40	−36	−12	−88
Outlays	−255	−340	−370	−965
612—Payment of Medicare claims:				
Budget authority	615	360	375	1,350
Outlays	−2,140	−185	−245	−2,570
613—Payment for home health services:				
Budget authority	−1	−2	−5	−8
Outlays	15	15	20	50
614—Modifications of waiver of liability and appeal provisions for home health services:				
Budget authority	−2	−5	−10	−17
Outlays	40	45	50	135
615—Provider representation of beneficiaries on appeals:				
Budget authority	0	−1	−1	−2
Outlays	4	7	7	18
616—Establishment of patient outcomes project:				
Budget authority	0	−1	−2	−3
Outlays	5	7	8	20
Subtotal subpart B:				
Budget authority	572	315	345	1,232
Outlays	−2,331	−451	−530	−3,312
Subpart C—Provisions relating to part B of Medicare:				
621—Payments for physician services:				
Budget authority	−105	−110	−125	−340
Outlays	−100	−105	−120	−325
622—MEI for physicians services:				
Budget authority	−85	−215	−260	−560
Outlays	−50	−200	−250	−500
623—End stage renal disease payments:				
Budget authority	−32	−32	−32	−96
Outlays	−30	−30	−30	−90
624—Payments for ambulatory surgery:				
Budget authority	−55	−95	−125	−275
Outlays	−45	−85	−120	−250
625—Occupational therapy services:				
Budget authority	15	16	20	51

relieve unemployment; patients or inmates working in a hospital, home, or other institution; temporary State or local government workers hired for certain emergencies; or certain students working in District of Columbia hospitals. Also, the provision extends for Medicare coverage purposes the present-law exception, applicable under social security and Medicare coverage pursuant to voluntary State agreements, for certain election officials and election workers who are paid less than $100 in a calendar year (see 42 U.S.C. see 418(c)(8)).

[2] Also, employees who performed service for a State or local government before May 1, 1987 that would constitute Medicare-qualified government employment if performed after May 1, 1987 may receive credit, for Medicare coverage purposes only, for such prior service under transitional provisions in the bill, similar to transitional provisions enacted when mandatory Medicare coverage was extended to Federal employees. The bill includes a provision authorizing appropriations as required for the transitional provision.

TABLE 2.—FINANCE RECONCILIATION PROVISIONS—Continued

[In millions of dollars]

SUBTITLE A—OUTLAY PROVISIONS

Sections	FY 1987	FY 1988	FY 1989	3-year total
Outlays	15	15	20	50
Subtotal subpart C:				
Budget authority	−262	−436	−522	−1,220
Outlays	−210	−405	−500	−1,115
Subpart D—Peer review organizations:				
631—PRO review of hospital denial notices:				
Budget authority	0	0	0	0
Outlays	1	2	2	5
632—PRO review of inpatient hospital services:				
Budget authority	0	0	−1	−1
Outlays	2	3	3	8
633—Requiring PRO review of quality of care services:				
Budget authority	0	0	0	0
Outlays	1	2	2	5
Subtotal subpart D:				
Budget authority	0	0	−1	−1
Outlays	4	7	7	18
Subtotal Medicare provisions:				
Budget authority	285	−182	−259	−156
Outlays	−2,369	−619	−956	−3,944
Part 2—Provisions relating to the Medicaid Program				
641—Optional coverage of pregnant women and infants:				
Budget authority	25	85	110	220
Outlays	25	85	110	220
642—Optional coverage of elderly and disabled:				
Budget authority	45	170	240	455
Outlays	45	170	240	455
643—Respiratory care services:				
Budget authority	−2	0	0	−2
Outlays	−2	0	0	−2
644—Hold-harmless for Medicaid matching percentage:				
Budget authority	50	0	0	50
Outlays	50	0	0	50
645—Respite care pilot project:				
Budget authority	1	2	2	5
Outlays	1	2	2	5
646—Presumptive Eligibility:				
Budget authority	2	2	2	6
Outlays	2	2	2	6
Subtotal Medicaid provisions:				
Budget authority	121	259	354	734
Outlays	121	259	354	734
Part 3—Miscellaneous provisions				
651—Procedure to prohibit retroactive modification of child support payments:				
Budget authority	−1	−2	−3	−6
Outlays	−1	−2	−3	−6
651—Hold-harmless for AFDC matching percentage:				
Budget authority	15	0	0	15
Outlays	15	0	0	15
Subtotal miscellaneous provisions:				
Budget authority	14	−2	−3	9
Outlays	14	−2	−3	9
Offset to revenue provisions				
Additional Medicare expenditures as a result of State and local coverage:				
Budget authority	0	0	0	0
Outlays	0	2	6	8
Subtotal all outlay provisions:				
Budget authority	420	75	92	587
Outlays	−2,234	−360	−599	−3,193

[1] Estimate pending final legislative language.

ADDITIONAL VIEWS OF SENATOR WILLIAM ARMSTRONG ON THE MEDICARE TAX ON STATE AND LOCAL EMPLOYEES

Earlier this year, Congress imposed the Medicare Hospital Insurance payroll tax on State and local employees hired after March 31, 1986—that is, on newly hired workers. It was the judgment of Congress last fall that such a significant tax on State governments and workers should be phased-in prospectively. I believe this was the appropriate way to handle the imposition of the tax and do not support imposing it on current State and local employees as proposed in this reconciliation bill.

I recognize that many State and local employees become eligible for Medicare benefits through private sector employment, or through a spouse, and as a result receive full benefits while paying a lesser amount in Medicare taxes than a private sector employee. In my view, this inequity was addressed last year in an equitable manner by phasing in the new tax. There is about a 9% turnover rate each year among State and local employees. Thus, over a relatively short period of time, all State and local workers will be required to pay into Medicare.

I think this solution is far preferable to imposing a direct 1.45% pay cut on current State and local workers and requiring State governments as employers to pay an equal tax. I am concerned this proposal will seriously undermine financial stability of existing State supported retirement and health care programs. In addition, some State treasuries are already suffering from the problems facing the oil and farm industries. In recent years, States have also faced limitations on direct Federal aid from Congress. While reductions in such Federal aid are justified because of the Federal deficit, I do not believe Congress should, at the same time, ask State governments to pay more from their own treasuries in taxes to Washington.

ADDITIONAL VIEWS OF SENATOR GEORGE J. MITCHELL, RECONCILIATION ACT OF 1986

I cannot support the recommendations of the Finance Committee to meet its reconciliation instructions because, once again, the Committee is relying on regressive excise and payroll taxes to reduce federal budget deficits.

Too often over the last few years, Congress has turned to taxes which are not based on ability to pay as a means of meeting budget reconciliation instructions for deficit reduction.

As a result, federal excise, payroll, and use taxes are contributing a growing share of federal revenues, causing a redistribution of tax burdens away from upper income families and toward middle and low income earners. In 1982, 1983, 1984 and again earlier this year, Congress enacted legislation increasing the payroll tax and almost every excise tax while creating new use fees.

Unfortunately, it appears that this trend toward greater reliance on taxes which are not based on ability to pay will continue. This is the second budget reconciliation measure we have considered during 1986. The measure enacted earlier this year increased federal revenues by $6 billion over a three year period, almost all of it from excise and payroll taxes.

In this reconciliation measure the Finance Committee is proposing to raise another $10 billion over three years, all of which would be raised from higher payroll and excise taxes.

As we consider this budget measure, House and Senate conferees are meeting to finalize an income tax reform measure that will reduce individual income taxes between $100 billion and $140 billion over the next five years. After 18 months of consideration of income tax reform, Congress is not likely to turn to the income tax system again. Yet, it is likely that in September Congress will once again have to look for more revenues to meet the Gramm-Rudman budget targets. As a result, Congress will vote still more increases in excise and fixed taxes not related to ability to pay, even as we reduce individual income taxes which are based on ability to pay.

This continuing redistribution of tax burdens on to lower and middle income earners is neither fiscally nor socially responsible. It should be stopped.

COMMITTEE ON GOVERNMENT AFFAIRS

TITLE VII

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, July 29, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on Budget, Washington, DC.

DEAR MR. CHAIRMAN: In accordance with the reconciliation instructions in the First Concurrent Resolution on the Budget (S. Con. Res. 120) the enclosed recommendation of the Committee on Governmental Affairs to effect budgetary savings is submitted.

The Committee has approved legislation which established civil penalties and fines for those who submit false claims and statements to the federal government. The enclosed language is a modification of S. 1134, previously reported by the Committee.

Other recommendations to effect further savings will be submitted shortly by separate letter.

Sincerely,

WILLIAM V. ROTH, Jr.,
Chairman.

PROGRAM CIVIL FRAUD

Part B of section 7 establishes an administrative remedy for false claim and statement cases under $100,000 that the Department of Justice has declined to litigate. This remedy is based on legislation (S. 1134, the Program Fraud Civil Remedies Act of 1986) that was reported by the Governmental Affairs Committee on November 19, 1985 (report 99-212).

While judicial remedies are available to penalize and deter fraud against the government, the cost of litigation often exceeds the amount recovered, thus making it economically impractical for the Justice Department to go to court. The government is frequently left without an adequate remedy for the small-dollar cases.

The consequence, according to the Justice Department, is that the federal government loses "tens, if not hundreds, of millions of dollars" to fraud each year. Beyond the actual monetary loss, fraud in federal programs also erodes public confidence in the administration of these programs by allowing ineligible persons to participate.

In a July 16, 1986, letter to Senator William V. Roth, Jr., Chairman of the Governmental Affairs Committee, the Congressional Budget Office states that the language contained in part B of section 7 "would result in a net reduction in the deficit as a result of increased civil penalty collections and/or some decrease in fraudulent activity." Although CBO is reluctant to provide a firm savings estimate, the letter cites a 1982 General Accounting Office report, which estimates that "cases of fraud targeted by this bill cost the government $30 million to $40 million annually."

Under the administrative remedy set forth in this section, a typical case would begin with an investigation conducted by the agency's investigating official, usually the Inspector General. The IG's findings would be transmitted to the agency's reviewing official, who would independently evaluate

the allegations to determine whether there is adequate evidence to believe that a false claim or statement has been submitted.

If so, the matter would be referred to the Justice Department for consideration. This procedure ensures that the Department will have an opportunity to review the charges and elect, if it so chooses, to litigate in federal court. An agency may only commence administrative proceedings against the person alleged to be liable if the Justice Department approves initiation of such proceedings. In those cases, the reviewing official would notify the person of the charges and of his or her right to a hearing.

An Administrative Law Judge—an independent, trained hearing examiner—would conduct the hearing to determine whether or not the person is liable and the amount of penalty and assessment, if any, to be imposed. The hearing itself would be conducted pursuant to the due process safeguards of the Administrative Procedure Act, which entitles the person to a written notice of the allegations, the right to be represented by counsel, and the right to present evidence on his or her own behalf. The amendment even goes beyond these APA protections by providing the person discovery rights.

Finally, the person alleged to be liable has the right to appeal the hearing examiner's decision to the agency head and then, having exhausted all administrative remedies, the right to obtain judicial review in a U.S. Court of Appeals.

In establishing liability under the administrative remedy, the government would not only have to prove that a claim or statement is false, but also that the person "knows or has reason to know" that the claim or statement is false. The amendment defines this knowledge standard to cover those persons who either have actual knowledge that a claim or statement submitted is false, act in deliberate ignorance of the truth or falsity of the claim or statement, or act in reckless disregard of the truth or falsity of the claims or statement. The penalty and assessment, if the person is found liable, would be up to $10,000 for each false claim or statement, plus double the amount falsely claimed.

The "knows or has reason to know" standard for establishing liability under this section is intended to capture those persons who recklessly disregard facts which are known or readily discoverable upon reasonable inquiry, while excluding those persons who submit false claims or make false statements through mistake, momentary thoughtlessness, or inadvertence. The definition clarifies, therefore, that a person who makes a false claim or statement through mere negligence does not meet the requisite *scienter* requirement and would not be held liable under the Act. Only those individuals who are extremely reckless, who demonstrate an extreme departure from ordinary care, would be subject to liability.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, July 16, 1986.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am pleased to clarify the CBO cost estimate for S. 1134, dated December 3, 1985. We believe that the bill would result in a net reduction in the deficit as a result of increased civil penalty collections and/or some decrease in fraudulent activity. The amount of the savings cannot be reliably estimated, however, because of uncertainty as to the amount of fraud, the way agencies would make use of the new authority, and the deterrent effect of any agency actions. As a result, there is no clear basis for projecting the savings that would result from the bill. As stated in CBO's cost estimate, the General Accounting Office conducted a comprehensive study of fraud in government programs (Fraud in Government Programs: How Extensive Is It? How Can It Be Controlled?, AFMD-81-73), and estimated that cases of fraud targeted by this bill cost the government $30 million to $40 million annually.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER,
Director.

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, July 29, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, Washington, DC.

DEAR MR. CHAIRMAN: In accordance with the reconciliation instructions in the First Concurrent Resolution on the Budget (S. Con. Res. 120) the recommendations of the Governmental Affairs Committee to effect the required budgetary savings are enclosed.

The Committee has adopted language to provide changes in the revenue foregone appropriation and moves the date for participation in the new Federal Employees Retirement System to April 1987. In addition, the Committee has approved legislation which establishes civil penalties and fines for those who submit false claims and statements to the federal government.

Sincerely,

WILLIAM V. ROTH, Jr.,
Chairman.

THOMAS F. EAGLETON,
Ranking Minority Member.

FEDERAL EMPLOYEE RETIREMENT SYSTEM

This language amends the dates on which current federal employees who are subject to the Civil Service Retirement and Disability System and who are not required to participate in the new Federal Employees' Retirement System may elect to participate in the new system and the system's new thrift savings plan. Under current law, employees may elect to participate in the new retirement plan beginning July 1, 1987. Alternatively, those employees remaining in the current civil service retirement plan may elect to participate in the new thrift savings plan beginning July 1, 1987. This language amends these provisions by changing the starting date to April 1, 1987.

REVENUE FOREGONE APPROPRIATION

This amendment would revise the method for computing the revenue foregone appropriation for the United States Postal Service. This provision implements one of the recommendations made by the Postal Rate Commission in its report of June 18, 1986 on preferred postal rates.

Currently, the federal government provides the Postal Service with funds to capture the revenue shortfall created by allowing eligible mailers lower postage rates than would otherwise be available to them. In its study, the Postal Rate Commission concluded that the present method for calculating revenue foregone results in an overstatement of the amount, thus inflating the amount Congress is requested to appropriate. The Committee endorses the Postal Rate Commission recommendation that a new method, the "equal markup" method be instituted to more accurately capture the revenue foregone.

CBO COST ESTIMATES

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, July 31, 1986.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached table analyzing the budget impact of the reconciliation recommendations adopted by the Senate Committee on Governmental Affairs on July 30, 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER,
Director.

RECONCILIATION RECOMMENDATIONS OF THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS—FEDERAL BUDGET IMPACT RELATIVE TO CURRENT LAW AND THE BUDGET RESOLUTION BASELINE

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Authorization					
Postal Service: [1]					
Estimated authorization level			−210	−300	−300
Estimated outlays			−210	−300	−300
Direct Spending					
Civil service retirement: [2]					
Estimated budget authority	664	64	66	56	37
Estimated outlays	−247	22	38	42	25
Revenues [2]	−42	2	3	4	5

[1] The Committee recommendations would revise the basis for determining costs to be recovered by revenues plus appropriations for reduced-rate categories of mail. If this legislation is enacted, and if appropriations in future years are adjusted correspondingly, revenue foregone payments would be an estimated $594 million in 1989, $539 million in 1990, and $575 million in 1991. It is possible that these amounts would be insufficient to maintain current postal rates for preferred mailers.

[2] The Committee recommendations would allow most federal civilian employees to begin contributing to the government retirement program's thrift savings plan and to begin participating in the new retirement system three months earlier than under current law. Earlier employee contributions would increase offsetting collections (negative outlays) in 1987, but would increase outlays in subsequent years as a result of larger withdrawals. In addition, because the employee contributions are tax deductible, the government's tax revenues would drop in 1987, while in subsequent years the larger withdrawals would result in higher tax revenues.

Note.—Negative outlays represent a decrease in spending and in the deficit. Negative revenue figures represent a decrease in revenues, and an increase in the deficit.

COMMITTEE ON LABOR AND HUMAN RESOURCES

TITLE VIII

U.S. SENATE, COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC, July 25, 1986.

Hon. PETE V. DOMENICI and Hon. LAWTON CHILES,
Chairman and Ranking Minority Member, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR PETE AND LAWTON: In compliance with the Senate Budget Committee procedures for reporting a reconciliation bill in response to the First Concurrent Budget Resolution for Fiscal Year 1987, we hereby submit a complete package of proposed legislative changes for inclusion in Title VIII of that bill.

This package includes: (1) the legislative language to implement the reductions, (2) the accompanying report language, and (3) a CBO cost estimate for the Senate Labor Committee amendments to the Guaranteed

Student Loan program and the Education loan asset program. The Committee is pleased to report a reconciliation package which meets the required savings in fiscal year 1987 as well as over a three-year period. These three-year savings of $1.5 billion are not expected to adversely affect beneficiaries most in need.

Sincerely,

EDWARD M. KENNEDY,
Ranking minority member.
ORRIN G. HATCH,
Chairman.

REPORT LANGUAGE ON GUARANTEED STUDENT LOAN PROGRAM

The Guaranteed Student Loan (GSL) Program has been under close review in the past few years, both by the members of the Committee and members of the Senate as a whole. Last year, a great deal of time was spent debating legislation to save $800 million over 3 years as instructed by P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985. Subsequently, the Subcommittee on Education, Arts and Humanities began work on S. 1965, a bill to reauthorize the Higher Education Act of 1965. Five cost saving provisions currently included in Senate-passed S. 1965 have been extracted and one additional proposal submitted as legislative language necessary to achieve cost savings pursuant to this Committee's reconcilation instructions in the Concurrent Resolution on the Budget—FY87, S. Con. Res. 120. Two of the above provisions, increasing the interest rate on GSL's and reducing the lender yield, were to be effective as of July 1986 under language in Senate-passed S. 1965. The effective date is changed to October 1, 1986. Outlay savings achieved by the adoption of this language include $795 million in budget authority and $680 million in outlays over a three year period.

(1) NEEDS BASIS FOR THE GUARANTEED STUDENT LOAN PROGRAM

This language requires that all applicants undergo a financial needs test to receive a GSL. Under current law, a student from a family with an annual income under $30,000 is automatically eligible for a loan. By requiring all students to undergo a needs test, the Committee seeks to ensure that students are borrowing according to their need. Concern has been raised about the exceptionally harsh treatment of low income independent students with children when instituting an across-the-board needs test. The Committee responded to this concern by clarifying the treatment of independent students (see section on independent student).

(2) INTEREST RATE FOR NEW BORROWERS

The interest rate for new borrowers in the GSL program is increased from 8% to 10% once the student begins repayment.

(3) RULE FOR REINSURANCE BASED ON DEFAULT RATES

The Committee language also changes the rate of reimbursement of claims paid on defaulted loans to the guarantee agencies (known as reinsurance) from the current 100%-90%-80% to 100%-80%-70% for new loans. While still providing incentives for the agencies to maintain a low default rate (less than 5%) and thus receive 100% reimbursement, this change will encourage enhanced due diligence and an increased emphasis on default prevention for those agencies with a higher default rate. The increase in the amount of student loans in default is of great concern to the Committee and this is one step toward lowering the default rate.

(4) SPECIAL ALLOWANCE

The special allowance which the Federal government pays to the banks to encourage their participation has been decreased in this language from the current 3.5% to 3.0%. The Committee does not intend to force any banks out of the program; rather, it is the Committee's finding that as the GSL program has grown, the banks have made a profit from this program. In the Committee's view, the banks can and should share in cost saving measures.

(5) DEFINITION OF INDEPENDENT STUDENT

The definition of independent student for all financial aid programs has been amended to require that unmarried students and students without dependents under 23 years of age must satisfy the established criteria for the award year plus the two previous years. The following criteria requires that the student:

Does not live for more than 6 weeks a year with his/her parents;

Is not claimed as a dependent for Federal income tax purposes by his/her parents; and

Does not receive more than $750 in financial assistance from his/her parents.

Students who are 23 years of age and above, or married students with dependents, fall under the current rule of satisfying the criteria for the award year plus one previous year.

ADDITIONAL PROPOSAL

Additionally, the Committee requires that $20 million be returned in fiscal year 1987 to the Department of the Treasury from state guarantee agency advances.

All of the above mentioned language assumes an effective date of October 1, 1986.

REPORT LANGUAGE ON EDUCATION LOAN ASSET SALES

The College Housing Loan program supports financing for the construction, renovation, and acquisition of college and university housing and related student service facilities through direct, subsidized loans made from a revolving fund. This financing is intended to help higher education institutions to accommodate increases in resident student enrollments and also to support energy conservation rehabilitation of existing facilities.

Since the inception of this program in 1950, over $3.79 billion in loans has been awarded, with about $2.676 billion remaining outstanding at the close of fiscal year 1984. Eligible applicants are institutions of higher education, certain vocational institutions, teaching hospitals, and public or private non-profit college housing agencies.

Loan capital has been provided both with Department of the Treasury borrowings and through the marketing of Government National Mortgage Association public securities. New loan commitments may be made from the revolving fund's available resources. The authorized level of new loans must be specified each year in appropriations language. In fiscal year 1984 and fiscal year 1985, $40 million in loan authority was authorized annually.

The Committee members were instructed to achieve $579 million in savings in the College Housing Loan Program in fiscal year 1987. That will be achieved by directing the Secretary of Education to sell approximately 50 percent of the loan obligations held by the Department of Education on this program. These loans have a face value of $1.3 billion. The Department of Education estimates that the sale of these loans will result in a profit of $579 million in fiscal year 1987. The proceeds from this sale will be used to pay off a portion of the Department of Education's debt to the Department of the Treasury. Language is included to clarify the Department of Education's authority to sell these loans at a discount. The Secretary of Education is directed to compute the discount which may be offered to a borrower as an inducement to early repayment in an amount determined to be in the best financial interests of the Federal government.

Also, language is included which states the Department of Education's authority to sell Higher Education Academic Facilities Loans. The reconciliation instructions assumed savings in the Higher Education Academic Facilities Loan program after fiscal year 1987.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, July 25, 1986.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate of the legislative changes sent by the Senate Committee on Labor and Human Resources to the Senate Budget Committee, July 25, 1986. This legislation would make changes in the Guaranteed Student Loan program, Title VII of the Higher Education Act of 1965, and the College Housing Act of 1950, for the purpose of meeting the reconciliation instructions included in the Concurrent Resolution on the Budget—Fiscal Year 1987 (S. Con. Res. 120).

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

COST ESTIMATE

1. Bill number: None.

2. Bill title: Education Budget Savings Act of 1986.

3. Bill status: As passed by the Senate Committee on Labor and Human Resources on July 25, 1986 and sent to the Senate Budget Committee.

4. Bill purpose: The purposes of the bill are: (1) to make changes in spending in the Guaranteed Student Loan program, and (2) to amend Title VII of the Higher Education Act of 1965 and the College Housing Act of 1950 regarding the sale of loan obligations, all for the purpose of deficit reduction consistent with the reconciliation instructions included in the Concurrent Resolution on the Budget—Fiscal Year 1987 (S. Con. Res. 120).

5. Estimated cost to the Federal Government: This bill is intended as a reconciliation act. We have, therefore, done the estimates relative to the baseline used for S. Con. Res. 120. The baseline differs from current law in that it reflects the full projected cost of the current programs for the next five years.

TABLE 1.—ESTIMATED FEDERAL COSTS RELATIVE TO BASELINE UNDER THE ECONOMIC ASSUMPTIONS CONSISTENT WITH THE CONCURRENT RESOLUTION ON THE BUDGET—FISCAL YEAR 1987

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Changes to baseline					
Guaranteed student loans:					
Budget authority	−55	−235	−505	−675	−755
Outlays	−30	−185	−465	−650	−735
College housing and higher education loan asset sales:					
Budget authority		−15	−9	−8	−7
Outlays	−579	−314	94	94	118
Bill total:					
Budget authority	−55	−250	−514	−683	−762
Outlays	−609	−499	−371	−556	−617

Note: The costs of the bill fall within budget functions 500 and 900.

Basis of Estimate: Guaranteed Student Loan Program

This legislation makes several programmatic changes to the Guaranteed Student Loan (GSL) program. Specifically, these changes would: (1) Limit program eligibility to remaining financial need. This would be done by both eliminating the current Guaranteed Student Loan (GSL) family contribution schedule and the $30,000 family income cap and using the "uniform methodology" currently in federal regulations for approving needs analysis systems for other federal student aid programs. (2) Change the definition of an independent student to require any single student under age 23 without dependents to prove two prior years of financial independence from their parents. (3) Increase the interest rate on GSLs from 8 to 10 percent when the loan enters repayment. (4) Reduce lender yield on new loans by .50 percent. (5) Lower the current reinsurance triggers for the federal share of default claims from 100 percent/90 percent/80 percent to 100 percent/80 percent/70 percent and (6) Recall $20 million of the state guarantee agency advances in 1987. The estimates, consistent with bill language, assume an October 1986 implementation date. In combination, these proposals reduce budget authority in 1987 by $55 million and outlays by $30 million. By 1991, budget authority is reduced by $755 million and outlays by $735 million.

In 1987, CBO projects that the GSL program would cost $3.2 billion under current law. This level reflects $9.75 billion in new loan commitments to 4.25 million students and a cumulative outstanding loan volume over $50 billion. Below is a brief discussion of the separate proposals and the major programmatic assumptions behind the budget estimates.

This bill would repeal the current GSL family contribution schedule published by the Department of Education, eliminate the current $30,000 income cap, and require the determination of financial need to be done through the "uniform methodology" (UM) financial needs analysis. The UM is currently in federal regulations for approving needs analysis systems used in other federal student aid programs.

As a result of the UM needs test, close to one million students are estimated to either have their borrowing levels held below the maximum levels or lose eligibility for loans altogether. Most of those affected would either be dependent students whose family income is close to the current $30,000 income cap and who attend relatively low-cost schools, or dependent undergraduates whose family income is in excess of $30,000 who would be expected to contribute more of their income to education due to a broader definition of income and who would be expected to make a family contribution from assets. In addition, independent students would also be affected since these students would be expected to contribute a significant amount of their earnings towards their education.

Since borrowers could be required to apply for their loans through a needs application administered or contracted by the Department of Education, the federal government would incur increased federal application processing costs. The 1985 cost of processing an application was $7.75. Adjusting for inflation and assuming the federal government would process about 1.5 million more applications than are currently processed in the Pell Grant program, federal administrative costs would increase by about $13 million in 1987.

In addition to the change in the needs analysis eligibility criteria, S. 1965 would affect another 45,000 students, who are single independent students under 23 years of age without dependents, by the redefinition of an independent student.

These students would be reclassified as dependent students in determining family resources and financial need. It is assumed that the majority of these students could not borrow as dependent students.

The lender yield on newly guaranteed loans in the GSL program would be reduced by .50 percent to a total yield to lenders of the 91-day Treasury bill rate plus 3.0 percent. The estimate of this proposed change reflects the change in yield on all new loan commitments. The cost estimate associated with this provision does not reflect any change in lender behavior. If lenders dropped out of the program as a result of lower total yields, the budget savings from the provision would be higher; however, eligible GSL borrowers would no longer have GSL loan capital available to them.

This bill changes the federal reinsurance trigger from 100 percent/90 percent/80 percent to 100 percent/80 percent/70 percent on all new loans. Guarantee agencies would be responsible for covering 10 percent more of default costs on any new loan as of 1987 when the guarantee agencies annual default claims exceed 5 percent of their cumulative matured loans. The federal reinsurance on GSLs will remain 100 percent for the first 5 percent of default claims.

Outstanding advances to state guarantee agencies currently exceed $170 million. The Consolidated Omnibus Budget Reconciliation Act of 1986 recalls $75 million of these advances during 1988. This bill would recall an additional $20 million of the advances in 1987.

Sale of Loan Obligations

This bill would require the Secretary of Education to sell college housing and higher education facilities loan obligations in a manner consistent with the directions in S. Con. Res. 120. CBO estimates that the Secretary's plan for the sale, initially proposed in the President's budget for fiscal year 1987, will meet the targets specified in the resolution. CBO assumes that the loans would be sold without future recourse to the federal government.

The proposed plan calls for the sale of most of the existing portfolio of housing and facilities loans over the four year period 1987–1990. The loans proposed for sale have a principal value of $2.4 billion. The sale price, realized over the four year period, is estimated to be $1.1 billion. The price is discounted from the principal value to reflect the time value of the interest and principal payments over the period of the loan.

In selling the loans, the federal government would realize a reduction in expected future principal repayments and interest revenue over the life of the loans, partially offsetting the collections from the sale. This reduction is estimated to be $500 million over the five year period 1987–1991, and $2.6 billion over a twenty year period.

6. Estimated cost to State and local goverment: The Congressional Office has determined that the budgets of state and local governments would not be affected directly by the enactment of this bill.

7. Estimate comparison: None.

8. Previous CBO estimate: None

9. Estimate prepared by: Deborah Kalcevic and Ken Pott.

10. Estimate approved by: C.B. Nuckolz (for James L. Blum, Assistant Director for Budget Analysis).

COMMITTEE ON SMALL BUSINESS

TITLE IX

U.S. SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC, July 29, 1986.

Hon. PETE V. DOMENICI,
Hon. LAWTON CHILES, *Chairman, Ranking Minority Member, Committee on the Budget, U.S. Senate, Washington, DC.*

DEAR PETE and LAWTON: In accordance with the reconciliation instruction included in section 2(t) of S. Con. Res. 120, enclosed are the changes in laws within the Committee's jurisdiction to achieve cost savings to meet the reconciliation instruction. Also enclosed is the Committee's report to accompany these statutory provisions.

On July 24, 1986, the Committee met and unanimously reported out these changes. The Committee rejects the assumptions underlying the reconciliation instruction to sell the disaster loan portfolio without recourse to the federal government. Instead, the Committee's recommendation directs the Secretary of the Treasury to sell section 503 certified development company loans now held by the Federal Financing Bank. The Committee believes that these loans are among the best quality loans made by the Small Business Administration. Indeed, the Committee has been advised that these loans may indeed sell at a premium, thereby providing revenues to the Treasury and reducing the deficit. It is the Committee's firm judgment that to direct the sale of loans on a basis other than with recourse will only be wasting valuable assets and add to deficits.

Sincerely,

LOWELL WEICKER, JR.,
Chairman.

DALE BUMPERS,
Ranking Minority Member.

SENATE COMMITTEE ON SMALL BUSINESS SUBMITS THE FOLLOWING REPORT

[To accompany transmittal of changes in law to achieve cost savings required by the reconciliation instruction pursuant to S. Con. Res. 120, to the Senate Committee on the Budget]

The Senate Committee on Small Business, pursuant to Sec. 2(t) of S. Con. Res. 120 submits changes in law to achieve cost savings as required by the Committee's reconciliation instruction.

I. RECONCILIATION INSTRUCTION

Section 2(t) of S. Con. Res. 120 provides that:

The Senate Committee on Small Business shall report (1) changes in laws within its jurisdiction which provide spending authority, as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974, sufficient to reduce budget authority and outlays; (2) changes in law within its jurisdiction other than those which provide spending authority as defined in section 401(c)(2)(C) of the Act, sufficient to achieve savings in budget authority and outlays; or (3) any combination thereof, as follows: decrease budget authority by $438,000,000 and outlays by $343,000,000 in fiscal year 1987; decrease budget authority by $399,000,000 and outlays by $55,000,000 in fiscal year 1988; and decrease budget authority by $223,000,000 and outlays by $14,000,000 in fiscal year 1989.

Although not specifically binding on the Committee, assumptions were made by the conferees in S. Con. Res. 120 in developing this reconciliation instruction. The instruction to the Small Business Committee was based on the assumption that the entire Disaster Loan portfolio held by the Small Business Administration (approximately $4.4 billion) would be sold over four years at a rate of approximately one billion dollars a year. The resolution, however, also assumes that the Disaster Loan program at the SBA would continue to be funded at current levels. Therefore, appropriations of $450 million in fiscal year 1988 and $600 million in fiscal year 1988 would be required.

The Committee has jurisdiction over federal spending programs at the Small Business Administration which are in budget functions 370 and 450. Cuts of the magnitude required by this instruction, particularly the $343 million in outlay savings in fiscal year 1987, can only be achieved by the sale of loan assets. The Committee's primary considerations have focused on which of the SBA loans should be sold and on whether they should be sold with recourse to the Federal government.

II. SUMMARY OF CHANGES IN LAW

After careful consideration, the Committee rejects the proposal in the Budget resolution to sell disaster loans in function 450 of the budget and recommends, instead, the sale of Certified Development Company debentures issued pursuant to section 503 of the Small Business Investment Act of 1958 which are now held by the Federal Financing Bank. These debentures would appear in function 370 of the budget.

The Committee submits the following recommendations as changes in laws under its jurisdiction:

The Secretary of the Treasury is authorized and directed to sell section 503 certified development company debentures now held by the Federal Financing Bank in sufficient amounts to reduce outlays by $361,000,000 in fiscal year 1987, $55,000,000 in fiscal year 1988 and $14,000,000 in fiscal year 1989; provided that such sales shall be with full recourse to the Federal government; and provided further that the sale of debentures discharges SBA's liability to the Federal Financing Bank. The Administration and the Secretary of the Treasury are precluded from selling any other loans to achieve cost savings.

III. DISCUSSION OF THE NEED FOR LEGISLATION

A. Background and legislative history

The President's budget submission for fiscal year 1987 again proposed the elimination of the Small Business Administration (SBA) as an independent agency, the elimination of all SBA's credit assistance programs and the transfer of the Agency's loan portfolio to the Department of the Treasury for liquidation and sale.

In its recommendations and views submitted by letter on March 5, 1986, to the Senate Budget Committee, this Committee strongly opposed the President's plan. Instead, the Committee recommended changes in SBA programs then embodied in the conference agreement on the budget for fiscal year 1986, which had not yet been enacted. With the enactment of P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, $2.5 billion of outlay savings were achieved through significant program reductions and restructuring at SBA.

The Committee's views to the Budget Committee also expressed strong reservations about the proposed loan asset sales in the President's budget because, in the long run, the sale would cost the federal government.

However, during full Senate consideration of S. Con. Res. 120, on April 30, 1986, Chairman Weicker in a colloquy with Senator Domenici agreed to a pilot program to sell $220 million of business loans a year for fiscal years 1987-89 in order to test the concept of loan asset sales.

B. Disaster Loan Program

The SBA disaster loan fund is a revolving fund in function 450 of the budget. The budget resolution assumes that the entire disaster loan portfolio would be sold over four years. The resolution also assumes that the program would continue through fiscal year 1989 at current levels. A summary of the anticipated savings from the sale of such loans is as follows:

Fiscal year 1987:	
BA	−$438
O	−343
Fiscal year 1988:	
BA	−399
O	−55
Fiscal year 1989:	
BA	−223
O	−14
Total:	
BA	−1,060
O	−412

Under the disaster loan program, SBA has been making below-market loans at four and eight percent to homeowners, businesses and farmers who are victims of natural disasters for uninsured losses. Although P.L. 99-272 eliminated the eligibility of agricultural enterprises for SBA disaster loan assistance, there are currently over 47,000 farm loans in the portfolio. Of this number only about 35,000 are current on repayments.

The Committee rejects the proposal in the budget resolution for several reasons.

First, the idea of selling the entire portfolio which supports the revolving fund, while simultaneously continuing the program, makes little sense. According to the SBA, under the assumptions in the resolution, the program could be maintained at current funding levels in fiscal year 1987 without an appropriation, but in fiscal year 1988 and fiscal year 1989 appropriations would be required. SBA estimates appropriations of $450 million in fiscal year 1988 and $600 million in fiscal year 1989 will be necessary. It makes litle sense to sell the portfolio only to have to recapitalize the fund in fiscal year 1988.

Second, if sold without recourse to the federal government, the loans would be very deeply discounted. The CBO estimated that the portfolio would sell for about 38 cents for every dollar of face value on the loan. Investment banking firms have informed the Committee that without a guarantee the portfolio would have to be sold at fire-sale prices, if they could be sold at all.

Additionally, the Committee is concerned about protections for homeowners, businesses and farmers who have been the recipients of SBA disaster assistance. Sale of these loans to private investors without recourse to the government would mean that these borrowers, in the event of default, would be subject to immediate foreclosures by potential private investors. This would be particularly harsh for farmers who have SBA disaster loans, given the presently depressed state of the farm economy. SBA indicates that currently only about 70 percent of farm loans in the portfolio are current.

C. Section 503 Certified Development Company Program

Under the Section 503 Certified Development Company (CDC) program, the SBA certifies local development companies to make fixed-asset "bricks and mortar" loans to growing small businesses for planned expansion and job creation. The small business concern receives 50 percent of the project financing from a bank, invests 10 percent of the cost from its own funds, and SBA guarantees a debenture issued by the CDC for the remaining 40 percent of the project cost, which must be secured by adequate collateral. The SBA-guaranteed debenture is then sold to the Federal Financing Bank. The borrower's promissory note to the CDC and accompanying security are assigned by the CDC to SBA.

Since the program's inception in 1980, over 590 CDC's have been certified by SBA and over 5,400 loans have been approved by the Small Business Administration. According to SBA, the actual loss rate in the program has been about 1.5 percent although the ultimate loss rate may prove somewhat higher, since this is a fairly unseasoned program. The Committee believes the 503 loans are of a far better quality than the disaster loan portfolio, since they are more highly collateralized and to date have shown a very high currency rate. This view is supported by comments the Committee has received from investment banking firms.

It is difficult to predict with any certainty what any loan may sell for in the private capital market, but estimates from both governmental and private sources indicate that the 503 loan portfolio would yield a much higher return, even without recourse to the government, than the disaster loan portfolio. This in part is explained by the simple fact that average yield on the 503 portfolio is 11.2 percent, while the yield on the Disaster loan program is 4.4 percent.

The Administration estimates that if sold on a non-recourse basis Section 503 loans would get about 49 cents for every dollar of face value. CBO estimates the portfolio could sell for as much as 60-70 cents. One investment banking firm estimated that the portfolio could sell for up to 83 cents on the dollar. By contrast, if sold with recourse to the Federal government, which implies that the investor assumes virtually no risk of non-payment, the portfolio would sell at a premium to face value since the average yield is some 200 to 300 basis points above comparable market yields. Consequently, the government would expect to make a

"profit" by selling the loans for $1.12 to $1.13 on the dollar. From the standpoint of savings to the Government, Section 503 loans are the better loans to sell.

D. Loan asset sales

A fundamental question for the Committee in authorizing sale of loans at SBA as a test of the pilot concept is whether loan assets should be sold with or without recourse to the Federal government. The sale of loans on a non-recourse basis has two consequences: 1) the loans will have to be sold at much more deeply discounted prices, and 2) in the event of default, investors may have no choice but to liquidate the loan, including recourse to collateral.

The Committee takes note of the statement of the managers on the conference agreement on S. Con. Res. 120 for guidance in meeting the reconciliation instruction:

The conferees hope that the appropriate committees of the Congress will consider legislation that establishes specific guidelines for the sale of these assets. Such legislation should address the process and terms of asset sales, including whether there should be any form of Federal guarantee and what kind of protections should be provided to borrowers.

The conferees believe that specific legislative guidelines for loan asset sales should be established to insure that the sales occur successfully and expeditiously without adverse consequences.

This discussion of loan asset sales clearly implies that authorizing Committees should make final decisions on whether a sale should be with or without recourse. Notwithstanding this clear statement by the managers of the conference, this Committee has been advised by the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB) that loan asset sales will be scored as offsetting receipts only if they are sold without recourse to the Federal government.

On July 24, 1986, Chairman Weicker recieved a letter from James Miller, Director of OMB, which states, ". . . the Administration intends to score as borrowing, rather than as off-setting collections, all sales of loan assets with recourse . . . while we support the sale of loan assets without recourse, sale with recourse should be scored as agency debt."

A memorandum from the Congressional Budget Office (CBO) provided to the Committee staff, presented the following view:

The sale of federal loan assets with recourse to the government or with a federal guarantee is a form of borrowing in that the government has entered an obligation to make a series of payments to an investor that is not dependent on the stream of payments on the underlying assets. The loan asset "sale" with recourse, thus, is not a genuine sale because it gives rise to a liability: the unconditional obligation to pay by the federal government. If loan assets were removed from the books of the federal government by such "sales", the government would be left with unrecognized, but potentially sizable, liabilities.

In contrast, loan asset sales that are final and without recourse to the government entail only an exchange of one asset—cash—for another—loans. The investor is entitled only to the stream of payments on the purchased assets, and is without further claim on the federal government.

The Senate Small Business Committee fundamentally disagrees with the proposition that no budget savings would be achieved by the sale of loan assets with recourse and rejects the notion.

First, the policy as stated in this memorandum suggests that all loans guaranteed by the Federal government will be defaulted. The memorandum further misstates the nature of the federal guarantee, calling it an "unconditional" obligation to pay on the part of the government. Obviously, the liability is contingent only.

The Committee believes that it would be more appropriate to provide for an amount likely to offset anticipated losses, rather than to assume that an entire portfolio will end in default. Sound public policy requires notice of the historical track record of a portfolio and its historical loss rate. To date, the actual loss rate on 503 loans is only 1.5 percent, and is anticipated to increase only to 5 percent over a period of years. The assertion that a federal guarantee of such loans amounts to a direct federal loan simply flies in the face of experience.

Secondly, under the CBO/OMB analysis, proceeds from a sale of assets with recourse are not scored as off-setting receipts. This begs the question of where the money goes and amounts to an economic article of faith against federal loan guarantees which ignores reality. Indeed, when the government sells an asset and receives cash the proceeds from the sale can be invested or used to reduce the deficit.

The Committee further notes that this treatment of loan asset sales is absolutely contrary to past budget practices. OMB Director Miller's letter states, "To minimize disruption in the short term, the Administration would agree to treat the limited number of existing loan sales with recourse (such as GNMA tandem, VA loans and new RHIF loans) as off-setting collections in fiscal year 1987". This treatment, thus, is an abrupt change in the rules on score-keeping and is contrary to the practice followed in the Reconciliation bill, P.L. 99-272, which was signed into law on April 7, 1986. Under that law we note that loan asset sales with recourse by the Secretary of Housing and Urban Development (HUD) were treated as off-setting receipts, thus, producing budget savings.

Even assuming a 100 percent default rate, the government still benefits from an immediate sale of a loan portfolio through the time value of money. Quite simply, a dollar in hand today is worth more than a dollar received tomorrow.

The Committee concluded, after consultation with financial experts, that the market place was likely to discount non-guaranteed loans far disproportionately to the actual risk of loss to the federal government, and that sales without recourse would cost the Treasury millions of dollars more than any reasonably anticipated losses from such guarantees.

The conference report states that loan sales should be without adverse consequences. Using CBO's conservative estimate that the 503 loan portfolio sold without recourse would return about 60-70 cents on a dollar it would be an "adverse consequence" for the government to lose over $250 million, based on a portfolio of $800 million, in order to avoid a contingent liability of approximately $40 million.

Further, selling loan assets without recourse so as to remove the government entirely from the process allows no protection for borrowers whom Congress has decided should receive federal credit assistance.

And, finally, if the purpose of reconciliation is deficit reduction, it is in the government's best interests to maximize its receipts from the sale of assets. It would be a waste of public assets to sell loans at a deep discount required by the market under a non-recourse sale.

IV. COMMITTEE RECOMMENDATION

The Committee recommendation directs the Secretary of the Treasury to sell debentures from the portfolio of Section 503 Certified Development Company loans in such amounts for fiscal years 1987-1989 as to meet the Concurrent Budget Resolution reconciliation instructions. Thus, in order to meet the required outlay savings for fiscal year 1987, the Secretary of the Treasury shall sell Section 503 debentures in such amounts as to achieve net realization of $361 million in fiscal year 1987; $55 million in savings in fiscal year 1988; and $14 million in savings in fiscal year 1989.

For fiscal year 1987, the Committee directs the Secretary to sell $361 million in Section 503 debentures, although under its budget reconciliation instructions, the Committee was ordered to produce only $343 million in savings. The additional $18 million in sales implements the Levin Amendment which sought to provide a cushion for losses to the government which might occur on loans due to eventual defaults over the next three years by the borrower. Under the Levin Amendment, the Treasury is assured of receiving a significant amount in addition to the budget mandated minimum which should provide more than enough to cover shortfalls produced by eventual defaults by borrowers over the next three years.

As the ultimate purchaser and holder of the portfolio, the Secretary of the Treasury is directed to sell the securities to the private sector on a recourse basis. In so doing, the Secretary of the Treasury must of course strive to obtain the optimal market conditions and must tailor the sale of securities in such a manner as to elicit the greatest market interest and response. The Committee believes that the Secretary should actively consult with qualified personnel at the Small Business Administration whose expertise and knowledge of the 503 program will certainly be of assistance. While the Committee gives the Secretary discretion as to the conditions of the sale, it believes that the Secretary should also rely on the advice of investment experts from the private capital markets. The Committee directs the Secretary to consider pooling of the debentures into collective, collateralized, undivided shares of ownership which will allow the targeting and sectoring of the investor market and will increase interest.

The Committee has considered and rejected the course of action proposed by OMB which would have FFB sell debentures without SBA's guarantee, and thus for less than full value, but nonetheless require SBA to make up to FFB any loss which accompanied the sale. This course could circumvent defined policy in existing authorization and appropriations measures defined by Congress and the President.

Despite the policy preference of CBO and OMB that the sale of government loans be made on a non-recourse basis, the Committee has ordered that the sale of Section 503 debentures to the private capital markets be done with the existing SBA guarantee of timely payment of principal and interest. The Federal Government has little if any experience in selling non-recourse paper, and universal predictions by experts in government finance are that non-recourse paper will cost 600 to 700 basis points to the

necessary yield and reduce the debentures from investment grade to assets of junk quality.

The Committee believes that common sense dictates that the time value of money alone produces a tangible savings to the government, and that losses on the sale of guaranteed paper can be measured by the actual loss rate and not by some mythical assumption that all loans will be defaulted. Because the sale is on a full-recourse basis, private investors will be able to turn to the Federal Government to make good on their investments in the event of default. The debentures will nevertheless be backed up by collateralized notes issued by the ultimate borrowers, the small business concerns, against which the SBA may seek redress if it is obliged to honor the term of its guarantee. The small business concern traditionally issues a note and commits collateral to the Certified Development Company, which in turn assigns the note and collateral to the Small Business Administration. The SBA will continue to be the holder of the notes and underlying security interests and collateral. In this way, investors will be able to treat 503 paper as a top-grade investment quality, and SBA will retain its security interest in the collateral.

The Committee has provided that with the sale of a debenture, the Administration is relieved of its obligation under its contract of guarantee with the Federal Financing Bank, and that there will be no liability from the Administration to the Federal Financing Bank on account of the discharge of the guarantee. However, the Administration remains as guarantor of the debenture vis-a-vis the eventual purchaser or assignee. In the event of default, the full faith and credit of the United States stands behind the instrument, and the Administration guarantees to the investor timely payment of principal and interest.

The Committee has also mandated that the integrity of existing contractual rights and obligations between the various parties to the Section 503 Certified Development-Company program remain intact. Thus, for example, the CDCs shall continue to have the right to receive fees for servicing section 503 loans. The Central Fiscal Agent shall continue, and its rights and responsibilities shall also remain intact.

V. SECTION-BY-SECTION ANALYSIS

Section 901 amends Title V of the Small Business Investment Act of 1958 and creates a new section 506.

Paragraph (a) directs the Secretary of the Treasury to take appropriate action to sell to the public whatever interest the Federal Financing Bank has in debentures issued under the Section 503 Certified Development Company Program in such amounts so as to realize net proceeds of $361 million in fiscal year 1987; $55 million in fiscal year 1988; and $14 million in fiscal year 1989.

Paragraph (b) requires the Secretary to sell all such debentures with full recourse to the Federal government and to preserve the integrity of existing contractual relations between all parties to the 503 Certified Development Company project.

Paragraph (c) provides that the sale of each 503 debenture by the Secretary shall discharge any liability of the Administration to the Federal Financing Bank on the debenture, and shall, therefore, extinguish the guarantee undertaken by the Administration to the Federal Financing Bank. The Administration remains liable to each individual purchaser or assignee of the debenture as guarantor of the interest.

Section 902. In order to achieve the budget savings specified in section 901 of this Act, neither the Secretary of the Treasury nor the Administration shall sell any loans, guaranteed portion of loans, notes or debentures guaranteed by the Administration pursuant either to the Small Business Act of 1953 or the Small Business Investment Act of 1958 except those specified in section 901.

VI. COMMITTEE ACTION

The Committee met in Executive session on July 24, 1986, and unanimously voted to submit these legislative changes to the Senate Budget Committee.

VII. REGULATORY IMPACT STATEMENT

In compliance with Rule XXVI (11)(b) of the Standing Rules of the Senate, it is the Committee's belief that this bill will have no regulatory or privacy impact on the small businesses affected by the legislation.

VIII. COST OF LEGISLATION

In compliance with Rule XXVI of the Standing Rules of the Senate, the Committee estimates that the cost of the legislation will be equal to the amounts indicated by the Congressional Budget Office in the following letter:

COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Proposed amendments to the Small Business Investment Act of 1958, for inclusion in the Budget Reconciliation Act of 1986.

3. Bill status: As ordered reported by the Senate Committee on Small Business, July 24, 1986.

4. Bill purpose: The proposed amendments to the Small Business Investment Act of 1958 would direct the Secretary of the Treasury to sell sufficient Section 503 debentures to result in net proceeds to the Federal Government of $361 million in 1987, $55 million in 1988, and $14 million in 1989. The assets sold would include a 100 percent guarantee by the Small Business Administration (SBA).

5. Estimated cost to the Federal Government: The table below shows the estimated budget impact of the proposed legislation relative to both current law and the 1987 resolution baseline, adjusted for enacted legislation.

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Direct spending:					
Estimated budget authority	8	11	13	13	
Estimated outlays	8	11	13	13	

The costs of this bill fall within budget function 900.

Basis of estimate:

For purposes of this estimate, it was assumed that the Treasury would sell Section 503 assets sufficient to generate net receipts to the Treasury of $361 million in 1987, $55 million in 1988, and $14 million in 1989. Because the weighted average interest rate of the outstanding loans exceeds 11 percent, it is expected that slightly less than the face value of the yearly proceeds will be sold each year.

As specified in the proposed legislation, it is expected that these assets would be sold with the existing 100 percent SBA guarantee. Unlike the sale of assets without a federal guarantee, CBO and the Office of Management and Budget consider loans sold with federal guarantees as a form of borrowing by the Federal Government. Because receipts from federal borrowing do not affect the deficit, the proceeds of the sale are now shown as a deficit reduction in the year received. The case proceeds, however, reduce the need for regular Treasury market borrowing. Interest costs, on balance, would be higher because the forgone interest on the loans sold exceeds the amount saved on regular, lower-cost Treasury borrowing. The estimated costs shown in the above table represent the net difference in the government's interest costs.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Mary Maginniss (226-2860) and Kathy Ruffing (226-2880).

10. Estimate approved by:

C. G. NUCKOLS,
(For James L. Blum, Assistant Director for Budget Analysis).●

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the Committee on Armed Services.

(The nominations and withdrawal received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED JOINT RESOLUTION SIGNED

At 10:26 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

S.J. Res. 356. Joint resolution to recognize and support the efforts of the United States Committee for the Battle of Normandy Museum to encourage American awareness and participation in development of a memorial to the Battle of Normandy.

The enrolled joint resolution was subsequently signed by the President pro tempore [Mr. THURMOND].

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, July 31, 1986, she had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 356. Joint resolution to recognize and support the efforts of the United States Committee for the Battle of Normandy Museum to encourage American awareness

and participation in development of a memorial to the Battle of Normandy.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 2230. A bill to improve the management of the Government by establishing an Office of Federal Management in the Executive Office of the President, and for other purposes (Rept. No. 99-347).

By Mr. DOMENICI, from the Committee on the Budget, without amendment:

S. 2706. An original bill to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987 (S. Con. Res. 120, Ninety-ninth Congress) (Rept. No. 99-348).

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 1047. A bill to reform the laws relating to former Presidents (Rept. No. 99-349).

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment:

S. 2004. A bill to require the President to submit to the Congress an annual report on the management of the executive branch of the Government (Rept. No. 99-350).

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 2005. A bill to amend the Inspector General Act of 1978 (Rept. No. 99-351).

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment:

S. 2426. A bill to amend the Contract Disputes Act of 1978 to require that a competitive examination process be used for the selection of members of boards of contract appeals of Federal Government agencies; to provide that the members of such boards shall be treated in the same manner as administrative law judges of the Federal Government for certain administrative purposes; and to revise the procedures for the collection of claims under Federal Government contracts (Rept. No. 99-352).

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

H.J. Res. 529. Joint resolution designating the week of September 21, 1986, through September 27, 1986, as "Emergency Medical Services Week."

H.J. Res. 642. Joint resolution to designate the week beginning May 17, 1987, as "National Tourism Week."

S.J. Res. 332. Joint resolution to designate the week of November 16, 1986, through November 22, 1986, as "National Software Awareness Week."

S.J. Res. 338. Joint resolution to designate November 18, 1986, as "National Community Education Day."

S.J. Res. 358. Joint resolution to designate the month of September 1986 as "Adult Literacy Awareness Month."

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary:

Charles R. Simpson III, of Kentucky, to the U.S. district judge for the western district of Kentucky;

John A. Smietanka, of Michigan, to be U.S. attorney for the western district of Michigan for the term of 4 years;

Robert G. Ulrich, of Missouri, to be U.S. attorney for the western district of Missouri for the term of 4 years; and

Lincoln C. Almond, of Rhode Island, to be U.S. attorney for the district of Rhode Island for the term of 4 years.

By Mr. LUGAR, from the Committee on Foreign Relations:

Robert Brendon Keating, of the District of Columbia, to be U.S. Executive Director of the International Bank for Reconstruction and Development for a term of 2 years.

Frank G. Wisner, of the District of Columbia, a career member of the Senior Foreign Service, class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Arab Republic of Egypt.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Frank G. Wisner.

Post: Cairo.

Contributions, amount, date, and donee:

1. Self: $201.00; 1984; Aspin for Congress.

2. Spouse: None.

3. Children and spouses names: None.

4. Parents' names: Mrs. Clayton Fritchey (see attached schedule); Mr. Clayton Fritchey, none.

5. Grandparents' names: Deceased.

6. Brothers and spouses: Mr. Ellis Wisner (see attached schedule); Mrs. Ellis Wisner, none; Mr. and Mrs. Graham Wisner, $500.00, 1985, Winter for Senate; $100.00, 1984, Mondale for Pres.

7. Sisters' and spouses' names: Mr. and Mrs. Bruce Hazard (see attached schedule).

Contributions—Mrs. Clayton Fritchey—1982

Bentsen Committee	$50
Lynn Cutler for Congress	100
Friends of Dave Clark	25
Democratic Senatorial Campaign	100
Marie Ritter	100
Kunin Campaign Committee	75
Adlai Stevenson for Governor	100
Committee for Tim Wirth	100
Tim Wirth for Congress	100
Committee for Tim Wirth	100
Woman's National Democratic Club (membership)	125
Women's Campaign Fund	100
Women's Campaign Fund	1,000
Total	2,075

1983

Mondale for President Cte	1,000
Women's Campaign Fund	1,500
North Carolina Campaign Fund	190
Hunt Campaign Cte.	100
Democratic National Cte	50
Women's National Democratic Club dues	125
NARAL (Abortion rights)	250
Voters for Choice	25
Wolpe for Congress	35
Cte to reelect Packwood	200
Total	3,475

1984

Women's National Democratic Club	75
Citizens for Harkin	100
Women's Campaign Fund	1,750
John Kerry for Senate	100
Jim Hunt Election Committee	100
Timonthy E. Wirth Reelection Committee	100
Charles Percy for Senate	250
Sidney Yates for Congress	100
Winter for Senate	500
Total	3,175

1985

Women's Campaign Fund	1,500
Women's Nat. Democratic Club (membership)	200
Woman's National Democratic Club	100
Mary Sue Terry	100
Mondale/Ferraro Committee	100
Total	2,000

Contributions—Mr. Ellis Wisner

1982: (none).

1983: (none).

1984: (none).

Citizens for Tom Harkin	$25
Committee for Tim Wirth	100
Jim Hunt Committee	50
Winter for Senate	250
Democrats Vote	25

1985: (none).

1986: Lyons Gray for Congress	50

Contributions—Mr. and Mrs. Bruce Hazard

1982:	
George Mitchell for Senate	$50
Maine Democratic Party	50
1983:	
Elizabeth Mitchell	500
George McGovern for President	50
Maine Democratic Party	50
1985:	
Maine Democratic Party	50
Carla Johnston (Congress)	25

Reginald Bartholomew, of Virginia, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Spain.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Reginald Bartholomew.

Post: Ambassador to Spain.

Contributions, amount, date and donee:

1. Self: None.

2. Spouse: None.

3. Children and spouses names Sylvic, Xian, Damira, Jonathan, none.

4. Parents' (deceased) names Thomas and Corinne, none.

5. Grandparents' (deceased) names G. and N. Bartholomew, C. and M. Delvecchio. None.

6. Brothers' and spouses' names David and Maryanne, $150, 50, $115, 50. 1982—Mitchell and O'Leary; 1982—Maine Dem. Party; 1984—State candidates and Maine Dem. Party; 1985—Maine Dem. Party.

7. Sisters and spouses names, none.

Julian Martin Niemczyk, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Czechoslovak Socialist Republic.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Julian M. Niemczyk.

Post: U.S. Ambassador to Czechoslovakia; nominated January 16, 1986.

Contributions, amount, date, donee [1].

1. Self: $4,000; 1982-85 [1].

2. Spouse: $200; 1982-85 [1].
3. Children's and spouses' names: none.
4. Parents' names: deceased.
5. Grandparents' names: deceased.
6. Brothers' and spouses' names: Paul Niemczyk (brother), $150; 1982-1985; Republican Party.
7. Sisters and spouses names: none.
[1] See donee below.

Donee:

1. Self: Republican Senatorial Inner Circle, $1,000, 1984-1985; $1,000, 1985-1986.
National Republican Heritage Groups Council, $400, 1983-1986.
National Republican Congressional Committee, $300, 1983-1986.
Republican Congressional and Senate Candidates, $1,300, 1983-1986.
2. Spouse: National Republican Congressional Committee, $90, 1983-1986.
Republican Congressional and Senate Candidates, $110, 1983-1986.

John Hubert Kelly, of Georgia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Lebanon.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: John H. Kelly.

Post: Ambassador, Beirut; nominated; May 15, 1986.

Contributions, amount, date.

1. Self: None.
2. Spouse: Not married.
3. Children's and spouses' names: David S. Kelly (child), None.
4. Parents' names: James D. Kelly, Clarice S. Kelly, None. $33.00; 1984; Republican Senatorial Campaign Committee.
5. Grandparents' names: Deceased.
6. Brothers' and spouses' names: James A. Kelly, None. Audrey P. Kelly, None. Joan S. Kelly, None. Michael D. Kelly, None.
7. Sisters' and spouses' names: Kathryn A. Kelly, None.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. GORTON:

S. 2704. A bill to require the Environmental Protection Agency to conduct a study for the purpose of developing procedures, methods, and other means for protecting against the wrongful use of cyanide, and for other purposes; to the Committee on Environment and Public Works.

By Mr. SYMMS (for himself and Mr. McCLURE):

S. 2705. A bill to amend the Federal Insecticide, Fungicide and Rodenticide Act to permit Federal agencies to use pesticides registered under such Act in compliance with its registered users without conducting further research analyses on human health effects; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DOMENICI from the Committee on the Budget:

S. 2706. An original bill to Provide for the reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987 (S. Con. Res. 120, Ninety-ninth Congress); placed on the calendar.

By Mr. BROYHILL:

S. 2707. A bill to amend the Wild and Scenic Rivers Act by designating a segment of the Horsepasture River in the State of North Carolina as a component of the National Wild and Scenic Rivers System; to the Committee on Energy and Natural Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GORTON:

S. 2704. A bill to require the Environmental Protection Agency to conduct a study for the purpose of developing procedures, methods, and other means for protecting against the wrongful use of cyanide, and for other purposes; to the Committee on Environment and Public Works.

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

By Mr. SYMMS (for himself and Mr. McCLURE):

S. 2705. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit Federal agencies to use pesticides registered under such act in compliance with its registered uses without conducting further research or analysis on human health effects; to the Committee on Agriculture, Nutrition, and Forestry.

FEDERAL PESTICIDE PROGRAMS IMPROVEMENT ACT

● Mr. SYMMS. Mr. President, it is no wonder that America's farmers and ranchers are in dire straits—they must apparently fight the combined efforts of both Congress and the administration before they are permitted to make a profit.

Recently, farmers and ranchers in Idaho were notified that the State's largest landlord, the Federal Government, was going to suspend control of noxious weeds on Government lands. This means that millions of acres in Idaho will be turned loose to grow thistle, leafy spurge, knapweed, and other noxious weeds.

The potential impact on agriculture is devastating. Under current conditions, noxious weeds in Idaho cost the State an estimated $50 million a year in lost agricultural production. If current control programs are suspended, and millions of acres of Government lands become weed infested, the losses to agriculture could double or even triple.

How can we in Congress justify such willful negligence and disregard for a sector of society that is already facing enormous difficulties? Could it be that noxious weed control programs are being suspended in order to save lives, protect vital species of animal or plant, or prevent some major environmental disruption? No noxious weeds are spreading uncontrolled while we wait for Federal agencies to complete research and paperwork, research that has already been done, and paperwork that yields no new information.

Recent court decisions in the Northwest have found that the National Environmental Policy Act requires Federal pesticide programs to conduct detailed site-specific research on the human health effects of pesticides prior to use of those pesticides on Government lands. This is the same research that was required of the Environmental Protection Agency, before the EPA could register the pesticides for use.

The cost of duplicating this research is phenomenal. The Bureau of Land Management estimates that it could cost as much as $5 million per compound. Just to illustrate what that adds up to, take for example the Federal Forest Vegetation Management Program. That program uses 14 different compounds, translating into 70 million dollars' worth of research required before the program could proceed. Furthermore, this research could take from 5 to 7 years. The timber lost during that period is estimated by the Bureau of Land Management to be worth $21,720,000 annually.

I might mention that there are several Government pesticide and herbicide programs that would be effected in a similar way. The Animal and Plant Health Inspection Service's Grasshopper Control Program could be suspended, the Drug Enforcement Administration's marijuana control could be halted, and the Forest Service's Pest Control Programs could come to a standstill. All of this at tremendous cost, both directly to the people of the United States and to their Treasury.

Today, I am introducing legislation to correct this untenable situation. The Federal Pesticide Programs Improvement Act is a simple amendment to the Federal Insecticide, Fungicide and Rodenticide Act, FIFRA. It clarifies that the agency of the Federal Government most qualified to do detailed pesticide research is the environmental protection agency. It also allows Federal agencies to refer to the research conducted at the time of pesticide registration when developing environmental impact statements. This eliminates the need for any duplicate research, allowing the pesticide program to proceed in a timely and economic manner.

I issue a standing invitation for any of my Senate colleagues to join me as a cosponsor of this legislation. The Federal Pesticide Programs Improvement Act will restore some sense to a policy that threatens to be the last straw for the Nation's struggling farmers, ranchers, and public land users.●

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ADDITIONAL COSPONSORS

S. 2231

At the request of Mr. GARN, the name of the Senator from Nebraska [Mr. ZORINSKY], was added as a cosponsor of S. 2231, a bill to amend the Federal Deposit Insurance Act.

S. 2270

At the request of Mr. SIMON, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 2270, a bill to amend the Immigration and Nationality Act to deter immigration-related marriage fraud and other immigration fraud.

S. 2577

At the request of Mr. LAUTENBERG, the name of the Senator from Montana [Mr. MELCHER] was added as a cosponsor of S. 2577, a bill to insure that amounts paid for home improvements to mitigate indoor air contaminants such as radon gas qualify for the tax deduction for medical care expenses.

S. 2678

At the request of Mr. BENTSEN, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 2678, a bill to provide a comprehensive national oil security policy.

S. 2680

At the request of Mr. THURMOND, the names of the Senator from North Dakota [Mr. BURDICK], and the Senator from Florida [Mrs. HAWKINS] were added as cosponsors of S. 2680, a bill to amend the Internal Revenue Code of 1954 to allow a charitable contribution deduction to farmers who donate agricultural products to assist victims of natural disasters.

S. 2683

At the request of Mr. THURMOND, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 2683, a bill to make unlawful the laundering of money, and for other purposes.

S. 2688

At the request of Mr. KENNEDY, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 2688, a bill to amend the Developmental Disabilities Assistance and Bill of Rights Act to authorize grants to university graduate programs which provide training in the care of the elderly persons with developmental disabilities.

SENATE JOINT RESOLUTION 343

At the request of Mr. D'AMATO, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of Senate Joint Resolution 343, joint resolution designating the week of September 21 through September 27, 1986, as "Emergency Medical Services Week."

SENATE JOINT RESOLUTION 352

At the request of Mr. METZENBAUM, the names of the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Hawaii [Mr. INOUYE], the Senator from Maryland [Mr. SARBANES], the Senator from New Jersey [Mr. BRADLEY], and the Senator from Connecticut [Mr. DODD] were added as cosponsors of Senate Joint Resolution 352, joint resolution to designate the week beginning September 7, 1986, as "Gaucher's Disease Awareness Week."

SENATE JOINT RESOLUTION 378

At the request of Mr. MITCHELL, the name of the Senator from Pennsylvania [Mr. HEINZ] was added as a cosponsor of Senate Joint Resolution 378, joint resolution to provide for a temporary prohibition of strikes or lockouts with respect to the Maine Central Railroad Co. Portland Terminal Co. labor-management dispute.

SENATE CONCURRENT RESOLUTION 108

At the request of Mr. LEVIN, the names of the Senator from Connecticut [Mr. DODD], the Senator from Massachusetts [Mr. KENNEDY], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Iowa [Mr. GRASSLEY], the Senator from South Dakota [Mr. ABDNOR], and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of Senate Concurrent Resolution 108, concurrent resolution expressing the sense of the Congress regarding East Timor.

AMENDMENT NO. 1823

At the request of Mrs. KASSEBAUM, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of amendment No. 1823 intended to be proposed to S. 100, a bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

At the request of Mr. DOLE, his name was added as a cosponsor of amendment No. 1823 intended to be proposed to S. 100, supra.

AMENDMENTS SUBMITTED

STATUTORY INCREASE IN PUBLIC DEBT LIMIT

HART (AND OTHERS) AMENDMENT NO. 2241

Mr. HART (for himself, Mr. MOYNIHAN, Mr. MATSUNAGA, and Mr. WEICKER) proposed an amendment to the joint resolution (H.J. Res. 668) increasing the statutory limit on the public debt; as follows:

At the end of the amendment add the following new section:

SECTION . REPEAL.

Notwithstanding any other provision of this Joint Resolution,

(a) IN GENERAL.—Except as provided in subsection (b), the Balanced Budget and Emergency Control Act of 1985 (title II of Public Law 99-177) is repealed.

(b) EXCEPTION.—Section 272 of the Balanced Budget and Emergency Deficit Control Act of 1985 (relating to restoration of trust fund investments) and section 275 of such Act (to the extent that it relates to section 272 of such Act) shall not be included in or affected by the repeal of such Act and shall be effective as if this section had not been enacted.

(c) EFFECTIVE DATE.—

(1) The repeal made by subsection (a) shall be effective with respect to fiscal years beginning after September 30, 1986.

(2) Provisions of law amended or repealed by the Balanced Budget and Emergency Deficit Control Act of 1985 are hereby restored or revived and shall be effective as if such Act had not been enacted.

GORTON (AND OTHERS) AMENDMENT NO. 2242

(Ordered to lie on the table.)

Mr. GORTON (for himself, Mr. TRIBLE, Mr. SARBANES, Mr. SPECTER, Mr. WARNER, Mrs. HAWKINS, Mr. MATSUNAGA, Mr. BURDICK, Mr. HECHT, Mr. INOUYE, and Mr. BINGAMAN) submitted an amendment intended to be proposed by them to the joint resolution, House Joint Resolution 668, supra; as follows:

At the end of the , insert the following new section:

SEC. . COST-OF-LIVING ADJUSTMENTS IN CERTAIN FEDERAL BENEFITS.

(a) IN GENERAL.—Benefits which are payable in calendar year 1987, 1988, 1989, 1990, or 1991, under programs listed in section 257(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), including any cost-of-living adjustment in such benefits, shall not be subject to modification, suspension, or reduction in such calendar year pursuant to a Presidential order issued under such Act.

(b) DEFINITION.—for purposes of this section, the term "cost-of-living adjustment" means any increase or change in the amount of a benefit or in standards relating to such benefit under any provision of Federal law which requires such increase or change as a result of any change in the Consumer Price Index (or any component thereof) or any other index which measures cost, prices, or wages.

EXON (AND OTHERS) AMENDMENT NO. 2243

Mr. EXON (for himself, Mr. ZORINSKY, Mr. HARKIN, Mr. MELCHER, Mr. DIXON, Mr. BURDICK, Mr. HART, Mr. NICKLES, Mr. INOUYE, Mr. BOREN, Mr. GRASSLEY, Mr. HOLLINGS, Mr. DOLE, Mr. HEINZ, and Mr. DOMENICI) proposed an amendment to the joint resolution (H.J. Res. 668), supra; as follows:

At the end of the amendment, add the following:

Advance deficiency payments sec. . Notwithstanding any other provision of law, the Secretary of Agriculture shall, in accordance with the criteria in section 107c of the Agriculture Act of 1949, make advance deficiency payments available for the 1987 crops of wheat, feed grains, upland cotton, and rice: *Provided*, That the percentage of the projected payment rate used in computing such payments shall not be less than (1) 40 percent in the case of wheat and feed grains, or (2) 30 percent in the case of rice and upland cotton.

EXON (AND OTHERS) AMENDMENT NO. 2244

Mr. EXON (for himself, Mrs. KASSEBAUM, Mr. BYRD, Mr. CRANSTON, and Mr. KASTEN) proposed an amendment to the joint resolution (H.J. Res. 668), supra; as follows:

SEC. . (a) The Congress finds that—

(1) safe and efficient air transportation is essential to the flow of interstate commerce in this Nation;

(2) airline traffic is estimated to increase to a record 400 million passengers aboard United States commercial aircraft in 1986 and the number of aircraft operations is projected by the Federal Aviation Administration to increase by 46 percent through the coming decade;

(3) recent studies by the National Transportation Safety Board and the General Accounting Office have indicated serious concerns with the Federal Aviation Administration's safety-related air traffic control and aircraft inspection and surveillance programs, particularly with respect to the need for additional trained and experienced personnel;

(4) the effect of air traffic controller staffing shortages, increased numbers of aircraft operations, and delays in the installation of automated systems has been a reduction in aviation safety, as evidenced by a record number of near-misses between aircraft, including 14 near-misses recorded thus far this year at Chicago O'Hare Airport, the Nation's busiest airport; and

(5) the growth of the United States commercial airline industry since deregulation and the inability of the Federal Aviation Administration to impose and enforce compliance of airline industry standards for operations and maintenance have further diminished the margin of aviation safety.

(b) It is therefore declared to be the sense of the Congress that the Secretary of Transportation—

(1) should undertake immediate action to ensure the safety of the Nation's air transportation system by increasing the number of qualified air traffic controllers and supervisors to a minimum level of 16,250, consistent with the number employed prior to 1981;

(2) should undertake immediate action to ensure the safe operation of aircraft by expanding further the Federal Aviation Administration's workforce for inspection and enforcement of aircraft operations, maintenance and reporting procedures;

(3) should consider, if necessary, restricting air traffic under the control of the Federal Aviation Administration at certain airports, or limiting the certification of new airlines, if such actions would improve aviation safety; and

(4) shall report to the Congress within 90 days after the date on which this joint resolution is enacted regarding what action will be undertaken to achieve increased air traffic safety staffing levels, the proposed timeframe for completing such actions, and any required additional funding which the Secretary considers necessary to carry out such action.

NICKLES (AND OTHERS) AMENDMENT NO. 2245

Mr. NICKLES (for himself, Mr. BOREN, Mr. DOLE, Mr. BUMPERS, Mr. SYMMS, Mr. GRAMM, Mr. BENTSEN, Mr. WALLOP, Mr. PRYOR, Mr. BURDICK, Mr. BOSCHWITZ, Mr. DOMENICI, Mr. MCCLURE, Mr. JOHNSTON, Mr. SIMPSON, Mr. STEVENS, Mr. MURKOWSKI, Mr. HECHT) proposed an amendment, which was subsequently modified, to the joint resolution (H.J. Res. 668), supra; as follows:

SEC. . REPEAL OF THE WINDFALL PROFIT TAX.

(a) IN GENERAL.—Chapter 45 of the Internal Revenue Code of 1954 (relating to windfall profit tax on domestic crude oil) is hereby repealed.

(b) EFFECTIVE DATE.—The repeal made by subsection (a) shall apply to oil removed from the premises after October 1, 1987.

SEC. . CLARIFICATION OF STATUTE OF LIMITATIONS WITH RESEPCT TO UNDERPAYMENTS OF WINDFALL PROFIT TAX.

(a) IN GENERAL.—Subparagraph (A) of section 6501(p)(1) of the Internal Revenue Code of 1954 (relating to special rules for windfall profit tax) is amended by adding at the end thereof the following: "For purposes of the preceding sentence, a return shall not be treated as required with respect to such oil if the amount withheld under section 4995(a) is not less than the amount required to be withheld as shown on the return by the first purchaser of such oil."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as of October 1, 1987 and shall apply as if included in the amendments made by section 101 of the Crude Oil Windfall Profit Tax Act of 1980.

(c) And further that no reports of any type shall be required in compliance with the windfall profits tax act effective on date of amendment.

STEVENS AMENDMENT NO. 2246

Mr. STEVENS proposed an amendment to the joint resolution (H.J. Res. 668, supra; as follows:

At the end of the amendment, insert the following new section:

SEC. . POINT OF ORDER.

(a) IN GENERAL.—Section 310(f) of the Congressional Budget Act of 1974 is amended by adding at the end thereof the following new paragraph:

"(3) It shall not be in order in either the House of Representatives or the Senate to consider any resolution providing for the adjournment sine die of either House unless action has been completed on the concurrent resolution on the budget required to be reported under section 301(a) for the fiscal year beginning on October 1 of such year, and, if a reconciliation bill or resolution, or both, is required to be reported under subsection (b) of this section for such fiscal year, unless the Congress has completed action on that bill or resolution, or both.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this joint resolution.

ABDNOR AMENDMENT NO. 2247

(Ordered to lie on the table.)

Mr. ABDNOR submitted an amendment intended to be proposed by him to the joint resolution (H.J. Res. 668), supra; as follows:

At the appropriate place, insert the following:

SEC. . Section 20(u)(4) of the Small Business Act is amended by striking out "$1,050,000,000" and inserting in lieu thereof "$1,200,000,000".

HART AMENDMENT NO. 2248

Mr. HART proposed an amendment to the joint resolution (H.J. Res. 668), supra; as follows:

At the end of the committee amendment, add the following:

SEC. . INCREASE IN TARIFFS ON PETROLEUM AND PETROLEUM PRODUCTS.

(a) Item 475.05 of the Tariff Schedules of the United States is amended—

(1) by striking out "0.125¢ per gal." and inserting in lieu thereof "$10.0525 per Bbl.", and

(2) by striking out "0.5¢ per gal." and inserting in lieu thereof "$10.21 per Bbl.".

(b) Item 475.10 of such Schedules is amended—

(1) by striking out "0.25¢ per gal." and inserting in lieu thereof "$10.105 per Bbl.", and

(2) by striking out "0.5¢ per gal." and inserting in lieu thereof "$10.21 per Bbl.".

(c) Item 475.25 of such Schedules is amended—

(1) by striking out "1.25¢ per gal." and inserting in lieu thereof "$10.525 per Bbl.", and

(2) by striking out "2.5¢ per gal." and inserting in lieu thereof "$11.05 per Bbl.".

(d) Items 475.30, 475.35, and 475.65 of such Schedules are each amended—

(1) by striking out "0.25¢ per gal." and inserting in lieu thereof "$10.105 per Bbl.", and

(2) by striking out "0.5¢ per gal." and inserting in lieu thereof "$10.21 per Bbl.".

(e) Item 475.45 of such Schedules is amended—

(1) by striking out "2¢ per gal." and inserting in lieu thereof "$10.84 per Bbl.", and

(2) by striking out "4¢ per gal." and inserting in lieu thereof "$11.68 per Bbl.".

(f) Notwithstanding any other provision of this section, the tariff imposed upon imported refined petroleum products shall equal $14.00 per Bbl. For purposes of this section the term "refined petroleum products" shall have the same meaning as that in section (3)(5) of the Emergency Petroleum Allocation Act of 1973 * * *.

appropriated to the President for the purpose of providing or increasing funding for any program of the United States under which financial assistance (including loans and loan guarantees) is provided to lower income individuals and families adversely affected by increased energy costs, an amount equal to the monetary effect on such individuals and families of the increases in duties imposed by this section. The monetary effect of such increases on such individuals and families is to be jointly determined by the Secretary of Health and Human Services and the Secretary of Energy. Amounts appropriated pursuant to the preceding sentence shall be obligated or expended only in connection with such programs as may be otherwise provided for by law.

(h) The amendments made by this section shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after the date that is 15 days after the date of enactment of this Act.

HAWKINS (AND OTHERS) AMENDMENT NO. 2249

Mrs. HAWKINS (for herself, Mr. HEINZ, Mr. ABDNOR, Mr. D'AMATO, Mr. ANDREWS, Mr. GRASSLEY, Mr. PRESSLER, Mr. BYRD, Mr. DENTON, Mr. MOY-

NIHAN, Mr. CRANSTON, Mr. KASTEN, Mr. ROTH, Mr. BROYHILL, Mr. GLENN, and Mr. ZORINSKY) proposed an amendment to the joint resolution (H.J. Res. 668), supra; as follows:

At the end of the amendment, add the following:

SEC. . REMOVAL OF THREE PERCENT THRESHOLD FOR COST-OF-LIVING ADJUSTMENTS.

(a) SHORT TITLE.—This section may be cited as the "Cost-of-Living-Adjustment Reform Act of 1986".

(b) IN GENERAL.—

(1) Section 215(i) of the Social Security Act is amended by striking out "is 3 percent or more" in paragraph (1)(B) and inserting in lieu thereof "is greater than zero".

(2) Section 215(i)(1)(B) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978, is amended by striking out "exceeds, by not less than 3 per centum, such Index" and inserting in lieu thereof "exceeds such Index".

(3) Section 215(i)(2)(C) of such Act is amended—

(A) by striking out clause (i) and redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(B) by striking out "under clause (ii)" in clause (ii) as so redesignated and inserting in lieu thereof "under clause (i)".

(4) Section 215(i)(2)(C) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act as in effect after December 1978, is amended by striking out clause (i) and by striking out "(ii)".

(5) Section 215(i)(4) of such Act is amended by inserting "and by the Cost-of-Living Adjustment Reform Act of 1986" after "Social Security Amendments of 1983".

(6) Section 215(i)(5)(A)(i) of such Act is amended by striking out "because the wage percentage increase was less than 3 percent" and inserting in lieu thereof "because there was no wage percentage increase greater than zero".

(c) EFFECTIVE DATE.—

(1) Except as otherwise provided in this subsection, the amendments made by this section shall apply with respect to cost-of-living increases determined in 1986 and all subsequent years.

(2) The amendments made by paragraphs (3) and (4) of subsection (b) shall apply with respect to months beginning after September 1986.

SASSER (AND OTHERS) AMENDMENT NO. 2250

Mr. SASSER (for himself, Mr. GORE, Mr. HEFLIN, Mr. BUMPERS, Mr. HOLLINGS, Mr. PRYOR, Mr. ZORINSKY, Mr. METZENBAUM, Mr. SARBANES, Mr. RIEGLE, Mr. LEVIN, Mr. BYRD, Mr. ROCKEFELLER, Mr. NUNN, Mr. DIXON, and Mr. EXON) proposed an amendment to the joint resolution (H.J. Res. 668), supra; as follows:

At the appropriate place in the committee amendment, as amended, add the following new section:

"SEC. . (a) Notwithstanding any other provision of law, the President and the Secretary of Agriculture shall make emergency disaster assistance available, as provided in this Act, to farmers and ranchers in drought disaster areas.

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) the term "drought disaster areas" includes any area in the United States in which farming and ranching operations have been adversely affected by a drought or excessively hot weather disaster such that assistance is available in the area under subtitle C of the Consolidated Farm and Rural Development Act for such disaster; and

(2) the term "livestock" includes all classes of beef and dairy cattle, sheep, goats, and swine.

EMERGENCY FEED DONATIONS

SEC. 3. Notwithstanding any other provision of law:

(a) The Secretary of Agriculture shall make available to farmers and ranchers in each drought disaster area, at no cost, surplus stocks of commodities held by the Commodity Credit Corporation (in the area or in the State in which the area is located or an adjoining State), for the purpose of, and under the conditions set out in, subsection (b) of this section.

(b)(1) The Secretary shall make such commodities available, in any drought disaster area in which the Secretary determines there is a critical need for livestock or poultry feed, in amounts necessary to preserve livestock herds and poultry flocks in the area. For purposes of this section, the phrase "critical need for livestock or poultry feed" means that (A) the total supply of feed grains and forage available to livestock and poultry producers in the area involved is insufficient to cover the combined feed needs of such producers for more than 72 hours or such other period, determined by the Secretary, reasonably needed for supplies of feed to arrive in the area for commercial use from feed surplus areas, whichever is a longer period; and (B) as a result of such deficient supply levels, it reasonably can be expected that, without the assistance made available under this section, farmers and ranchers in the area will suffer significant losses of livestock or poultry due to mortality.

(2) Subject to section 8(b), the Secretary shall cover any costs involved in transporting such surplus commodities to the drought disaster area, using the funds, facilities, and authorities of the Commodity Credit Corporation for such purposes.

(3) The Secretary shall continue to make commodities available under this section until there no longer is a critical need for livestock or poultry feed, as determined by the Secretary.

(4) In determining the feed needs of producers in an area and the amount of commodities to be made available in the area under this section, the Secretary shall use the regulations issued under section 1105 of the Food and Agriculture Act of 1977 (7 C.F.R. 1475.52(n) and 1475.55(f)(1)) and comparable rules for poultry.

(5) Donations under this section shall be made available during the period beginning 3 days after the date of enactment of this Act and ending March 31, 1987, or the date, as determined by the Secretary, on which the emergency created by the drought or excessively hot weather no longer exists, whichever is earlier.

EMERGENCY LIVESTOCK FEED ASSISTANCE

SEC. 4. (a) Notwithstanding any other provision of law:

(1) The Secretary of Agriculture shall make emergency livestock and poultry feed assistance under section 1105 of the Food and Agriculture Act of 1977 to farmers and ranchers in drought disaster areas. Reimbursement for purchased feed provided to such farmers and ranchers under section 1105 shall be made in kind, as provided in section 8(a) of this Act, using surplus stocks of commodities held by the Commodity Credit Corporation. Whenever, under any export development program conducted by the Secretary of Agriculture, a feed grain or other commodity used for animal feed is made available to foreign purchasers at prices less than the average domestic market price for the commodity, as determined by the Secretary, reimbursement under this paragraph for purchases of such commodity shall be made at a level in excess of 50 percent of the cost of the purchased commodity if necessary to ensure that the net cost to the producer for such commodity (taking into account the reimbursement under this paragraph) is not in excess of the average price at which the commodity is made available to foreign purchasers under such export development program.

(2) The Secretary of Agriculture shall permit any producer of the 1986 crop of wheat, feed grains, upland cotton, or rice (A) who is participating in the program under the Agricultural Act of 1949 for such crop, and (B) whose farm is located in a drought disaster area, to devote acreage on the farm diverted from the production of the crop under such program to hay or grazing without regard to limitations on when haying or grazing may take place otherwise imposed under the Agricultural Act of 1949.

(3)(A) In carrying out any emergency assistance program, for farmers and ranchers in a drought disaster area under the Disaster Relief Act of 1974, subject to subparagraph (B), the President shall direct the Secretary of Agriculture to implement an emergency hay program to assist such farmers and ranchers in obtaining hay to feed their livestock. Under such program, the Secretary, subject to section 8(b), shall pay 80 percent of the cost of transporting hay from areas in which hay is in plentiful supply to the area in which the farmers and ranchers are located.

(B) The President shall take the action required under subparagraph (A) only if the Secretary of Agriculture reports to the President that—

(i) as a result of the drought or excessively hot weather, the amount of hay readily available to such farmers and ranchers at reasonable prices to feed their livestock is substantially below the amount normally available; and

(ii) the assistance to be made available under paragraph (1) and haying or grazing permitted under paragraph (2) together will be insufficient to prevent substantial losses of livestock or liquidation of herds by such farmers and ranchers in such area.

(C) The Secretary of Agriculture shall determine whether the conditions described in clauses (i) and (ii) of subparagraph (B) exist for each drought disaster area, and if such conditions exist so report to the President, within 30 days after the date of enactment of this Act and after reasonable intervals of time thereafter.

(D) Prior to making any determination under subparagraph (B), the Secretary of Agriculture shall consult with the Governor and the Secretary of Agriculture (or comparable official) of the State involved, and give due consideration to the views of the such persons.

(4) Paragraphs (1) and (3) shall become effective 15 days after the date of enactment;

and assistance under such subsections shall be available until March 30, 1987, or the date, as determined by the Secretary of Agriculture, on which the emergency created by the drought or excessively hot weather no longer exists, whichever is earlier.

(b) Effective October 1, 1986, section 1105 of the Food and Agriculture Act of 1977 (7 U.S.C. 2267) is amended by adding at the end thereof the following:

"(h) If—

"(1) the Secretary of Agriculture makes emergency livestock or poultry feed assistance available to producers in a county under section 407 of the Agricultural Act of 1949, or comparable law; but

"(2) surplus commodities of adequate nutritive value are not made available under such program for distribution to such producers within ten days after the announcement of the program for such county,

the Secretary shall make assistance available to such producers under this section until such time as surplus commodities are made available under the announced program.".

DISASTER PAYMENT PROGRAM

SEC. 5. Notwithstanding any other provision of law:

(a) The Secretary of Agriculture shall make disaster payments available, at the request of the producer, on the 1986 crops of wheat, feed grains, upland cotton, rice, and soybeans and peanuts under sections 107D(c)(2)(D), 105C(c)(2)(D), 103A(c)(2)(D), 101A(c)(2)(D), and 201(k) of the Agricultural Act of 1949, respectively, to producers located in natural disaster areas.

(b) For the purposes of this section, the conditions set out in sections 107D(c)(2)(D)(i), 105C(c)(2)(D)(i), 103A(c)(2)(D)(i), and 101A(c)(2)(D)(i) of the Agricultural Act of 1949 shall be considered as having been met.

(c) Payments under this section shall be made in kind, as provided in section 8(a) of this Act, using surplus stocks held by the Commodity Credit Corporation.

(d) The total amount of in kind payments that a producer shall be entitled to receive for the producer's crops of wheat, feed grains, upland cotton, rice, peanuts, and soybeans under this section shall not exceed an amount of commodities of a combined value of more than $100,000.

MILK PROGRAM PRODUCER ASSESSMENTS

SEC. 6. Notwithstanding any other provision of law:

(a)(1) At the option of the producer, no reductions in the price received by producers for milk marketed for commercial use under section 201(d)(2)(A) of the Agricultural Act of 1949 shall be made on milk produced by producers in drought disaster areas and marketed for commercial use during the period beginning October 1, 1986, and ending December 31, 1986.

(2) The reductions in the price of milk required under section 10 of the Food Security Improvements Act of 1987 shall not be increased as a result of the implementation of the temporary prohibition on reductions in the price of milk provided for under paragraph (1).

(b) The Secretary of Agriculture shall increase the amount of the reduction in the price received by producers in drought disaster areas for milk produced and marketed by such producers for commercial use under section 201(d)(2)(A) of the Agricultural Act of 1949 during the period beginning January 1, 1987, and ending September 30, 1987, by an amount that will ensure that, to the extent practicable, the aggregate amount of reductions applicable to milk of such producers for the period beginning October 1, 1986, and ending September 10, 1987, will be the same aggregate amount of reductions that would have been made if the prohibition on reductions under subsection (a) had not been in force.

COST-SHARING FOR SOIL CONSERVATION MEASURES AND TIMBER STAND RESEEDING EXPENSES

SEC. 7. Notwithstanding any other provision of law,

(a) The Secretary of Agriculture shall make available—

(1) cost-share payments under the agricultural conservation program to producers in drought disaster areas for conservation measures designed to prevent anticipated soil erosion due to loss of vegetative cover; and

(2) cost-share payments under the forestry incentives program to forest landowners in drought disaster areas for the reestablishment of stands of pine trees lost to drought conditions.

(b) The Secretary shall share not less than 50 percent of the cost of such measures or reestablishment of timber stands; and such cost-share payments shall be made in kind, as provided in section 8(a) of this Act, using surplus stocks of commodities held by the Commodity Credit Corporation.

(c) Payments made under this section shall be in addition to, and not in lieu of, payments made under the Soil Conservation and Domestic Allotment Act or the Cooperative Forestry Assistance Act of 1978 using funds appropriated for such purposes.

(d) Assistance under this section shall be made available to persons in drought disaster areas during the period beginning 15 days after the date of enactment of this Act and ending March 30, 1987.

PAYMENTS

SEC. 8. Notwithstanding any other provision of law:

(a)(1) In making in-kind payments under section 4(a)(1), 5, or 7, or subsection (b) of this section, the Secretary of Agriculture may—

(A) acquire and use commodities that have been pledged to the Commodity Credit Corporation as security for price support loans under the Agricultural Act of 1949, including loans made to producers under section 110 of such Act; and

(B) use other commodities owned by the Commodity Credit Corporation.

(2) The Secretary may make in-kind payments by—

(A) if requested by the producer, delivery of the commodity to the producer at a warehouse or other similar facility, as determined by the Secretary; or

(B)(i) the transfer of negotiable warehouse receipts;

(ii) the issuance of negotiable certificates that the Commodity Credit Corporation shall redeem for a commodity in accordance with regulations prescribed by the Secretary; or

(iii) such other methods as the Secretary determines appropriate to enable the producer to receive payments in an efficient, equitable, and expeditious manner so as to ensure that the producer receives the same total return as if the payments had been made in cash.

(3) In carrying out this subsection, the Secretary, to the maximum extent practicable, shall use Commodity Credit Corporation commodities stored in storage deficient areas such as the midwestern United States.

(b) Transportation cost payments made under section 3(b)(2) or 4(a)(3) of this Act prior to October 1, 1986, shall be made in kind, as provided in subsection (a), using surplus stocks of commodities held by the Commodity Credit Corporation. Such payments made after September 30, 1986, may be made in kind or in cash. The Secretary of Agriculture shall assist recipients of in-kind payments in marketing warehouse receipts, certificates, or other documents representing such in-kind payments.

CREDIT FORBEARANCE

SEC. 9. It is the sense of Congress that, with respect to farm borrowers who are adversely affected by drought disaster conditions in 1986—

(1) the Secretary of Agriculture should exercise the authority provided under section 331A of the Consolidated Farm and Rural Development Act and instruct the Farmers Home Administration to defer loan repayments and forgo foreclosures in cases where such farm borrowers are unable to make loan payments in full due to no fault of their own; and

(2) the lending institutions of the Farm Credit System and commercial lending institutions are encouraged, insofar as practicable, to adopt lenient lending, forbearance, and foreclosure policies, and to the maximum extent possible participate and cooperate with Federal and State lenders in assistance programs, with respect to such borrowers who are under financial stress due to no fault of their own.

COORDINATION OF ASSISTANCE EFFORTS

SEC. 10. It is the sense of Congress that, with respect to the provision of Federal assistance to farmers and ranchers in drought disaster areas, the Secretary of Agriculture should take steps immediately to—

(1) establish an overall coordinating mechanism within the Department of Agriculture to ensure that the assistance provided by each agency within the Executive Branch is coordinated with, and complements, the assistance provided by other agencies;

(2) ensure that government and voluntary agencies, and the farmers and ranchers, in each drought disaster area are provided a single contact person or unit for Federal assistance, and that a similar such Federal contact person or unit is provided for government and voluntary agencies, farmers and ranchers, and other persons outside drought disaster areas who wish to contribute additional assistance to drought disaster areas; and

(3) consult with the Governors, Secretaries of Agriculture (or comparable officials), and the State disaster relief agency in each State in which a drought disaster area is located, or the disaster assistance needs of farmers and ranchers located in the State.

Amend the title to read: "A bill to provide emergency assistance to farmers and ranchers adversely affected by drought disasters in 1986.".

ASSISTANCE UNDER DISASTER RELIEF ACT

SEC. 11. Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.) is amended by adding at the end the following new section:

"FEDERAL SHARE OF ASSISTANCE

"SEC. 240. (a)(1) The Federal share of assistance under section 402 or 403 of this Act—

"(A) shall be at least 75 percent of the actual cost of providing assistance under such section, and

"(B) shall be made only on condition that the remaining portion of such cost is paid from funds made available by a State or local government.

"(2) Where a State or local government is unable immediately to pay its share the President is authorized to advance to such government such 25 percent share, and any such advance shall be repaid to the United States.

"(b) The Federal share of assistance under sections 404, 407, and 413 shall be equal to 100 percent of the actual cost of providing assistance under such sections.

"(c) No State shall be ruled ineligible to receive assistance under subsections (a) and (b) of this section by virtue of an arithmetic formula based on income or population if such State has qualified for Federal disaster assistance within the past 24 months."

D'AMATO AMENDMENT NO. 2251

(Ordered to lie on the table.)

Mr. D'AMATO submitted an amendment intended to be proposed by him to the joint resolution (H.J. Res. 668), supra; as follows:

At the end of the Committee amendment, add the following new section:

SEC. . EXEMPT PROGRAMS AND ACTIVITIES.

(a) IN GENERAL.—Section 255(g)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)) is amended—

(1) by inserting after the item relating to Compensation of the President the following new items:

"Department of Justice, Immigration and Naturalization Service (15-1217-0-1-751);

"Department of the Treasury, United States Customs Service;

"Department of Transportation, United States Coast Guard;

"Drug Enforcement Administration (15-1100-0-1-751);";

(2) by inserting after the item relating to Exchange stabilization fund the following new item:

"Federal Bureau of Investigation (15-0020-0-1-751);";

(3) by inserting after the item relating to Federal payment to the railroad retirement account the following new item:

"Federal Prison System;"; and

(4) by inserting after the item relating to Postal service fund the following new item:

"Salaries and Expenses, United States Attorneys and Marshals (15-0322-0-1-752);".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to fiscal years beginning after September 30, 1986.

HELMS (AND DENTON) AMENDMENT NO. 2252

(Ordered to lie on the table.)

Mr. HELMS (for himself and Mr. DENTON) submitted an amendment intended to be proposed by them to the joint resolution (H.J. Res. 668), supra; as follows:

At the end of the joint resolution add the following new section:

SEC. . DISAPPROVAL OF ACTION OF THE DISTRICT OF COLUMBIA COUNCIL.

The Congress disapproves of the action of the District of Columbia Council described as follows: The Prohibition of Discrimination in the Provision of Insurance Act of 1986 (D.C. Law 6-170).

NOTICE OF HEARINGS

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that the Subcommittee on Energy Research and Development of the Committee on Energy and Natural Resources will conduct a joint field hearing with the House of Representatives Committee on Science and Technology. The hearing will take place on Thursday, September 4, 1986, at 9:15 a.m. at the Albuquerque Convention Center in the ballroom, 2d and Grand Avenue, Albuquerque, NM.

Testimony will be received on "Technology Transfer" in conjunction with "Focus 86"—a 2-day conference on Commercializing Federal Lab Technologies and enhancing U.S. competitiveness through regional economic development.

Witnesses will include representatives from Federal agencies and national laboratories, national industrial firms, as well as local New Mexican companies and academic institutions with direct experience in technology transfer mechanisms.

The hearing will focus on technology transfer issues from the standpoint of both the public and the private sectors. The hearing will explore mechanisms and policies that facilitate technology transfer; factors such as intellectual property rights and proprietary information, which are crucial to the commercialization process; financing and marketing aspects; as well as innovation concepts for collaboration between academic, industrial and Government entities.

Those who wish to testify or wish to submit written statements for the hearing record should write to the Subcommittee on Energy Research and Development, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510 (staff contact Ms. Marilyn Meigs 202-224-4431) or the office of Senator PETE DOMENICI at the Federal Building and U.S. Court House, room 10013, Albuquerque, NM 87103 (staff contact Martha Buddecke 505-766-3481).

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ROTH. Mr. President, the Senate Committee on Governmental Affairs will hold a hearing on Wednesday, August 6 at 2 p.m., in SD-342 on the following nominations:

Janet D. Steiger to be a Commissioner of the Postal Rate Commission;

Mary F. Wieseman to be Special Counsel of the Merit Systems Protection Board; and,

James E. Colvard to be Deputy Director of the Office of Personnel Management.

For further information, please contact Carol Fox at 224-4751.

Mr. President, the Senate Committee on Governmental Affairs will hold a hearing on Wednesday, August 13 at 10 a.m., in SD-342 on the nomination of John Agresto to be Archivist of the United States. For further information, please contact Carol Fox at 224-4751.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. McCLURE. Mr. President, I would like to announce for the information of the Senate and the public that the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs will conduct a joint hearing on Monday, August 11, 1986, beginning at 10 a.m. in room SD-562 of the Senate Dirksen Office Building in Washington, DC.

Testimony will be received on S. 2676, to provide for the settlement of water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, CA, and for other purposes.

Those who wish to testify or wish to submit written statements for the hearing record should write or contact either of the two following offices:

Committee on Energy and Natural Resources, U.S. Senate, SD-358 Dirksen Senate Office Building, Washington, DC 20510 (committee contact Mr. Russell Brown at 202-224-2366).

Select Committee on Indian Affairs, U.S. Senate, SH-838 Hart Senate Office Building, Washington, DC 20510, (committee contact Patricia Zell, 202-224-2981).

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER, AND RESOURCE CONSERVATION

Mr. HEINZ. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, Reserved Water and Resource Conservation of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, July 31, to hold a hearing on S. 2159, to designate the Big Sur National Forest Scenic Area; House Joint Resolution 666, expressing the sense of Congress in support of a commemorative structure within the National Park System dedicated to the promotion of understanding, knowledge, opportunity and equality for all people; and S. 767, to direct the Secretary of the Interior to permit access across certain Federal lands in the State of Arkansas, and for other purposes.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. HEINZ. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the

Senate on Thursday, July 31, in closed session, to conduct a business meeting, and to receive a briefing on intelligence matters.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. HEINZ. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 31, to hold a business meeting to consider State Department nominations; and S. 1917, to amend the Foreign Assistance Act of 1961, to provide assistance to promote immunization and oral rehydration, and for other purposes.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HEINZ. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Thursday, July 31, to hold a hearing on the issue of satellite signal scrambling.

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

ADDITIONAL STATEMENTS

LIBERAL McCARTHYISM

● Mr. GOLDWATER. Mr. President, anyone reviewing the record objectively knows beyond a shadow of a doubt that Associate Justice Rehnquist meets every test of qualification for service as Chief Justice of the U.S. Supreme Court. He is a man of superior intelligence and proven excellence and his outstanding qualities have been recognized time after time by his colleagues of the bar. Twice he has received the American Bar Association's highest rating of professional competence, judicial temperament and integrity.

Yet, some of those at the extreme end of liberal philosophy persist in attacking Justice Rehnquist on the basis of his alleged insensitivity to their agenda. Yesterday, in its lead editorial, the Arizona Republic called this attitude "liberal bigotry." The editorial also called the opposition to the nomination of Mr. Rehnquist as "liberal McCarthyism" because his critics seem to be saying it is un-American to disagree with liberalism.

Mr. President, I believe the Arizona Republic has put its finger on the problem. I am concerned that the Senate is being asked to abuse the advice and consent power conferred upon us by the framers of the Constitution. I believe the exercise we are currently going through is a test of whether or not the Senate will take it upon itself to convert the confirmation power into a license to reject obviously qualified nominees at will because of their perceived political philosophy.

The road we are asked to take would distort the power the framers of the Constitution have conferred upon us in article II, section 2, by using it as a weapon for confrontation and open collision with the President's appointment power.

Certainly, Mr. President, we are expected to make an independent decision regarding the character and fitness of every nominee. But we are not to vote on the basis of a nominee's political beliefs. To the contrary, I believe the framers contemplated that the Chief Executive of the United States should be given broad discretion in making appointments. Alexander Hamilton stated in the Federalist paper No. 76 that it is "not very probable" that the President's nomination would often be overruled.

Let us remember that the President is chosen in the only nationwide election held in our country. Thus, the will of the people, as expressed in their choice of President, should be given due respect when acting on his nominations. This is particularly true where there is a nominee of such impeccable credentials for the office as Mr. Justice Rehnquist.

Mr. President, in recent weeks the Senate has been told by one wing of political thought that it should insist on the standard of "excellence" for all members of the Federal judiciary. William Rehnquist is eminently qualified under this standard or under any other rational test.

Mr. President, I ask that the text of the editorial published in the Arizona Republic may appear in the RECORD.

The editorial follows:

[From the Arizona Republic; July 30, 1986]

LIBERAL McCARTHYISM

The opposition to the nomination of William Rehnquist as chief justice of the United States is plainly ideological. Rehnquist is a conservative, which is all the reason some of his liberal detractors require to oppose his confirmation.

Objections raised thus far to Rehnquist's nomination are allegations that as a Republican party poll watcher 25 years ago he tried to prevent Phoenix minorities from voting, and ideological objections from the far left.

If Rehnquist was judged qualified to sit on the Supreme Court in 1971, he is qualified to be chief justice in 1986. It's that simple.

The chief justice is a *primus inter pares*, the first among equals, and casts only one vote. His sole power is to assign written decisions. *Any* justice already seated on the bench is qualified to hold the position.

Rehnquist categorically denied the charges of election tampering during his 1971 nomination hearings and he was confirmed on a 68-26 vote of the then Democrat-controlled Senate.

As California's attorney general, Earl Warren gave the Constitution short thrift, enthusiastically enforcing the World War II program in which thousands of American citizens of Japanese ancestry were deprived of their property and imprisoned without due process. If that dark episode in American history did not disqualify Warren from becoming chief justice 25-year-old partisan political recollections against Rehnquist certainly do not.

It is comical that the likes of Eleanor Smeal of the National Organization for Women call Rehnquist an ideological extremist. Smeal's real objection is not ideological extremism, but that Rehnquist is a conservative, for a far left ideological extremist would not be met with similar objections by NOW.

This liberal McCarthyism goes like this: The liberal agenda is identical to "the American way," and to disagree with liberalism is to advocate un-American ideas. It is liberal bigotry, pure and simple.

It is also an absurd idea that Rehnquist is disqualified because he regularly votes with the conservative minority against the liberal majority. Were that criterion forced on the presidency it would preclude any ideological change in the court by mandating majoritarian appointments, regardless of the political ideology of the president in office. Liberals would not stand for this were the ideological shoe on the other foot.

Just because the court has followed the path of liberal judicial activism for three decades does not mean the president cannot make appointments under the powers reserved to him in the Constitution which would shift the court toward a more conservative position.

Liberalism is not protected by the Constitution, nor is it entitled by right to control the Supreme Court indefinitely. Rehnquist should be confirmed without delay, and without petty partisan politics.●

THE VALIANT AFGHAN STRUGGLE

● Mr. HUMPHREY. Mr. President, during the long, tragic course of the brutal Soviet occupation of Afghanistan, many concerned legislators throughout the world have raised their voices in support of the valiant Afghan struggle. The bloodshed in Afghanistan cannot be stopped by materiel alone, although that is of critical importance. Accompanying this must be the roar of world public opinion and outrage. People and their governments worldwide must say loudly and in one voice that the continued occupation of Afghanistan and the genocide being waged on the Afghans will not be tolerated, and that the war will have an impact on the conduct of relations between the Soviet Union and the civilized community of nations.

This type of political and diplomatic pressure is an essential component of the overall effort to end the bloodshed in Afghanistan. National outrage has been accompanied by near unanimity in the United Nations, where the General Assembly has repeatedly condemned the Soviet presence there, voting last year by an unprecedented margin of 122 to 19, with 12 abstentions, to call for:

The complete withdrawal of foreign forces.

The restoration of Afghanistan's independent and nonaligned status.

Self-determination for the Afghan people.

The creation of conditions that would enable the refugees to return home with safety and honor.

Mr. President, this international outcry is crucial to the quest to rid Afghanistan of the war which has plagued it since 1979. The Soviets must be aware by every international and parliamentary assembly worldwide that their murderous deeds in Afghanistan do not go unnoticed. Soviet diplomats and other officials must be taken to task at every opportunity for the crimes committed by their nation in its attempt to subjugate an innocent neighbor. Sustained, intense pressure must come from every quarter if the world is ever to see the restoration of Afghan independence and self-determination.

Among other international bodies, the Organization of the Islamic Conference, the Nonaligned Movement, and the European Parliament have endorsed similar principles. The latter group, Mr. President, is the only multinational institution directly elected by the people of Europe. Its 518 members are selected by voters in France, Germany, Italy, the United Kingdom, Spain, The Netherlands, Belgium, Greece, Portugal, Denmark, Ireland, and Luxembourg. Today I would like to share with my colleagues an incredible document on the situation in Afghanistan, recently passed by the European Parliament in a vote of 219 to 33, with 19 abstentions.

I would like to point out some of the major observations and provisions of the resolution.

The resolution observes that:

The problem of the presence of millions of Afghan refugees in Pakistan and other countries has assumed dramatic proportions.

The majority of the Afghan people oppose the government in Kabul, the Soviet influence on their domestic policies, and the military occupation by the Red Army.

The Soviet Union has ignored repeated international calls for its withdrawal from Afghanistan, even increasing the number of its troops there to over 121,000 in 1985.

The Soviet Union has fully occupied the Wakhan Salient in eastern Afghanistan, expelling the local population, in effect annexing the area and creating for the first time a substantial frontier between the Soviet Union and Pakistan.

Because of the millions of killed and wounded, "the Soviet Union is guilty of mass murder in Afghanistan."

The meeting of jurists held in Turin on November 1985 under the auspices of the European committees . . . clearly concluded that the resistance was a representative body and took the view that despite its internal differences, it was competent to represent the Afghan people in the fight for its right to self-determination and national identity.

Border incursions by Soviet/Afghan forces "could lead to the spread of the war and an escalation of fighting, which means that the situation in Afghanistan is a serious threat to world peace."

Based on these and other observations, Mr. President, the European Parliament resolution, among numerous provisions:

Emphasized that the Soviet Union must withdraw its troops from Afghanistan immediately and unconditionally and thereby restore Afghanistan's neutral and nonaligned status.

Calls for the International Red Cross to be allowed into Afghanistan, in accordance with the Geneva Convention.

Condemns the political imprisonment; torture; atrocities; deportation to the Soviet Union; killing of prisoners of war; destruction of villages, cattle, and harvests; bombing of medical centers; the use of toy bombs; the use of chemical weapons; cross-border attacks; prohibition of media coverage; and massive casualties which characterize the Soviet occupation of Afghanistan.

Calls for stepped-up humanitarian assistance to the Afghan people through both the International Red Cross and private aid organizations.

Calls on the European Community and the governments of member states to "recognize the Afghan resistance movement as being competent to represent the Afghan people in its fight to exercise its right to self-determination."

Calls for "political cooperation to work actively towards an early negotiated political solution involving all the parties concerned, including the various factions of the Afghan resistance movement."

Calls for "National Reconciliation Talks," with the direct participation of the resistance aimed at achieving a cease-fire in the near future. Such a cease-fire should be supervised by a U.N. peace-keeping force.

Mr. President, this is one of the most remarkable and comprehensive documents I have seen in support of the Afghans' struggle for national liberation. I would like to call my colleagues' attention to the most imperative provision in the document: Its call for direct negotiations among the warring parties in Afghanistan. As it stands now, the United Nations peace process is flawed by the lack of representation for the Mujahideen fighting the Soviets. President Reagan called for this himself in his October 1985 address to the U.N. General Assembly, insisting that the starting point for the settlement of regional conflicts "must be a process of negotiation among the warring parties in each country." This has not been the case in Afghanistan, Mr. President. Surely after more than 4 years of "indirect talks," we should get down to the real business of including the resistance in any peace settlement.

The European Parliament should be commended for its admirable and humanitarian stand on the war in Afghanistan. We must show the Soviets that both sides of the Atlantic are unprepared to accept blatant aggression against innocent nations. Consensus across the ocean does exist, as evidenced by this resolution. With the combined political and diplomatic weight of the free world behind us, we can someday hope to rid Afghanistan of Soviet forces.●

TESTIMONY OF COCHAIRMEN OF COMMONWEALTH'S EMINENT PERSONS GROUP AT FORUM ON SOUTH AFRICA

● Mr. KENNEDY. Mr. President, I would like to call the attention of my colleagues to the testimony of the cochairmen of the Commonwealth's Eminent Persons Group [EPG]—former Prime Minister Malcolm Fraser of Australia and General Olusegun Obasanjo, former Chief of State of Nigeria.

In October 1985, the 49 member states of the Commonwealth of Nations established a "small group of eminent persons [known as the Eminent Persons Group or EPG] to encourage through all practicable ways the evolution of [the] necessary process of political dialogue" between the government and the black majority required for a peaceful end of the apartheid system. In the course of their mission, the EPG dealt with all the parties involved in the South African conflict. They met with the leaders of the South African Government as well as the leaders of the anti-apartheid forces. They visited Nelson Mandela in Pollsmoor Prison three times and engaged in serious negotiations aimed at securing his release and suspending the violence inside South Africa.

Last month, the EPG issued a thoughtful and compelling report describing their experience. On Monday, July 21, 1986, the cochairmen of the EPG participated in a Forum on South Africa sponsored by Senator WEICKER and myself. At the forum, General Obasanjo warned: "[I]f nothing is done to bring about peaceful change in South Africa, there will be a descent into greater violence, violence that will go beyond the borders of South Africa that will engulf the entire region of South Africa, and, in fact beyond the region of South Africa into the other parts of Africa—violence that will have implications for all multiracial countries of the world, violence that may have implications for the East-West relationship."

The general spoke out strongly in favor of sanctions in order to lead South Africa toward negotiation. "[W]e are convinced as a group that the countries where South Africa seems to obtain succor are countries on the West that have not made definite pronouncement, or take definite decision to push South Africa toward negotiation in terms of bringing effective measures that will induce South Africa toward negotiation."

General Obasanjo went on to say that he did not advocate the complete destruction of the way of life in South Africa. "I want to emphasize here that our aim is not to destroy the economy of South Africa. If anything, our aim is to save the economy of South Africa, and save the people—all the people of South Africa—from what we see as impending disaster, which may be second only in destruction to what we have witnessed since the end of the Second World War."

Malcolm Fraser, also strongly supported sanctions against South Africa, saying that they are the last possible action to avoid greater bloodshed. "[T]he exercise of sanctions is the only thing that might divert decisions from the Africans, who would come to the conclusion that by themselves, they've got to move to a full-scale guerrilla conflict." He went on to say that the United States plays a crucial role in initiating needed sanctions worldwide. "Now, I think the dates are critical. The Commonwealth meeting starts on the 5th of August. And if Mrs. Thatcher doesn't support sanctions, then they will be looking very closely at what the United States does or what the Senate or the Congress as a whole does. If we assume for a moment that there is no effective action from the United States by the time you adjourn, it would seem they are on their own, and if they want political equality, they have to fight it out. I don't think anyone can blame the people ultimately fighting for political rights and political liberty in a situation where they basically have no liberty."

Fraser strongly urged that the United States not turn its back on the black leaders of South Africa. He warned that "The kind of government that would emerge at the end of a long, drawn-out guerrilla war would owe its allegiance to its source of arms, would be anti-West, pro-Soviet, probably Marxist and would nationalize the totality of the Western commercial-trading-financial links in South Africa."

Both General Obasanjo and Malcolm Fraser are sending the Senate a clear message—that we must pass sanctions legislation, and soon. All of the world is looking to the United States for action. The administration has not taken such action and it is now in the hands of the Senate. The House of Representatives has spoken. Now is the time for the Senate to speak, and we must have broad bipartisan support for comprehensive economic sanctions.

I ask that the testimony of both General Obasanjo and Malcolm Fraser at the Forum on South Africa on Monday, July 21, 1986 be placed in the RECORD.

The testimony follows:

Senator KENNEDY. We welcome both of you and we ask you to proceed in whichever order you would want to proceed.

General OBASANJO. Thank you very much. We thank you for giving us the opportunity to appear before you, and by appearing before you, appearing before the people of this great country.

As you rightly said, Senator Kennedy, in October last year, the Commonwealth leaders at their biannual meeting decided to set up a group of personalities of the Commonwealth to encourage political dialogue in South Africa.

This is a means of taking positive action, along, of course, with what may be regarded as negative action of functions. They had three pillars, if you like, a small amount, or if you like, functions to be followed by the work of the group. And if the work of the group is positive, of course, they do not intend to take any further measures.

If the work of the group is negative, that is, to prove there is no perceptible movement in South Africa towards of dismantling of apartheid and erecting a structure of democracy, the Commonwealth leaders were to meet and consider further stringent measures.

As soon as we were composed as a group, we met in London. We set up our program of action, and we informed the South African authorities of our existence and of our intention to visit South Africa.

Soon after that we got a response from the State President, Pieter Willem Botha, asking us to come in. And this was followed by the visit of the senior official of the Foreign Ministry of South Africa in London who talked to us on the moralities of our visit and of our work.

This, of course, led to sending a preliminary group—that is, the two co-chairmen and the lady member of our group. We went in for one week. After we had gone in for one week, the Government of South Africa gave the green light for the whole group to come in.

The whole group went in after we had visited the Front Line States. We talked to their ministers, including the State President himself. Some of these ministers we talked to five or six times. We talked to members of Parliament.

We talked to trade union leaders. We talked to business leaders. We talked to community leaders. We talked to academicians. We traveled through the length and breadth of South Africa. As a result of these wide and varied consultations and discussions with people, we came up with a negotiating concept which, we believe, if followed, will lead to the beginning of meaningful dialogue—political dialogue—between the government and the black leadership.

It consists of the government's doing certain things, things that, in fact, the world community had called on the government to do. And, of course, on the other side, it also impose such an obligation on the black leaders—an obligation like suspension of violence—and within the government, to talk on a proper agenda.

For some time, we thought that this negotiating concept was agreeable with the government until late April or early May when, by action, by words, the government indicated to all of us clearly that they were not ready for meaningful negotiations.

They did this in a number of ways. When we went in the second time on the negotiating concept which we had left with them for six weeks—if they had no reply to us, yes, or no. Then the points on which they seemed to have agreed: suspension of violence by the other side, they went back on it and insisted on a resumption of violence. A resumption of violence for people who had no political rights and very little economic right. It was not regarded as realistic.

Then while we were still there, the President made a statement which, in short, was saying to all of us: you can keep away from us and remove your fingers from our internal affairs. In spite of all of this, we remained, because we wanted to explore all of the liberal countries.

We know that what is at stake is very grave and very great. And on the last day of our meeting with eight government ministers, they left us in no doubt that our negotiation concept is unacceptable and slammed the door of negotiation right in our face.

It was also the same day that they raided countries that are liberal: Zambia, Zimbabwe and Botswana. Two of these countries happen to be countries that nominated two of us on that group, Zimbabwe and Zambia.

Our position, although it became very untenable, we did not react in any way except to continue to explore all possible ways of securing a response of the South African government to our negotiating concept.

When it dawned on us that the South African government was not interested in meaningful negotiation, we packed out of South Africa. We wrote our report, which you have kindly remarked, Senator Kennedy, as a landmark in the struggle against apartheid.

If nothing is done to bring about peaceful change in South Africa, there will be a descent into greater violence, violence that will go beyond the borders of South Africa that will engulf the entire region of southern Africa, and, in fact, beyond the region of South Africa into the other parts of Africa. Violence that will have implications for all multi-racial countries of the world, violence that may have implications for the east-west relationship.

We are convinced as a group that the countries where South Africa seems to obtain succor are countries of the west that have not made definite pronouncements, or taken definite actions to push South Africa towards negotiation in terms of bringing effective economic measures that will induce South Africa towards negotiation.

I want to emphasize here that our aim is not to destroy the economy of South Africa. If anything, our aim is to save the economy of South Africa, and save the people—all the people of South Africa—from what we see as impending disaster, which may be second only in destruction to what we have witnessed since the end of the Second World war.

Thank you.

Chairman KENNEDY. Prime Minister Fraser.

Prime Minister FRASER. Thank you very much, Senator, and gentlemen.

Like my colleague, I am honored to be asked to be here. We recognize very much the importance of actions taken by the United States, and of the very real need for free world leadership which has so often come effectively from this country.

We thank you very much for the opportunity to give our views briefly to you.

I thought I would try and deal with two questions, because I think they give an insight into the sort of action that is needed. Why did, indeed, the government turn away from negotiations late in April when we

really thought we had a negotiation within grasp?

And, secondly, what's going to happen next, if existing policies from major free world states remain unaltered? It was quite clear at the end of April that the hardliners—those that believe that they can shoot it out, tough it out—has won the argument within the South African government.

The ministers had said to us, if they shoot enough blacks, they can get rid of the violence and restore their kind of normalcy. It was instrumental that it was the Minister for Law and Order who made that comment to us in one particular discussion.

But there is another and significant reason—I think the South Africans often believe their own propaganda of the South African government. One part of their propaganda is that South Africa is a nation of minorities, all people who can't get on together and who will have very differing points of view.

Now if the South African government had believed earlier—which I think it did—that in a negotiation with them, there would be ten or twelve different African points of view being put to them, and they would then be able to pick out the points of view that were nearest their own, or indeed, persuade or cajole one or two homeland leaders to support the government's point of view.

The government's point of view, of course, was one which was still dependent upon race. The new identity document will depict race. The ministers time and again indicated to us that political rights would have to be exercised through separate racial groups.

Now, that's not the establishment of any kind of a democracy in the South African context. That is maintenance of apartheid but under another form and under another name. As a result of discussions that we had with Chief Buthelezi, who had indicated he would work under Mandela—as a result of the discussions we had with Mandela which would have been available to the government, very obviously, it was clear that the prospect of a united African leadership was starting to emerge.

And if you had Mandela being able to heal the rift between ANC and Buthelezi, as he believed he could if he were freed, and establishing a united view, all the other black groups would come around and support that kind of general, joint leadership. In those circumstances, the negotiation could not serve any purpose for the government because they knew in those circumstances they could never get that leadership to accept a dispensation for the future that was based on the race of designation of every person in the country.

I think the realization of the real prospect of the united black leadership was something that probably surprised the government, and also caused them to move dramatically away from negotiation and kill the Commonwealth initiative as they did, like the General described, early in May.

And that I think is important when we look to the future because something is going to have to alter the equation, alter the balance of forces in South Africa if the government's view is to be changed.

Well, what's next? If there is no action, no change in policies in the United States and Britain, there will still be actions from all other countries of the Commonwealth, but their trade weight is not heavy enough to carry the day.

It needs the major states. So if America and Britain would move, Germany and the community would move and Japan would certainly do whatever the United States would do. They're the major commercial and financial powers, and therefore, measures would be successful in those circumstances.

But if there is no action leading to a concerted approach from America or from Britain, the black leadership will decide that they have no substantial or significant support from the west.

They've been asking for sanctions for a very, very long while, with the exception of Chief Buthelezi. All the other leaders that spoke to us said, please, if you don't get a negotiation, try and get the west to exercise this kind of pressure.

The exercise of sanctions is the only thing that might divert decisions from the Africans, who would come to the conclusion that by themselves, they've got to move to a full-scale guerrilla conflict.

Now, I think the dates are critical. The Commonwealth meeting starts on the 5th of August. And if Mrs. Thatcher doesn't support sanctions, then they will be looking very closely at what the United States does or what the Senate or the Congress as a whole does.

If we assume for a moment that there is no effective action from the United States by the time you adjourn, it would seem they are on their own, and if they want political equality, they have to fight it out. I don't think anyone can blame the people ultimately fighting for political rights and political liberty in a situation where they basically have no liberty.

After all, the origins of the greatest of all free world paths came out of such a fight a long while ago. The kind of government that would emerge at the end of a long, drawn-out guerrilla war would owe its allegiance to its source of arms, would be anti-west, pro-Soviet, probably Marxist and would nationalize the totality of the western commercial-trading-financial links in South Africa.

The conflict would have embroiled all the other countries of southern Africa, who would then probably be coerced into moving in the same direction while now they know the collectivist approach does not work and they basically reject it. That, of course, would be a result—that would destroy the totality of western strategic and commercial interests in South Africa.

Leave aside the moral question for the moment and just look at it from the point of view of the United States' self-interest, the British's self-interest, the western self-interest. I believe, on that ground, the West ought to move very substantially.

Nobody can guarantee that sanctions will work but they are the only remaining option to the west. Surely we've learned over the last five or six years that quiet diplomacy or whatever it's called is not going to move the Afrikaner from his own favored point of view.

Indeed, Afrikaner history indicates that they have never been amenable to reason and quiet discussion but they are amenable to pressure, often extreme pressure. That's the only thing that has ever caused them to move off their own chosen path.

I think there is a good chance that sanctions would work. They would need to be effective. They would need to indicate to the whites plainly that you've got no real future in the country unless the government changes. And what the banks did voluntarily as a result of economic circumstances last year woke many whites for the first time to the fact that their futures could be in jeopardy in South Africa.

So that, I think, offers the West the only opportunity. There can't be any guarantees. It's so late in the day that there's no course available that would guarantee the preservation of western interests, or a peaceful transition in South Africa.

But if, on the one hand, the option of doing nothing is going to guarantee the destruction of western interests and the certainty of massive bloodshed in South Africa over an eight- or ten- or twelve-year period, if there is another course that provides even a reasonable chance of a better result for western interests, and for South Africa itself, then that alternative, of course, I believe should be seriously considered.

Thank you very much, Senators.

Chairman KENNEDY. Thank you very much for a splendid summation of the conclusions of your EPG group. Prime Minister, I think you have placed your finger on one of the most significant factors, and that's the issue of time. That will certainly be an issue.

I am not asking you to comment on it because obviously it's an issue for us as an institution, the Senate of the United States, to address that issue. But I think in your comments you mentioned some benchmark meetings that are coming up, the meetings in early August, the fact that eventually this body will adjourn and you point out that people in South Africa, in the government and those that are not in the government, the blacks of South Africa are watching very carefully as to what we, as a society; what we, as an institution; what the government is going to do, the Congress and the President of the United States.

And I think that, as something coming from you and coming from the General, it is very important for us to hear. We are going to at least play devil's advocate for some of the course of this panel and the remaining parts of the panel.

I and Senator Weicker are going to address some questions to you that we get asked a good deal and will probably be asked tomorrow in the Senate Foreign Relations Committee. They are concerns of Americans, members of the Congress and the Senate, and they need to be addressed.

We've attempted in our own way to address them but I'd be interested, and all of us would be interested, in yours and the General's reaction to them.

One of the challenges that is put to us is the fact that any kind of economic sanctions, that any kind of interference will be counter-productive, that it will promote intransigence with the South Africa government, that basically the government itself will become more entrenched in its own attitude and that sanctions will be self-destructive. There are those who have pointed out where sanctions haven't worked.

How do you respond to the charge that promoting economic sanctions would drive the South African government—those who you have just mentioned who are calling the shots with regards to South African policy—into more intransigence and less willing to come to grips with some of the political and human rights in that country.

General OBASANJO. As we say, nobody can say absolutely or can guarantee that sanctions will work, but when we were in South Africa we saw and witnessed that the South African government believes the efficiency of sanctions and uses it effectively against its neighbors, too. We do know that.

The South African government is afraid of only two things. Those two things are the only two things that can bring about

change: the political unrest and the imposition of sanctions. The fact they are afraid of this is an implication that it would work. If they are not afraid of it, then it would not work, but they are definitely afraid of it.

It is true that South Africa is highly developed. It is also true that South Africa depends fairly intensively on the outside world, no matter what. It may be said that South Africa's economy depends very much on the outside world.

What we are saying is not sanctions to destroy the South African economy but sanctions that have sufficient effect on the white population of South Africa, so they can bring the desired pressure on their government for change. This is the way we believe sanctions can work.

Prime Minister FRASER. If I can add to that, Senator. If you could force them into line and bring about changes under extreme pressure, the sanctions would be to get the white population much, much more concerned about their own future and the present government, and themselves would bring more pressure on the government to bear.

Chairman KENNEDY. One of the other points that is raised constantly is the argument that if we have economic sanctions, the people that it's going to hurt is the blacks. Why do you think we ought to have economic sanctions when one of the important black leaders, Buthelezi, strongly opposes it and the people who are going to be hurt most by this kind of economic action are going to be the blacks?

Prime Minister FRASER. I think that, Senator, is probably one of the most false arguments of all. Let me just say one word about Chief Buthelezi. He is a political figure in South Africa. He can't be ignored, but he is not as significant as many people say, because if you want to have a job, you have to be a card-carrying member of Inkhata or even if you want to go to school. that reinforces his numbers very, very greatly.

So he can't be ignored, but everyone else says, "We want sanctions imposed." The black leaders say, the blacks generally say, "We know that sanctions will affect us and will hurt us but we are hurting already." Sixty or seventy percent are unemployed in Crossroads and many other townships. High levels of unemployment in that and the Homelands where there is no economic activity possible, and with the towns and the general state of the country being one that really denies blacks access to the normal dignity that should be associated with the participation in a reasonable and civilized society.

So blacks suffer a great deal in current circumstances. They say they want to hurt more for a while to try and change the situation. That's their judgment and I really think it's presumptuous for white leaders from other countries—and I'm not thinking of anyone from the United States when I say that—to suggest that they have a capacity or an ability or even a right to put a superior foreign judgment over the judgment that is, in fact, made by blacks themselves in South Africa.

But also it needs to be judged against the alternative. And if one can accept the general view of our report, that a descent into greater and greater violence is likely—and in our view if there's no change there will be a total guerrilla war which will obviously hurt many, many, maybe tens or hundreds of thousands of people, black and white—that's the alternative, the sanctions.

That alternative will result in infinitely more people, black and white, being hurt than would the imposition of sanctions. So you are not comparing a sanction situation with another situation which is a clean slate. The alternative to sanctions is one that would lead to much, much greater loss of life, and greater killings.

I think it wrong for white leaders outside South Africa to try and impose their judgment over that of the blacks within South Africa. It smacks of paternalism and all sorts of things that should be put aside.

Chairman KENNEDY. General, is there anything you want to add to that?

General OBASANJO. Well, I just want to state the position of Buthelezi because maybe this is not well known. Chief Buthelezi was a member of ANC and when ANC was banned, Buthelezi remained inside South Africa while some of the leaders of ANC fled the country, others were imprisoned.

And it was decided by the ANC outside that Buthelezi should form another organization which should forswear violence so that it can carry on in existence. And he formed Inkatha.

The quarrel of Buthelezi and ANC stemmed from the fact that Chief Buthelezi hijacked and did not allow Inkatha to work with ANC. And, of course, since Inkatha is established on the basis of non-violence, no sanctions, it has to remain in that sort of mode.

But it is not a stand against a sanction or violence that causes the disagreement with ANC. It is the fact that he broke with the ANC. After all, the UDF, which cooperates with ANC at the moment, stands for the same thing as Inkatha on the issue of violence.

Chairman KENNEDY. We're trying to share the time up here, and I'll ask Senator Weicker to ask what questions he might have.

Chairman WEICKER. As I indicated in my opening Statement, I think Prime Minister Fraser emphasized in his remarks that time is of the essence in this matter. That's what I would like to base my questions on.

Number one: there are those that say we are already past the point where meaningful negotiations could take place, that, indeed, we are past the point where moderate voices can still be heard.

Would either, or both of you care to address that question as to whether or not there still is time to achieve a resolution of the matter which excludes the violence which awaits?

General OBASANJO. There is very, very little time; very little time indeed. The leadership of ANC, whether inside or outside, particularly Nelson Mandela, is acknowledged throughout South Africa as the leader, and the black people look to him for salvation.

We met him—I met him three times in the prison, and the whole group met him two times. He is an impressive man. He's a nationalist. He's a man who, even though he has been in prison, has a fairly good knowledge of what goes on around him. He's a man who has spent 24 years in prison and has never said a word of bitterness against his tormentors.

Everywhere we went and wherever we talked among the black people, they acknowledged—and as Mr. Fraser said, even Chief Buthelezi said to us—"If Nelson Mandela is out, we will gladly work under him". This is the type of person this man is.

We believe as a group, from what we saw of him and what we saw inside South Africa, that with a man like him free and able to bring his office and influence to bear, there can still be room for negotiation if there is willingness on the part of the government to do those things that are absolutely necessary to make it possible for the voice of moderation and voice of reason to come into play.

But the time is running out. We had a case while we were there of unrest in Alexandra. One of the black leaders, in fact, Desmond Tutu went to Alexandra and spoke to the people and said, "Leave, stop and let me go to Cape Town".

They told him he wouldn't get anything out of Cape Town. He would come back empty-handed. He pleaded with them. He went to Cape Town and three days later he came back empty-handed. They told him, "Next time when you appeal to us, we will not listen."

That is the way that the influence of these leaders of moderation has been diffused, and, of course, in due course they will have no influence left. And what will take over is, I guess, radicalized youngsters who say to their parents now, "You are afraid to die so that we could live a different life. If you are afraid to die, we are not afraid to die. We will die so that our children can live a decent life."

Prime Minister FRASER. Could I just add two points briefly to that, Senator? Last April or early May we were convinced that the black leadership would accept our negotiating concept. But because of what the government has done in the last three months or so, the government could accept that concept tomorrow, but the black leadership would no longer accept that concept. The government would have to do much more than it would have had to do then to demonstrate its own good faith.

I haven't been in touch with the black leadership since that time. Therefore, it's difficult to make a judgment of what more would need to be done to re-establish the possibility of a negotiation. But it could be going as far as abolition of the Population Registration Act and the Group Areas Act. And those two acts could be abolished without altering the face of South Africa in the short term simply because of economic forces. How many blacks are going to be able to buy a house in the white suburbs, for example?

So, from practical terms, those Acts could be abolished without disrupting South Africa. But something as substantial as that may be necessary to get back to the possibility of a negotiation.

And, I emphasize again the black timetable. They will be looking to see what the United States does over the next few weeks, and what the British government does over the next two or three weeks. And after those periods have gone, if there isn't substantial support, then it could certainly be far too late.

If I could just make one word of explanation—one word that my colleague used. I think he was using the word "radicalized" in the sense of believing that they are going to have to go it alone and fight it out. It wasn't being used in the sense that some people say or see it in America or Australia that "radical" equals communist. It wasn't being used in that sense. It was being used in the sense of just believing that they're going to have to fight for it.

Chairman WEICKER. If I may just follow up then: if the Congress of the United States adjourns around October 1 without any action being taken, which in the absence of a lame duck session would mean no

action could be taken until January of next year at the earliest, what would be the implication of that?

Prime Minister FRASER. Well, if you added to that no actions being taken by the British government, the black leadership would be assuming that they are not going to get substantive and adequate support from the West and that, therefore, if they are going to get political rights, they're going to have to fight for it. And that means that immediately after those sorts of deadlines occur, and it could even be as early as the end of August that they could be having meetings saying we haven't got adequate support, and therefore, we are going to have to fight for it.

Once you make those decisions and start to put them into action, terror is answered by counter-terror, and the hatreds and fears that are aroused, it's an irreversible decision. You only get back to negotiations then when one side or the other becomes exhausted enough after a long conflict. And that would be the whites after eight or ten or twelve years.

Chairman WEICKER. Then lastly, if there is action by the government of the United States—and by that I mean a resolution that has gone the entire length of the constitutional process, Congress and President—do you believe that will precipitate ensuing actions by other governments, both within and without the Commonwealth?

Prime Mininster FRASER. Let's assume for the moment that it's effective action, and if you wanted to, we could comment on that. But if there is effective action—

Chairman WEICKER. —please do.

Prime Mininster FRASER. Thank you. But if there is effective action from the United States, I'm sure it would be impossible for Britain to hang out. And all the members of the Commonwealth will—they want to and they have in a sense been held back by Britain. But I think they will be taking their decisions, other members, even if Britain doesn't, early in August.

I know that Japan will do whatever the United States does. And that's not an assumption. I was in Japan shortly before their election. If Britain moves, I have no doubt that Germany and the European community can move. So there you've got the major industrial, financial centers of the west.

Do you want me to give an indication of what we think the minimum measures necessary?

Chairman WEICKER. Yes.

Prime Minister FRASER. They are divided probably into three categories. Please have in mind that we regard these as a minimum. If anyone wanted to do more, I think that would be helpful. But break off air links both ways. That means stopping American, Australian and British aircraft going to South Africa. And just as much stopping South African aircraft coming here.

Chairman KENNEDY. What about air space, too, Mr. Prime Minister? Does that include denying air space rights, flying over countries?

Prime Minister FRASER. Well, if they can't land their aircraft anywhere, that's not necessary then, I think.

Make it so they have to go to Lusaka or Harare to get out of the country. Take away consular facilities from South Africa except for your own nationals. You for yours and Australia for its, so they have to apply to their Embassy in Washington or Canberra or wherever it might be. That would be a great annoyance to whites who want to travel, and there are a lot of them.

But then to get into more substantial measures, look at the financial banking area to see what additional steps can be taken there beyond that which was taken for commercial decisions last year. Now banning new investment is useful but symbolic. There just is not going to be new investment until the political problems are solved.

But if one could ban access to trade credit and at the same time freeze access to overseas accounts of South African individuals or corporations—accounts held in America or Australia or Britain—that would be enormously effective, especially so since a very large number of South Africans, including Afrikaners, are trying to shift funds offshore to establish a safe boathold for themselves if things go adversely in South Africa.

And our advice is that through different devices, a significant number of South Africans, including Afrikaner farmers, are trying to establish funds in America or Britain or somewhere.

And then thirdly, rather than try and put a ban on merchandise exports to South Africa, which can be difficult to police, put a ban on the major commodity and agricultural exports of South Africa which is often in bulk supplies, therefore, more easily policed and more easily monitored and most of which are in excess supply.

And even in the case of the rare metals, the dependence of the West on South Africa is grossly overstated. In nearly—well, I think in every case, there is either technological change diminishing the demand or alternative sources of supply are available, and alternative sources outside the Soviet Union. And a close analysis will demonstrate that that is correct.

Chairman KENNEDY. I think you have probably gone beyond this in your earlier responses, but let me just get your reaction.

There are those that say there have been some meaningful steps taken by the South African government in recent times: the Mixed Marriage Act, the Trade Unions Act, changes in the Pass Law, the new Constitution, and these are all steps that have been taken in the last year or year and a half. Does it show that they are really committed towards progress?

Also, did the EPG give up too early and too soon? Hasn't the South African government demonstrated that they are prepared to take steps, albeit in a gradual way? And why are you opposed to supporting the government's program of reform? Haven't really meaningful steps been taken for the first time?

Prime Minister FRASER. Not one member of our group believed meaningful steps were being taken or have been taken. Let me just mention a couple of things. The Mixed-Marriage Act certainly in some ways was an advance that affects maybe 100 people a year. What the blacks want is something that affects the generality of blacks' lives in South Africa and not something that just affects a tiny, tiny proportion of those in South Africa.

And in any case, if you are a white and you have a house in a white suburb, and if you marry a colored girl or a black girl, the minute you sign the marriage register, you cannot spend another night in the house even though generations have lived there.

The Pass Laws, the ones that were before abolished were replaced by a new identity document. So that's why the abolition of the Pass Laws was not greeted with jubilation as it should have been.

It is terribly important, I think Senator, to keep in mind what the government means when it talks about reform and new dispensation and apartheid being outmoded. They do not mean democracy organized as the federal system as we know it. They mean a system in which each person is still designated by his race and will vote in his racial group. It's racial group rights, not individual rights. And it's easily maintained by a white power veto.

Nothing was said that convinced us that the government wanted to move away from that. Indeed, we had discussions amongst ourselves in the group, knowing that to be the view of the government, did we have any right to continue to pursue a negotiation knowing that the government wasn't being genuine when it said it wanted a negotiation?

And we believed that we should pursue the possibility of getting a negotiation because sometimes miraculous things can happen in negotiation and people can be pushed up to a point of view and adopt a more reasonable view. But we never at any point believed that the government was determined to end apartheid.

They were trying to change it and modify it in ways which would gain time and gain international respectability but would not give political rights to the blacks. I don't think for a minute that we gave up too early.

I would reinforce what the General said about that earlier. We had come to the view that within the present balance of forces in South Africa, the government was uninterested in a genuine negotiation and, indeed, had moved dramatically in the opposite direction.

To continue and to have tried to achieve a negotiation in those circumstances would, I believe, have been demeaning. Once one of your distinguished colleagues, Senator, mentioned the prospects negotiating with a certain power of the 1930's, I think that at least one British Prime Minister in government lost all credibility by continuing to negotiate beyond the point in which negotiation allowed one to maintain one's own dignity and self-esteem in a democratic state.

This, again, is why we come to the need for the introduction of effective substantial measures, sanctions, to alter the balance of forces within South Africa. And without that, I don't believe there is any hope at all.

Chairman KENNEDY. General, I just have one final question. I note that Senator Weicker has one or two concluding questions. And that is with regards to the ANC.

There are those that say members of Congress and the Senate and American people that are supporting strong economic measures are really working in harmony with the ANC and that that is basically a communist-front organization. Therefore, that those who are really committed to democracy should reject both the ANC, its policies, and the policies of those who may be in harmony with the ANC.

How do you respond to the allegation that the ANC is basically a communist-front organization that is a terrorist organization and that is committed to continued violence and disruption? I suppose that's put in about as hard a way as you could put it.

General OBASANJO. Thank you, Senator.

I raised that same question with Mr. Nelson Mandela. He gave me an answer, and in front of the whole group, an answer——

Chairman KENNEDY. —for our record, I think it's important you might mention his association with the ANC. I know it. You know it. We want others who read through to know.

General OBASANJO. Well, Nelson Mandela, of course, was the leader of ANC, who has been sentenced to life imprisonment. He's spent 24 years there and has recently celebrated his 60th birthday. Now he said that in 1947 he headed the move to rid the ANC of communist elements. And that it was those who were opposed to communists that, in fact, defeated him and his group because they said that the ANC is democratic movement. And in a democracy you do not ban—or fail a radical's idea by banning them. You do it by force of persuasion.

And that the ANC is like the British Parliament where the only thing you need to be a member of is to win an election. And the only thing you need to be a member of the ANC is to be opposed to apartheid. And he said to us that if in 24 years that he has been put in prison—and the government has not got him to say what he does not believe in, how can anybody think that the communists will get him to do what he does not believe in?

And he referred to Oliver Tombo and said, "You know Oliver Tombo? We have been childhood friends. Do you see him as a Communist, or is Oliver Tombo the kind of man that the communists would put up as a front? And he will accept that position? No," he said.

He agreed that there are people in ANC who have been in the communist party before. He did not deny that. But he said they are much less in number than the number that the government quoted.

He also said that the only document that the ANC has now to work with is the Freedom Charter. And for that document, the ANC was taken to Court. The Court absolved them that that document is not a communist document. And they won that case in Court. And he referred us to the latest writeup on the ANC by Professor Lodge which is very, very instructive, and which is very up-to-date.

It talks about the ANC executives, which of them has any communist connection in the past and which of them have no communist connection. If one goes by this really, the cry that ANC is a communist organization, it's absolutely baseless.

Chairman KENNEDY. Thank you.

Senator Weicker.

Chairman WEICKER. My last question is two-part. With its policy of either acceptance, which has been the case during the past decade, or its policy of constructive engagement which is the policy of this administration, I would like to know one: the view of the United States by the white South African? And two: The view of the United States by the black African?

General OBASANJO. When we were in South Africa and we had a meeting with the President, President Botha, he left us with no doubt that . . . gave him support and two leaders for whom he has a disregard—President Reagan and Mrs. Thatcher. Wherever we went among the black people inside South Africa, we were left in no doubt that they have been disappointed, particularly by the United States.

They told us time and again that they used to look up to the United States as a model of a multi-racial society or non-racial society that they would want to emulate and, if possible, surpass. But the way that they have been abandoned by that same society, they feel that there is nothing for them to look up to. This is the picture they give us.

Prime Minister FRASER. If I could add to that, Senators. There are a number of other things which have exacerbated the views held of the United States and of Britain because I think the perceptions are shared in relation to both countries.

There is no doubt that the government has believed the United States and Britain would protect South Africa from effective measures taken by the international community. That encouraged the government's intransigence. It has made the government surer and more firm and more determined to pursue its own path.

And also because of things that have been said both here and in the United Kingdom. To give an example, Prime Minister Thatcher sought to minimize any concessions she had made at Nassau by saying she hasn't budged an inch or only a teensy-weensy bit and held up her hand. And by the kinds of statements she has made in recent days preceding the meeting to be held starting on the 3rd of August—all these sorts of things have led to the view that the two countries are not sympathetic to the cause of African nationalism in South Africa.

I believe that that's a great tragedy because the United States, in particular, has been a force for good in so much of the world and in ever so much of its history and has wandered in foreign policy more so than any other major state, I believe, to pursue courses that are correct, that are morally right, if you like, and that's not generally the standard by which the foreign policy of any government is tested.

One generally looks just to self-interest. And I've sought to argue the self-interest of Britain and the United States this morning. But here I believe the self-interested cause and the morally-right path coincide, absolutely. This is one of the things that goes to the importance of the timetable.

It is because the black leadership has been disappointed by lack of effective support from Britain and the United States for a long while now that they are looking at the upcoming period as one of great importance.

And, again, if it results in no action being taken, they'll come to the conclusions that they are without effective support and take the other decisions which were indicated. These adages are again made worse by the apparent speed with which sanctions are put in place in other areas, which I certainly agreed with and supported. Australia, under my government at the time, put in I think, more comprehensive sanctions after the invasion of Afghanistan than maybe even did the United States. We certainly supported whatever the United States did.

We don't have any significant trade with Libya or with Nicaragua but I don't disagree with the decisions of the United States in either case in relation to sanctions. For that matter—and I'm speaking for myself, only, obviously—I don't disagree with the administration's policy in relation in Nicaragua. I think it's a very difficult situation. Maybe it just establishes a credential of some kind to conservatives at least on some things.

But the fact that sanctions have been put in place in these instances, and the fact that sanctions are opposed so vehemently in relation to South Africa, just reinforces the view that Britain and America have more sympathy with Mr. P.W. Botha than the with the cause of African freedom or political rights for blacks. I think this is tragic.

If the whole thing descends into a major guerrilla conflict, step by step, with some irreversible steps to be made very closely ahead of us, that's going to leave throughout Africa a view of the United States and of Britain which does not accord with so much of the history of this country, or of Britain, both of whom in many instances have acted internationally out of a great sense of what has to be done and of a great sense of what's right.

And to put that tradition aside is tragic, not just for the United States and not just for South Africa but I think it's tragic for all the democracies.

Chairman KENNEDY. We want to thank you very much, General, and Mr. Prime Minister. I think your comments are of great interest to us. I know it will be to the other members of the Senate and I'm sure to the American people.

We have very substantial resources in our own country in gaining insights to the problems within our country and around the world. But I do believe your insights into this situation, which is of such enormous importance and consequence to the people, black and white alike in South Africa, and to all of Africa and to all over the world, is of enormous importance to the American people.

You come from different traditions, different backgrounds, different experience and different countries, but your comments today, I think, have been of enormous help to those of us in the Senate who are trying to ensure that our policy towards that part of the world will be in line with the best traditions of the western politic for respect towards the basic political rights and human rights.

We are very, very grateful to the both of you and for the time that you have spent and your panel has spent on this issue. We know that you have other important meetings. We have already delayed you past one very important one, but we've been grateful to you for your appearance here.

General OBASANJO. Thank you. Thank you very much.

Prime Minister FRASER. Thank you very much.

TRIBUTE TO W. AVERELL HARRIMAN

● Mr. BOREN. Mr. President, I join my colleagues in paying tribute to Averell Harriman. During his long life, he touched and affected the course of American history at some of its most crucial and trying times.

Pioneering America's Navy in the First World War, molding Roosevelt's New Deal policies during the Great Depression, and negotiating the United States-Soviet Limited Test Ban Treaty, Harriman's confident and persistent personality won him the ear of almost every major world leader in the 20th century.

I want to acknowledge not only the great influence Averell Harriman had on our Nation but also the spirit in which he served it. Exceptionally capable in a multitude of private interests, he was always prepared to provide for an interest beyond himself. His willingness to head the Business Advisory Council during the depression while also chairman of the Union Pacific Railroad evidences the unselfishness he projected in times of need.

It is this combination of ability and unselfishness that characterizes the

truly great leaders of our time and which certainly describes our memory of Averell Harriman.●

BILL IRELAND, BANDMAN EXTRAORDINAIRE

● Mr. ABDNOR. Mr. President, I stand before my colleagues in this revered chamber to pay my respects to a man who enriched the lives of thousands of his fellow South Dakotans. Mr. William Ireland was a rare individual who shared not only the gift of music with his students, but also instilled in all a sense of humanity and meaning in life. The greatness of this man certainly qualified him to be addressed with a title of distinction. As a true mark of his character, he instead insisted on one name only—just plain bill. Thus, everyone young and old alike new and loved him as Bill.

Bill was the fun-loving type of person who worked hard and played hard. The glint in his eye was ever-present; it merely varied in intensity, revealing the clever whimsy and mischief at work in his mind. Those same vivid eyes would strike temporary fear in his student musicians when he would demand nothing less than their best. Such moments of trepidation faded quickly from memory however, and inevitably gave way to the fruits of Bill's labor. The rewards were personal accomplishment and blue-ribbon bands with countless trophies and honors in international competition. His bands even performed here in our Nation's captial.

During his career, Bill served as director of bands for the communities of Madison and Flandreau. His successful tenure spanned four decades and earned him honors and awards. His active involvement in the community extended far beyond his vocation. He contributed his talents, energy and vitality to various civic, social, and church organizations. His devotion and generosity to the people around him is reflected by their love for him and their sorrow in his passing. Bill will be sorely missed.

Mr. President, Bil Ireland was a truly great man. His exemplary life serves as a beacon, compelling us to strive and excel in all that we do. He was a teacher beyond his baton and music. Bill taught us the virtues of ambition, perseverence, common sense, reliance, competitiveness, respect, compassion, friendship, and love. Most of all, he showed us life has meaning and purpose.●

THE PHILOSOPHY AND SERVICE OF AVERELL HARRIMAN

● Mr. BIDEN. Mr. President, this week saw the passing of W. Averell Harriman, a man who had become an institution in the life of 20th century America. In eulogy, many have spoken and written to celebrate his contribution to the Nation. To their words, I wish to add only a comment concerning the continuing relevance of the Harriman philosophy to current national affairs. I refer most particularly to Ambassador Harriman's convictions—reflected in action—with regard to public service and to America's role and responsibility in the world.

In commemorating Mr. Harriman's life, some have commented that, with his inherited wealth, public service was not something "he had to do." Ambassador Harriman would probably have found such an account slightly amusing and more than a little ironic. Averell Harriman regarded participation in America's public life not as a sacrifice but as a privilege and an honor. Recognizing that his private wealth conferred both advantage and obligation, he exercised the advantage in order to fulfill the obligation.

We are passing now through a period when the country—as reflected in its elected administration—has drifted considerably from such quietly patriotic principles. Under the reigning ideology, national self-congratulation has become the theme; individual self-aggrandisement the prevailing credo. Public office, properly a solemn investiture of trust, has become less an opportunity for those with wealth to serve than for those who have held office to become wealthy. Meanwhile, the influence of public policy has been transformed from a means to promote the national weal into a growth industry aimed at serving factional and corporate interests. Ambassador Harriman's philosophy and service remind us of a different and higher ethic, to which we may hope someday to see our public life return.

Averell Harriman leaves more, however, than a record of honest and altruistic service. His contribution was an aggressive and agile diplomacy which served this Nation well during his lifetime and which can continue to serve by its example. Few players on the international stage ever saw or did more. None represented American interests more ably.

Ambassador Harriman believed in, and exemplified, American responsibility in the world community. He brought ideas to bear on foreign policy, while never losing the consummate diplomat's sense of the practical. He was an early, ardent, and continuing proponent of the United Nations, recognizing that its vagaries reflected no more or less than the diverse people and nationalities which comprised it.

But most significant was Ambassador Harriman's performance in the conduct of American relations with the Soviet Union. Never, through a diplomatic career that spanned decades, did Mr. Harriman exhibit the slightest illusion about the nature of Stalin or his successors. Indeed, he is blamed in some historical interpretations for contributing to the onset of the Cold War by his warnings to President Truman about the Soviet Union's postwar intentions in Eastern Europe and elsewhere. Yet, it was precisely this realism—and his ability to express himself with an elegantly firm candor—that gained Mr. Harriman a respect in the Soviet Union which he never lost and which enabled him to arbitrate so skillfully.

Averell Harriman's philosophy of United States-Soviet relations was subtle but straight-forward, emanating from the premise that American interests would best be served by a continuing effort to manage the relationship through agreements built on common ground. Such agreement, he believed, could be forged not from a mutual compatibility, which did not and does not exist, but from a mutual interest in peace, an interest intensified by the unbanishable specter of nuclear war.

It was this philosophy which Ambassador Harriman carried with him to Moscow in 1963 when, as President Kennedy's envoy, he negotiated the world's first nuclear arms control agreement, the Limited Test Ban Treaty. And it was this philosophy which produced in him a determined anger as he saw American foreign policy, in his final years, slide into a posture of unwarranted complacency mixed with unproductive bluster. America would be well served by a return to the determined and purposeful diplomacy that Ambassador Harriman so well exemplified: the iron fist in the velvet glove.

Ambassador Averell Harriman found honor in the privilege of serving his Nation. And the United States, in turn, was graced by this long and distinguished career. To fulfill its highest ideals and purpose in the world, America will continue to need such men.●

NATIONAL COMMUNITY EDUCATION DAY

● Mr. DOMENICI. Mr. President, I am pleased to be a cosponsor of National Community Education Day. I believe that learning is a lifelong process and that the most effective education takes place when the public schools and the community work together.

In New Mexico we have a number of examples of this interaction. The National Laboratories at Los Alamos provide demonstrations and discussions to attract young students into learning about science. Local school districts make facilities available after hours for continuing education and community activities. All of these programs indicate how much we value education.

Educators have long recognized the need for an educating community, a community in which the school is recognized, valued, and supported by everyone. The success of the old one-room schoolhouse is not clearly understood as the product of a totally supportive community that was willing to pay in cash, goods, and services for the education of the next generation.

The recent Department of Education publication, "What Works," reaffirmed what we all suspected, that a child's education is greatly enhanced when parents become involved to support and extend what the child learns in school. I think research would show that the community's support also has a positive effect on making young people feel that education is a very valuable commodity.

Our period of history is being referred to as the Information Age. That description is far too passive. Its not enough to have information available to us, we must develop the skills for analysing and using that information effectively. Schools can teach us the skills for analysing information but only the interaction of schools and the community can define how that information can be used effectively. In recognizing this cooperative effort with "National Community Education Day," we are laying the foundation for our next period of history, the Education Age.●

AMENDMENT RELATING TO IONIZING RADIATION

● Mr. DIXON. Mr. President, last Thursday I introduced an amendment to the Veterans Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542; 98 stat. 2725), which would delete the word "female" in reference to breast cancer.

I became aware last week that an Illinois resident, Mr. Don Parchem, a marine veteran who had an operation for breast cancer, was turned down by the Veterans' Administration, based on the fact that even though he had been exposed to ionizing radiation while in the Marine Corps, he was not eligible for consideration because the law listed female breast cancer only as a radiogenic disease. Unfortunately, the law does not cover a male with breast cancer.

I believe that when considering the issue of breast cancer, it should not matter whether a female or male has the disease. The issue is the cancer itself.

Although scientists have determined that the likelihood of male breast cancer from radiation is very minimal, the problem does exist. I think that for those cases where male cancer is found in a veteran, and it can be proven that the cancer was caused by an individual being exposed to ionizing radiation while in the military, that individual should be compensated.

Mr. President, I have discussed my amendment with my good friend, the chairman of the Veterans' Affairs Committee, Senator MURKOWSKI, and I think we have reached an agreement which will not require me to ask for a vote on my amendment.

I yield to my good friend from Alaska.

Mr. MURKOWSKI. Mr. President, as chairman of the Senate Committee on Veterans' Affairs, I appreciate Senator DIXON's strong interest in and concern for the issues relating to veterans' exposure to ionizing radiation as a result of atomic tests.

Senator DIXON's amendment was designed to overcome what he believes is an inequitable and discriminatory differentiation between male and female breast cancer, and the consideration of those diseases by the VA in the adjudication of claims for disability compensation. He could very well be correct.

He proposed to delete the word "female" when making reference to breast cancer. Senator DIXON became very concerned as a result of a newspaper article which chronicled a veteran's denied claim for VA compensation. A male veteran had breast cancer and had been exposed to ionizing radiation when in the service. The veteran claimed discrimination because the VA's list of "radiogenic diseases" lists "female" breast cancer only as such a disease.

Public Law 98-542, the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, established an advisory Committee on Environmental Hazards which is required to review scientific information on an ongoing basis. This process is intended to ensure that the VA regulations would be updated if scientific data so indicated. This committee is comprised of recognized authorities on radiation and agent orange related diseases.

Currently, available scientific information, such as that prepared by the National Academy of Sciences and the U.S. Department of Health and Human Services, indicates that little data exists on male breast cancer, in part because the incidence of this cancer in men is so rare. The advisory Committee on the Biological Effects of Exposure to Ionizing Radiation in its report entitled "The Effects on Populations of Exposure to Low Levels of Ionizing Radiation," 1980—the so-called BEIR III report—states that "[b]reast cancer occurs almost exclusively in women * * *". In addition, the reports states "[t]he female breast is one of the organs most susceptible to radiation carcinogenesis * * *. Evidence concerning male breast cancer is confined to case reports of cancers is men exposed to therapeutic radiation for benign conditions." To date, I am advised that there is no scientific data to support the conclusion that exposure to ionizing radiation is associated with male breast cancer.

However, in view of the questions that have been raised with regard to this subject in general, and the specific case referred to in the newspaper, I believe that the Senate Veterans' Affairs Committee should look into this matter further.

Therefore, I propose the following:

First, that our staffs meet promptly with the VA's Board of Veterans' Appeals—the highest level of appeal for veterans' claims—to review the facts and to determine if there is a basis for reopening the veteran's case.

Second, that I shall write to the chairman of the Committee on Environmental Hazards, and request that as part of their scheduled November 1986 meeting, that they address this issue and report their findings to the Senate Veterans' Affairs Committee with a copy to Senator DIXON. I will discuss those findings with my distinguished friend, Senator DIXON. At that time, we can determine if further action is required. If necessary, the committee will take up this issue immediately following the committee's consideration of the President's VA budget proposal for fiscal year 1988. At this time, we will provide the opportunity to hear testimony on this issue from Senator DIXON, medical witnesses, and veterans organizations.

I ask the Senator from Illinois if he believes that these steps are an appropriate avenue to pursue at this time.

Mr. DIXON. I agree with my good friend that what he has just stated is our agreement. I thank him and the staff of the committee for working on this problem with me.

Mr. MURKOWSKI. The Committee on Veterans' Affairs continues to be actively involved in issues relating to veterans' exposure to ionizing radiation. I welcome Senator DIXON's involvement with us to ensure that the VA appropriately include in its regulations diseases which have been determined to be radiogenic. I appreciate his cooperation and that of his staff, principally Charles Smith, in this matter, and look forward to working with the Senator on this and other important issues affecting our Nation's veterans.●

NAUM AND INNA MEIMAN

● Mr. SIMON. Mr. President, at the turn of the century Russia was one of the major centers of Jewish activity. Jewish learning, teaching and traditons prospered while Jews lived in small towns and cities centered on their synagogues and rabbis. Today, hardly anything from this past world still remains. In 1926, there were over 1,000 synagogues operating in the U.S.S.R. Now, there are about 70, one

synagogue for roughly every 25,000 people, and it is not uncommon to find a synagogue closed or barricaded to prevent entry. Jewish religious texts and ritual objects are not produced in the Soviet Union, Hebrew cannot be taught or studied by Jews and all Jewish communal and cultural institutions have been destroyed.

Because of the constant anti-Semitism which constantly faces Soviet Jews, many want to leave and strive for repatriation to Israel.

One example is Naum and Inna Meiman. The Meimans are an elderly, ailing couple who desperately want to emigrate to Israel. They want to reunite with their daughter and obtain medical treatment for Inna which the Soviets cannot provide. The Meimans have filed their emigration papers many times, but the Soviet Government repeatedly refuses their requests. The Meimans are wonderful, righteous people who deserve the best life can offer. The Soviet Government can give no justifiable reason why they continue to deny this lovely couple the right to medical treatment or to choose the way they want to live.

I strongly encourage the Soviet authorities to grant the Meimans exit visas to their historic homeland, Israel.●

RECESS UNTIL 10 A.M.

Mr. DOLE. Mr. President, I move that the Senate stand in recess until 10 a.m. today, August 1, 1986.

The motion was agreed to, and at 1:22 a.m., the Senate recessed until 10 a.m., August 1, 1986.

NOMINATIONS

Executive nominations received by the Senate July 31, 1986:

IN THE ARMY

The following-named Army Chaplains Competitive Category officer for appointment in the U.S. Army to the grade indicated under the provisions of title 10, United States Code, sections 611(a) and 624:

To be permanent brigadier general

Col. Charles J. McDonnell, [redacted], Chaplains Competitive Category, U.S. Army.

IN THE AIR FORCE

The following-named officers for permanent promotion in the U.S. Air Force, under the provisions of section 628, title 10, United States Code, as amended, with dates of rank to be determined by the Secretary of the Air Force:

LINE OF THE AIR FORCE

To be colonel

Robert D. Childs, [redacted].
Willie W. Gray, Jr., [redacted].
Harry F. Johnson, [redacted].
Robert B. Renz, [redacted].

IN THE MARINE CORPS

The following-named U.S. Air Force Academy graduates for permanent appointment to the grade of second lieutenant in the U.S. Marine Corps, pursuant to title 10, United States Code, section 541:

Craig S. Esslinger, [redacted].
Todd W. Vosper, [redacted].

The following-named Marine Corps Enlisted Commissioning Education Program graduates for permanent appointment to the grade of second lieutenant in the U.S. Marine Corps, pursuant to title 10, United States Code, section 531:

Stewart H. Holmes, [redacted].
Jeffrey D. Warren, [redacted]

WITHDRAWAL

Executive nomination withdrawn from the Senate July 31, 1986:

Jefferson B. Sessions III, of Alabama, to be U.S. district judge for the southern district of Alabama, vice a new position created by Public Law 98-353, approved July 10, 1984, which was sent to the Senate on January 29, 1986.