SENATE—*Wednesday, September 24, 1986*

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. The prayer today will be offered by the Reverend Dr. John H. Alexander, minister, the Congregational Church of Sun City, Sun City, AZ. Dr. Alexander is sponsored by Senator KASTEN and cosponsored by Senator GOLDWATER.

PRAYER

The Reverend Dr. John H. Alexander, minister, Congregational Church of Sun City, Sun City, AZ, offered the following prayer:

Let us pray.

Eternal and Almighty God, no person has seen You at any time, but Your love and power is felt by every one who places trust in You. We pause to renew in Your care the Members of this Senate of the United States.

After a long day yesterday, and very few hours of rest and refreshment, they return to this historic Chamber, to 100 offices and to committee rooms about these Halls of Government.

Many concerns are being pressed upon them, some mundane, others self-serving, some old, some new, and still others of significant import to the responsibilities to which they have been elected.

Whatever may claim their attention today, social or economic challenges, national or international issues, reelection concerns, protect the Senators from wasting their energies in trivial pursuits. Empower them to be their best and to give creative thought to what is crucial to the strength and well-being of our country.

May they have the wisdom and the strength to complete the agenda that is ahead of them in these critical days.

From the time of its birth, the leaders of this Nation have placed their trust in You for guidance and inspiration. Let it be so for the men and women of the Senate today. May what they do be good in Your sight, and in the best interests of the millions of people here and everywhere who will be affected by their actions. We offer this prayer with continuing trust in Your power and presence. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE, of Kansas, is recognized.

Mr. DOLE. Mr. President, I thank the distinguished Presiding Officer, the distinguished Senator from South Carolina, Senator THURMOND. If there is no objection, I would like to yield 2 minutes of my leader time at this point to the distinguished Senator from Wisconsin, Senator KASTEN.

Mr. KASTEN. I thank the majority leader.

A TRIBUTE TO GUEST CHAPLAIN DR. JOHN H. ALEXANDER

Mr. KASTEN. Mr. President, it is a pleasure to welcome the Reverend Dr. John H. Alexander of the Congregational Church of Sun City, AZ, as guest chaplain to the Senate this morning.

Dr. Alexander is a respected national and international leader in the Congregational faith. His participation as guest chaplain today is especially significant for me because of the close ties of Congregationalism, and Dr. Alexander, to my home State of Wisconsin.

And, it is meaningful to this body because the Congregational faith is historically entwined with the birth of the American Nation and our democratic form of government.

Mr. President, the Congregationalists came to America on the *Mayflower* in 1620. The Pilgrim fathers, who fled the religious persecution of the Church of England to plant the seeds of free religious fellowship in America, were among the religious, intellectual, and political leaders of Colonial America. The Mayflower Compact, signed by the Pilgrims as they embarked on the creation of a free society in Plymouth colony, was the first expression of democratic principles governing both church and state.

And Congregationalists were among the Founding Fathers of the new United States. John Adams, Samuel Adams, and John Hancock all were Congregationalists. Participants in the Boston Tea Party gathered at Old South Congregational Church. Thomas Hooker, author of the Connecticut Constitution, from which the U.S. Constitution derived much of its structure, was a Congregationalist. So too were President Calvin Coolidge, abolitionist author Harriet Beecher Stowe, and Catherine Lee Bates, who wrote "America the Beautiful."

Congregationalism has had great impact on American education. Believing in the strength of an educated laity, the early Congregationalists established in America the first Sunday schools, public schools, and universities, including Harvard and Dartmouth. Congregationalists founded two of the finest higher education institutions in my home State of Wisconsin, Beloit College in 1846, and Ripon College in 1851.

According to Dr. Alexander, Congregationalism believes in the autonomy of the local church and that each person has the right to interpret the Scripture and apply its teachings for himself. The Congregational Way—faith, freedom, and fellowship—is based on the importance of the individual conscience before God.

Mr. President, Dr. Alexander has been a lifelong practitioner of the Congregational ideal of individual freedom and responsibility.

A native of Boston, who was born and reared some 50 miles from Plymouth Rock, he was educated at Bowdoin College in Brunswick, ME, and at Bangor [ME] Theological Seminary. He was ordained in 1948 and has served churches in Winthrop, ME; Galewood, IL; Wauwatosa, WI; Marshalltown, IA; and Sun City, AZ, which he founded in 1976. He was awarded the honorary degree of doctor of divinity by Piedmont College, Demorest, GA, in 1970.

In addition to pastoral ministry, Dr. Alexander has been a leader in the national politics of preserving the traditional Congregational faith.

The denomination, which once totaled some 6,000 churches nationwide, was shaken in the 1950's by the merger of several denominations into the United Church of Christ. Dr. Alexander was one of a handful of intellectual religious leaders who in 1955 formed a voluntary association of Congregational churches that did not wish to yield their local autonomy to the United Church of Christ national hierarchy.

Dr. Alexander was the first moderator of the National Association of Congregational Christian Churches, which today has the voluntary membership of some 425 churches, including churches in 29 Wisconsin communities. He served as the National Association's associate executive for missions from 1967 to 1969 and as its executive secretary from 1969 to 1976. During his tenure, the association built its national headquarters in Oak Creek, WI.

Dr. Alexander also has been a leading voice in the international Congregational movement, organizing and serving as the cochairman of the first International Congregational Fellowship held in London, England, in 1977. His devotion to expanding the concept of religious freedom has taken him and his wife of 43 years, Donna, on many overseas journeys, including

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

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leading the Youth Pilgrimage to Greece in 1964 to build a dining hall for the Greek Evangelical Churches near Alexandroupolis, Greece.

Dr. Alexander's ties to Wisconsin are strong. In addition to bringing the National Association to Oak Creek, he served as associate minister of the First Congregational Church in Wauwatosa from 1956 to 1962, directing a major building project. In the early 1960's, he founded the Wisconsin Congregational Association, a fellowship of continuing Congregational churches throughout the State.

Mr. President, this autumn marks a passing of seasons for Dr. Alexander. After a lifetime of ministry and selfless service to the Congregational faith, he will retire this November.

I am delighted that Dr. Alexander could join us today as guest chaplain, and I know that all who have been inspired by his religious scholarship and his Christian caring join me in wishing Dr. and Mrs. Alexander a healthy and spiritually fulfilling life in the years to come.

Mr. DOLE. Mr. President, let me also yield to the distinguished senior Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I want to congratulate the distinguished minister who led us in prayer this morning, Dr. Alexander. It was in the same great tradition of Chaplain Halverson. It was a relevant prayer, not just a general prayer. He appealed to the U.S. Senate to do our very best and to be our best. I cannot tell him what pride I have in the fact that, first, he is a Congregationalist; second, he is from Wisconsin; third, he is a fine minister; and fourth, he is in the fine tradition of Chaplain Halverson.

Mr. DOLE. I thank both my colleagues.

SCHEDULE

Mr. DOLE. Mr. President, we hope to complete action on the highway bill by noon today, if we can reach some agreement on certain antiapartheid language; then take up the intelligence authorization bill; the commodity futures trading bill; and FIFRA [Federal Insecticide, Fungicide, Rodenticide Act], so we will have votes throughout the day. If we can reach agreement there maybe other matters we could bring up. But this is one of the last, if not the last, days to resolve any legislative issues where we are going to take a couple of hours of debate. I think from here on, unless something happens that we do not forsee, unless there is some unanimous-consent agreement or almost unanimous consent, we are probably not going to be able to accommodate Members on either side. I really believe we can reach to October 3 deadline. We still have the continuing resolution, which I am advised we will try to bring up next Monday. We have tax reform. We have reconciliation. We have drug enforcement legislation. We have, hopefully, Superfund. So there are a number of bills. We still have the product liability matter to dispose of. Some would still hope that there will be trade legislation this year. I think those chances are very unlikely

TIME TO ACT ON THE DANILOFF RESOLUTION

I also hope we can dispose of the Daniloff resolution and the intelligence authorization bill. I know Senators HUMPHREY and MOYNIHAN feel strongly about the Daniloff resolution. There are other Members who feel just as strongly but are not particularly pleased with the modified version of the Daniloff resolution. They feel it needs to be touched up. It seems to me everything ought to be on hold with the Soviet Union unless there is some resolution of the Daniloff case, whether it is conversations about arms control, whether it is negotiations or whatever with reference to the unratified SALT II agreement, whether it is sales of any commodities, including grain to the Soviet Union. All of that ought to be on hold until we have resolved the Daniloff case.

It is time to act on the Daniloff resolution. I hope there can be some agreement on what the resolution will contain. I think we ought to have an up-or-down vote on it. We ought to indicate to the Soviets that we mean business.

There are some press reports today that there may be some movement on the Daniloff case. I have some concern about what I have read but I do not want to comment in detail until we have more facts. But one thing is clear. Daniloff himself is still sitting under virtual house arrest in Moscow with a sharp sword dangling over his head and our whole relationship with Moscow is pretty much dead in the water, as it should be, until Daniloff, if given unconditional permission to depart the Soviet Union.

All of us are pretty fed up with the games Moscow is playing. We want to say so in a way that is so loud and clear that the message will penetrate even those thick walls around the Kremlin. The resolution we put in last Friday does the job.

Now, it has been modified since then. Some do not believe it has nearly the punch it had last Friday, so I think we need to take a look at that and make certain it does send a message.

It is not just tough talk. It endorses tough action. It doesn't just take one, or another, little aspect of our relationship and say to the Russians: "Unless you clean up your act, you're going to lose this program, or this benefit." It sends the kind of across-the-board message that is essential when you are dealing with a matter so fundamental, and so damaging to our relations with Moscow, as the unjust arrest and indictment of an American citizen. It says to Gorbachev and his cronies: "No more business as usual—in fact, no more business, period—until Daniloff is free."

The principle is that important to us. The life and freedom of one American is that important to us. And the Soviets better understand that, if we are ever going to deal successfully with them on any major issue.

So let us get to this resolution. Let us not water it down in any way, or pull our punches. Let us vote on the resolution in its original form. And let us vote for it, overwhelmingly.

INTELLIGENCE AUTHORIZATION BILL

The second matter I want to touch on, more briefly, is the intelligence authorization bill. It is my understanding that we have come very close to reaching a good agreement here within the Senate on this bill, on which the Intelligence Committee has worked hard. The chairman has been working closely with Senator HELMS over the past several days, to work out some concerns that Senator HELMS had on the bill. It is my understanding that they have succeeded in fashioning some language, mostly in the bill's report, and a method of workingout one amendment of concern to Senator HELMS, That will hopefully allow us to move on this bill this afternoon.

I know that both Senator DURENBERGER and Senator HELMS intend to speak to Director Casey today, to insure that any concerns he has can be addressed in a way that will meet everyone's needs. I hope that any differences which do exist now can be speedily resolved, so that we can move this legislation, which is so important, not only to the "CIA," but to all the elements of the intelligence community—and, in fact, to our national security.

SOUTH AFRICA ON HIGHWAYS BILL

Finally, there is the matter of the South Africa provision now on the highways bill. It seems almost self-evident, at least to me, that a highways bill is not the place to deal with South Africa. As everyone here—and, I guess, virtually everyone in the country—knows very well, we've already passed a South African bill, and we may be dealing with it again soon.

What I hope all Senators will keep in mind, also, is that in passing the South Africa bill, we dealt with the very provision which how appears in the highways bill. We dealt with it by taking a vote on it, and voting it down. We decided that it was not a good addition to the South Africa bill. In light of that action, it is hard to see how it could be considered a good addition to a highway bill.

I know that Senator WALLOP, who joins me, and I think many others, in strongly opposing this provision in the highways bill, will be talking to Sena-

tor MOYNIHAN, who supports it, to see if there is not some way to put South Africa back where it belongs—on South Africa legislation, or at least on some vehicle that is not so totally unrelated to foreign policy as this one is.

REMEMBERING THE UKRAINIAN FAMINE—THE "HARVEST OF DESPAIR"

Mr. DOLE. Mr. President, there has been a lot of hype lately over the new fall series of network television shows. I am not a TV critic, but I can tell my colleagues that there is a program well worth watching on public television this evening. It's a documentary entitled "Harvest of Despair," a chilling account of one of the darkest episodes in human history: the deliberate starvation of millions of Ukrainians by Soviet boss Josef Stalin.

CALCULATED ACT OF REVENGE

In 1932 and 1933, the breadbasket of the Soviet Union was stripped of its golden harvest of wheat, to be replaced with a harvest of despair. The precious Ukrainian grain was taken from their farms; taken from their hands; and taken from their mouths. As a result, men, women, and children—hardworking and proud—were left to die unspeakable deaths. It was a calculated act of revenge by the Kremlin, designed to crush not only the will of the fiercely independent Ukrainians, but also to eradicate their very being from Communist Russia.

What followed was a holocaust. According to scholars who have investigated this tragedy, as many as 5 or 6 million Ukrainians perished in the harvest of despair. It is almost unimaginable that such an atrocity could be so coldly and willingly carried out. But it was. And sadly enough, the full story was slow to reach the front pages of America's newspapers—and that is still the case, even to this day.

GETTING THE STORY OUT—AT LAST

Mr. President, the documentary "Harvest of Despair" was produced in 1983 by a Canadian group for the 50th anniversary of this sad moment in history. Unfortunately, it has taken 3 long years to put this award-winning film on American television. All I can say is "Why?"

So let me salute all the people who have worked long and hard to cut through the redtape—and the politics of public television—to finally bring this shocking tale to our TV screens. I ask unanimous consent that four articles telling the story behind the story of "Harvest of Despair" be included in the RECORD.

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

CULTIVATED STARVATION

(By William F. Buckley, Jr.)

Twenty Questions time . . .

It happened in 1932-1933 and there were approximately 10 million victims.

Russia? Well, sort of: the Ukraine.

Of starvation.

No, not drought: cultivated starvation. You know, where there is actually food, but the people one intends to starve aren't permitted to move to where the food is, and the food is not permitted to be moved to where the people who are supposed to starve are.

Well, the implied questions and the explicit answers give it away, but giving it away is precisely the problem. Not many people know that between 1932 and 1933, Josef Stalin decided to crush the people of the Ukraine. The neatest way to effect this was to starve them to death. This was done by going in and removing the wheat—not an easy project. It's something like going into Iowa and removing all the wheat, and then moving in a division or two whose responsibility is to keep the borders, in this case the borders of the Ukraine (which by the way is the largest state in Europe, incorporated by force into the Union of Soviet Socialist Republics), locked tight in order to prevent people from moving out or food from getting in.

A good year for old Joe. He managed in that one episode to kill more people than Hitler killed in his slaughterhouses. In fact, he killed more people than were killed on all the battlefronts of World War I, up until then the heaviest hitter of any war in history.

Comes now the story of a small Canadian company that resolved to commemorate this spectacular act of genocide, on its 50th anniversary. That was 1983, when "Harvest of Despair" was produced. Initiatives were instantly taken to sell the one-hour documentary to the networks, but neither CBS nor NBC nor ABC was interested, notwithstanding that the documentary was winning prizes abroad.

And here we pause in our narrative, having just viewed the documentary: It is not pleasant viewing. A camera can show the emaciated corpses of children for only so long before causing the viewer to feel a certain itch, not entirely unlike the kind of itch one feels inspecting, oh, the torture room at the Chateau at Chinon, or the collection in Leningrad at the Museum of the History of Religion and Atheism—a collection of torture instruments used during the Inquisition, and serving, one supposes, as prototypes for use in the Lubyanka and throughout the Gulag.

But one views such things—for instance, long accounts of life in Hitler's elimination centers—not for pleasure but for instruction. And it was the naive assumption of the producers of "Harvest of Despair" that there would be a lively interest in the West in seeing the evidence of one of the most spectacular acts of human cruelty in history. Moreover, not something entirely irrelevant to a continuing understanding of the Soviet Union and its policies. Why is that? Because official Soviet history simply denies that the famine ever took place—denies it quite categorically.

When Prime Minister Brian Mulroney of Canada made a pious reference to the Ukrainian famine on its 50th anniversary, he received a tongue-lashing from the Soviet ambassador—an official protest, as though a reference to the Ukrainian massacre was on the order of a reference to the Protocols of the Elders of Zion—a forgery.

Mikhail Gorbachev, profiled a season ago by Time magazine, is thus referred to: "Gorbachev looks well tanned, just a bit ruddy in the cheek. . . . He laughs easily. . . . [His eyes] are an intense, dark brown. . . . The voice is extraordinary, deep but also quite soft . . . low and melodious." He voiced his concern to Time over the "hundreds of millions of people going hungry. . . . We, all of us, just have no right to ignore the situation."

Well, planned starvation isn't only a historical memory. It has been going on in Ethiopia on a pretty grand scale, and Ethiopia is for all intents and purposes a satellite state of the Soviet Union. Gorbachev can't begin to fight hunger by encouraging starvation. And if he is against ignoring hunger, then he should be against ignoring the hunger and starvation effected by the principal figure in the development of the Soviet state, Papa Stalin. A continuing failure by the Soviet state to acknowledge the atrocity of 1932-1933 is, in effect, a continuing ratification of that atrocity.

The documentary will be shown on network by PBS on Sept. 24, and there is no way to avoid mentioning that it will be shown as a part of a two-hour "Firing Line" program, of which I act as the host. I can't really recommend that you watch it, for reasons listed above. But it is very important that you not forget that harvest of despair, that it live in the memory—like the Nazi Holocaust—as evidence of man's long bestial reach in our time.

[From the Washington Times]

PBS' FOOT-DRAGGING ON "HARVEST" RAISES A CROP OF QUESTIONS

(By Don Kowet)

On Sept. 24, the Public Broadcasting System will distribute to its stations a two-hour, special prime-time edition of William F. Buckley, Jr.'s "Firing Line."

For the first time, a national U.S. audience will be able to see a film completed in 1983 about the 1932-33 Soviet-made famine in the Ukraine.

"Harvest of Despair" signals a pause in the PBS-made famine of documentaries that dare to criticize the Soviet Union. But for people associated with the production, this "Harvest" has been a bitter one.

They want to know why a film that became an Academy Award nominee and was based largely on research at Harvard University warrants a one-hour wraparound featuring a debate over the "facts."

They are also asking:

Why is The Nation's leftist Washington correspondent Christopher Hitchens among the trio of proposed panelists?

Why has their broadcast been branded with a for-conservatives-only warning—the "Firing Line" label—while PBS' 12-hour, Soviet-sanctified "Comrades" carries no such skull and crossbones?

"It's a disgrace," said a Corporation for Public Broadcasting official who asked not to be identified," one more example of the hypocrisy in the system."

Critics believe that the many questions about PBS' treatment of this program have a single answer: The broadcast blasphemes PBS orthodoxy by desecrating a pair of sacred totems.

"Harvest of Despair" not only focuses on the taboo topic of purposeful Soviet genocide, it accuses The New York Times, and by proxy the entire American liberal press, of deliberately covering up the crime.

The crime was committed by the Soviet state in collusion with Josef Stalin, who created a famine by confiscating the entire

grain harvest of the Ukraine, Europe's "breadbasket."

The Soviets sealed off the Ukraine. People who tried to enter the adjacent Russian Soviet Federated Republic, where there was no famine, were turned back at the border.

The Ukraine became a vast death camp filled with the bloated bodies of nearly one-quarter of the population, the documentary argues. Based on a three-year research project—headed by Hoover Institution Sovietologist Robert Conquest—at Harvard's Ukrainian Research Institute, the documentary persuasively argues that the famine was intentional, devised by the Soviet regime to starve out the Ukraine's stubborn spirit of nationalism.

This thesis challenges the wisdom of Soviet apologists, who since the 1930s have been dismissing the famine as an inevitable side effect of "collectivization" or the random result of bureaucratic bungling.

"To put it brutally," wrote The New York Times' Moscow correspondent Walter Duranty, "you can't make an omelet without breaking eggs."

Now, courtesy of "Harvest of Despair," observers are asking if the egg that may be cracking is the Pulitzer Prize-winning Mr. Duranty's posthumous reputation, and perhaps The New York Times' legend as the newspaper of record.

Mr. Duranty consistently denied in his dispatches that a "famine" existed, even after an excursion into the Ukraine.

But while publicly scoffing at reports of starving millions, documents reveal, privately he was confirming that "the population of the Ukraine [has decreased] by 4 to 5 million . . . and that as many as 10 million may have died directly or indirectly from a lack of food in the Soviet Union during the past year."

The documentary—produced in Canada with financial assistance from that country's national film board—was released in 1984 and aired on Canadian national television. Its American representatives from the Harvard University Ukrainian Studies Fund, a private organization associated with the university's Ukrainian Research Institute, were eager for exposure on American television, and expected a warm welcome.

Not only did their broadcast document an untold holocaust, its message rang with a contemporary echo. The Soviets were being accused of using the same starvation tactics in Afghanistan, and their disciples of using the same strategy in Cambodia and Ethiopia.

"We wrote to all three commercial networks," said Ukrainian Studies Fund board member Peter Paluch. None of them responded.

"We began to focus more and more on PBS," said Mr. Paluch.

Mr. Paluch and his colleagues approached "Frontline" and "MacNeil-Lehrer NewsHour."

No response.

Mr. Paluch began submitting his review cassettes to individual public television stations, including WNET in New York.

Peter Foges, at that time director of WNET's public-affairs programming, reportedly rejected the film because it was "technically deficient" and "of dubious quality" and failed to meet PBS' "production standards." When asked for specifics, Mr. Paluch recalled, Mr. Foges responded that "the sound of hoofbeats should have been dubbed into a still scene showing human corpses being carted away." (The hoofbeats had, indeed, been dubbed.)

Then this "technically deficient" documentary began garnering first-place prizes in film festivals. Within a year, this film "of dubious quality" had earned an Academy Award nomination.

"Harvest's" ever-more crowded trophy case meant increased pressure on PBS stations to air the program.

"They couldn't keep talking about lousy production values after the show started winning all these awards," said the CPB source.

Critics contended PBS stations needed a new excuse, and that Miami station WPBT's was typical.

In rejecting the broadcast, WPBT's director of program acquisition wrote that although she found the documentary "interesting and well-produced, we have a journalistic problem with the content in that the producers . . . have a perceived bias in terms of the viewing public."

In other words, while the documentary passed muster, its producers—and presumably Harvard University—lacked a proper pedigree.

The excuses kept coming.

A public-TV viewer in a suburb of Boston wrote to WGBH to find out why the station hadn't aired "Harvest of Despair."

WGBH's director of scheduling replied that she had attempted to purchase rights for a broadcast, but "unfortunately, the price requested . . . was much higher than we would pay for comparable programming, and we were unable to reach an agreement."

Mr. Paluch insists that WGBH could have purchased the program for a third less than "filler junk" from Canada normally costs, and that "price was never a factor in dealing with WGBH." The difference in price between what WGBH was willing to pay and what the producers felt they needed, he said, was about $1,000. "A committee in Boston agreed to provide the $1,000," he added, "in the form of a contribution." WGBH, he said, replied that such contributions were unacceptable.

Within a week of WGBH's letter to the viewer, an article by Mr. Paluch appeared in The National Review, suggesting that PBS stations were conspiring to prevent the documentary's broadcast.

That article, along with screenings arranged for several sympathetic congressmen and a least one Corporation for Public Broadcasting board member, seems to have suddenly energized PBS.

After a telephone call from PBS Vice President of Public Affairs Programming Barry Chase, William F. Buckley, Jr. agreed to air the broadcast in a special edition of "Firing Line."

"We think the program would have been ideal for 'Frontline,'" said Mr. Paluch. "Putting it on 'Firing Line' takes the cutting edge off."

Why was the broadcast placed under Mr. Buckley's conservative umbrella?

PBS, said Mr. Chase in an interview, wants to take shows that are normally seen only on weekends—such as "Firing Line"—"and showcase them in prime time." Mr. Chase added that "this special treatment ensures the film will get special attention, too."

Why the wraparound?

The film, said Mr. Chase, leveled a pair of allegations that "require expanded discussion: that the famine was done, and that it was done intentionally. If it was intentional as charged," he added, "then comparisons with the Nazi holocaust aren't ridiculous."

The panel will consist of Mr. Conquest plus Harrison Salisbury and Mr. Hitchens.

Mr. Salisbury, like Mr. Duranty, was a New York Times Moscow correspondent.

In his book "Without Fear or Favor," Mr. Salisbury wrote that Mr. Duranty "had failed to report one of the greatest of Stalin's crimes, one of the most important stories of the decade," but insisted that Mr. Duranty had been "nobody's agent but his own."

"We need an opportunity [to hear] someone who knows how the Times worked in that day and age," said Mr. Chase. "If a defense [of Mr. Duranty and the Times] can be made, it ought to be made."

Mr. Chase said that Mr. Hitchens of The Nation "can be expected to raise the [issue of] the motivation of the Ukrainian community [in lobbying for this film]," in the light of allegations of Ukrainian complicity in Nazi war crimes.

[From Boston Herald, Aug. 20, 1986]

HOW "PUBLIC" IS THE BROADCASTING?

On Sept. 24, the Public Broadcasting System will distribute to its stations a special two-hour segment of William F. Buckley, Jr.'s show "Firing Line." Those tuning in will be able to see, for the first time nationally, an Academy Award-nominated documentary about the man-made Ukrainian famine in 1932-33. "Harvest of Despair."

Getting "Harvest" on PBS has not been easy. Despite winning numerous awards and acclaim for its scholarship and production values, PBS has been extraordinarily reluctant to broadcast the film, which lays bare Stalin's coldly calculated starvation of five to six million Ukrainians, who were resisting Communist rule.

PBS has also been less than eager to broadcast "Television's Vietnam: The Impact of the Media," hosted by Charlton Heston and produced by the conservative media watchdog group Accuracy in Media. The program is a sequel to AIM's "Television's Vietnam: The Real Story," which PBS finally broadcast last year after a long struggle. Both films are in response to the PBS series "Vietnam: A Television History," which AIM said was biased against the U.S.

PBS nevertheless found time this summer for 12 hours worth of Soviet-sanctified broadcasting with the "Comrades" series. Last December, they also broadcast a "documentary" called "Guatemala: When the Mountains Tremble," which, arguably, was a valentine to the Communist guerrillas in that country.

Just how "public" is public broadcasting, anyway? Its executives seem to find it hard to believe Stalin deliberately wiped out millions of innocent Ukrainians.

The Ukrainian-Americans who live in Boston, lost relatives in the famine and pay taxes to support PBS don't find it hard to believe at all.

Ronald Reagan says Vietnam was a "noble cause" and he won 49 states. If any at PBS share that conviction, you'd never know it by the way they have fought to keep AIM's point of view off the air.

In the age of cable and satellite dishes, the choice of programming is expanding tremendously, calling public broadcasting's very reason for being into question. If well-made programs that happen to conflict with the prejudices of "public" broadcasting executives cannot make it onto the airwaves, then President Reagan should rethink whether the whole exercise is even worth it.

[From the National Review, Apr. 11, 1986]

SPIKING THE UKRAINIAN FAMINE, AGAIN

(By Peter Paluch)

"Give me Hollywood for six months, and I'll rule the world,"—Josef Stalin.

Aside from the climate, the 28th International Film & TV Festival of New York was as lush and glamorous as any Hollywood bash. The festival is one of the most highly regarded in the world, with 44 countries represented in 1985. The two thousand people seated for the awards-presentation banquet in the Imperial Ballroom of the Sheraton Centre hotel represented 5,313 entrants and the cream of the industry. The BBC, ABC, NBC, and CBS were there in force. So were HBO and Turner Broadcasting.

The gold medalist in the TV Documentaries category was announced halfway through the braised beef bordelaise—*Harvest of Despair,* a 55-minute Canadian production disinterring the story of the man-made Ukrainian famine buried half a century ago beneath layers of Soviet propaganda and Western venality. After the presentation of the gold medals in the ten categories included in the overall TV Entertainment Programs and Specials Group, it was time for the ice-cream log *assorti* in meringue crown and the announcement of the winner of the Grand Award Trophy Bowl. Again, it was *Harvest of Despair,* judged the "most outstanding entry" of all 837 films in the group. These two awards gave the film enough points in international competitions to make it eligible for an Oscar, although too late for this year's Academy Awards.

This was last November 15. Ten months earlier, Peter Foges, Public Affairs Programming Director at New York's PBS affiliate, WNET, was pressed to explain why he had rejected the film. After a long silence he replied that it was "technically deficient" and of "dubious quality," and that it did not meet PBS's "production standards." Pressed for an explanation of what *that* meant, Foges stumbled for a moment and said, not entirely convinced himself, that the sound of horses' hoofbeats should have been dubbed into a still scene showing human corpses being carted away. (Those sound effects *are* included.)

These two incidents typify the whipsaw reaction to an extended effort to call to the American media's attention the untold story of how Soviet authorities deliberately starved to death at least seven million people in the traditional "breadbasket of Europe." Harvard University's Ukrainian Research Institute recently concluded a monumental three-year research project on the subject, headed by British Sovietologist Robert Conquest; the resulting book will be published this spring by the Oxford University Press. The Harvard project coincided with the production in Toronto of *Harvest of Dispair,* a private effort that soon attracted the attention and support of the National Film Board of Canada. Independent of each other, the Canadian film and the Harvard study were simultaneous firsts concerning a subject that Harvard's James Mace said "remains as the least understood cataclysm of this century, a tragedy that has disappeared from the public consciousness so completely that it represents the most successful example of the denial of genocide by its perpetrators."

The importance and timeliness of the issue seemed obvious enough, and any one of the several threads in this story would make it a natural for broader dissemination.

There is most obviously the purely human-interest aspect—nothing less than the systematized murder of seven million human beings in less than a year, three million of them children under the age of seven. That is the conservative figure, extrapolated from Soviet statistics. That the actual number is significantly higher must be assumed, since the compilers of the first Soviet census after the famine was lifted were summarily shot for "undermining Socialism by deliberately undercounting the population." A "correct" census was immediately prepared. It is on the "corrected" version that the seven-million figure is based. The true extent of the human cataclysm is perhaps more accurately suggested by Dr. W. Horsley Gantt, a British physician who was in the Soviet Union at the time and who relayed private estimates by Soviet officials of as many as 15 million killed, fully half the Ukrainian nation, and equal to the population of all of Central America today.

In testifying before the Senate shortly after the destruction of KAL flight 007, Robert Conquest remarked that Soviet policy in Ukraine during 1932-33 could be placed in a clearer perspective by recognizing that Soviet MiGs would have to shoot down a 747 airliner every day for seventy years in order to approximate the death toll in Ukraine.

The novelty in all this is that the famine in Ukraine was modern history's first example of "famine on command." It was not brought about by drought, or crop failure, or war. One hundred thousand Communist Party activists, brought in for the task from Russia, physically removed virtually all of the food from the region. Dogs and cats vanished from the streets, as the state abruptly realized a need for their skins. Ukraine's symbol, the nightingale, was trapped and slaughtered *en masse* by the secret police. The famine was the realization of Soviet Foreign Minister Maksim Litvinov's dictum, "Food is a weapon." It was also the precursor of starvation politics in Afghanistan [1] and Ethiopia.

The second thread of the story, which the producers hoped the media half a century later would have the integrity to address, was the Western media's responsibility for spiking the story originally in order to curry favor with the Kremlin. Among the luminaries of the time, Walter Duranty of the *New York Times* was the acknowledged dean of Western reporters in Moscow. He categorically denied the existence of any famine, prompting Stalin to compliment him—"You have done a good job in your reporting of the USSR"—and to reward his efforts with the Order of Lenin.[2]

PULITZER JOURNALISM

The Pulitzer Prize Committee was of like mind and bestowed its own coveted award upon Duranty for his "dispassionate, interpretative reporting . . . marked by scholarship, profundity, impartiality, sound judgment, and exceptional clarity . . . excellent examples of the best type of foreign correspondence." In order to promote such journalism, Duranty was permitted by Soviet authorities to accompany Litvinov on his triumphant trip to the United States, when we negotiated the diplomatic recognition of the USSR at the very height of the famine.

To be sure, a few European papers, such as France's *Le Matin,* decided to publish the truth. But the American media were damningly silent, both about the genocide and about Soviet manipulation of the foreign press.

The third thread of the story is summed up in George Orwell's observation, "We have now sunk to a depth at which the restatement of the obvious is the first duty of intelligent men." It may sound tautological to repeat that "the Soviet Union" is not "Russia," but it is nonetheless necessary to do so. The USSR is a multinational federation of formerly independent nations. It is not a monolithic state, any more than is any empire. An Uzbek in Samarkand or a Latvian in Riga has about as much similarity to, or affinity for, a Russian in Leningrad as does an Afghan in Kabul. The Red Army's occupations of Lithuania and Georgia were little different from its occupation of Afghanistan, with the exception that with the passage of time the former have been absorbed into a "Soviet Union" as constituent republics. Afghanistan may yet become the 16th installment. In this light, the man-made famine in Ukraine speaks volumes about Moscow's relationship with the non-Russian nations of the USSR, which account for 50 per cent of its population. That event thus offers the West a glimpse into the practical consequence of the structuring of the Soviet Union and the centrifugal forces in it.

None of these issues has proved attractive to the media in the United States. At this writing *Harvest of Despair* has been shown only on two small U.S. television stations; and virtually no press attention has been given to the discoveries of the Conquest group. This has not been for lack of trying by either the *Harvest* producers or the Harvard Institute. But all their efforts have been met with the sort of embarrassingly inarticulate—or silent—rejection that suggests people are unwilling to explain their reasons for not doing the obviously right thing.

Thus, for instance, the three commercial television networks did not see fit to articulate any reason whatsoever for their rejection of the story. We have reason to believe that, at least in the case of one of the networks, a fawning concern, at the highest level, with maintaining the good graces of the Kremlin led to the network's self-censorship.

When we approached the major news weeklies, *Time,* for example, answered that "at the present time" it was not planning any stories on the subject. Asked when would be a more opportune occasion than the fiftieth anniversary of the tragedy, *Time* (after repeating that it "is not considering such an article at this time") made an abrupt change of course and said that its mandate was only to cover immediate news. This was immediately followed by another twist—"We do occasionally report historical events when they bear directly on current news . . . or if the event itself becomes the subject of renewed controversy or discussion."

The repetition of the Ukrainian pattern in Cambodia, or Afghanistan, or Ethiopia did not qualify. Not did the recent establishment of a Joint Congressional Commission to investigate the famine and its coverup. As

[1] Recently, a Ukrainian in the Red Army deserted and joined the Afghan resistance. The 21-year-old private, Aleksandr Levenets, gave his reason: "Our officers said we must go into a village and kill all the people and animals, sheep, horses, even dogs and cats. But I thought it was the Mujahedin who were fighting against us, not elderly people and dogs and cats."

[2] In private conversations with his colleagues in Moscow and with representatives of the British Foreign Office, Duranty volunteered that as many as ten million had been killed by starvation, leading Malcolm Muggeridge to call Duranty the greatest liar he had met in fifty years of journalism.

to waiting for a "renewed controversy or discussion," that was a rather incestuous excuse, since a discussion cannot be renewed when the story was never reported in the first place. The disclosures of the Harvard project shatter some long-held assumptions concerning the formative years of the USSR. That, certainly, should satisfy even *Time's* tortured criteria. Presented with these arguments, *Time* made no response.

The Harvard group hoped the release of *Harvest of Despair* might make a difference. A recognized film-distribution firm in Washington, D.C., viewed the film and expressed enthusiastic interest in serving as its exclusive agent in the United States and Canada. But after the firm discussed the matter with its industry contacts on the East and West Coasts, a wall of silence descended. No explanation. No replies to inquiries. Nothing.

And then there is PBS. Its legislative mandate requires that it serve as an accessible alternative to commercial broadcasting, to provide an outlet for productions that couldn't win a place in the ratings game. Controversy, the unknown, the unorthodox were to be PBS's mainstay.

The initial reaction of PBS, summarized above, came before *Harvest of Despair* was awarded the gold medal in the first of what soon became an unbroken succession of international awards. In a follow-up discussion, the reason given for WNET's rejection predictably changed. Now, the film was "inadequately documented." This is hardly less transparent than was Foges's first excuse. It is also untoward, given that the production has been critically acclaimed as "exceedingly well documented." More than one and a half million feet of rare archival film footage were viewed, of which 720 feet were incorporated into the production. The critics wrote that "the historical documentation has been vividly assembled. One can see that tremendous research was part of making *Harvest of Despair.*"

So, when we asked what "inadequate documentation" meant, WNET said the film lacked "journalistic integrity." When we asked what *that* meant, we finally got to the heart of the matter—the "other side" of the story was not presented. We replied that this *was* the other side of the story. PBS's airing of *Harvest of Despair* would be the first time, after half a century, that the "other side" of the story finally was made available to the American public, in fullest accord with PBS's own mandate. Alas, to no avail.

In a remarkable parallel, on November 5, 1985, WPBT, the PBS affiliate in Miami, also rejected the film on the grounds that it has "a perceived bias in terms of the viewing public." (WPBT did acknowledge that the film was "interesting and well produced.") The film was submitted to WPBT after that station broadcast a documentary on Stalin covering the period from 1934 onward. *Harvest of Despair* treats the period through 1933 and seemed a logical adjunct. A request to Candace Carlisle, WPBT's Director of Program Acquisition, for an explanation or example of the film's bias has remained unanswered.

Finally, after a ten-month blackout, and on the heels of WPBT's rejection, the main office of PBS in Washington opined that the film presents only "one point of view" and that it is "subjective." This, of a film that now is in the running for an Academy Award as a documentary. Unembarrassed, a few weeks ago the PBS affiliate in Boston, WGBH, also fell into line.

PBS thus remains adamant.[3] *Harvest of Despair* is fatally flawed because it violates Solomonic impartiality by not giving equal time to Moscow's point of view. But what would the Soviets say? Perhaps, like those who deny the Nazi Holocaust, they would claim the famine never occurred. But no one suggests that Holocaust films be routinely accompanied by a rebuttal from the editors of *Spotlight.* Or perhaps they would use the war criminal's lament: It happened, but it was nobody's fault.

Indeed, in a Canadian television production shown on April 27, 1983, the Soviet Union *was* given equal time and said absolutely nothing new. CBC's *Fifth Estate* series, Canada's answer to *60 Minutes,* produced a twenty-minute segment on the Ukrainian famine, a full 18 months before the public release of *Harvest of Despair.* Aleksandr Podakin, from the Soviet Embassy in Ottawa, appeared in the segment and was cool, calm, and collected, countering with sober reflections on the tribulations of Americans and Canadians during the Depression. The day after the broadcast of the *Fifth Estate* program, the Soviet Embassy put out a virulent three-page press release "On the So-Called 'Famine' in Ukraine," replete with the predictable litanies. In December of that year, Aleksandr Podakin finally lost his cool, after Canadian Conservative leader Brian Mulroney mentioned the Ukrainian famine in a speech. The Soviet Embassy filed a formal protest with the Department of External Affairs, branding Mulroney's speech "a 100 per cent lie." It accused Canada of violating the Helsinki Accords by attemping the overthrow of the Soviet government.

There was nothing to prevent PBS or any of the U.S. networks, for that matter, from similarly airing *Harvest of Despair* and then having a post-mortem with a Soviet representative. Certainly, the Soviet Embassy in Washington will not broach the issue so long as, in the U.S., it remains submerged.

LOST IN AMERICA

Perhaps the strangest aspect of the story is the contrast between the silence of the media in the United States concerning *Harvest of Despair* and the critical acclaim elsewhere. In addition to its sweep in the international film competitions, the film has been lauded as "a searing 55-minute documentary," "powerful," "an eye-opener," "an important film . . . it should be seen by everyone," "an unquestionably sobering film which rightfully deserves wide distribution on television," "a riveting account," "a superb chronicle," *"un film éminemment nécessaire."* CBC broadcast the film throughout Canada last September, and European, Australian, and Japanese rights are being negotiated.

The only important exception among the critics is the *New York Times's* Vincent Canby. Writing on the occasion of the screening at the New York Film Festival last October 10, Canby defended the *Times's* Walter Duranty. He did not deny that Duranty lied; he criticized the *film* for not explaining why Duranty did it. He excused Duranty's perfidy by explaining (citing Harrison Salisbury) that Duranty was not a Communist ideologue but merely a "calculating careerist," as if that were a valid defense for fraud.

Canby continued: *Harvest of Despair* was visually "full of generalities." An astonishing statement. The *New York Times* first censors the printed news and then, fifty years later, complains that the visual record is too general. The remarkable thing is that there is any visual record extant in the West. (*Shoah,* the recent documentary of the Nazi Holocaust, was applauded by the critics even though it runs for nine and a half hours without using *any* archival footage.)

Canby ruled, ultimately, that *Harvest of Despair* is a "frankly biased, angry recollection" of a "hugely emotional subject." "Biased" is a serious charge to hurl at a documentary. But what does it mean here? That the producers disapprove of genocide? Or that they twisted the facts to make genocide appear where there was none? If it was the latter, Canby gave not a single example, nor the slightest substantiation. A letter requesting substantiation remains unanswered.

What is to be made of the particular resistance of the U.S. media? The story is clear enough. After 15 years of trying, Moscow had been unable to solidify Communist rule in Ukraine, the largest non-Russian republic in the Soviet Union. Soviet reaction to Ukrainian opposition was simple—starve the opponents. A quarter, perhaps half, of the population was driven to madness, cannibalism, and death. During the whole process, Moscow was able to muzzle the Western media, enthrall Western intellectuals, and entrance Western governments. For half a century the story remains entombed. Then, a major university study and an award-winning film expose the genocide and its coverup, and the U.S. media do not respond. Why?

LAP DOGS OF THE PRESS

As one of the few Western journalists who remained true to his public trust, Malcolm Muggeridge wrote at the time that "the man-made famine in Ukraine is one of the most monstrous crimes in history, so terrible that people in the future will scarcely be able to believe it ever happened." But, of the myriad excuses given by the American media, disbelief was never even intimated. Nor would we expect to see the line of demarcation between belief and disbelief to be so sharply drawn between the United States on the one hand, and Canada, Western Europe, and Australia on the other. Quite beyond *Harvest,* over the last three years, the famine itself has been the focus of extensive editorial and reader discussion in the major publications of those countries.

Part of the reason must surely lie in the American media's refusal publicly to admit to its especially disgraceful delinquency. But the ultimate reasons can only be the same ones that prompted the media to spike the story in the first instance. One of those is a fawning concern to maintain their good standing with the Kremlin. An indirect example of this is found in the Wall Street Journal, which does not maintain an office in Moscow and whose editorial policy has earned Moscow's ire. Moscow thus has no leverage on the Journal, and the Journal has publicized the direct connection between the man-made famine in Ukraine and present-day developments in Afghanistan and Ethiopia.

The other, more important reason is the pervasiveness of the very political bias that PBS was so quick to ascribe to *Harvest of Despair.* It isn't simple conscious complicity, but unknowing gullibility, that is behind the acceptance of Soviet horrors. Because this bias is often subliminal, it is all the more in-

[3] To their credit, the local PBS affiliates in Chicago, Illinois, and Rochester, New York, have recently aired the film.

sidious. David Satter wrote in the October 22, 1985, *Wall Street Journal:* "The Soviet authorities understand that concessions to their view of reality weaken an adversary's ability to insist on the absolute value of anything. This is why the effort to induce the world to take their ideological lying literally is not just a question of prestige for the Soviet leaders but also a matter of political strategy. The Soviet authorities do not expect Western journalists to believe Soviet propaganda, but only to repeat it uncritically, without any effort to analyze what it means, so that, over time, the Soviet Union's ideological lying and officially sanctioned misuse of language, enhanced by the credibility of important American publications, begin to have the same numbing effect on Westerners as Soviet citizens."

Were, say, ABC to air *Harvest of Despair* or its own documentary on the subject, it would freeze for an hour the Soviet phantasmagoria. The new image: The famine in Ukraine was not the unfortunate but unintended byproduct of the overall collectivization of agriculture in the Soviet Union, as soporifically recited by those in the West who even concede its occurrence. In Ukraine, collectivization was completed long before the Central Statistical Office ceased publication. Long before doctors were forbidden to record deaths as due to starvation. Long before *holod*, the Ukrainian word for famine, was outlawed. Long before the Ukrainian-Russian border was sealed, preventing anyone from leaving Ukraine for Russia in search of food. Ukrainian villages starved. Russian villages a few hundred yards across the border did not.

The ensuing half-century of worldwide silence testifies to the effectiveness of the Soviet disinformation effort on a global scale. Eugene Lyons wrote bitterly that "the most rigorous censorship in all of Soviet Russia's history has been successful. It had concealed the catastrophe, until it was ended, thereby bringing confusion, doubt, contradiction into the whole subject." Concurrently, the Soviet Union achieved its greatest foreign-policy goals—America extended diplomatic recognition and the international community invited it to join the League of Nations.

Soviet brutality has never been exploited by its enemies as a way of undermining Soviet power. Indeed, its brutalities have increased its might, helping to transform it into a global superpower. "The Soviet Union is not the only original killer state, but the model one," wrote Nick Eberstadt of the Harvard Center for Population Studies.

For American newsmakers, such an image remains awkward, untimely, impolitic, inexpedient. Yet the man-made famine in Ukraine represents, as much as any one event can, the USSR's most precarious fault lines, domestically and globally. That event, half a century ago, today bears direcly on issues of national self-determination, land and social reform, and indigenous cultural and religious values that are of burning concern in those areas of the world that lie in the path of Soviet influence. An understanding of the Ukrainian famine may well be the critical first step in a popular assimilation of the interaction between Soviet domestic and foreign policies, American media coverage of the Soviet Union, and our own consequential formulation of policy toward the Soviet Union.

Until that step is taken, Mikhail Gorbachev has good reason to be pleased. True to form, his cover-story interview in the September 9, 1985, issue of *Time* magazine began with *Time*'s own insights: "Gorbachev looks well tanned, just a bit ruddy in the cheek . . . He laughs easily . . . [His eyes] are an intense dark brown . . . The voice is extraordinary, deep but also quite soft . . . low and melodious." That voice then broadcast to us his concern about the "hundreds of millions of people going hungry . . . We, all of us, just have no right to ignore the situation." So spoke the man who forged his career in the crucible of the once heavily Ukrainian North Caucasus.

Mr. DOLE. It has been a long time coming, but tonight the American people can at last judge for themselves. It is on their channel this evening—"public television"—on Willian F. Buckley's outstanding show "Firing Line." I hope that my colleagues will join the American people in watching this special show. In doing so, we will help remember—and honor—the millions of innocent victims of a ruthless dictator's "harvest of despair."

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 1 minute 20 seconds.

Mr. DOLE. After the leader's time on the other side, I would yield the remainder of my time to the distinguished Senator from Florida [Mrs. HAWKINS].

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Wisconsin is recognized.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the time of the Democratic leader be reserved for his use later today.

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

Mr. PROXMIRE. I will follow the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

A MATTER OF SURVIVAL

Mrs. HAWKINS. Mr. President, Vice President BUSH recently raised the question of the death penalty for large-scale narcotics traffickers. "I don't think the death penalty is unreasonable," the Vice President said in an interview with a Boston Herald reporter. Mr. BUSH described drugs as a "great threat to our society. Finding a way to control them is something that must be done."

The Vice President is a wise man, and demonstrates the caliber of his wisdom when he notes that leniency against drug use has contributed to the problem. He singles out drug use in sports as an outstanding example. There has been a pattern of leniency toward drug users in the sports fraternity. It is something that has been swept under the rug for too long. And it also is a fact of life that many drug users start at an early age when they are influenced by the behavior of professional athletes.

Narcotics trafficking is the most despicable of crimes and the punishment should fit the crime! We have slapped the wrists of the drug smugglers for too long. They should be stripped of all profits derived from their slimy and very profitable business. Any material thing that has been acquired as a result of dealing in narcotics should be confiscated.

When you talk about property seizure, you are talking about homes, you are talking about cars, you are talking about planes, boats, and all kinds of vehicles used in moving drugs from one place to another. Seizure should result in hardships to the families of narcotics dealers. If a dealer cared enough for his family and their welfare, he would not be in the drug business in the first place. The profit motive must be removed entirely from drug dealing.

Most States, realizing the menace posed by drugs, have toughened the sentences for drug convictions. The Federal drug laws have shown a pattern of gradually cracking down tighter on drug violators. Longer sentences with less possibility of early parole is the order of the day. But the question remains—what can you do to dissuade traffickers beyond seizing their ill-gotten gains and throwing them into jail? The temptations to deal in drugs remains high—the potential rewards so great that people are attracted to this nefarious business.

Vice President BUSH's feelings lend new credence to the position that perhaps we should consider the death penalty for major drug trafficking. Immediately, there are those who would rise to note that capital punishment is not a particular deterrent to murder. But there is a difference. Most murders are committed in a moment of passion. There is heat and anger. In some cases, longstanding grievances are involved. Drug dealers, in contrast, know exactly what they are doing. Their moves are cold and calculating. Their goal is not vengeance or injury to someone but the satisfaction of greed. Profit, pure and simple. The damage narcotics traffickers inflict on society is incalculable: wrecked health, destroyed families, lost productivity and corrupted institutions. What measures should we take to discourage people from trafficking in drugs?

A society has the right, and indeed the obligation, to exist and to take whatever steps are necessary to insure its continued existence. It's a simple matter of survival.

I yield the floor.

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 10 a.m., with statements therein limited to 5 minutes each.

HOW DO WE TAKE ADVANTAGE OF THE U.S.S.R. NUKE WEAPONS TEST MORATORIUM?

Mr. PROXMIRE. Mr. President, what are the implications of the Soviet extension of their unilateral suspensions of nuclear weapons testing that began August 6, 1985, and has now been extended until January 1, 1987? First, have the Soviets actually stopped nuclear testing for more than a year? Have they violated this moratorium? After all, the moratorium has not been subject to any U.S. verification procedures of any kind.

How do we know the Soviet Union has not been cheating? How do we know they have not conducted scores of tests? We are told that seismic monitoring stations in Scandinavian countries can detect underground explosions that exceed 1 kiloton within the Soviet Union. We are also told that explosions of less than a single kiloton would have no military significance. Is this true? Ask yourself: Would the administration make this an issue if the Soviets had, in fact, tested nuclear weapons during this 13-month moratorium? The administration could. They should. They would.

Has there been any charge by any responsible administration official that the Soviet Union has violated its unilateral suspension of nuclear weapons testing since August 6, 1985? No. This Senator has not heard such a charge from any source.

Has anyone in the Defense Department charged that the Russians could have been testing nuclear weapons of significant kilotonnage in actual explosions without detection? This Senator has not heard it. If there is any evidence of this kind, let us have it.

The fact is, Mr. President, that there is every reason to believe that for more than a year, the Soviet Union has not conducted a single nulcear weapons test. There is also every reason to believe that the Soviets will continue this moratorium at least until January 1, 1987.

What are the implications of this Soviet absention from nuclear weapons testing? First, it means that the Soviets, in all likelihood, do not feel that this long moratorium will have an important adverse effect on their national security or on the credibility of their deterrent. Second, it means that by next January, our country will have nearly 1½ years advantage over the Soviet Union in the testing of nuclear weapons which is essential to proving new research on these weapons.

Keep in mind that at the time the Soviet Union stopped testing, the United States was already well ahead in nuclear weapons technology—according to our own Under Secretary of Defense for Research and Development. The Undersecretary informed the Congress in 1985—shortly before the Soviet moratorium on testing began—that the United States was either ahead of or tied with the Soviet Union in every one of the most important nuclear weapons technologies. The Soviet Union was ahead in none. Since then, our researchers have had more than a year to advance their technology even further. It is also a fact that the United States had initiated far more nuclear weapons test explosions than the Soviet Union even before the Soviets ceased their testing.

What does all this mean for the wisdom of U.S. negotiations with the Soviet Union to stop further nuclear weapons testing? It means we can stop testing on both sides with the absolute assurance that the United States has a clear and decisive technological lead in nuclear weapons research and testing. We freeze. We stop testing when we are ahead. And what does that do? It solidifies our advantage in concrete. Neither side can test. Neither side can move the lethal, devastating effect of nuclear weapons ahead further by the testing that is quintessential to effective nuclear weapon technology advance. If we stop nuclear weapons testing now, we end this crucial element of the nuclear arms race. We end the nuclear weapon technology arms race.

If there can be a winner in this race, it is us. That is reason enough to negotiate a test ban treaty. But there is an element here that should satisfy the most cynical hawk. We stop the testing when we are clearly ahead. We stop the testing when we have had nearly 1½ years to further advance our advantage. Mr. President, there is no way we can gain by refusing to take advantage of this golden opportunity. Just think of it. We serve the cause of peace in this terribly dangerous nuclear age by ending the technological nuclear arms race. And best of all, we do it at a time when our country is ahead—so we perpetuate our advantage. We freeze it.

Does this mean the negotiations will be easy or automatic? Certainly not. We can and should insist that verification be absolute. We should insist on the stationing of seismic monitoring stations through the Soviet Union. We should insist on on-the-spot, unannounced inspections of any suspicious indications of explosions in the Soviet Union. We should promptly turn to the extension of this ban to other nations, including all the present acknowledged nuclear powers and potential nuclear powers.

We have a golden opportunity here. Let us take advantage of it.

MYTH OF THE DAY

Mr. PROXMIRE. Mr. President, there are two prevailing points of view among many experts in the United States on the subjects of terrorism and nuclear accidents that, at their core, are based on mythology. The first generally accepted viewpoint is that nuclear accidents can't happen here. Sure we had Three Mile Island but not one life was lost. Our technology is superior to the Russians. Chernobyl can't happen here.

Likewise the United States has escaped serious terrorist attack. This has given rise to the perception, also a myth, that we somehow are safe from terrorist actions.

Both related and commonly held positions are, unfortunately, not based on fact.

What form can nuclear terrorism take in this country?

Just look at all of the nuclear powerplants in this country and the large number of nuclear reactors we have at our universities and research centers. Many of these facilities have less than adequate physical security arrangements, which in many cases would not deter a nuclear terrorist from sabotaging them.

According to Theodore Taylor, former Deputy Director of the U.S. Defense Atomic Support Agency, one possible terrorist scenario could be the detonation of a very small nuclear device on top of a nuclear waste facility causing an extraordinary amount of destruction.

Mr. President, let me add another possibility. Not all weapons-grade uranium and plutonium in this country is very well protected. The biggest risk we face today, where these materials are concerned, is during transport. Can you imagine someone actually stealing weapons-grade nuclear materials during transport on the open road? Well, it could happen.

THE NEW GATT ROUND

Mr. BAUCUS. Mr. President, yesterday I stated that the GATT [General Agreement on Tariffs and Trade] agenda recently agreed to in Punta del Este was a good beginning.

But yesterday I was able to review an actual copy of the agenda that was agreed to. It contains a troubling provision.

The agenda seems to state that the less developed countries do not have to make any concessions in these negotiations, if those concessions might hurt their "development, financial or trade needs."

Let me read the language. This is from a section entitled "General Principles Governing Negotiations;"

The developed countries—that is, the United States and other developed countries—do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs.

Continuing the language further:

Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latters' development, financial and trade needs.

That is a lot of legal language. But it means that the LDC's seem to have it all their way. They do not have to make any concessions—and we cannot ask for concessions—if those demands would be contrary to their "development, financial and trade needs."

Let me explain what that phrase means. In this new round, the United States would like to gain access to many markets in the LDC's, including services, computers, agriculture, and other areas where the United States is most competitive.

The administration has stated that these are their highest priorities in the new round.

But under this agenda, can Brazil state that it should be able to continue to protect its computer or aircraft markets because it is necessary for their development needs?

Under this agenda, can developing countries refuse to open their investment and banking markets because it contradicts their financial needs?

Under this agenda, can Korea refuse to open its markets to United States beef exports because it is inconsistent with their trade needs?

This GATT agenda language seems to say "yes."

Not only does it say "yes," but also, it seems to say that the United States cannot even ask to have them open these markets. It can't be discussed.

Mr. President, that is not the understanding that we in the Congress have as we enter this new round.

One of our primary goals in entering this new round is to open these markets. If we cannot even ask them to open them, why are we entering this round at all?

Let me be clear. I know that in past GATT agreements, the LDC's have received a special status. It has traditionally been understood that the developed countries will give special consideration to the LDC's to assist their development.

I support that approach up to a point. But this new GATT provision strikes the balance too far the other way.

This provision says that the LDC's have to give up nothing. They get the whole ball of wax.

It not only says that we will tie our hands behind our backs, but that we will not try to untie them.

I think I speak for most of my colleagues in saying that that approach is not acceptable. We will not accept a final agreement in which the LDC's have made no concessions.

Mr. President, I would like to ask for two things today.

First, I would like the administration formally to explain to the Congress the meaning of this provision in the agenda.

Congress will be asked before long to determine whether to grant fast-track authority to the administration to negotiate this new round. My colleagues will not want to grant fast-track authority unless they can be assured that the United States will not be sold down the river in these negotiations.

We deserve an explanation.

Second, I want to send a clear message to the LDC's. This Congress will not approve of any agreement in which the LDC's refuse to make concessions on the basis that those concessions are inconsistent with their "development, financial, and trade needs."

All countries—developed and developing—must demand concessions as part of the negotiating process.

I note that the provision after the one I have cited states that LDC's recognize that their capacity to make concessions will increase as their economies progress.

I expect the LDC's to live up to that commitment sooner rather than later. And I would expect that the final agreement would reflect the development these countries already have achieved.

Mr. President, this GATT round cannot be a one-way street. Both sides must give, but this provision looks like unilateral disarmament.

Mr. President, for years, GATT has proceeded on the basis that open trade benefits all nations. That principle is just as valid today.

But that principle requires that all countries open their markets. To carve out certain exceptions for certain groups of countries undermines the entire GATT framework.

Before we go any further with this GATT round, we need an explanation of the meaning of this provision.

Benjamin Franklin once said, "A good beginning begets a good ending."

Mr. President, we need some explanations of this provision. Otherwise, this uncertain beginning will beget a horrible ending.

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SUPERFUND

Mr. LAUTENBERG. Mr. President, the Superfund Program is facing another crisis. With adjournment drawing near, and the conference on the Superfund reauthorization bill still unresolved, we face the unacceptable prospect of closing the 99th Congress without enacting a bill to expand and renew this program.

Mr. President, members of the Senate Environment and Public Works Committee have committed almost 3 years of work to renewing and reshaping the Superfund Program. In 1984, knowing that it would be a complicated and contentious effort, our committee, under the distinguished leadership of Senator STAFFORD, reported a bill to the Senate for consideration. That bill was never scheduled for floor action, because the administration opposed moving ahead with a bill at that time.

It is now 2 years later, and we still do not have a bill. The House and Senate both approved Superfund legislation in 1985, but no conference met on the bill until February 1986. The conference of the programmatic provisions of the Superfund bill was completed, after 6 months of intense meetings, in July. But, the tax provisions of the bill are still pending in conference.

Mr. President, Superfund has survived over the past year on a series of interim funding measures. EPA Administrator Lee Thomas has sounded the alarm. Without an infusion of funds, or a bill approved by the Congress, he will have to take irrevocable action. He will have to cancel existing contracts for work at Superfund sites threatening our capability to get this job done, as contractors lay off skilled engineers and workers and they scatter to the wind. At the end of October, work at over 100 remedial projects across this Nation will stop.

Mr. President, the Superfund Program is in danger of dying. With the 99th Congress coming to a close, we must make it a top priority to renew this program, and provide funding for it, before we leave for the year. What we do will have an impact on this Nation's environment for years to come.

Will we have a nation of Timers Beaches and of Lipari's or will we have a commitment to rigorous cleanups? Will we expose our citizens to the risks of chemical releases or will we insure that they have the right to know about chemicals in their communities, and how to respond in the event of a chemical release? Will we clean up the 900 abandoned toxic waste sites on the Superfund national priority list, or will we turn our backs on these threats to the environment and public health?

Mr. President, continued stop-gap funding for Superfund, if it can even be provided at this late date, is not the way to deal with this problem. We need, instead, to enact the conference report on H.R. 2005, which includes important reforms in Superfund Progam. We need to provide for an equitable and effective financing mechanism to fund the program to its authorized level of $9 billion.

Mr. President, there is a lot at stake in this bill. Many of us spent years in writing it. We worked with all affected parties—from local officials, to community groups, to environmental and industry groups. There is no opposition from any corner to the programmatic provisions in this bill. These provisions require effective cleanup standards, so that money is not wasted on remedial actions that do not do the job. They set up community notification and emergency response programs. They authorize a radon/indoor air program. The conference agreement also provides for citizen suits a leaking underground storage tank program, preservation of State taxing authority for State spill funds, credits for work done by our States at cleanup sites, and a list of other environmental protections too long to document here.

Mr. President, what prevents final passage of these historic provisions is the need to complete action on the revenue provisions. As we know, because of their work on tax reform, the tax conferees have not been able to reach an agreement on these provisions. On Monday, I joined with 28 other Members of the Senate urging action on the tax title now that work has been completed on the tax reform bill. It is my understanding that the tax conferees on the Superfund bill are scheduled to meet this morning, and that is welcome news.

Mr. President, I hope those deliberations can be completed quickly, and that we can take up the conference report on Superfund within days.

The time is now. The stakes are high. And the goal is clear: Let us enact a strong, enlarged, and improved Superfund Program and get on with the task of cleaning up the abandoned waste sites that dot my State and others across the Nation.

EDUCATION OF THE HANDICAPPED ACT AMENDMENTS

Mr. STAFFORD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2294.

The legislative clerk laid before the Senate the amendment of the House of Representatives to the bill (S. 2294) to reauthorize certain programs under the Education of the Handicapped Act, to authorize an early intervention program for handicapped infants, and for other purposes.

(The amendment of the House is printed in the RECORD of September 22, 1986, beginning at page 25187.)

Mr. WEICKER. Mr. President, on behalf of myself, Mr. HATCH, Mr. STAFFORD, Mr. KERRY, Mr. KENNEDY, and Mr. SIMON, I rise to urge the passage of S. 2294 as amended by the House. In the absence of a conference report on this legislation, we make this joint statement as members of the Subcommittee on the Handicapped and cosponsors of the original S. 2294. Further, we would like to commend our colleagues on the House side, particularly Representative PAT WILLIAMS, for taking action on this critical legislation.

On June 6, the Senate unanimously passed S. 2294, the Education of the Handicapped Amendments of 1986 to amend and extend the discretionary programs under the Education of the Handicapped Act for an additional 3 years and to create a new program of early intervention services for handicapped children beginning at birth. The bill before us represents House consideration of, and response to, the Senate-passed bill. Because the underlying goals of S. 2294 have been retained by the House and are embodied in S. 2294 as amended, the bill has our full support.

Although the legislation now before us differs structurally from the Senate-passed S. 2294, let us make it crystal clear that in terms of congressional intent regarding the provision of services to handicapped infants, toddlers, and young children, the two bills are not different.

First, with regard to the provision of special education and related services to handicapped children from ages 3 to 5, both bills establish a mandate for serving these handicapped children, while differing in terms of the funding formula and the length of time allowable for the State to phase in its program. This new funding formula was developed by the American Association of School Administrators, and is described in detail in the House committee report on this bill. Although it is true that the Senate bill established a mandate for services to handicapped children between the ages of 3 and 5 by lowering the mandate under Public Law 94-142, we firmly believe that the end product of the House amendments will be the same. With the very strong financial incentives provided in the bill to serve these children, we are confident that all the Nation's handicapped preschool children will have the special educational services they need.

Second, with regard to the establishment of a new program of comprehensive early intervention services for handicapped infants, both House and Senate versions of S. 2294 reflect our commitment to ensuring that such services will be available to all eligible children by the end of the 4-year phase-in period. The bill before us today establishes a policy of assistance to States to develop and implement programs of early intervention services to handicapped infants, toddlers, and their families.

Many of these programs include provisions found so successful in serving the school-aged handicapped child, such as parent participation, individualized intervention plans, interdisciplinary decisionmaking, and procedural safeguards.

Both the House- and Senate-passed bills specify that these early intervention services shall be at no cost to parents to the extent not inconsistent with Federal or State law. This is not intended to signal congressional toleration of undue financial burdens on parents. States participating in this program accept responsibility for providing early intervention services. This legislation recognizes that universal access to services gives the State—not the parents—the chief financial responsibility for the provision of services required by the act. The services required by this act must be made available to handicapped infants and toddlers on the basis of their need and not on the basis of a family's ability to pay. It must be understood that the act bars the reliance on such laws if they create a financial barrier to infants receiving the required services.

By amending the Education of the Handicapped Act to provide authority for a program of early intervention services, Congress recognizes and emphasizes the critical relationship between development and learning. There is now clear and convincing evidence that early intervention reduces the need for special education once a child reaches school age. A reduced need for special education means an increased opportunity for interaction between handicapped and nonhandicapped children and youth; an increased opportunity for independence and self-sufficiency in adulthood; and a substantial reduction in the cost of education for handicapped students.

A primary purpose of early intervention relates to educational need; however, the legislation we are considering today recognizes that educational services do not exist in isolation from other necessary services, such as health and social services. Just as developmental readiness for school is not limited to cognitive development, early intervention is not limited to education alone. Rather, early intervention means a combination of services designed to meet the needs of a handicapped infant or toddler across a range of developmental domains. There can be no doubt about the appropriateness or viability of this policy. The establishment of this policy is grounded in special education

and child development research and brings Federal law in line with contemporary best practices in special education.

We also recognize the value of public input with respect to all of the policies constituting the statewide system of service delivery, particularly with respect to the definition of eligible children.

It is our belief that an individualized program of early intervention services will greatly enhance the educational prognosis for handicapped children. Ten years of experience with Public Law 94-142 has shown what education alone can do to ameliorate the effects of handicapping conditions.

Not unlike part B of the act, commonly known as Public Law 94-142, the new early intervention program contains procedural safeguards to ensure that handicapped infants and toddlers receive services based upon individual need. Although States are given flexibility in providing for the speedy resolution of disputes, parents are entitled to have their complaint heard by an impartial individual. Such an individual should be independent of any agency providing services. Of course, the remedies provided to parents under this part are in no way meant to be exclusive of any other remedies parents of handicapped children, including infants and toddlers, may have under other Federal laws. Moreover, the bill allows court actions by parties aggrieved by the findings of the complaint resolution process.

We note, however, that there are circumstances comparable to the exception recognized under part B in which exhaustion of administrative remedies would not be required: For example, where immediate action is necessary to protect the child's health or where it would be futile to use the administrative proceedings, such as where the dispute is not over the content of the individualized family service plan but rather the failure to provide the services contained within it. Finally, nothing in this section should be construed to prevent or delay the provision of services to handicapped infants or toddlers. We wish to emphasize that there may be situations in which interim services are required pending the resolution of a complaint.

Let me also take a moment to note that at least six States and three territories are currently providing special education to all handicapped children beginning at birth. In these States, no single agency provides all services to all children. Rather, existing service delivery systems represent interdependence among public and private organizations at both the State and local level. In crafting this legislation, we have looked carefully at what the States have done to meet the needs of handicapped infants and toddlers. In creating a new Federal discretionary grant program, the Congress does not intend to disrupt existing efforts in the States. However, it is in the national interest to assist State and local efforts in this regard and thereby promote a policy of universal access to services for handicapped infants and toddlers.

Some opponents of this legislation have said more time is needed to address the issues involved in establishing this new Federal program. We reject this argument. The state of our knowledge is more than sufficient to justify this new commitment of Federal resources to those who need our special care. This is not to say that we do not have concerns which must and shall be addressed when this legislation is reauthorized. Most notably, we are concerned about program accountability and fully intend for the allocation of funds authorized under the new early intervention program be based on the actual number of infants and toddlers served after the phase-in period expires. To this end, the bill amends section 618 of the act to require data collection on the numbers of children served. We believe that tying the distribution of funds to the actual number of children served is a critical component of program accountability.

The bill before us also amends and extends the discretionary programs under the act to ensure quality early intervention, special education, and related services will continue to be available to handicapped children. I will take just a moment to highlight some of these provisions.

One significant provision is the recognized need for research institutes to carry on sustained research. If we are to determine what are cost-effective and cost-beneficial services, sustained research such as that conducted in research institutes is essential.

Another significant provision addresses the training of teachers who will assist secondary special education students make the transition from school-based services to adult services, including employment. Currently, most secondary special education teachers are trained to utilize a classroom model rather than a community model. Teachers who are trained and experienced to work in a community environment rather than a traditional classroom are needed. This bill provides for such training.

We would also like to point out the very timely provisions in the House amendment designed to expand the advancement of new technology, media, and materials in the education of handicapped students. The development and utilization of such technology holds great promise in circumventing the limitations of certain handicaps. The new part G of the act will take a bold step in this direction.

We are pleased to note that the special needs of underserved groups have not been ignored by the Congress. For example, the House committee report on the measure directs the Secretary to pay particular attention to the needs of native Hawaiian and American Indian children.

Further, we wish to emphasize that the term "special education" includes physical education. The committee received testimony indication that many schools were not including physical education services in students' individualized education plan. We wish to underscore the importance of physical education as a part of special education.

Finally, we want to make a statement to everyone who has been involved in developing, or who will benefit from, the passage of this landmark legislation—whether parents, educators, handicapped children, or those who will implement the program. Make no mistake that today we send a message to the handicapped citizens of our Nation that their needs are not going to be sacrificed at the altar of budget cuts or educational reforms. And remember, too, that the enactment of this legislation does not signal the culmination of all congressional efforts to maintain and strengthen our commitment to preschool education and early intervention services for handicapped children. Over the next several years, as the impact of the action we take here today becomes clear, we will be watching closely to determine what improvements need to be made when these programs are next reauthorized.

In particular, we will be monitoring the implementation of the provisions in the bill pertaining to special education for eligible preschool children to ensure that its implementation results in a free, appropriate public education to all handicapped children beginning at age 3. We must—and will—be vigilant in ensuring that the services needed to maximize our handicapped children's potential for growth and achievement are available to all who need them.

Mr. KERRY. Mr. President, I rise in support of S. 2294, the Education of the Handicapped Amendments as amended by the House of Representatives.

Let me first commend the distinguished subcommittee chairman, Senator WEICKER, for his leadership on this legislation that will benefit so many handicapped infants, children, and youth and their ability to achieve a quality education.

A little over a decade ago, Congress set out to provide quality educational services to handicapped children in the schools by enacting what we know today as Public Law 94-142. Today's legislative initiative takes that success-

ful law one step further and offers States great incentives which will enable them to serve all handicapped infants, toddlers, and children. Furthermore, Congress has provided adequate funding for the States to carry out this exciting new initiative in the 1987 appropriations bill.

The Senate passed on EHA reauthorization in June. When Congress returned from the August recess, I must admit I was concerned that we might not see action on this essential bill. Fortunately, in the past 2 weeks, the House of Representatives has introduced, considered, and passed, its version of S. 2294. Mr. President, tonight the Senate has an opportunity to finish the work that we set out to do when we introduced this legislation. Because the Congress will be adjourning soon, I strongly recommend that the Senate accept S. 2294 as amended by the House. By accepting the amended House version, the Senate will forfeit their ability to conference differences with the House bill, as well as the opportunity to write a conference committee report. It is for this reason that I overwhelmingly endorse the comments of my distinguished colleague from Connecticut which, delivered on behalf of myself, the Democrats on the Subcommittee on the Handicapped, and others, are designed to establish legislative history on this bill.

I strongly urge my colleagues to join with me tonight and unanimously pass this critical legislation.

I understand that during consideration of S. 2294 by the House, a provision contained in the Senate bill was not included in the House amendment pertaining to the authority for staff of parent training centers to assist parents directly in activities under part B of the Education of the Handicapped Act.

The intent of the Senate provision in this regard was to clarify current law with respect to this authority. Is that correct?

Mr. WEICKER. The Senator is correct. Information had been provided to the Subcommittee on the Handicapped indicating that there had been some confusion with respect to this authority.

Mr. KERRY. Further, is it your understanding that current law permits staff of parent training centers to assist parents in activities under part B, and that therefore, the Senate provision was viewed as unnecessary?

Mr. WEICKER. That is correct. There has been no change in Federal policy since this program was created in 1983. As originally intended, these programs were designed to assist parents participate effectively with professionals in recognizing and addressing the special educational needs of handicapped children. For example, should parents need a staff person to accompany them to any meeting with school officials regarding the provision of services to their child, this legislation clearly permits them to do so.

Mr. KERRY. I thank the Senator from Connecticut for this clarification.

Mr. STAFFORD. Mr. President, I move that the Senate concur in the House amendments to S. 2294.

The PRESIDING OFFICER. Is there objection to the motion of the Senator from Vermont?

Mr. BYRD. There is no objection.

The motion was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the motion was adopted.

Mr. BYRD. Mr. President, I move to lay the motion to reconsider on the table.

The motion to lay on the table was agreed to.

REPRESENTATION AND TESTIMONY OF FORMER SENATE EMPLOYEES

Mr. STAFFORD. Mr. President, I send to the desk a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 493) to authorize the production of documents by the Senate Permanent Subcommittee on Investigations.

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

There being no objection, the Senate proceeded to consider the resolution.

Mr. DOLE. Mr. President, at the request of the chairman of the Permanent Subcommittee on Investigations, Mr. ROTH, the U.S. attorney for the District of Columbia is conducting an investigation of possible misuse of subcommittee funds by a former staff member. In that regard, the U.S. attorney has asked the subcommittee for access to certain relevent documents.

Both Senator ROTH and Senator NUNN, the ranking minority member of the subcommittee, would like to be able to respond to such a request. This resolution would so authorize the chairman and ranking minority member, acting jointly, to provide the requested documents.

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

The resolution (S. Res. 493) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 493

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs possesses documents relating to the financial activities of the subcommittee;

Whereas, the United States Attorney for the District of Columbia has requested access to certain of those records to assist him in fulfilling his own investigatory responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that documents, papers, and records under the control or in the possession of the Senate are needed in any investigation for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That the chairman and ranking minority member of the Permanent Subcommittee on Investigations, acting jointly, are authorized to provide to the United States Attorney for the District of Columbia pertinent records relating to the subcommittee's financial affairs for the years 1980-1986.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REPRESENTATION AND TESTIMONY OF FORMER SENATE EMPLOYEE

Mr. STAFFORD. Mr. President, I send another resolution to the desk on behalf of Senator DOLE and Senator BYRD and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection? If not, the clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 494) to direct the Senate Legal Counsel to represent and to authorize the testimony of former Permanent Subcommittee on Investigations employee in the case of William E. Brock versus Frank Gerace, et al.

The Senate proceeded to consider the resolution.

Mr. DOLE. Mr. President, two former employees of the Senate Permanent Subcommittee on Investigations, David Faulkner and Michael Eberhardt, have been subpoenaed for deposition testimony and the production of documents by the defendants in a civil action now before the Federal District Court in New Jersey. The case, Brock versus Gerace, involves allegations of ERISA violations which were also the subject of an investigation by the subcommittee.

This resolution would direct the Senate Legal Counsel to represent both former employees in the matter as well as authorize them to testify, though only if consistent with the privileges of the Senate. Mr. Presi-

dent, I move adoption of the resolution.

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

The resolution (S. Res. 494) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 494

Whereas, in the case of *William E. Brock* v. *Frank Gerace, et al.* Civil Action No. 85-3669, pending in the United States District Court for the District of New Jersey, the defendants have obtained subpoenas for the testimony of David Faulkner and Michael C. Eberhardt, former employees of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a)(2) (1982), the Senate may direct its counsel to represent former employees of the Senate with respect to subpoenas issued to them in their official capacity;

Whereas, by the privileges of the United States Senate and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that testimony of former employees of the Senate is or may be needful for use in any court for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent David Faulkner and Michael C. Eberhardt in the case of *William E. Brock* v. *Frank Gerace, et al.*.

SEC. 2. That David Faulkner and Michael C. Eberhardt are authorized to testify in the case of *William E. Brock* v. *Frank Gerace, et al.*, except concerning matters which are privileged and subject to a determination that they have relevant information which is not so protected from disclosure.

Mr. STAFFORD. I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

TRIBUTE TO DR. A.G. GASTON

Mr. DENTON. Mr. President, it is my honor to stand before the Senate today to pay tribute to Dr. A.G. Gaston, a fellow Alabamian, on the occasion of his receipt of the sixth Living For America Award. The fact that Dr. Gaston is the first black recipient of this award pays tribute to his efforts to bring about equality for persons of all races in Alabama and the rest of the Nation; it is also great testimony to the wisdom of those who present the annual award—the Selma-Dallas County Chamber of Commerce and the Alabama Tourism and Travel Bureau.

As a former winner of the award myself, I am deeply honored to be in the same company as Dr. Gaston, a man who has worked to build a better Alabama and a better nation for the greater part of his 94 years.

Dr. Gaston, who is a graduate of the Tuggle Institute and the recipient of 10 honorary doctorates from several prestigous colleges and universities, has engaged in a career which not only brought him marked success in the business world, but also helped bring about great social change through his work in defending civil rights and his efforts to eliminate many racial barriers in Alabama and the Nation.

Dr. Gaston's career began in 1923 with the founding of the Booker T. Washington Insurance Co. in Birmingham. With less than $500 as capital, his perseverance and entrepreneurial spirit transformed this initial investment into a business empire which now controls not only the original insurance company, but also the A.G. Gaston Home for Senior Citizens, Vulcan Realty and Investment Corp., Citizens Federal Savings Bank, the Booker T. Washington Broadcasting Co., and four other companies which he founded—a free enterprise empire valued at over $35 million. He is, in the truest sense, a great American success story.

Despite the time and energies required of the chief executive of such ventures, Dr. Gaston never lost sight of the responsibility to serve the needs of his fellow man.

There are many examples of his compassion and philanthropy. In 1966, he organized the A.G. Gaston Boys' Club, leading the way in helping to finance it by contributing the first $50,000 for the project.

His boys' club has had a dramatic impact in the city of Birmingham. Within a year after the opening of the club, the Birmingham Police Department reported a 50-percent drop in juvenile crime.

Dr. Gaston currently serves on the boards of no fewer than 26 civic organizations, associations, and commissions reflecting a broad interest. They include the Boy's Clubs of America, the United Negro College Fund, Tuskegee Institute, the National and Birmingham Urban League, and the American Legion, to name just a few.

In 1954, Dr. Gaston opened the A.G. Gaston Motel, later to play a major part in the history of the civil rights movement in the United States. When Dr. Martin Luther King, Jr., brought his protest movement to Birmingham in 1963, the A.G. Gaston Motel served as the major facility that housed and fed those leading the demonstration.

As another example of his desire to serve the members of the black community, Dr. Gaston founded the Citizens Federal Savings & Loan Association, as a means of providing a financial institution that could lend home mortgage money to blacks who could not borrow from other financial institutions.

Dr. Gaston's concern for elderly black residents of Alabama led him to found the A.G. Gaston Home for Senior Citizens. With this effort, Dr. Gaston provided a first-rate nursing home to meet the needs of the black community when there were no other similar institutions to be found.

Dr. Gaston, who has spent his life helping and encouraging others to excel, has never allowed race to become an issue in one's pursuit of any goal. Dr. Gaston was recently quoted as saying:

> You hear people say they can't make it because they're black. But it can be done. This democracy—and I don't know how long it will last—is the best thing in the world.

Dr. Gaston has set an example from which we can all learn. Dedication and effort will bring success, and will overcome all barriers, including race. His life and story inspire me, and it is my sincere hope that it will inspire generations to come.

Mr. President, I am proud that Dr. A.G. Gaston is a fellow Alabamian, and I congratulate him on this latest, well-deserved honor.

VETERANS FAST FOR LIFE

Mr. LEAHY. Mr. President, I rise to call attention to four American veterans who are fasting in protest of United States aid to the Contra rebels in Nicaragua. Two have consumed only water for 3½ weeks. The others are in their second week. They have said they will fast until they die, or until they achieve their goal of inspiring the majority of Americans who opposed this aid before the recent Senate vote to renew their efforts to stop this war. Charlie Litkey, a Catholic priest who renounced the Medal of Honor he was awarded for bravery in Vietnam to protest United States aid to the Contras, has lost 25 pounds and has developed medical problems. Brian Willson of Chelsea, VT, an Air Force captain in Vietnam, has been told by doctors that he can expect to live only 40 days without foods.

Mr. President, I came to the U.S. Senate in January 1975. I was 34 years old. Like all Americans, I had seen the debate over Vietnam, the dissention in our country and in my own State of Vermont. When I took the oath of office I made a promise to myself to do everything I could to prevent this country from repeating that tragedy.

The recent Senate vote to aid the Contras was a profound disappointment to those of us who advocate a peaceful resolution to the conflict in Nicaragua. That vote was a vote on a downpayment—a downpayment on an-

other Vietnam. The President and others who support this policy have said that this war is different—that no American men will be sent to fight in Nicaragua. We heard that in 1960. How quickly we forget.

Brian Willson, Charlie Liteky, George Mizo, and Duncan Murphy are fasting because they, more than anything else, want us never to forget the lessons of Vietnam. Three of them witnessed that tragedy with their own eyes. They saw the destruction of that country. They saw mothers and fathers holding the lifeless bodies of their children. The fourth, Duncan Murphy, a veteran of World War II, helped free the surviviors of Nazi death camps in 1945.

These brave men fought for our country because they loved and believed in it. They have each devoted years of their lives to helping veterans recover from the Vietnam war, and to helping others understand why there must never be another Vietnam. They have watched, as we all have, with growing fear as the United States has once again started down that road to war in Central America. To them it does not matter that no United States troops are dying in Nicaragua yet. Other men, women, and children are dying there.

No one should make light of the significance of this fast—that four veterans who have already risked their lives on the battlefield, are prepared to face that risk again so this generation of Americans will be spared the terrible costs of another senseless war. They spend each afternoon on the steps of the Capitol talking with people about their fast, and reading aloud from the hundreds of letters they receive each day from Americans who share their goal. I have met with these men and am convinced of their sincerity. Their commitment is an inspiration to me, as it is to many Vermonters. I admire their courage and pray that the American people will renew their resolve to turn this administration away from the road to war.

Mr. President, I ask unanimous consent that an article from the Times Argus, Barre-Montpelier, VT, entitled "Willson: Fasting Vets Are Doing Well" be printed in the RECORD.

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

WILLSON: FASTING VETS ARE DOING WELL

(By Will Lindner)

His voice was firm, clear and buoyant over the phone, just as it was a month ago when he weighed 210 pounds and lived in an apartment across from the green in Chelsea.

Today, however, as he spoke by telephone from Washington, D.C., Brian Willson, 45, was entering the 10th day of a water-only fast. His weight had dropped to 195 pounds, he said, but he felt healthy and vigorous.

With three partners, all of them combat veterans of the United States armed forces, Willson has begun a "fast for life" to protest U.S. policy in Central America.

"Everybody's well, mentally and spiritually," said Willson. "George and Charlie are getting a little tired, but when you get a thousand letters a day and 200 phone calls, it charges you up."

The four began their action on Labor Day, when they convened at the steps of the Capitol in Washington and issued a press statement describing their intention to fast, until death if necessary, in an effort to focus national attention and popular will on the issue of U.S. aid to the contra forces fighting to overthrow Nicaragua's Sandinista government.

Charles Liteky of San Francisco and George Mizo of Boston were the first to stop eating, and now are in their 24th day without food.

Willson said the four veterans—three of whom fought in Vietnam, while one, Duncan Murphy of Sulphur Springs, Ark., saw action in World War II—spend four hours each day but Sunday on the steps of the U.S. Capitol building. They convene there each day at 3 p.m., and, he said, routinely are joined by supporters, some of whom travel from far out of state to be with them. Willson mentioned visitors from Oregon, Maine and New Hampshire.

The veterans also have been visited on the Capitol steps by U.S. senators and congressmen, including Sen. Patrick J. Leahy, D-Vt., according to Willson.

"There have been three senators and three representatives," he said. "It isn't much, but it's a start."

Last weekend, Willson said, the four veterans took their case to the United Nations, where they presented a written statement of their beliefs and goals to the Mexican Ambassador to the U.N. Mexico is a leader of the Contadoran process, by which a group of Central American nations are seeking a negotiated settlement in Nicaragua.

Willson said the four held a private discussion with the ambassador, outside the presence of news personnel, during which he told them their action was the first hopeful sign he has seen of a constructive, nonmilitary role by the U.S. in the troubled region.

"He told us he was really moved, and he seemed to be," said Willson. "He said, 'We've been waiting for signs the U.S. people are going to rise up against this madness."

Willson said the ambassador told them groups from as many as eight European nations had contacted him about forming a European movement in support of the Contadoran process, which the Reagan administration has not endorsed.

The trip to New York also included a service at the Community Church in Manhattan, Willson said.

Back in Washington, the four have found a comfortable house in the city in which to live and center their fast, safely off the streets so that no legal issues arise with police. He said a Vermonter named Will Ravenscroft, who has medical skills, had joined them as a caretaker.

Willson said the four veterans continue to discuss what they would perceive to be signs their fast has succeeded and would lead them to end their starvation diet.

"What we want to see is a movement prepared to work full time to end the war," he said. "We don't want (the movement) to end when we end the fast. We're talking about a revolution of consciousness. That's hard. People don't know what that means."

What it means, Willson said, is a new vision of the U.S. not just as a country that no longer is militarily aggressive, but as one that is aggressively peaceful, that will lend its considerable weight to finding peaceful solutions to turmoil not only in Nicaragua, but in Angola and other countries where the U.S. is supporting armed domestic forces.

"If (the movement) is not going to follow through without the fast," Willson predicted, "I can tell you we're all going to go down."

TRIBUTE TO STANLEY FISHER

Mr. GLENN. Mr. President, I take great pleasure in recognizing the accomplishments of an outstanding member of the legal profession and an Ohioan, Stanley Fisher. September 26, 1986, Stanley Fisher is being sworn in as president of the Federal Bar Association. He is the first Ohio lawyer to be elected president of the Federal Bar Association in its 65-year history.

Mr. Fisher has been an active member of the Federal Bar Association for more than 30 years. He has held a number of national offices with the organization and served as president of the Cleveland Chapter of the Federal Bar Association from 1971-72.

As a practicing attorney in Cleveland, Mr. Fisher has received the first superior service award of the FBA Cleveland Chapter and has twice received distinguished service awards and commendation awards. He has served as special counsel to the attorney general of Ohio and has been an adjunct lecturer of law for the Cleveland Marshall School of Law. He is admitted to the bar in Ohio, Michigan and Florida.

During his legal career, Mr. Fisher has maintained a high level of excellence in all aspects of his life. He is deserving of the office to which he has been elected and the respect of his fellow attorneys as well as those of us who make this country's laws.

Mr. Fisher's accomplishments are deserving of recognition by the Senate. If it were possible to pass a Senate resolution in his honor it would read as follows:

To commend Stanley Fisher on becoming the president of the Federal Bar Association.

Whereas Stanley Fisher is the first Ohioan to be elected president of the Federal Bar Association in its 65-year history.

Whereas Stanley Fisher earned his law degree from the University of Michigan Law School in 1950 and his undergraduate degree from Oberlin College.

Whereas Stanley Fisher, of counsel to the Cleveland law firm of Arter & Hadden, has served as special counsel to the attorney general of the State of Ohio and as an adjunct lecturer of law for the Cleveland Marshall School of Law.

Whereas Stanley Fisher has been awarded the first superior service award of the Cleveland Chapter of the Federal Bar Association and twice received distinguished service awards and commendation awards.

Whereas Stanley Fisher is a life member of the judicial conference of the sixth circuit and has been admitted to the bar in Ohio, Michigan and Florida.

Whereas Stanley Fisher has been elected president of the Federal Bar Association at the 1985 convention in Detroit, MI. Now, Therefore, be it

Resolved by the Senate, that it is the sense of the Senate to commend Stanley Fisher on the achievement of becoming the 66th president of the Federal Bar Association and to recognize his accomplishments and the integrity with which Mr. Fisher has served the legal profession for more than 30 years.

Mr. President, I am confident that my colleagues join me in commending Stanley Fisher on this memorable day in his long and distinguished career.

SENATE RECONCILIATION PROTECTIONS FOR RETIREES

Mr. KASTEN. Mr. President, last week the Senate reaffirmed its commitment to protecting retirement benefits for the elderly of this Nation.

Once again, we approved legislation protecting the Social Security Trust Funds and benefits in a debt crisis and we guaranteed that Social Security retirees will get full COLA's, regardless of the rate of inflation.

We also extended trust fund and benefit protections to civil service, military and railroad retirees and exempted their retirement benefits, like Social Security, from future sequester.

These provisions, along with the requirement that employers continue to accrue pension benefits for those over 65 who continue working, given seniors assurance that their retirement benefits are secure and will not be jeopardized by future budget reductions.

Although the Senate approved several of these retirement protections as part of the debt limit bill, the House and Senate have not met to conference that bill yet. The overwhelming adoption of these provisions as part of reconciliation ensures that they will be considered even if the debt limit bill is scrapped, and moves them one step closer to becoming law.

We have one hurdle left to overcome before these provisions become law, however, and that is the House-Senate reconciliation conference. I urge the Senate conferees on reconciliation to retain the Senate's position on retirement protections.

The House has approved repeal of the COLA trigger as part of reconciliation, but it has overlooked many other signficant retirement protections. The House bill does not exempt civil service, military and railroad retirement COLA's from sequestration; it does not require continued pension accrual for older workers, and it offers no protections for the retirement trust funds or benefit payments in a debt crisis.

Mr. President, I want to call particular attention to the Senate provisions dealing with trust fund protections for a debt crisis. Earlier this year, I introduced legislation to keep the trust funds whole and ensure benefit payments when the Government reaches its debt ceiling. The Senate has twice adopted legislation which will accomplish that goal. The House, however, has approved another piece of legislation that would prevent benefit payments in a debt crisis, prohibiting those payments until Congress completed action on debt extension legislation.

I believe, as most of those in this body do, that we must remove Social Security as a political hostage of the debt limit. We must prevail upon the House to eliminate this unacceptable situation which haunts seniors every time we approach the debt ceiling.

Mr. SYMMS. 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.

□ 1010

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

The PRESIDING OFFICER (Mr. HATFIELD). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FEDERAL AID HIGHWAY ACT OF 1986

The PRESIDING OFFICER. The clerk will report the pending bill.

The assistant legislative clerk read as follows:

A bill (S. 2405) to authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes.

The Senate resumed consideration of the bill.

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

Mr. SYMMS. Mr. President, first, I would like to thank all of my colleagues on both sides of the aisle and the leadership of the committee on both sides of the aisle for their hard work and diligence yesterday. We made a lot of progress on the bill. Pending now is the amendment of the distinguished Senator from Mississippi. Unless there are other amendments, we may be getting close to final consideration of the highway bill.

So I announce to my colleagues that we would expect to vote on the Cochran amendment probably within the hour and they should start making preparations.

I believe the unanimous-consent agreement is 1 hour equally divided.

The PRESIDING OFFICER. The Senator is correct.

Mr. SYMMS. I yield the floor. I think the Senator from Mississippi is prepared to go forward.

AMENDMENT NO. 2890

(Purpose: To apply the Buy American provision to cement and cement clinker)

Mr. COCHRAN. Mr. President, I send an amendment to the desk and ask that it be reported.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for himself, Mr. THURMOND, Mr. MELCHER, and Mr. SPECTER, proposes an amendment numbered 2890.

Mr. COCHRAN. 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 reads as follows:

On page 56, on line 20, insert after "steel" ", cement, cement clinker,"

Mr. COCHRAN. Mr. President, on behalf of the Senator from South Carolina [Mr. THURMOND], the Senator from Montana [Mr. MELCHER] and the Senator from Pennsylvania [Mr. SPECTER], I offer this amendment to the Surface Transportation Act. The amendment seeks to include in the Buy American section the provision that had been in this highway bill as a result of congressional action in 1982. At that time, the Congress decided that it was important to provide in the highway bill that the Federal tax moneys, those in the highway trust fund collected from user fees, would be used to purchase steel, cement, and other manufactured products to be used in highway construction from American firms, products that were manufactured and produced in the United States. The Congress debated that, considered it very carefully, and included it in the highway bill.

Then, in 1984, the committees of jurisdiction took out cement but left in the bill the requirement that steel and other manufactured goods had to be purchased from American firms with money authorized to be appropriated in the Federal Aid Highway Act.

Now, what has happened and what is the problem that we are seeking to address this morning? In 1983, during the time when this provision was a part of the law that related to the purchase of cement, foreign imports coming into this country amounted to 4.2 million tons. Last year, after this amendment had been approved by the committees of jurisdiction and cement was no longer a part of the Buy American provision, imports of cement more than tripled, so that 14.5 million tons

of cement were imported into the United States last year.

The impact on the domestic industry, on American jobs, has been quite severe, Mr. President. This morning we have an opportunity to try to help correct that and to improve the opportunities for American industry, American business, American workers to compete for business in the Federal-aid highway program.

I really do not think it is too much to ask to dedicate at least a portion of the funds spent in the United States to buy cement and other products from American business men and women when those funds are tax dollars that have been collected from the American people.

I do not see any real harm in this prohibition. We are talking about only 7 percent of the total consumption of cement in a given year in the United States.

So we are not asking the Senate this morning to approve a ban on imports of cement into the United States. We are simply saying that the cement used in the Federal-Aid Highway Construction Program should be American cement, produced here in the United States. We have that provision as it relates to steel. That provision is in this bill and in the law since 1982 with respect to other manufactured products. It is time to correct the error that was made in 1984 in deleting cement from this provision.

Well, you might say: "Why put this prohibition in the law right now? Let American firms compete with the foreign producers, those who are exporting into this country."

Well, let me tell you what is happening. The foreign producers are selling their cement in the United States at below market prices. And I an not talking about just below U.S. market prices, but I am talking about below the market prices in their own countries.

Here is an example: In Spain, cement is being sold in Spain by producers there for $71.33 a ton. That same cement is being sold in New Orleans, LA for $39 a ton. In Mexico, cement being produced in Mexico for use in Mexico brings about $56 a ton there in Mexico, but, when sold in Houston, TX, that same cement is being sold for $29 a ton.

Now, that is what we are up against, Mr. President, and that is why it is important that we draw a line and say that at least in the use of Federal tax dollars we are going to insist that American producers be given a chance to sell the cement for these contracts. Unless we draw the line, we are going to see a continued erosion of this very important industry in our country.

The pattern has been set. The trend is to bring in more and more cement from overseas. The trend is to close more and more American cement production plants and more American workers are out of work as a result.

This morning we have an opportunity to speak up for those who are losing their jobs and for those who are seeing their plants closed, who are being forced to import foreign cement rather than produce American cement. This piece of legislation should not add to the problem. We have an opportunity to try to do something to improve the situation, Mr. President, and I hope the Senate will support the amendment.

I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator from Rhode Island?

Mr. SYMMS. Mr. President, who is controlling the time?

The PRESIDING OFFICER. The managers of the bill or their designees.

Mr. SYMMS. Mr. President, how much time does the Senator want?

Mr. CHAFEE. If we have a total of a half an hour, I would take 10 minutes at this time.

Mr. SYMMS. I yield 10 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 10 minutes.

Mr. CHAFEE. Mr. President, every so often a bill comes through here that is of significant importance to the future of the Nation and if the vote on that measure goes one way or another it can really affect the future of our country. In other words, even though it may not be part of a major bill, nonetheless an amendment can have very, very significant advantageous or deleterious effects on the future of our country. And this, Mr. President, is one of those that has extremely adverse effects on our future.

Mr. President, what we are talking about seems like a simple issue—the supplying of cement for our Highway Program. Now, the truth of the matter is, Mr. President, we are now buying minor amounts of cement from Mexico, but principally from Canada. So I would like to put this in terms of our Canadian relationships.

But before doing that, let us look at the situation as it exists now in our country. The fact is, Mr. President, that the U.S. production for cement is short of demand. It is not a question of foreign cement coming in and causing Americans to lose jobs. The statitics are that the United States last year consumed 85½ million tons of cement, but only is capable of producing about 80 million tons.

Thus, the result of this Buy American provision which the Senator from Mississippi is proposing would not cause an increased amount of jobs in the United States. What it would do is bring about an intense shortage of cement for necessary construction projects. And, of course, when we are talking about the flow of cement to our highways, also factored into the equation must be the supply of cement for all the rest of American projects.

And so what this means is that the cost of building our highways will be higher because the intense pressure will come on the American cement and the prices will naturally go up. We all know that. We know that in certain regions of our country, such as the Northeast, the Southeast, and the Pacific Southwest, where domestic production is insufficient to meet local demand, that, the highway builders will be put in an intensely difficult position, competing to try to get enough cement.

Now one of the questions is: "Well, why don't we just go and build more capacity? All that you have got to do is put up some more capacity and then there will be American jobs."

Well, it is not that simple. To provide more capacity takes 3 or 4 years. It is not something you can do overnight.

The fluctuating demands for cement will mitigate against the domestic producers building more capacity. They feel they have sufficient capacity. Then when the surge comes, as it were, when the demand increases, then the imports go up and when the demand slackens the imports go down and the domestic producers have the cement they need.

I would like to cite some testimony that was had on this subject.

The chairman of the Highway Committee conducted a hearing in the Subcommittee on Transportation a little over a year ago on this subject. This is the first and only time that this issue has received careful scrutiny from witnesses from the Government and the industry. The hearings supported the congressional conclusion to repeal the then existing restriction on the "buy American" provision.

In other words, it was found that the ban on imported cement would provide virtually no additional employment in the domestic cement industry.

In addition, witnesses testified that such a demand would have serious regional consequences in those areas I have pointed out, the Northeast, the Southeast, and other areas where cement is in short supply.

Since the hearing in 1984, the demand for cement has continued to outstrip the capacity of the domestic cement industry. Demand has been so great in recent years that domestic cement producers—in other words, the ones in theory this is trying to protect—have themselves been importing cement. The demand is there. Do they go out and build new plants? No. They are importing cement because they do not believe it wise to put into this ex-

tremely capital-intensive industry the dollars that are needed just to meet this elastic demand upward which, in a cyclical fashion, could go down just as rapidly.

So when we are talking about jobs, we are not talking about increasing American jobs. When we talk about helping the domestic cement industry, that is not completely accurate, as I have pointed out from the statistics and the statements.

Now I would like to talk, Mr. President, about the effect of this on our Canadian relationships.

There is a very interesting statistic that I found. The Province of Ontario does more trade with the United States than any nation in the world, except Canada. In other words, our largest trading partner is Canada. But the second largest trading partner, if you take it an entity, is the Province of Ontario.

What this legislation is doing is an anti-Canadian cement move. I think we have to recognize it as that.

We are currently in negotiations with Canada on a free trade agreement. Perhaps that will come about. These are long negotiations that are going to take considerable time.

This is absolutely going to throw a monkey wrench into those trade negotiations.

Furthermore, we found that Canada, our largest trading partner, responds, and rightfully so, when we take one of these strictly protectionist actions against that nation. We have seen if we take one action in the cedar shingles, they will take another action, a retaliatory action, justifiably so, on specialty steel. Now we come back with cement and on it goes.

Mr. President, I do not think that is the way either to build trade relationships or decent neighborly relationships with the great country to our north.

Mr. President, our negotiators through GATT, in working with the Japanese and the other nations of the world, are constantly trying to remove their so-called buy provisions. In other words, we fight against the Japanese tendency to buy Japan for the Japanese telecommunications system. We want an entry into that.

Yet, we are turning around and saying, "We are going to have a buy American provision on cement like there are on other products."

With the other products, so be it. I wish they were not there. But they are.

What this provision does is add cement to that and make it a strictly buy American procedure for our highway program.

Some might say, "Well, there is a cap. Anything less than a $500,000 project does not apply."

The trouble is there are very, very few $500,000 projects in the highway system and I think we all know that. You do not let out a contract to build an overpass, to build a section of highway, for $500,000. These projects are in the millions.

So, in effect, we are excluding from our highway program all imported cement.

Mr. President, I would like to point out one side factor of this. What we are trying to do in this Congress constantly is to give small businesses a chance to bid on these big contracts, these big governmental contracts. At least, to have a portion of them.

Any cement producer or cement supplier, a ready-mix concrete company, in this country that is supplying concrete for driveways, for houses, for county roads, whatever it might be, has a mixture of imported and domestic cement. Many of these concrete companies are really small and only have one silo.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CHAFEE. I request 4 more minutes.

Mr. SYMMS. I am happy to yield 4 additional minutes.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. What the amendment of the Senator from Mississippi is doing is excluding those concrete companies which are small and have but one silo and, therefore, are not able to set aside what is U.S. cement in one silo and what is a mixture of U.S. and imported cement in the other silo. They are barred. They cannot compete on these contracts.

Here is a letter from Consolidated Ready Mix Concrete, in Providence.

This protectionist language would not just affect highway projects. Many ready mixes have but one silo in which to store their cement. If forced to differentiate between foreign and U.S. cement many could not afford the cost of another silo or the overlapping bookkeeping complications and might be forced to discontinue the use of foreign cement for non-government projects as well and thus lose out on contracts for other competitive projects.

So, Mr. President, not only is this bad internationally, not only is this bad as far as the cost to the U.S. Government goes, it is going to increase our costs, but also it is anti small business.

Mr. President, the amendment of the Senator from Mississippi is strongly opposed by the Secretary of Transportation. I will ask that a copy of the letter from the Secretary of Transportation be printed in the RECORD at the conclusion of my remarks. It states.

We believe that the restrictions on the use of imported cement will increase the cost of Federal-aid highway construction without providing an offseting benefit to the Nation.

This is also opposed by the Secretary of Commerce.

I strongly oppose the buy America cement provision.

It is opposed by Clayton Yeutter, the U.S. Trade Representative.

Mr. President, I ask unanimous consent that copies of these letters be printed in the RECORD.

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

SECRETARY OF TRANSPORTATION,
Washington, DC, September 19, 1986.

Hon. JOHN H. CHAFEE,
U.S. Senate, Washington, DC.

DEAR SENATOR CHAFEE: You asked for the Administration's views and concerns regarding the provision in H.R. 3129 which would require that cement used in Federally funded highway and transit projects be manufactured in the United States. As a general matter, the Administration prefers that the existing "Buy America" statutory provision be repealed entirely. We find too often that protectionist measures are counterproductive, resulting in higher prices for United States industry and consumers and reduced trade opportunities for United States exporters as a result of foreign retaliation. We strenuously oppose the expansion of the current provision to include cement and clinker and believe that Congress acted wisely when cement was removed from the coverage of "Buy America" in 1982.

We believe that restrictions on the use of imported cement will increase the cost of Federal-aid highway construction without providing an offsetting benefit to the Nation. In areas heavily dependent on imported cement, suppliers would be forced to construct new storage facilities to ensure that cement used for Federal-aid highway construction could be segregated and verified as not being imported or stop purchasing imported cement altogether. Many suppliers are not likely to increase their investment and would cease purchasing imported cement. Since domestic producers are operating at, or near, capacity in many areas of the country, prices of cement would rapidly increase. Suppliers will be able to increase prices in the wake of short term constraints on supply resulting from the elimination of imports and an important source of price competition. These trade restrictions, with the resulting increase in prices, will not be limited to highway construction, but will ripple throughout the construction industry, raising prices in both the private and public construction sectors. The restrictions will lead to supply disruptions and delays in construction projects in areas where imported cement has become an essential source of supply.

Cement imports have increased substantially over the past three years (from 4.2 million tons in 1983, to 8.9 million tons in 1984, and 14.5 million tons in 1985). In large part this is in response to strong temporary demand from the construction industry. Because of the cyclical nature of the cement market, imported cement plays a critical role in the United States market. Imports moderate price increases during periods of rising demand, and fill temporary gaps between demand and domestic supply in regions of the country where the domestic industry can not economically expand production capabilities. During the past few years, because of the upswing in demand, domestic cement producers have been importing cement rather than constructing new plants whose capacity would lie vastly underused in periods of slack demand. In such slack pe-

riods, cement imports typically fall off more than proportionately and moderate the extent to which domestic producers must reduce their prices.

The capacity to produce cement domestically can expand very little in response to cyclical growth in demand and is unlikely to expand significantly in the foreseeable future. New plants are extremely expensive to build; older, less efficient plants have been closed; and several existing plants have been faced with difficult technical problems which have constrained output. Once a decision is made to build a new plant, it takes from three to five years to bring the plant into production, and it often takes longer than this to eliminate all technical problems associated with the new plant.

A study prepared for the Cement Free Trade Association in February of this year indicated that, when capacity utilization rates are adjusted for loss of effective capacity due to plant obsolescence, input material problems, or other technical difficulties, the domestic industry's productive available capacity is about 79.3 million tons. With 1985 consumption at the 87.4 million ton level, the essential need for imported cement is readily apparent.

Differences between available capacity and consumption rates are even more striking when viewed on a regional basis. The above study uses Portland Cement Association data on individual plant capacities and plant information provided by industry sources to project available capacity in each of seven regions of the United States. These calculations show estimated 1985 consumption at 109.6 percent of available capacity in the Pacific Southwest region, 131.9 percent of available capacity in the Eastern region, 149.8 percent of available capacity in the Southeastern region, 98.1 percent of available capacity in the Great Lakes-Midwestern region, 93.7 percent of available capacity in the Rocky Mountain-Northwest region, 89 percent of available capacity in the South Central region, and 87.6 percent of available capacity in the North Central region.

If Portland Cement Association capacity data for 1984 are used without making any adjustments for loss of effective capacity between 1984 and 1985, total United States capacity in 1985 was about 86 million tons, just slightly below 1985 cement consumption. A third United States capacity figure is provided by United States Bureau of Mines data which put total United States capacity at about 90 million tons, although these figures apparently include plants that are unlikely to ever come back into production. These figures seem to indicate somewhat less of a strain on available capacity on a national basis. However, Portland Cement Association data indicate that consumption is still significantly higher than available capacity in the Eastern and South eastern regions (131.9 percent and 116.2 percent), and is above 90 percent of capacity in the Rocky Mountains-Northwest region and the Pacific Southwest region.

The Federal-aid highway program used about 7.1 million tons of cement in 1985 (8.1 percent of total United States usage). If it is assumed that the share of imported cement in Federal-aid highway construction is the same as the import share for all domestic uses (16.6 percent out of a total consumption of 87.4 million tons in 1985), the Federal-aid highway programs used an estimated 1.18 million tons of imported cement in 1985.

Those advocating a ban on use of imported cement on Federal-aid projects appear to feel that such a prohibition will increase the output of domestic cement plants and increase employment opportunities for American workers. We believe that there is little likelihood that this will be significant because the cement industry is very capital intensive. The industry cannot simply add more workers to increase output when it is already operating at or near full capacity. As noted earlier, a more likely result of the import ban will be an escalation of cement prices, particularly in those regions most dependent on cement imports.

Imports of cement have played an important role in moderating price increases in areas of short supply. Eliminating this source of price competition will create new cost pressures for an important federal program and make it even more difficult to reduce the size of the federal deficit. The Department of Transportation remains vigorously opposed to legislation that restricts the use of imported cement, and other imported materials, on Federally assisted highway and transit construction projects.

Moreover, since trade restrictions often lead to counter restrictions by affected trading partners, the provision could jeopardize access by United States firms to other foreign markets, particularly Canada.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of these views to the Congress.

I hope that this information is helpful.

Sincerely,

ELIZABETH HANFORD DOLE.

SECRETARY OF COMMERCE,
Washington, DC, September 17, 1986.

Hon. JOHN H. CHAFEE,
U.S. Senate, Washington, DC.

DEAR JOHN: Thank you for your letter regarding H.R. 3129, the Surface Transportation Reauthorization bill recently passed by the House of Representatives. H.R. 3129 contains a prohibition against the use of foreign cement in federally aided highway construction.

I strongly oppose the "buy America" cement provision in H.R. 3129. Provisions such as this will not result in a net increase in American jobs. Instead, they will result in further restrictions against American exports in overseas markets. "Buy national" requirements imposed by foreign governments are already major barriers to U.S. exports, and we are working hard to eliminate them. Enactment of "buy America" requirements will make our job that much more difficult. In addition, enactment of these provisions will undermine our continuing efforts to improve and expand the General Agreement on Tariffs and Trade Government Procurement Code and negotiate a free trade area with Canada. Furthermore, imposition of new trade restrictions as we embark on a new round of multilateral trade negotiations will jeopardize our credibility in this effort.

Because domestic cement production is currently insufficient to meet U.S. demands in some markets, limitations on imports in these areas will adversely affect economic activity generally. Because of the difficulties in segregating foreign and domestically produced cement, many U.S. distributors may simply discontinue the use of foreign cement. This could exacerbate the shortage situation not only for highway projects but for non-government construction as well. In certain areas—especially the border states and the Northeast—the impact on price and supply would be severe.

The largest domestic cement producers are among the largest importers of foreign cement supplies. This is due partially to the fact that foreign sources are sometimes more readily available and less expensive, particularly in the border states. Since the domestic cement industry has not increased its capacity in recent years, we must depend on imports to meet peak demand for the product in some market areas. In Florida and New England, imports are generally needed to meet demand.

I enclose a copy of a letter which the Department has sent to Chairman Stafford regarding the cement provision, as well as two other provisions of H.R. 3129 to which we are strongly opposed: an increase in the required domestic content of certain federally financed rolling stock, and an increase in the "buy America" preferential rate for rolling stock.

I strongly urge your help in resisting any effort to include these provisions in any bill reauthorizing highway or transit programs.

Sincerely,

DOUGLAS A. RIGGS,
Acting Secretary of Commerce.

U.S. TRADE REPRESENTATIVE,
Washington, DC, September 12, 1986.

Hon. JOHN H. CHAFEE,
U.S. Senate, Washington, DC.

DEAR JOHN: Thank you for your August 28 letter and your request for the Administration's views on the effect of H.R. 3129, the Surface Transportation Assistance Act, on the use of imported cement in any federally-aided highway construction.

The Administration is strongly opposed to the proposed "buy America" cement provision in H.R. 3129 because this provision is contrary to the principles of free trade. Furthermore, it has a negative impact on the domestic cement industry itself, particularly in those regions, such as the Northeast and some border States, which rely on imports to supplement tight supplies. In some cases, the largest domestic cement producers are among the largest importers of foreign cement supplies. An estimated 70 percent of imports of cement are imported by firms that produce in the United States. Limitations on imports of cement in these areas will have an adverse impact on supply and price that could be severe.

In addition, restricting the use of foreign cement on interstate highway projects could easily result in higher highway construction costs and construction delays. Because many domestic concrete producers mix domestic and foreign cement together in their silos, they will be unable to certify the domestic content of the concrete they supply for federal highway projects. If they discontinue the use of foreign cement, shortages could develop not only for federal highway projects but for non-government construction as well. The result would adversely affect economic activity generally.

In summary, the Administration finds the provisions of H.R. 3129 to be contrary to our national interest and to the Administration's free trade principles. It will work against consumers and workers in affected industries.

Sincerely,

CLAYTON YEUTTER.

The PRESIDING OFFICER. Who yields time?

Mr. COCHRAN. I yield 3 minutes to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise as a cosponsor of the buy America amendment to the Federal Aid Highway Act of 1986. This amendment would ensure that cement firms are not affected when contracting for federally funded highway projects.

Our domestic cement industry cannot compete against foreign imported cement when foreign governments subsidize these industries. It is impossible for us to compete when their governments subsidize them.

American cement manufacturers are in direct competition with the governments of Mexico—not the individuals over there, not the companies over there, but the Governments—Mexico, Canada, Spain, Venezuela, and Colombia.

I am confident that American cement manufacturing firms can compete with foreign firms, but not foreign governments. For these firms to compete with foreign governments is unfair.

Mr. President, for too long we have neglected the concerns of our domestic manufacturers. Now is the time to stand firmly behind American businessmen.

Mr. President, this will show how they are subsidized: The same cement that sells in Spain for $71 a ton sells in New Orleans, as was brought out by the able Senator from Mississippi, for $39. In other words, they are subsidizing when they sell in this country. How can our own cement people survive when that is the case?

The same cement that sells in Mexico for $56 a ton, sells in Houston for $29 a ton.

How can the people in this country compete with that? It is simply because they are being subsidized by foreign governments.

Mr. President, I think it is about time we look after our own people first. The same principle was brought out in the textile bill. We lost 350,000 jobs in the last 5 years. Just like the textile business now going out of business, practically, being squeezed out by foreign imports, now you are going to do the same thing with cement and you will do the same thing with many other things if we do not change our trade policy.

I hope the Congress will see fit to pass this bill and tell the people of the United States, "We think of you first. You are American citizens. You are entitled to our first consideration."

If we do that, we will vote for the amendment of the able Senator from Mississippi and that will be a signal that these foreign governments cannot send goods in here and sell them when they are subsidized.

□ 1040

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. SYMMS. Mr. President, I yield 5 minutes to the distinguished chairman of the committee, Senator STAFFORD.

The PRESIDING OFFICER. The Senator from Vermont is recognized for 5 minutes.

Mr. STAFFORD. Mr. President, I must oppose the amendment offered by my distinguished colleague from Mississippi, Mr. COCHRAN. I am very concerned about proposals to extend buy-America restrictions. In terms of economics and trade policy, this is an unwise course, and I believe such restrictions do not serve highway and transit interests well either.

The buy-America provisions in the House-passed surface transportation bill, H.R. 3129, and in the amendment being offered today by my distinguished colleague greatly concern me. Both the House bill and this amendment would ban the use of imported cement for highway projects entirely. This issue has been debated repeatedly in the last several years. The Transportation Subcommittee held a hearing on this specific issue in August 1984. At that time, The U.S. Trade Representative testified that the Federal-aid highway program accounts for only 6 percent of domestic consumption of cement. He also stated that a buy-America restriction would save only about 80 jobs, and that the cost per job saved could range from $21,000 to $180,000 per job.

If this buy-America restriction is imposed on cement other countries will retaliate in kind.

I have received a letter from the Honorable Allan Gotlieb, the Canadian Ambassador on this issue. He states:

> The possibility of renewed or expanded restrictions affecting Canadian cement and rolling stock reinforces our concern over this issue. You will recall that Canada responded to the removal of restrictions on cement in March 1984 by lifting tariff surcharges applied to certain U.S. specialty steel products. The re-imposition of Buy America restrictions on cement and an increase in domestic content for rolling stock would be most unfortunate as it would reopen the tariffs issue on certain U.S. specialty steel products. It would also be regrettable for such restrictive provisions to be put forward at a time when our two Governments are engaged in the negotiation of a comprehensive bilateral trade liberalization agreement.

I ask unanimous consent that the entire letter from Ambassador Gotlieb be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. STAFFORD. Mr. President, I have also received a letter from Mr. Douglas A. Riggs, general counsel of the Department of Commerce, stating the Department's strong opposition to any further Buy America requirements. Mr. Riggs states that—

> Restricting the use of foreign cement on all Federal-aid highway and transit projects could easily result in higher construction costs and construction delays.

He continues:

> The Department is also concerned that, because domestic production is currently insufficient to meet U.S. demands in some markets, limitations on imports in these areas will adversely affect economic activity generally. Because of the difficulties in differentiating between foreign and domestically produced cement, many U.S. distributors may simply discontinue the use of foreign cement. This could exacerbate the shortage situation not only for highway projects but for non-government construction as well. In certain areas—especially the border states and the Northeast—the impact on price and supply would be severe.

I ask unanimous consent that the letter from Mr. Riggs be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. STAFFORD. Mr. President, Buy America restrictions will make highway cement work more costly and could result in fewer highway miles being built or repaired. Every producer and distributor, at a minimum, will have to construct separate facilities to keep domestic and foreign cement separated because cement is impossible to trace.

Mr. President, in conclusion, I believe that the costs generated by buy America restrictions such as those I have described far outweigh any benefits. I urge my colleagues to resist efforts to expand on buy America requirements within the Federal-aid highway and transit programs and defeat this amendment.

EXHIBIT 1

CANADIAN EMBASSY,
Washington, DC, August 1, 1986.

Hon. ROBERT T. STAFFORD,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR STAFFORD: I understand that the Senate will be considering S. 2405, the "Federal Aid Highway Act of 1986". I am very grateful for your efforts in ensuring that this Bill does not increase Buy America requirements under the Surface Transportation Assistance Act.

However, my Government is deeply concerned over certain provisions of the House version of this Bill (H.R. 3129, the "Surface Transportation and Uniform Relocation Act of 1986"). The House Bill contains an amendment which would place Buy America restrictions on cement imported from Canada and Mexico. It is not at all clear why Buy America restrictions should apply to imports from only these two countries, and especially Canada whose share of U.S. imports of cement has fallen dramatically within the last two years. It would also increase the domestic content requirement for rolling stock from the current 50 per cent to 85 per cent.

I understand that this issue may be joined in conference and I am taking this opportunity to reiterate my Government's longstanding opposition to the restrictive Buy

America provision of the Surface Transportation Assistance Act. The possibility of renewed or expanded restrictions affecting Canadian cement and rolling stock reinforces our concern over this issue. You will recall that Canada responded to the removal of restrictions on cement in March 1984 by lifting tariff surcharges applied to certain U.S. specialty steel products. The re-imposition of Buy America restrictions on cement and an increase in domestic content for rolling stock would be most unfortunate as it would reopen the tariffs issue on certain U.S. specialty steel products. It would also be regrettable for such restrictive provisions to be put forward at a time when our two Governments are engaged in the negotiation of a comprehensive bilateral trade liberalization agreement.

Thank you again for your support on this issue.

Yours sincerely,

ALLAN GOTLIEB,
Ambassador.

EXHIBIT 2

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, DC, September 17, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The purpose of this letter is to convey the strong opposition of the Department of Commerce to three provisions in H.R. 3129, the Surface Transportation Reauthorization bill recently passed by the House of Representatives. These provisions would (1) raise the required domestic content of buses and other rolling stock whose construction or assembly is funded by the Urban Mass Transportation Administration, (2) increase the "buy America" preferential rate for rolling stock, and (3) impose "buy America" requirements on cement to be used in federally funded highway projects.

Your Committee recently marked up S. 2405, the Senate version of the Surface Transportation Reauthorization legislation. In its present form, the bill does not contain these provisions. However, the House version of the legislation, H.R. 3129, does. For the following reasons, the Department of Commerce urges the Senate to oppose any efforts to add these provisions to S. 2405 and to oppose efforts by the House to include these provisions during the conference on this legislation.

DOMESTIC-CONTENT REQUIREMENTS FOR ROLLING STOCK

The domestic-content requirements for rolling stock contained in H.R. 3129 will not result in a net increase in American jobs. Instead, they will result in further restrictions against American exports in overseas markets. "Buy national" requirements imposed by foreign governments are already major barriers to U.S. exports, and we are working hard to eliminate them. Enactment of "buy America" requirements just makes our job that much more difficult.

The domestic-content requirements of H.R. 3129 would also lessen competition in the bus and subway car assembly and manufacturing industry, and provide competitive advantages to certain firms at the expense of other firms. Only one subway car assembler, and a few bus manufacturers, could meet the domestic-content requirements of H.R. 3129. Those many companies not meeting the requirements would suffer severe adverse consequences, including the loss of their investment. Over 1,000 jobs would be jeopardized, according to our estimates. There is simply no justification for this exercise in economic favoritism. Of course, diminished competition in the industry will also result in price increases, at a time when state and local transportation authorities have a particular need to use their resources wisely.

"BUY AMERICA" PREFERENTIAL RATE FOR ROLLING STOCK

The provisions increasing the "buy America" preferential rate for rolling stock constitute an unwarranted restriction on international trade. As noted above, this provision would frustrate our ongoing efforts to eliminate "buy national" requirements imposed by our trading partners. Enactment of these provisions would undermine our ongoing efforts to improve and expand the General Agreement on Tariffs and Trade (GATT) Government Procurement Code and negotiate a free trade area with Canada. Furthermore, imposition of new trade restrictions as we embark on a new round of multilateral trade negotiations would jeopardize our credibility in this effort.

"BUY AMERICA" REQUIREMENTS FOR CEMENT

The Department of Commerce also strongly opposes the "buy America" cement provision in H.R. 3129. Like those discussed above, this provision is contrary to principles of free trade. In addition, restricting the use of foreign cement on all federal-aid highway and transit projects could easily result in higher construction costs and construction delays.

The Department is also concerned that, because domestic production is currently insufficient to meet U.S. demands in some markets, limitations on imports in these areas will adversely affect economic activity generally. Because of the difficulties in differentiating between foreign and domestically produced cement, many U.S. distributors may simply discontinue the use of foreign cement. This could exacerbate the shortage situation not only for highway projects but for non-government construction as well. In certain areas—especially the border states and the Northeast—the impact on price and supply would be severe.

The largest domestic cement producers are among the largest importers of foreign cement supplies. This is due partially to the fact that foreign sources are sometimes more readily available, particularly in the border states. Since the domestic cement industry has not increased its capacity in recent years, we must depend on imports to meet peak demand for the product in some market areas. In Florida and New England, imports are generally needed to meet demand.

In conclusion, Mr. Chairman, these three provisions are contrary to our national interest and to the Administration's free-trade principles, and will work against consumers and workers in the affected industries. The Department strongly urges you and your colleagues actively to work against their inclusion in any bill reauthorizing highway or transit programs.

The Office of Management and Budget has advised that there is no objection to the submission of this letter to the Congress from the standpoint of the Administration's program.

Sincerely,

DOUGLAS A RIGGS.

The PRESIDING OFFICER. Who yields time?

Mr. SYMMS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Idaho has 12 minutes and 33 seconds. The Senator from Mississippi has 20 minutes and 16 seconds.

Mr. SYMMS. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 1 minute.

Mr. SYMMS. Mr. President, I have a great deal of regard and sympathy for the arguments that have been presented here by both the distinguished President pro tempore, Senator THURMOND, and the distinguished Senator from Mississippi, and I hear their point of view, but there is one thing we must remember. We are talking about dollars paid by U.S. taxpayers, trying to buy road construction at a best price available for them, so that we can get more highways built for the dollars that are invested in the highway system.

The Senator from South Carolina talks about subsidized cement. In the Finance Committee, we have legislation pending right now, being marked up in the committee, dealing with trade, in which four natural resource subsidies would be addressed. It appears to me that is the appropriate place to address this question.

As a citizen, if people wish to buy America, I will support it and encourage it. That is fine, if people want to do that with their own money. But when you start taking taxpayers' dollars and then imposing "Buy America" restrictions that will interfere with Canadian and other cement that comes into the country, I think it is a high-risk proposition. This is not the right way to impose trade restrictions.

If you want to talk about stopping subsidized cement, I favor that. The appropriate way to handle that problem would be with countervailing duties. But to prohibit the use of foreign-produced cement may result in a Presidential veto of the bill. I don't think any of us want that result.

Mr. President, I yield 7½ minutes to the distinguished Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 7½ minutes.

Mr. MOYNIHAN. I thank my friend, the distinguished manager of this legislation.

Mr. President, the Senator from Idaho has said that he feels that this provision would be a mistake. I should like to report to the Senate that this provision already has been tried and has been proved a mistake.

The Senate will recall that a "Buy America" provision was in the Highway Act from 1982 to 1984, so we have had an experiment. It was a particularly precise experiment in the State

of New York, which I have the honor to represent—a big State. The State's limestone formations run northwest through the Catskills, west to Buffalo, south as far as Mount Vernon, NY, and east to the Connecticut and Massachusetts borders.

We have a cement industry in New York. A broken limestone ridge runs north and south—the Lake Champlain-Hudson River geologic formation. We make cement in Glens Falls and Ravena and places like that.

All that cement makes its way down river. It is a waterborne commerce. It is bulk. The price is about $55 to $60 a ton. Anyplace where water transportation is available is a logical route for cement, and the cement in the eastern part of our State makes its way down to the metropolitan area of New York and elsewhere.

West from the Hudson, you will not get to a cement plant for 200 or 300 miles. There are some in Pennsylvania, but none really in that region, except just on the other side of Lake Ontario, where there is another limestone ridge, and where the Canadians produce perfectly good cement, which we have been trading for a century and a half.

When the Buy America Act went into effect, the price of cement in Syracuse, NY, went up $5 a ton. That is a 10-percent increase. Why? Because they could not bring the cement in the Oswego branch of the Erie Canal and across the lake. This was self-inflicted injury. It raised the cost of all related goods and services in that part of the State, for that period.

Beyond that, Mr. President, this proposal to reenact that experiment, a failed experiment, is particularly baffling and in some ways ominous.

The Portland cement industry in this country is producing at above its nominal production capacity. There is no spare capacity at all. The improbable number of 109 percent of capacity is the present level of production, and there is always a little extra. You can always squeeze a little more out of an industrial plant, and that is happening.

There is a shortage of output but no shortage of work. All that this provision would do, according to the International Trade Commission, would be to save 80 jobs, as the Senator from Vermont suggested. And the cost per job saved could be as high as $180,000.

What is the matter with our country, that we find it necessary to protect ourselves from the cement produced by our nearest neighbor and friend—commerce that has been going on for a century and a half? The elemental economics of transportation support this commerce.

Moreover, such a proposal comes at a particularly inopportune time. President Reagan and Prime Minister Mulroney have done an extraordinary thing. They have initiated major trade negotiations which are now underway.

This is the first time in 75 years this has happened. President Taft and then-Prime Minister Laurier proposed such an enterprise in 1911, and it quickly came to grief over fears from both sides of the border. It took three-quarters of a century to get back to the point where a Canadian Prime Minister was prepared to do this with an American President, and vice versa. And right in the middle of these negotiations we propose to do something like this!

What has come of the United States of America that we are threatened by cement imports? Mr. President, this is unbecoming of us. It is inefficient of us. We have no right to waste public moneys in this manner, and it is a disservice to the President of the United States to do this when Canada will have to retaliate. Our relations with a nation such as Canada are of such profound consequences in diplomatic, in military, and economic matters, how could we think of jeopardizing such a relationship?

These events are seen and heard. There is no Buy Canada cement provision out of Ottawa. Agreed, there is such a provision in the Province of Quebec, and I wish there were not, and there ought not to be. But it is unbecoming of us to do this; it is unwise; it is imprudent, it is wasteful, and it puts in jeopardy a major initiative of President Reagan, which is a freer trade relationship across the border with Canada. I hope this will not be done.

I would say once again we have tried the experiment. I can report for the State of New York that it was a great mistake. Can we not learn from our experience?

I thank the Chair.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. SYMMS. I yield to the distinguished Senator from Rhode Island 2 minutes.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 2 minutes.

Mr. CHAFEE. Mr. President, we are really playing with fire here. We are not doing anything for the domestic cement industry, as has been so clearly pointed out. The total imports from Canada amount to 4 percent of U.S. consumption. So what we are doing is, in an extreme fashion, irritating a neighbor of ours and one of the great customers we have. Listen to these statistics. Ontario is the largest single customer for American-made products in the world. In 1985, U.S. exports to Ontario were valued at $40 billion—19 percent of all U.S. exports.

Are these exports growing? We know they are declining all over the rest of the world. What is happening with Ontario? Between 1981 and 1985, U.S. exports to Ontario advanced by 51 percent, to the $40 billion. In 1985, Ontario consumers purchased 20 percent of all U.S.-manufactured exports. That is where we are trying to do some good in our sales abroad, with manufactured exports. Twenty percent of all of them went to Ontario; never mind how many went to the balance of Canada. But this is the principal province we are dealing with. We are saying to Canada, "No, we are not even going to let you sell 4 percent of our total cement supply in the United States."

Mr. President, I plead with my colleague to reject this amendment because of the dangers it imposes on the United States. Now, I would say that if this amendment should be adopted, we have word from the Office of Management and Budget that they would recommend a veto to the President of the United States. Certainly, with all of the work we have done in this highway bill, we do not want to have it endangered by a measure such as this.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. SYMMS. Mr. President, I yield to the distinguished Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for not to exceed 1 minute 9 seconds.

Mr. CHAFEE. Mr. President, I ask unanimous consent that two letters and a telegram that I have be printed in the RECORD.

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

CONSOLIDATED
READY MIXED CONCRETE,
East Providence, RI, August 18, 1986.

Hon. JOHN H. CHAFEE,
U.S. Senate, Senate Dirksen Office Building, Washington, DC.

DEAR SENATOR CHAFEE. As a cement ready-mixer from your state, I am writing to express my strong opposition to a Buy America cement proposal in the House highway reauthorization bill (H.R. 3129). A similar bill (S. 2405) will be addressed on the Senate floor in the near future. Your continued strong opposition to the Buy America cement provision is vital to the health of my business.

I know you are aware of the adverse implications of such a ban on U.S. trade relations and on U.S. compliance with standard international trading practices (GATT). This proposal would also be very damaging to the U.S. domestic economy. Every small business person needs as many alternate sources of supply as possible. For a variety of reasons, many U.S. cement producers have abandoned markets in the Northeast and along the U.S./Canadian border. Thus, because of prohibitive transportation costs, many ready-mix companies have no real alternative to Canadian or other foreign cement.

If foreign cement were banned from use in federal highway projects, many of us would either face shortages or severe price disad-

vantages because of the cost of transporting cement over long distances. In any event, the result would be higher prices, economic disruptions and inflation in construction costs. This would mean less highway miles for the same amount of money.

This protectionist language would not just affect highway projects. Many ready-mixers have only one silo in which to store their cement. If forced to differentiate between foreign and U.S. cement, many could not afford the cost of another silo, or the overwhelming bookkeeping complications, and might be forced to discontinue use of foreign cement for non-government construction projects as well. In summary, such a ban would adversely affect Rhode Island, the entire domestic economy, and my small business.

You are a member of the Senate Environment and Public Works Committee that has jurisdiction over the Surface Transportation Assistance Act (STAA) to which the House has attached this provision. I appreciate your excellent efforts in the past and urge you to keep this proposal or any similar proposal out of the Senate bill.

Sincerely,

GEORGE PESCE,
Vice President.

FIORE READY-MIX CO., INC.,
Peace Dale, RI, August 25, 1986.

Hon. JOHN CHAFEE,
U.S. Senate, Washington, DC.

DEAR SENATOR CHAFEE: As a cement ready-mixer from your state, I am writing to urge you to oppose any attempt to insert a Buy America cement provision in S. 2405, the highway bill reauthorization. The highway bill reauthorization would restrict the use of foreign cement in any federal highway project.

Buy America does not take into account the unique makeup of the cement industry. For one thing, domestic producers cannot meet consumer demand. Plants were not upgraded and expansion was curtailed to such a degree in the 1970's that now, in the 1980's, foreign cement is an invaluable, irreplaceable product to ready-mixers. This is especially true in the Northeast and along the U.S. Canadian border. If foreign cement were banned from use in federal highway projects, many of us would face shortages and severe price increases because of the cost of transporting cement over long distances. We would either have to stop bidding on projects or build costly cement silos to differentiate between foreign and domestic cement. This, in turn, could lead to discontinuation of the use of any foreign cement and thus create domestic cement monopolies. In any event, the result would be economic disruptions and inflation in construction costs. This would mean less highway miles for the same amount of money.

The ready-mix people of our state will greatly appreciate your efforts to defeat any such provisions on the Senate floor.

Sincerely,

ROLAND FIORE, Jr.,
President.

[Telegram]

INDEPENDENT CEMENT CORP.,
Providence, RI.

Senator JOHN CHAFEE,
Capitol One, DC.

We urgently need your strong opposition to any Buy America cement provision in the reauthorization of the Surface Transportation Assistance Act (S. 2405). Domestic cement producers cannot meet cement demands. This legislation would be devastating to the construction and transportation industries in Rhode Island that depend on foreign supplements.

WILLIAM A. BAUGH.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from Mississippi.

Mr. COCHRAN. Mr. President, may I inquire about the time remaining for each side on this amendment?

The PRESIDING OFFICER. The Senator from Mississippi as the proponent of the amendment has 20 minutes and 4 seconds. The Senator from Idaho has 54 seconds.

Mr. COCHRAN. I thank the Chair.

Mr. President, I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, I appreciate the concerns expressed by those who have spoken in opposition to the amendment. It is certainly not the intention of this Senator to urge the Senate to agree to an amendment which would be targeted toward any of our friends in other countries or our neighbors or that would affect their economies or their ability to sell products and compete in our market in the United States. That is not what the amendment seeks to do. I am convinced that is not the effect of the amendment. We are talking about only 7 percent of the total cement sales in the United States, which would be restricted to American firms—only 7 percent. So, if, as the Senator from Rhode Island urges, our friends in Canada are selling and claiming a market share here of about 4 percent of total consumption, then the impact on that producing country would not be very great.

Let me say that Canada has about 23 percent of the share of the total import cement market. Spain has about the same share. Other countries—Mexico, Venezuela, Colombia—are also selling in this market. There are new countries competing now—Korea, and Greece are examples. Others are getting involved too. Everybody is getting on the act because it is a huge market. It offers tremendous potential, particularly for those countries that are getting started in the business of exporting cement. That which cannot be sold in their own country is being shipped here and dumped into this market at prices below the cost of production.

I used as examples the prices that are being charged by Mexico and Spain for their cement when it is shipped into the United States as compared with the prices of the same cement that is being sold in their countries—it's less than half the price here in the United States. That is the kind of competition that is hurting our industry and is going to erode the entire industry. We are writing a blueprint for the demise of the U.S. cement industry.

□ 1100

Some say "Well, it doesn't mean that many jobs." Twenty-six thousand jobs is what it means. It means an underlying business that has been a very important part of our Nation's economy.

I wonder what the pressures are that have caused us to treat this industry different from our other industries under this Federal highway program.

It is very interesting, Mr. President, that when the Buy American provision was written into the bill in 1982 it included steel, cement, and other manufactured products. Then cement was taken out in 1984 by the committee.

This is an effort to simply put that back in the bill and require that cement be treated as other manufactured products in the United States.

You would think we were asking people here today to vote to bankrupt the Nation or destroy our trade relations with all our friends around the world. They can still come in and sell their cement in the market and compete with our firms as they have been doing in the past. They now have about a 17-percent share of our market. Foreign producers do.

What is alarming is the rate at which that is increasing. The rate of growth of the foreign share of the American market is alarming, and that is why we are debating this today, Mr. President.

Are we going to just sit back and just observe this and say to the cement industry "I am sorry." We are going to do something about insisting that our steel be used in Federal aid highway projects, we are going to require that other manufactured products be obtained from American firms in our Federal aid highway projects, but not cement. We are going to write them off. We are going to give that to all of our foreign friends and let them sell in our market, destroy our indigenous cement industry, and let the foreigners have it.

I just do not think that ought to be our national policy, Mr. President, and that is why the issue is before the Senate today.

I think jobs and American workers are more important than that and our attitude ought to be that we recognize that we have a responsibility to our own industries, not to protect them from foreign competition in every respect but where U.S. highway tax dollars are used for Federal construction projects, the goods, the ingredients that go into making up that project ought to be American products. That is all we are saying here.

Let me also respond to the suggestion by our friends who spoke in oppo-

sition to the amendment that the impact on the highway program would be devastating in terms of costs. I think that is an over-statement, and it is just not reflected in the facts, as I understand them, Mr. President.

If we assume that the adoption of this amendment would increase the price of cement that goes into Federal aid projects by $10 a ton, which we do not concede, the impact would be less than one-hundredth of 1 percent in terms of the total cost of all the projects that would be authorized in this bill. We are not talking about imposing any unusual expense on our Federal Aid Highway Program. The cost would be negligible, Mr. President, and that is a fact.

We are just suggesting that we ought not to single out one of our industries and treat it differently from the way we treat steel and the manufacturers of other products that are used in the highway program. That is all we are asking.

This is a surface transportation act that means a great deal to the transportation resources of our country, It is a very important program. We call it the national defense highway trust fund that we use to pay for these projects. It is my hope that we will recognize our indigenous industries as a part of the economic strength of our country that permits us to be able to defend ourselves, or have something to defend.

I am worried that we are going to see our trade deficit become worse if we do not start taking corrective action.

This is one small step, one thing we can do today which will help restore a better trade balance. It is not going to turn around the entire industry but it is going to at least show American workers and businessmen and women who are involved in the American cement industry that we are not just going to trade them off. We talk about negotiations with our friends around the world on matters of trade.

Here is where we have cashed in too early. We have traded in all of our chips in advance of the negotiations with Canada. We have taken out, unilaterally, the provision that relates to cement and said we give in on that before we even start the talks. I think that is a very bad mistake, Mr. President, and we should not support that kind of policy here in the Senate today.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. KASTEN). Who yields time?

BUY AMERICA, CEMENT

Mr. DECONCINI. Mr. President, cement imports have been rising dramatically over the last several years. My State, Arizona, has been one of the importers' primary targets. Imports in Arizona accounted for 17.3 percent of the Arizona market for the first half of 1986. The trend line is continuing upward.

By far the largest share of these imports comes from new plants and expansions in Mexico that have come on line within the last 5 years. Though they are some distance from the Arizona markets—U.S. plants would find it difficult to ship their cement the same distance and remain competitive—these plants have large capacities that will not be fully utilized by the internal Mexican construction market. That can only mean continued import penetration into Arizona and the border States.

We are sympathetic to the needs of our neighbors in Mexico for trade with the United States in order to work their way out of the current Mexican economic troubles. But for jobs, investment, and competitiveness in Arizona, the consequences of the foreign cement incursion are disastrous. We have modern, state-of-the-art cement plants in Arizona, but they require continuous reinvestment to maintain their productivity and efficiency. We have a growing construction market that needs new production capacity for cement, but this takes large, long-term capital investments to build new facilities or reopen mothballed plants. This kind of investment in the future is not occurring now in the Arizona cement industry, and the reason for it is imports.

It is important to add that these imports are unfairly traded. The Commerce Department has found that Mexican cement imports are subsidized by several Mexican Government programs. In addition, as the Senate is well aware, there is a fierce debate in the courts and agencies, as well as in Congress, over whether the cheap fuel and energy supplied to the Mexican cement makers constitutes a countervailable subsidy. In the only two dumping cases brought so far against foreign cement, the dumping margins found by Commerce were massive—from 45 to 136 percent. These are accounts in the international trade press that more dumping cases are on the way.

In the Southwestern States, we have seen a number of U.S. cement kilns shutdown in the last year or 2, with the U.S. cement companies, themselves, forced to import in order to compete. Make no mistake about it: This is a highly distasteful step for the American manufacturers. They do not aspire to be a sales network for foreign cement producers. They want to keep their plants running, to replace old plants with new ones, and to expand their capacity. But with foreign cement flowing in from nearly a dozen countries, they do not have much choice.

One thing seems clear in this situation: We did not enact the 1982 gas tax increase in order to transfer dollars from the taxpayers to foreign cement producers. Using Federal highway funds for foreign cement is bad for our foreign trade deficit, bad for the competitiveness of the U.S. cement industry, bad for new investment, and bad for jobs in Arizona and elsewhere. For these reasons, I urge my colleagues to support reimposition of a Buy American provision in the aid-to-highways authorization bill.

Mr. KASTEN. Mr. President, I rise to express my regret that I cannot support the amendment offered by my friend from Mississippi, Senator COCHRAN.

As my colleagues know, I have long advocated a stronger American trade policy that seeks to make our system more fair. Unfortunately, this particular amendment falls short of that goal, and I must oppose this amendment in its current form.

This amendment is harmful to the group it is supposed to help the most—the cement manufacturers. It assumes that American cement manufacturers are being forced to close down their doors because of a glut of imported cement from Canada and Mexico. The truth is, that in every State except for Mississippi, domestic cement manufacturers rely on both imported cement and cement produced in their own facilities. Without the imports, the cement manufacturers would be unable to keep up with the demand, and thus, some jobs would almost surely be lost. I have heard from many cement manufacturers in Wisconsin, and although some are for the language of this amendment, it is clear that a great many more people are opposed.

Not only will this amendment clearly hurt most cement manufacturers in Wisconsin, it will also hurt ports like those in Green Bay and Duluth-Superior which import some of the greatly needed foreign-made cement.

For these reasons, Mr. President, I must oppose this amendment.

Mr. BAUCUS. There are times when frustration comes very close to overtaking commonsense.

Our commonsense tells us that Buy America provisions are the classic example of shooting ourselves in the foot.

They distort trade flows, create economic inefficiencies and generally result in higher prices. They cause trade to shrink, and that means lost jobs. They invite retaliation.

Even so, it's tempting to consider Buy America provisions when you reach the last straw, and, frankly, Mr. President, I came very close to reaching that point in the case of a small Montana cement company.

In June, this particular Montana company was low bidder on a tender to supply 12,000 tons of cement for a strip of highway in Alberta.

They offered the highest quality product at the lowest price. But did they get the contract? No, Mr. President, they did not.

After behind-the scenes maneuvering, the Alberta authorities decided not to buy American cement and awarded the contract to a Canadian company.

That wasn't the end. Things took a turn for the worse when specifications in tenders let by the Alberta provincial government indicated that a fairly tough Buy Canada policy was in effect.

I was ready then, Mr. President, to argue for reciprocity, and ready to propose a limited Buy America provision to convince Alberta to mend its ways.

But I knew that that was the "last-straw" option. The Montana company agreed with me that that's not the way to promote trade or economic growth.

We worked with the Alberta Government, and the Canadian Government in Ottawa. We worked with the Canadian cement companies to get this thing resolved.

I'm pleased to report that we've been successful. That problem was resolved—by negotiation and by good faith efforts on all sides.

The Montana company was told officially by the Alberta Government that they will henceforth be placed on the list of approved bidders for future projects.

This means they'll have a chance to compete on equal terms with other contenders. This means they'll have a chance to benefit from trade.

I'm convinced, Mr. President, that that's the way to go, not Buy America provisions.

We've preserved trade relations, kept open the possibility of growth through trade and solved our problem.

A vote for this Buy America provision would undo all of these good efforts. It would guarantee that this Montana company would once again be shutout of the Alberta market.

But the damage would not be limited to Alberta. This provision would invite Canada and all of our trading partners to retaliate by erecting their own Buy Whatever provisions.

Make no mistake, Mr. President. If it turns out that Alberta is not making good on its promises, I will revisit the Buy America question.

Until then, I'm convinced that that's not the way to go, and that's why I'm voting against this amendment.

Mr. SYMMS. Mr. President, I yield myself 24 seconds.

Mr. President, I just bring to the attention of my colleagues a letter from Jim Miller, the Director of the Office of Management and Budget of the Executive Office of the President. Mr. Miller indicates that the senior advisers to the President would recommend a veto if this "Buy America" proposal is adopted.

I hope my colleagues will support a motion to table when it is offered.

I yield the remaining 30 seconds to the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I just point out that as far as the Canadian imports go, in 1980 they were 3.4 percent; in 1983 they dipped to 3 percent; in 1985 they are at 4 percent.

So there is not a surge of Canadian imports into the United States, exports to the United States of Canadian cement.

If we adopt this amendment we threaten American coal sales, American computer sales, aircraft sales, tractor sales, chemical product sales, scientific equipment sales. It will be extremely damaging to American imports and to our balance of trade.

Mr. COCHRAN. Mr. President, I have been asked by the Senator from Pennsylvania [Mr. SPECTER] to indicate that he does not wish to be listed as a cosponsor of the bill.

Mr. President, let me say, in conclusion, and I intend to yield back the remainder of my time—I assume all time has been consumed by the opponents of the bill—there was a reference made to the impact on small businessmen and those who have small firms.

This amendment does not treat cement producers any different from producers of any other manufactured goods or producers of steel. It puts them all on the same footing. There is no distinguishing between large subcontracts or small subcontracts.

This provision is described in the bill as any project whose total costs exceed $500,000. That does not mean that you have to sell $500,000 worth of cement in a project to come under the terms of this provision.

Also, most firms who do sell cement for inclusion in Federal aid highway projects have more than one silo, more than one bin for the storage of cement.

So, I think the facts indicate that this does not adversely affect any small business; that the preference for small business is not going to be affected by this amendment.

I yield back the remainder of my time.

Mr. SYMMS. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from James C. Miller III, Director of the Office of Management and Budget.

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, DC.

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

DEAR BOB: I am writing to convey the Administration's strong opposition to a "Buy America" amendment to be offered by Senator Cochran to S. 2405, the Federal Aid Highway Act of 1986.

We understand that the amendment would prohibit purchases of foreign materials for Federally-funded highway projects. Such a provision would add millions of dollars to the cost of highway projects; cause substantial construction delays (because of insufficient domestic cement production); and invite foreign retaliation against U.S. exports. The Office of the U.S. Trade Representative advises that restraints on cement imports would almost certainly result in Canadian retaliation against U.S. specialty steel exports.

The proposed amendment is clearly contrary to our national interest. If adopted by the Senate and subsequently included in the final version of this legislation, it would result in the President's senior advisors recommending disapproval of the bill.

Sincerely yours,

JAMES C. MILLER III,
Director.

Mr. EVANS. Mr. President, I rise to speak in opposition to the Cochran amendment. This is one more Buy-American amendment to add to our already large number of such requirements on Government procurement. They raise unnecessarily the price of materials which the Federal Government procure, thus raising the eventual costs to American taxpayers. Furthermore, such a Buy American provision by itself doesn't improve the competitiveness of the domestic cement industry.

It is true that cement imports have been rising over the past several years to a level of 14.5 million tons in 1985, which amounts to about 16 percent of total consumption. Much of this increase in demand, however, is due to the cyclical nature of the construction industry. Since cement manufacturing is a capital-intensive industry, a rapid increase in domestic demand can't be met quickly by domestic producers. Data from the Cement Free Trade Association indicates that domestic producers haven't had sufficient capacity to meet increasing demand recently. This is especially true for certain regions of the country, such as the Eastern and Southeastern regions. Demand is running about even to available capacity in my region of the country, also, the Rocky Mountain-Northwest region.

Hence imports play an important role in moderating the troughs and peaks of demand and price in the U.S. market. From a supply standpoint, imported cement is critical in some projects to meet constuction schedules and cost objectives. Without the ability to import cement, Federal projects would be subject to artificial restraints on supply and higher costs. The data available for 1985 clearly support this point: consumption was 87.4 million tons, while the domestic industry's productive available capacity was about 79.3 million tons.

Indeed, the main effect of the Cochran amendment to require the purchase of U.S.-manufactured cement would be to raise prices in our markets. Construction projects already planned or underway could not be stopped suddenly; demand would exceed the available supply; and cement prices would increase as a result. Price increases, in fact, appear to be the ultimate objective of many domestic industries that are competing head-on with imports in our market. The domestic cement industry isn't unusual in this regard. Yet I don't think a price increase for one industry is what the Senate should be advocating on this important highway authorization bill.

Mr. President, this amendment is misguided and untimely from a trade policy standpoint, also. The administration has just concluded a successful round of ministerial talks at Punta del Este for the beginning of a new GATT round. The overall objective of this new round is to liberalize trade flows and eliminate trade-restrictive measures such as Buy-American laws. The adoption of this amendment would directly contradict this objective, which would send the wrong message to other contracting parties of the GATT.

Furthermore, this amendment is aimed in particular to restrict cement imports from Canada and Mexico. Mexico has just joined the GATT and will be obligated to eliminate many domestic laws and regulations which are illegal under the GATT. Furthermore, the administration is embarking on a comprehensive round of negotiations with Canada to reduce restrictions on trade flows and create a free trade area between our two countries. This provision flies in the face of these positive trends in both Mexico and Canada. Finally, I should mention that the administration is attempting to expand the scope of the GATT Government Procurement Code to the transportation sector. The enactment of unilateral legislation such as this Buy-American amendment will undoubtedly detract from our efforts to persuade other countries to reduce their trade barriers and sign such a code.

In conclusion, Mr. President, this Buy-American provision for cement should be decisively rejected. The adoption of this amendment would raise prices for the Federal Government and the American taxpayer in our highway projects. Cement imports aren't injuring our domestic industry to the extent that requires this sort of drastic relief. Other trade remedies are available to the domestic cement industry if it proves before the ITC and other Government bodies that it is being injured by imports or that exports are being subsidized. That is the proper route for this industry to follow—not a Buy-American amendment attached to the highway bill. I urge the Senate to defeat this amendment.

Mr. SYMMS. Mr. President, I move to table the amendment and 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 Idaho to lay on the table the amendment of the Senator from Mississippi.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. MATSUNAGA] is necessarily absent.

I also announce that the Senator from Ohio [Mr. METZENBAUM] is absent because of illness in the family.

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

The result was announced—yeas 56, nays 41, as follows:

[Rollcall Vote No. 285 Leg.]

YEAS—56

Andrews	Gorton	Moynihan
Armstrong	Gramm	Nunn
Baucus	Hart	Packwood
Bentsen	Hatch	Pell
Bingaman	Hatfield	Proxmire
Boschwitz	Hawkins	Quayle
Bradley	Hecht	Rockefeller
Burdick	Humphrey	Roth
Chafee	Inouye	Rudman
Chiles	Johnston	Simon
Cranston	Kassebaum	Stafford
Danforth	Kasten	Symms
Dodd	Kerry	Trible
Dole	Lautenberg	Wallop
Durenberger	Laxalt	Warner
Evans	Leahy	Weicker
Exon	Lugar	Wilson
Goldwater	Mathias	Zorinsky
Gore	McClure	

NAYS—41

Abdnor	Ford	Mitchell
Biden	Glenn	Murkowski
Boren	Grassley	Nickles
Broyhill	Harkin	Pressler
Bumpers	Heflin	Pryor
Byrd	Heinz	Riegle
Cochran	Helms	Sarbanes
Cohen	Hollings	Sasser
D'Amato	Kennedy	Simpson
DeConcini	Levin	Specter
Denton	Long	Stennis
Dixon	Mattingly	Stevens
Domenici	McConnell	Thurmond
Eagleton	Melcher	

NOT VOTING—3

Garn	Matsunaga	Metzenbaum

So the motion to lay on the table Amendment No. 2890 was agreed to.

□ 1130

Mr. COCHRAN. I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. CHAFEE. Mr. President, it has come to my attention recently that there has been a flurry of activity in the other body to try and force the administration to expand the application of the Cargo Preference Act beyond its current applicability to the highway program.

The Cargo Preference Act has historically been applied by the Federal Highway Administration [FHWA] to foreign shipments of construction materials brought to a project site, which result from purchases made by contractors or subcontractors after a Federal-aid highway contract had been let. Conversely, foreign items delivered to U.S. suppliers as part of a normal business transaction that subsequently are purchased by a Federal-aid contractor or subcontractor are not covered by cargo preference.

I view this interpretation of the Cargo Preference Act to be correct, and view attempts by some to expand its coverage as a thinly veiled effort to expand Buy America coverage to cement in a backdoor manner.

It has been suggested that cargo preference be expanded to trace shipments of all components of manufactured materials used in highway construction, such as the crude oil used to manufacture asphalt and clinker used to manufacture cement. Expansion has also been proposed to trace shipments of a suppliers' inventory which may be sold to any customers, including highway contractors. Lastly, it has been suggested that shipments be traced to materials purchased prior to a Federal-aid contract in the normal course of business.

Such expansion interferes with private commercial transactions between vendors and manufacturers. It also gives a retroactive application to cargo preference. Clearly such expanded application is not consistent with the language of the Cargo Preference Act and was never intended by Congress.

Moreover, such an expansion would impose an undue hardship and business disruption not only on highway construction contractors but on private businesses as well. The FHWA and the States are not administratively geared to manage such an enormous expansion, which would require the tracing of all components to assure any foreign articles were transported on U.S. vessels regardless of when they were shipped.

Mr. President, I fail to see how such burdens could be legally imposed on private enterprise or the States and find it astounding that such expansion is being given serious consideration. Such recommendations are far beyond the scope and responsibilities of build-

ing our Nation's highways in an effective, efficient, and economical manner.

Mr. SYMMS. Mr. President, let me announce to my colleagues that we are nearing what I believe will be completion of this legislation. The distinguished Senator from Pennsylvania [Mr. SPECTER] has an amendment dealing with budgetary ceilings. I might just inquire of the Senator from Pennsylvania, how much time he needs?

Mr. SPECTER. Mr. President, I anticipate not more than 15 minutes. I propose to offer two amendments, one which I understand is subject to objection on which I shall not appeal the ruling of the Chair. I have a second amendment on the outyears where I expect to be able to present my arguments in the course of 10 minutes.

Mr. SYMMS. We can do what the leader wishes, but I would suggest that we go ahead with the amendment and dispose of it.

I might also say we think we are entering an agreement with respect to the South Africa amendment that Senator MOYNIHAN and I have been working on. We shall try to leave that until last. The Senator from Washington [Mr. GORTON] has an amendment which we shall take up right after the amendments of the Senator from Pennsylvania.

Mr. DOLE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will come to order.

Mr. DOLE. Mr. President, there will be a rollcall vote on passage of this legislation. I am hopeful we can be on passage between now and 12:30.

Following disposition of this legislation, we shall move to the intelligence authorization bill. We believe we can reach a time agreement of 2 hours. If not, we can just bring it up.

Following that, we hope to bring up the CFTC bill, the Commodity Futures Trading Corporation. As far as I know, that can be disposed of in a couple of hours.

Then if we can reach some agreement on FIFRA—Federal insecticide, fungicide, rodenticide. In any event, that will be after that.

There is a possibility we might not be in late this evening if we can take care of those three items. I do not know of anything else that might be ready today. If I have additional information, I shall convey it to the distinguished minority leader.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

AMENDMENT NO. 2891

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 2891.

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

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

The amendment is as follows:

On page 62, strike out lines 20 through 23, and insert in lieu thereof the following:

(1) $14,200,000,000 for fiscal year 1987;

(2) $14,200,000,000 for fiscal year 1988;

(3) $14,200,000,000 for fiscal year 1989; and

(4) $14,200,000,000 for fiscal year 1990.

Mr. SPECTER. Mr. President, this amendment would authorize increased funding for much-needed highway projects across the country without raising taxes. This amendment would accomplish this important purpose by drawing down approximately $10 billion of the unobligated balance that currently exists in the highway trust fund in order to prevent the even greater buildup of unobligated funds that would occur without this action.

Earlier this year, I introduced identical legislation in S. 2581. At that time, I advised the managers of this bill that I intended to pursue this issue when the highway bill came up.

The cause for this buildup of a highway trust fund reserve and a partial cause of the shortfall in Federal highway dollars to the States is that the States are not allowed to obligate at a rate that equals their apportionment. My home State of Pennsylvania is an example of this. Pennsylvania's federally mandated obligation ceiling versus its apportionment was only 93 cents on the dollar in 1985 and is 84 cents on the dollar in 1986. My State now reportedly has a $460 million unobligated balance because of these low mandated obligation ceilings.

Stated simply, Pennsylvania cannot obtain the funds which it should have under action taken by Congress. Pennsylvania reportedly now could use some $460 million in the unobligated balance because of these low mandated obligated ceilings. I emphasize that these are funds which Congress says should be spent but they have not been spent, notwithstanding the fact that they exist in the trust fund, because of the applicable law which would be remedied by this amendment. My amendment would set obligation ceilings at $14.2 billion per year for fiscal years 1987 through 1990, rather than the $12.35 billion recommended by the committee. This would reduce the unused surplus in the trust fund to $3.5 billion by 1990, a sufficient reserve against unexpected obligations or revenue variances and consistent with sound financial practices.

The present $10 billion reserve is unreasonable and wasteful at a time when our Interstate Highway System remains unfinished and in disrepair. The Nation has invested more than $110 billion in the interstate system which is now 86-percent complete. It is unconscionable to allow the system to degenerate due to a lack of adequate dollar allocations when these moneys are present, have been set aside, and have been paid for by highway users. Some 1,416 miles of our Nation's interstate highways are closed to the public because sufficient funds to finish their completion have not been made available.

My home State of Pennsylvania is illustrative of the runaway problem of disrepair which has struck our Nation's system of highways. The State estimates a requirement of $1.4 billion for interstate restoration between now and 1990. Given current funding projections, Pennsylvania could only mount $500 million against this shortfall.

Mr. President, I emphasize that the money is there, it has been paid for by the highway users, but it simply is not being spent because of bookkeeping procedures in the Federal Government.

For example, Interstate 80, which is a vital link between the eastern and western halves of the State, requires $50 million per year to finance important reconstruction, but receives only $15 million per year through the regular apportionment of Federal funds for interstate restoration. My amendment would help increase expenditures to remedy the needs of I-80 and of many other similar highways throughout the Nation. All States would be beneficiaries if this amendment is passed.

□ 1140

I would add only one other point, and that is that the use of the Federal highway funds for the highways would be a very important factor in increasing the use of steel in this country—another issue of great importance to Pennsylvania, where we have massive unemployment in the steel mills. It would also create jobs in areas other than steel. A study by the Pennsylvania Economy League found that every $1 million spent on highway construction supports a total of 104 on site and indirect jobs. This amendment would provide for an additional 187,000 jobs of various types nationwide and 8,500 jobs in Pennsylvania annually. Increasing the obligation ceiling will result in approximately 121 tons of steel being produced for every $1 million spent on highway construction, which would amount to approximately 200,000 additional tons of steel.

Mr. President, I do not call for the use of steel simply to make jobs but I call for the use of steel because it is necessary for the Nation's highway system, and, again, I emphasize with

funds which have been paid for by highway users out of the gasoline tax.

Mr. President, I yield the floor at this time.

Mr. SYMMS. Mr. President, I rise in support of the amendment offered by my colleague from Pennsylvania, Senator SPECTER. This amendment would raise the obligation limitation in S. 2405 to $14.2 billion annually for fiscal year 1987 to fiscal year 1990. The obligation limitation established by the Environment and Public Works Committee is $12.35 billion per year, so the Specter amendment would increase the annual spending authority in this bill by $1.85 billion. If we adopt the amendment, total spending authority, including categories outside the obligation ceiling, will be approximately $15 billion per year.

The highway trust fund can easily support this level of spending over the next 4 years. The Congressional Budget Office estimates that an annual obligation limitation of $14.2 billion, combined with annual authorizations of $13.1 billion—as already provided in the bill—will leave in the highway account of the trust fund an end-of-year cash balance of approximately $3.57 billion in fiscal year 1990, if we take the Specter amendment. That figure compares favorably with the $9-plus billion currently sitting in the highway account and the $9-plus billion CBO estimates would still be sitting there by the end of fiscal year 1990 under spending levels approved by the committee.

Mr. President, when Congress passed the Surface Transportation Assistance Act of 1982, we approved a significant increase in the Federal excise tax on motor fuels in order to stop the rapid deterioration of our transportation infrastructure. We made a promise to American highway users that if they would accept the higher fuel taxes, we would spend those increased revenues on badly needed highway and bridge projects around the country.

Subsequent to passage of the 1982 act, authorizations in the highway program did increase significantly, but Congress has used a budgeting tool—the obligation limitation—to limit the amount of those authorizations that the States can actually spend. As a result, total spending in the highway program has been held well below the amounts authorized and the cash balance in the highway trust fund has grown to the current $9-plus billion level.

Mr. President, I think it is time to renew our commitment to American highway users by adopting the Specter amendment and, thereby, drawing down the balance in the highway trust fund. Let us come clean in this budgetary process. Let us admit to our constituents that we have used that $9 billion trust fund balance to help make the deficit picture look a little better than it really is. Let us admit that spending in the highway program does not and cannot contribute to the Federal deficit because revenues to the highway trust fund are paid in advance by highway users and can be spent only on highways and bridges. Let us put some "trust" back in this trust fund.

I want my colleagues to know that it is not just the Senator from Pennsylvania and the chairman of the Transportation Subcommittee who believe we ought to stop playing this budget game in which we break our commitment to users who contribute to the highway trust fund and other Federal trust funds. An August 25 Wall Street Journal article cites recent remarks by Don Regan saying he believes the President's next major policy initiative will be a budget-overhaul package in which trust funds would be removed from the Federal budget. Mr. Regan specifically mentions "the commingling of trust funds with ordinary expenses" as one of the "many things [we do] at the Federal level that would be considered dishonest and illegal if done in the private sector." Mr. President, I look forward to reviewing that budget-overhaul package, and I ask unanimous consent that the Wall Street Journal article to which I've referred be printed in the RECORD following my remarks.

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

(See Exhibit 1).

Mr. SYMMS. Again, Mr. President, I urge the adoption of the Specter amendment. Even with spending authority of $15 billion per year, the highway program will still be grossly underfunded to meet the highway needs across the country. Federal Highway Administration statistics indicate that $12 to $15 billion is needed to complete the Interstate System; $50.8 billion is needed to repair and replace deficient bridges; $20 billion is needed to address existing interstate 4R needs; over 200,000 miles of the primary system will need capital investments during the next 15 years; and over $6 billion per year is needed to maintain existing conditions on the urban and secondary systems.

In addition to helping protect our transportation infrastructure, adoption of the Specter amendment would allow the States to draw down the balance of previously authorized funds which they have been unable to obligate because of spending constraints imposed by Congress. By the end of this fiscal year, the States will have accumulated an estimated $6.7 billion worth of previously authorized funds which they would be allowed to spend under the Specter amendment.

Mr. President, I congratulate my colleague from Pennsylvania for offering this amendment and for his continued interest in preserving a strong Federal-aid highway program. I am always pleased to know that the highway program has ardent supporters both on and off the authorizing committee.

Mr. President, I urge adoption of the Specter amendment.

EXHIBIT 1

REGAN SAYS REVAMPING BUDGET PROCESS WILL BE A MAJOR GOAL FOR THE PRESIDENT

(By Ellen Hume)

SANTA BARBARA, CALIF.—White House chief of staff Donald Regan said he expects that overhauling the federal budget process will be a major policy initiative for the rest of President Reagan's term.

Mr. Regan, who long has wanted to put the federal budget on a more businesslike footing, told a group of reporters here that he's considering a budget-overhaul package that would give the federal government a so-called capital budget.

The proposal also would remove trust funds from the federal budget, add a presidential line-item veto and include a balanced-budget constitutional amendment. The administration also might seek a two-year budget process, he said.

The chances of winning congressional approval for such a package appear remote now, especially since the administration previously tried and failed to get the line-item veto and the balanced-budget amendment approved. But Mr. Regan insisted that the prospects aren't hopeless, because the administration has "never seriously" pushed for them as part of a major budget overhaul.

"Now, in these days of huge deficits, Gramm-Rudman and so forth. I think the atmosphere may be changing, where people are saying this is a Mickey Mouse system," Mr. Regan said.

The idea of a capital budget—in which buildings and other capital costs could be charged off over time, rather than in a lump sum at the beginning—has long been resisted by staff experts at the Office of Management and Budget. Such proposals were blocked by David Stockman when he was OMB director.

A capital budget would reduce annual deficits by spreading some costs over a period of years. But critics note questions about what constitutes a legitimate capital expenditure and the temptation to abuse this accounting technique. They charge that the technique was a leading reason for New York City's fiscal crisis and could lead to even greater problems at the federal level.

Mr. Regan said the budget-process overhaul, which still is in the discussion stage, emerged as a major initiative when the staff met a week ago to plan the agenda for the Reagan administration's final 17 months.

HODGEPODGE IS CITED

"We have a crazy hodgepodge of a budget," he told reporters, adding: "We do many things at the federal level that would be considered dishonest and illegal if done in the private sector."

As an example, he cited "the commingling of trust funds with ordinary expenses." He was referring to such trust funds as the highway and airport accounts, which are financed by specially earmarked fees and taxes. It is "not right" to count such trust fund receipts against the federal budget deficit, he asserted.

Mr. Regan reiterated that the administration's crackdown on drugs will be its No. 1

priority once work on the tax-overhaul bill is completed. Asked if an administration study on revamping the welfare system might lead to a major initiative in that area, Mr. Regan said: "I don't know what we'll do, if anything, about it. I want to read the study first."

Mr. Regan acknowledged that the economy in the second quarter was a "downer," and that many economists consider the administration's projections of a 4% economic growth rate for the remainder of the year too optimistic. But he said the 4% rate was "possible," and he predicted the trade deficit with Japan would narrow "gradually."

"The third quarter is starting off pretty well," he said, citing recent increases in durable-goods orders, the continued stability of prices, and the Federal Reserve Board's recent steps to stimulate the economy by cutting the discount rate.

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

Mr. STAFFORD. Mr. President, this is a matter of major interest to the distinguished chairman of the Budget Committee, Senator DOMENICI, and we are advised he is on his way. In order to allow him to get to the floor I suggest the absence of a quorum.

Mr. GORTON. Will the Senator from Vermont withhold that request?

Mr. STAFFORD. I would withhold if it is for another matter.

Mr. GORTON. It is. While we are waiting, I have an amendment at the desk that I believe can be disposed of in 60 seconds or so. Does that meet with the approval of the Senator from Idaho?

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

Mr. SYMMS. Mr. President, maybe we could ask unanimous consent to temporarily set the Specter amendment aside and dispose of the Gorton amendment. I think there is no disagreement on the Gorton amendment.

Mr. GORTON. I would make such a request, Mr. President.

The PRESIDING OFFICER. Is there objection? Without objection, the Specter amendment is temporarily set aside.

AMENDMENT NO. 2893

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The desk does not have a copy of the amendment. Does the Senator have an amendment he can send to the desk?

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 2893.

Mr. GORTON. 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, insert the following:

SEC. . None of the funds appropriated or made available by this Act shall be used to implement Internal Revenue Service Regulation section 41.4481-1(a)(2) or any ruling or procedure which attains the same or similar result.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I am offering an amendment to reimpose the heavy vehicle use tax on Canadian operators. This action is taken in response to a regulation issued by the Internal Revenue Service on May 23, 1985. That regulation, 44.4481-1(a)(2), was designed to conform to the Tax Reform Act of 1984. That act called for a study "to determine the significance of the tax imposed by section 4481 of the Internal Revenue Code of 1954 (relating to tax on use of certain vehicles) on transborder trucking operations." During the comment period, several commentators suggested that the imposition of the tax on Canadian vehicles should be suspended until this study was completed. The Internal Revenue Service accepted this suggestion and suspended the tax.

This decision has created an inequitable situation whereby Canadian truckers have the benefit of our highways, but do not bear a reasonable share of their costs. I believe we should remedy this situation by adopting this amendment, which will prohibit the Service from spending any funds appropriated by this act to implement its regulation 41.4481-1(a)(2) and will carry us through until that study is completed some time in 1987.

The amendment has been cleared by the chairman of the Finance Committee, Senator PACKWOOD, and the ranking minority member, Senator LONG, since it falls within their jurisdiction. I ask for my colleagues' support.

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

The amendment (No. 2893) was agreed to.

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

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

The motion to lay on the table was agreed to.

□ 1150

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO 2891

Mr. DOMENICI. Mr. President, I am fully aware of the fact that the distinguished junior Senator from Pennsylvania and many other Senators desire to spend more of the trust fund that we collect from our highway users for the 1987 highway program. However, as in many trust funds that we have in the U.S. Government, they are all part of the unified budget. Some people do not like that, but that is the reality of it.

For now, the biggest of trust funds and the smallest of trust funds are all part of the fiscal policy of this country—Social Security being the largest, Medicare being the second largest. There are innumerable trust funds—a trust fund for airport construction. You tax a specific use by way of a user-type fee, much as you do with a gasoline fuel tax and certain levies on trucks and tires to pay for the highways. Those go into a fund.

Let me make it clear that they are not used for anything else. We are not going to spend that trust fund money on something else. But when you take the big ledger of the U.S. Government, you have receipts and you have disbursements. You add them up, whether they are trust fund receipts or not, whether they are trust fund disbursements or not, or whether they are normal outlays or expenditures that we appropriate out of the general tax coffers. Each year, you go through this exercise of adding up the receipts and adding up the expenditures, and from that accumulation you get the national deficit.

So, obviously, this highway trust fund is building up a little bit of a reserve; because as we move through each year, we set limits that are not coextensive with the expected receipts. At one point, we were moving in the other direction: We were spending more than we were taking in. We have been catching up of late, and there is a reserve of a few billion dollars.

What the distinguished Senator from Pennsylvania—whom I greatly admire—would like to do is to build more roads. The infrastructure of the country needs more money; not less. The truth of the matter is that we have already made some decisions around here with reference to the overall budget that precludes this amendment from being in order.

Obviously, if the Senator wants to push, the U.S. Senate can do what it pleases. It just has to waive the Budget Act and spend more money than is presently prescribed to be spent in 1987 by way of obligational authority, and I believe it would be a couple of hundred millon dollars this year.

The Senator would perhaps propose later on that we proceed to set some higher limits in the outyears. That would be 1988, 1989, and 1990. For now, his amendment says let us raise the obligational ceilings for 1987 over that which, No. 1, the appropriators have established, since they set that each year; No. 2, from the levels that were established a couple of nights ago, when, at 12 in the evening, we voted for a reconciliation bill in the Senate by an overwhelming vote. This particular activity of the Federal Government was within that reconciliation bill, and the 1987, 1988, and 1989 levels were mandated by a huge vote.

Some 85 Senators said, "Let us save some money." In saving money, it means that we are not going to spend it. It does not mean that we are going to use entrusted highway funds for something else.

Having said that, Mr. President, I raise the point of order that the pending amendment violates section 302(f) of the Budget Act by providing for outlays in excess of the appropriate 302(b) allocation.

Mr. SPECTER. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Is debate permitted after the point of order is raised?

The PRESIDING OFFICER. At the discretion of the Chair.

Mr. SPECTER. I ask the distinguished Senator from New Mexico to withhold the point of order for the moment, to give this Senator an opportunity to make a brief reply.

Mr. DOMENICI. I have no objection.

Mr. SPECTER. Mr. President, I understand fully what the distinguished chairman of the Budget Committee is saying, and I understand that, technically, my amendment is subject to a point of order at this time.

I have already advised the distinguished chairman of the Budget Committee that I will abide by the ruling of the Chair, because there has been a determination as to this year's budget, and I would pursue the issue with the outyears for fiscal 1988, 1989, and 1990.

But I do want to say at this time that the use by the Federal Government of trust funds is in my legal opinion inappropriate and on occasions illegal.

When the Government of the United States last year used trust funds from the Social Security trust when we could not have an extension of the debt limit, that was in my legal opinion unlawful.

A trust fund is a fund, a sum of money, set aside for a specific purpose. It is held in trust for a specific purpose and any use of those funds for any purpose other than that specifically authorized by law is what is called a conversion and it is a fraudulent conversion and it is punishable as a crime in the courts of the United States.

I do not think it makes any difference if high level Government officials take an action which is fraudulent conversion any more than anyone else. This is something that I think the Government has to face up to, and not use trust funds for some purpose other than what they were set aside for.

We do not face precisely that situation here because here we have a fund which is not being used for the purpose for which it was established. But there is a very fine line, and I would like the attention of the chairman of the Budget Committee on this point, if I may have his attention, because while Senator DOMENICI is exactly correct that we are not spending this trust fund for anything else, which is what he has asserted, we are using it for another purpose. We are using it at the present time to meet the targets of law on what the deficit may be, and if we were spending the trust fund for highway construction we would not be meeting those targets.

I am committed, as is the Senator from New Mexico, to meet the targets of deficit reduction. But many perceive, de facto, that there is something of value which is being derived from not spending this money for highway construction, and that is funds being withheld so that the deficit does not exceed the $154 billion amount to come within the Gramm-Rudman target, and it seems to me that, call it what you like, call it juggling the Federal books or call it accounting of a certain sort, staying within the budget deficit limit, that is what is happening. And I don't think that it is the right way to stay within the deficit.

The distinguished Senator from Idaho, the chairman of the subcommittee, referred to that a few minutes ago. I had expected a point of order to be raised against my amendment, and I am not unaware of the fact that the point of order validly lies under the technical circumstance present here.

I make this argument somewhat more extended because I do intend to submit another amendment, and I hope the distinguished chairman of the Budget Committee will join me in the second amendment. It will not violate the Budget Act, and I am going to call for a rollcall vote because I think there ought to be an expression of as many Senators as possible—of course, I may be surprised; maybe the Senate will vote against it—I think there ought to be an expression of Senators. As Senators SYMMS said earlier, this money is set aside in order to be used for highway construction. It is not a foolish use. Our highways are in disrepair. Probably a lot of people are watching on C-SPAN now because they cannot drive on the highways in their States across this country.

Everywhere I drive in Pennsylvania I find detours and I find potholes and I find problems that go all across this country. The highway users of this country have bought and paid for highways and it is unfair not to let them get the value for what they paid.

I know the budget problem this year, and I know the point of order lies and I am not going to appeal the ruling of the Chair, although maybe, Mr. President, if I submit to my colleagues this list of highway funds which would come to every State, every State would be a winner, maybe the Senate would overrule the Chair and would say these funds ought to be expended.

Mr. President, I ask unanimous consent at this time that a table showing the distribution to the 50 States and Puerto Rico be printed in the RECORD. It shows the power and the importance of this to everybody in the country.

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

ESTIMATED DISTRIBUTION OF OBLIGATION LIMITATIONS BASED ON S. 2405 PROGRAM STRUCTURE

[In thousands of dollars]

State	$12.35 billion ceiling	$14.2 billion ceiling	Difference
Alabama	226,730	264,112	37,382
Alaska	152,541	177,691	25,150
Arizona	127,505	148,527	21,022
Arkansas	110,934	129,223	18,289
California	907,962	1,057,659	149,697
Colorado	186,792	217,588	30,796
Connecticut	243,574	283,733	40,159
Delaware	50,152	58,420	8,268
District of Columbia	67,768	78,942	11,174
Florida	495,756	577,492	81,736
Georgia	323,113	376,386	53,273
Hawaii	139,003	161,921	22,918
Idaho	87,203	101,580	14,377
Illinois	365,144	425,345	60,201
Indiana	192,036	223,697	31,661
Iowa	162,373	189,144	26,771
Kansas	145,529	169,523	23,994
Kentucky	206,891	241,002	34,111
Louisiana	318,137	370,589	52,452
Maine	57,242	66,679	9,437
Maryland	262,944	306,296	43,352
Massachusetts	309,368	360,374	51,006
Michigan	302,816	352,742	49,926
Minnesota	229,382	267,201	37,819
Mississippi	122,177	142,320	20,143
Missouri	235,096	273,857	38,761
Montana	107,820	125,596	17,776
Nebraska	104,145	121,316	17,171
Nevada	72,324	84,248	11,924
New Hampshire	55,502	64,653	9,151
New Jersey	333,831	388,870	55,039
New Mexico	105,238	122,589	17,351
New York	609,352	709,817	100,465
North Carolina	228,386	266,040	37,654
North Dakota	75,720	88,204	12,484
Ohio	353,796	412,127	58,331
Oklahoma	145,491	169,478	23,987
Oregon	136,246	158,710	22,464
Pennsylvania	499,555	581,918	82,363
Rhode Island	94,902	110,548	15,646
South Carolina	148,553	173,045	24,492
South Dakota	82,115	95,654	13,539
Tennessee	228,640	266,336	37,696
Texas	674,526	785,737	111,211
Utah	139,175	162,121	22,946
Vermont	53,680	62,530	8,850
Virginia	278,009	323,845	45,836
Washington	261,677	304,820	43,143
West Virginia	98,393	114,616	16,223
Wisconsin	160,960	187,497	26,537
Wyoming	83,087	96,786	13,699
Puerto Rico	61,549	71,697	10,148

ESTIMATED DISTRIBUTION OF OBLIGATION LIMITATIONS BASED ON S. 2405 PROGRAM STRUCTURE—Continued

[In thousands of dollars]

State	$12.35 billion ceiling	$14.2 billion ceiling	Difference
Total	11,220,840	13,070,841	1,850,001

Source: U.S. Department of Transportation.

Amounts not distributed

Federal lands	$250,000,000
Administration	204,660,000
Discretionary	662,500,000
Territories	12,000,000
Total	1,129,160,000

U.S. Department of Transportation.

Mr. SPECTER. I yield the floor.

Mr. DOMENICI. Mr. President, I withhold my point of order momentarily and want to make a couple statements in response to my friend from Pennsylvania.

First of all, I do not want anyone to think that the fact that the Senator from New Mexico is making the point of order against the amendment of the distinguished Senator from Pennsylvania means that the Senator from Pennsylvania is not fully within his rights to offer this amendment. Sometimes a point of order makes some people think it means something different than I think. It merely means that under the budget processes of this country that are in effect right now and the budget that we have adopted and have been working on, the Senate would have to vote by a supermajority if they choose to do this, to overrule the point of order. I do not think they would do it, I regret to say to my friend, with or without that list because, as a matter of fact, this clearly would add $200 million to the base line agaist which we figure a sequester.

We spent 3 days negotiating amongst ourselves and with the House and untold numbers of hours here on the floor and we voted at about midnight on Friday to put into effect a reconciliation bill because we did not want a sequester come October, that is, an across-the-board cut.

Whether one likes the procedure or not, the fact is that excesses in trust funds that are not spent are used in the bookkeeping of the United States to reduce the deficit. Whether one likes that or not, the truth of the matter is that this would add $200 million right up front to what we will have to try to find in the appropriations process, in the reconciliation bill, in order to avoid an across-the-board cut. It is in that sense adding $200 million to the deficit perceived by Congress as of now as it works its way trying to control the outlays of Government.

Let me also say to my friend from Pennsylvania if the theory of offering an amendment to increase the expenditures out of the trust fund is that we ought to spend every year everything that is collected for a trust fund, then I submit that we have done exactly the opposite for a long time. For a long time we did not collect enough in the trust fund and yet we spent more than was in there because we thought there was a highway need. So for a long time we go down at the end of the year and say well, we only have $7 billion collected, but we are going to spend $8 or $9. We did that because it was our decision to get the program going and to, in a sense, spend trust fund money we did not have, perfectly within our purview, and equally appropriate to save money when you have more than you need when you have tough fiscal times.

So, Mr. President, with that I must say to my friend I do not intend to support an outyear change either in 1988 or 1989 and I will argue that when he proposes the amendment and I think the Senate ought to wait on that and make that decision later.

But I renew my point of order.

The PRESIDING OFFICER. The point of order is well taken. The amendment falls.

AMENDMENT NO. 2894

(Purpose: To increase the obligation limitations for Federal-aid highways and highway safety construction programs)

Mr. SPECTER. 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 assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 2894.

On page 62, strike out lines 21 through 23, and insert in lieu thereof the following:

(2) $14,200,000,000 for fiscal year 1988;

(3) $14,200,000,000 for fiscal year 1989; and

(4) $14,200,000,000 for fiscal year 1990.

Mr. SPECTER. 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. SPECTER. Mr. President, this amendment follows up on the discussion which we have been having and does not fall subject to a point of order.

I might say that I do not disagree with what the distinguished chairman of the Budget Committee has argued in terms of our having established the reconciliation picture, and I quite agree with him about the undesirable consequence of having any sequestration.

I think that is something which is highly undersirable and that Congress ought to establish the priorities within the limits of the deficit ceiling. This body has discharged its responsibilities and we got that job done last week. I commend, and have heretofore and do again, what the distinguished chairman of the Budget Committee has accomplished.

But now we are on a different point. We have met the targets of Gramm-Rudman for fiscal year 1987 and now the issue is what is going to happen in succeeding years, 1988, 1989, and 1990.

□ 1210

Mr. President, this amendment would fulfill the commitment which the Senate made when it passed a resolution, which was cosponsored by Senator SYMMS and Senator MURKOWSKI and myself, expressing the sense of the Senate that the highway trust fund should be drawn down to the safest minimum level of reserves possible. That has been passed on a sense of the Senate by this body and I think we ought to move ahead at this time.

Mr. President, I would disagree with the distinguished chairman of the Budget Committee when he seeks to make an analogy between spending more than the trust fund and not spending as much as the trust fund has absent a reasonable reserve.

The Congress of the United States has authority to appropriate what we choose and we can spend money for highways out of general revenues if we choose to do so. But it is not the same as saying, since we spend more than the trust fund in the past, we ought not to spend as much as the trust fund as a matter of our discretion.

If we are not going to spend the trust fund, let us not charge the American consumer, the American highway users for the gasoline tax as much as we are.

It is true that we cannot precisely say what the trust fund will be and exactly how much we should spend. So it is necessary to have a reserve. But I believe it ought to be a realistic reserve. And a reserve is something you keep in reserve for contingencies or some problem which may arise. It is not something which you have a large sum of money for some collateral purpose to balance the budget or to hold the deficit at a certain level.

If those funds are needed, they ought to come from other sources. That is not why we ought to have highway users place money into the highway trust fund.

I have asked for a rollcall vote on this matter, because I believe that if the Senate of the United States speaks emphatically on this issue, it will be a direction to the Budget Committee and the distinguished chairman next year that we want to have money spent on highways. And, of course, it is easier to spend the moneys next year and the year after than it is this year, because we do not have to bite any bullets in doing so.

But I believe it is an appropriate statement of the expression of the

intent of the Senate. And if the Senate decides we ought to leave the decision for next year, then I think the Senate will be recognizing that this will be a bargaining chip in the overall process and highways will probably end up short next year.

Of course, if we can express our intention by adopting this amendment, it could always be changed, as well, if the eloquent chairman of the Budget Committee comes in next year with budget problems—and maybe he will not have any problems next year on the budget. Maybe there will not be a need to shortchange highway construction.

But I would say if we are going to defer something to next year, let us defer consideration of any unknown problem to next year. Let us renew our commitment to the American highway user that the money we have taken out of his pocket on the gasoline tax is going to be used for highway construction. I yield the floor.

Mr. SYMMS. Mr. President, I have already spoken on the previous Specter amendment which really covers my position. I would only rise to say that I compliment my colleague for offering the amendment. I support the amendment.

As a member of the Budget Committee, I know we have difficulties deciding where to get the money necessary to meet the Gramm-Rudman targets, but I believe there are good, justifiable reasons for us to support a higher funding level out of the Federal trust fund.

Again, I support the amendment and urge its adoption.

The PRESIDING OFFICER. The question is on the amendment. Is there further debate?

Mr. STAFFORD. Mr. President, with a great deal of regret, I have to rise in opposition to the Senator's amendment. And I do so in the name of the committee, because the committee did come to a conclusion on spending over these years and the Senator's proposal would run almost $2 billion over the committee level which the committee voted for. There was a vote in the committee, as a matter of fact, to raise the level, which was defeated in the committee by a vote of 8 to 5.

The Senator proposes $14.2 billion a year. But there are additional expenditures from the fund for other programs that are not included in that figure which raises it to about $15 billion a year in total expenditures, as I understand it.

I should point out that estimated revenues for the trust fund for the years in question are about $13.2 billion, which is approximately the amount called for to be expended under the committee decision, and that figure appears in the committee bill.

So, much as I would like to spend more money on highways at this time, I think that the committee, having made the decision that we stay at the levels I have mentioned—$13.2 billion roughly, in total expenditures—I feel we should stay there. We have committed ourselves to that course, both in deference to the national deficit, the national debt and in connection with the Budget Committee and reconciliation.

Mr. DOMENICI. Mr. President, I might say to my friend from Pennsylvania, if he desires to further debate the issue, I hope he will let me know, because I do intend to ask that the amendment be tabled. I think that is a preferable vote, from my standpoint, to an up-or-down vote because I think it more aptly expresses what we are doing and what we ought to do.

First of all, in plain, simple terms, next year, the year after, and the year after that—1988, 1989, and 1990—we will have a budget, we will have appropriations, and clearly the Highway Act that is before us will not constrain us in terms of raising the level of funding if the Senate and the Congress desire to. But for now, plain and simple, we voted in ourselves, by recommendation of the Public Works Committee that has jurisdiction over this, we voted a 3-year limitation in the reconciliation just a few nights ago.

The distinguished chairman of the full committee has stated it right. We did that, and we will turn around today and we will say, "Well, yeah, we did that because we want to be fiscally responsible, as we look at next year and the year after, to take a real look at where are we. Do we have enough money to spend more out of the trust fund, or should we save it and apply it to the deficit?"

This will add, my numbers indicate, $3.15 billion in outlays for the next 3 years as a mandate over and above what we already just voted for, decided to be for, Friday night at 12 o'clock. I just do not think we ought to do it. The same reasoning applies in his behalf as in behalf of the committee. If next year the budget looks better, as he hopes—and I hope so, too—then obviously we will be debating this issue of a predetermined decision made by the committee which they thought was reasonably prudent under the circumstances.

So I regret to say I will ask to table the amendment and actually would hope the Senator would not make us vote on this. I think we should give him some commitment that we will work on this, that clearly we will listen to him and to the chairman of the subcommittee and, if we can find our way, we will significantly increase it; we will try to.

I am sure the distinguished chairman would agree. I am sure if Senator HATFIELD were here he would say he would agree to take another look and see if we could raise it next year. But for now, I think we must object.

I move to table the amendment and 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 New Mexico [Mr. DOMENICI] to table the amendment of the Senator from Pennsylvania [Mr. SPECTER]. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN] is necessarily absent.

I also announce that the Senator from Ohio [Mr. METZENBAUM] is absent because of illness in the family.

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

The result was announced—yeas 69, nays 28, as follows:

[Rollcall Vote No. 286 Leg.]

YEAS—69

Andrews	Exon	McConnell
Armstrong	Goldwater	Melcher
Bentsen	Gorton	Mitchell
Bingaman	Gramm	Moynihan
Boren	Grassley	Murkowski
Boschwitz	Hart	Nickles
Bradley	Hatch	Nunn
Broyhill	Hatfield	Packwood
Bumpers	Heflin	Pell
Chafee	Helms	Proxmire
Chiles	Hollings	Roth
Cochran	Humphrey	Rudman
Cohen	Inouye	Sarbanes
Cranston	Johnston	Simon
Danforth	Kennedy	Simpson
DeConcini	Kerry	Stafford
Dixon	Laxalt	Stennis
Dodd	Leahy	Stevens
Dole	Lugar	Trible
Domenici	Mathias	Wallop
Durenberger	Matsunaga	Weicker
Eagleton	Mattingly	Wilson
Evans	McClure	Zorinsky

NAYS—28

Abdnor	Hawkins	Quayle
Baucus	Hecht	Riegle
Burdick	Heinz	Rockefeller
Byrd	Kassebaum	Sasser
D'Amato	Kasten	Specter
Denton	Lautenberg	Symms
Ford	Levin	Thurmond
Glenn	Long	Warner
Gore	Pressler	
Harkin	Pryor	

NOT VOTING—3

Biden	Garn	Metzenbaum

So the motion to lay on the table amendment No. 289 was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote.

Mr. STAFFORD. 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 Idaho is recognized.

Mr. SYMMS. Mr. President, we are very close to passage of the bill. I say again to my colleagues, this is a most important piece of legislation which we must get through a conference and on the President's desk before the end of the month. It is most important to the Federal aid highway program.

We have one remaining glitch. Specifically, the problem is the language on page 28 of the committee report, which explains section 105(b) of the bill.

AMENDMENT NO. 2895

In order to try to clear up this issue, Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS] proposes an amendment numbered 2895.

On page 28 line 24 strike all through page 29 line 15.

□ 1240

Mr. SYMMS. Mr. President, may I please have order?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Idaho is recognized.

Mr. SYMMS. Thank you, Mr. President.

Mr. President, I will be very brief in my explanation of this amendment. This amendment simply strikes section 105(b) from the bill. The question is, Should a State or local government be allowed to attempt to influence international relations with South Africa?

The answer in this Senator's opinion is "no." In this instance, it is basically a New York City issue. We thought we had a compromise worked out between the distinguished senior Senator from New York and myself, but we have had other Senators who have voiced objections.

I want to make two or three very quick points. Foreign relations for the United States of America should not be vested in local governments. Foreign policy is and should be in the domain of the National Government.

I believe we should not piecemeal our international relations with South Africa and we should have a coordinated comprehensive policy. The language currently in the bill sets a bad precedent for us.

We have pending before the Congress and the administration legislation dealing with South Africa, and it is being properly handled by the appropriate authorities. I believe the provision would set a costly and dangerous precedent for the highway program. This amendment could have a very chilling effect on competitive bidding because some firms may choose not to bid. Moreover, each local area could establish its own type of South Africa contracting restrictions and this would destroy the uniformity of the contracting process and add to the bid preparation costs.

Mr. President, those are reasons why I think we should support the Symms amendment and strike out section 105(b) from the bill. An equally important reason is that each Senator has a State department of transportation and highway users waiting to get the highway program resolved.

Let us not let this one small issue interfere with the Federal-aid Highway Program. I urge support for my amendment.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, I am just going to take about 1 minute. I think the issue is fairly clear but the consequences may not be. If there is not some resolution of this provision, I am advised by a number of Senators that there will not be a highway bill. I think that is what we need to focus on. This is really the last day, as I look at the next 7 or 8 days, that we can take up the highway bill.

We have about three other bills pending this afternoon. Tomorrow, Friday, and Saturday we will be on the drug enforcement bill. Somewhere we have to work in the tax bill in that period of time. And then on Monday we are on the continuing resolution. That will take at least 2 days. Then we will also have Superfund, and we have the debt limit conference report. We also have the trial of Judge Clairborne.

While this may not and perhaps should not be an element in consideration of how Senators vote, I think in every State we have vital interests in this package. I am not threatening anyone. I am just suggesting I have been advised by a number of Senators that unless this provision is stricken or there is some compromise, they intend to spend the rest of the day discussing it and that, as far as I know, would postpone any final action on this package. We might be able to get to it sometime next week but I am not certain.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Thank you, Mr. President.

Might I make two points. The first is to take very gentle exception to the statement of my friend from Idaho that this is a New York City matter. Similar legislation has been enacted in some 25 cities. I will name just a few: Charleston, SC; Chicago, IL; East Lansing, MI; College Park, MD; Kansas City, KS and—Perhaps I should say that again, Kansas City, KS—Kansas City, MO; Los Angeles; Madison, WI; Newark, NJ; New Orleans; New York; Oakland, Omaha; Pittsburgh; Raleigh, North Carolina; Richmond, CA; Richmond, VA; Rochester, NY; San Francisco; Topeka, KS; and Tucson, AZ.

Measures of this kind have been adopted in a number of places and for the same reason. They are an expression of concern American communities have about South Africa.

I completely agree with the Senator's statement that the conduct of foreign policy is a national responsibility.

□ 1250

Madison wrote in Federalist Paper No. 42 that "If we are to be one nation in any respect, it clearly ought to be in respect to other nations." But this does not have to do with our relations with other countries. It is a statement internal—about how we will behave with our own fellow citizens with respect to business activities and government investment.

This legislation provides that if a community—Kansas City, San Francisco, College Park, Rochester, or wherever—wishes to enforce anti-apartheid bidding standards on highway projects, with the result that a higher bid might have to be accepted than otherwise would be the case, and if that municipality pays from its own resources every penny of the additional cost, then the Federal Government and the highway program have no argument with that community. It is a very American arrangement. It is characteristic of our country that when people feel strongly about ethical issues, moral issues, they act in local ways; and often in our history, policy has come up from the lower levels of government rather than come down from the higher ones.

This is not something we need ever be ashamed of. It is something we have every reason to be proud of, as a characteristic of American life. This provision is a simple accommodation to it.

I think of it in the same spirit that Thoreau refused to pay taxes that he thought were supporting the Mexican War. The authorities put him in jail in Concord for so doing. Emerson came to visit him, and they had a wonderful exchange:

Emerson said: "What are you doing in there?"

Thoreau said: "What are you doing out there?"

A moral statement was being made by one man and by the other man, too. They had different views, and we admire them for that.

When Kansas City and Camden, NJ, and Charleston, SC, and Chicago and New York take measures such as this, they do so out of conscience, and we

want them to behave out of conscience.

Are they doing any harm to anyone in economic terms? Yes—to themselves. They accept that. They say, "We will pay more in order to make a statement of moral concern of importance to this community to this City Council, to this Mayor." That is a very American thing to do. It is not to be disparaged, not to be prevented—no, not to be prevented, so long as we are a country of Thoreaus. Nor is there any need to do so.

I offered this amendment in the Committee on Environment and Public Works. The amendment addressed a situation in a city in my State—and in a number of cities across the country. We asked to have the arrangement made that if cities accept higher than least-cost bidding, then those cities can make up for the higher costs that result. Our committee, with the great courtesy we show one another, under the very remarkable leadership of the senior Senator from Vermont—who has a Vermont Yankee's capacity to tolerate even New Yorkers—said:

> Fine, if you want to do that, you do it. You pay for it. We are not going to let this get in the way either of the highway program or of the expression of views about matters important to American communities.

Therefore, it is there. Essentially identical language is in the House bill.

Mr. President, I have no desire to prolong this debate. I would not have entered it, save that my good friend, the distinguished Senator from Idaho, has observed that other Senators felt it necessary to raise the matter. That is their right, and in the end we will vote. I hope we will vote to sustain the Committee on Environment and Public Works in a fine American tradition which is somewhat disorderly, but wonderfully creative in the long run.

Mr. D'AMATO. Mr. President, I join my distinguished colleague, the senior Senator from New York [Mr. MOYNIHAN], and commend him for having moved to include this provision in the bill.

I believe that it should be the right of any municipality to undertake a conscious decision not to do business with those who might be giving aid and comfort to the practice of apartheid. I believe that this is a very real and strong sentiment, not only in the city of New York, but also in the other municipalities which have already undertaken similar legislation. In the case of the city of New York, the local government is willing to make up any deficiency that might result from refusing to award a contract to a low bidder that does business with South Africa. Thus, the taxpayers of the United States will not be called upon to pay any additional costs, but the city, itself, will do so.

The taxpayers of the city have been supportive of this initiative. Overwhelming support has been given to this local legislation by other members of the New York delegation. They have not come out in opposition. They are willing to make up for the economic difference that possibly may take place.

There has been mention by the distinguished Senator from Idaho [Mr. SYMMS] that we have already dealt with this issue on the Comprehensive Antiapartheid Act of 1986 and that that is where it should be left. I am concerned that there is a very real chance that that bill will be vetoed, and we will find ourselves in a situation where we have not adequately addressed this problem.

I join Senator MOYNIHAN in saying that we are not attempting to make foreign policy by the inclusion of this language in the highway bill. What we are saying is that we support the efforts of those communities which have chosen to restrict their dealings with those who do business with South Africa, whether it is Alameda County, CA, or Tucson, AR, or our great city of New York. If those local governments wish to say clearly that they will not countenance doing business with South Africa, we should hear their voices. If they are willing to put their money where their mouths are, and if they are willing to make a commitment of their resources, to see to it that the practice of apartheid is not encouraged, then the Senate should not penalize them for their efforts.

Mr. President, I hope we will be able to retain this important language which would underscore the revulsion we feel toward the system of apartheid. I urge my colleagues not to delete this provision and to join me in our crusade against State-sponsored racism.

Thank you, Mr. President.

Mr. WALLOP. Mr. President, I will be very brief on this, as one who has stood on this floor many, many times as an advocate of local control, local government, State government. But I am also here as an advocate of the concept of constitutional government.

Here is an advocate of the fact that some things the National Government must do, and other things the State government, local government, local commissions, by our concept, must do. One of the things the Federal Government must do is conduct the foreign policy of the United States.

I say to my friend from New York that this has nothing to do with apartheid. It has to do with apartheid in the case of New York City and perhaps another local government or two around the country, but it has nothing to do with apartheid.

□ 1300

The senior Senator from New York sent in a statement in behalf of the public. It is not a statement of interest on behalf of the public. It is a statement of foreign policy.

Now, I can conceive of marvelous politics at the local level where local entities would much prefer to talk about the emotional issues of foreign policy rather than the issues for which they are constituted. The school board would far prefer to speak to foreign policy rather than curriculum. A city council would far prefer to speak to foreign policy rather than the sewers or streets. The planning commission would far prefer to speak to South Africa or Cambodia or some other place than they would on open spaces or requirements in conflict between interests within their jurisdiction. The county commissioners would far prefer to speak of the national emotional issues of foreign policy rather than speak about the construction of roads or the organization of school districts or the other kinds of things of which they are constituted and, of course, they would because it is a diversion from their political responsibility.

But were we to let this go, the Secretary of State of the United States would soon be closely involved with negotiations with every community in America as well as with every foreign country. It soon would be the obligation of the Secretary of State to deal with the city of New York, or the county of Sheridan in Wyoming or some State that wished to offer sanctuary and that is not the role that was conceived of by the Founding Fathers nor must it ever be.

It is difficult enough for this body to make its recommendations to the President of the United States and the executive branch as to the conduct of foreign policy. It does not belong in the hands of local governments.

And this is not a question of apartheid. This is a question of foreign policy of the United States. It is not a question of apartheid or sanctuary movements or of nuclear free zones or anythng else. It is a question that the national policy of the country must be set at the national level.

The local governments will find me standing by their side in every single instance in which their right to make local decisions is clear. This is not one of those areas. And I urge this amendment's adoption.

Mr. SYMMS. Mr. President, now, on this amendment I see the distinguished ranking member of the Foreign Relations Committee is here on the floor.

I ask unanimous consent to have printed in the RECORD an article from the Wall Street Journal by Mr. Spiro, the editor of the Virginia Law Review, Wednesday, September 24.

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

[From the Wall Street Journal, Sept. 24, 1986]

GET STATES AND CITIES OFF FOREIGN-POLICY STAGE

(By Peter Spiro)

A wave of state and local boycotts and divestiture actions directed against the white regime in Pretoria has meant that much of U.S. policy on South Africa has evolved outside Washington. On this issue mayors, county executives and governors have been elevated to virtual equality with U.S. national legislators and administration officials; never before has the action of these nonfederal authorities loomed so large in shaping a foreign-policy issue.

The phenomenon is a disturbing one, with serious implications not only for the development of a national strategy to help dismantle apartheid but also for the making of U.S. foreign policy in general. Congress and the courts should move against it while it remains largely restricted to the South Africa question. Allowed to act untrammeled for the time being, cities and states may grow accustomed to their newfound role and resort to it more frequently on a broader range of issues.

Congress has not been blind to the problem. Sen. Richard Lugar (R., Ind.), chairman of the Senate Foreign Relations Committee and author of the latest sanctions bill, has made clear in floor debate that his proposal, if passed into law, would "preempt" state and local measures by "occupying the field" of South Africa policy. In other words, his legislation would render such measures inoperative. Uncontested, Sen. Lugar's statement would probably suffice to support a judicial scrapping of local anti-South Africa laws were they to face court challenge.

THE SOONER THE BETTER

While agreeing to the substance of the Lugar sanctions, the House of Representatives passed a non-binding rule in order to establish legislative intent that would allow state and local laws to stand up in court. Anti-apartheid representatives have also managed to pass riders to various appropriations measures excusing local governments with anti-apartheid laws from federal competitive-bidding requirements.

Sen. Lugar has the right idea on the question of pre-emption, but he states the case too softly. The scrapping of state and local anti-South Africa laws is not simply a matter of congressional intention. It is mandated by constitutional law, and the sooner someone takes Sen. Lugar's hint to the courts, the better.

State and local governments have, in effect, implemented a national policy encouraging full divestiture. In doing so, they have bypassed federal decision making on an issue upon which only the federal government is empowered to decide.

The stage is by now well set. Dozens of cities and states, from Jacksonville, Fla., and Richmond, Va., to New York City, California and New Jersey, have moved to divest themselves of securities in corporations that do business in South Africa, many regardless of their compliance with the Sullivan principles (a code of fair-labor and anti-discriminatory practices). A growing number of these authorities have similarly moved to restrict or prohibit procurement from corporations doing business in South Africa.

The exclusive federal domain over foreign affairs is, first of all, firmly grounded in constitutional tradition. It was partly because the original 13 states found themselves so weak in the international arena that they abandoned the Articles of Confederation and adopted the Constitution itself almost 200 years ago; as James Madison put it, "If we are to be one nation in any respect, it clearly ought to be in respect of other nations." Thus only the federal government is allowed by the Constitution to conclude treaties with foreign states.

The Supreme Court has unequivocally upheld this precept of uniformity. In the landmark 1941 case of *Hines vs. Davidowitz*, the court struck down a Pennsylvania statute requiring the fingerprinting and photographing of enemy aliens where Congress had required only that they register with the government. "Our system of government," the decision concluded, "is such that the interest of the cities, counties and states . . . imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference."

In invalidating state probate laws that, in practice, tended to disallow inheritance by citizens of East-bloc nations, the court extended these clear dictates with its 1968 opinion in *Zschernig vs. Miller* so as to condemn any inquiry by local authorities into political conditions prevailing in foreign countries. Significantly, the local action considered in *Zschernig* was not in conflict with federal policy. The implication of the decision is that states may not under any circumstances jump into the foreign-policy arena. Although the court has also indicated a willingness to protect state action in the marketplace from federal interference, such precedent has never been applied in a situation involving foreign relations. (Some states and cities have "buy-America" laws on the books, but the courts have never conclusively ruled on their constitutionality.)

In fact, it is in the long-term interest of local authorities to defer to Washington in the making of foreign policy—ever where it may impinge on decisions traditionally left to their discretion. This is why—to take an extreme and unlikely example—the U.S. would not tolerate one state declaring war on another country, for all the states would suffer the consequences of such a brazen act. More plausibly—and closer to the South African example—if car-producing Michigan decided that it would no longer invest in or make purchases from Japanese corporations or their subsidiaries, Japan might strike back by limiting textile imports from the U.S. North Carolina would be hurt as a result of Michigan's parochialism, and yet it would have little recourse in Washington to prevent Michigan or other states from so compromising its interests, if local anti-apartheid laws set any sort of precedent.

Such laws are already setting a precedent. Massachusetts recently moved to ban pension-fund investments in banks with loans to corporations selling armaments to Britain for use in Northern Ireland. Michigan has taken steps to restrict university holdings in corporations doing business with the Soviet Union. So-called sanctuary legislation and nuclear-free-zone laws are also symptomatic of this trend. The question of nonfederal involvement in foreign affairs is one that should transcend partisan politics. A stand in favor of local action on today's issue—that of South Africa—may backfire tomorrow.

The position of cities and states on South Africa also stands in clear contrast to federal policy in the area. The president's executive order of September 1985—which remains the law of the land—implemented limited economic measures designed to maintain a U.S. economic presence in South Africa while eliminating some counterproductive aspects of that presence, such as the sale of computer goods to apartheid-enforcing agencies of the Pretoria government. Even if the Lugar sanctions package were to become law, presumably over a presidential veto, companies complying with the Sullivan principles would in no way be penalized for staying in South Africa.

But state and local actions, of course, mean that a continued South African presence would remain a serious liability. Companies that do not disinvest face millions of dollars in lost municipal contracts and lowered share prices on national markets. The probable result? "In five years," according to financial analyst Pierre A. Rinfret, "almost no American investment will be left in South Africa." While the impact of nonfederal measures is perhaps not as direct and immediate as an all-out embargo on continued investment in South Africa, the long-term result will be the same as if federal action were taken.

A SERIOUS IMPACT

These nonfederal measures are far more sweeping than similar actions taken by private institutions and investors, since they often go beyond mere disinvestment and include boycotts against products with the slightest South African connection. And, unlike their private-sector counterparts, they enjoy the imprimatur of governmental authority. In addition to provoking Pretoria's ire, these have had a serious impact on their intended corporate targets. Nineteen companies have pulled out of South Africa this year alone, and many more are taking second looks at their presences there. Several, including Bell & Howell Co. and Phibro-Salomon Inc., have cited state and local action as their primary motivation for their withdrawal.

If a majority of Americans want disinvestment from South Africa, or action on any other matter of foreign policy, then presumably that action can be taken through their elected representatives in Washington. Upholding this institutional necessity may take patience and restraint where the political process is slow to register electoral opinion, but it is infinitely preferable to allowing mayors and governors to transcend their competence and assume the status of would-be secretaries of state. The U.S. has enough trouble developing one foreign policy; let us not thereby devolve to hundreds.

Mr. SYMMS. Mr. President, I would just like to say that it is the wish of the managers of the bill that we could keep the debate very brief on this subject. It is most important, I think, that we get this highway legislation through.

The majority leader has been most patient, but his patience is running thin. We need to get this bill done very soon, and I mean within the next 30 minutes.

So I hope we could keep our remarks as brief as possible, say what we have to say, vote on this amendment, and then vote on final passage of the bill.

I yield the floor.

Mr. PELL. Mr. President, I oppose this amendment.

To date, 19 States, including my home State of Rhode Island, and 81 cities and counties have enacted laws or other binding antiapartheid measures restricting public funds, investments, and/or procurement and contracting practices.

These measures reflect the strength and commitment of the grass roots antiapartheid movement in the United States—a movement that has played an important role in focusing attention on the immorality of apartheid and the failure of the administration's constructive engagement policy.

In my view, these and other antiapartheid measures that may be adopted in the future by State and local governments should stand.

In voting for the South Africa bill in August, it was not my intention to preempt State and local antiapartheid laws. In my view, there is no language in the bill that constitutes preemption.

When the distinguished chairman of the Foreign Relations Committee raised the preemption issue during Senate consideration of the South Africa bill, I made the point that it is a State's privilege to invest any way it wishes and that that is not a foreign policy matter.

The preemption issue was never discussed during the Foreign Relations Committee's deliberations on the South Africa bill and was only briefly touched upon during debate on the floor.

The House, on the other hand, has spoken clearly on this issue. In passing the Senate's bill on South Africa, the House adopted a resolution clarifying its intent not to restrict, nullify or affect the authority of State and local governments to enact antiapartheid measures.

I believe that section 105(b) of the bill before us is fair, in that States and local governments would bear the excess financial costs of enforcing their antiapartheid laws, and consonant with the view that the South Africa bill recently passed by Congress does not preempt State and local antiapartheid measures.

I urge my colleagues to oppose the amendment.

I yield the floor.

Mr. D'AMATO. Mr. President, I do not wish to prolong this but I could not help but concur with my distinguished colleague, the senior Senator from Rhode Island, when he indicates that this is not an abdication of the responsibility of the Federal Government to make its policies. There is nothing that really should preclude a local community if it is willing to pay for any additional costs that are incurred as a result of its local initiative.

Let me simply refer to the clear intent of the House of Representatives on this specific issue upon passage of the Comprehensive Antiapartheid Act of 1986. The House also passed a resolution, House Resolution 548, with respect to that bill in which they stated:

Resolved, That in passing the bill, H.R. 4868, as amended by the Senate, it is not the intent of the House of Representatives that the bill limit, preempt, or affect, in any fashion, the authority of any State or local government or the District of Columbia or of any Commonwealth, territory, or possession of the United States or political subdivision thereof to restrict or otherwise regulate any financial or commercial activity respecting South Africa.

So the House clearly went on record as indicating that it was not attempting to preempt States and cities from doing exactly what this provision would allow them to do.

I yield the floor.

Mr. SYMMS. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER (Mr. DENTON). 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 amendment of the Senator from New York.

On this question the yeas and nays were ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Ohio [Mr. METZENBAUM] is absent because of illness in the family.

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

The result was announced—yeas 65, nays 32, as follows:

[Rollcall Vote No. 287 Leg.]

YEAS—65

Abdnor	Gramm	Murkowski
Andrews	Grassley	Nickles
Armstrong	Hatch	Nunn
Baucus	Hatfield	Packwood
Bentsen	Hawkins	Pressler
Bingaman	Hecht	Quayle
Boren	Heflin	Roth
Boschwitz	Heinz	Rudman
Broyhill	Helms	Sasser
Bumpers	Humphrey	Simpson
Burdick	Inouye	Stafford
Chiles	Johnston	Stennis
Cochran	Kassebaum	Stevens
Danforth	Kasten	Symms
Denton	Laxalt	Thurmond
Dole	Long	Trible
Domenici	Lugar	Wallop
Durenberger	Mathias	Warner
Evans	Matsunaga	Weicker
Exon	Mattingly	Wilson
Ford	McClure	Zorinsky
Gorton	McConnell	

NAYS—32

Biden	DeConcini	Hart
Bradley	Dixon	Hollings
Byrd	Dodd	Kennedy
Chafee	Eagleton	Kerry
Cohen	Glenn	Lautenberg
Cranston	Gore	Leahy
D'Amato	Harkin	Levin
Melcher	Proxmire	Sarbanes
Mitchell	Pryor	Simon
Moynihan	Riegle	Specter
Pell	Rockefeller	

NOT VOTING—3

Garn	Goldwater	Metzenbaum

So the amendment (No. 2895) was agreed to.

□ 1330

Mr. SYMMS. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, we have had a very clear expression of the Senate's will, with one-third of the Chamber recorded in opposition to the amendment to strike our antiapartheid provision. As for those who supported the amendment, that is the way we make decisions in this body. I wish to state for the record that the House bill has an essentially identical provision. I express the hope that the House might prevail in the conference, the committee having been strongly of this view. That, too, will be determined.

I appreciate the courtesy of Senator SYMMS and Senator BURDICK in this entire matter. I am sure I speak for Mr. D'AMATO as well.

Mr. STAFFORD. In a decisive vote on July 23, the Senate Environment and Public Works Committee approved section 117 of S. 2405 which provides an equitable and meaningful solution to a law that has become unworkable and ineffective.

The Highway Beautification Program is the only area of Federal law that I know of where the industry which is supposed to be regulated by the law is the only group which supports the law and has vehemently opposed any changes to the law or its repeal. I think that only proves how convoluted the Highway Beautification Act has become since its passage in 1965.

Section 117 of S. 2405 will balance the information needs of the traveling public with the desire for natural scenic beauty along our Nation's highways. Most importantly, it will finally return to the States their constitutional right to regulate existing billboards under their land use laws, and end the preferential treatment billboards have been receiving.

The most devastating blow came in 1978 when the billboard industry was able to convince Congress to give billboards preferential treatment by requiring States to pay cash for the removal of all nonconforming billboards whether or not they were taken down pursuant to the Highway Beautification Act. If States did not pay cash,

they would lose 10 percent of their Federal-aid highway money.

States and localities have always regulated and removed billboards, and other nonconforming uses, through land use laws derived from their constitutional police power. This authority has been repeatedly upheld by Federal and State courts. Courts have rejected the view that the Constitution mandates payment of cash compensation to property owners on the removal of billboards in Markham Advertising Co. versus Washington; National Advertising Co. versus City of Ashland, OR; and Modjeska Sign Studios Inc. versus Berle as just several examples.

Under the Constitution, States and localities have the authority to provide amortization in removing nonconforming signs in lieu of cash compensation. Courts have consistently rejected constitutional challenges by the billboard industry to amortization. Examples of cases include Lamar Advertising Associates of East Florida, Ltd. versus City of Daytona Beach; Accord, Fischer Buick, Inc. versus City of Fayetteville; Major Media of Southeast, Inc. versus City of Raleigh.

Most nonconforming billboards were identified soon after the 1965 act was passed or at the latest in the early 1970's. These nonconforming billboards have enjoyed between 10 and 15 years of income, profits, and tax benefits and now we are supposed to give them even more. No other nonconforming uses that I know of have been given such generous treatment.

Billboards have no constitutional right to cash compensation as opposed to amortization. The billboard industry is one of the healthiest industries in the country and needs no special protection as evidenced by an article in the June 1983 issue of People & Taxes. In 1982, a time of recession for the rest of the country, Bear, Stearns & Co., put together a tax shelter using Metromedia's 45,000 billboards which Metromedia was willing to sell for $485 million. Metromedia would continue to manage the business side of the project and after 5 years buy the billboards back. In 1982, Bear, Stearns was projecting a 43-percent after-tax return on investment. Most of these billboards were not giving travelers any information at all. Forty-one percent of them advertised cigarettes and 21-percent promoted alcohol.

When Congress required the States to pay cash, Congress also promised to provide Federal funds to pay cash and remove nonconforming billboards. Congress has not lived up to its promise and has not provided the money. With record budget deficits and severe cuts in all Federal programs now and in the foreseeable future, Congress will not provide any funds to take down billboards. We have tied the States hands entirely which is precisely what the billboard industry wants. The General Accounting Office estimates that the requirement for cash compensation will cost taxpayers nearly $1 billion to pay for just the nonconforming billboards.

Not only are the States hands tied in removing nonconforming billboards, new billboards are going up at an ever increasing rate. According to the General Accounting Office, in fiscal year 1983, 2,235 nonconforming billboards were removed while 13,522 new billboards were erected.

Section 117 of S. 2405 puts the Billboard Control Program back in the hands of the States where it belongs. It would permit the States to choose to remove signs through amortization, or to require cash compensation for the removal of billboards, or the State could choose to do nothing and leave the existing nonconforming billboards stand. If States and localities want to live with the blight of billboards, that should be their choice. But it should not be something forced on them by the Federal Government.

There is ample evidence that billboards are bad for economic development and the tourism industry all of which is related to jobs. A recent poll conducted by the President's Commission on American Outdoors found that "Natural beauty is the most important criterion for men and women in selecting a place to visit." Four of the most tourist dependent States in the country, Alaska, Hawaii, Maine, an Vermont, have all totally banned billboards.

American communities which have banned or strictly regulated billboards have all benefitted economically. Examples of such communities are Scottsdale, AZ; Sante Fe, NM; Boulder, CO; Montgomery County, MD; Fairfax County, VA; Chapel Hill, NC; Boca Raton, FL; Marin County, CA; and Honolulu, HI.

The three American cities voted most conducive to business, best to retire to, and most attractive for their size—San Diego, Seattle, and Portland—have all banned billboards.

Most of America's premier vacation resorts ban billboards, including Palm Springs; Lake Tahoe; Carmel, CA; Santa Fe, NM; Socttsdale, AZ; Hilton Head Island, SC; Williamsburg, VA; Boca Raton, FL; and Martha's Vineyard, MA.

The billboard industry maintains that billboards are necessary to provide information to travelers. Yet according to Advertising Age, product advertising, which is largely cigarettes and alcohol, accounts for the majority of all billboard revenues. For those businesses that do provide information to the traveling public, there are effective and attractive alternatives to billboards including logo signs, on-premise signs, information at rest areas and tourist information centers and uniform State business identification signs.

Communities all over the country are demanding the return of their constitutional right to regulate billboards and to regain control of their environment.

I ask unanimous consent that information from the Coalition on Scenic Beauty on public attitudes toward billboards be included at this point in the RECORD.

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

PUBLIC ATTITUDES RE BILLBOARDS

Memo to Charlie Floyd, President of the Coalition.

The allegation is frequently made that there are no studies which indicate that the average person likes or does not like billboards. In this connection I have kept files on this matter over a period of years, and would like to submit the following for the Coalition's records.

On 18 July 1979 I testified before the U.S. Senate's Committee on Environment and Public Works re S. 344, a bill by Senator Stafford to modify the Highway Beautification Act of 1965 on the ground that the Act, as later modified, was not accomplishing its stated purpose.

At the conclusion of my testimony I submitted an "Addendum to Testimony of Yale Maxon, re S. 344, Public Attitudes Re Billboards, Documentation from fourteen polls."

This addendum is contained on pages 289—291 inclusive of Hearings Before the Subcommittee on transportation of the Committee on Public Works, U.S. Senate, 96th Congress, First Session on S. 344, A Bill to Amend Section 131, Title 23, United States Code. Serial No. 96-H25. See following sheets for the content of these data.

Summarizing the above data, it can be said that of the 13 polls that gave respondents a choice of indicating a pro-billboard or anti-billboard attitude, the percentages of anti-billboard attitudes were as follows: 61%; 65%; 66%; 69%; 69%; 71%; 76%; 76%; 79%; 79%; 82%; 82%; and 95%.

[Addendum To Testimony of Yale Maxon re S. 344]

PUBLIC ATTITUDES RE BILLBOARDS: DOCUMENTATION FROM FOURTEEN POLLS

"It would appear that wherever billboards continue to exist, they do so despite the contrary force of public opinion." This comment accompanies a 1977 study by the California Roadside Council from which the following data have been abstracted. The data indicate that whether tested at the national, state, or local level, public sentiment is opposed to the visual pollution of the environment caused by the presence of billboards.

PUBLIC ATTITUDES RE BILLBOARDS; DOCUMENTATION FROM 14 POLLS

Title or description, area, year, and finding:

Poll No. 1: Maryland State Auto Club: Maryland, 1957—25,000 questionnaires were sent out to motorists and AAA members asking whether recipients would favor or oppose a ban on billboards within 1000' of all controlled access freeways in the state. 95% favored the total ban.

Poll No. 2: Trendex Nationwide News Poll: U.S.A., 1957—Respondents were asked whether they favored or opposed strict limitation of outdoor advertising along major state highways. 65% favored strict limitation.

Poll No. 3: University of Akron: I-90 between Cleveland and Erie, Pa., 1967—2051 motorists were asked "Should any commercial advertising billboards be allowed on all of 90?" 71% said none should be allowed.

Polls Nos. 4, 5, and 6: San Diego, 1971—Three groups of students of Professor Jack Haberstroh, Professor of Advertising at San Diego State University, contacted San Diego residents with the following question: "The City Council of San Diego early next year will consider an ordinance which would ban all billboards except those used for the purpose of identification of the property, or advertising goods and services available on that property. Are you in favor or not in favor of such an ordinance.

Poll No. 4: Mailed Random Survey of 195 S.D. residents: San Diego, 1971—In answer to the above question, 82% favored the ordinance.

Poll No. 5: Personal Contact of 200 individuals at busy traffic locations: San Diego, 1971—In answer to the above question, 76% favored the ordinance.

Poll No. 6: Random phone survey of 200: San Diego, 1971—In answer to the above question, 66% favored the ordinance.

Poll No. 7: State Planning Office: Maine, 1973—In response to the question "Should the State pass legislation to ban billboards on State Highways?" 61% said "yes".

Poll No. 8: Opinion Research of California: Long Beach, 1974—In the course of in-home interviews on "Citizen Attitudes Toward Future Development" with 602 persons statistically representative of the city's population as a whole, "Provide more stringent regulations of commercial signs and billboards" rated in desirability above each of the following: "Create more parks . . ." Expand program of landscaping roadways and center strips." "Restrict strip commercial zoning."

Poll No. 9: City Planning Commission: San Gabriel, 1976—Survey questionnaire was sent out to 1104 businesses. Of the 165 who responded, 79% said billboards should not be permitted in San Gabriel.

Polls Nos. 10, 11, and 12: San Diego, 1976—Four-year follow-up of Polls 4, 5 and 6 by graduate student of Professor Jack Haberstroh of San Diego State University (see above). All respondents were asked the following question: "In 1972 the City Council of San Diego passed an ordinance banning all billboards except those used for the purposes of identification of property, or advertising goods or services available on that property. This ordinance has been under appeal and in the courts for the last four years. Are you in favor or not in favor of seeing this ordinance enforced?"

Poll No. 10: Mailed Random Survey of 188 San Diego residents: San Diego, 1976—76% favored enforcement of San Diego's total ban on commercial off-site billboards.

Poll No. 11: Personal Contact with 200 San Diego residents at busy traffic locations: San Diego, 1976—82% favored enforcement of San Diego's total ban on off-site commercial billboards.

Poll No. 12: Random phone contacts with 200 San Diego residents: San Diego, 1976—79.5% favored enforcement of San Diego's total ban on off-site commercial billboards.

Poll No. 13: City Staff Survey: Visalia, 1977—City staff interviewed by telephone 896 households regarding the city's signs. 69% answered that the city would be more attractive if it had more stringent regulations on commercial signs.

Poll No. 14: Random Telephone Survey of 42 S.F. residents: San Francisco, 1977—Graduate students of the Urban Studies Program at Antioch College/West, under the direction of Professor Irwin Mussen, sought citizen reaction to a proposal by the City Planning Department to eliminate billboards throughout the city. 69% favored the purposed ordinance.

WHO LIKES BILLBOARDS?

(1) On November 5, 1985, voters in Tucson, Arizona, voted to ban the constuction of all new billboards in Tucson.

(2) On November 6, 1984, voters in Beaufort County, South Carolina, voted overwhelmingly to abolish all billboards in Beaufort County.

(3) A 1984 public opinion poll conducted by Nicolet Research Corporation of Green Bay, Wisconsin, indicated that a large majority of Wisconsin residents oppose billboards.

(4) Houston Mayor Kathy Whitmire was elected after pledging to clean up billboard blight in Houston. Six months later the Houston City Council banned the construction of new billboards and enacted its first comprehensive sign ordinance.

(5) In March 1983, the major and city council of Little Rock, Arkansas, unanimously voted to ban new billboards in that city.

(6) In January 1984, the mayor and city council of Austin, Texas, voted unanimously to ban all new billboards.

(7) In March 1984, the mayor and city council of Ft. Worth banned all new off-premise signs.

(8) Since 1980, over 60 percent of suburban cities in the Houston/Galveston Metro area have followed Houston's lead and voted to prohibit construction of new billboards. This includes blue-collar communities like Pasadena, Texas.

(9) Almost every major American newspaper (from most liberal to most conservative) has editorialized against billboards. For example:

(10) The Los Angles Times calls billboards "Highway Eye Pollution."

(11) The Baltimore Sun calls billboards a "Blight on the Nation."

(12) The Atlanta Constitution calls them a "Spreading Pox on the Urban Landscape."

(13) Readers Digest calls billboards "America's Most Persistent Parasite."

(14) Columnist William Buckley calls billboards "Acts of Aggression Against the American Landscape."

(15) Advertising Executive David Ogilvy calls billboards "hideous."

WHAT'S WRONG WITH BILLBOARDS

(1) Billboards are a form of pollution which scar the face of America. For example, columnist William Buckley calls them "acts of aggression against the American landscape."

(2) Billboards erode the quality of life in America. They pollute our landscape, destroy our historic, cultural, and natural diversity, and undermine America's heritage and sense of place.

(3) Billboards are bad for business. Business, industry, and new residents are all attracted or repelled by a community's appearance. An attractive community generates business and attracts homeowners. Without exception, every American community which has banned or regulated billboards has benefited economically. Just look at Scottsdale, Arizona, Sante Fe, N.M. or Boulder, Colorado to see that this is true.

(4) Billboards are unnecessary. Most billboards advertise cigarettes, liquor, and other products which have nothing to do with roadside businesses. Six states, hundreds of cities, even entire countries have eliminated billboards. All have benefited. Alternatives are alternatives to billboards, while provide the same information to motorists without destroying our environment and at less cost to roadside businesses.

(6) Billboards are a form of blight which invariably lower property values, waste energy, and discourage tourism. Tourists seek unspoiled countryside and unobliterated architecture not endless clutter.

(7) Billboards violate our constitutional right to privacy. Unlike other forms of advertising which can be eliminated at the flip of a switch or the turn of a page there is no possible way to turn off a billboard.

(8) Billboards cause traffic accidents. Research and common sense tell us that billboards are designed to distract motorists' attention. Highways cluttered with billboards have more accidents than those that don't.

(9) If every billboard in America disappeared tomorrow no one would miss them. Maine, Vermont, Hawaii, Alaska and hundreds of American cities have eliminated billboards. All have benefited. Billboard controls will help business. Indeed, the Chamber of Commerce in Houston, Texas has made cleaning up billboard pollution one of their top priorities.

(10) Even if we accept billboards as a legitimate form of business there is absolutely no reason why we can't pass regulations to control the size, height, placement, and number of outdoor ads. Presently, billboards are too big, too tall, too many, and in all the wrong places.

SIGN CONTROL IS GOOD FOR BUSINESS

(1) To a great degree, business, industry, and new residents are attracted or repelled by a community's appearance. In other words, what it looks like. An attractive community generates business and attracts homeowners. An attractive community is also a healthy community. It fosters a sense of community pride, a sense of caring, and a sense of place.

(2) Without exception, communities that have enacted sign control ordinances have benefitted economically. For example, Montgomery County, Maryland; Fairfax County, Virginia; Boulder, Colorado; Chapel Hill, North Carolina; Boca Raton, Florida; Marin County, California; and Honolulu, Hawaii all have three things in common: strict sign controls, healthy economies, and national images as good places to live, work, and do business.

(3) The Joint Economic Committee of the United States Congress reports that a city's quality of life is more important than purely business-related factors when it comes to attracting new businesses, particularly in the rapidly growing high-tech and service industries.

(4) The three American cities voted most conductive to business, best to retire to, and most attractive for their size—San Diego, Seattle, and Portland—have all banned new billboards and enacted tough on-premise sign controls.

(5) Sign control is even more important when it comes to communities that depend on tourism. As tourists, Americans collectively spend millions of dollars seeking un-

spoiled countryside and unobliterated architecture. Yet nothing destroys the unique character of a place faster than uncontrolled signs and billboards. The more a community does to enhance its unique set of natural, historic, and architectural assets the more tourists it will attract. On the other hand the more one place comes to look like everyplace else, the less reason there is to visit.

(6) Almost all of America's premier vacation resorts ban billboards. For example, Palm Springs, Lake Tahoe, and Carmel, California; Sante Fe, New Mexico, Scottsdale, Arizona, Hilton Head Island South Carolina; Williamsburg, Virginia; Boca Raton, Florida; and Martha's Vineyard, Massachusetts have all recognized that sign control helps attract tourists' dollars and aids the local economy.

(7) Chaotic overabundance of billboards almost invariably accomplishes an area's deterioration and lowers property values.

(8) Indeed, the copy cat competition to see who can build the biggest, tallest, and most distracting signs always backfires. Like screaming children in a crowded classroom, the more everyone shouts the less you can hear. Sign cutter works the same way. It means the viewer sees less, not more.

(9) When a community passes regulations that effectively limit the size and number of signs, the viewer actually sees more. As a result businesses do a more effective selling job at lower cost. Elimination of clutter also increases motorist safety, and reduces the visual assault on our senses.

(10) You need only look about you to see that every step taken to improve a community's livability includes without question good sign control. You always find it in modern shopping malls, revitalized business districts, and top grade industrial parks.

Mr. LEAHY. Mr. President, I rise today to support the highway bill reported by the Senate Environment and Public Works Committee, and to congratulate my good friend, the senior Senator from Vermont, Mr. STAFFORD.

Senator STAFFORD and his committee worked long and hard to produce a bill to make sorely needed improvements and repairs in our Nation's highway system. There is little doubt that much work must be done. More than 1,100 bridges in my State of Vermont, alone, are deficient. Much needed improvements are necessary on our State's roads, including Route 7, in the western part of Vermont.

Mr. President, the Senate highway bill is more than a parochial piece of legislation. It authorizes more than $52 billion in highway programs to improve the flow of interstate commerce and to make our Nation's roads safer for the traveling public.

The Senate highway bill achieves all of these things without increasing the Federal gas tax or adding to the deficit. There is no need to raise the gas tax to pay for better highways, because the Federal highway trust is currently running a $16 billion surplus.

My support for Senator STAFFORD's highway bill follows my vote in 1982 to renew our investment in America's infrastructure. I said at that time that our Nation's highways and bridges were in trouble, and I voted with Senator STAFFORD to increase the gas tax to pay for better roads and bridges. Both of us took a lot of heat for our vote.

But my vote for the 1982 highway bill is one of which I am proud.

Only later did our critics realize the deteriorating condition of our Nation's highways. But if we had waited to improve our highways until it became popular, or until some tragedy shocked us into action, the Nation's roads would have deteriorated even more. The cost of repairing and improving those highways would have greatly increased.

The current Senate highway bill is equally farsighted. But we must not become complacent. All of us will look to Senator STAFFORD in the future to bring legislation before the Senate to maintain our investment in the Nation's highways.

I urge the Senate to adopt the highway bill.

Mr. DOMENICI. Mr. President, I would like to take a few moments to address the provisions contained in this bill pertaining to the disadvantaged business enterprise program.

The committee received a great amount of testimony on this program; it is one that has generated a great deal of controversy. Some have argued for its elimination, but the committee took a firm stand in support of its continuation. There was a recognition by the committee, however, that there have been serious implementation problems with the program.

Therefore, section 130 of the legislation before us attempts to address some of these problems. Significant reforms include the following:

Establishment of Federal minimum uniform certification criteria for States to use in certifying whether a concern is disadvantaged. This is important to make sure nonminority contractors know who are qualified DBE's certified under this program.

Requirement that States expend not less that 5 percent in 1988, not less than 7 percent in 1989, and not less than 10 percent in 1990 of the overall DBE goal directly with DBE firms. This requirement should focus the attention of State governments on increasing the opportunities for DBE's to be prime contractors.

Changing the definition of a DBE to include small business concerns with annual average gross receipts less than $10 million and to include women as "socially and economically disadvantaged individuals"; and

Allowing up to 10 percent of the costs of each contract incurred by State and local governments and prime contractors in assisting DBE's to be used to meet the goal.

Mr. President, these provisions are an important step in the right direction, but we may want to consider further changes at a later date. I feel strongly that we must continue our oversight of this program to ensure that it is being implemented properly.

This is one Senator who believes that the DBE program is essential in bringing disadvantaged businesses into the marketplace. However, without proper implementation the provision will not help anyone. I commend the committee for its efforts in this regard.

Mr. SPECTER. Mr. President, at this time I wish to raise with Senator SYMMS the matter of section 127 of S. 2405, as reported by the Committee on Environment and Public Works, which would establish a $500,000 threshold of application for "Buy America" requirements on Federal Aid to Highway and Transit Contracts. Under current law, "Buy America" requires that 100 percent of all steel and other construction materials used in STAA authorized contracts be domestically produced.

While taking large strides toward rehabilitating our Nation's transportation infrastructure, S. 2405's predecessor, the Surface Transportation Assistance Act of 1982, also gave a much needed boost to the suffering steel and construction industries.

The U.S. Department of Transportation estimated that STAA led to the creation of over 100,000 jobs within the first year of its enactment. The Pennsylvania Economy League calculates that for every $1 million spent on highway construction, a total of 104 direct and indirect jobs are produced. Because of STAA-funded procurement, reportedly over 2 million more tons of steel are produced, which supports over 6,000 new jobs in the vital steel industry. The "Buy America" provision has been a great success.

Mr. SYMMS. I appreciate the Senator's concern about this important issue. You are correct in stating that section 127 exempts projects costing $500,000 or less from domestic content requirements. It was the committee's position, however, that reestablishment of such a threshold provision would help to reduce administrative burdens and facilitate the highway and transit procurements of grantees with small projects, and lower the cost of the highway and transit programs.

Mr. SPECTER. I must vigorously oppose this clause which would exempt contracts, under $500,000 from being subject to the "Buy America" provision. This is plainly an attempt to subvert our current successful "Buy America" policy. If this new change had been in effect in fiscal year 1985, approximately 3,000 or 48 percent of the 6,275 contracts awarded would have been exempt from "Buy America." Over the last 6 years, almost 55 percent of all Federal-aid highway

construction contracts were for $500,000 or less.

In addition to a decrease in production by our important steel industry, a drop in domestic procurement imposed by the $500,000 threshold will also translate into a loss of tax revenues at a time when we are trying to reduce deficits. A study by the Congressional Research Service on this issue reports that for every $1,000 purchase of domestic materials by the Federal Government, $464 are eventually recaptured through taxes at the Federal, State, and local levels. If the $500,000 threshold were to become law, we could lose $1.6 billion in tax revenues over the next 4 years at a time when we especially need to be fiscally tight.

Mr. SYMMS. I would note for the RECORD that the statistics cited from the Congressional Research Service [CRS] study are based on the assumption that without "Buy America" requirements, all steel and other construction materials used in Federal-aid highway and transit contracts would be foreign-produced. I am advised that American-produced materials covered under the "Buy America" provision are often very competitively priced with foreign-produced materials and the CRS study, therefore, may have overstated the actual impact of this "Buy America" threshold on American manufacturers. However, I recognize the Senator's desire to ensure that the money of American taxpayers goes to support American jobs and American industries, and will work to protect these concerns in conference. The Senator's cooperation will further our shared interest in securing passage of this highway reauthorization legislation, without which State highway construction and repair programs would be frozen to a halt.

Mr. SPECTER. Mr. President, on the basis of such assurance that the chairman of the Subcommittee on Transportation will protect my concerns with respect to the "Buy America" statute, I withdraw my amendment from further consideration and yield the floor.

Mr. HEFLIN. Mr. President, the amendment of the Highway Beautification Act concerning the elimination of just compensation for the removal of billboards is, in my opinion, unfair and unnecessary. Since the act's passage in 1965, Congress has held firm in its insistence on the payment of just compensation for lawful signs removed by Government action. The Senate Committee on Public Works, predecessor of our present Committee on Environment and Public Works, unanimously elected to pay just compensation for signs and billboards when they considered and reported the bill in 1965.

Just compensation is fair, and it is totally consistent with all other provisions of the Federal-Aid Highway Program that result in the acquisition of personal and real property.

I believe Congress should do what is fair, and continue the compensation requirement as contained in the House bill.

Mr. CRANSTON. Mr. President, I want to commend the leadership of the Senate Environment and Public Works Committee for their diligence in bringing to the Senate a multiyear highway reauthorization bill. Reauthorization of Federal Highway Programs is vitally important to the growing transportation needs of California and the Nation. The timely maintenance and expansion of our highway system, made possible by sound planning, is critical to California's continued economic growth. Such planning is possible only with a multiyear Federal authorization of highway programs.

I support prompt Senate approval of the multiyear reauthorization of highway programs in S. 2405. At the same time, I support the California highway demonstration projects included in H.R. 3129, the House counterpart to the Senate highway bill. These are projects of merit, important to communities throughout California. They respond to specific local transportation needs unmet by the current highway program.

I am aware that S. 2405 makes possible the addition of demonstration projects, to be paid for from the State's Federal apportionment. Additional Federal funds are not authorized under the Senate bill, as they are under the House bill. I will not propose to include these projects in S. 2405. California operates under a 5-year State Transportation Improvement Program [STIP] that commits its highway funds to specific projects well in advance. Including new projects in the Senate bill would necessarily displace others to which the State is already committed. Nonetheless, I want to make it clear to the chairman and the ranking minority member that my not offering an amendment to include the projects in the committee bill does not signal any lack of support for the California projects set forth in H.R. 3129. Rather, it simply means that I view a conference with the House as the best place for resolving the matter, where the relative merits of the Senate versus House funding approach for demonstration projects may be thoroughly debated.

I want to make my support for these projects clear to the chairman and ranking minority member. I would like their acknowledgment of my support and their assurance that every effort will be made to resolve the demonstration project funding matter in conference with the House.

Mr. STAFFORD. I can assure my distinguished colleague from California that I understand he is supportive of the California projects in H.R. 3139, and that the Senate will be diligent in its attempts to reach a compromise in conference with the House.

Mr. BENTSEN. Mr. President, I also wish to assure the Senator from California that I am aware of his support for the projects and that I will assist the chairman in achieving an equitable resolution of the issue in conference.

Mr. CRANSTON. I thank the distinguished floor managers.

AMENDMENT NO. 2893

Mr. GORTON. Mr. President, I ask unanimous consent that in the engrossment of H.R. 3129, the highway bill, the enrolling clerk be instructed to insert in the text of my amendment, numbered 2893, agreed to earlier today, the words "or any other" before the word "act." This amendment is necessary to correct a technical drafting error and has been agreed to by Senators SYMMS and BURDICK.

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

Are there further amendments? The Senator from Idaho.

Mr. SYMMS. Mr. President, I move that we advance the bill to third reading.

The PRESIDING OFFICER. If there are no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. SYMMS. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 889, H.R. 3129.

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

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 3129), to authorize funds for construction of highways, for highway safety programs, and for mass transportation programs, to expand and improve the relocation assistance program, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. SYMMS. Mr. President, I move to strike all after the enacting clause and to substitute therefore the text of S. 2405 as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Idaho.

The motion was agreed to.

Mr. SYMMS. I ask for the yeas and nays on passage.

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 the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is: Shall it pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 288 Leg.]

YEAS—99

Abdnor	Goldwater	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	Simpson
DeConcini	Kerry	Specter
Denton	Lautenberg	Stafford
Dixon	Laxalt	Stennis
Dodd	Leahy	Stevens
Dole	Levin	Symms
Domenici	Long	Thurmond
Durenberger	Lugar	Trible
Eagleton	Mathias	Wallop
Evans	Matsunaga	Warner
Exon	Mattingly	Weicker
Ford	McClure	Wilson
Glenn	McConnell	Zorinsky

NOT VOTING—1

Garn

So the bill (H.R. 3129) was passed, as follows:

That this Act may be cited as the "Federal-Aid Highway Act of 1986".

AUTHORIZATIONS

SEC. 102. The following sums are hereby authorized to be appropriated out of the Highway Trust Fund other than the Mass Transit Account—

(1) For the Federal-aid Interstate-Primary Program $8,150,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(2) For the Federal-aid urban system $750,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(3) For the Federal-aid secondary system in rural areas $600,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(4) For bridge replacement and rehabilitation under section 144 of title 23, United States Code, $1,500,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. All but $200,000,000 per fiscal year of each such authorization shall be apportioned as provided in 23 U.S.C. 144(e). Such $200,000,000 shall be obligated as provided in 23 U.S.C. 144(g)(2). The minimum percentage off-system bridge provisions of 23 U.S.C. 144(g)(2) shall continue effective in fiscal years 1987, 1988, 1989, and 1990;

(5) For carrying out the Federal lands highway program under section 204 of title 23, United States Code—

(A) For forest highways, $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(B) For public lands highways, $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(C) For Indian reservation roads, $75,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990; and

(D) For park roads and parkways $75,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(6) For carrying out the territorial highway program under section 215(a) of title 23, United States Code—

(A) For the Virgin Islands, $5,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(B) For Guam, $5,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(C) For American Samoa, $1,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990; and

(D) For the Commonwealth of the Northern Mariana Islands, $1,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(7) For carrying out section 402 of title 23, United States Code (relating to highway safety construction programs), by the Federal Highway Administration, $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(8) For carrying out sections 307(a) and 403 of title 23, United States Code (relating to highway construction safety research and development), by the Federal Highway Administration, $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(9) For projects for the elimination of hazards under section 152 of title 23, United States Code, $175,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990; and

(10) For projects for the elimination of hazards of railway-highway crossings on any public road under section 130 of title 23, United States Code, $175,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

INTERSTATE SUBSTITUTE PROGRAM

SEC. 103. (a) Section 103(e)(4) of title 23, United States Code, is amended to read as follows:

"(4) INTERSTATE SUBSTITUTE PROGRAM.—

"(A) WITHDRAWAL OF APPROVAL.—Upon the joint request of a State Governor and the local governments concerned, the Secretary may withdraw approval of any route or portion thereof on the Interstate System which was selected and approved in accordance with this title, if the Secretary determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System and if the Secretary receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by the route or portion thereof.

"(B) SUBSTITUTE PROJECTS.—When the Secretary withdraws approval under this paragraph, a sum equal to the Federal share of the cost to complete the withdrawn route or portion thereof, as that cost is included in the latest Interstate System cost estimate approved by Congress, or up to and including the 1983 interstate cost estimate, whichever is earlier, subject to increase or decrease, as determined by the Secretary based on changes in construction costs of the withdrawn route or portion thereof as of the date of approval of each substitute project under this paragraph, or the date of approval of the 1983 interstate cost estimate, whichever is earlier, shall be available to the Secretary to incur obligations for the Federal share of either public mass transit projects involving the construction of fixed rail facilities or the purchase of passenger equipment including rolling stock, for any mode of mass transit, or both, or highway construction projects on any public road or both, which will serve the area or areas from which the Interstate route or portion thereof was withdrawn, which are selected by the responsible local officials of the area or areas to be served, and which are selected by the Governor or the Governors of the State or States in which the withdrawn route was located if the withdrawn route was not within an urbanized area or did not pass through and connect urbanized areas, and which are submitted by the Governors of the States in which the withdrawn route was located. Federal-aid highway projects constructed under this paragraph shall be subject to provisions of this title applicable to the appropriate Federal-aid system. Off system highway projects constructed under this paragraph shall be subject to the provisions of this title applicable to Federal-aid secondary system projects.

"(C) DEADLINE FOR WITHDRAWAL.—The Secretary shall not approve any withdrawal of a route under this paragraph after September 30, 1983, except that with respect to any route which on November 6, 1978, is under judicial injunction prohibiting its construction the Secretary may approve withdrawals until September 30, 1986, and except that with respect to any route which on May 12, 1982, is under judicial injunction prohibiting its construction, the Secretary may approve withdrawals on such route until September 30, 1985.

"(D) PROJECT APPROVAL; FEDERAL SHARE.—Approval by the Secretary of the plans, specifications, and estimates for a substitute project shall be deemed to be a contractual obligation of the Federal Government. The Federal share of each substitute project shall not exceed 85 per centum of the cost thereof.

"(E) AVAILABILITY OF FUNDS FOR SUBSTITUTE PROJECTS.—

"(i) TIME PERIOD.—The sums apportioned and the sums allocated under this paragraph for public mass transit projects or for projects under any highway assistance program shall remain available in the State of apportionment or allocation for the fiscal year for which apportioned or allocated, as the case may be, and for the succeeding fiscal year.

"(ii) REAPPORTIONMENT OR REALLOCATION.—Any sums which are apportioned or allocated to a State and are unobligated (other than an amount which, by itself, is insufficient to pay the Federal share of the cost of a substitute project which has been submitted by the State to the Secretary for approval) at the end of the period of availability shall be apportioned or allocated, as the case may be, among those States which have obligated all sums (other than such an amount) apportioned or allocated, as the case may be, to them. Such reapportionments shall be in accordance with the latest adjusted estimate of the cost of completing substitute projects, and such reallocations shall be at the discretion of the Secretary.

"(F) ADMINISTRATION OF TRANSIT FUNDS.—The sums obligated for mass transit projects under this paragraph shall become part of, and be administered through, the Urban Mass Transportation Fund.

"(G) AUTHORIZATION OF APPROPRIATIONS FOR HIGHWAY PROJECTS.—For the fiscal year ending September 30, 1983 $257,000,000 shall be available out of the Highway Trust Fund for expenditure at the discretion of the Secretary for projects under highway assistance programs. There shall be available, out of the Highway Trust Fund (other than the Mass Transit Account), to the Secretary for expenditure under this paragraph for projects under highway assistance programs $700,000,000 per fiscal year for each of the fiscal years ending September 30, 1984, and September 30, 1985, and $725,000,000 for the fiscal year ending September 30, 1986, and $650,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

"(H) DISTRIBUTION OF SUBSTITUTE HIGHWAY FUNDS.—

"(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Twenty-five per centum of the funds made available by subparagraph (G) for each of the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, for substitute highway projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 75 per centum of such funds shall be apportioned in accordance with cost estimates.

"(ii) 1984 APPORTIONMENT.—The Secretary shall make an estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of enactment of the Highway Improvement Act of 1982. Upon approval of such cost estimate by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute highway projects for the fiscal year ending September 30, 1984.

"(iii) 1985 AND 1986 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute highway projects for the fiscal years ending September 30, 1985 and September 30, 1986.

"(iv) SUBSEQUENT APPORTIONMENTS.—In September of 1986 and every September thereafter, the Secretary shall adjust the Interstate substitute cost estimate established in revised Table 3, Committee Print 99-171 of the Senate Committees on Environment and Public Works and on Banking, Housing, and Urban Affairs to reflect (1) changes in the amounts available to the Secretary, (2) changes in the State estimates in the division of funds between substitute highway and transit projects, (3) approval of substitute projects, and (4) the allocation and apportionment of substitute highway funds in prior fiscal years and shall use the Federal share of such adjusted estimates in making apportionments for substitute highway projects on October 1 or as soon as practicable thereafter for fiscal years subsequent to the fiscal year ending September 30, 1986.

"(I) AUTHORIZATION OF APPROPRIATIONS FOR TRANSIT PROJECTS.—There are authorized to be appropriated for liquidation of obligations incurred for substitute transit projects under this paragraph the sums provided in section 4(g) of the Urban Mass Transportation Act of 1964.

"(J) DISTRIBUTION OF SUBSTITUTE TRANSIT FUNDS.—

"(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Fifty per centum of the funds appropriated for each fiscal year beginning after September 30, 1983, for carrying out substitute transit projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 50 per centum of such funds shall be apportioned in accordance with cost estimates approved by Congress.

"(ii) 1984 APPORTIONMENT.—The Secretary shall make an estimate of the cost of completing substitute transit projects under this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of the enactment of the Highway Improvement Act of 1982. Upon approval of such cost estimate by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for the fiscal year ending September 30, 1984.

"(iii) 1985 AND 1986 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute transit projects under this paragraph and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for the fiscal years ending September 30, 1985 and September 30, 1986.

"(iv) SUBSEQUENT APPORTIONMENTS.—In September 1986 and every September thereafter, the Secretary shall adjust the Interstate substitute cost estimate established in revised Table 4, Committee Print 99-171 of the Senate Committees on Environment and Public Works and on Banking, Housing, and Urban Affairs to reflect (1) changes in the amounts available to the Secretary under this paragraph, (2) changes in State estimates of the division of funds between substitute highway and transit projects, (3) approvals of substitute projects, and (4) the allocation and apportionment of substitute transit funds in prior fiscal years and shall use the Federal share of such adjusted estimate in making apportionments for substitute transit projects on October 1 or as soon as practicable thereafter for fiscal years subsequent to the fiscal year ending September 30, 1986.

"(K) REDUCTION OF INTERSTATE APPORTIONMENT.—

"(i) IN GENERAL.—Unobligated apportionments for the Interstate System in any State where a withdrawal is approved under this paragraph shall, on the date of such approval, be reduced in the proportion that the Federal share of the cost of the withdrawn route or portion thereof bears to the Federal share of the total cost of all Interstate routes in that State as reflected in the latest cost estimate approved by the Congress.

"(ii) EXCEPTION.—In any State where the withdrawal of an Interstate route or portion thereof has been approved under this paragraph prior to the date of the enactment of the Federal-Aid Highway Act of 1976, the unobligated apportionments for the Interstate System in that State on such date of enactment shall be reduced in the proportion that the Federal share of the cost to complete such route or portion thereof, as shown on the latest cost estimate approved by Congress prior to such approval of withdrawal, bears to the Federal share of the cost of all Interstate routes in the State, as shown on such cost estimate; except that the amount of such proportional reduction shall be credited with the amount of any reduction in such State's Interstate apportionment which was attributable to the Federal share of any substitute project approved under this paragraph prior to enactment of such Federal-Aid Highway Act.

"(L) APPLICABILITY OF URBAN MASS TRANSPORTATION ACT.—

"(i) SUPPLEMENTARY FUNDS.—Funds available for expenditure to carry out the purposes of this paragraph shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to the Urban Mass Transportation Act of 1964, as amended.

"(ii) LABOR PROTECTION.—The provisions of section 3(e)(4) of the Urban Mass Transportation Act of 1964, as amended, shall apply in carrying out this paragraph.

"(M) LIMITATION ON INTERSTATE DESIGNATIONS.—After the date of enactment of the Federal-Aid Highway Act of 1978, the Secretary may not designate any mileage as part of the Interstate System pursuant to this paragraph or under any other provisions of law. The preceding sentence shall not apply to a designation made under section 139 of this title.

"(N) OPEN TO TRAFFIC REQUIREMENT.—After September 30, 1979, the Secretary shall not withdraw approval under this paragraph of any route or portion thereof on the Interstate System open to traffic before the date of the proposed withdrawal. Any withdrawal of approval of any such route or portion thereof before September 30, 1979, is hereby determined to be authorized by this paragraph.

"(O) LIMITATION OF SUBSTITUTION FOR STATUTORILY DESIGNATED ROUTES.—Any route or segment which was statutorily designated after March 7, 1978, to be on the Interstate System shall not be eligible for withdrawal or substitution under this subsection.

"(P) RIGHT-OF-WAY PAYBACK.—Of sums made available to the Secretary under this paragraph for a State, an amount equal to the amount expended in Federal funds to purchase right-of-way for the withdrawn route or portion thereof in every case where right-of-way has not been disposed of by the State as of the date of enactment of this sentence shall not be available for release by the Secretary until the right-of-way disposition decision has been made in accordance with 103(e)(5)(B), (6)(B), or (e)(7) of this title. The amount apportioned to each eligible State pursuant to this paragraph shall be based on the full remaining value of the sums made available under this paragraph as determined by the Secretary but the total of such apportionments shall not exceed the remaining value of such sums less the amount unavailable for release by the Secretary. Sums retained by the Secretary shall be made available for apportionment upon partial or full repayment of funds in accordance with section 103(e)(7) of this title or upon determination by the Secretary that, under section 103(e)(5)(B) or (6)(B), repayment is not required.".

RIGHT-OF-WAY PAYBACK

(b) Subsection 103(e) of title 23, United States Code, is amended by adding paragraph (10) as follows:

"(10)(A) Upon repayment by a State to the Treasurer of the United States of an amount as determined by the Secretary to be equal to the amount of Federal funds expended to acquire property for the Interstate System which was withdrawn from the Interstate System on or after September 1, 1985, in accordance with paragraph (4), such State shall be absolved of any further responsibility for repayment and will be deemed to have fully met all of the repayment requirements of paragraph (7) of this section.

"(B) The amount repaid to the United States under this paragraph shall be deposited to the credit of the appropriation for the Highway Trust Fund. Such repayment shall be credited to the unprogrammed balance of funds apportioned to such State in accordance with section 104(d)(1)(C) of this title. The amount so credited shall be in addition to all other funds then apportioned to the State and shall be available for expenditure in accordance with the provisions of this title."

APPORTIONMENT

SEC. 104. Section 104 of title 23, United States Code, is amended by (a) Striking in paragraph (f)(1) ", except that in the case of funds authorized for apportionment on the Interstate System, the Secretary shall set aside that portion of such funds (subject to the overall limitation of one-half of 1 per centum) on October 1 of the year next preceding the fiscal year for which such funds are authorized for such System." and inserting in lieu thereof a period and by relettering subsection (f) as subsection (b).

(b) Adding a new subsection (c) as follows:

"(c) On October 1 of each of the fiscal years, ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, the Secretary, after making deductions authorized by subsections (a) and (b) of this section, shall deduct one-quarter per centum of the remaining funds authorized to be appropriated for that fiscal year for the Federal-aid Interstate-Primary Program, the urban system, the secondary system, bridge replacement and rehabilitation, Interstate substitution highway projects, projects for the elimination of hazards of railway-highway crossings, and for projects for the elimination of hazards under section 152 of this title for the purpose of carrying out the objectives of the Strategic Highway Research Project under section 133 of this title."

(c) Repealing existing subsections (c) and (d).

(d) Existing subsection (b) is amended to read as follows:

"(d) On October 1 of each fiscal year the Secretary, after making the deductions authorized by subsections (a), (b), and (c) of this section, shall apportion the remainder of the sums authorized to be appropriated for expenditure upon the Federal-aid systems for the fiscal year, among the several States in the following manner:

"(1) FOR THE FEDERAL-AID INTERSTATE-PRIMARY PROGRAM.—

"(A) For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $3,000,000,000 remaining after making the deductions authorized by subsections (a), (b), and (c) of this section shall be apportioned in the ratio which the estimated cost of completing the Interstate System in each State bears to the sum of the estimated cost of completing the Interstate System in all of the States as established in revised table 5, Committee Print 99-170 of the Senate Committee on Environment and Public Works: Provided, That the Secretary shall on October 1, 1986, before making the apportionment required by this paragraph, adjust such Interstate Cost Estimate to reflect (i) all previous credits, apportionments of Interstate construction funds and lapses of previous apportionments of Interstate construction funds, (ii) previous withdrawals of Interstate segments, (iii) previous allocations of Interstate discretionary funds, and (iv) transfers of Interstate construction funds and: Provided, That for each of the fiscal years 1987, 1988, 1989, and 1990, no State, including the State of Alaska, shall receive less than one-half per centum of the total apportionment under this paragraph (A). Amounts made available under this proviso shall be eligible for expenditure in the same manner as other Interstate-primary funds, for projects on the urban and secondary system, and for projects for the elimination of hazards under section 152 of this title.

"(B) For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $2,800,000,000 remaining after making the deduction authorized by subsections (a), (b), and (c) of this section shall be apportioned as follows 55 per centum in the ratio that lane miles on the Interstate routes designated under sections 103 and 139(c) of this title (other than those on toll roads not subject to a Secretarial agreement provided for in section 129(e) of this title and section 105 of the Surface Transportation Assistance Act of 1978) in each State bears to the total of all such lane miles in all States; and 45 per centum in the ratio that vehicle miles traveled on lanes on the Interstate routes designated under sections 103 and 139(c) of this title (other than those on toll roads not subject to a Secretarial agreement provided for in section 129(e) of this title and section 105 of the Surface Transportation Assistance Act of 1978) in each State bears to the total of all such vehicle miles in all States. Notwithstanding the preceding sentence, no State excluding any State that has no Interstate lane miles shall receive less than one-half of 1 per centum of the total apportionment made by this subparagraph for any fiscal year.

"(C) Before making the apportionment under this paragraph (C), the Secretary shall set aside such sums as are necessary to carry out the provisions of subparagraph (C)(iv). For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $2,350,000,000 remaining after such set aside and after the deductions authorized by subsections (a), (b), and (c) of this section shall be apportioned as follows:

"(i) The Secretary shall determine for each State the higher of the amount which would be apportioned to such State under a formula where (I) two-thirds would be apportioned, one-third in the ratio which the area of each State bears to the total area of all the States, one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States as shown by the latest available Federal census, and one-third in the ratio which the mileage of rural delivery routes and intercity mail routes where service is performed by motor vehicles in each State bears to the total mileage of rural delivery and intercity mail routes where service is performed by motor vehicles, as shown by a certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary; and one-third in the ratio which the population in urban areas in each State bears to the total population in urban areas in all the States as shown by the latest Federal census with no State (other than the District of Columbia) to receive less than one-half per centum of each year's apportionment and the amount which would be apportioned to such State under a formula where (II) each State would be apportioned one-half in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States as shown by the latest available Federal census and one-half in the ratio which the population in urban areas in each State bears to the total population in urban areas in all the States as shown by the latest Federal census.

"(ii) The Secretary shall total the amounts determined for each State under paragraph (i) and shall determine the ratio which the amounts apportioned under this paragraph (C) bears to such total.

"(iii) The amount which shall be apportioned to each State under this paragraph (C) shall be the amount determined for such State under paragraph (i) multiplied by the ratio determined under paragraph (ii).

"(iv) No State shall receive an apportionment under this paragraph (C) which is less than the lower of (I), the amount which the State would be apportioned under the formula in paragraph (i)(I), and (II), the amount which the State would be apportioned under the formula in paragraph (i)(II). No State shall receive less than one-half per centum of the total apportionment under this paragraph (C).

"(2) For the Federal-aid secondary system one-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all of the States as shown by the latest available Federal census; and one-third in the ratio which the mileage of rural delivery and intercity mail routes where service is performed by motor vehicles, certified as above provided, in each State bears to the total mileage of rural delivery and intercity mail routes where serv-

ice is performed by motor vehicles in all the States. No State (other than the District of Columbia) shall receive less than one-half of 1 per centum of each year's apportionment.

"(3) For the Federal-aid urban system in the ratio which the population in urban areas, or parts thereof, in each State bears to the total population in such urban areas, or parts thereof, in all the States as shown by the latest available Federal census. No State shall receive less than one-half of 1 per centum of each year's apportionment.".

(e) Subsection (e) is amended to read as follows:

"(e) On October 1 of each fiscal year the Secretary shall certify to each of the State highway departments the sums apportioned hereunder to each State for such fiscal year, and also the sums which have been deducted pursuant to subsections (a), (b), and (c) of this section. To permit the State to develop adequate plans for the utilization of apportioned sums, the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than ninety days before the beginning of the fiscal year for which the sums to be apportioned are authorized.".

(f) Existing subsection (g) is amended to read as follows:

"(f) Not more than 40 per centum of the amount apportioned in any fiscal year to each State in accordance with sections 130, 144, and 152 of this title, may be transferred from the apportionment under one section to the apportionment under any other of such sections if such a transfer is requested by the State highway department and is approved by the Secretary as being in the public interest. The Secretary may approve the transfer of 100 per centum of the apportionment under one such section to the apportionment under any other of such sections if such transfer is requested by the State highway department, and is approved by the Secretary as being in the public interest, if the Secretary has received satisfactory assurances from such State highway department that the purposes of the program from which such funds are to be transferred have been met.".

(g) Existing subsection (h) is repealed.

(h) Subsection (g) is added as follows:

"(g)(1) The amount apportioned in any fiscal year to each State in accordance with paragraph (2) or (3) of subsection (d) of this section may be transferred from the apportionment under one paragraph to the apportionment under the other paragraph if such transfer is requested by the State highway department and is approved by the Governor of such State and the Secretary as being in the public interest. Funds apportioned in accordance with paragraph (3) of subsection (d) of this section shall not be transferred from their allocation to any urbanized area of two hundred thousand population or more under section 150 of this title without the approval of the local officials of such urbanized area.

"(2) In the case of transfers under paragraph (1), the total of all transfers during any fiscal year to any apportionment shall not increase the original amount of such apportionment for such fiscal year by more than 50 per centum. Not more than 50 per centum of the original amount of any apportionment for any fiscal year shall be transferred to other apportionments.".

LETTING OF CONTRACTS

SEC. 105. Section 112(b) of title 23, United States Code, is amended by inserting "or that an emergency situation exists" before the period at the end of the first sentence.

AVAILABILITY

SEC. 106. Section 118 of title 23, United States Code, is amended to read as follows:

"Sec. 118. Availability.

"(a) On and after the date that the Secretary has certified to each State the sums apportioned or allocated pursuant to an authorization under this title such sums shall be available for obligation under the provisions of this title.

"(b)(1) Sums apportioned for the Federal-aid Interstate-Primary Program, for the Federal-aid secondary system and for the Federal-aid urban system in a State shall continue available for obligation in that State for the appropriate program and system for a period of three years after the close of the fiscal year for which such sums are authorized and any amounts so apportioned remaining unobligated at the end of such period shall lapse.

"(2)(A) Sums apportioned for bridge replacement and rehabilitation in a State shall remain available for obligation in that State for a period of three years after the close of the fiscal year for which the sums are authorized and any amounts apportioned remaining unobligated at the end of the period shall be allocated by the Secretary pursuant to section 144(g)(2) of this title.

"(B) Sums allocated for bridge replacement and rehabilitation in a State shall remain available for obligation in that State until the close of the fiscal year of allocation and any amount allocated remaining unobligated at the end of the period shall be reallocated by the Secretary pursuant to section 144(g)(2) of this title.

"(3) Sums apportioned or allocated for a particular purpose for any fiscal year shall be deemed to be obligated if a sum equal to the total of the sums apportioned or allocated to the State for such purpose for such fiscal year and previous fiscal years is obligated. Any funds released by the payment of the final voucher or by the modification of the formal project agreement shall be credited to the same class of funds previously apportioned or allocated to the State and be immediately available for obligation.

"(c) Funds made available to the State of Alaska under this title may be expended for construction of access and development roads on a Federal-aid system that will serve resource development, recreational, residential, commercial, industrial, or other like purposes.".

INTERSTATE SYSTEM RESURFACING

SEC. 107. (a) Section 119(a) of title 23, United States Code, is amended by (1) striking "section 105 of the Federal-Aid Highway Act of 1978" and inserting in lieu thereof "section 129(k) of this title" and by (2) striking the next to the last sentence.

(b) Section 119(b) of title 23, United States Code, is amended by striking "for the Interstate system shall" and inserting in lieu thereof "shall", by (2) striking "equal to 10 per centum" and inserting in lieu thereof "of not more than 10 per centum", and by (3) striking "104" and inserting in lieu thereof "104(d)(1)(A)".

(c) Section 119(d) is repealed.

FEDERAL SHARE PAYABLE

SEC. 108. (a) Subsection (a) of section 120, title 23, United States Code, is amended by striking "financed with primary" and inserting in lieu thereof "financed with Interstate-primary" and by inserting "(other than the Interstate System)" after "primary system".

(b) Subsection (b) of section 120, title 23, United States Code, is repealed.

(c) Subsection (c) of section 120, title 23, United States Code, is amended by striking "provided for by funds made available under the provisions of section 108(b) of the Federal-Aid Highway Act of 1956 shall be increased to" and inserting in lieu thereof ", as designated in section 103 of this title and as designated prior to March 9, 1984, in section 139 (a) and (b) of this title financed with Interstate-primary funds shall not exceed".

(d) Subsection (f) of section 120 of title 23, United States Code, is amended by striking "shall not exceed 100 per centum of the cost thereof: Provided" and inserting in lieu thereof "on account of any project on a Federal-aid highway system, including the Interstate System, shall not exceed the Federal share payable of a project on a system as provided in subsections (a) and (c) of this section: Provided, That the Federal share payable for eligible emergency repairs to minimize damage, protect facilities or restore essential traffic accomplished within thirty days after the actual occurrence may amount to 100 per centum of the costs thereof: And provided further".

(e)(1) The second subsection (i), subsection (j), and subsection (k) of section 120 of title 23, United States Code, are relettered as subsection (j), (k), and (l) respectively.

(2) The second subsection (i) of section 120, title 23, United States Code, relettered as subsection (j), is amended by inserting "104(b) and" before "307(c)".

(f) Subsection (b) is added to section 120 of title 23, United States Code, as follows: "Notwithstanding other provisions of this title, a State may contribute an amount in excess of its normal share on a project under this title so as to decrease the Federal share payable on such project: Provided, That the use of this provision shall be subject to criteria established by the Secretary.".

(g) Section 120(f) of title 23, United States Code, as amended by this section is effective for all natural disasters or catastrophic failures which occur subsequent to enactment of this Act.

RELOCATION OF UTILITY FACILITIES

SEC. 109. Section 123(a) of title 23, United States Code, is amended to read as follows:

"(a) When a State pays for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary system including the Interstate System, or under a Federal-aid program, or under the State's safety improvement program for the elimination of hazards to the traveling public resulting from the utility facilities on or near the right-of-way of highways on the Federal-aid primary system including the Interstate system, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are used on the project.".

EMERGENCY RELIEF

SEC. 110. Section 125 of title 23, United States Code, is amended by adding subsection (d) as follows:

"(d) For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Island shall be considered to be States and part of the United States, and the chief executive officer of each territory shall be considered to be a Governor of a State. The Secretary may expend funds from the sums authorized for this section for the repair or reconstruction of highways eligible for assistance under section 215 of this title: Provided, That obligations for projects under this subsection shall not exceed $5,000,000 in any fiscal year.".

VEHICLE WEIGHT LIMITATIONS—INTERSTATE SYSTEM

SEC. 111. Section 127(a) of title 23, United States Code, is amended by striking "authorized to be appropriated for any fiscal year under provisions of the Federal-Aid Highway Act of 1956 shall be apportioned" and inserting in lieu thereof "shall be apportioned under section 104(d)(1)(A) of this title" and by (b) adding after the word "lapse" the following: "if not released and obligated within the availability period specified in section 118(b)(1) of this title".

TOLL ROADS, BRIDGES, TUNNELS AND FERRIES

SEC. 112. (a)(1) Section 301 of title 23, United States Code, is repealed.

(2) Section 105 of the Federal-Aid Highway Act of 1978 is amended by striking the last two sentences.

(b) Section 129 of title 23, United States Code, is amended to read as follows:

"SEC. 129. TOLL ROADS, BRIDGES, TUNNELS AND FERRIES.

"(a) Except as provided in this section all highways constructed, reconstructed, rehabilitated, restored, or resurfaced under the provisions of this title shall be free from tolls of all kinds.

"(b) The Secretary may permit Federal participation, on the same basis and in the same manner as in the construction of free highways under this chapter, in the construction of any new toll highway, bridge or tunnel other than a highway on the Interstate System; in the reconstruction of any existing highway, bridge or tunnel to expand its capacity, other than a highway, bridge or tunnel on the Interstate System; or in the construction, reconstruction or acquisition of any toll bridge or toll tunnel; upon compliance with the conditions contained in this section Provided, That the Federal share payable for the construction or reconstruction of a toll highway, bridge or tunnel shall not exceed 35 per centum. The highway, bridge, tunnel, or approach thereto must be publicly owned and operated. Federal funds may participate in the approaches to a toll bridge or toll tunnel whether the bridge or tunnel is to be or has been constructed, or acquired, by the State or other public authority. For purposes of this section the term "new toll highway, bridge or tunnel" shall mean initial construction of a highway, bridge or tunnel on a new location at any time before it is open to traffic and shall not include any improvements to a toll highway after it is open to traffic. The State Highway Department must agree, for toll bridges, tunnels and highways, that toll revenues will be used only on the facility tolled, and only for construction or reconstruction costs, or for the costs necessary for the proper operation, maintenance and debt service of the facility including resurfacing, reconstruction, rehabilitation, and restoration. Except for reconstruction to expand capacity, toll facilities may receive Federal participation under this subsection once only for the original construction, reconstruction, or acquisition. Toll mileage created under this subsection shall not be used to increase a State's apportionment under any apportionment formula.

"(c) Funds authorized for use on any of the Federal-aid systems including the Interstate System shall be available for obligation on projects approaching any toll road, bridge, or tunnel to a point where the approach enters the main lanes of the toll facility or toll plaza, whichever occurs first. Construction, reconstruction, or relocation of toll collection equipment, facilities, plaza, or related facilities shall not be eligible for Federal funds. The Secretary may permit Federal participation in any engineering and fiscal assessments, traffic analyses, and preliminary design analyses necessary to determine whether a privately owned toll road, toll bridge, or toll tunnel shall be acquired by a State or political subdivision thereof.

"(d)(1) The Secretary may permit Federal participation under this title in the construction of a ferryboat, whether toll or free, subject to the following conditions:

"(A) It is not feasible to build a bridge, tunnel, combination bridge-tunnel, or other normal highway structure in lieu of use of the ferry.

"(B) The operation of the ferry shall be on the Federal-aid primary sustem other than the Interstate System or the Federal-aid secondary system.

"(C) The ferry shall be publicly owned and operated.

"(D) The operating authority and the amount of fares charged for passage on the ferry shall be under the control of the State, and all revenues derived therefrom shall be applied to actual and necessary costs of operation, maintenance, and repair.

"(E) The ferry may be operated only within the State (including the islands which comprise the State of Hawaii and the islands which comprise the Commonwealth of Puerto Rico) or between adjoining States. Except with respect to operations between the islands which comprise the State of Hawaii, operations between the islands which comprise the Commonwealth of Puerto Rico, operations between the State of Maine and its off-shore islands, and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of the ferry operation shall be in any foreign or international waters.

"(F) The ferry shall not be sold, leased, or otherwise disposed of without the approval of the Secretary. The Federal share of any proceeds from a disposition shall be credited to the unprogrammed balance of Federal-aid highway funds of the same class last apportioned to the State. Any amount credited shall be in addition to other funds apportioned to the State and shall be available for obligation in accordance with the provisions of this title.

"(2) The Secretary may permit Federal participation under this title in the construction of a project constituting an approach to a ferry, whether toll or free, on the Federal-aid primary system other than the Interstate System or the Federal-aid secondary system. The ferry may be either publicly or privately owned and operated, but the operating authority and the amount of fares charged for passage shall be under the control of a State agency or official, and all revenues derived from publicly owned or operated ferries shall be applied to payment of the cost of construction or acquisition, including debt service, and to actual and necessary costs of operation, maintenance, repair, and replacement.

"(e) Sums apportioned to a State for the Federal-aid Interstate-primary program or for Interstate System resurfacing may be obligated for projects for resurfacing, restoring, and rehabilitating lanes on a toll road which has been designated as a part of the Interstate System if an agreement satisfactory to the Secretary of Transportation has been reached with the State highway department and any public authority with jurisdiction over such toll road prior to the approval of such project that the toll road will become free to the public upon the collection of tolls sufficient to liquidate the cost of the toll road or any bonds outstanding at the time constituting a valid lien against it, and the cost of maintenance and operation and debt service during the period of toll collections. The agreement referred to in the preceding sentence shall contain a provision requiring that if, for any reason, toll road subject to an agreement does not become free to the public upon collection of sufficient tolls, as specified in the preceding sentence, Federal funds used for projects on such toll road pursuant to this subsection shall be repaid to the Federal Treasury and a provision requiring that if such repayment does not equal or exceed Federal funds apportioned to a State by reason of including toll road mileage in an apportionment formula, the State's apportionment shall be reduced by the amount needed to make the repayment equal such apportionment.

"(f)(1) Each operator of toll roads, toll tunnels, toll ferries, and toll bridges, other than an international toll facility or toll facility subject to an agreement under this section or section 105 of the Surface Transportation Assistance Act of 1978 on a Federal-aid system in a State shall biennially certify to the Governor of the State that such facilities are adequately maintained and that the operator of such toll facility has the ability to fund the replacement or repair of any such facilities that are not adequately maintained without using Federal-aid highway funds. Failure to certify shall preclude Federal funding out of the Highway Trust Fund of any facilities owned or operated by the operator of such toll facility.

"(2) The Governor shall report biennially to the Secretary the toll facilities subject to paragraph (1) of this subsection, that have so certified and those which have not certified in accordance with paragraph (1) of this subsection. If funds from the Highway Trust Fund are used to repair or replace such toll facilities, the States' apportionments for the following fiscal year under section 104 of this title shall be reduced by the amount of Highway Trust Fund moneys expended: Provided, That such reduction shall not be made if the State has executed an agreement covering such toll facilities under this section or section 105 of the Surface Transportation Assistance Act of 1978.".

(c) Upon the request of a State and upon entering into an agreement that toll revenue will be used only on the facility tolled, construction and reconstruction costs, or for the costs necessary for the proper operation and debt service of the facility, including resurfacing, reconstruction, rehabilitation, and restoration, pursuant to section 129(b) of title 23, United States Code, as amended by this section, the Secretary of Transportation may void an agreement entered into prior to the enactment of this section under section 129 (a) (d) or (e) of title 23, United States Code. The Secretary shall issue rules and regulations regarding the voiding of such agreements which shall be limited to insuring future operation and maintenance of the tolled facility.

RAILWAY-HIGHWAY CROSSINGS

SEC. 113. (a) Section 130 of title 23, United States Code, is amended by adding subsections, (d), (e), (f), (g), and (h) as follows:

"(d) Each State shall conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement

a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railroad-highway crossings.

"(e) At least half of the funds authorized for and expended under this section shall be available for the installation of protective devices at railway-highway crossings. Sums authorized to be appropriated for this section shall be available for obligation in the same manner as funds apportioned under section 104(d)(1) of title 23, United States Code.

"(f) 25 per centum of the funds authorized for this section shall be apportioned to the States in the same manner as sums apportioned under section 104(d)(2) of title 23, United States Code, 25 per centum of such funds shall be apportioned to the States in the same manner as apportioned under section 104(d)(3) of title 23, United States Code, and 50 per centum of such funds shall be apportioned to the States in the ratio that total rail-highway crossings in each State bears to the total of such crossings in all States. The Federal share payable on account of any project financed with funds authorized for this section shall be 90 per centum of the cost thereof.

"(g) Each State shall report to the Secretary of Transportation not later than December 30 of each year on the progress being made to implement the railroad-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary of Transportation shall submit a report to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress not later than April 1 of each year, on the progress being made by the State in implementing projects to improve railroad-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (d) and include recommendations for future implementation of the railroad highway crossings program.

"(h) Funds authorized for this section may be used to provide local government with funds to be used on a matching basis when State funds are available which may only be spent when local government produces matching funds for the improvement of railroad crossings.".

(b) Section 203 of the Highway Safety Act of 1973 is repealed.

STRATEGIC HIGHWAY RESEARCH PROGRAM

SEC. 114. Title 23, United States Code, is amended by adding section 133 as follows:

"§ 133. Strategic highway research program

"(a) The sums provided by section 104(c) of this title shall be available for obligation when deducted to implement the Strategic Highway Research Program (SHRP). The Secretary is authorized to carry out the SHRP in cooperation with the State highway departments, as represented by the American Association of State Highway and Transportation Officials (AASHTO). The Secretary shall set standards to use the funds under this paragraph to conduct research, development and technology transfer activities determined to be strategically important to the national highway transportation system. The Secretary may provide grants to, and enter into cooperative agreements with, AASHTO and/or the National Academy of Sciences to conduct appropriate portions of the SHRP. Advance payments may be made as necessary to facilitate this program. No State matching share is required for the sums made available under this section. The sums provided by this section shall be combined and administered by the Secretary as a single fund which shall be available for obligation for the same period as funds apportioned for the Federal-aid Interstate-Primary Program.

"(b) The Secretary shall transmit a report annually beginning on January 1, 1988, to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress which provides information on the progress and research findings of the Strategic Highway Research Program.

"(c)(1) The remedy against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for injury, loss of property, personal injury, or death shall apply to any civil action against the National Academy of Sciences for injury, loss of property, personal injury, or death for any act or omission arising from activities conducted under or in connection with the Strategic Highway Research Program authorized under subsection (a) of this section.

"(2) The remedies referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining liability arising from any such act or omission without regard to when the act or omission occurred. Employees of the National Academy of Sciences and other individuals appointed by the President of the National Academy of Sciences and acting on its behalf in connection with the Strategic Highway Research Program shall be considered to be employees of the Federal Government, as provided in section 2671 of title 28, United States Code, for the purposes of such civil action or proceeding; and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of such title and shall be subject to the limitations and exceptions applicable to those actions.

"(3) Upon certification by the Attorney General that a suit is within the provisions of subsection (a), a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceeding shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28, United States Code. For purposes of removal, the certification of the Attorney General under this subsection shall be conclusive.".

SECTION 139 ROUTES

SEC. 115. The last sentence of section 139(a), the fourth sentence of 139(b), and the last sentence of section 139(c) of title 23, United States Code, are each amended by striking "sections 104(b)(1) and 104(b)(5)(B)" and inserting in lieu thereof "section 104(d)(1)".

OFF-SYSTEM BRIDGE PROGRAM

SEC. 116. Section 144, title 23, United States Code, is amended by adding a new subsection as follows:

"(n) Notwithstanding any other provision of law, with respect to any project not on a Federal-aid highway system for the replacement of a bridge or rehabilitation of a bridge which is wholly funded from State and local sources, is eligible for Federal funds under section 144 of title 23, United States Code, is noncontroversial, is certified by the State to have been carried out in accordance with all standards applicable to such projects under section 144, and is determined by the Secretary upon completion to be no longer a deficient bridge, any amount expended after the effective date of this section, from such State and local sources for such project in excess of 20 per centum of the cost of construction thereof may be credited to the non-Federal share of the cost of the projects in such State which are eligible for Federal funds under section 144, in accordance with procedures established by the Secretary.".

BRIDGE REPLACEMENT FUNDS

SEC. 117. (a) Section 144, Title 23, United States Code, is further amended by adding a new subsection as follows:

"(o)(1) Notwithstanding any other provision of this section or of any other provision of law, any State may utilize any of the funds provided under this section to construct any bridge which—

"(A) replaces any low-water crossing (regardless of the length of such low-water crossing),

"(B) replaces any bridge that was destroyed prior to 1960, or

"(C) replaces any ferry which was in existence on January 1, 1984.

"(2) The Federal share payable on any bridge construction carried out under paragraph (1) shall be 80 percent of the cost of such construction.".

(b) The amendment made by subsection (a) shall apply to funds apportioned to the States for fiscal year 1987 or or any subsequent fiscal year.

HIGHWAY BEAUTIFICATION

SEC. 118. (a) Section 131 of title 23, United States Code, is amended as follows—

(1) in subsection (b)—

(A) by striking "shall be reduced" and inserting in lieu thereof "may be reduced"; and

(B) by striking the words "equal to 10" in the second to last sentence, by inserting in lieu thereof "up to 5", and by striking the last sentence;

(2) in subsection (c)—

(A) by striking "(c)" and inserting in lieu thereof "(c)(1)" and redesignating clauses 1 through 5 as clauses A through E;

(B) by inserting at the end thereof the following new paragraphs—

"(2) As part of effective control, each State shall maintain an annual inventory of all outdoor advertising signs, displays, and devices required to be controlled pursuant to this section. Such inventory shall identify all such signs as either illegal, nonconforming, or conforming under State law. An inventory shall not be required in States which the Secretary determines have a permit and enforcement system which requires a permit for all lawful signs required to be controlled by this section and identifies promptly all unlawful signs.

"(3) As part of effective control, each State shall assure that signs, displays, and devices required to be removed by this section shall be removed within ninety days of (A) the date upon which they become unlawful or if not unlawful, the date upon which they must be removed pursuant to State law, or

(B), if eligible to receive compensation pursuant to this section or to be amortized, the date upon which cash compensation is paid, or the State amortization period ends.

"(4) As part of effective control, no State may allow or undertake any vegetation removal or other alteration of the highway right-of-way with the purpose of improving the visibility of any outdoor advertising sign, display or device located outside of the right-of-way.

"(5) As part of effective control, no State may permit any person to modify any outdoor advertising sign, display, or device which does not conform to subsections (c) or (d) of this section to improve its visibility or its useful life.

"(6) As part of effective control, signs, displays and devices carrying advertising which is required to include a warning label in other advertising media, pursuant to a federal law or regulation, shall be required to display such warning label so that it is plainly legible from the main traveled way of the highway.";

(3) in subsection (d) by striking "(d)", by inserting in lieu thereof "(d)(1)", and by adding at the end of the subsection the following:

"(2) After July 1, 1986, no new signs, displays or devices may be erected under the authority of this subsection. Any sign, display, or device lawfully erected under State law after July 1, 1986, and prior to the effective date of this section shall be treated as nonconforming.";

(4) in subsection (e) by amending subsection (e) as follows:

"(e) The Secretary shall not require a State to remove any lawfully erected sign, display, or device which does not conform to this section and is lawfully in existence on the date which this section becomes effective pursuant to section 117(b) of the Federal-Aid Highway Act of 1986. Nothing in this subsection shall prevent a State from removing any sign, display, or device.";

(5) in subsection (g) by amending subsection (g) to read as follows:

"(g)(1) The Secretary may participate in the costs incurred by a State for the following:

"(A) physically removing signs, displays, or devices that are located in areas required to be effectively controlled by this section and are illegal under State law or that are required by this section to be removed and that were lawfully created and have been lawfully maintained under State law.

"(B) acquiring signs, displays, or devices that are required by this section to be removed and that were lawfully erected and have been lawfully maintained under State law.

"(2) Payments made to a State by the Secretary may be made for the removal or acquisition of signs, displays, and devices located in areas adjacent to the Federal-aid primary system and the Interstate System from funds apportioned to such State under section 104(d)(1) of this title. For the removal or acquisition of signs, displays, or devices, the Federal share of any costs participated in under this subsection shall not exceed that set forth in section 120(a) for those adjacent to the Federal-aid primary system and that set forth in section 120(c) for those adjacent to the Interstate System.

"(3) A sign, display, or device acquired with funds made available pursuant to this section may be disposed of by sale or other means to a private party only if the State receives satisfactory written assurances that the material will not be used to construct or reconstruct an outdoor advertising sign, display, or device.";

(6) in subsection (h) by striking "(h)", by inserting in lieu thereof "(h)(1)", and by adding at the end the following new paragraph:

"(2) No outdoor advertising sign, display, or device shall be permitted by any Federal agency on all public lands or reservations owned or controlled by the United States, unless such sign, display, or device conforms to regulations issued by the Federal agency with jurisdiction over, or responsibility for, such land. Such regulations shall be at least as stringent as the requirements of this section and the requirements of the State in which the land is located. The regulations required by this subsection shall be developed in consultation with the Secretary of Transportation and shall be promulgated within 12 months of the effective date of this Act.";

(7) in subsection (k) by striking the words "Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing" and inserting in place thereof the word "Nothing".; and

(8) by repealing subsections (n) and (p).

(b) The amendments made by this section shall be effective on December 31, 1988.

MINIMUM ALLOCATION

SEC. 119. (a) Section 157(a) of title 23, United States Code, is amended to read as follows:

"(a) Beginning with fiscal year 1987, as soon as practicable after the date of enactment of the Federal-Aid Highway Act of 1986 and in each of the fiscal years thereafter, on October 1, or as soon as possible thereafter, the Secretary of Transportation shall allocate among the States, as defined in section 101 of this title, amounts sufficient to ensure that a State's percentage of the total apportionments in each such fiscal year and allocations for the prior fiscal year for Federal-aid highway programs, except allocations for forest highways, Indian reservation roads, and parkways and park roads in accordance with section 202 of this title, highway related safety grants authorized by section 402 of this title, nonconstruction safety grants authorized by sections 402, 406, and 408 of this title, and Bureau of Motor Carrier Safety Grants authorized by section 404 of the Surface Transportation Assistance Act of 1982, shall not be less than 85 per centum of the percentage of estimated tax payments attributable to highway users in that State paid into the Highway Trust Fund, other than the Mass Transit Account, in the latest fiscal year for which data are available.".

(b) The amendment made by subsection (a) shall become effective on October 1, 1986.

(c) Title 23, United States Code, section 157(c) is amended by striking the "and" that precedes "September 30, 1986" and inserting after "1986" the following: ", September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990".

FEDERAL-AID INTERSTATE-PRIMARY PROGRAM

SEC. 120. Title 23, United States Code, is amended by adding section 159 as follows:

"§ 159. Federal-aid Interstate-primary program

"(a) It is the national policy to bring all elements of the primary system up to standards established pursuant to section 109 of this title. To accomplish this policy the Federal-aid Interstate-primary program shall consist of projects for the construction, reconstruction, rehabilitation, restoration, and resurfacing or improvement of the primary system as designated in section 103(a) of this title and the Interstate System as designated in section 103(c)(1) and section 139 of this title.

"(b) In approving projects under this section, the Secretary shall give consideration to projects to complete essential gaps on the Interstate System and for the reconstruction, rehabilitation, restoration, and resurfacing of existing highway facilities. Reconstruction may include, but is not limited to, the addition of travel lanes and the construction and reconstruction of interchanges and overcrossings along existing completed Interstate routes, including the acquisition of right-of-way where necessary.".

INCOME FROM RIGHTS-OF-WAY

SEC. 121. Title 23, United States Code, is amended by adding section 160 as follows:

"§ 160. Income from rights-of-way

"Net income that a State receives from the use, lease, or sale of right-of-way airspace acquired as a result of a project under this title shall be used by the State for projects eligible under this chapter.".

TERRITORIAL HIGHWAY PROGRAM

SEC. 122. Subsection (f) of section 215 of title 23, United States Code, is amended to read as follows:

"(f) The provisions of chapter 1 of this title that are applicable to Federal-aid Interstate-Primary Program funds and to projects on the Federal-aid primary system other than the Interstate System shall apply to funds authorized to be appropriated to carry out this section, to funds obligated under this section and to projects carried out under this section except as determined by the Secretary to be inconsistent with this section. There shall be designated in each territory, a territorial Federal-aid highway system which will include all highways eligible for funding under this section. The system shall be designated by the highway department of the territory and be subject to the approval of the Secretary. Funding provided under this section shall only be available for highway construction projects on the territorial Federal-aid system.".

BICYCLE PROJECTS ELIGIBILITY

SEC. 123 The second sentence of section 217(b)(1) of title 23, United States Code, is amended by inserting "and sums apportioned or allocated for highway substitute projects in accordance with section 103(e)(4) of this title" after the word "title".

HIGHWAY PLANNING AND RESEARCH

SEC. 124. Section 307(c)(1) of title 23, United States Code, is amended by inserting after "section 104 of this title", the following: "and for highway projects, section 103(e)(4)".

NATIONAL HIGHWAY INSTITUTE

SEC. 125. Subsections (b) and (c) of section 321 of title 23, United States Code, are amended to read as follows:

"(b) Not to exceed one-quarter per centum of all Federal-aid Interstate-Primary Program funds, apportioned to a State under section 104 of this title shall be available for expenditure by the State highway department, subject to approval by the Secretary, for payment of not to exceed 75 per centum of the cost of tuition and direct educational expenses (but not travel, subsistence, or salaries) in connection with the education and training of State and local highway department employees as provided in this section.

"(c) Education and training of Federal, State, and local highway employees authorized by this section shall be provided by the Secretary at no cost to the States and local

governments for those subject areas which are a Federal program responsibility, or, in the case where such education and training are to be paid for under subsection (b) of this section, by the State, subject to the approval of the Secretary, through grants and contract with public and private agencies, institutions, individuals and the Institute.".

RIGHT-OF-WAY DONATION

SEC. 126. (a) Notwithstanding any other provision of title 23, United States Code, the State matching share for a project under title 23, United States Code, may be credited by the fair market value of land incorporated into the project and lawfully donated to the State after the effective date of this subsection. The fair market value of the donated land shall be established as determined by the Secretary. Fair market value shall not include increases and decreases in the value of donated property caused by the project. For purposes of this subsection the fair market value of donated land shall be established after the date the donation becomes effective or when equitable title to the land vests in the State, whichever is earlier. This subsection shall not apply to donations made by an agency of a Federal, State or local government. The credit received by a State pursuant to this subsection may not exceed the State's matching share for the project to which the donation is applied.

(b) Section 323 of title 23, United States Code, is amended by—

(1) inserting after "Donations." an "(a)"; and

(2) inserting the following new subsection:

"(b)(1) A gift or donation in accordance with subsection (a) may be made at any time during the development of a project: Provided, That any document executed as part of such donation prior to the approval of an environmental document prepared pursuant to the National Environmental Policy Act shall clearly indicate that—

"(i) all alternatives to a proposed alignment will be studied and considered pursuant to the National Environmental Policy Act;

"(ii) acquisition of property under this subsection shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and

"(iii) any property acquired by gift or donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings and completion of the environmental document.".

(c) Section 4651 of title 42, United States Code, is amended as follows:

(1) Insert after "programs" in the first sentence the following "to promote joint projects between States and landowners and other entities in order to maximize Federal and State dollars".

(2) Insert new paragraph (10) as follows:

"(10) Promotion of joint projects wherein private citizens and other governmental entities participate in the cost through land donations and/or financial contributions is consistent with Federal policy and should be encouraged by all Federal agencies. To this end donations of right-of-way and/or financial contributions by a State or other political subdivision, or any person is permissible.".

(d) Notwithstanding any other provision of law, the fair market value of any lands which have been or in the future are donated or dedicated to the State of California necessary for the right-of-way for relocation and construction of California State Route 73 in Orange County, California, from its interchange with Interstate Route I-405 to its interchange with Interstate Route I-5 shall be included as a part of the cost of such relocation and construction project and shall be credited first toward payment of the non-Federal share of the cost of such relocation and construction project. If the fair market value of such lands exceeds the non-Federal share of such relocation and construction project, then the excess amount, upon the request of the State of California, shall be credited toward the non-Federal share of the cost of any other project on the Federal-aid system in the State of California. To further the purposes of this section and section 323 of title 23, United States Code, any recorded irrevocable offer of dedication or donation of property within the right-of-way shall be considered as part of the State right-of-way acquisition for purposes of this section if such offer is irrevocable and effective no later than such time as the State of California requests final reimbursement for the Federal share. In no case shall the amount of Federal-aid reimbursement to the State of California on account of such relocation and construction project exceed the actual cost to the State for such project.

PROHIBITION AGAINST DISCLOSURE AND ADMISSION AS EVIDENCE OF STATE REPORTS AND SURVEYS

SEC. 127. Chapter 4 of title 23, United States Code, is amended by adding section 409 as follows:

"§ 409. Reports, surveys; disclosures; admission as evidence

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled with the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or rail-highway crossings, pursuant to sections 130, 144, and 152 of title 23, United States Code, or for the development of any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be admitted into evidence in Federal or State court, or considered for other purposes, in any action for damages arising from any matter occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists or data.".

BUY AMERICA

SEC. 128. Section 165(a) of the Surface Transportation Assistance Act of 1982 is amended to read as follows:

"Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by this Act or, after the date of enactment of this Act, any funds authorized to be appropriated to carry out this Act, title 23, United States Code, the Urban Mass Transportation Act of 1964, or the Surface Transportation Assistance Act of 1978 and administered by the Department of Transportation, for projects whose total cost exceed $500,000, unless steel and manufactured products used in such projects are produced in the United States.".

REGULATION OF TOLLS

SEC. 129. (a) Section 4 of the General Bridge Act of 1906 (34 Stat. 85, 33 U.S.C. 494), as amended, is further amended by deleting the last sentence thereof.

(b) Section 17 of the Act of June 10, 1930 (46 Stat. 552, 33 U.S.C. 498a), as amended, is repealed.

(c) Section 1 of the Act of June 27, 1930 (46 Stat. 821, 33 U.S.C. 498b), as amended, is repealed.

(d) Sections 1-5 of the Act of August 21, 1935 (49 Stat. 670, 33 U.S.C. 503-507), as amended, are repealed.

(e) Sections 503 and 506 of the General Bridge Act of 1946 (60 Stat. 847, 848, 33 U.S.C. 526, 529), as amended, are repealed.

(f) Section 133 of Public Law 93-87 (87 Stat. 267, 33 U.S.C. 526a) is repealed.

(g) Section 6 of the International Bridge Act of 1972 (86 Stat. 732, 33 U.S.C. 535d) is repealed.

(h) Section 6(g)(4) of the Department of Transportation Act (80 Stat. 937, 49 U.S.C. 1655(g)(4)) is repealed.

(i) Tolls for passage or transit over any bridge constructed under the authority of the Bridge Act of 1906, as amended, the General Bridge Act of 1946, as amended, and the International Bridge Act of 1972, shall be just and reasonable.

INDIAN EMPLOYMENT AND CONTRACTING

SEC. 130. Section 140 of title 23, United States Code is amended by adding the following:

"(d) Consistent with section 703(i) of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241, July 2, 1964, nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads. The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.".

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

SEC. 131. (a) CONTRACTING GOAL.—Except as the Secretary determines otherwise, not less than 10 per centum of the amounts authorized to be appropriated under this title or obligated under title 1 of Public Law 97-424 after the effective date of this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) DEFINITIONS.—For the purposes of this section:

(1) "disadvantaged business enterprise" means a small business concern owned and controlled by socially and economically disadvantaged individuals;

(2) "small business concern" is defined by section 3 of the Small Business Act (15 U.S.C. 632), except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of $10 million, as adjusted by the Secretary for inflation; and

(3) "socially and economically disadvantaged individuals" is defined by section 8(d)(2)(C) of the Small Business Act (15 U.S.C. 637(d)(2)(C), except that women shall be presumed to be socially and economically disadvantaged individuals.

(c) TECHNICAL ASSISTANCE.—Amounts expended for technical assistance to benefit disadvantaged business enterprises may be used to meet up to 10 per centum of the amounts required to be expended on a contract or subcontract with a disadvantaged business enterprise under the provisions of this section.

(d) UNIFORM CERTIFICATION.—The Secretary shall establish minimum uniform criteria for State governments to use in certifying whether a concern is a disadvantaged business enterprise for the purposes of this section. Such minimum uniform criteria shall

include but not be limited to on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred.

(e) LEVEL OF EFFORT BY SUBCONTRACTORS.—

(1) Amounts expended with a disadvantaged business enterprise for subcontracting work shall not be used to meet any part of the goal established by this section unless such enterprise performs with its own organization subcontract work amounting to not less than 30 per centum of the subcontract price not including materials and supplies.

(2) A State government may reduce the 30 per centum requirement of paragraph (1) for a particular contract if it determines that such a reduction would be in the public interest and that the level of effort by the disadvantaged business enterprise is consistent with industry practice by subcontractors for the type of work involved.

(3) Except for contracting arrangements approved in advance by the State government, any payments from a disadvantaged business enterprise to the prime contractor or any affiliate shall not be used to meet any part of the goal established by this section.

(f) PRIME CONTRACTS.—Except as the Secretary determines otherwise, amounts equal to not less than 5 per centum in 1988, not less than 7 per centum in 1989 and not less than 10 per centum in 1990, of the goal established by this section for a State shall be expended on contracts directly between a State government and a disadvantaged business enterprise.

(g) APPLICABILITY.—Section 105(f) of Public Law 97-424 shall not apply to amounts authorized under title 1 of such Act and obligated after the effective date of this Act.

RELEASE OF CONDITION RELATING TO CONVEYANCE OF A CERTAIN HIGHWAY

SEC. 132. Notwithstanding paragraph (1) of subsection (b) of section 146 of the Federal-Aid Highway Act of 1970 (84 Stat. 1739) and any agreement entered into under such subsection, no conveyance of any road or portion thereof shall be required to be made under such paragraph or agreement to the State of Maryland and the State of Maryland shall not be required to accept conveyance of any such road or portion. Funds authorized by such section may be obligated and expended without regard to any requirement of such paragraph or agreement that such conveyance be made.

WASTE ISOLATION PILOT PROJECT

SEC. 133. For the fiscal year ending September 30, 1986, and thereafter, there is authorized to be appropriated $58,000,000 to remain available until expended for the upgrading of certain highways in the State of New Mexico for the transportation of nuclear waste generated during defense-related activities.

OBLIGATION LIMITATION

SEC. 134. (a) Notwithstanding any other provisions of law, the total of all obligations for Federal-aid highways and highway safety construction programs shall not exceed—

(1) $12,350,000,000 for fiscal year 1987;

(2) $12,350,000,000 for fiscal year 1988;

(3) $12,350,000,000 for fiscal year 1989; and

(4) $12,350,000,000 for fiscal year 1990.

These limitations shall not apply to obligations for emergency relief under section 125 of title 23, United States Code, and projects under section 157 of title 23, United States Code.

(b) For each of the fiscal years 1987, 1988, 1989 and 1990, the Secretary of Transportation shall distribute the limitation imposed by subsection (a) by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to each State for such fiscal year bears to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States for such fiscal year.

(c) During the period October 1 through December 31, 1986, no State shall obligate more than 35 per centum of the amount distributed to such State under subsection (b) for fiscal year 1987, and the total of all State obligations during such period shall not exceed 25 per centum of the total amount distributed to all States under such subsection for such fiscal year.

(d) Notwithstanding subsections (b) and (c), the Secretary shall—

(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a State;

(2) after August 1 of each of the fiscal years 1987, 1988, 1989, and 1990 revise a distribution of the funds made available under subsection (b) for such fiscal year if a State will not obligate the amount distributed during such fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during such fiscal year giving priority to those States having large unobligated balances of funds apportioned under section 104 of title 23, United States Code, and giving priority to those States which, because of statutory changes made by the Surface Transportation Assistance Act of 1982 and the Federal-Aid Highway Act of 1981, have experienced substantial proportional reductions in their apportionments and allocations; and

(3) not distribute amounts authorized for administrative expenses, Federal lands highways, and the Strategic Highway Research Program.

HISTORIC BRIDGES

SEC. 135. (a) Congress hereby finds and declares it to be in the national interest to encourage the rehabilitation, reuse and preservation of bridges significant in American history, architecture, engineering and culture. Historic bridges are important links to our past, serve as safe and vital transportation routes in the present, and can represent significant resources for the future.

(b) The Secretary shall, in cooperation with the State, implement the programs described in section 144 of this title in a manner that encourages the inventory, retention, rehabilitation, adaptive reuse and future study of historic bridges.

(c) The Secretary shall require each State to complete an inventory of all bridges on and off the Federal-aid system to determine their historic significance.

(d) Reasonable costs associated with actions to preserve, or reduce the impact of the project on, the historic integrity of historic bridges which continue to be used for motorized vehicular traffic shall be eligible as reimburseable project costs, including projects authorized pursuant to section 144 of title 23, provided that the load capacity and safety features of the resulting bridge are adequate to serve the intended use for the life of the facility. Funding pursuant to section 144 of this title for actions to preserve, or reduce the impact of the project on, the historic integrity of historic bridges which are no longer used for motorized vehicular traffic shall not exceed the estimated cost of demolition.

(e) Any State which proposes to demolish a historic bridge for a replacement project with funds made available pursuant to section 144 of title 23, shall make the bridge available for donation to a State, locality, or responsible private entity provided such State, locality, or responsible entity enters into an agreement to—

(1) maintain the bridge and the features that give it its historic significance and

(2) assume all future legal and financial responsibility for the bridge, which may include an agreement to hold the State highway agency harmless in any liability action. Costs incurred by the State to preserve the historic bridge, including funds made available to the State, locality, or private entity to enable it to accept the bridge, shall be eligible project costs under chapter 1 of title 23 up to an amount not to exceed the cost of demolition. Any bridge preserved pursuant to this subsection shall thereafter not be eligible for any other funds authorized pursuant to this title.

(f) For purposes of this section, "historic bridge" means any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

(g) The Secretary of Transportation shall make appropriate arrangements with the Transportation Research Board of the National Research Council to carry out a study of the section 144 bridge program's effect on the preservation and rehabilitation of historic bridges. The Transportation Research Board shall also develop recommendations of specific standards which shall apply only to the rehabilitation of historic bridges, and shall provide an analysis of any other factors which would serve to enhance the rehabilitation of historic bridges.

FOREST HIGHWAYS

SEC. 136. Notwithstanding section 202(a) of title 23, United States Code, the Secretary of Transportation shall, after making the transfer provided by section 204(g) of title 23, United States Code, on October 1, of each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, allocate 66 per centum of the remainder of the authorization for forest highways provided for that fiscal year by this Act in the same percentage as the amounts allocated for expenditure in each State and the Commonwealth of Puerto Rico from funds authorized for forest highways for the fiscal year ending June 30, 1958, adjusted to (1) eliminate the 0.003,243,547 per centum for the State of Iowa to the State by deed executed May 26, 1964, and (2) redistribute the above percentage formerly apportioned to the State of Iowa for other participating States on a proportional basis. The remaining funds authorized to be appropriated for forest highways for such fiscal years shall be allocated pursuant to section 202(a) of title 23, United States Code.

WILDFLOWERS

SEC. 137. Section 319 of title 23, United States Code, is amended by inserting an "(a)" after section 319 and inserting the following new subsection:

"(b) The Secretary shall require the planting of native wildflower seeds and/or seed-

lings as part of any landscaping project under this section. At least one-quarter per centum of the funds expended for landscaping projects shall be used for such plantings. The requirements of this subsection may be waived by the Secretary if the State certifies that such native wildflowers or seedlings cannot be grown satisfactorily or planting areas are limited or otherwise used for agricultural purposes. Nothing in this subsection shall be construed to prohibit the acceptance of native wildflower seeds or seedlings donated by civic organizations or other organizations and individuals to be used in landscaping projects.".

COMBINED ROAD PLAN DEMONSTRATION PROGRAM

SEC. 138. (a) The Secretary of Transportation, in cooperation with up to 10 States, shall conduct a Combined Road Plan Demonstration to test the feasibility of approaches for combining, streamlining and increasing the flexibility in the administration of the Federal-aid secondary, Federal-aid urban and off-system urban and secondary bridge programs. The demonstration shall place as much responsibility as feasible with State and local governments including, but not limited to, the granting of design exceptions and the conduct of final inspections.

(b) As soon as is practicable, upon completion of the demonstration project, the Secretary of Transportation shall submit a report to the Congress evaluating the effectiveness of the demonstration and making needed recommendations.

CALIFORNIA EMERGENCY RELIEF

SEC. 139. Section 125(b) of title 23, United States Code, is amended by striking "$30,000,000" and inserting in lieu thereof "$55,000,000" and the following: "(or $100,000,000 with respect to natural disasters and catastrophic failures occurring in calendar year 1986)".

PRIORITY PROJECTS

SEC. 140. (a) Notwithstanding any other provisions of title 23 pertaining to the transfer of Federal-aid program funds, the Secretary of Transportation shall carry out the following projects if requested by a State highway department and if designated as part of a Federal-aid system;

(1) The Broadway-Chinden Connector in Idaho, connecting Interstate-184 with Broadway Avenue, to increase the access to downtown Boise and the Interstate;

(2) U.S. 59 Highway Corridor in Texas, from Texarkana to Houston to Beeville;

(3) The Brunswick-Topsham Bypass in Maine, a limited access highway providing increased access from Interstate 95 to Brunswick Naval Air Station and Bath Iron Works;

(4) The Long Island Expressway Fourth Lane Study to examine the feasibility of adding a fourth lane in each direction to I-495 in New York;

(5) The Nassau Expressway in New York, extending from Burnside Avenue to Broadway;

(6) The Westchester Parkway in New York, to widen the segment between the Hawthorne Interchange and Washburn Road, reconstruct the southbound lanes in the vicinity of Pleasantville Road, and reconstruct the Pleasantville Road interchange;

(7) The Lockport Expressway in New York, to relocate the terminus of the Lockport Expressway (I-990) and construct an interchange at its new terminus at Millersport Highway in Erie County, New York;

(8) The Sunrise Highway in New York, from Wheeler Road to Veterans' Memorial Highway in the Town of Islip, Suffolk County, New York;

(9) The Southern Tier Expressway in Steuben County, New York;

(10) Fuhrman Boulevard, an access road which parallels Lake Erie along the outer harbor in the City of Buffalo, New York;

(11) Access highways to public recreation areas on certain lakes and State parks in order to accommodate present and projected traffic density—

(A) Morton County: $1.8 million for bridge replacement and access road to Sweetbriar and Crown Butte Lakes, North Dakota;

(B) Mercer County: $1.2 million for access road to Hazen Bay, Lake Sakakawea, North Dakota;

(C) Ransom County: $3.0 million for access road to Fort Ransom State Park, North Dakota;

(D) Benson/Ramsey Counties: $3.7 million for access road to Tri-County Park, Devils Lake Recreation Areas, North Dakota;

(E) Mountrail County: $2.8 million for access road to Parshall Bay, Lake Sakakawea, North Dakota;

(F) Emmons County: $5.9 million for access road to Lake Oahe and numerous bays, North Dakota;

(G) McKenzie County: $.8 million for access road to several bays on Lake Sakakawea near the city of Charlson, North Dakota;

(H) Grand Forks County: $.8 million for access road to Larimore Dam Recreation Areas, North Dakota;

(I) Grand Forks County: $1 million for access road to Fordville Dam Recreation Area, North Dakota;

(J) Steele County: $1.6 million for access road to Golden Lake Recreation Areas, North Dakota;

(K) McKenzie County: $.8 million for access road to several bays on Lake Sakakawea near U.S. Highway 85 south of the City of Williston, North Dakota;

(L) Bottineau/Renville Counties: $1.6 million for access road to U.S. Fish and Wildlife Lake Darling Refuge, North Dakota; and

(M) Mountrail County: $.6 million for access road to Van Hook Bay, Lake Sakakawea, North Dakota;

(12) Stark/Hettinger Counties: $8.1 million for secondary road improvements serving a regional grain terminal at Gladstone, North Dakota;

(13) For a new route from Los Alamos, New Mexico to Santa Fe, New Mexico;

(14) For work on U.S. 70 in the State of New Mexico from Las Cruces, New Mexico to Texico, New Mexico;

(15) A project on the Federal-aid urban system between a railroad line and a highway in the vicinity of Moorhead, Minnesota;

(16) A highway project in Pine City, Minnesota, to construct an interchange between a highway on the Interstate System and a county State-aid highway;

(17) A reconstruction of an access road to Voyageurs National Park, Minnesota;

(18) A highway project for the construction of an access road from County Road 413 in St. Louis County, Minnesota, to a recreational complex on the Bois Forte Chippewa Reservation (Vermilion Sector);

(19) A project for the design and site location for the replacement of the Bloomington Ferry Bridge, located in Hennepin and Scott Counties, Minnesota; and

(20) A project for construction of a highway connecting Aurora-Hoyt Lakes and Silver Bay, Minnesota.

(21) Interstate connector from I-95 near Florence, South Carolina to U.S. 17, north of Myrtle Beach, South Carolina to allow increased access to the Grand Strand.

(22) The South Caroline portion of the Bobby Joines Expressway by-pass from I-20 near North Augusta, South Carolina south across the Savannah River into Georgia, where it connects with I-520.

(23) Up to $14.5 million to carry out a highway project in the vicinity of Sanford, Florida, to demonstrate methods of reducing costs and expediting construction of an interchange between Florida State Route 46A and a highway on the Interstate System by contracting with a private consultant to design and construct such project.

(24) To reconstruct and rehabilitate the Eugene Talmade Memorial Bridge, a functionally obsolete bridge which is located in Savannah, Georgia and crosses the Savannah River.

(25) In Lawrence, Kansas, a by-pass project which is a model for its cost-sharing arrangement and economic development goals.

(26) In Wichita, Kansas, the replacement of a conventional intersection of two heavily travelled streets at Kellogg and Oliver with a new low-cost European fly-over design for the interchange.

(27) In Olathe, Kansas, the 119th Street Interchange to correct a dangerous interchange.

(28) In Emporia, Kansas, a new Prairie Street overpass to overcome existing flood conditions.

(29) In Sparks, Nevada, for the purpose of demonstrating the efficacy of improving traffic flow conditions on various adjacent interchanges and local streets by constructing a new interchange and approahces on an east-west highway on the Interstate System and a four-lane highway not on such system which could serve as a beltway.

(30) In the State of Arkansas on a segment of a north-south highway on the Federal-aid primary system from the vicinity of the junction of Interstate routes I-40 and I-540 to the boundary between the State of Arkansas and Missouri in the vicinity of Bella Vista, Arkansas.

(31) In the vicinity of Fort Smith, Arkansas, to widen a segment of the Federal-aid urban system and improve signalization.

(32) In the vicinity of Jonesboro, Arkansas for the construction of four grade separations on a four-lane bypass route for demonstration methods of improving highway safety.

(33) In Kansas City, Missouri, the South Midtown Roadway, a north-south route on the Federal-aid Primary System.

(34) In St. Charles County, Missouri, a bypass highway to connect an east-west Interstate route with the Interstate beltway around St. Louis, Missouri.

(35) A segment of north-south highway on the Federal-Aid Primary System from the vicinity of Carthage, Missouri, to the boundary between the States of Arkansas and Missouri in the vicinity of Noel, Missouri, increasing the number of lanes on such segment from two to four.

(36) A 106-mile highway on the Federal-aid Primary system in Missouri, Beginning in the vicinity of Columbia and ending in the vicinity of Lancaster.

(37) Construction of the New River Parkway in West Virginia, a two-lane scenic highway through the New River Gorge National River area connecting with Interstate 64.

(38) To improve the Peachtree Industrial Boulevard from I-285 to S.R. 141 in Atlanta, Georgia.

(39) A ten mile extension from the Blue Ridge Parkway to the Explore Project (a 5,000 acre tourist destination located in the Roanoke Valley in western Virginia).

(40) The restoration of the Martin Luther King bridge connecting the metro east area in Illiniois and St. Louis, Missouri.

(41) The improvement of the Builder Highway in Henderson, Nevada creating a landscaped environment.

(42) Highway bridge at Lock & Dam 4 near Pine Bluff, Arkansas.

(43) The extension of I-49 for 6.7 miles in the Shreveport and Lafayette, Louisiana vicinities.

(44) The Cline Avenue/I-94 Interchange in East Chicago, Indiana.

(45) The demonstration of the state of the art highway technologies on U.S. 220 in Blair County, Pennsylvania.

(46) The Basin Street Railroad Crossing. To secure funding for a railroad grade crossing project in Allentown, Pennsylvania.

(47) The Southern Expressway project in Pittsburgh, Pennsylvania. To enable traffic to bypass airport and local roads that access the Pittsburgh Airport.

(48) The Ebsenberg Bypass. To divert traffic from Route 219 in Ebsenberg, Pennsylvania, to a 5.1 mile relocated segment.

(49) The Chambersburg, Pennsylvania interchange project, located in Franklin County. To relieve traffic congestion at an existing interchange on a north-south interstate route and to provide access to Chambersburg, Pennsylvania.

(50) The Chadville, Pennsylvania highway project. To relocate and reconstruct a 3.5 mile segment of the Federal-aid primary system from the vicinity of Chadville, Pennsylvania, to Fairchance, Pennsylvania.

(51) The Kittanning-Brookville, Pennsylvania project. To reconstruct approximately 30 miles of a two-lane on the Federal-aid primary system between Kittanning and Brookville, Pennsylvania.

(52) The Johnstown Flood National Memorial project. To upgrade a narrow, 1.3 mile access road to the Johnstown Flood National Memorial, near Johnstown, Pennsylvania.

(53) The Seltice Way project located in Post Falls, Idaho. The reconstruction project of Seltice Way through the city of Post Falls, beginning at Pleasant View Road and ending at Huetter Road.

(54) The US-20/26 Highway Project, located on US-20/26 and US-20 between the Idaho National Engineering Laboratory (INEL) site and the city of Idaho Falls, Idaho.

(55) A highway project in the vicinity of Southeast Baton Rouge, Louisiana, for the purpose of demonstrating methods by which (a) the widening of the on and off ramps of a full diamond interchange on the Interstate System, and (b) the widening and improvement of the approaches on both sides of the Interstate System, including access ramps and turnouts therefrom, of a two lane highway not on such system and construction of a school bus loading area immediately adjacent thereto, and (c) the coordination of a partial relocation of a two lane highway not on such system, will enchance to the economic development of the area while removing safety hazards, reducing traffic congestion at the Interstate Interchange, at the entrances to a large commercial development and a school, including the entrances to the school bus loading zone.

(56) A highway project in the vicinity of East Lafayette Parish, Louisiana, for the purpose of demonstrating the benefits of a full diamond interchange connecting Louisiana Avenue on the west bank of Bayou Vermillion to the Interstate System to improve traffic flow and highway safety in the City of Lafayette.

(57) A highway project in the vicinity of East Lafayette, Louisiana for the purpose of demonstrating the benefits of providing access to the Interstate System from a state highway not on such system.

(58) The New Sewickly project, located in the townships of New Sewickly and Conway, Pennsylvania. To construct a two-lane highway between the two municipalities.

(59) A grade separation over a rail highway crossing at the intersection of U.S. 41 and Causeway Boulevard in the vicinity of Tampa, Florida, to relieve motor vehicle congestion resulting from the transportation of freight to and from areas for the transshipment of waterborne commerce.

(60) A highway project to demonstrate methods of improving highway safety by making improvements to a road providing direct access from the Fort Campbell Military Reservation to the City of Clarksville, Tennessee.

(61) To perform a study to determine the benefits and cost associated with making Route 22 West from Ebensburg, Pennsylvania to Pittsburgh, Pennsylvania a four lane road. Preliminary design and engineering is to be included in this study. This segment of Route 22 is a dangerous road which varies from two to three ot four lanes. A four lane road would benefit commerce and safety. This project should be granted priority status for construction funds.

(62) To perform a study to determine the benefits and costs associated with making Route 219 from Somerset, Pennsylvania to the Maryland border a four lane highway. Preliminary design and engineering is to be included in this study. This segment, currently a two lane road, would connect with two four lane segments to provide a major Appalachian thoroughfare and result in jobs and safety benefits. This project should be granted priority status for construction funds.

(63) To perform a study to determine the benefits and costs associated with creating a four lane highway from Route 56 in Johnstown, Pennsylvania to Route 22. Preliminary design and engineering is to be included in this study. This project should be granted priority status for construction funds.

(64) $184,000 is needed to perform emergency repair to the Calhoun Bridge (Morrisville to Trenton, Pennsylvania). An accident caused structural damage which necessitated closing the bridge until repairs can be accomplished. Twenty thousand cars per day that were regular users of the bridge are inconvenienced and many businesses located at this bridge are inconvenienced as a result. This Project should be granted priority status for construction funds.

(65) To perform a study to determine the benefits and costs associated with making Route 15 from Hunterstown, Pennsylvania to the Maryland Border four lanes. This segment is currently two lanes and connects two four lane segments. Many deaths occur on this dangerous stretch of highway. This project should be granted priority status for construction funds.

(66) Cline Avenue Interchange Improvement Project in East Chicago, Indiana for the reconstruction of an interchange at the intersection of Cline Avenue and the Borman Expressway.

(67) Hammond Railroad Relocation Project in Hammond, Indiana to complete acquisition of right-of-way and construction of the Hohman Avenue underpass to improve transportation and economic benefits to the community.

(68) Lafayette Railroad Relocation in Lafayette, Indiana to reroute rail traffic to a single corridor with few crossings reducing the threat posed to the safety of the local citizens by over 40 rail-highway intersections.

(69) U.S. 75 North Central Expressway Extension combines several individual projects which involve construction of additional lanes, more efficient interchanges, and improved bridge structures for added capacity and safer travel on a Federal-aid Primary System highway. Improvements to this major north-south route in north central Texas near Dallas would cover 15.4 miles of highway from Interstate 635 in Dallas County to State Highway 121 in Collin County. Cost of the project is estimated at $134.5 million.

(70) Interstate Highway 30 Interchange ("West Leg")—Ft. Worth, Texas, reconstructs and widens a critical interchange involving major, heavily-traveled East-West and North-South Interstate Highways (IH 30 and IH 35, repectively).

(b) Each fiscal year before making any apportionment, the Secretary of Transportation shall approve from a State's apportionments under sections 104, 130, 144, and 152, of title 23, United States Code, such sums that may be requested by a State highway department to carry out projects required by this section in that State. A State highway department shall designate the apportionments from which sums are to be approved. The Federal share payable for sums approved from apportionments provided in paragraphs 104(d)(1)(A) and 104(d)(1)(B) shall not exceed the share provided in subsection 120(c) of title 23, United States Code; from apportionments provided in paragraphs 104(d)(1)(C), 104(d)(2) and 104(d)(3) shall not exceed the share provided in subsection 120(a) of title 23, United States Code; from apportionments provided in subsection 130(f) shall not exceed the share provided in subsection 130(f); from apportionments provided in subsection 144(e) shall not exceed the share provided in subsection 144(f); and from apportionments provided in subsection 152(e) shall not exceed the share provided in subsection 152(d). Funds approved under this section shall be available for obligation in the same manner as if apportioned under chapter 1 of title 23, United States Code, and shall be available until expended. Funds in excess of the amounts needed to complete a project shall be returned to the appropriate apportionment.

NEW JERSEY PENNSYLVANIA TOLL COMPACT DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION

SEC. 141. (a) OBLIGATION TO REPAY FEDERAL FUNDS INVESTED ON I-80.—

(1) The Delaware River Joint Toll Bridge Commission (hereinafter in this section referred to as the "Commission"), in conjunction with the State highway agencies of the Commonwealth of Pennsylvania and of the State of New Jersey, shall enter into an agreement with the Secretary of Transportation to repay to the Treasury of the United States any Federal funds which previously have been obligated or otherwise expended by the Federal Government with respect to the Delaware Water Gap Bridge on I-80. Such repayment shall be credited to the Highway Trust Fund.

(2) Upon such repayment, such States and the Commission shall be free of all restrictions contained in title 23, United States Code, and any regulation or agreement thereunder, with respect to the collection or imposition of tolls or other charges for such bridge or the use thereof.

(b) AGREEMENT TO CONSTRUCT I-78 BRIDGE AS A TOLL BRIDGE.—If the Commonwealth of Pennsylvania, the State of New Jersey, and the Commission determine to operate the uncompleted bridge under construction in the vicinity of Easton, Pennsylvania, and Phillipsburg, New Jersey, on I-78 as a toll bridge, such States, the Commission, and the Secretary of Transportation shall enter into an agreement with respect to such I-78 bridge project as provided in section 129 of title 23, United States Code, notwithstanding the requirements of section 301 of such title or any existing agreement.

(c) COMMISSION'S AUTHORITY TO CHARGE TOLLS; RIGHT OF REVIEW BY FEDERAL AGENCIES PRESERVED.—The Commission's authority to fix, charge, or collect any fees, rentals, tolls, or other charges shall be as provided in its Compact, supplements thereto and the supplemental agreement described and consented to in subsection (f), but paragraph (c) of the supplemental agreement described and consented to in subsection (f) shall not be construed to eliminate the necessity for review and approval by any Federal agency, as may be required under applicable Federal law, to determine that the tolls charged by the Commission are reasonable and just consistent with the Commission's responsibilities under its Compact, supplements thereto and the supplemental agreement described and consented to in subsection (f).

(d) CONGRESSIONAL CONSENT NOT GRANTED TO TOLLS ON EXISTING NONTOLL BRIDGES.—Nothing in this section shall be construed to grant congressional consent to the imposition of tolls by the Commission on any existing and operating bridge under the Commission's jurisdiction on which tolls were not charged and collected on January 1, 1986.

(e) CONGRESSIONAL APPROVAL NOT APPLICABLE TO I-895 CORRIDOR.—Nothing in this section shall constitute congressional approval to construct any additional toll bridge in the previously designated I-895 corridor.

(f) CONSENT OF CONGRESS TO SUPPLEMENTAL AGREEMENT CONCERNING AUTHORITY OF COMMISSION.—

(1) The consent of the Congress is hereby given to the supplemental agreement, described in paragraph (2), concerning the Delaware River Joint Toll Bridge Commission, which agreement has been enacted by the Commonwealth of Pennsylvania on December 18, 1984, as Act 206, laws of 1984, and by the State of New Jersey on October 21, 1985, as Public Law 1985, chapter 342.

(2) The agreement referred to in paragraph (1) reads substantially as follows:

"SUPPLEMENTAL AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY

"Supplementing the Compact or Agreement Entitled Agreement between the Commonwealth of Pennsylvania and the State of New Jersey Creating the Delaware River Joint Toll Bridge Commission as a Body Corporate and Politic and Defining its Powers and Duties, as Heretofore Amended and Supplemented, to Establish the Purposes for Which the Commission May Fix, Charge, and Collect Tolls, Rates, Rents, and Other Charges for the use of Commission Facilities and Properties".

"The Commonwealth of Pennsylvania and the State of New Jersey do solemnly covenant and agree, each with the other, as follows:

"(a)(1) Notwithstanding any other provision of the compact hereby supplemented, or any provision of law, State or Federal to the contrary, as soon as the existing outstanding bonded indebtedness of the commission shall be refunded, defeased, retired, or otherwise satisfied and thereafter, the commission may fix, charge, and collect tolls, rates, rents, and other charges for the use of any commission facility or property and in addition to any purpose now or heretofore or hereafter authorized for which the revenues from such tolls, rates, rents, or other charges may be applied, the commission is authorized to apply or expend any such revenue for the management, operation, maintenance, betterment, reconstruction, or replacement (a) of the existing non-toll bridges, formerly toll or otherwise, over the Delaware River between the State of New Jersey and the Commonwealth of Pennsylvania heretofore acquired by the commission pursuant to the provisions of the act of the State of New Jersey approved April 1, 1912 (Chapter 297), and all supplements and amendments thereto, and the act of the Commonwealth of Pennsylvania approved May 8, 1919 (Pamphlet Laws 148), and all supplements and amendments thereto and (b) of all other bridges within the commission's jurisdiction and control. Betterment shall include but not be limited to parking areas for public transportation services and all facilities appurtenant to approved projects.

"(2) The commission may borrow money or otherwise incur indebtedness and provide from time to time for the issuance of its bonds or other obligations for one or more of the purposes authorized in this supplemental agreement. The commission is authorized to pledge its tolls, rates, rents, and other revenues, or any part thereof, as security for the repayment, with interest, of any moneys borrowed by it or advanced to it for any of its authorized purposes, and as security for the satisfaction of any other obligation assumed by it in connection with such loan or advances.

"(3) The authority of the commission to fix, charge, and collect fees, rentals, tolls or any other charges on the bridges within its jurisdiction, including the bridge at the Delaware Water Gap, is confirmed.

"(4) The covenants of the State of New Jersey and the Commonwealth of Pennsylvania as set forth in Article VI of the compact to which this is a supplemental agreement shall be fully applicable to any bonds or other obligations issued or undertaken by the commission. Notwithstanding Article VI or any other provision of the compact, the State of New Jersey and the Commonwealth of Pennsylvania may construct a bridge across the Delaware River in the vicinity of Easton, Pennsylvania, and Phillipsburg, New Jersey, within 10 miles of the existing toll bridge at that location. All the rest and remainder of the compact, as amended or supplemented, shall be in full force and effect except to the extent it is inconsistent with this supplemental agreement.

"(b) The commission is authorized to fix, charge, or collect fees, rentals, tolls, or any other charges on the proposed bridge to be constructed in the vicinity of Easton, Pennsylvania, and Phillipsburg, New Jersey, in the same manner and to the same extent that it can do so for other toll bridges under its jurisdiction and control provided that the United States Government has approved the bridge to be a part of the National System of Interstate and Defense Highways with 90 percent of the cost of construction to be contributed by the United States Government, and provided further, that the non-Federal share of such bridge project is contributed by the commission. The commission is further authorized in the same manner and to the same extent that it can do so for all other toll bridges under its jurisdiction and control to fix, charge, and collect fees, rentals, tolls or any other charges on any other bridge within its jurisdiction and control if such bridge has been constructed in part with Federal funds.

"(c) The consent of Congress to this compact shall constitute Federal approval of the powers herein vested in the commission and shall also constitute authority to the United States Department of Transportation or any successor agency and the intent of Congress to grant any Federal approvals required hereunder to permit the commission to fix, charge, and collect fees, rentals, tolls, or any other charges on the bridges within its jurisdiction to the extent provided in subsections (a) and (b) and this subsection and the compact.

"(d) Notwithstanding the above provisions, the commission shall not fix, charge, or collect fees, rentals, tolls, or any other charges on any of the various bridges formerly toll or otherwise over the Delaware River between the State of New Jersey and the Commonwealth of Pennsylvania heretofore acquired by the commission pursuant to the provisions of the Act of the State of New Jersey approved April 1, 1912 (chapter 297), and all supplements and amendments thereto, and the Act of the Commonwealth of Pennsylvania approved May 8, 1919 (Pamphlet Laws 148), and all supplements and amendments thereto.

"(e) At any time that the commission shall be free of all outstanding indebtedness, the State of New Jersey and the Commonwealth of Pennsylvania may, by the enactment of substantially similar acts, require the elimination of all tolls, rates, rents, and other charges on all bridges within the commission's jurisdiction and control and, thereafter, all costs and charges in connection with the construction, management, operation, maintenance, and betterment of bridges within the jurisdiction and control of the commission shall be the financial responsibility of the States as provided by law.".

MOTOR VEHICLE STUDY

SEC. 142. (a) The Secretary shall enter into appropriate arrangements with the Transportation Research Board (TRB) of the National Academy of Sciences to conduct a study of those motor vehicle issues noted in subsection (b) of this section. The TRB shall consult with the Department of Transportation, the State highway administrations, the motor carrier industry, highway safety groups, and any other appropriate entities.

(b) The study shall include an analysis of the impacts of the various positions that have been put forth with respect to each issue. The final report shall include best estimates of the effects on pavement, bridges, and highway safety, and the changes in transportation costs and other measures of productivity for various segments of the trucking industry resulting from adoption of each of the positions identified and analyzed. Related issues of permitting, weight enforcement, and data availability and reliability shall be addressed as appropriate. The issues to be addressed shall include but not be limited to:

(1) Elimination of existing, grandfather provisions of section 127, title 23, United

States Code, which allow higher axle loads and gross vehicle weights than the 20,000-pound single axle load limit, 34,000-pound tandem axle load limit, and 80,000-pound gross vehicle weight limit maximums authorized by the Federal-Aid Highway Amendments of 1974 (Public Law 93-643), including permits for divisible loads and statutory provisions providing higher weights by formula, tolerance or statutory specification.

(2) Analysis of alternative methods of determining a gross vehicle weight limit and axle loadings for all types of motor carrier vehicles.

(3) Analysis of the bridge formula contained in section 127 of title 23, United States Code, in view of current vehicle configurations, pavement and bridge stresses in accord with 1986 design and construction practices, and existing bridges on and off the Interstate System.

(4) Establishment of a nationwide policy regarding the provisions of "reasonable access" to the National Network for combination vehicles established pursuant to the Surface Transportation Assistance Act of 1982.

(5) Recommend appropriate treatment for specialized hauling vehicles which do not comply with the existing Federal bridge formula.

(c) The TRB shall submit a final report to the Secretary and the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress on the results of the study conducted under this section, not later than thirty months after appropriate arrangements are entered into under subsection (a). Appropriate arrangements shall be concluded within six months from the date of passage of this Act.

(d) There is authorized to be appropriated to carry out subsection (a) of this section, out of the Highway Trust Fund (other than the Mass Transit Account), $500,000 per fiscal year for each of the fiscal years ending September 30, 1987, and September 30, 1988. Funds authorized for this section shall be available for obligation in the same manner as if apportioned under chapter 1 of title 23, United States Code, and shall be available until expended.

RAIL-HIGHWAY CROSSINGS STUDY

SEC. 143. (a) The Secretary shall conduct a study of national highway-railroad crossing improvement and maintenance needs. The Secretary shall consult with the State highway administrations, the Association of American Railroads, highway safety groups, and any other appropriate entities in carrying out this study.

(b) The issues to be addressed by this study shall include but not be limited to:

(1) Examine any correlation which may exist between existing conditions at crossings and accident data at crossings.

(2) Examine existing hazards to motorists and railroad personnel and community impacts resulting from mobility and capacity constraints including delays of police, fire, and emergency medical services.

(3) Analysis of most cost effective methods of protecting the public at crossings including a review of the impact of Federal funds expended at crossings; division of cost of improvements and maintenance between Federal, State, local governments and railroads; cost effectiveness of the Railroad Relocation Demonstration Program (section 163 of the Federal-Aid Highways Act of 1973) compared to the Railroad-Highway Crossings program (section 203 of the Highway Safety Act of 1973); and the cost of upgrading existing equipment at crossings to the latest technology.

(4) Examine driver behavior at railroad-highway crossings and what technologies are most effective in changing behavior and preventing accidents.

(5) Examine what effect the shift in rail traffic patterns, including abandonments, mergers, and increased demand in certain corridors) has on railroad-highway crossing needs.

(6) Review any other potential costs associated with railroad-highway crossings including accident liability, increased truck size and wieght, and maintenance responsibilities.

(c) The Secretary shall submit a final report to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress on the results of the study conducted under this section along with recommendations of how these needs can be addressed in a cost effective manner, not later than twenty-four months after the date of enactment of this section.

(d) There is authorized to be appropriated to carry out subsection (a) of this section, out of the Highway Trust Fund (other than the Mass Transit Account), $600,000 for the fiscal year ending September 30, 1987, to remain available until expended. Funds authorized for this section shall be available for obligation in the same manner as if apportioned under chapter 1 of title 23, United States Code, and shall be available until expended.

FERRY BOAT SERVICE STUDY

SEC. 144. (a) The Secretary of Transportation in consulation with the highway departments of the States of Nebraska and South Dakota, shall conduct a study to determine the feasibility and cost of establishing public ferry boat service on the Missouri River which connects a Federal-aid highway in the Vicinity of Niobrara, Nebraska with a Federal-aid highway in the vicinity of Springfield, South Dakota, and which meets the requirements of section 129(g) of title 23, United States Code.

(b) Not later than one year after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under this section together with any recommendations the Secretary may have concerning the establishment of the ferry boat service described in subsection (a).

SUBSTITUTE TRANSIT PROJECT IN OREGON

SEC. 145. (a) Notwithstanding any other provision of law, upon the joint request of the Governor of the State of Oregon and the local governments concerned, the Secretary may approve a substitute transit project for construction of a light rail transit system in lieu of construction of any eligible interstate lanes if such substitute project is in or adjacent to the proposed right-of-way for such lanes.*

(b) Upon approval of any substitute transit project under subsection (a), the costs of construction of the eligible interstate lanes for which such project is substituted shall not be eligible for funds authorized under section 108(b) of the Federal-Aid Highway Act of 1956 and a sum equal to the Federal share of such costs, as included in the latest interstate cost estimate approved by Congress, shall be available to the Secretary to incur obligations under section 103(e)(4) of title 23, United States Code, for the Federal share of the costs of such substitute project.

(c) By September 30, 1989, any substitute transit project approved under subsection (a) (for which the Secretary finds that sufficient Federal funds are available) must be under contract for construction or construction must have commenced. If any such substitute transit project is not under contract for construction or construction has not commenced by such date, then immediately after such date, the Secretary shall withdraw approval of such project and no funds shall be appropriated under the authority of section 103(e)(4) of title 23, United States Code, for any such project.

(d)(1) A substitute transit project approved under subsection (a) shall be deemed to be a substitute transit project for purposes of section 103(e)(4) of title 23, United States Code (other than subparagraphs (C) and (O)).

(2) Unobligated apportionments for the Interstate System in the State of Oregon shall, on the date of approval of a substitute transit project under subsection (a), be reduced in the proportion that the Federal share of the costs of the construction of the eligible interstate lanes for which such project is substituted bears to the Federal share of the total cost of all interstate routes in that State as reflected in the latest cost estimate approved by Congress.

(3) The Secretary shall administer this section through the Federal Highway Administration.

(f) For purposes of this section, the term "eligible interstate lanes" means any bus lanes which are to be constructed on Interstate Route 205 in Oregon.

REVIEW OF REPORTS ON UNITED STATES ROUTE 13 RELIEF ROUTE

SEC. 146. The Congress requests the Board of Engineers for Rivers and Harbors of the United States Army Corps of Engineers to review—

(1) the report of the State of Delaware and the Federal Highway Administration for the United States Route 13 Relief Route; Project No. F-1001(16), Contract #83-110-01,

(2) the report of the Chief of Engineers on the Inland Waterway from the Delaware River to Chesapeake Bay, Delaware and Maryland, printed as House Document Number 63-196, and

(3) other subsequent pertinent reports,

for the purpose of determining how to best modify the existing canal project to provide a new structure for the selected alignment of the United States Route 13 Relief Route.

USE OF ROCK SALT ON HIGHWAYS

SEC. 147. (a) The Congress finds that—

(1) the use of rock salt to remove ice from the highways causes considerable damage to the highways, bridges, automobiles, and trucks,

(2) rock salt also causes damage to equipment and buildings near highways,

(3) rock salt causes considerable damage to the environment,

(4) all of these costs are real costs borne by the taxpayers, although such costs may not be paid directly to the government, and

(5) calcium magnesium acetate is an effective deicing material which does not cause the corrosion and environmental damage associated with rock salt.

(b) It is the sense of the Congress that the States and local governments should consider the full cost of using rock salt on the highways, including the damage to highways, vehicles, equipment, buildings, and the environment, in calculating the real cost of deicing materials and the use of calcium magne-

sium acetate as an alternative deicing material.

HIGHWAY FEASIBILITY STUDY

SEC. 148. (a) STUDY.—The Secretary, in cooperation with the States of Louisiana, Arkansas, and Missouri, shall study the feasibility and necessity of constructing to appropriate standards a proposed highway along a route from Shreveport, Louisiana to Texarkana, Fort Smith, and Fayetteville, Arkansas, and Carthage and Kansas City, Missouri. Such study shall update the feasibility study conducted under section 143(6) of the Federal-Aid Highway Act of 1973.

(b) REPORT.—Not later than one year after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this section.

INTERIM AMENDMENTS

SEC. 149. (a) Unobligated balances of Interstate construction funds apportioned or allocated to a State and available to a State on September 30, 1986, shall be available for obligation for Interstate construction projects or to convert Advance Construction Interstate projects until October 1, 1990. Federal Interstate construction funds shall not be used to reimburse the State under section 123(a) of title 23, United States Code, when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Projects constructed under this subsection are eligible for the Federal share payable provided in section 120(b) of title 23, United States Code. Interstate discretionary funds unallocated on September 30, 1986, shall be available for allocation until October 1, 1990.

(b) Unobligated balances apportioned to a State under section 104(b)(1) of title 23, United States Code and section 104(b)(5)(B) of title 23, United States Code, shall be available for obligation for projects under section 159 of title 23, United States Code.

(c) Unobligated balances apportioned to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands under the provisions of section 108 of the Highway Improvement Act of 1982 shall be considered to have been authorized to be appropriated to carry out the provisions of section 215 of title 23, United States Code.

(d) Unobligated balances apportioned to a State under section 203 of the Highway Safety Act of 1973 shall be available for projects under section 130 of title 23, United States Code.

TECHNICAL AMENDMENTS

SEC. 150. (a) Title 23, United States Code, is amended as follows:

(1) The tables of sections for chapters 1, 3, and 4 are amended by (A) striking:

"115. Construction by States in advance of apportionment."
"118. Availability of sums apportioned."
"127. Vehicle weight and width limitations—Interstate System."
"133. Repealed."
"146. Repealed."
"148. Development of a national scenic and recreational highway."
"151. Pavement marking demonstration program."
"155. Access highways to public recreation areas on certain lakes."
"156. Highways crossing Federal projects."
"213. Rama Road."
and

"219. Safer off-system roads.",

and by (B) inserting in lieu thereof, respectively,

"115. Advance construction."
"118. Availability."
"127. Vehicle weight limitations—Interstate System."
"133. Strategic highway research program."
"146. Carpool and vanpool projects."
"148. Repealed."
"151. Repealed."
"155. Repealed."
"156. Repealed."
"213. Repealed."
and

"219. Repealed."
and by (C) adding

"159. Federal-aid Interstate-primary program."
"160. Income from right-of-way."
and

"409. Reports, surveys; disclosures; admission as evidence.".

(2) Section 101(a) is amended by striking the definition of "park road" and inserting in lieu thereof "The term 'park road' means a public road that is located within, or provides access to, an area in the national park system, with title and maintenance responsibilities vested in the United States.".

(3) Section 106(c) is amended by striking "10" and inserting in lieu thereof "15" and by striking the second sentence.

(4) Section 107(b) is amended by striking "under section 108(b) of the Federal-Aid Highway Act of 1956" and inserting in lieu thereof "for Interstate construction or for the Interstate-primary program".

(5) Section 113 is amended by striking out "August 30, 1935" and inserting in lieu thereof "March 3, 1931" and by striking out "267a" and inserting in lieu thereof "276a".

(6) Section 121(d) is amended by striking out "10" and inserting in lieu thereof "15", and by striking out the third sentence.

(7) The first sentence of section 122 is amended by inserting "or for substitute highway projects" before "and the retirement".

(8)(A) Section 125(b) is amended by striking out "the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors," each place it appears and inserting in lieu thereof "the Federal-aid highway systems, including the Interstate System".

(B) Section 125(c) is amended by striking out "routes functionally classified as arterials or major collectors" and inserting in lieu thereof "on any of the Federal-aid highway systems".

(9) Section 137(f)(1) is amended by striking "104(b)(5)(B)" and inserting in lieu thereof "104(d)(1)".

(10) Section 141(d) is amended by striking "104(b)(5)" and inserting in lieu thereof "104(d)(1)" the two places "104(b)(5)" appears and by inserting "-primary" after the word "Interstate".

(11)(A) Section 142(a)(1) is amended by (iii) striking "104(b)" and inserting in lieu thereof "104(d)".

(B) Section 142(a)(2) is amended by striking "104(b)(6)" the three places it appears and inserting in lieu thereof "104(d)(3)" in each place.

(C) Section 142(b) is amended by striking "paragraph (5) of subsection (b) of section 104" and inserting in lieu thereof "section 104(d)(1)".

(D) Section 142(c) is amended by striking "104(b)(6)" the two places it appears and inserting in lieu thereof in each place "104(d)(3)".

(12) Section 144(i) is amended by striking out the period at the end and inserting in lieu thereof "to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation.".

(13) Section 146 is amended by striking "104(b)(1), 104(b)(2), and 104(b)(6)" and inserting in lieu thereof "104(d) (1), (2), and (3)".

(14) Sections 148, 151, 155, 156, 213, and 219 are repealed.

(15) Section 150 is amended by striking "(6) of subsection (b)" in two places and inserting in lieu thereof in each place "(3) of subsection (d)".

(16)(A) Section 152(e) is amended by striking "104(b)(1)" and inserting in lieu thereof "104(d)(1)".

(B) Section 152(g) is amended by striking "the Congress" and inserting in lieu thereof "the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation".

(17)(A) Section 154(e) is amended—

(i) by striking out "criteria which takes" and inserting in lieu thereof "criteria which take";

(ii) by inserting after "posted" the following: "on January 1, 1983,"; and

(iii) by inserting before "in accordance with" the following: ", and on highways built after such date with speed limits posted at fifty-five miles per hour,".

(B) Section 154(f) is amended by striking "each of sections 104(b)(1), 104(b)(2), and 104(b)(6) of this title in an aggregate amount of up to 5 percent of the amount to be apportioned for the following fiscal years, in the case of fiscal years 1982 and 1983, and up to 10 percent, in the case of subsequent fiscal years." and inserting in lieu thereof "sections 104(d)(1)(C), (2), and (3) of this title in an amount of up to 10 percent of the amount to be apportioned for the following fiscal year.".

(18)(A) Section 158(a)(1) is amended by striking "each of the sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of this title on the first day of the fiscal year succeeding the fiscal year beginning after September 30, 1985" and inserting in lieu thereof "sections 104(d) (1), (2), and (3) of this title on October 1, 1986".

(B) Section 158(a)(2) is amended by striking "each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of this title on the first day of the fiscal year succeeding the second fiscal year beginning after September 30, 1985" and inserting in lieu thereof "sections 104(d) (1), (2), and (3) of this title on October 1, 1987."

(19)(A) The second sentence of section 204(b) is amended by inserting "the Secretary or" before the "Secretary of the Interior".

(B) Section 204(e) is amended by striking "88 Stat. 2205" and inserting in lieu thereof "88 Stat. 2203".

(20) Section 210(g) is amended by striking "Commerce" and inserting in lieu thereof "Transportation".

(21) Subsection (a) of section 215 of title 23, United States Code, is amended by striking from the first sentence the words "and American Samoa" and inserting in lieu thereof "American Samoa, and the Commonwealth of the Northern Mariana Islands".

(22) Section 217 is amended by striking "paragraphs (1), (2), and (6) of section

104(b)" the two places it appears and inserting in lieu thereof "sections 104(d) (1), (2), and (3)".

(23)(A) Section 307(c)(3) is amended by striking "(1), (2), and (3) of section 104(b)" and inserting in lieu thereof "(1) and (2) of 104(d)".

(B) Section 307(c)(5) is amended by striking "104(b)(1)" and inserting in lieu thereof "104(d)(1)".

(C) Section 307(e) is amended by striking "the Congress" and inserting in lieu thereof "the Senate Environment and Public Works Committee and the House Committee on Public Works and Transportation".

(24) Section 311 is amended by striking "(b)" and inserting in lieu thereof "(d)".

(25) Section 315 is amended by striking "204(d), 205(a), 207(b) and 208(c)" and inserting in lieu thereof "204(f) and 205(a)".

(26) Section 401 is amended by striking "and American Samoa." and inserting in lieu thereof "American Samoa and the Commonwealth of the Northern Mariana Islands.".

(27)(A) Section 402(c) is amended by (i) striking "For the fiscal years ending June 30, 1967, June 30, 1968, and June 30, 1969, such funds shall be apportioned 75 per centum on the basis of population and 25 per centum as the Secretary in his administrative discretion may deem appropriate and thereafter such" and inserting in lieu thereof "Such", by (ii), striking "After December 31, 1969, the" and inserting in lieu thereof "The", and by (iii) striking "and American Samoa" and inserting in lieu thereof "American Samoa and the Commonwealth of the Northern Mariana Islands".

(B) The last sentence of section 402(j) is amended by striking out "chapter" and inserting in lieu thereof "section".

(b)(1) Section 108(b) of the Federal-Aid Highway Act of 1956 is amended by (A) inserting "and" before "the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1987", by (B) inserting a period after "1987", and by (C) striking ", and the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1988, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1989, and the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1990.".

(2) Section 108(d) of the Surface Transportation Assistance Act of 1982 is amended by striking "this title," and inserting in lieu thereof "title 23, United States Code,".

(3) Section 163 of the Surface Transportation Assistance Act of 1982 is amended by striking "appropriated" and inserting in lieu thereof "apportioned".

(4) Section 163(o) of the Federal-Aid Highway Act of 1973 is amended to read as follows:

"(o) The Secretary of Transportation shall make biennial reports and a final report to the President, the Senate Committee on Environment and Public Works, and the House Committee on Public Works and Transportation with respect to activities pursuant to this section."

(5) Section 103(c) of the Federal-Aid Highway Act of 1978 is amended by striking "Congress" and inserting in lieu thereof "the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation".

NATIONAL MAXIMUM SPEED LIMIT LAW

SEC. 151. (a) Subsection 154(a) of title 23, United States Code, is amended—

(1) by inserting "other than a highway on the Interstate System located outside of an urbanized area of fifty thousand population or more, (2) a maximum speed on any highway within its jurisdiction on the Interstate System located outside of an urbanized area of fifty thousand population or more in excess of sixty-five miles per hour" immediately after "hour"; and

(2) by renumbering "(2)" as "(3)" at the two places "(2)" appears.

(b) Subsection 154(f) of title 23, United States Code, is amended by inserting "on public highways with speed limits posted at fifty-five miles per hour" immediately after "hour".

CUMBERLAND GAP NATIONAL HISTORICAL PARK, VIRGINIA

SEC. 152. (a) Section 160(a) of the Federal-Aid Highway Act of 1973 (87 Stat. 278) is amended by adding the following new sentences at the end thereof: "After completion of the reconstruction and relocation of Route 25E through the Cumberland Gap National Historical Park (including construction of a tunnel and the approaches thereto), funds available for parkways in subsection (a) of section 101, Title 23, United States Code, shall be available to finance the cost of upgrading from 2 lanes to 4 lanes a highway providing access from such route through that portion of the Cumberland Gap National Historical Park which lies within the State of Virginia. The project, including any environmental impact statements, referred to in the preceding sentence shall not delay or affect in any way the reconstruction and relocation of Route 25E (including construction of a tunnel and approaches thereto).

(b) Subsection (b) of section 160 of such Act is amended by inserting after "rights-of-way" the following: "including approaches in the State of Virginia".

STATE MATCHING SHARE

SEC. 153. Notwithstanding title 23, United States Code, the State matching share for the Calder Bridge project across the St. Joe River, nineteen miles east of St. Maries, Idaho, including approaches, under title 23, United States Code, may be credited by the fair market value of land incorporated into the projected, where such land is fair market value of land incorporated into the project, where such land is in addition to existing public right-of-way and such land is lawfully donated to the State or local government after the effective date of this section, and may be credited by the fair market value of construction on the project performed by or donated to the State or local government after the effective date of this section.

ADVANCE CONSTRUCTION

SEC. 154. (a) Section 115 of title 23, United States Code, is amended by striking the title and inserting in lieu thereof "Advance construction".

(b) Paragraph (a) of section 115 of title 23, United States Code, is amended to read as follows:

"(a) When a State has obligated all the highway substitute, urban, secondary or bridge funds, as the case may be, apportioned or allocated to it or has used or demonstrates that it will use the obligation authority allocated to it, and proceeds to construct a highway substitute, urban, secondary or bridge project without the aid of Federal funds in accordance with all procedures and all requirements applicable to a project, except insofar as procedures and requirements limit a State to the construction of a project with the aid of funds previously apportioned or allocated to it or limit a State to the construction of a project with obligation authority previously allocated to it, the Secretary, upon approval of an application, is authorized to pay to the State the Federal share of the cost of construction of the project when additional funds are apportioned or allocated to the State, or when additional obligation authority is allocated to the State if—

"(A) prior to the construction of the project the Secretary approved the plans and specifications therefor in the same manner as other projects, and

"(B) the project conforms to the applicable standards under section 109 of this title.".

(c) Paragraph (b)(1) of section 115 of title 23, United States Code, is amended to read as follows:

"(b)(1) When a State proceeds to construct any project on the Federal-aid primary system including the Interstate System without the aid of Federal funds in accordance with all procedures and all requirements applicable to projects on the Interstate System or the primary system, as the case may be, except insofar as the procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon approval of the application, is authorized to pay to the State the Federal share of the cost of construction of the project when additional funds are apportioned to the State if—

"(A) prior to the construction of the project the Secretary approved the plans and specifications therefor in the same manner as other projects, and

"(B) the project conforms to the applicable standards under section 109 of this title.".

(d) Paragraph (b)(3) of section 115 of title 23, United States Code, is amended by inserting "on the Interstate System" after "project" the first place that "project" appears.

(e) Section 115 of title 23, United States Code, is further amended by adding new subsection (d) as follows:

"(d) the Secretary may not approve an application under this section if the amount of approved applications in the category of funds involved exceeds the total of that category of unobligated funds apportioned or allocated to a State, plus such State's expected apportionment of that category of funds from existing authorizations plus an amount equal to such States expected apportionment of that category of funds for one additional fiscal year.".

DAVID-BACON WAGE RATES

SEC. 155. Subsection (a) of section 113 of title 23, United States Code, is amended by striking out "subcontractors on" and inserting in lieu thereof "subcontractors under any contract or subcontract in excess of $250,000 for".

H-3 HIGHWAY IN HAWAII

SEC. 156. The Secretary of Transportation shall approve the construction of the Interstate Highway H-3 between the Halawa Interchange to, and including, the Halekou Interchange (a distance of approximately 10.7 miles), and such construction shall proceed to completion notwithstanding section 138 of title 23 and section 303 of title 49, United States Code.

HEAVY VEHICLE USE TAX

SEC. 157. None of the funds appropriated or made avaiable by this or any other Act shall be used to implement Internal Revenue Service Regulation section 41.4481-1(a)(2) or any ruling or procedure which attains the same or similar result.

EFFECTIVE DATE

SEC. 158. Except as otherwise provided therein the effective date of the Federal-Aid Highway Act of 1986 is October 1, 1986.

TITLE II—MASS TRANSIT

AUTHORIZATIONS

SEC. 201. (a) Section 21 of the Urban Mass Transportation Act of 1964 is amended—

(1) in subsection (a)(1), by striking out "and $3,050,000,000 for the fiscal year ending September 30, 1986, and funds" and inserting in lieu thereof the following: "$3,050,000,000 for the fiscal year ending September 30, 1986, such sums as may be necessary for fiscal year 1987, $1,990,000,000 for fiscal year 1988, $1,993,000,000 for fiscal year 1989, and $1,996,000,000 for fiscal year 1990. Funds";

(2) in subsection (a)(2)(B), by striking out "and $1,100,000,000 for fiscal year 1986" and inserting in lieu thereof "$1,100,000,000 for fiscal year 1986, and $1,000,000,000 for each of the fiscal years 1987 through 1990";

(3) in subsection (a)(4), by striking out "In each of the fiscal years 1984, 1985, and 1986" and inserting in lieu thereof "in each of the fiscal years 1984 through 1990";

(4) in subsection (a)(5), by striking out "1984, 1985, and 1986" and inserting in lieu thereof "1984 through 1990"; and

(5) in the first sentence of subsection (b), by striking out "and" before "$90,000,000" and by inserting before the period at the end the following: ", such sums as may be appropriated for fiscal year 1987, and $46,000,000 for each of the fiscal years 1988 through 1990".

(b) Section 4(g) of such Act is amended by striking out "and" before "$400,000,000" and by inserting after "September 30, 1986," the following: "such sums as may be necessary for fiscal year 1987, and $200,000,000 for each of the fiscal years 1988 through 1990,".

NEWLY URBANIZED AREAS

SEC. 202. The last sentence of section 9(k)(2) of the Urban Mass Transportation Act of 1964 is amended by inserting "authorized" after "its".

LEASED PROPERTY

SEC. 203. Section 9(j) of the Urban Mass Transportation Act of 1964 is amended by inserting after the first sentence the following: "Grants for construction projects under this section shall also be available to finance the leasing of facilities and equipment for use in mass transportation service, subject to regulations limiting such grants to leasing arrangements which are more cost effective than acquisition or construction. The Secretary shall publish regulations under the preceding sentence in proposed form in the Federal Register for public comment not later than 60 days after the date of enactment of this sentence, and shall promulgate such regulations in final form not later than 120 days after such date of enactment.".

DEFINITION OF ASSOCIATED CAPITAL ITEM

SEC. 204. The last sentence of section 9(j) of the Urban Mass Transportation Act of 1964 is amended—

(1) by striking out "and materials" and inserting in lieu thereof ", tires, tubes, materials, and supplies"; and

(2) by striking out "1 per centum" and inserting in lieu thereof "one-half of 1 per centum".

OVERHAUL-RECONSTRUCTION

SEC. 205. (a) Section 12(c)(1) of the Urban Mass Transportation Act of 1964 is amended by inserting "(A)" after "such term also means" and by inserting before the semicolon at the end thereof the following: ", (B) any bus remanufacturing project which extends the economic life of a bus eight years or more, and (C) any project for the overhaul of rolling stock (whether or not such overhaul increases the useful life of the rolling stock)".

(b) Section 9(j) of such Act is amended—

(1) by inserting "(1)" before "Grants"; and

(2) by adding at the end the following new paragraphs:

"(2) A project for the reconstruction (whether by employees of the grant recipient or by contract), of any equipment and materials each of which, after reconstruction, will have a fair market value no less than one half of 1 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and materials are to be used shall be considered a project for construction of an associated capital maintenance item under this section.

"(3) Notwithstanding any other provision of this section—

"(A) a grant, or that portion of a grant, for a project under the second sentence of paragraph (1);

"(B) a grant covering the costs of associated capital maintenance items having a value of less than 1 per centum but more than ½ of 1 per centum of current fair market value of rolling stock described in the last sentence of paragraph (1); and

"(C) a grant under paragraph (2);

shall be subject to the Federal grant limitation contained in the second sentence of subsection (k)(1).".

(c) Section 3(a)(2)(A)(iii) of such Act is amended by inserting before the period the following: ", and will maintain such facilities and equipment".

PROJECT MANAGEMENT OVERSIGHT

SEC. 206. The Urban Mass Transportation Act of 1964 is amended by inserting at the end thereof the following new section:

"PROJECT MANAGEMENT OVERSIGHT

"SEC. 24. (a)(1) The Secretary may use as much as is necessary of the funds made available for each fiscal year by sections 21(a)(1), 21(a)(2)(B), and 4(g) of this Act, and section 14(b) of the National Capital Transportation Act of 1969 to contract with any person for the performance of project management oversight. Any contract entered into under this subsection shall provide for the payment by the Secretary of 100 percent of the cost of carrying out the contract.

"(2) Each recipient of assistance under this Act or section 14(b) of the National Capital Transportation Act of 1969 shall provide the Secretary and a contractor chosen by the Secretary in accordance with paragraph (1) such access to its construction sites and records as may be reasonably required.

"(b) As a condition of Federal financial assistance for a major capital project under this Act or the National Capital Transportation Act of 1969, the Secretary shall require the recipient to prepare and, after approval by the Secretary, implement a project management plan which meets the requirements of subsection (c).

"(c) A project management plan may, as required in each case by the Secretary, provide for—

"(1) adequate recipient staff organization complete with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

"(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and such miscellaneous payments as the recipient may be prepared to justify;

"(3) a construction schedule;

"(4) a document control procedure and recordkeeping system;

"(5) a change order procedure which includes a documented, systematic approach to the handling of construction change orders;

"(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

"(7) quality control and quality assurance functions, procedures, and responsibilities for construction and for system installation and integration of system components;

"(8) materials testing policies and procedures;

"(9) internal plan implementation and reporting requirements;

"(10) criteria and procedures to be used for testing the operational system of its major components; or

"(11) periodic updates of the plan, especially with respect to such items as project budget and project schedule, financing, ridership estimates, and where applicable, the status of local efforts to enhance ridership in cases where ridership estimates are contingent, in part, upon the success of such efforts; and

"(12) the recipient's commitment to make monthly submissions of project budget and project schedule to the Secretary.

"(d) The Secretary shall promulgate such regulations as may be necessary to implement the provisions of this section. Such regulations shall be published in proposed form for comment in the Federal Register and shall be submitted for review to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than 60 days after the date of enactment of this section, and shall be promulgated in final form not later than 120 days after the date of enactment of this section. Such regulations shall, at a minimum, include the following:

"(1) A definition of the term 'major capital project' for the purpose of subsection (b). Such definition shall exclude projects for the acquisition of vehicles or other rolling stock, or for the performance of vehicle maintenance or rehabilitation.

"(2) A requirement that, in order to maximize the transportation benefits and cost savings associated with project management oversight, such oversight shall begin during the preliminary engineering stage of a project. The requirement of this paragraph shall not apply if the Secretary finds that it is more appropriate to initiate such oversight during another stage of the project.

"(e) The Secretary shall approve a plan submitted pursuant to subsection (b) within 60 days following its submittal. In the event that approval cannot be completed within 60 days, the Secretary shall inform the recipient of the reasons therefor and as to how much more time is needed for review to be completed. If a plan is disapproved, the Secretary shall inform the recipient of the reasons therefor.".

EFFECTIVE DATE

SEC. 158. Except as otherwise provided therein the effective date of the Federal-Aid Highway Act of 1986 is October 1, 1986.

TITLE III—DISASTER RELIEF AMENDMENTS

SEC. 301. This title may be cited as the "Disaster Relief Act Amendments of 1986".

SEC. 302. The short title of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended by deleting the words "Disaster Relief Act of 1974" and inserting in lieu thereof "Major Disaster Relief and Emergency Assistance Act".

SEC. 303. Section 102(1) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(1)) is amended to read as follows:

"(1) 'Emergency' means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property, public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.".

SEC. 304. Title VIII of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3231-3236) is hereby repealed, and title V of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended to read as follows:

"TITLE V—FEDERAL EMERGENCY ASSISTANCE PROGRAMS

"PROCEDURES

"SEC. 501. (a) All requests for a determination by the President that an emergency exists shall be made by the Governor of the affected State. Such request shall be based upon the Governor's finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. As a part of this request, and as a prerequisite to emergency assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. Based upon such Governor's request, the President may declare that an emergency exists.

"(b) The President may exercise any authority vested in him by section 502 and section 503 of this Act with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. The President may determine that such an emergency exists only after consultation with the Governor of the affected State, if practicable. The President's determination, however, may be made without regard to the provisions of section 501(a) of this Act.

"FEDERAL ASSISTANCE

"SEC. 502. In any emergency, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts, including but not limited to personnel, equipment, supplies, facilities, and managerial, technical and advisory services in support of State and local emergency assistance efforts to save lives and to protect property, public health and safety or to lessen or avert the threat of a catastrophe;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing emergency assistance, and coordinate emergency assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks of hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"EMERGENCY ASSISTANCE

"SEC. 503. (a) In an emergency, when the Federal assistance provided pursuant to section 502 of this title is inadequate, the President may provide assistance to save lives and protect property, public health and safety, or to lessen or avert the threat of a catastrophe. When debris removal assistance is appropriate under this section, it shall be provided in accordance with the terms and conditions of section 406 of this Act.

"(b) In any emergency and except as provided by subsection (c) of this section, the costs of providing emergency assistance under this section shall not exceed $5,000,000 of funds appropriated to carry out this Act.

"(c) The limitation of subsection (b) of this section may be exceeded when the President determines that continued emergency assistance is immediately required; that there is a continuing and immediate risk to lives, property, public health or safety; and that necessary assistance will not otherwise be provided on a timely basis. In the event that the limitation of subsection (b) is exceeded, the President shall report to Congress on the nature and extent of the emergency assistance requirements and propose additional legislation if necessary.".

SEC. 305. Section 102(2) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(2)) is amended to read as follows—

"(2) 'Major disaster' means any natural catastrophe, including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or any fire, flood, or explosion, regardless of cause, in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.".

SEC. 306. Title II of the Disaster Relief Act of 1974 (42 U.S.C. 5131-5132) is amended by—

(1) striking the words "(including the Defense Civil Preparedness Agency)" in section 201(a);

(2) adding the words "including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards," between the words "plans" and "except" in section 201(d); and

(3) striking "$25,000" in section 201(d) and inserting in lieu thereof "$50,000".

SEC. 307. Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by—

(1) deleting sections 301, 305, and 306 and renumbering subsequent sections appropriately;

(2) deleting the caption "FEDERAL ASSISTANCE" of section 301, as redesignated by paragraph (1) of this section, and inserting in lieu thereof "RULES AND REGULATIONS";

(3) deleting the first and second sentences of subsection (a) of section 301, as redesignated by paragraph (1) of this section, and amending the final sentence thereof by adding ", with or without reimbursement," immediately before "through"; and

(4) deleting ", or economic status" in the second sentence of section 308(a) as redesignated by paragraph (1) of this section, and adding "or" before "age,".

SEC. 308. Section 302(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5143(a)), as redesignated by section 307(1) of this Act, is amended by adding at the end thereof the following: "The Federal coordinating officer shall represent the President in coordinating the emergency or the major disaster response and recovery effort.".

SEC. 309. Section 311 of the Disaster Relief Act of 1974 (42 U.S.C. 5154), as redesignated by section 307(1) of this Act, is amended by redesignating subsections (a), (b), and (c) as (b), (c), and (d), respectively, and by adding at the beginning thereof a new subsection as follows:

"(a) As a condition of assistance, any public facility and private nonprofit facility which is:

"(1) located in a special flood hazard area as identified by the Director pursuant to the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.);

"(2) damaged or destroyed by flooding; and

"(3) otherwise eligible for assistance under section 405 of this Act, must be covered, on the date of the flood damage, by reasonable and adequate flood insurance. Assistance under section 405 for any such facility not so covered shall be reduced by the maximum amount of benefits which could have been received had reasonable and adequate flood insurance been in force: Provided, however, That this reduction of assistance shall not apply to uninsured facilities where such communities have been identified for less than one year as having special flood hazard areas. The limitations of assistance required by this subsection shall not apply until final regulations are promulgated by the President. Such regulations shall define reasonable and adequate flood insurance.".

SEC. 310. Section 312 of the Disaster Relief Act of 1974 (42 U.S.C. 5155), as redesignated by section 307(1) of this Act, is amended to read as follows:

"DUPLICATION OF BENEFITS

"SEC. 312. (a) Agencies or other organizations providing Federal assistance for needs or losses resulting from a major disaster or emergency shall assure that no person, business concern, or other entity receives any such Federal assistance if said person, business concern, or entity receives or is entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source: Provided, That nothing in this section shall prohibit the provision of Federal assistance to a person, business concern, or other entity who is or may be entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source when any such applicant for Federal assistance has not received such other benefits by the time of application for Federal assistance, so long as the applicant for Federal assistance agrees as a condition of receipt of Federal assistance to repay duplicative assistance from insurance or any other Federal or non-Federal source to the agency or other organizations providing the Federal assistance. The President shall establish such procedures as are deemed necessary to insure uniformity in preventing such duplication of benefits. Receipt of par-

tial benefits for a loss or need resulting from a major disaster or emergency does not preclude provision of additional Federal assistance for any part of such loss or need for which benefits have not been provided.

"(b) A person, business concern, or other entity receiving Federal assistance for needs or losses resulting from a major disaster or emergency shall be liable to the United States to the extent that such Federal assistance has duplicated benefits available to the person, business concern, or other entity for the same purpose from insurance or any other Federal or non-Federal sources. The agency or other organization which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with the Claims Collection Act of 1966, as amended, when in the best interest of the Government. The repayment shall not exceed the amount of Federal assistance received.

"(c) Federal disaster assistance and comparable disaster assistance provided by States, local governments, and disaster assistance organizations to individuals and families shall not be considered as income or a resource when determining eligibility or benefit levels for federally funded income assistance or resource tested benefit programs.".

SEC. 311. (a) Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by adding at the end thereof four new sections as follows:

"PROTECTION OF ENVIRONMENT

"SEC. 315. No action taken or assistance provided pursuant to section 402, 403, 406, 502, or 503 of this Act, or any assistance provided pursuant to section 405 of this Act that has the effect of restoring facilities substantially as they existed prior to the disaster, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852). Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 (83 Stat. 852) to other Federal actions taken under this Act or under any other provisions of law.

"RECOVERY OF FUNDS

"SEC. 316. The Attorney General of the United States is authorized to institute actions in the United States District Court for the district in which an emergency or major disaster occurred, or in such district as otherwise provided by law, against any party whose acts or omissions may in any way have caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to this Act. Upon the showing that an emergency or major disaster or the associated damage or hardship was caused in whole or in part by an act or omission of such party, then such party shall be liable to the United States for the full amount of Federal expenditures made to alleviate the suffering or damage attributable to such act or omission. The authority of this section shall also apply to the recovery of Federal funds expended under the authority of section 419 of this Act for fire suppression.

"AUDITS AND INVESTIGATIONS

"SEC. 317. (a) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, shall conduct audits and investigations and in connection therewith may enter such places and inspect such records and accounts and question such persons as deemed necessary to determine the facts relative thereto.

"(b) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, may require audits by State and local governments in connection with assistance provided under the Act.

"(c) The President and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of investigation, audit, and examination, to any books, documents, papers, and records of any person or entity relating to any activity or program undertaken or funded pursuant to this Act.

"CRIMINAL AND CIVIL PENALTIES

"SEC. 318. (a) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any application or other document in connection with a request for assistance under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for assistance is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(b) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any bill, invoice, claim, or other document requesting reimbursement for work or services performed in connection with assistance provided under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for reimbursement is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(c) Any person, organization, or other entity who knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of this Act shall be subject to a fine in an amount equal to one and one-half times the misapplied amount of the loan or cash benefit.

"(d) Whenever it appears that any person, organization, or other entity has violated or is about to violate any provision of this Act, including rules and regulations issued and civil penalties imposed, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in the district court of the United States having jurisdiction where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

"(e) The President, or the duly authorized representative of the President, shall expeditiously refer to the Attorney General of the United States for appropriate action such evidence developed in the performance of functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.".

(b) Title III of the Disaster Relief Act of 1974 is amended by deleting subsections (a) and (c) of section 314 (42 U.S.C. 5157), as redesignated by section 307(1) of this Act, and by renumbering "(b)" from the remaining subsection of section 314 as subsection "(f)" of section 318 as added by section 311(a) of this Act.

(c) Title IV of the Disaster Relief Act of 1974 is amended by deleting section 405 (42 U.S.C. 5175) and by renumbering subsequent sections appropriately.

(d) Section 315 of the Disaster Relief Act of 1974 (42 U.S.C. 5158), as redesignated by section 307(1) of this Act, is further redesignated as section 314.

SEC. 312. Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding three new sections as follows and by renumbering subsequent sections appropriately:

"PROCEDURES

"SEC. 401. (a) All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such Governor's request shall be based upon a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of this request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. He shall furnish information on the extent and nature of State resources which have been or will be used to alleviate the conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster, including, but not limited to, the cost-sharing provisions pursuant to sections 405, 406, 407, and 410 of this Act. Based upon such Governor's request, the President may declare that a major disaster exists.

"(b) In any case where an eligible applicant (or the State) is unable to assume its financial responsibility under the cost-sharing provisions of sections 405, 406, and 407 of this Act, the President is authorized to lend or advance to the State such 25 per centum share. For the purposes of section 405, such loan or advance shall be authorized only after the occurrence of concurrent, multiple major disasters in a given jurisdiction, or the extraordinary costs of a particular major disaster, and when the damages caused by such major disasters are so overwhelming and severe that it is not possible for the applicant or the State to assume their financial responsibility under this Act immediately. Except as provided by subsection (c) of this section, any such loan or advance is to be repaid to the United States; there shall be no deferral of the repayment of loans or advances authorized by this subsection or of accrued interest. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

"(c) The President may cancel all or any part of such loan or advance made regarding section 405 or section 406 for concurrent, multiple major disasters or a single catastrophic major disaster if a determination is made that following the three full fiscal years after the loan or advance is made, the applicant demonstrates substantial and continuing inability to repay all or part of the loan or advance.

"(d) The President shall issue regulations describing the terms and conditions under which any loans or advances authorized by this section may be made or canceled.

"FEDERAL ASSISTANCE

"SEC. 402. In any major disaster, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts including, but not limited to, personnel, equipment, supplies, facilities, and managerial, technical, and advisory services in support of State and local assistance efforts;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing disaster assistance, and coordinate disaster assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks and hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"COOPERATION OF FEDERAL AGENCIES IN RENDERING DISASTER ASSISTANCE

"SEC. 403. (a) In any major disaster, Federal agencies are hereby authorized, on the direction of the President, to provide assistance by—

"(1) utilizing or lending, with or without compensation therefore, to States and local governments, their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act;

"(2) distributing or rendering, through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations, or otherwise, medicine, food, and other consumable supplies, other services to disaster victims, or emergency assistance;

"(3) donating or lending equipment and supplies, including that determined in accordance with applicable laws to be surplus to the needs and responsibilities of the Federal Government, to State and local governments for use or distribution by them for the purposes of this Act; and

"(4) performing on public or private lands or waters any emergency work or services essential to save lives and to protect and preserve property, public health and safety, including, but not limited to: Search and rescue, emergency medical care, emergency mass care, emergency shelter, and provisions of food, water, medicine, and other essential needs, including movement of supplies or persons; construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; warning of further risks and hazards; public information and assistance on health and safety measures; technical advice to State and local governments on disaster management and control; reduction of immediate threats to life, property, and public health and safety; and making contributions to State or local governments for the purpose of carrying out the provisions of this paragraph. Such contributions for emergency work under this section and section 402 of this Act shall not exceed 100 per centum of the net eligible cost, or for small projects 100 per centum of the Federal estimate of the net eligible cost, of such emergency work or services performed by State and local governments: Provided, That where debris removal assistance is appropriate under this section or section 402 of this Act it shall be provided in accordance with the terms and conditions of section 406 of this Act.".

SEC. 313. (a) Section 405 of the Disaster Relief Act of 1974 (42 U.S.C. 5172), as redesignated by section 312 of this Act, is amended to read as follows:

"(a) The President is authorized to make contributions to State or local governments, to help repair, restore, reconstruct, or replace public facilities belonging to such State or local government which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contribution shall be limited to 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'public facility' includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, any other public building, structure, or system including those used for educational or recreational purposes, and any park.

"(b) The President is authorized to make contributions to help repair, restore, reconstruct, or replace eligible private nonprofit facilities which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contributions shall be 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'eligible private nonprofit facility' means private nonprofit educational, utility, emergency, medical, and custodial care facilities, including those for the aged and disabled, and such private nonprofit facilities on Indian reservations, which were damaged or destroyed by a major disaster.

"(c) No authority under this section shall be exercised unless the affected State, local government, or eligible private nonprofit organization first agrees that such facility shall be repaired, restored, reconstructed, or replaced in compliance with flood plain management and hazard mitigation criteria required by the President, with the provisions of the Coastal Barrier Resources Act and other applicable Federal statutes, and in conformity with other applicable codes, specifications, and standards, except as otherwise provided in section 315 of this Act.

"(d) For those facilities eligible under this section which were in the process of construction when damaged or destroyed by a major disaster, the contribution shall be 75 per centum of the net eligible costs of restoring such facilities substantially to their predisaster condition: Provided, That the term 'net eligible costs' shall not include cost which, under a contract, are the responsibility of a contractor.

"(e) In those cases, except for small projects, where a State or local government determines that public welfare would not be best served by repairing, restoring, reconstructing, or replacing particular public facilities owned or controlled by that State or that local government and which have been damaged or destroyed in a major disaster, it may elect to receive, in lieu of the contribution described in subsection (a) of this section, a contribution that shall be 50 per centum of the Federal estimate of the net eligible cost of repairing, restoring, reconstructing, or replacing such damaged facilities owned by it within its jurisdiction. The cost of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications, and standards. Funds contributed under this subsection may be expended either to repair or restore certain selected damaged public facilities or to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area.".

(b) The Disaster Relief Act of 1974 is amended by deleting section 421 (42 U.S.C. 5189), as redesignated by sections 311(c) and 312 of this Act, and by striking "or 419" each place that this phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 307(1) of this Act.

(c) Section 406 of the Disaster Relief Act of 1974 (42 U.S.C. 5173), as redesignated by section 312 of this Act, is amended by adding at the end thereof the following:

"(c) Notwithstanding any other provision of law, whether carried out directly through Federal departments, agencies, or instrumentalities or through grants to State or local governments, Federal assistance provided under authority of this section shall be 75 per centum of the net eligible costs, or for small projects 75 per centum of the Federal estimate of the net eligible costs, of debris removal.".

SEC. 314. Section 407(a) of the Disaster Relief Act of 1974, as redesignated by section 312 of this Act, is amended to read as follows:

"(a) The President is authorized to provide, either by purchase or lease, temporary housing including, but not limited to, unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings for those who, as a result of a major disaster, require temporary housing. Whenever he determines it to be in the public interest, the President is authorized to provide temporary housing assistance by using Federal departments, agencies, or instrumentalities. In addition, the President is authorized to provide temporary housing assistance by contributing not to exceed 100 per centum (or 75 per centum for group site development pursuant to paragraph (2) of this subsection) of the costs of temporary housing assistance to a State or local government which provides such assistance to those who require it as a result of a major disaster. Federal financial and operational responsibilities for temporary housing assistance shall not exceed eighteen months from the date of the major disaster declaration by the President, unless he determines that due to extraordinary circumstances it would be in the public interest to extend the eighteen month period.

"(1) Temporary housing assistance pursuant to this subsection shall be provided only when adequate alternative housing is un-

available, unless there is compelling need to do so because of extreme hardship.

"(2) Any mobile home or other readily fabricated dwelling supplied pursuant to this subsection shall be placed on a site complete with utilities provided either by the State or local government, or by the owner or occupant of the site who was displaced by the major disaster. When the President determines such action to be in the public interest, he may authorize installation of essential utilities at Federal expense and he may elect to provide other more economical or accessible sites. However, in the event the President authorizes the development of a group site, that is, a site for two or more households, the Federal share shall be 75 per centum of the development costs, and the remainder shall be met by funds provided by the State or local government.".

SEC. 315. Section 408 of the Disaster Relief Act of 1974 (42 U.S.C. 5176), as resdesignated by sections 311(c) and 312 of this Act, is amended by adding "(a)" after "408." and by adding a new subsection "(b)" as follows:

"(b) The President is authorized to contribute up to 50 per centum of the cost of implementing hazard mitigation projects which he has determined would be cost effective and would substantially reduce the risk of future damage, hardship, loss, or suffering in the area affected by a major disaster. Such projects shall be identified following the evaluation of natural hazards provided for in subsection (a) of this section and shall be subject to approval by the President. The total of the contributions made under this subsection shall not exceed 10 per centum of the Federal estimate of grants made under the authority of section 405 of this Act for each major disaster.".

SEC. 316. Section 409(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5177), as redesignated by sections 311(c) and 312 of this Act, is amended to read as follows: "The President is authorized to provide such disaster unemployment assistance as he deems appropriate to individuals who are unemployed as a result of a major disaster. Disaster unemployment assistance authorized by this section shall be available to an eligible individual for a period not to exceed fifty-two weeks after the week in which an eligible individual became unemployed as a result of a major disaster, and such period shall be regarded as the disaster assistance period for that individual for the purposes of this section. Disaster unemployment assistance shall not be payable with respect to any week for which an individual is entitled to unemployment compensation (as defined in section 85(c) of the Internal Revenue Code of 1954, as amended) or waiting week credit. The maximum amount of disaster unemployment assistance payable to any individual with respect to a major disaster shall not exceed twenty-six times the maximum weekly amount for which the individual establishes eligibility minus the amount of any unemployment compensation paid to the individual during the fifty-two week benefit period established pursuant to this section. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred, and the amount of assistance under this section for a week of unemployment shall be reduced by any amount of private income protection insurance compensation available to such individual for such week of unemployment. The payment of unemployment compensation to an individual with respect to any week subsequent to the exhaustion of eligibility of such individual for disaster unemployment assistance and within the fifty-two week benefit period established pursuant to this section shall not be regarded as duplication of benefits under section 312 of this Act. The President is directed to provide disaster unemployment assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.".

SEC. 317. (a) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 311(c) and 312 of this Act, is amended by adding a period after the word "share" in the second sentence of that subsection and by deleting the following phrase from the second sentence of section 410(b): "and any such advance is to be repaid to the United States when such State is able to do so.".

(b) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 311(c) and 312 of this Act, is further amended by adding the following sentence between the second and third sentences of this subsection: "Such advances shall bear interest from the date of the advance at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Repayment of such advances and of interest which accrues on the advances may be deferred for no longer than two years from the date of the major disaster declaration.".

SEC. 318. Section 410(d) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 311(c) and 312 of this Act, is amended by striking "$5,000" in the last sentence and inserting in lieu thereof "$7,500".

SEC. 319. Section 415 of the Disaster Relief Act of 1974 (42 U.S.C. 5183), as redesignated by sections 311(c) and 312 of this Act, is amended by striking "(through the National Institute of Mental Health)".

SEC. 320. Section 420(d) of the Disaster Relief Act of 1974 (42 U.S.C. 5188), as redesignated by sections 311(c) and 312 of this Act, is deleted.

SEC. 321. The Disaster Relief Act of 1974 (42 U.S.C. 5121-5202) is amended by—

(1) striking paragraph (7) of section 101(b) (42 U.S.C. 5121), striking "; and" from paragraph (6) and adding in lieu thereof a period, and adding "and" at the end of paragraph (5);

(2) striking "the Canal Zone," in paragraphs (3) and (4) of section 102 (42 U.S.C. 5122);

(3) striking "DISASTER" in the caption of title III (42 U.S.C. 5141-5158) and inserting in lieu thereof "MAJOR DISASTER RELIEF AND EMERGENCY";

(4) striking "section 402 or 404 of" in section 308(b) (42 U.S.C. 5151), as redesignated by section 307(1) of this Act;

(5) adding "emergency or" before the word "major" each of two places that word appears in section 307 (42 U.S.C. 5150), as redesignated by section 307(1) of this Act;

(6) striking in section 310(b) (42 U.S.C. 5153), as redesignated by section 307(1) of this Act, everything after the word "areas" and inserting in lieu thereof a period;

(7) striking "or section 803 of the Public Works and Economic Development Act of 1965," each place the phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 307(1) of this Act;

(8) striking "402" each place that number appears in section 311 (42 U.S.C. 5154), as redesignated by section 307(1) of this Act, and inserting in lieu thereof "405";

(9) adding "emergency and major" before the word "disaster" in section 313 (42 U.S.C. 5156), as redesignated by section 307(1) of this Act;

(10) adding the word "MAJOR" between the words "FEDERAL" and "DISASTER" in the caption to title IV (42 U.S.C. 5171-5189);

(11) striking "in emergencies or in major disasters" in the third sentence of paragraph (2) of section 407(d) (42 U.S.C. 5174), as redesignated by section 312 of this Act;

(12) striking "311" in section 407(d)(2) (42 U.S.C. 5174), as redesignated by section 312 of this Act, and inserting in lieu thereof "308";

(13) striking "an emergency or" in section 417 (42 U.S.C. 5185), as redesignated by sections 311(c) and 312 of this Act, and inserting in lieu thereof "a";

(14) striking "408" in section 605 (42 U.S.C. 5121) and inserting in lieu thereof "410";

(15) striking "301" in subtitle C of title I of the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512; 86 Stat. 919) and inserting in lieu thereof "401";

(16) striking "President" each place that word appears in section 309(a), as redesignated by section 307(1) of this Act, and inserting in lieu thereof "Federal coordinating officer".

(17) striking "rent" in section 310(a)(2) (42 U.S.C. 5153), as redesignated by section 307(1) of this Act, and inserting in lieu thereof "income"; and

(18) striking paragraph (1) of section 310(a) (42 U.S.C. 5153), as redesignated by section 307(1) of this Act, and renumbering subsequent paragraphs appropriately.

SEC. 322. (a) Section 6(a)(6)(E) of the Coastal Barrier Resource Act, 16 U.S.C. 3505(a)(6)(E), is amended by striking out "pursuant to sections 305 and 306 of the Disaster Relief Act of 1974" and inserting in lieu thereof "pursuant to sections 402, 403, 502, and 503 of the Major Disaster Relief and Emergency Assistance Act".

(b) Whenever any reference is made in any provision of law (other than this Act), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1974 repealed or renumbered by this title, such reference shall be deemed to be a reference to the appropriate provisions of the Major Disaster Relief and Emergency Assistance Act.

SEC. 323. (a) Except as provided in subsection (b), this title shall take effect on October 1, 1986.

(b)(1) This title shall not affect the administration of any assistance provided under the authority of the Disaster Relief Act of 1974, for any major disaster or emergency declared by the President prior to October 1, 1986.

(2) Except with regard to section 409(a) of the Disaster Relief Act of 1974, as redesignated by sections 311(c) and 312 of this Act (relating to disaster unemployment assistance)—

(A) rules and regulations issued under statutory provisions which are repealed, modified, or amended by this Act shall continue in effect as though issued under the authority of this Act until they are expressly abrogated, modified, or amended by the President; and

(B) provision of disaster assistance authorized by statutory provisions repealed, modified, or amended by this Act or rules

and regulations issued thereunder, or proceedings involving violations of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are in process prior to the effective date of this Act, may be continued to conclusion as though the applicable statutory provisons had not been repealed, modified, or amended.

(3) Violations of statutory provisons or rules and regulations issued under the authority of statutory provisons repealed, modified, or amended by this Act or rules and regulations issued thereunder which are committed prior to the effective date of this Act may be proceeded against under the law in effect at the time of the specific violation.

(c) Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding at the end thereof a new section as follows:

"SEC. 421. No State shall be ruled ineligible to receive assistance under this Act solely by virtue of an arithmetic formula based on income or population.".

TITLE IV—HIGHWAY REVENUE ACT OF 1986

SEC. 401. SHORT TITLE.

This title may be cited as the "Highway Revenue Act of 1986".

SEC. 402. 4-YEAR EXTENSION OF HIGHWAY TRUST FUND TAXES AND RELATED EXEMPTIONS.

(a) EXTENSION OF TAXES.—The following provisions of the Internal Revenue Code of 1954 are each amended by striking out "1988" each place it appears and inserting in lieu thereof "1992":

(1) Section 4041(a)(3) (relating to special fuels tax).

(2) Section 4051(c) (relating to tax on heavy trucks and trailers sold at retail).

(3) Section 4071(d) (relating to tax on tires and tread rubber).

(4) Section 4081(b) (relating to gasoline tax).

(5) Sections 4481(e), 4482(c)(4), and 4482(d) (relating to highway use tax).

(b) EXTENSION OF EXEMPTIONS, ETC.—The following provisions of the Internal Revenue Code of 1954 are each amended by striking out "1988" each place it appears and inserting in lieu thereof "1992":

(1) Section 4041(b)(2)(C) (relating to qualified methanol and ethanol fuel).

(2) Section 4041(f)(3) (relating to exemption for farm use).

(3) Section 4041(g) (relating to other exemptions).

(4) Section 4221(a) relating to certain tax-free sales).

(5) Section 4483(f) (relating to exemption for highway use tax).

(6) Section 6420(h) (relating to gasoline used on farms).

(7) Section 6421(h) (relating to tax on gasoline used for certain nonhighway purposes or by local transit systems).

(8) Section 6427(g)(5) (relating to advance repayment of increased diesel fuel tax).

(9) Section 6427(m) (relating to fuels not used for taxable purposes).

(c) OTHER PROVISIONS.—

(1) FLOOR STOCKS REFUNDS.—Paragraph (1) of section 6412(a) of the Internal Revenue Code of 1954 (relating to floor stocks refunds) is amended—

(A) by striking out "1988" each place it appears and inserting in lieu thereof "1992", and

(B) by striking out "1989", each place it appears and inserting in lieu thereof "1993".

(2) INSTALLMENT PAYMENTS OF HIGHWAY USE TAX.—Paragraph (2) of section 6156(e) of such Code (relating to installment payments of tax on use of highway motor vehicles) is amended by striking out "1988" and inserting in lieu thereof "1992".

SEC. 403. 4-YEAR EXTENSION OF HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsections (b), (c), and (e) of section 9503 of the Internal Revenue Code of 1954 (relating to Highway Trust Fund) are each amended—

(1) by striking out "1988" each place it appears and inserting in lieu thereof "1992", and

(2) by striking out "1989" each place it appears and inserting in lieu thereof "1993".

(b) EXPENDITURES FROM HIGHWAY TRUST FUND.—Paragraph (1) of section 9503(c) of the Internal Revenue Code of 1954 (relating to expenditures from Highway Trust Fund) is amended by striking out "or" at the end of subparagraph (B) and by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraphs:

"(C) authorized to be paid out of the Highway Trust Fund under the Federal-Aid Highway Act of 1986, or

"(D) hereafter authorized by a law which does not authorize the expenditure out of the Highway Trust Fund of any amount for a general purpose not covered by subparagraph (A), (B), or (C) as in effect on December 31, 1986.".

(c) CONFORMING AMENDMENTS TO LAND AND WATER CONSERVATION FUND.—Subsection (b) of section 201 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-11) is amended—

(1) by striking out "1988" and inserting in lieu thereof "1992", and

(2) by striking out "1989" each place it appears and inserting in lieu thereof "1993".

SEC. 404. REDUCTION IN EXCISE TAX EXEMPTION FOR QUALIFIED METHANOL AND ETHANOL FUELS.

(a) IN GENERAL.—Subparagraph (A) of section 4041(b)(2) of the Internal Revenue Code of 1954 (relating to exemption for qualified ethanol and methanol fuels) is amended to read as follows:

"(A) IN GENERAL.—In the case of any qualified methanol or ethanol fuel, subsection (a)(2) shall be applied by substituting '3 cents' for '9 cents'.".

(b) CONFORMING AMENDMENT.—The heading for section 4041(b) of the Internal Revenue Code of 1954 is amended by striking out "Exemption" the second place it appears and inserting in lieu thereof "Reduction in Tax".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 405. TECHNICAL CORRECTIONS.

(a) REFUND OF ENTIRE DIESEL FUEL TAX WITH RESPECT TO SCHOOL BUSES.—

(1) IN GENERAL.—Paragraph (2) of section 6427(b) of the Internation Revenue Code of 1954 (relating to intercity, local, or school buses) is amended by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and by inserting after subparagraph (A) the following new subparagraph:

"(B) EXCEPTION FOR SCHOOL BUS TRANSPORTATION.—Subpargraph (A) shall not apply to fuel used in an automobile bus while engaged in the transportation described in paragraph (1)(B).".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 6427(b)(2) of such Code is amended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B) and (C)".

(B) The heading for subparagraph (C) of section 6427(b)(2) of such Code, as redesignated by paragraph (1), is amended by striking out "Exception" and inserting in lieu thereof "Exception for certain intracity transportation".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in section 915 of the Tax Reform Act of 1984.

(b) CERTAIN TRANSFERS FROM HIGHWAY TRUST FUND TO BE MADE PROPORTIONATELY FROM MASS TRANSIT ACCOUNT.—Subsection (e) of section 9503 of such Code (relating to establishment of Mass Transit Account) is amended by adding at the end thereof the following new paragraph:

"(5) PORTION OF CERTAIN TRANSFERS TO BE MADE FROM ACCOUNT.—

"(A) IN GENERAL.—Transfers under paragraphs (2), (3), and (4) of subsection (c) shall be borne by the Highway Account and the Mass Transit Account in proportion to the respective revenues transferred to such Accounts under this section.

"(B) HIGHWAY ACCOUNT.—For purposes of subparagraph (A), the term 'Highway Account' means the portion of the Highway Trust Fund which is not the Mass Transit Account.".

TITLE V—UNIFORM RELOCATION ACT AMENDMENTS

Subtitle A—Short Title

SHORT TITLE

SEC. 501. This title may be cited as the "Uniform-Relocation Act Amendments of 1986".

Subtitle B—General Provisions

DEFINITIONS

SEC. 511. (a) Section 101(1) (42 U.S.C. 4601(1)) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (hereinafter the "Uniform Act") is amended by striking out "(except the National Capital Housing Authority)" and "(except the District of Columbia Redevelopment Land Agency)".

(b) Section 101(3) of the Uniform Act (42 U.S.C. 4601(3)) is amended to read as follows:

"(3) The term 'State agency' means any entity which has eminent domain authority under State law.".

(c) Section 101(4) of the Uniform Act (42 U.S.C. 4601(4)) is amended by inserting, "or mortgage interest subsidy to a person" after "insurance".

(d) Section 101(6) of the Uniform Act (42 U.S.C. 4601(6)) is amended to read as follows:

"(6) The term 'displaced person' means—

"(A) except as provided under paragraph (E) (with respect to a utility on real property under the control or ownership of a State or local agency), any person who moves from real property, moves personal property, or moves a business or farm operation, as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance;

"(B) solely for the purpose of subsections (a) and (b) of section 202 and of section 205, any person who moves from real property or moves personal property from real property—

"(i) as a direct result of the written notice of intent to acquire or the acquisition of other real property, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; and

"(ii) as a direct result of rehabilitation or demolition for a program or project undertaken by a Federal agency or with Federal financial assistance, where the person is a residential tenant, farm operation, or a small business and where the head of the displacing agency determines that such displacement is permanent;

"(C) solely for the purpose of subsections (a) and (b) of section 202 and of any other provisions of this Act which the head of the displacing agency may prescribe, any other person who is a residential tenant, farm operation, or small business and who the head of the displacing agency determines will be permanently displaced as a direct result of a program or project undertaken by a Federal agency or with Federal financial assistance;

"(D) any person who is eligible for relocation assistance under paragraphs (A), (B), or (C) of this subsection, unless such person has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this Act; or

"(E) solely for the purpose of subsections (d) and (e) of section 202, any utility company which moves its facilities from real property under the ownership or control of a State or local agency.".

(e) Section 101 of the Uniform Act (42 U.S.C. 4601) is amended by adding at the end thereof the following new subsections:

"(10) The term 'suitable replacement dwelling' means any dwelling that is (A) decent, safe, and sanitary; (B) adequate in size to accommodate the occupants; (C) within the financial means of the displaced person; (D) functionally similar; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

"(11) The term 'displacing agency' means any Federal agency, State or State agency utilizing Federal financial assistance or, for the purposes of paragraphs (B) and (C) of section 101(6), any person furnished Federal financial assistance which causes a person to be a displaced person.

"(12) The term 'lead agency' means the Federal department, agency, or other entity designated by the President to coordinate implementation of the Uniform Act under section 213 of this Act.

"(13) The term 'appraisal' means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.".

SUBTITLE C—UNIFORM RELOCATION ASSISTANCE

SEC. 521. Section 201 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621), and its catchline are amended to read as follows:

"DECLARATION OF FINDINGS AND POLICY

"SEC. 201. (a) The Congress finds and declares that—

"(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

"(2) displacement occurs in a variety of social, economic, geographic, and legal circumstances;

"(3) relocation assistance policies must provide for sufficient flexibility to assure fair, uniform, and equitable treatment of all affected persons;

"(4) the displacement of businesses often results in their closure; and

"(5) minimizing the adverse impact of the displacement of businesses is essential to maintaining the economic and social well-being of communities.

"(b) This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance, in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

"(c) It is the intent of Congress that—

"(1) the primary purpose of this title is to minimize the hardship of displacement on persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance;

"(2) Federal agencies shall carry out this law in a manner which minimizes waste, fraud, and mismanagement;

"(3) the administration of this Act shall, to the maximum extent feasible, minimize unnecessary administrative and program costs borne by States and State agencies through the promulgation of economical regulatory requirements and the delegation of substantial administrative discretion to State and local governments;

"(4) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this Act; and

"(5) the improvement of housing conditions of economically disadvantaged persons under this title shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals.".

MOVING AND RELATED EXPENSES

SEC. 522. (a) Section 202(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4622(a)) is amended—

(1) by striking out the matter preceding paragraph (1) and inserting in lieu thereof the following:

"(a) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of—";

(2) by striking out "and" at the end of paragraph (2);

(3) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(4) by adding at the end thereof the following:

"(4) actual reasonable expenses necessary to reestablish a displaced nonprofit organization or small business at its new site, but not to exceed $10,000.".

(b) Section 202(b) of the Uniform Act (42 U.S.C. 4622(b)) is amended by striking out all that follows "may receive" and inserting in lieu thereof "an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.".

(c) Section 202(c) of such Act (42 U.S.C. 4622(c)) is amended to read as follows:

"(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than $1,000 nor more than $20,000. A person whose sole business is renting displacement property to others shall not qualify for this payment.".

(d) Section 202 of the Uniform Act (42 U.S.C. 4622) is amended by adding at the end thereof the following new subsections:

"(d)(1) For the purposes of this section and section 101(6)—

"(A) The term 'cost of relocation' shall include the entire amount paid by the utility company properly attributable to a relocation after deducting any betterment in the relocated utility and any salvage from the old utility.

"(B) The term 'utility' means any electric, gas, water, steam power or materials transmission or distribution system, any transportation system, or any communications system (including cable television), and any fixtures, equipment, or other property appropriate to the operation, maintenance, or repair of the foregoing. A utility may be publicly, privately, or cooperatively owned.

"(2) Except when provided otherwise by Federal law, whenever a federally assisted program or project undertaken by a displacing agency other than a Federal agency will result in the displacement of a utility from property under the ownership or control of a State or local agency, the head of the displacing agency shall provide a payment to the utility company pursuant to State or local law or a written contract, if any, between the utility company and the State or local agency, but in no event shall such payment exceed the actual reasonable cost of relocation of such utility.

"(3) Nothing in this subsection shall supercede a State or local law or a written contract between a utility company and a State or local government, or require a payment to be made where none is required under State or local law or a written contract.

"(4) Nothing in this subsection shall deprive a utility company of its rights under State or local law.

"(5) Nothing in this subsection shall require a Federal agency to increase its payment if the increased payment is attributable to a contract or contract amendment that is made in anticipation of the Federal payment.

"(6) Nothing in this subsection shall require a Federal payment in excess of the payment that a State or local agency would pay if no Federal funds were involved.

"(7) Nothing in this subsection confers jurisdiction on a court of the United States (as defined in section 451 of title 28, United States Code) to review any action of a displacing agency in carrying out this subsection or to review the right of a utility company to be compensated under State or local law.

"(e) Whenever a program or project directly undertaken by a Federal agency will

result in the displacement of a utility as the result of Federal acquisition of real property under the ownership or control of a State or local agency, the head of the Federal agency shall either relocate the utility with the utility company's consent, or provide a payment to the utility equal to the actual reasonable cost of relocation of such utility. Such relocation or such payment shall not be required when it is provided otherwise by a Federal law, or a Federal regulation promulgated prior to March 17, 1983, or a contract or agreement with a Federal agency.".

REPLACEMENT HOUSING FOR HOMEOWNER

SEC. 523. Section 203(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4623(a)) is amended—

(1) by striking out "Federal" in paragraph (1) and inserting in lieu thereof "displacing";

(2) by striking "$15,000" and inserting in lieu thereof, "$22,500";

(3) by striking out "acquired by" and all that follows through "market" in paragraph (1)(A) and inserting in lieu thereof "acquired by the displacing agency, equals the reasonable cost of a suitable replacement dwelling";

(4) by striking out paragraph (1)(B) and inserting in lieu thereof the following:

"(B) The amount, if any, which will compensate such person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such suitable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling."; and

(5) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 205(c)(3) of this Act is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a suitable replacement dwelling within one year of such date.".

REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

SEC. 524. Section 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4624) is amended to read as follows:

"REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

"SEC. 204. (a) In addition to amounts otherwise authorized by this title, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling unit not eligible to receive a payment under section 203 which was actually and lawfully occupied by such displaced person for not less than ninety days immediately prior to the initiation of negotiations for acquisition of such dwelling, or, where displacement is not caused by acquisition, any other event which the head of the lead agency may prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed three years, a suitable replacement dwelling. For a person whose income exceeds 50 per centum of the median income of the area, as determined by the Secretary of Housing and Urban Development, the amount referred to shall equal the lesser of (i) $4,500 or (ii) 36 times the amount obtained by subtracting the monthly housing costs for the displacement dwelling from the monthly housing costs for a suitable replacement dwelling. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments.

"(b) Any displaced person eligible for payments under subsection (a) of this section may elect to receive in lieu thereof either Federal low income housing assistance or similar State or local governmental assistance if such assistance is available at the time of displacement and such person is otherwise eligible for such assistance. The failure of any such person to make such an election shall be considered when evaluating the eligibility of such person for any Federal or federally assisted low income housing assistance program during the three years following the date on which such person received the payment authorized under subsection (a) of this section.

"(c) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a downpayment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. A displaced homeowner who has occupied the displacement dwelling for at least ninety days but not more than one hundred and eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling may, at the discretion of the head of the displacing agency, be eligible for the maximum payment allowed under this subsection: Provided, That such payment shall not exceed the payment such person would otherwise have received under section 203(a) of this Act had the person occupied the displacement dwelling for one hundred and eighty days immediately prior to the initiation of such negotiations.".

RELOCATION ASSISTANCE COORDINATION AND ADVISORY SERVICES

SEC. 525. Section 205 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4625) and its catchline are amended to read as follows:

"RELOCATION ASSISTANCE COORDINATION AND ADVISORY SERVICES

"SEC. 205. (a) The head of any displacing agency shall assure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make available to such person such advisory services.

"(b) The Secretary of Housing and Urban Development shall assign a high priority for assistance under the programs referred to in sections 204(b) and 206(b) of this Act to persons eligible under such sections. To the extent practicable, the Secretary shall require that federally assisted State and local governmental low income housing assistance programs assign priority for assistance to such persons. To the extent practicable, the Administrator of the Small Business Administration and the heads of other Federal agencies administering programs which may be of assistance to displaced persons shall make available technical assistance under subsection (c)(5) of this section and expedite the applications for such assistance by such persons.

"(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

"(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

"(2) provide current and continuing information about sales prices and rental charges on suitable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

"(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a suitable replacement dwelling;

"(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

"(5) supply information concerning other Federal programs which may be of assistance to displaced persons, and technical assistance to such persons in applying for assistance under such programs;

"(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation; and

"(7) assure that a one hundred and eighty day homeowner-occupant is given a reasonable opportunity to remain in such occupancy status.

"(d) The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

"(e) Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may by agreement designate one such agency as the cognizant Federal agency whose procedures shall be utilized to implement the activities. If such agreement cannot be reached, then the head of the lead agency shall designate one such agency as the cognizant agency. Such related activities constitute a single program or project for purposes of this Act.".

HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

SEC. 206. Section 206 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4626) is amended to read as follows:

"HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

"SEC. 206. (a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because suitable replacement dwellings are not available, and the need of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropri-

ate to provide such dwellings by use of funds authorized for such project. The head of the lead agency shall require that this section may be used to exceed the payment ceilings established in sections 203 and 204 only on a case-by-case basis, for good cause.

"(b) Whenever housing replacement as a last resort will result in the provision of housing for persons who are otherwise eligible for low income housing assistance, the requirement that the displacing agency provide suitable replacement housing may be met through such assistance as the provision of a certificate of family participation under the existing section 8 housing program pursuant to the United States Housing Act of 1937, as amended (42 U.S.C. 1437f).".

CERTIFICATION

SEC. 527. (a) Section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) and its catchline are amended to read as follows:

"AGENCY CERTIFICATION OF STATE PROGRAMS

"SEC. 210. (a) Except as provided in paragraph (b) of this section, the head of a Federal agency shall not approve any grant to or contract or agreement with a displacing agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such agency that—

"(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

"(2) relocation assistance programs offering the services described in section 205 of this title shall be provided to such displaced person;

"(3) within a reasonable period of time prior to a displacement, suitable replacement dwellings will be available to displaced persons in accordance with section 205(c)(3) of this title.

"(b)(1) In lieu of the provisions of subsection (a) of this section, the head of a Federal agency may discharge his responsibilities under this title and title I of this Act, with the exception of sections 208 and 211 of this title, by accepting a certification from a State agency that it will implement State law in a manner which will accomplish the policies and objectives contained in this title and title I: Provided, That the head of the lead agency has determined that such State law will accomplish the same purpose and effect as this title and title I, particularly with respect to the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to such persons in such categories.

"(2) The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of such certification, and a State agency shall make available any information required for such purpose. The head of a Federal agency, after consultation with the head of the lead agency, may withdraw his acceptance of the certification for good cause: Provided, That the State government is given due notice prior to taking any such action and is given a reasonable opportunity to demonstrate why such action should not be taken.

"(c) Prior to making a determination regarding State law under subsection (b) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general purpose governments within such States on the impacts of such State laws on the ability of local governments to carry out their responsibilities under the Act.

"(d) The head of a Federal agency may withhold his approval of any grant, contract, or cooperative agreement with any displacing agency found to have intentionally circumvented a State law adopted under subsection (b) of this section.".

FEDERAL SHARE OF COSTS

SEC. 528. (a) Section 211(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4631(a)) is amended to read as follows:

"(a) The cost to a displacing agency of providing payments and assistance pursuant to titles II and III shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program costs.".

(b) Section 210(b) of the Uniform Act (42 U.S.C. 4631(b)) is amended by striking out all that follows "required by" and inserting in lieu thereof "State law which is determined by the head of the lead agency to have substantially the same purpose and effect of such payment under this section.".

REGULATION

SEC. 529. Section 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4633) and its catchline are amended to read as follows:

"REGULATION

"SEC. 213. (a) The President shall designate a lead agency.

"(b) The head of the lead agency shall—

"(1) develop, publish, and promulgate, with the active participation of other Federal agencies responsible for funding relocation and acquisition actions, and in full coordination with State and local governments, such rules as may be necessary to carry out this Act;

"(2) assure that relocation assistance activities under this Act are coordinated with low-income housing assistance programs or projects by a Federal agency, or a State or State agency with Federal financial assistance;

"(3) monitor, in coordination with other Federal agencies, the implementation and enforcement of this Act and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this Act; and

"(4) perform other duties as may be provided by law as relate to the purposes of this Act.

"(c) The rules promulgated pursuant to subsection (b) shall apply to the Tennessee Valley Authority only with respect to relocation assistance under this title and title I.".

TRANSFER OF SURPLUS PROPERTY

SEC. 530. Section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4638) is amended by inserting "net" after "all".

REPEALS

SEC. 531. Sections 214, 215, 217, and 219 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4634, 4635, 4637, and 4639) are hereby repealed.

Subtitle D—Uniform Real Property Acquisition Policy

UNIFORM POLICY ON REAL PROPERTY ACQUISITION PRACTICES

SEC. 541. (a) Section 301(2) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651(2)) is amended by inserting the following before the period at the end thereof: ", except that the head of the lead agency may prescribe a procedure which forgoes the appraisal".

(b) Section 301(9) of the Uniform Act (42 U.S.C. 4651(9)) is amended to read as follows:

"(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the acquiring agency shall offer to acquire that remnant. For the purposes of this Act, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the acquiring agency has determined has little or no value or utility to the owner.".

(c) Section 301 of the Uniform Act (42 U.S.C. 4651) is amended by adding at the end thereof the following subsection:

"(10) A person whose real property is being acquired in connection with a project under this title may, after the person has been fully informed of his right to receive just compensation of such property, donate such property, any part thereof, any interest therein, or any compensation paid therefor to an acquiring agency, as said person shall determine.".

CERTIFICATION

SEC. 542. Section 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4655) and its catchline are amended to read as follows:

"AGENCY CERTIFICATION OF STATE PROGRAMS

"SEC. 305. (a) Except as provided in paragraph (b) of this section, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, an acquiring agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on or after the effective date of this title, unless he receives satisfactory assurances that—

"(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies under section 301 of this title and the provisions of section 302 of this title; and

"(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 of this title.

"(b)(1) In lieu of the provisions of subsection (a) of this section, the head of a Federal agency may discharge his responsibilities under this title by accepting a certification from a State agency that it will implement State law in a manner which will accomplish the policies and objectives contained in this title: Provided, That the head of the lead agency has determined that such State law will accomplish the same purpose and effect as this title.

"(2) The head of the lead agency in coordination with other Federal agencies shall from time to time monitor State agency im-

plementation of such certification and the State agency shall make available any information required for such purpose. The head of the lead agency shall by regulation develop criteria for withdrawal of acceptance of a certification.

"(c) Prior to making a determination regarding State law under subsection (b) of this section, the head of the lead agency shall consult with interested local general purpose governments within such States on the impacts of such State laws on the ability of local governments to carry out their responsibilities under this Act.".

Subtitle E—Effective Date

SEC. 551. (a) Section 529 of the Uniform Act takes effect on the date of its enactment.

(b) The remainder of this title takes effect either twenty-four months from the date of its enactment or when a State agency makes such provisions applicable under State laws, whichever is earlier.

□ 1400

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SYMMS. Mr. President, I ask unanimous consent that S. 2405 be indefinitely postponed.

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

Mr. SYMMS. Mr. President, I wish to again say thanks to the distinguished chairman of the committee, the ranking minority member and the ranking minority member of the subcommittee and all of my colleagues on the Environment and Public Works Committee and my colleagues in the Senate who made it possible that we brought this very important piece of legislation to final passage.

I would also be remiss if I did not say thanks to Jean Lauver and Nadine Hamilton, of the majority staff, along with the good leadership of Bailey Guard, our staff director, and equally strong support for the minority staff, Mike Weiss and Paulette Hansen, and Lee Fuller, the minority staff director.

I appreciate the work of all the staff and certainly my own member of my own staff, Taylor Boulden, who without his help and support this would have been a very difficult task for this Senator to accomplish.

Mr. President, I now move that the Senate insist on its amendments and request a conference with the House on the disagreeing votes thereon and the Chair be authorized to appoint conferees on the part of the Senate.

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

The motion was agreed to.

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

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1410

Mr. STAFFORD. Mr. President, I think the Senate has just passed a very good highway bill for the sake of this Nation and our traveling public.

I particularly wanted to express my personal appreciation, as chairman of the parent committee, to the managers of the bill—they have done yeoman service—and to the staff that have helped them. I will not name the staff individually, but I join in Senator SYMMS' words of appreciation to the members of the staff who worked so hard to help us get this bill passed.

Again, I say, Senator SYMMS has done an outstanding job as the manager for the majority and, as always, Senator BURDICK has, as manager for the minority. It has always been a great pleasure for me to work with Senator BENTSEN, the ranking member of the committee who has been not only my partner but friend over a great many years.

I yield the floor.

Mr. BURDICK. Mr. President, I, too, would like to thank the staff who gave yeoman work in this effort.

I want to say to the majority that we have worked together very harmoniously and, as a result of those efforts, I think we have got a very good piece of legislation.

Mr. DOLE. Mr. President, I thank the leaders on both sides in the handling of the highway bill. I believe the 90-to-0 vote indicates the strong support for that measure. I certainly wish to thank Senator BURDICK from North Dakota, Senator BENTSEN from Texas, Senator STAFFORD from Vermont, and particularly Senator SYMMS, the subcommittee chairman, because without his tenacity and ability, without his leadership, the Senate could not have completed action on the highway authorization bill in such an expedited fashion.

The Federal Aid Highway Act of 1986 is important to every part of our country, but no place is it more important than in largely rural States like Kansas, and I might say Idaho, North Dakota, parts of Texas, and what we consider the Far West. The Interstate Highway System is the lifeline for hundreds of thousands of Americans. Senator SYMMS' role in advocating a modest increase in the speed limit to 65 miles per hour on these roads was pivotal, and I know that countless Americans will thank him for his success in amending the bill to include this change.

It is not without controversy. Senator HECHT had a different idea which would have expanded the increase from 55 to 65 miles an hour on primary and secondary roads. That was defeated, but the Symms amendment dealt with rural interstates and if this provision holds in the conference it will permit an increase of 10 miles per hour.

I believe that the Senate will prevail, at least in part, in increasing the speed limit but in all the other important parts I believe the Senate will prevail more often than not.

Again, I thank all of my colleagues for their cooperation on this very important bill and in particular thanks Senator SYMMS for his leadership.

INTELLIGENCE AUTHORIZATION ACT

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar Order No. 804, S. 2477, the intelligence authorization bill.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 2477) to authorize appropriations for fiscal year 1987 for intelligence activities of the United States Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Minnesota?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Armed Services, with an amendment:

On page 3, line 7, after "Senate," insert "as amended by the classified appendix of the Committee on Armed Services of the Senate."

So as to make the bill read:

S. 2477

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Authorization Act for fiscal year 1987".

TITLE I—INTELLIGENCE ACTIVITIES

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1987 for the conduct of the intelligence activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Federal Bureau of Investigation.

CLASSIFIED SCHEDULE OF AUTHORIZATIONS

SEC. 102. The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1987, for the conduct of the intelligence activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared by the Select Committee on Intelligence of the Senate, *as amended by the classified appendix of the Committee on Armed Services of the Senate.* That Schedule of Authorizations shall be made available to the Committees

on Appropriations of the Senate and the House of Representatives, and to the President. The President shall provide for suitable distribution of the schedule, or of appropriate portions of the schedule, within the executive branch.

PERSONNEL CEILING ADJUSTMENTS

SEC. 103. The Director of Central Intelligence may authorize employment of civilian personnel in excess of the numbers authorized for fiscal year 1987 under sections 102 and 202 of this Act when he determines that such action is necessary to the performance of important intelligence functions, except that such number may not, for any element of the Intelligence Community, exceed 2 per centum of the number of civilian personnel authorized under such sections for such element. The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

TITLE II—INTELLIGENCE COMMUNITY STAFF

AUTHORIZATION OF APPROPRIATIONS

SEC. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1987 the sum of $22,338,000.

AUTHORIZATION OF PERSONNEL END STRENGTH

SEC. 202. (a) The Intelligence Community Staff is authorized two hundred and thirty-nine full-time personnel as of September 30, 1987. Such personnel of the Intelligence Community Staff may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1987, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence activities.

(c) During fiscal year 1987, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

INTELLIGENCE COMMUNITY STAFF ADMINISTERED IN SAME MANNER AS CENTRAL INTELLIGENCE AGENCY

SEC. 203. During fiscal year 1987, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III—CENTRAL INTELLIGENCE AGENCY

RETIREMENT AND DISABILITY SYSTEM AUTHORIZATION OF APPROPRIATIONS

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1987 the sum of $125,800,000.

TITLE IV—ADMINISTRATIVE PROVISIONS RELATED TO INTELLIGENCE AGENCIES

CLASSIFIED RECORD DESTRUCTION SCHEDULES

SEC. 401. Section 3303a of title 44, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) The requirement in subsection (a) of this section that the Archivist provide notice in the Federal Register of the list and schedule of records proposed for disposal shall not apply to lists or schedules of the Central Intelligence Agency or the National Security Agency that are properly classified pursuant to Executive Order 12356, or its successor order.".

EMPLOYMENT OF CIVILIAN PERSONNEL IN THE DEFENSE INTELLIGENCE AGENCY

SEC. 402. Paragraph 1604(e)(1) of chapter 83 of title 10, United States Code, is amended by striking out "1985 and 1986" and inserting in lieu thereof "1987 and 1988".

CLARIFICATION OF DEFENSE MAPPING AGENCY AUTHORITIES

SEC. 403. (a) Chapter 167 of title 10, United States Code, is amended by adding at the end thereof the following:

"§ 2795. Exchange of mapping, charting, and geodesy data with foreign nations.

"The Secretary of Defense may, subject to the requirements of section 112b of title I, United States Code, and the regulations promulgated thereunder (22 CFR part 181), and under such additional regulations as are deemed appropriate, authorize the Defense Mapping Agency to exchange or furnish mapping, charting, and geodetic data, supplies or services to a foreign country or international organization pursuant to an agreement for the production or exchange of such data.".

(b) The table of contents of chapter 167 of title 10, United States Code, is amended by adding at the end thereof:

"2795. Exchange of mapping, charting, and geodesy data with foreign nations.".

MEDICAL EVACUATION OF DIA CIVILIAN EMPLOYEES STATIONED OVERSEAS

SEC. 404. Subsection 1605(a) of chapter 83 of title 10, United States Code, is amended by inserting "(5)" after "paragraphs (2), (3), (4)" and after "22 U.S.C. 4082 (2), (3), (4)".

PROCEEDS FROM DEFENSE DEPARTMENT COUNTERINTELLIGENCE OPERATIONS

SEC. 405. (a) The Secretary of Defense may authorize, without regard to the provisions of section 3302 of title 31, United States Code, use of proceeds from counterintelligence operations conducted by components of the Military Departments to offset necessary and reasonable expenses, not otherwise prohibited by law, incurred in such operations, if use of appropriated funds to meet such expenses would not be practicable.

(b) As soon as the net proceeds from particular counterintelligence operations are no longer necessary for the conduct of those or similar operations, such proceeds shall be deposited into the Treasury as miscellaneous receipts.

(c) The Secretary of Defense shall establish policies and procedures to govern acquisition, use, management and disposition of proceeds from counterintelligence operations conducted by components of the Military Departments, including effective internal systems of accounting and administrative controls.

SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES OF CENTRAL INTELLIGENCE AGENCY EMPLOYEES

SEC. 406. (a) Part C of title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees is amended by adding at the end thereof the following new section:

"SURVIVOR BENEFITS FOR CERTAIN OTHER FORMER SPOUSES

"SEC. 224. (a)(1) Any individual who was a former spouse of a participant or former participant on November 15, 1982, shall be entitled, to the extent of available appropriations, and except to the extent such former spouse is disqualified under subsection (b), to a survivor annuity equal to 55 per centum of the greater of—

"(A) the full amount of the participant's or former participant's annuity, as computed under section 221(a); or

"(B) the full amount of what such annuity as so computed would be if the participant or former participant had not withdrawn a lump-sum portion of contributions made with respect to such annuity.

"(2) A survivor annuity payable under this section shall be reduced by an amount equal to the amount of retirement benefits, not including benefits under title II of the Social Security Act, received by the former spouse which are attributable to previous employment of such former spouse by the United States.

"(b) A former spouse shall not be entitled to a survivor annuity under this section if—

"(1) an election has been made with respect to such former spouse under section 223;

"(2) the former spouse remarries before age fifty-five; or

"(3) the former spouse is less than fifty years of age.

"(c)(1) The entitlement of a former spouse to a survivor annuity under this section—

"(A) shall commence—

"(i) in the case of a former spouse of a participant or former participant who is deceased as of the effective date of this section, beginning on the later of—

"(I) the sixtieth day after such date; or

"(II) the date such former spouse reaches age fifty; and

"(ii) in the case of any other former spouse, beginning on the latest date of—

"(I) the date that the participant or former participant to whom the former spouse was married dies;

"(II) the sixtieth day after the effective date of this section; or

"(III) the date such former spouse reaches age fifty; and

"(B) shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age fifty.

"(2)(A) A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require, within thirty months after the effective date of this section.

"(B) Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before the effective date of this section.

"(d) The Director shall—

"(1) issue such regulations as may be necessary to carry out this section; and

"(2) to the extent practicable inform each individual who was a former spouse of a participant or former participant on November 15, 1982, of any rights which such individual may have under this section.".

(b) Section 14(a) of the Central Intelligence Agency Act of 1949 (59 U.S.C. 403n(a)) is amended by inserting "224," after "222, 223,".

(c) For fiscal year 1987, not to exceed $500,000 shall be available from amounts appropriated under the authority of section 101(1) of this Act for survivor annuities under section 224 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employment and under the amendment made by subsection (b) of this section.

(d) The amendments made by this section shall take effect on October 1, 1986.

HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES OF CENTRAL INTELLIGENCE AGENCY EMPLOYEES

SEC. 407. (a) The Central Intelligence Agency Act of 1949 is amended by adding at the end thereof a new section, as follows:

"HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES OF CENTRAL INTELLIGENCE AGENCY EMPLOYEES

"SEC. 16. (a) Except as provided in subsection (c)(1), any individual—

"(1) formerly married to an employee or former employee of the Agency whose marriage was dissolved by divorce or annulment before May 7, 1985;

"(2) who, at any time during the eighteen-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

"(3) who was married to such employee for not less than ten years during periods of service by such employee with the Agency, at least five years of which were spent outside the United States by both the employee and the former spouse,

is eligible for coverage under a health benefits plan in accordance with the provisions of this section.

"(b)(1) Any individual eligible for coverage under subsection (a) may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the six-month period beginning on the effective date of this section, and in accordance with such procedures as the Director of the Office of Personnel Management shall by regulations prescribe, such individual—

"(A) files an election for such enrollment; and

"(B) arranges to pay currently into the Employees Health Benefits Fund under section 8909 of title 5, United States Code an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

"(2) The Director of Central Intelligence shall take all steps practicable—

"(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a); and

"(B) to notify each such former spouse of that individual's rights under this section.

"(3) The Director of the Office of Personnel Management, upon notification by the Director of Central Intelligence, shall waive the six-month limitation set forth in paragraph (1) in any case in which the Director of Central Intelligence determines that the circumstances so warrant.

"(c)(1) Any former spouse who remarries before age fifty-five is not eligible to make an election under subsection (b)(1).

"(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) may continue the enrollment under the conditions of eligibility which the Director of the Office of Personnel Management shall by regulation prescribe, except that any former spouse who remarries before age fifty-five shall not be eligible for continued enrollment under this section after the end of the 31-day period beginning on the date of remarriage.

"(d) No individual may be covered by a health benefits plan under this section during any period in which such individual is enrolled in a health benefits plan under any other authority, nor may any individual be covered under more than one enrollment under this section.

"(e) For purposes of this section the term 'health benefits plan' means an approved health benefits plan under chapter 89 of title 5, United States Code.".

(b) The amendment made by this section shall take effect on October 1, 1986.

PHYSICAL SECURITY OF NATIONAL SECURITY AGENCY FACILITIES

SEC. 408. The National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by deleting section 11 and inserting in lieu thereof the following new section:

"SEC. 11. (a) The Director of the National Security Agency may authorize National Security Agency personnel within the United States to perform the same functions as special policemen of the General Services Administration perform under the first section of the Act entitled 'An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policemen for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes' (40 U.S.C. 318), with the powers set forth in that section, except that such personnel shall perform such functions and exercise such powers only within Agency installations, and the rules and regulations enforced by such personnel shall be the rules and regulations promulgated by the Director.

"(b) The Director is authorized to establish penalties for violations of the rules or regulations promulgated by the Director under subsection (a) of this section. Such penalties shall not exceed those specified in the fourth section of the Act referred to in subsection (a) of this section (49 U.S.C. 318c).

"(c) Agency personnel designated by the Director under subsection (a) of this section shall be clearly identifiable as United States Government security personnel while engaged in the performance of the functions to which subsection (a) of this section refers.".

TITLE V—ENHANCED FEDERAL BUREAU OF INVESTIGATION COUNTERINTELLIGENCE CAPABILITIES

ACCESS TO FINANCIAL RECORDS OF AGENTS OF FOREIGN POWERS

SEC. 501. Section 1114(a) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)) is amended by adding at the end thereof the following new paragraph:

"(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee) certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is or may be a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(B) The Federal Bureau of Investigation may disseminate information obtained pursuant to this paragraph only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(C) On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to this paragraph.

"(D) No financial institutions, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph.".

ACCESS TO STATE AND LOCAL CRIMINAL RECORDS

SEC. 502. (a) Section 9101 of title 5, United States Code, is amended:

(1) in paragraph (1) of subsection (b) by striking out "or" after "Office of Personnel Management" and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligency Agency;"

(2) in subparagraph (3)(A) of subsection (b) by striking out "or" after "Office of Personnel Management" and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency;"

(3) in subparagraph (3)(B) of subsection (b) by striking out "or" after "Office of Personnel Management" and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency;" and

(4) in subsection (c) by striking out "or" after "Office of Personnel Management" and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency."

(b) Section 803(a) of title 8 of the Intelligence Authorization Act for fiscal year 1986 is amended by striking out "and" after "the Office of Personnel Management" and by inserting ", and the Federal Bureau of Investigation" after "the Central Intelligence Agency".

(c) The amendments made by this section shall become effective with respect to any inquiry which begins after the date of enactment of this Act conducted by the Federal Bureau of Investigation for purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code.

ACCESS TO TELEPHONE TOLL RECORDS

SEC. 503. (a) Chapter 33 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 538. Access to telephone toll records

"(a) A communication common carrier shall comply with a request for telephone subscriber information or toll billing record

information by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee) certifies in writing to the communications common carrier that such information is sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is or may be a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(b) The Federal Bureau of Investigation may disseminate information obtained pursuant to this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(c) On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to this section.

"(d) No communications common carrier, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to telephone subscriber information or toll billing record information under this section."

(b) The table of contents for chapter 33 of title 28, United States Code, is amended by adding at the end thereof the following:

"538. Access to Telephone Toll Records"

TITLE VI—PROTECTION OF UNITED STATES INTERESTS

FOREIGN MISSIONS ACT AMENDMENT

SEC. 601. Section 202(a)(4) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4302(a)(4)) is amended to read as follows:

"(4) 'foreign mission' means any mission to or agency or entity in the United States which is involved in the diplomatic, consular, or other activities of, or which is substantially owned or effectively controlled by—

"(A) a foreign government, or

"(B) an organization (other than an international organization, as defined in section 209(b) of this title) representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States or which engages in some aspect of the conduct of the international affairs of such territory or political entity,

including any real property of such a mission and including the personnel of such a mission;".

SOVIET MISSION AT THE UNITED NATIONS

SEC. 602. (a)(1) It is the policy of the Congress that the number of nationals of the Soviet Union admitted to the United States to serve as members of the Soviet mission at the United Nations headquarters shall not substantially exceed the number of United States nationals who serve as members of the United States mission at the United Nations headquarters, unless the President determines that the admission to the United States of additional Soviet nationals to serve as members of the Soviet mission at the United Nations headquarters would be in the interest of the United States.

(2) Beginning six months after the date of enactment of this section, and every six months thereafter, the Secretary of State shall prepare and transmit to the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and to the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence of the House of Representatives a report setting forth the number of Soviet nationals admitted during the preceding six-month period to the United States pursuant to a determination of the President under paragraph (1) and their duties with the Soviet mission at the United Nations headquarters.

(3) Nothing in this subsection may be construed as including any dependent or spouse who is not a member of a mission at the United Nations headquarters in the calculation of the number of members of a mission at the United Nations headquarters.

(b) It is the sense of the Congress that the Secretary of State and the Attorney General should, not later than six months after the date of enactment of this section, prepare and transmit to the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and to the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence of the House of Representatives a report setting forth a plan for ensuring that the number of Soviet nationals described in paragraph (a)(1) does not exceed the limitation described in that paragraph.

(c) For purposes of this section—

(1) the term "members of the Soviet mission" and "members of the United States mission" are used within the meaning of the term "members of the mission", as defined by article 1(b) of the Vienna Convention on Diplomatic Relations, done April 18, 1961; and

(2) the term "mission at the United Nations headquarters" of a country includes all the missions of such country to the United Nations in New York City and includes missions in New York City to specialized agencies of the United Nations, as defined in article 57 of the charter of the United Nations.

REGISTRATION OF AGENTS OF CERTAIN FOREIGN GOVERNMENTS

SEC. 603. Section 951 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding paragraph (d)(4), any person engaged in a legal commercial transaction shall be considered to be an agent of a foreign government for purposes of this section if—

"(1) such person agrees to operate within the United States subject to the direction or control of a foreign government or official; and

"(2) such person—

"(A) is an agent of the Soviet Union, the German Democratic Republic, Hungary, Czechoslovakia, Poland, Bulgaria, Romania, or Cuba, unless the Attorney General, after consultation with the Secretary of State, determines and so reports to the Congress that the national security or foreign policy interests of the United States require that the provisions of this section do not apply in specific circumstances to agents of such country; or

"(B) has been convicted of, or has entered a plea of nolo contendere with respect to, any offense under section 792 through 799, 831, or 2381 of this title or under section 11 of the Export Administration Act of 1979, or is the employer of such person, except that the provisions of this section shall not apply to a person or employer described in this clause for a period of more than five years beginning on the date of the conviction or the date of entry of the plea of nolo contendere, as the case may be.".

TITLE VII—GENERAL PROVISIONS

AUTHORITY FOR THE CONDUCT OF INTELLIGENCE ACTIVITIES

SEC. 701. The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

INCREASES IN COMPENSATION AND BENEFITS AUTHORIZED BY LAW

SEC. 702. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

UNANIMOUS-CONSENT REQUEST

Mr. DURENBERGER. Mr. President, I ask unanimous consent that, as the Senate turns to the consideration of Calendar Order No. 804, S. 2477, the Intelligence Authorization Act, it be considered under the following time agreement: 1 hour on the bill, to be equally divided between the chairman of the Committee on Intelligence and the vice chairman or their designees, and that the following amendments be the only amendments in order and that no second-degree amendments be in order.

The committee-reported amendment from the Committee on Armed Services, limited to 15 minutes; an amendment to be offered by Senator HELMS related to the classified report of the Intelligence Committee on the bill, limited to 30 minutes; an amendment to be offered by Seantor HELMS related to the request for report on human rights in Panama, limited to 1 hour; further, Mr. President, that there be 30 minutes on any debatable motions, appeals, or points of order, if so submitted to the Senate; tht no motions to recommit with instructions be in order, and that the agreement be in the usual form.

The PRESIDING OFFICER. Is there objection to the request?

Mr. BYRD. Mr. President, the request was not fully made.

Mr. DURENBERGER. I have a further request, Mr. President.

I further ask unanimous consent that once the bill has been advanced to third reading, the chairman of the Intelligence Committee, or his designee, be recognized to proceed to the immediate consideration of H.R. 4759, the House companion bill, and strike its text and substitute the text of S. 2477, and that the Senate insist on its amendment to H.R. 4759, request a conference with the House on the disagreeing votes of the two Houses on

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the bill, and that the Chair be authorized to appoint conferees on the part of the Senate, all without debate.

The PRESIDING OFFICER. Has the Senator completed stating the request?

Mr. DURENBERGER. I have. That is the complete unanimous-consent request.

The PRESIDING OFFICER. Is there an objection to the request?

Mr. LEAHY. Mr. President, reserving the right to object, it is my understanding, on the time agreement on the amendments by the distinguished Senator from North Carolina, that that time was divided.

Mr. DURENBERGER. Mr. President, it is agreeable with me that the time is divided. I understand that the agreement that we did have, particularly between the chairman and the vice chairman, I misstated in the second part. I will restate it as follows: An amendment to be offered by Senator HELMS related to the classified report of the Intelligence Committee on the bill, which would be limited to 1 hour, equally divided.

Mr. BYRD. Reserving the right to object, Mr. President, the words "in the usual form" are words of art which mean that the time will be equally divided.

I reserve the right to object further. There is no provision here for immediate passage without further debate, intervening motion, or point of order from the moment that the substitution of the text of S. 2477 is made, so I assume that to include such a provision.

Mr. DURENBERGER. Mr. President, I think the distinguished Democratic leader is correct. I would add to the proposal that I made for unanimous consent the language which he suggested relative to the consideration of the House bill.

Mr. BYRD. Mr. President, further reserving the right to object, is it to be established for the record that Mr. WARNER and Mr. HART will be conferees for matters within the jurisdiction of the Armed Services Committee?

Mr. DURENBERGER. Mr. President, I would say to my distinguised colleague, the Democratic leader, that at the appropriate time I will get the appointment of all of the members of the Intelligence Committee, which is our usual approach, together with two members of the Armed Services Committee who are not members of the Intelligence Committee, Senators WARNER and HART.

□ 1420

Mr. BYRD. Mr. President, I thank the distinguished manager of the bill. I want to be sure that we are clear that, once the text of S. 2477 is inserted in lieu of the House text on H.R. 4759 the Senate then is to proceed to third reading immediately without further debate, without any intervening action and without further motion or point of order, and that once third reading is achieved, the same conditions will apply to passage of the bill, and that there be no motion to reconsider in order.

Mr. DURENBERGER. Mr. President, the Senator correctly states my understanding of the procedure which I would ask to be incorporated in the unanimous-consent request.

The PRESIDING OFFICER. Is there objection to the request?

Mr. HUMPHREY. Mr. President, reserving the right to object, I would ask the Senator if he would include in his request 30 minutes to be equally divided for the Senator from New Hampshire to have the opportunity to offer a resolution dealing with the situation concerning Mr. Daniloff. I might say we have been prepared to offer that on a couple of occasions since last Friday night. We are currently trying to negotiate the language with various parties.

I want to say from the point of view of this Senator that it is time to go, that we cannot wait forever to perfect the language to satisfy everybody. I am prepared to offer that resolution.

In any event, I do ask the Senator from Minnesota to include in his request the 30 minutes to be equally divided for that purpose.

Mr. DURENBERGER. Mr. President, I have no objection to including in my request the 30 minutes equally divided on the amendment to be proposed by the Senator from New Hampshire. I intend to oppose the amendment, though I do not know the entire text of the amendment. From our side, it would certainly be appropriate to include it on this bill if he so desired.

Mr. LEAHY. Reserving the right to object, I wish we could keep within the parameters we had agreed to earlier, informally agreed to. The Senator from New Hampshire, of course, is within his rights to offer further amendments. My concern is that this is a very sensitive matter. The Senate is proceeding on the intelligence authorization bill which requires us to deal with extraordinarily sensitive matters. Adding in what would be, as I understand the description, advice to the President, or even a direction to the President, on how to handle the Daniloff case I, for one, wish could be done as a freestanding matter and not to be on this bill.

I also feel that the President is doing a good job in handling the Daniloff case.

I will not object because the Senator from New Hampshire is within his rights. I would just urge Senators to understand that of all the pieces of legislation that comes before the Senate during the year, the intelligence authorization bill is an extraordinarily different one and is usually handled in a far different manner because of the highly sensitive matters within it.

Mr. BYRD. Mr. President, reserving the right to object, if Mr. HUMPHREY insists on this approach, then we cannot agree to the rest of the agreement.

We go through a time-consuming process here of contacting all Members on our side by telephone, running the proposed agreement by them, to see if they consent to that agreement. Now, if there is going to be a change in that agreement, it necessitates our doing the same thing all over again.

I could very well support the amendment of the distinguished Senator from New Hampshire, but if he insists on the amendment I would have to object to the agreement.

Perhaps I would want to offer an amendment myself to stop the sale of subsidized grain to the Soviets. I am not sure that Senators want to get into that kind of discussion this afternoon.

So, it is either go with what we have already agreed to, or I will have to object and try to run the traps all over again.

The PRESIDING OFFICER. Did the Senator from Minnesota include in his request the right of the Senator from New Hampshire to offer an amendment?

Mr. DURENBERGER. I did. I indicated, Mr. President, that I have no objection to including in the unanimous-consent request, as I understood it, a 30-minute debate on an amendment to be offered by the Senator from New Hampshire related to the Daniloff matter.

Before the Chair entertains an objection, I might inquire of the Democratic leader if the problem here is one of time. That is, whether given an opportunity to run the normal cloakroom check of Democratic Members we might find no specific objection to this matter. Or is the concern of the Democratic leader deeper, that other amendments would be offered which would make it difficult for us to consider the bill?

Mr. BYRD. As I was saying, I do not think I could get consent to the overall agreement with that amendment. Other Senators may want to offer amendments, too. If we let this one in, I will want consent to offer my amendment. It might be best that we just not have an agreement and if the Senator wants to offer his amendment, he may go ahead.

Mr. LEAHY. Reserving the right to object, I should note in support of what the distinguished Senator from West Virginia has said I have urged a number of Senators not to put amendments on this particular bill, again because of the unique nature of the intelligence authorization bill, including

amendments that I might well cosponsor if they were put on a more appropriate vehicle. But this is so we can bring out a bill which is much needed by the intelligence agencies in our country, much needed at a time of increased terrorist activities and much needed for our counterterrorism.

I would again urge Senators on both sides of the aisle to see if it is possible to restrain themselves and put their amendments on some other bill.

As I say, on many of the amendments I might well join them. I wish that could be done.

Mr. DURENBERGER. Mr. President, I will repropose the unanimous-consent agreement. But first, let me say in response to my colleagues on the Democratic side of the aisle, we do not know what is contained in the Senator's proposed amendment, but if it does deal with the Daniloff matter it deals with subject matters that are covered in the intelligence authorization bill.

If it deals with the issues of espionage, security, and counterintelligence, it obviously deals with some of the concerns that this committee usually has. So I do not think there is an irrelevance at all to the subject matter contained in this bill. It might well be very significant addition, as is one of the amendments to be proposed by the Senator from North Carolina.

Mr. President, I will ask unanimous consent that the time agreement as I have stated it, modified by the addition of the 30 minutes for the Senator from New Hampshire, be considered at this time.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, I would hope the distinguished manager would put the request as he originally put it, and I would hope it would not be objected to. This is a bill which is somewhat sui generis. It is not like most bills which come before the Senate. I would like to see the bill acted on without amendments other than those that were originally stated. If the Senator wants to object to that request he may do so and he may offer his amendment because there would then not be an agreement.

At least, the chairman has the chance to get an agreement here which will expedite floor consideration of this matter, which I understand the majority leader would like to dispose of. The majority leader has two or three other matters he would like to dispose of today. We have offered consent to an agreement on this bill, which was a difficult agreement to work out. Consent agreements often take a lot of time. I have been sitting on the floor for 1 hour now waiting to achieve this agreement. Now, to come up with the same proposal that has been discussed before and has been objected to before—the Senator has the right to offer his amendment. He could have offered it to the highway bill. We shall have a continuing resolution coming along here that is going to be a lightning rod for any and every amendment one can think of. Also, the debt limit extension. The Senator can offer a freestanding resolution.

□ 1430

I hope there would not be an objection on this. The majority leader is on the floor and can speak for himself. He knows time is of the essence. He knows this measure is important. I think we have a good time agreement here that would see us complete action on this measure within, certainly, 3 hours at the most, I would think.

Mr. DOLE. Will the Senator from Minnesota yield?

Mr. DURENBERGER. I am happy to yield to the majority leader.

Mr. DOLE. Mr. President, I know the Senator from New Hampshire feels rather strongly about the resolution. It has been modified a couple of times. It is a rather weak resolution now, in my view; the teeth have been taken out of it. But it is better than nothing.

It seems to me a better thing to do would be to offer it as a freestanding resolution. I would be glad to try to clear that with the minority leader, try to get an agreement to do that. Otherwise, there are a couple of other bills that have been waiting around here for about a week to be brought up and we are in that period of time where anybody can offer anything. If the Senator from New Hampshire feels strongly about this, maybe we can toughen it up a little bit. Maybe we can offer it as a freestanding resolution.

But to put it on this measure—I think the Russians are already indicating that Daniloff is a CIA agent and if we put it on an intelligence bill, we sort of buttress that suspicion. It seems to me we have it on the wrong bill in any event.

Mr. DURENBERGER. Mr. President, that last part does concern me. Perhaps I should yield to my colleague from New Hampshire.

Mr. HUMPHREY. Mr. President, I thank my colleague from Minnesota. The difficulty is that time is of the essence. The difficulty is that we have rather few bills left. The difficulty is that there is all kinds of maneuvering relative to this resolution preventing us from offering it. The difficulty is that the Democratic side objected last Friday to offering it as a freestanding measure.

Everyone thinks we ought to do something about this resolution, but so far, no one is willing to do anything. That is why I am seeking to protect the right, frankly, in hope of instigating some action on this resolution, getting the language clarified and finalized and an opportunity agreed upon to offer it. That is why I am seeking to protect the right to offer it to this bill. I continue to insist upon that right.

Mr. DURENBERGER. Mr. President, given the statement by the majority leader and the suggestion that he will make an alternative available to the Senator from New Hampshire, I shall repropose my unanimous-consent request without the request included by the Senator from New Hampshire.

The PRESIDING OFFICER. Is there objection?

Mr. HUMPHREY. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I am pleased to present before the Senate the intelligence authorization for fiscal year 1987, as recommended by the Select Committee on Intelligence. While the specifics of the intelligence authorization must, for the most part, remain secret, we believe that the annual presentation of this bill to the Members is important. It shows to the Senate and to the American public that, even when dealing with the most secretive matters of national security, laws in the United States are reviewed by elected officials representing the interests of the American people.

The intelligence authorization, as you are aware, is the principal means for the Senate to express its concerns and its priorities for the U.S. intelligence community. Not only must the Senate approve every dollar that is spent in the name of intelligence; the intelligence authorization is also the occasion on which the Senate makes its recommendations for U.S. intelligence policy and the manner in which that policy will be carried out.

Mr. President, in presenting the fiscal year 1987 intelligence authorization, I would like to call the attention of my colleagues to two developments reflected in this year's bill.

First, I am pleased to point out that, for the first time, this year the Select Committee reviewed the budget requests of the Director of Central Intelligence in light of the DCI's national intelligence strategy. As the Members may recall, last year's intelligence conference report required Mr. Casey to submit with his budget request a national intelligence strategy. This document was to state the DCI's goals for national intelligence, the missions and priorities he had set out for the intelligence community, and his plans for carrying out these missions.

Bill Casey responded to the Select Committee's request, I am pleased to say, with distinction. Furthermore, the expectations of the committee that the national intelligence strategy

would strengthen oversight were borne out in the review of the fiscal year 1987 intelligence authorization bill. Not only did the committee examine over 3,000 pages of budget documentation in a line-by-line review of the National Foreign Intelligence Program; we also considered just how well this program would meet the intelligence needs of the United States. I believe that, as a result of the national intelligence strategy, the intelligence community and the Select Committee both have a better understanding of what we are buying for our intelligence dollar and why we are buying it.

This brings me to the second point I would like to call to the attention of the Members—the current state of U.S intelligence and the crisis it faces today.

In the course of our review of the national intelligence strategy, it also became clear to the Select Committee just how tightly stretched the National Foreign Intelligence Program is in meeting the basic intelligence requirements of the United States. The committee is deeply concerned about the future health of U.S. intelligence. Many of our concerns stem from constraints now facing the defense budget, where, for reasons of security, intelligence programs are financed. Last year, largely because of constraints imposed on defense spending, fiscal year 1986 intelligence community investment actually declined in real terms. This was the first decline in 7 years. It forced cancellation of a number of important activities and the deferral and stretchout of many others.

This situation, combined with the tragic loss of the space shuttle *Challenger* and the consequences arising from the Titan 34D launch vehicle explosion in April 1986, has placed U.S. intelligence in its most serious crisis in decades. Mr. President, I cannot overstate the severity of the current situation. Having reviewed the DCI's national intelligence strategy, his fiscal year 1987 budget request, and the requirements levied by the defense and foreign policy community on intelligence program managers, the Members of the Select Committee are convinced that intelligence investment must be protected from arbitrary limits imposed on Government spending in general and on defense spending in particular.

We on the Select Committee are fully aware that similar claims will be made about other Government programs in this age of fiscal constraint. Indeed, we have reached our conclusions with considerable hand-wringing, However, we would point out that the secrecy necessary for intelligence operations leaves the intelligence community with only one constituency that can speak out on its behalf to the Senate—namely, those of us on the Intelligence Committee who must meet behind closed doors and have witnessed the dangers facing the National Foreign Intelligence Program.

In addition to the budgetary recommendations which are the primary function of this bill, there are also several significant legislative provisions. These are extensively discussed in the report on the bill submitted by the Intelligence Committee. I might mention at this point that the bill contains proposals on enhancing FBI access to financial and telephone records for counterintelligence purposes and FBI access to State and local law enforcement records for counterintelligence and security purposes; for legislatively mandating the reduction in the size of the Soviet mission to the United Nations and registering and limiting the activities of foreign commercial agents from countries engaged in intelligence activities against the United States; for providing benefits to former spouses of CIA officers who currently receive none; and for other purposes.

The classified supplement to the committee's report on the fiscal year 1987 intelligence authorization has been available for review by all Members of the Senate since early June of this year in accordance with the provisions of Senate Resolution 400. This classified supplement explains in detail the specific recommendations of the committee on all intelligence programs.

We believe, Mr. President, that the recommendations set forth by the Committee in the classified supplement represent the minimum that must be invested in intelligence to provide the intelligence capabilities necessary for U.S. national security. This judgment is objective; this judgment is bipartisan; and, most of all, it is strongly held. We urge the Members of this body to join us in supporting this bill.

Mr. LEAHY. Mr. President, this has certainly been a challenging year for everyone associated with our intelligence effort—the aftermath of the "Year of the Spy," the continued specter of international terrorism, the realization by all of us that there will be more terrorist attacks, this year and next year, and the disasters involving the space shuttle and the Titan launch vehicle. In addition, reports of serious progress in the arms talks underscore the intelligence community's need to improve its capabilities to monitor Soviet forces and verify an arms control agreement that might come out of Geneva or out of a summit.

The Select Committee on Intelligence views the annual budget authorization process as one of its principal oversight responsibilities because of the means this process provides in our effort to influence the long-term direction and scope of U.S. intelligence efforts.

This year, as we did last year, the committee conducted its intelligence budget review at the full committee level, involving all members of the Intelligence Committee. In my opinion, the committee's review of the budget this year was the most comprehensive and effective that I have seen in the more than 7 years I have served on the committee. I am very gratified at the personal and bipartisan participation we had from the committee members in this sometimes arduous process, one where members were able to set aside labels of Democrat and Republican to work together in a bipartisan effort for the best intelligence this country could possibly have.

As Senator DURENBERGER has stated, we take very seriously our obligation to the other 85 Members of the Senate to review, dollar for dollar, every program that is proposed for U.S. intelligence. I should also note that we have been helped in no small way by our excellent and nonpartisan staff—Bernie McMahon, staff director; Eric Newsom, minority staff director; Dan Finn, chief counsel; Keith Hall, chief budget officer; and numerous others.

I am pleased with the committee's continuing oversight in the area of combatting terrorism. This is something I have felt strongly about for several years. As the recent hijacking in Karachi and the attack at the synagogue in Turkey graphically show, terrorist activity throughout the world continues to threaten the safety of innocent persons as well as peace and stability worldwide. I and others on the committee have frequently stressed the need for more and better intelligence to combat terrorism. This bill continues the committee's efforts to strengthen the intelligence community's counterterrorism programs.

Another area in which I believe the committee has made a significant contribution is counterintelligence. The Intelligence Committee is in the process of completing a comprehensive report to the Senate on the state of U.S. counterintelligence and security programs. That report is nearly ready and should be available within a matter of days, if not weeks. In addition, the fiscal year 1987 authorization bill calls for substantial new resources for communications and personnel security initiatives, which I wholeheartedly support.

Mr. President, I take I hope a pardonable pride in the committee's incorporation of S. 1773, a bill Senator COHEN and I offered last year to apply the principle of numerical equivalence to the sizes of the United States and Soviet missions to the United Nations. It, together with a companion measure enacted into law in 1985, the Leahy-Cohen diplomatic equivalence and rec-

iprocity amendment, provide's strong tools to the President and in fact the entire executive branch in controlling and reducing the Soviet espionage presence in the United States operating under diplomatic cover.

Let me take one moment to compliment my friend from Maine for his hard work and leadership in our efforts to combat the hostile intelligence presence in this country. I want also to thank Jim Dykstra, from the committee staff, for his valuable contributions.

Mr. President, I mention both the Leahy-Cohen bill that passed in 1985 and its newer version included in this bill for a specific reason. Secretary Shultz has recently been implementing a policy to limit the size of the Soviet diplomatic mission at the United Nations which mirrors the approach Senator COHEN and I have proposed. He has done it in my mind for all the right reasons. He has not only brought a great deal of pressure to bear on the Daniloff matter, but he has also demonstrated that the United States is concerned about the number of Soviets in that mission, which is much larger than they need to perform their normal diplomatic duties. According to the FBI as many as 35 percent or more of the Soviet diplomats are active KGB agents. By reducing the size of the Soviet mission to the United Nations, we have succeeded in bringing pressure on the Soviets in the Daniloff matter.

I am one Democratic Senator who says: Do not tie the hands of President Ronald Reagan in this case. In my estimation, the President has been doing everything right in the Daniloff case. He has taken a very, very tough attitude toward the Soviet Union. He has taken the extraordinary measure of sending a letter stating that Mr. Daniloff is not a spy. He has made his anger and concern very clear. He has authorized Secretary Shultz to follow the basic principles which Senator COHEN and I have proposed in kicking out Soviet diplomats. All that brings pressure on the Soviet Union.

At the same time, President Reagan has also realized that we have a preeminent responsibility to enhance the security of our own country by pursuing meaningful arms negotiations. As a result he has instructed his Ambassadors to continue that effort in Geneva. The arms negotiations go on.

Earlier this week at the United Nations, the President of the United States gave a strong statement of his own commitment to nuclear arms control. So I say that we should not be here trying to second-guess the President of the United States. We should give him the tools with which to work.

We will provide him even more tools in this bill. But this is such a delicate area. With arms control negotiations coming under the cloud of the Daniloff matter, the President of the United States should be given the tools and the confidence to go forward. I, for one, am confident of the direction President Reagan has taken, and I support it.

The select committee has also taken the lead in assuring that the intelligence community will be able to address future requirements for arms control monitoring and that these are given a high priority in the development of future intelligence capabilities. I mention that because the Senate has a unique responsibility in arms control matters. We are the only 100 people in the country to vote on a treaty. A major issue will be whether it is verifiable.

In these times of large deficits and budget reductions, it is even more critical that we provide support for intelligence to meet arms control as well as other essential requirements affecting our national security. Intelligence is the eyes and ears of our overall national defense program. As we cutback in general defense programs, it would be shortsighted and dangerous to reduce funding for intelligence programs.

In my opinion, some of the most dedicated, most capable, most qualified, and most hardworking people in our Government are within our intelligence community, whether they work for the CIA, the DIA, the FBI, or others. We must give them the support they require. I believe it is vital to the first line of our security.

Mr. President, we have not recommended authorization of one dollar more than we believe is absolutely necessary to fulfill the intelligence requirements to cope with the growing threat facing this Nation. Our review was extensive and complete. It has also been bipartisan, continuing our committee tradition.

In conclusion, Mr. President, I once again compliment the work of the chairman and the other members of the Intelligence Committee on the important piece of legislation before us today. This bill will continue to provide the resources that are sorely needed to keep our national intelligence capabilities up with international developments that could threaten U.S. interests. It also will provide additional authority to respond to the proliferation of espionage activities within our country.

Mr. President, as vice chairman of the Intelligence Committee, I fully endorse this bill and recommend its passage.

Mr. DURENBURGER. Mr. President, I thank my colleagues from New Hampshire, not only for——

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

Mr. DURENBURGER. I yield for the obvious——

Mr. LEAHY. New Hampshire is a slightly smaller State geographically. They have more people. They need more people—no, I should not say that. New Hampshire is a wonderful State. It is slightly smaller, however.

Mr. DURENBURGER. I trust that this is not the first time you have had to correct someone on that.

Mr. President, I do compliment my colleague, who this year had to make a choice as to where he was going to play a leadership role, between the Agriculture Committee and the Intelligence Committee, and I am grateful that he chose the Intelligence Committee to do that.

I think we have made a lot more progress over the last 2 years than the time that we each have allotted to describing the authorization bill before us. I appreciate very much all the effort he has put in on that, as well as the minority staff. We do not call them minority staff. They are all part of the committee staff. Eric Newsom is the minority staff director, and he has been around for quite some time and has always been a very valuable addition to all the difficult efforts we have had to undertake during the course of these 2 years.

Mr. President, I understand that the pending amendment is the committee amendment of the Armed Services Committee on sequential referral of the bill.

The PRESIDING OFFICER. The Senator is correct.

Mr. DURENBURGER. Mr. President, the amendment by the Armed Services Committee makes a change in a classified item relating to a military construction project. It adds funds for the purpose of providing full funding for this project, which was only partially funded in the bill reported by the Intelligence Committee. The Intelligence Committee welcomes this amendment, which is reflected in the text of S. 2477, as reported, on sequential referral by the Armed Services Committee on August 7.

I request that the Senate approve the amendment of the Armed Services Committee.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the committee amendment of the Armed Services Committee.

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. DURENBERGER. Mr. President, this probably is an appropriate time for us to consider the first of what I understand will be two amendments this afternoon to the bill, to be

offered by the Senator from North Carolina [Mr. HELMS].

Mr. HELMS. I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 2896

Mr. HELMS. Mr. President, I have an amendment at the desk, and I ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 2896:

On page 4 of the bill, after line 2, add the following new section:

"SEC. 104. The classified report of the Select Committee on Intelligence which accompanies this Act is hereby amended to include the material contained in the classified supplement to the aforesaid report which was prepared on September 24, 1986. The classified supplement incorporates additional directions to the Intelligence Community on the following subjects: Competitive analyses of key intelligence topics; survivability of national technical means of intelligence collection; availability of the report of the President's 1980 Transition Team study of intelligence; training on combatting Marxism-Leninism; integration of military, political and economic aspect of national estimates on the Soviet Union; integrated national estimate on the Soviet Union; assessment of the effects of Soviet data denial;

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

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

The amendment reads as follows:

On page 4 of the bill, after line 2, add the following new section:

"SEC. 104. The classified report of the Select Committee on Intelligence which accompanies this Act is hereby amended to include the material contained in the classified supplement to the aforesaid report which was prepared on September 24, 1986. The classified supplement incorporates additional directions to the Intelligence Community on the following subjects: Competitive analyses of key intelligence topics; survivability of national technical means of intelligence collection; availability of the report of the President's 1980 Transition Team study of intelligence; training on combatting Marxism-Leninism; integration of military, political and economic aspects of national estimates on the Soviet Union; integrated national estimate on the Soviet Union; assessment of the effects of Soviet data denial; Foreign Broadcast Information Service analyses; reconnaissance capability; protection of polygraph information; role of the Defense Intelligence Agency; and intelligence policy regarding Panama."

Mr. HELMS. Mr. President, I allowed the clerk to read part of the amendment in order to give an indication of its nature. It is a very important amendment.

Let me say at the outset that the distinguished chairman and vice chairman, Mr. DURENBERGER and Mr. LEAHY, have worked very hard to produce a bill which contains significant reforms of the intelligence process. However, the intelligence process is an extremely important component of our foreign policy decisions. In my work as ranking majority member of the Foreign Relations Committee, I have frequently run into situations which suggested an inadequacy in the intelligence analyses our policymakers have been getting.

I have had a number of discussions with the distinguished chairman of the select committee about these problems, and I have been gratified by his response to my suggestions. I have worked with him, Senator LEAHY, and other distinguished members of the select committee to produce some points to supplement the diligent work of the committee. This is in no way intended as a criticism of the work of the select committee, but merely to present an added perspective from a foreign policy point of view.

My first amendment amends the classified report of the select committee to provide some additional directions to the intelligence community on a number of topics, particularly with regard to intelligence about the Soviet Union. I will only single out for comment here a requirement for intensified competitive analysis. That may be a vague term to many because of the classified nature of the intelligence apparatus, but let me say for the record that it is enormously important.

□ 1500

Mr. President, competitive analysis has been demonstrated by the 1975 A team-B team exercise to be beneficial to better intelligence of our national security. Contending points of view and varying schools of analysis and interpretation are inevitable in the art form—I suppose one would call it—called intelligence. The classified supplement goes into more detail, but I have been assured by the distinguished chairman that the following list of intelligence problems will be studied under appropriate competitive analysis procedures:

1. Soviet geopolitical and strategic intentions, including the functions of the Soviet Five Year Defense Plan and the long range Fifteen Year Plan;

2. Soviet investigation of the feasibility of detecting submerged submarines through the analysis of data on the surface of the ocean;

3. The role of surprise and deception as principles of Soviet military doctrine;

4. Soviet perceptions of American military, political, economic, and psychological vulnerabilities;

5. The accuracy of Soviet missiles;

6. The existence of hidden Soviet missiles for reload, refire, and covert soft launch, in strategic reserves;

7. The reasons for the continuing underestimation by CIA of Soviet strategic forces, in light of the recent statement in the White House Report to Congress on SALT II of June 16, 1986, that: "On the basis of the history of U.S. Intelligence underestimation, it is unlikely that the numbers of Soviet strategic missiles, bombers, and warheads five years from now will be identical (or necessarily even close) to these [NIE] force projections";

8. The role of Soviet Bloc intelligence services in the international drug trade;

9. Better methodologies for estimating Soviet defense spending;

10. The effects of Soviet negotiating and operational deception in arms control;

11. Better methods for processing, debriefing, retaining, and resettling defectors and emigres;

12. Means of overcoming, deterring, and hardening against Soviet data denial through Soviet radio-electronic warfare;

13. The role of disinformation and forgeries in Soviet foreign policy; and the extent of Soviet Active Measures, disinformation and forgeries inside the United States;

14. Countermeasures to deter Soviet jamming of U.S. National Technical Means of reconnaissance;

15. The extent of the Soviet lead over the U.S. in deploying a nationwide, land-based ABM defense, and in developing a space-based ABM defense, including identification of U.S. intelligence gaps on the Soviet SDI program;

16. Soviet civil defense capabilities;

17. Soviet knowledge of U.S. National Technical Means of intelligence collection, and deceptive actions which the USSR might have taken on the basis of that knowledge;

18. The possibility of Soviet Bloc sabotage being among the human errors causing the Space Shuttle Challenger and other recent U.S. strategic space mission explosions;

19. The Soviet Biological and Chemical Warfare threat, and potential U.S. countermeasures;

20. Implications for U.S. national security of Soviet military supremacy;

21. Better means for protecting U.S. Intelligence Sources and Methods and classified information, including reforming the classification system, so as to prevent such cases as the unlawful publication of details of the "Chalet" project by The New York Times in June, 1979;

22. Better methodologies for estimating yields of Soviet underground nuclear weapons tests, which utilize all the evidence available;

23. Possible limitations in U.S. area search and spot search reconnaissance capability, and the possibility of a U.S. search and spot National Technical Means of intelligence collection crisis due to the long-term standdown in the U.S. Space Shuttle and other strategic space launch programs;

24. The possibility that the CIA and the State Department have been penetrated by the KGB at various levels;

25. The contents of the 1962 Kennedy-Khrushchev Agreement prohibiting Soviet offensive weapons in Cuba, and the evidence supporting the charges of President Reagan, the DCI, the Chairman of the JCS, and the Under Secretary of Defense for Policy that Soviet Mig-27 fighter-bombers, TU-95 Bear bombers, strategic submarines, and the Soviet Combat Brigade in Cuba violate the Kennedy-Khrushchev Agreement;

26. The ability of U.S. National Technical Means of intelligence collection to monitor Soviet compliance with the 1967 Outer Space Treaty prohibiting nuclear weapons in space, and with an Anti-Satellite Treaty;

27. The history of Soviet violations of the Biological and Chemical Weapons Conven-

tions, and whether the CIA blocked the creation of an Interagency Group to study these violations when first detected in 1976 and 1977;

28. The military implications of Soviet SALT and other arms control violations, and the reasons why the CIA resisted evidence and analysis showing Soviet SALT violations for 12 years;

29. Complete analysis of the Popov, Penkovsky, Golitsyn, Nosenko, and Pacepa cases, including their contribution to Intelligence Community analyses and Counter-Intelligence;

30. Long-term Soviet violations of the 1947 Rio Treaty, through their massive arms shipments to Cuba and to Nicaragua;

31. Allegations of drug trafficking, money laundering, arms trafficking, human rights violations, political assassination, and intelligence exchange and collaboration with Castro and Ortega by military leaders of Panama;

32. Reasons for reported CIA long term underestimation of Soviet submarine capabilities.

Mr. President, this amendment, as I indicated earlier, has been worked out through the cooperation of a number of people, including the distinguished chairman of the committee and vice chairman and their very capable and competent staff.

I urge adoption of the amendment.

The PRESIDING OFFICER (Mr. DANFORTH). The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, as my colleague has indicated we have put some effort in the last week or so against the concerns of the Senator from North Carolina.

Let me begin my brief comments in reaction to his amendment by indicating that I appreciate his comments on the intelligence bill itself. Like him the members of the Select Committee on Intelligence are dedicated to improving the quality of intelligence available to the U.S. Government.

I have consulted with the members of the Intelligence Committee and can say that the committee has no objection to inclusion in its classified report on the bill the material of interest to the Senator from North Carolina.

The amendment which the Senator has offered to the bill reflects certain changes in the nature of a supplement, which would be incorporated into the committee's classified report on intelligence programs. Material in the supplement relates to the subjects listed in the amendment and it is available to be read by any Member of the Senate who so wishes.

Mr. President, in view of the agreement of the committee for the inclusion of supplementary material in its classified report, members of the committee will not object to a motion by the Senator from North Carolina that his amendment be adopted. However, prior to proceeding with that motion, I would like to engage in two colloquys with the Senator on the subjects of CIA analysts and on the subject of counter intelligence.

After hearing of the Senator's concerns in these areas it appeared for a variety of reasons more desirable to discuss them here than to include them in the classified report on the bill.

With respect to the issue of how CIA analysts use their time on basic research as proposed by the Senator or on current reporting and policy support tasks such as briefing, I felt that a discussion on the floor would be sufficient to alert the Director of Central Intelligence to the Senate's interest on this issue.

I think we have agreed on a colloquy. If the Senator wants to proceed he certainly may do so.

Mr. HELMS. Very well.

Mr. President, I thank the distinguished chairman. I do have some questions which I wish to direct to the distinguished chairman concerning the kind of responsibilities that the CIA analyst must assume today.

□ 1510

As the distinguished occupant of the chair knows, a lot of us have been concerned for a great while about whether the CIA analysts have the opportunity to carry out the mission they were hired to do, and that is to conduct basic analysis. According to some reports I have received, CIA analysts are increasingly required to attend interagency meetings and coordination sessions, all of which cuts into the basic intelligence research and analysis the Agency is able to accumulate. My concern is that, without a base of research, the people we expect to be our experts on the Soviet Union and the rest of the world will lack the opportunity to develop the knowledge we expect of them.

So, with that preface, I would ask my good friend from Minnesota, Senator DURENBERGER, are these reports true, and what is the burden of irrelevant administrative duties that is being imposed on CIA analysts?

Mr. DURENBERGER. I fully appreciate my colleague's concerns. This is one reason why the select committee has initiated an indepth study of personnel policies within the Intelligence Community. One of the subjects that the committee study is currently addressing is how our most valuable resource—people—is being used within the Directorate of Intelligence and other analytic units in the Intelligence Community.

Mr. HELMS. Then, am I correct in understanding that the select committee's study will investigate whether CIA analysts are being drawn away from doing basic research?

Mr. DURENBERGER. That is correct.

Mr. HELMS. I thank the Senator. And when will this committee study be completed, if I may ask the chairman?

Mr. DURENBERGER. Our current expectation is that the study will be completed and available for implementation in January 1987.

Mr. HELMS. That is fine. I appreciate the distinguished chairman's response and I appreciate his diligence in this connection, and that of Senator LEAHY, as well. I will be looking forward to the results because, Mr. President, this issue is so critical to our intelligence capability and, of course, to the security of this country.

COUNTERINTELLIGENCE COLLOQUY

Mr. HELMS. Mr. President, counterintelligence is at the heart of the deep concern that many Americans have about the intelligence community and its potential weaknesses. The espionage cases of the past 2 years do not tell the whole story, but they make clear that our Government has some very serious problems.

Counterintelligence issues cannot be confined to closed hearings and secret deliberations. Foreign agents and spies are prosecuted in public. Strategic monitoring capabilities are acknowledged by the Government, and Soviet concealment practices are described in the administration's unclassified statements on Soviet noncompliance with arms control agreements. The compromise of our intelligence collection capabilities by a Howard, a Pelton, or a Chin cannot be kept quiet, because espionage is too serious to be immune from the criminal law or congressional and public concern.

The implications of these and other, earlier hostile intelligence successes can be enormous. The Navy says the Walker-Whitworth ring was a military disaster. Fortunately, we were not engaged in battle with the Soviet Navy, for we might well have lost any battle due to the Soviets reading our coded messages; that's what we did to Japan in World War II. There are immediate dangers when the compromise of intelligence secrets gives our adversaries the ability to neutralize or deceive some of our sensitive intelligence systems or operations.

Concerned Americans have to be deeply troubled by the propsect that the Government may not be facing up to the full implications of Soviet intelligence operations. Is anybody doing an overall assessment of the damage from all the recent espionage cases? How can we learn and apply the lessons, if nobody looks at what went wrong, why it happened, and what the consequences have been?

Another question is raised by the latest case involving a Soviet employee at the United Nations Secretariat. Has there been a comprehensive effort to examine the ways the Soviet KGB exploits its access through the U.N. Secretariat and the Soviet U.N. missions for intelligence purposes? We have stood idly by for too long while the So-

viets overwhelm our counterintelligence by the sheer numbers of people they have at the United Nations.

When are we going to get serious about the role of disinformation, forgeries, and other "active measures" in Soviet foreign policy? The KGB is using these covert political action operations all over the world, and the United States itself is not off limits.

Are we building a cadre of trained and experienced counterintelligence specialists in the intelligence community who can handle all the dimensions of hostile intelligence operations? Or is counterintelligence still the forgotten discipline, a dead-end job that can not attract talented intelligence professionals?

Does the intelligence community have the capability to detect and analyze hostile measures to deceive, manipulate, or limit our technical and human intelligence collection? Do we have an organized effort to protect the security of our own intelligence systems and operations? These are issues that strike at the core of the credibility of our national intelligence products.

Is there any plan to improve personnel security in the State Department and the intelligence community? There is altogether too much reliance on foreign national employees at sensitive U.S. missions abroad, and we must wonder whether the CIA has learned any lessons from the Koecher, Scranage, Howard and Chin cases.

Finally, the interrelationships among these issues show the inadequacy of the Government's definition of "counterintelligence" in Executive Order 12333. That order says that counterintelligence means "information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorism, but not including personnel, physical, document, or communications security programs."

The limitations of this provision should be obvious when it is compared with the terms used in a definition from 1958 that spoke of "destroying the effectiveness of inimical foreign intelligence activities" and that related counterintelligence directly to activities undertaken to protect the security of the Nation and its personnel, information, and installations against espionage, sabotage, and subversion. The 1958 definition may be outdated in some respects, for it leaves out the problem of deception of our intelligence systems and it uses the vague term "subversion" instead of active measures and disinformation. But we need an approach to counterintelligence that stresses offensive tactics and that is broad enough to link the findings about hostile intelligence threats with the design of security measures.

Can the Intelligence Committee provide answers to these questions, so that the Senate and the American people can have some assurances that critical counterintelligence issues are being addressed more effectively than they have been in the recent past?

Mr. DURENBERGER. Mr. President, the Intelligence Committee has been concerned about all of these counterintelligence matters for a number of years. In the last Congress, for example, the committee used the classified report accompanying the Intelligence Authorization Act to require action on several counterintelligence initiatives. They were summarized as follows in a public report to the Senate on the Committee's activities in 1983-84 (S. Rept. 98-665):

COUNTERINTELLIGENCE

For several years, the Committee has emphasized the need to improve the U.S. counterintelligence capabilities by, among other things, re-establishment of a career counterintelligence service within the CIA and organizational and policy changes to promote multidisciplinary counterintelligence analysis. In the Intelligence Authorization Act Report for FY 1985, the Congress directed that specific steps be taken to achieve these objectives.

Counterintelligence (CI) requires critical appraisals of the operational security and vulnerability of intelligence collection from human sources and by technical means. This means testing the conclusions and assumptions of intelligence personnel engaged in collection and in the analysis of intelligence data. For that reason, the job of CI specialist in agencies such as the CIA has not always been popular or career-enhancing. If it is to be done conscientiously, as the Committee desires, it must be done by people whose careers may progress in the ranks of CI specialists, and do not depend on the favor of the collectors whose work they scrutinize. Although CI should not be a force unto itself and the DCI must always judge between contrasting views, it is important to foster and protect the expression of independent views by establishing a career CI service within the CIA.

Additionally, in agencies that collect intelligence by technical means, there is a need to apply CI discipline and provide for the kind of operational security and testing that is traditional for human sources. The need for such operational security and validity-testing is especially important in such agencies, because of the number of recent compromise of technical systems by espionage and unauthorized public disclosure. Inadequate operational security could affect the Committee's willingness to authorize funds for such systems.

In the 99th Congress, the committee has stepped up its efforts on an even wider range of counterintelligence issues. In addition to further initiatives through the Intelligence Authorization Acts and accompanying reports, the committee has conducted a comprehensive review of U.S. counterintelligence and security programs. We have held 16 closed hearings and scores of staff interviews and briefings, drawing on expertise from inside and outside the Government.

The committee is preparing to submit, before the end of this session, a report to the Senate on the results of this review. This report will respond directly to the concerns raised by Members of the Senate and others who wonder whether the U.S. Government is doing all that it can to respond to the hostile intelligence challenge. We are also dealing with significant counterintelligence issues in the Intelligence Authorization Act for Fiscal Year 1987, which the Senate will pass today, and in the accompanying classified report. The bill itself contains legislative provisions to reduce and restrict the hostile intelligence presence, including reduction of the size of the Soviet U.N. missions and greater regulation of East European Government-owned commercial entities operating in the United States, as well as provisions to enhance FBI counterintelligence capabilities through a procedure for mandatory access to financial and telecommunications records.

We are confident, as well, that the committee's forthcoming reports will show significant progress by the administration in building an effective counterintelligence system. That is not to say the report will be rosy. We are pushing the administration on several fronts, particularly on the need for an improved security policy mechanism.

One of the principal features of our report will be an overall assessment of the damage from recent cases, as part of a description and analysis of the hostile intelligence threat across the board. The committee has drawn on its many hearings on specific cases, as well as on internal executive branch assessments of the damage to military, intelligence, and other national security interests.

On specific counterintelligence questions, we believe the committee will bring some reasonably good news. The limited Executive order provision defining counterintelligence does not really reflect the current situation. Thus, executive branch officials are more attentive than ever to the need for security policy to be based on the best counter-intelligence. The definition in the order has not been a serious barrier to improvements, once there was a will to take on difficult problems.

Perhaps the most important sign of a new approach is the executive branch decision to develop a national counter-intelligence strategy, as we proposed almost a year ago in testimony before public hearings of the Permanent Subcommittee on Investigations chaired by Senator ROTH. Counterintelligence has traditionally been fragmented by the jurisdictional divisions among the FBI, the CIA, and

components of the Defense Department. The NSC is now developing a strategic plan that combines the capabilities of all the agencies to achieve identified national objectives.

One reason for greater confidence that this enterprise will succeed is the willingness of the agencies to assign talented counterintelligence personnel to an augmented community counterintelligence and security countermeasures staff, which was reorganized and upgraded by the DCI earlier this year. The community staff is no substitute for joint planning by senior officials of the agencies themselves, but it has a clear mandate to foster and promote the strategic planning process.

Recent counterintelligence actions that have surfaced publicly, such as the expulsion of the Soviet Air Attache in June and the substantial reduction in the size of the Soviet U.N. missions, are tangible signs that the current approach to counterintelligence is indeed to "destroy the effectiveness of inimical foreign intelligence activities." We know that such a strategy has broad support in the Senate. It also reflects the consistent and aggressive prosecution policy adopted over the past 8 years by the Department of Justice.

Soviet exploitation of the United Nations has been a high-priority concern of the committee. In 1985, we issued a public report, prepared for the Committee by the Intelligence Community, on Soviet use of the United Nations Secretariat. Last fall, Senators LEAHY and COHEN of the committee introduced S. 1773 to establish a policy that the size of the Soviet U.N. missions must be substantially equivalent to the size of the U.S. mission. This year, we have included the provisions of S. 1773 in the Intelligence Authorization Act that is before us now, so as to reinforce the administration's commitment to cut the number of Soviets at their U.N. missions.

The committee is continuing to press the intelligence community to develop in each agency a trained, experienced body of counterintelligence specialists. Several agencies, including the CIA, have made significant strides in this direction during the past 2 years, which will be discussed in the committee's upcoming reports. The committee is monitoring their progress, and the reports identify the need for further actions in several areas.

In the wider field of personnel security for sensitive Government agencies, the committee's reports will have a number of specific findings and recommendations. Without trying to summarize a complex subject, it is fair to say an area where the committee is using the Intelligence Authorization Act to advance needed changes. The committee's actions to improve personnel security are detailed in the classified annex to the bill, which is available to any Member.

We have also supported funds to implement plans, pursuant to the Diplomatic Security Act, to replace foreign national employees with Americans at sensitive State Department posts abroad and to put Americans in charge of Embassy computer systems. The committee has specifically addressed the situation in Moscow, where overreliance on foreign national employees presents definite security risks. Committee legislation proposed by Senators LEAHY and COHEN and enacted in 1985 required the Secretary of State and the Attorney General to submit a plan to eliminate the disparity between the number of Soviet Embassy and consular personnel in the United States, 320, and the number of American officials in the U.S.S.R. about 200. The plan should result in replacing a significant number of foreign national employees by Americans at our Moscow embassy, as well as a reduction in the official Soviet presence in the United States.

The committee and the administration are focusing much more attention on programs to identify, expose, and counter Soviet disinformation, forgeries, and other active measures. The State Department's Bureau of Intelligence and Research has created a new office for this purpose. The FBI has also prepared a completely new and updated version of its 1982 classified report on Soviet active measures in the United States. That report and other intelligence reports on Soviet efforts worldwide have been provided to the committee and were used in preparing our reports to the Senate.

The counterintelligence issues that are most difficult to discuss in public involve denial, concealment, and deception. We do not want to reveal to our adversaries either our strengths or our weaknesses. Yet we realize there are inevitable public concerns about whether the Soviets may be able to affect U.S. national policy by deceiving our intelligence system. This problem deserves high priority in every part of the intelligence community, as well as leadership by the DCI who can ensure that analysts have access to the data they need to identify threats and develop means to counter them. The committee and the DCI have taken certain initiatives in this field, and the committee continues to monitor the effort. The classified committee report to the Senate will discuss this issue.

In general, we have found over the past 2 years a new attitude in the executive branch toward counterintelligence. The administration and the intelligence community are coming to grips with difficult, underlying problems that have plagued the Government for years. The Intelligence Committee has worked very closely and quietly with the executive branch to raise these issues in a manner that can lead to their resolution by policymakers, rather than delay on defensiveness.

The committee's attention to these issues will not end when our reports are issued next week. The committee will continue to seek the support of the Senate for its efforts to make constructive use of its oversight authority in counterintelligence and other sensitive areas.

Mr. President, I have one further set of brief comments that relate principally to the process that we are going through this afternoon. I have indicated already that the Committee on Intelligence has agreed to accept the omnibus amendment the Senator from North Carolina has offered to the authorization bill.

But, if I might, I would like to make two brief points. One, that it would not be accurate to say that, as chairman, I agree with the purpose of these amendments or with any reflection that the acceptance by the committee might imply on the current performance or management of the intelligence community.

I do understand, Mr. President, that this process that we are going through here this afternoon does allow the Senator from North Carolina to raise some issues that he feels very, very deeply about. He is not a member of the Intelligence Committee and has not been a member of that committee. This is an opportunity for him, as any Member might have that same opportunity, to raise those issues and to ensure not only himself but a larger constituency that he and we represent that these issues have been considered by the Senate, are being considered by the Congress and are being considered by the executive branch.

The second point I would make is important as it relates to what you might call the health and welfare of the intelligence oversight itself. Because, Mr. President, when the Senate created the Select Committee on Intelligence in 1976, under the provisions of Senate Resolution 400, it was exploring new ground. Up until that time, many people believed that it was impossible to operate an effective intelligence community without giving away the essential democratic right of free and open debate. Some people said democracy had to give way because the United States absolutely needed intelligence. Others said the United States should not operate an intelligence community at all because the costs of operating a community in the way it needed to be operated, the costs to democracy would be too great.

The Senate at that time said otherwise. In adopting Senate Resolution 400, the Members of the Senate decided that they could compromise be-

tween intelligence and democratic rule by selecting some of their colleagues to represent the full range of views within the Senate and by giving them full and open access to the budget, the operations, and the policies of the intelligence community. Then, to protect the security of the intelligence, the Senate agreed to isolate legislative review of the intelligence community to just this one committee.

The thinking, Mr. President, was that the Select Committee on Intelligence would serve as a buffer.

The concerns that Members had regarding intelligence were to be funneled through the committee so that discussions of the relevant issues could remain secure. In exchange for that arrangement, the intelligence community agreed to deal with the select committee in a completely frank and open atmosphere. Normally, this process works well. The community has sometimes raised concerns about security. The select committee for its part sometimes complained about not being kept fully and adequately informed on intelligence matters.

But, on the whole, Mr. President, the system works, and it works well.

As I said in my earlier statement, it is kind of an amazing fact that not $1 is spent on intelligence in the United States that has not been reviewed by the elected representatives of the people of this country in Congress. That is an amazing fact. It is unique in the world. But it is a fact.

Unfortunately, Mr. President, the system, to a degree, this year may have broken down, or some people may say it has broken down. And it is not the kind of course that we would necessarily want to follow year after year after year.

I think the Members of the body understand that everyone has the right to move amendments to the intelligence bill on the floor of the Senate. That right needs to be exercised in as responsible a fashion as possible. We have just had an example of that out here earlier this afternoon.

Mr. President, I would suggest that, in the accommodation to our colleague from North Carolina, we are not necessarily intending to set up a new process, pattern, or rule. It is very, very difficult for the 15 Members who have volunteered for brief periods of time in their Senate career—up to 8 years, but no more—to deal with the very, very difficult issues of the so-called compromise between democracy and good intelligence.

So I would hope that, in the future, the concerns of all of our colleagues for the adequacy or the inadequacy of the intelligence collection analysis or oversight process may be reflected in a manner somewhat different from the manner in which it was reflected this year.

□ 1520

And yet, Mr. President, I would say that without in any way disparaging the right of my colleague from North Carolina to present to his colleagues and to present to the larger constituency that we all represent those feelings that are deeply held, feelings that have accumulated over years and years of experience, with a commitment to the security of the country that we both hold so dear.

Mr. President, I yield to my colleague from Vermont.

Mr. LEAHY. Mr. President, I will be brief. I think the distinguished Senator from Minnesota has spelled out very carefully and very well the strictures we operate under and the extreme difficulty we face in actually running this committee. I compliment him for his work and the amount of time that he has devoted. He knows more than any of the other 99 Members of this body how much time it takes, how much care it takes, and why so often we must speak in euphemisms if we speak at all. We often refrain from speaking rather than saying anything at all.

I also compliment the distinguished Senator from North Carolina because he worked very hard with the committee in trying to find the way to raise issues of concern to him in a manner which minimizes floor discussion.

The distinguished Senator from North Carolina is certainly not one who normally would shy away from floor debate. But in this case, he has worked very, very hard to minimize discussion on issues about which he feels strongly.

As he knows, and the distinguished Senator from Minnesota and I know, many of these topics are quite sensitive. We do not want to do anything to damage our intelligence or national security in discussing them.

I will note that the full descriptions of the issues and report language to be appended to the Intelligence Committee's report are available to all Senators through the select committee in a classified version under the structures of Senate Resolution 400, 94th Congress.

I would also note for all Senators that the chairman and I are willing and ready at any time to meet with Senators from either side of the aisle if they have specific questions on intelligence matters. If we have the answers we can make them available under the rules of Senate Resolution 400. If not we can use the Senate Intelligence Committee to get those questions answered for individual Senators or for committees—whether it is Foreign Relations, of which the distinguished Senator from North Carolina is a member, or Armed Services or Judiciary. Each of these committees from time to time have need for access to classified material in order to carry out their duties and functions.

Again, I would remind all Senators that we are available to help. We neither serve as advocate or adversary, but merely present the facts as we know them.

I yield to the distinguished Senator from Minnesota.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair for recognizing me.

Let me say to my good friends, Senator DURENBERGER and Senator LEAHY, that I appreciate the spirit of cooperation and I think it is a matter of comfort to people inside and outside the Senate that there is comity in the understanding about the agreement about very important aspects of our intelligence capability in this country.

I know this exercise has been arduous for you. It has been detailed. And also for the staff, in particular, Mr. McMahon, Mr. Finn, Mr. Newsome, and Mr. Holliday. They have spent an enormous number of hours going through this material.

I might add parenthetically, it was not easy to prepare my statement, even, without running the risk of stepping over the classified line of demarcation.

In any case, I compliment the chairman and vice chairman of the committee and I assure them it has been a pleasure to work with them on this.

It is a complicated amendment and it is a very important one.

I thank my friends.

Mr. DURENBERGER. I thank our colleague from North Carolina for his comments. I think in the remarks we have made on the subject, besides expressing the difficulty in dealing with the line of demarcation that the Senator from North Carolina referred to between classification and national secrets and what can be referred to in the open, the other difficulty is always dealing as between this branch and the executive branch. I think the Senator from North Carolina can appreciate to a degree the difficulty, perhaps the last-minute difficulty, presented to some people in the executive branch who have been working very, very closely with this committee over many years, particularly in the last 2 years—by the suggestion from the Senator from North Carolina that a more detailed description of the needs of the oversight process needed to be accommodated.

I reflect in my comments my appreciation to my colleague from North Carolina for being, I think, significantly cognizant of the difficulty that certain members of the executive branch many have had with his amendment.

Mr. HELMS. If the Senator will yield, I thank him for his kind com-

ments. In a very delicate way, it might have given some slight heartburn to certain individuals, which is what I intended. but they can take a little bicarbonate with water and feel better tomorrow morning.

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

The amendment (No. 2896) was agreed to.

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

Mr. DURENBERGER. 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 North Carolina.

AMENDMENT NO. 2897

Mr. HELMS. Mr. President, I have a second amendment at the desk which I momentarily will call up and ask to be stated. I am offering amendment on behalf of myself and Senators PELL, DENTON, HATCH, KERRY, WALLOP, ZORINSKY, HAWKINS, MCCLURE, SYMMS, HECHT, THURMOND, and MATTINGLY.

Mr. President, I send the 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 North Carolina [Mr. HELMS], for himself, Mr. PELL, Mr. DENTON, Mr. HATCH, Mr. KERRY, Mr. WALLOP, Mr. ZORINSKY, Mrs. HAWKINS, Mr. MCCLURE, Mr. SYMMS, Mr. THURMOND, Mr. MATTINGLY, and Mr. HECHT, proposes an amendment numbered 2897.

On page 24 of the bill, after line 4, add the following new section:

"Section 604. The Director of Central Intelligence shall provide a report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives not later than March 1, 1987, whether and to what extent the Defense Forces of the Government of Panama have violated the human rights of the Panamanian people, are involved in international drug trafficking, arms trafficking, or money laundering, or were involved in the death of Dr. Hugo Spadafora."

□ 1530

Mr. HELMS. Mr. President, in the past few months, many Senators have come to me and expressed their deep concern over the current situation in Panama. There were many events in Panama in the last year which sparked this concern, beginning with the brutal murder of former Vice Minister of Health, Dr. Hugo Spadafora, and the forced removal of President Nicolas Ardito Barletta. This concern was heightened with the revelations about Gen. Manuel Antonio Noriega last June in the New York Times and on NBC television. Furthermore, in the subcommittee on Western Hemisphere Affairs, I held three hearings this year on Panama in which both witnesses from the administration and the private sector discussed many of the problems facing Panama today.

The news accounts as may be expected, generated a greater interest in tracking down the veracity of the alleged activities of the Panamanian Defense Forces. Several hearings were held in the House of Representatives, and just last week, Johns Hopkins University held a seminar on Panama and what is going on there. At that seminar, Mr. Norman Bailey, a former NSC staffer charged that U.S. dependence on Panama as an intelligence asset was causing us to mute criticism of Panama's drug trafficking activities, and the Spadafora case.

This cannot be allowed to continue, Mr. President. Other recent allegations regarding Panama have centered on the following issues: The decapitation and murder of Noriega's harshest critic, Dr. Spadafora; the unanswered questions about the plane crash of Gen. Omar Torrijos; the role of the Panamanian Defense Forces in international drug trafficking, arms trafficking and money laundering; the role of the Panama Defense Forces in election fraud; the role of the defense forces in the removal of President Barletta; the existence of gross corruption at the highest levels of the government and the defense forces; the role of General Noriega as an intelligence asset for Cuba and other countries, at the same time he was providing intelligence for the United States; and the role of Panama serving as a refuge for various terrorist organizations.

Mr. President, this amendment pending would require that the Central Intelligence Agency report to the Intelligence Committees of the Senate and the House, within 6 months, whether and to what extent the defense forces of the Government of Panama violated the human rights of the people of Panana; to what extent they are involved in international drug trafficking, arms trafficking, or money laundering; or whether they were involved in the death of Dr. Hugo Spadafora.

It is time that the veneer was ripped off and whatever the facts may be—and I think I know what they are—let them be exposed. That is all this amendment asks. I am asking it because I believe that it is absolutely essential that the U.S. Senate be able to have this information in order to assess United States policy toward Panama with regard to intelligence matters. In the New York Times of June 12, 1986, Seymour Hersh wrote that senior U.S. Government officials stated that General Noriega had been providing intelligence information simultaneously to Cuba and the United States. I believe that we absolutely must ask ourselves whether this situation constitutes a national security threat to the United States if proven true. It is with this in mind that I offer this amendment on behalf of a number of my colleagues and myself as a first step in focusing our long-overdue attention on what really is going on and has been going on in Panama. Let us review a little bit, then I shall conclude.

Mr. President, a little more than 1 year ago, Panama was shocked by the brutal murder of Dr. Hugo Spadafora, at one time the Vice Minister of Health for Panama. More recently he had been leading bands of freedom-fighters in the fight against the Sandinistas in Nicaragua.

In the weeks before he was murdered, Dr. Spadafora had been very vocal in criticism of elements in the Panamanian military whom he said were allied to drug trafficking, principally Gen. Antonio Noriega.

That is pretty dangerous stuff to do and say in a number of countries. Apparently Panama is one of them because on September 13, Doctor Spadadora was taken off a public bus as it entered Panama from Costa Rica by two members of the Panama defense forces, and was never seen again alive. The next morning his decapitated body was found across the border in Costa Rica, and that mutilated body showed clear signs of torture before this man was murdered.

Dr. Barletta, the President of Panama—incidentally, he is a graduate of North Carolina State University, I might say to my friends who are managing this bill—Nicky Barletta was moved by the public outcry to call for the appointment of a commission to invesigate the death. And what do you reckon happened, Mr. President, when Barletta called for a public investigation? This was the President, President Barletta, known personally by many of us in this Chamber.

Before the commission could even be appointed, he went to New York for the meeting of the UN General Assembly. He returned to Panama on September 26, and was ousted under pressure from the military elements suspected of the murder.

That was the President of Panama, and he was ousted after he had said, "I want a public investigation and I am going to appoint a commission." That is the kind of thing, Mr. President, that this Senator believes should be investigated, and I believe the U.S. Senate is well within its rights to make such a requirement of our intelligence capability.

Let me make it clear, Mr. President, that I am not a partisan of Dr. Barletta. I know him and I like him personally. I am not a partisan of the late Dr. Spadafora or General Noriega. And I have grave doubts, as a matter of fact, that Dr. Barletta's election was a free and fair election. I would

hardly be considered an advocate of Dr. Spadafora's Social Democrat politics; not do I hold any brief for General Noriega, whose longstanding ties with Cuba are well-known.

Nevertheless, the Panamanian Government is widely perceived as dependent on United States aid. We appear to be responsible for the activities of the Panamanian military, as though we somehow approved the murder of Dr. Spadafora.

That is why the U.S. Senate deserves to know the truth about what is happening in Panama, and why we need to call upon the CIA to direct its assets toward a study of Panamanian Government involvement in drug trafficking, arms trafficking and political assassination.

Mr. President, the historic partnership with Panama has always been very important to the people of the United States. The friendly contribution of the American people to Panama's development, through the construction and operation of the Panama Canal, still remains unmatched in any other country in the world. At times, no doubt, the sheer size of the United States has tended to overwhelm Panama, and Panamanians have sometimes chaffed at the relationship, perhaps feeling they have too much of a good thing. Nevertheless, for better or for worse, the United States and Panama are closely associated by treaty until the end of this century; and I know of no American who is not eager for that close association and friendship to continue for the next century.

And in Panama itself, we recognize a basic reserve of good will and deep friendship. Many Panamanian families have intermarried with ours, have sent their sons and daughters to the United States for education, have joined in business ventures with Americans for decades in the canal operations. Members of the Panamanian Defense Forces have trained with our military personnel, have gone to our military schools, have served on multilateral institutions such as the Inter-American Defense Board, and worked to coordinate the defense of the canal.

The positive interests of the United States and of Panama are inextricably intertwined to the benefit of both countries. We want to do everything to see that those benefits continue for everyone.

Yet the news from Panama continues to be very disquieting. When the commitment to turn the Panama Canal over to Panama was made in the 1976 treaties, there were many of us in this country who felt that Panama, physically, was too small a country to bear the burden of responsibility for a strategic waterway coveted by the major military and economic powers of the world. We lost that argument. But there was an implicit agreement in the treaties that the United States would work to encourage stability and development to Panama during the transition period so that Panama would be as strong as possible in the year 2000.

So far Panama has not achieved either political stability or economic development. Despite the many additional millions of dollars which the treaties have brought to Panama, the republic faces an economic crisis. Unemployment has reached catastrophic proportions. And its political structure has almost ceased to operate effectively. In the last 4 years, Panama has had five Presidents, three of whom were removed by pressure from elements in the military. The brutal murder of Dr. Hugo Spadafora has not been solved. Panama's free press, with traditions stretching back to the founding of the republic, feels increasing pressure and intimidation.

These international events are destablizing Panamanian society. Panama's future internal security depends upon opening up economic opportunity to all levels of the Panamanian social structure. The promise of free enterprise will be an illusion unless the campesino, the worker, the tradesman, and the small businessman have the chance to participate in economic life. No economy can flourish when motivation is destroyed by Government regulations, delays in granting permits, redistribution schemes, corruption, and special privileges for cronies and relatives of the rich and powerful.

Moreover, powerful outside forces threaten Panama's freedom, independence, and democracy. The longstanding relationship of some elements in the military with the totalitarian Communist government of Cuba is a cause for concern. The special privileges granted to the supranational banking institutions, which respect the national interest of no nation, have distorted the Panamanian economy and Panama's relationship with other nations. Finally, the growing concentration of the North American drug traffic in Panama's transportation facilities threatens to create forces more powerful than any legitimate power in Panama.

The brutality of the murder of Dr. Spadafora, an insistent critic of powerful elements in Panama, is without precedent. It has served as a catalyst to action for many, inside of Panama and without, who believe that it marks the end of Panama's independence and signifies the hidden takeover of the country by illegitimate and antidemocratic forces. That is why my amendment calls for a thorough CIA report to the Intelligence Committee.

Mr. President, I ask unanimous consent that the following articles be placed into the CONGRESSIONAL RECORD: June 12, 1986, New York Times, "Panama Strongman Said To Trade in Drugs, Arms and Illicit Money," be Seymour Hersh; June 13, 1986, New York Times, "U.S. Aides in '72 Weighed Killing Officer Who Now Leads Panama," by Seymour Hersh; June 16, 1986, New York Times, "U.S. Envoy Outlining Policy for Panama," by James LeMoyne; and September 20, 1986, the Washington Post, "Panamanians Spying on, for U.S.," by Associated Press.

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

[From the New York Times, June 12, 1986]

PANAMA STRONGMAN SAID TO TRADE IN DRUGS, ARMS, AND ILLICIT MONEY

(By Seymour M. Hersh)

WASHINGTON, June 11.—The army commander of Panama, a country vital to United States interests in Latin America, is extensively involved in illicit money laundering and drug activities and has provided a Latin American guerrilla group with arms, according to evidence collected by American intelligence agencies.

Senior State Department, White House, Pentagon and intelligence officials said the evidence also showed that the Commander, Gen Manuel Antonio Noriega, who is in effect the leader of the country, had been tied to the killing of a political opponent. They also said that for the last 15 years, he had been providing intelligence information simultaneously to Cuba and the United States.

In addition, they said, General Noriega is a secret investor in Panamanian export companies that sell restricted American technology to Cuba and Eastern European countries.

ESPIONAGE INVESTIGATION IN 70'S

In the mid-1970's, according to former officials of the National Security Agency, General Noriega was implicated in a secret espionage investigation involving the transfer of highly sensitive agency materials to Havana. These officials said General Noriega purchased the N.S.A. documents from a United States Army sergeant on duty in Panama.

A White House official, discussing General Noriega's role in what he depicted as the "Panamanian connection," said curtailing the general's activities would play an enormous role in stopping the international trafficking of drugs by organized crime.

The head of the Panamanian military, called the Panama Defense Force, is widely viewed as the politically dominant force in the country.

General Noriega is on a visit to the United States this week and presented a Panamanian medal of honor today at a private ceremony at the Inter-American Defense Board. Requests to interview the general in Washington received no response.

In Panama last weekend, General Noriega could not be interviewed to discuss the Americans' assertions despite three days of telephone calls to the army press office and attempts to reach him through other senior army officers.

SPOKESMAN DENIES ASSERTIONS

The general, said Capt. Eduardo E. Lim Yueng, the second in command of the Panama Defense Force press office, was busy with other important business. Two days of telephone calls, including several

written messages left with secretaries, brought no reply from the presidential press office.

Captain Lim Yueng, however, denied the assertions as a spokesman for the "institution of the armed forces and for General Noriega." He said General Noriega and the military were the victims of a campaign of slander that had no basis in fact.

"These are political attacks," he said. "General Noriega would answer the same way. This campaign is trying to damage our institution."

A White House official said the intelligence information about General Noriega's activities had been made available to senior officials of the White House. But this official and others said they did not know whether President Reagan was aware of the reports.

A senior Reagan Administration official would not discuss the assertions against General Noriega, who was previously head of military intelligence and became army commander when Brig. Gen. Omar Torrijos Herrera was killed in a helicopter crash in 1981. The Administration official expressed concern that the intelligence information would damage relations with Panama if it was seen as reflecting the views of the White House.

Officials in the Reagan Administration and past Administrations said in interviews that they had overlooked General Noriega's illegal activities because of his cooperation with American intelligence and his willingness to permit the American military extensive leeway to operate in Panama.

They said, for example, that General Noriega had been a valuable asset to Washington in countering insurgencies in Central America and was now cooperating with the Central Intelligence Agency in providing sensitive information from Nicaragua.

But many Reagan Administration officials made clear in interviews that the extent of General Noriega's activities was seen as a potential national security threat because of the strategic importance of Panama and the Panama Canal. Under treaties negotiated with General Torrijos in the 1970's, the United States has agreed to turn the canal over to Panama in the year 2000.

"It's precisely because we have long-term strategic interests in Panama, with the canal, that it's important to have reliable people we can deal with," a senior American diplomat said. In addition, Panama has become increasingly important for the United States and its monitoring of insurgencies in Central America.

GENERAL'S ACTIVITIES: 'LEGAL AND ILLEGAL'

A recent classified report by the Defense Intelligence Agency concludes that General Noriega, operating through a small band of top associates in the military, maintains tight control of drug and money-laundering activities by his associates in the Panama Defense Force, according to one American official. The study said the general was "deeply involved in legal and illegal business."

"Nothing moves in Panama without the instructions', order and consent of Noriega," the official said.

According to the State Department, White House, Pentagon and intelligence sources, there has been longstanding evidence among intelligence officials of General Noriega's activities, including his relations with the Cuban Government and his willingness to sell arms to the M-19 rebel group in Colombia.

The goal of M-19, which is pro-Cuban, is to overthrow the democratically elected Government. Over the years, the guerrilla group has been responsible for violent attacks that have led to hundreds of deaths.

Of the assertion on the M-19 guerrillas, Captain Lim Yueng, the Panamanian Army spokesman, said: "We have no information on M-19. We do all we can to avoid Panama being used as a trampoline for terrorism."

The Captain also denied any Cuban intelligence efforts in Panama or that General Noriega was involved in any shady activities with Cuba. He also denied any export of embargoed goods to Cuba. "Cuba has an embassy here and normal relations with us like many countries," the captain said.

He added, "We've captured drugs here, and are doing our best to collaborate with the United States to fight narcotraffic in Panama."

'A CRITICAL MISJUDGMENT' IN KILLING OF A CRITIC

What has come to be seen within the United States Government as the Noriega problem was heightened by recent intelligence directly tying the general and the top leadership of the Panama Defense Force to the slaying last September of Dr. Hugo Spadafora, one of the army's leading critics.

In his statement, Captain Lim Yueng said: "There is absolutely nothing in this case involving the army. Spadafora had many enemies. The institution of the armed forces absolutely denies any ties to the death of Spadafora. We criticize this crime."

A classified Defense Intelligence Agency report on General Noriega described his involvement in the killing as "a critical misjudgment" on his part. The D.I.A. is also known to have intelligence demonstrating that General Noriega ordered the killing, according to an official with first-hand information.

Dr. Spadafora's decapitated body was found stuffed in a United States mailbag in Costa Rica just across the Panamanian-Costa Rican border. The killing occurred a few weeks before General Noriega ousted the civilian President, Nicolás Ardito Barletta, who was about to name an investigating commission.

Mr. Barletta was replaced by Eric Arturo Delvalle, who is viewed by American officials as another nominal leader, with the army commander actually in control of the country.

Some senior White House officials have privately been concerned about General Noriega's activities. Late last year Vice Adm. John M. Poindexter, then the newly appointed national security adviser, visited the general and privately told him to "cut it out"—alluding to the drug and money laundering activities and his close relations with Cuba, according to a Government official.

Admiral Poindexter was later quoted as having raised questions about an alternative to the Panamanian general.

The issue is a chronic one for American policy makers: how far to over look corruption and a lack of democratic principles in allies in order to protect secret intelligence installations.

Senior civilian officials in the Pentagon, headed by Nestor D. Sanchez, a former C.I.A. and White House aide for Latin American issues who is a deputy Assistant Secretary of Defense for Inter-American Affairs, are known to be concerned that any successor to General Noriega might not be willing to tolerate the American military activites that now exist in Panama.

IN PANAMA, A WEB OF U.S. INTELLIGENCE

Since the early 1980's the National Security Agency, operating through its military components in the Army, the Navy and the Air Force, has vastly increased its intelligence-gathering activities in Panama. It is now capable of monitoring all of Central America and most of South America from its Panamanian installations.

The Central Intelligence Agency has also used military bases in Panama, especially Howard Air Base near Panama City, as a jumping-off point for intelligence gathering and for agents sent to Nicaragua, according to intelligence officials.

In interviews, Reagan Administration officials emphasized the nature of the evidence tying General Noriega and the top leadership of the Panama defense Force to money-laundering and drug trafficking activities.

One official who said he had extensively reviewed the most sensitive intelligence available to the American Government on General Noriega, including reports from agents and intercepts, described most of the specifics as "having to do with gun and drug running."

He said General Noriega's name appeared "over and over" in connection with specific dates, places and contacts in money-laundering and drug activities.

Much of the information, the sources acknowledged, has been gleaned from National Security Agency intercepts, among the most highly classified information in the Government.

In interviews, intelligence officials repeatedly described General Noriega as brilliant in masking much of his direct involvement, preferring to operate through cutouts or as a secret partner in Panamanian trading companies and banks.

An American official with long experience in Pananamian affairs noted that the general seemed to have become more circumspect in his pattern of activity in the early 1980's, moderating overt support for M-19 and direct financial involvement in drug activities.

Instead, the official said, the general has invested more heavily in legitimate business ventures and become more involved in what were described as safer and more lucrative activities—money laundering, much of it, according to American law enforcement agencies, known to be drug-related. In addition, the official said, he has also become involved in the shipping of high-technology American goods, much of them on restricted lists, from duty-free zones in Panama to Cuba and countries in Eastern Europe.

COLOMBIAN REBELS AND THE PANAMANIANS

According to American intelligence officials there is evidence tying General Noriega to longstanding arms dealing to M-19, the Colombian rebel group.

Such shipments dwindled in the last few years, officials said, apparently in response to pressure from the Reagan Administration, but have begun to flow again. General Noriega's M-19 trafficking "continues today," said an official with access to the most current intelligence.

The most specific details of General Noriega's involvement with M-19 were provided by C.I.A. officials. In one instance, carefully monitored by the agency, General Noriega and members of the Panama Defense Force were found to have armed a small M-19 band—estimates range from 60 to more than 100—before an unsuccessful attack on Colombia's west coast in early 1982.

Members of the M-19 group, which had been trained in Cuba, were tracked by American intelligence as they left Havana and flew to Panama, according to intelligence officials. They said the rebels were then armed by members of the Panama Defense Force and shipped by a boat, which had passed through the canal, from Panama Bay to two locations off the coast of Colombia.

The guerrilla bands were eventually found and attacked by Colombian officials, with heavy loss of life, according to intelligence officials. Diaries were seized in which the recruits told of their training in Havana and their stay in Panama, including an overnight stay in a safehouse that was said to have been provided by members of the Panama Defense Force.

Other American intelligence officials told of viewing reconnaissance film, believed to have been taken by a high-flying U-2, depicting M-19 aircraft off-loading drugs at a Panamanian Air Defense Force airstrip. Arms were said to have been loaded into the craft for its return to Colombia.

Through his legal and illegal activities, American officials said, General Noriega has amassed an enormous personal fortune, much of which is believed to be deposited in European banks. He is reported to own at least two homes in Panama City and one in southern France. As army commander, officials said, General Noriega earns a salary of $1,200 a month.

General Noriega is also reported to have a substantial interest in a bank in the Colón, Panama, Free Zone, which American officials said is heavily involved in laundering money for the M-19 as well as for narcotics dealers.

LAUNDERING MONEY AND SHIPPING DRUGS

According to a 1985 assessment of "U.S. Narcotics Control Programs Overseas," published by the House Foreign Affairs Committee, Panama is regarded by American law enforcement officials as a "drug and chemical transshipment point and money-laundering center for drug money."

Panama's banking laws are among the most stringent in the world, permitting secret accounts by individuals and corporations that are virtually free from scrutiny by American law enforcement officials. Additionally, Panama's corporation laws allow companies to be organized with no public disclosure of principals. As a result, Panama has become a world leader in the depositing of illegal profits from drug dealing and other activities.

Cash on deposit at a Panamanian bank can simply be sent by wire to banks in the United States or elsewhere, part of the process known as money laundering, in which the ultimate source of the money is disguised through a series of transactions.

A White House official said the most significant drug-running in Panama was being directed by General Noriega.

"Doing away with the Panamanian connection—in the sense that General Noriega condoned and protects such activity—would put one hell of a dent in the movement of drugs in organized crime," the White House official said. "That's the bottom line."

In the recent interviews, Administration officials depicted General Noriega's current drug function as that of a "facilitator." The officials cited intelligence reports showing that he is a secret investor in companies controlled by a Panamanian businessman and is financially involved in a series of trading companies.

A former White House aide depicted General Noriega's role as being to "facilitate the shipments and pay the payoffs."

The former aide added: "Noriega doesn't carry the stuff around. They pay him a percentage for protection of the traffic."

General Noriega's involvement in money laundering was similarly described by American intelligence and diplomatic officials as a behind-the-scenes role, with private export companies acting as his agent.

Officials said the United States had intelligence showing that in the early 1980's General Noriega held a major financial interest in an opium-processing plant that was discovered, according to a House Foreign Affairs Committee investigation in 1985, in operation along the Panamanian-Colombian border.

The Congressional report noted that the laboratory was apparently financed by Colombians along with a senior member of the Panama Defense Force whom it identified as a Colonel Melo.

The colonel and others were arrested by the Panama Defense Force, the report noted, but "none was prosecuted due to 'lack of evidence.'" Administration officials said that despite the officer's arrest and dismissal from the military by General Noriega, he was still living openly in Panama City.

Customs officials have filed many criminal indictments in which the role of members of the Panama Defense Force was prominent. In one case, involving a private Panamanian freight carrier, Inair Cargo Airlines, a Federal grand jury returned an indictment charging conspiracy to move "multimillion-dollar shipments" of cash to Panama.

According to American officials, there is evidence tying General Noriega and members of the Defense Force to a financial involvement in a small airline charter company that, operating out of the main airport in Panama City, flies weekly money-laundering missions in and out of the United States. The aircraft is met in Panama by an armored truck.

NORIEGA REPORTED LINKED TO A KILLING

According to American officials, the Defense Intelligence Agency has uncovered evidence linking General Noriega to the slaying of Dr. Spadafora.

General Noriega has repeated military denials of involvement in the killing.

One White House official who has access to the Government's intelligence reports said "there is no doubt" that General Noriega was directly implicated in Dr. Spadafora's death.

Another official said the intelligence "takes it up to him"—General Noriega—"as the originator of the idea and the planning of it." There is no evidence, the official added, that General Noriega was directly involved in the actual torture and slaying of Dr. Spadafora, who was beheaded.

General Noriega is known, according to highly sensitive American intelligence information, to have told "several aides in prior days that 'I want that guy's head,'" the official said. American intelligence officials in Panama are known to have reviewed the Panamanian medical reports on the slaying and confirmed, the official added, that Dr. Spadafora was tortured four to six hours while alive.

Another American official, who was in Central America at the time of the slaying, similarly declared that the United States "knows"—he emphasized that word—"that the Panamanian Defense Force did him in; these are people who were working under Noriega."

This official also said, however, that "who gave the order and why it was done in the way it was, we don't know." The possibility cannot be ruled out, he added, that some of General Noriega's associates may have killed him without an express order in hopes of currying favor with their leader.

A SUPPLIER OF DATA TO CUBA AND U.S.

General Noriega's ties to Cuba have touched off a longstanding debate among intelligence agencies.

The C.I.A. has viewed General Noriega as an invaluable asset since the 1970's because of his willingness to provide intelligence on the Cubans. He later became a valuable source of inside information on the Sandinista revolution in Nicaragua and, informed officials said, has used the Panamanian Embassy in Managua to collect intelligence for the United States.

At the time, it was also known that General Noriega was supplying intelligence on the United States and its activities in Panama and elsewhere to the Cubans.

"The station chiefs loved him," a former American Ambassador to Panama recalled, referring to intelligence agents. "As far as they were concerned, the stuff that they were getting was more interesting than what the Cubans were getting from Noriega on us."

Another American official told of a briefing in Washington at which he was assured that General Noriega was "our man." After the American was posted to Panama City, one of the first National Security Agency intercepts that crossed his desk said that the D.S.G.I., the Cuban intelligence agency, had assured its operatives in Panama that General Noriega was "their man."

One former senior C.I.A. official who served in Panama when General Noriega was chief of intelligence under General Torrijos defended his agency's reliance on General Noriega.

"To me, he was under continuous attack by people who kept saying, 'Look at this with Havana.' But he was G-2," or intelligence. It was General Noriega's job, the C.I.A. official explained, to stay in close contact with Havana.

"As to who had the upper hand—and this was debated for years—the United States or Cuba, I frankly think it was the United States that came out ahead" because of General Noriega's reporting, he said.

A BREACH OF SECURITY: 'SINGING SERGEANTS'

The most disturbing breach of security in General Noriega's relationship with Cuba involved his recruitment of an American Army intelligence sergeant in the mid-1970's. The incident briefly came into public view in the fall of 1977, in a critical period in the Carter Administration's negotiations with Panama on the future of the canal.

Among other details, the sergeant informed General Noriega of the clandestine monitoring of senior Panamanian officials, according to intelligence officials. There were later allegations from American critics of the Panama Canal treaties that the United States had eavesdropped on Panamanian negotiations, had been caught in the process and was being threatened with exposure unless last-minute concessions were made. The Senate Intelligence Committee, after investigating the incident, concluded that there was no evidence that the Panamanians had made any blackmail threats.

The incident became known inside the Carter Administration as the case of the "singing sergeants," and the breach of security was widely considered to be limited to interceptions of personal conversations, some of them highly embarrassing, by General Torrijos.

Retired N.S.A. officials, in recent interviews, depicted the breach as far more troublesome and one that directly involved General Noriega. In the officials' account, the sergeant began dealing with General Noriega. Transcripts of intercepts of General Torrijos were turned over, in return for cash payments, as well as highly sensitive technical materials, including manuals that described how various N.S.A. systems worked. "Quite detailed N.S.A. documents were given to Noriega" and ended up in Cuba, a former N.S.A. official recalled.

General Noriega enraged some American officers in the late 1970's, according to an intelligence report, when he purchased 10 new American-made automobiles while on a visit to Washington and then, upon his return, turned over the vehicles to the Cuban diplomatic delegation in Panama City.

Many American officials, despite their hostility to General Noriega's involvement in these activities, expressed admiration for his ability to keep his various constituencies—such as the United States and Cuba—at bay. One key to his success, some officials said, was his lack of ideology.

[From the New York Times, June 13, 1986]

U.S. AIDES IN 1972 WEIGHED KILLING OFFICER WHO NOW LEADS PANAMA

(By Seymour M. Hersh)

WASHINGTON, June 12—Law enforcement officials in the Nixon Administration once proposed the assassination of Gen. Manuel Antonio Noriega, who was then chief of intelligence in the Panama Defense Force, as a partial solution to that nation's heavy drug trafficking, according to a Senate Intelligence Committee report.

The recommendation was one of a series of options proposed in 1972 for dealing with the officer, who was then a lieutenant colonel. The options were presented to John E. Ingersoll, then the Director of the Bureau of Narcotics and Dangerous Drugs. Mr. Ingersoll, the Senate report said, rejected the option, which proposed the "total and complete immobilization" of General Noriega. A separate Department of Justice investigation also found no evidence that any direct action against General Noriega had been put in motion.

General Noriega is now the army commander of Panama and is widely viewed as the politically dominant force in the country. In an article in The New York Times today, American intelligence agencies were reported to have evidence that General Noriega is extensively involved in illicit money laundering and drug activities and provided a Latin American guerrilla group with arms.

In a telephone interview about the Nixon-era events, Mr. Ingersoll confirmed that he had rejected a staff proposal to kill the Panamanian. He recalled that his agency had accumulated "hard information" that General Noriega was trafficking in drugs and had been frustrated in its attempts to persuade Brig. Gen. Omar Torrijos Herrera, who was then the military strongman of Panama, to take sanctions.

Mr. Ingersoll, who is now a security consultant, recalled that at the same time the Bureau of Narcotics and Dangerous Drugs was under heavy pressure for more aggressive action in international narcotics control from senior officials in the Nixon White House, including John E. Ehrlichman, then the counsel for domestic affairs.

A SET OF OPTIONS

Mr. Ehrlichman, reached at his home in Santa Fe, NM, acknowledged today that during the Nixon years there was White House pressure on Mr. Ingersoll "to get more results," but he said it was nothing more than that—general pressure. Mr. Ingersoll's most pressing concern, Mr. Ehrlichman said, was Turkey as a source of drugs.

The pressure from the White House and the hard intelligence about the extent of General Noriega's involvement in drug trafficking led Mr. Ingersoll's staff to prepare a set of options to deal with the Panamanian, Mr. Ingersoll said.

The Senate Intelligence Committee, in a 1978 report, said five options against General Noriega, who was described as a "Guardia Nacional official" rather than by name, were "considered" by the Bureau of Narcotics and Dangerous Drugs in the first months of 1972.

The report listed these options:

Linking the official to a fictitious plot against General Torrijos.

Leaking information on drug trafficking to the press.

Linking his removal to negotiations over the future status of the Panama Canal.

Secretly encouraging powerful groups in Panama to raise the issue.

"Total and complete immobilization."

Senate committee investigators confirmed that the officer referred to was General Noriega, and that the option calling for "immobilization" was a euphemism for assassination.

PERIOD OF TENSIONS

One investigator described the evidence obtained by the Bureau of Narcotics and Dangerous Drugs in early 1972 as extensive, and said it showed that the Panamanian intelligence officer "was more powerful than anybody wanted to admit at the time."

The Senate report said the options paper was composed at a period of tension in United States-Panamanian relations that stemmed from the drug agency's efforts inside Panama. Agency officials had arrested a Panamanian official inside the Canal Zone, which was then under American jurisdiction, creating a serious diplomatic incident.

According to the Senate report, the State Department and Panama's intelligence service, which Mr. Noriega ran, then insisted that investigators from the Bureau of Narcotics and Dangerous Drugs not enter Panama without coordinating their activities with the United States Ambassador.

Recalling the atmosphere, Mr. Ingersoll said today that there was "no question" that the extensive, and seemingly protected, activities of Colonel Noriega posed "a problem."

APPROACH TO TORRIJOS

"The only way to deal with him was to go to his leader," Mr. Ingersoll said, adding that he and top aides in his agency responded to the options paper by taking what he called "hard information" about Mr. Noriega's drug dealings to General Torrijos at a meeting in Panama City.

The confrontation also had been urged by the White House, Mr. Ingersoll said. "They would never have instructed me to go visit the head of an allied country without hard information," he added.

General Torrijos responded to the evidence, Mr. Ingersoll said, by "suggesting that something might be done." But no steps were taken against Colonel Noriega, and Mr. Ingersoll said he concluded at the time that "Torrijos was worried about him even then" and that "Noriega was a very dangerous man."

The 1972 options paper emerged during the Senate Intelligence Committee's extensive investigation in the late 1970's into American intelligence activities inside Panama. At issue was whether there were any high-risk American activities that, if disclosed, would endanger or taint the negotiations then being conducted over the Panama Canal treaty.

4 INSTANCES OF PLOTTING REPORTED

The Committee report also noted that the Department of Justice had investigated the drug agency options paper in 1975 and had concluded that "no illegal activity resulted."

A former senior Justice Department official, reached today, acknowledged that three lawyers, all knowledgeable in national security affairs, had been assigned in the post-Watergate period to investigate four known instances of formal and informal assassination plotting by federal agencies during the Nixon Administration. The department inquiries, conducted in strict secrecy, found "no evidence" in any of the four cases that any action had resulted from the plotting.

It could not be learned what the other three instances were, or how the four cases become known to officials in the Justice Department.

The former Justice Department official said that once confronted with written evidence of assassination plotting, the unit adopted the approach of working "from the bottom up" and summoning field operatives and low-level officials for questioning.

"There were four instances," that officical recalled, "where there was a whiff that there could have been consideration of assassination." The Bureau of Narcotics and Dangerous Drugs options paper, with its reference to "immobilization," was one of the four, he said.

"In the Noriega case," he added, "we approached it to see whether any steps were ever taken—and none was."

[From the New York Times, June 16, 1986]

U.S. ENVOY OUTLINING POLICY FOR PANAMA

(By James LeMoyne)

PANAMA, June 15—The United States Ambassador here will deliver a formal definition of American policy on Panama to the Government here on Monday, according to an American Embassy spokesman, after charges in Washington that the head of the Panamanian Army is a drug dealer, money launderer and occasional spy for Cuba.

The Ambassador, Arthur H. Davis, was originally schedule to have delivered the message last Friday, but asked for a postponement until Monday.

The formal expression of Administration policy is seen as a key element in the growing political crisis here set off by the charges made by American officials against the Panamanian Army commander, Gen. Manuel Antonio Noriega. The charges were the subject of a New York Times report last Thursday.

In the last two days opposition leaders have called for the resignation of the army high command and a Government investigation of the activities of General Noriega,

who is seen as the true holder of political power here.

AN APPEAL TO THE MILITARY

The opposition Christian Democratic Party went a step further Saturday night, choosing the politically risky course of calling on "responsible officers and troops" to seek new military leaders.

The increasingly open confrontation with the de facto military Government forms part of a prolonged political struggle in Panama, where the military has imposed or deposed five presidents in recent years and is suspected of having killed a leading opposition figure, Dr. Hugo Spadafora, last September.

"We are in a period of remilitarization of our society," Ricardo Arias Calderón, head of the Christian Democratic Party, said in an interview today. "The structure of military power is more and more naked."

Mr. Arias noted that in recent months there had been unexplained attacks on his party's headquarters and on a leading Christian Democratic legislator. In addition, the Government has shut down an opposition radio station and censored a leading opposition radio commentator.

ELECTION FRAUD SUSPECTED

The army, known as the Panama Defense Force, seized power in 1968 but permitted a limited return to civilian rule in the last few years. However, the army is widely believed to have stolen the last election in 1984, imposing its candidate, Nicolás Ardito Barletta, who was then summarily dismissed when he backed an inquiry into the killing of Dr. Spadafora. Dr. Spadafora's decapitated body was found stuffed in a United States mailbag in Costa Rica just across the border with Panama.

In the months since then the army and its political allies have continued to control the Government and have angrily denied the charges made by American officials against General Noriega in the last few days.

The general himself has characterized the accusations as part of a campaign to keep Panama from taking control of the Panama Canal in the year 2000. There are rumors that he is organizing a demonstration in support of the Government later this week.

The charges made in Washington have raised major questions about United States policy toward Panama because they appear to have been purposely disclosed by several American officials who conceded they had known of General Noriega's reported criminal activities for years but tolerated them because he was useful to the United States.

ATTEMPT AT OUSTER SEEN

The accusations have led to speculation here that the Reagan Administration is now seeking General Noriega's ouster because he is no longer so useful to the United States.

Both American and Panamanian political analysts say Pentagon and Central Intelligence officials have long relied on General Noriega for intelligence information and as a guarantor of the main United States military base and intelligence-gathering center in Latin America, situated along the Panama Canal.

But American officials, speaking in interviews before the latest charges against General Noriega were made public, blamed him for failing to bring the political liberalization that the Administration sees as necessary for the long-term stability of Panama and, by extension, the security of the Panama Canal.

Even General Noriega's chief critics say they remain cynical about American policy concerns in Panama.

Several Panamanian politicians bitterly recalled that despite knowing that the last presidential election was a fraud, the Administration sent Secretary of State George P. Shultz to the inauguration of Mr. Barletta. At the height of anti-Government protests in March, they said, the United States held joint military maneuvers with the Panamanian Army.

U.S. EMBASSY WON'T COMMENT

"The United States chief interest here is the security of the Panama Canal," Mr. Arias said. "In all these years they have known exactly what Noriega was doing. But now they are against him because they feel he is a source of instability rather than stability."

A spokesman for the United States Embassy refused to comment on American policy here.

At present the political opposition appears too divided and too weak to force major changes. Opposition leaders say that instead they hope a barracks coup will lead to General Noriega's removal.

So far General Noriega has treated his critics with considerable restraint. The opposition La Prensa newspaper has been allowed to print regular front page stories on the general's alleged criminal activities and has repeatedly demanded his resignation.

Pro-Government newspapers have replied, with no apparent sense of irony, by accusing opposition politicians and journalists of being the main drug dealers in Panama, where strict bank secrecy laws are widely believed to have attracted billions of illicit dollars.

[From the Washington Post, Sept. 20, 1986]

PANAMANIANS SPYING ON, FOR UNITED STATES

The United States receives valuable intelligence information about Cuba and Nicaragua from Panamanian "double agents" who, in turn, inform those two countries about U.S. activities, a former administration official said yesterday.

Norman Bailey, formerly of the National Security Council staff, said he gives high marks to the Panamanian agents because the United States, on the one hand, and Cuba and Nicaragua, on the other, both believe they are "getting more than they are giving."

Bailey said Panama's role as an intelligence asset is a principal reason the United States has muted its public criticism of that country's alleged drug-trafficking activities and continued military domination of the government.

He said, however, that the president's national security affairs adviser, John M. Poindexter, during a private meeting last December, "read the riot act" to the head of Panama's Defense Forces, Gen. Manuel Noriega, about his alleged drug smuggling.

Based on the findings of "all U.S. agencies and departments," Bailey said Panama is "major center of drug trafficking."

Bailey was a panelist for a daylong seminar at the Johns Hopkins School for Advanced International Studies. Panelists included U.S. and Panamanian government officials and nongovernment experts from both countries.

Panama is headed by President Eric Arturo del Valle, who took office last year after Nicolas Ardito Barletta was forced out by the Defense Forces.

□ 1540

Mr. HELMS. 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. HELMS. I thank the Chair.

I yield the floor.

Mr. DURENBERGER. Mr. President, I will be brief. I oppose this amendment of the Senator from North Carolina. As the Chair already knows, we have discussed a variety of his amendments with him and accommodated in the areas we felt we could accommodate. But in this particular area, I will oppose the amendment of the Senator from North Carolina. It would require the Director of Central Intelligence to report to the Intelligence Committees on whether and to what extent the security forces of Panama violate human rights or engage in international drug trafficing and certain other undesirable activities. It sounds like American motherhood, how to get the "Good Housekeeping Seal of Approval," and has gotten a lot of cosponsors.

Mr. President, I would have to note also though for my colleagues that similar reports are required of the President of the United States. Particularly is this true on the issue of human rights compliance. In fact, we consistently require of the President of the United States reports on the human rights compliance of countries that receive security assistance from the United States. This amendment would require an additional, presumbly classified, report by the Director of Central Intelligence to the Intelligence Committees on these subjects, but in fact intelligence information should already be fully considered in the reports periodically filed by the President on human rights and on narcotics matters.

Mr. President, I have not asked the other members of the Intelligence Committee their views on this amendment so I speak only for myself in this regard. I believe that the Senator's requirement would duplicate existing reporting. It is unnecessary. I would add this is also the view of the country's intelligence community. Mr. President, I think their concern as well as my own for the amendment by the Senator from North Carolina is that by making intelligence the focus of the inquiry, we run the risk of putting in jeopardy intelligence sources and methods.

On an ongoing basis, inside the committee, apart from explicit statutory authorizations, both the Senate and the House committees do regularly review human rights violations and make a variety of other inquiries as appropriate.

To put that requirement, as the Senator suggests that we do, in the authorization bill not only duplicates the requirements that are already laid on the President of the United States, who can do it in a much larger context, but also narrows it to intelligence sources and methods.

I fear particularly in the Panama situation—and I want to say I would love to read the report when it comes from the President as much as my colleague from North Carolina, because I share his concerns for what is going on in that country. But if it is to be as he proposes, an intelligence report, reported to the Intelligence Committees, I think, Mr. President, we run too great a risk of compromising intelligence sources and methods particularly in a country like Panama. So for that reason I will oppose the Senator's amendment.

Mr. LEAHY. Mr. President, on its merits, I have no objection to the amendment or issues raised by the distinguished Senator from North Carolina. He raises questions which are realistic questions, valid ones for those of us who must make decisions on matters involving not only that part of the world but others.

Many of the questions he raises are questions which occur to the Senator from Vermont also. My concern about the amendment is only that a report by the Director of Central Intelligence on such a sensitive topic should not be the subject of debate in open session on the Senate floor. Legitimate questions, yes, but I would prefer requesting answers to such questions through the aegis of the select committee, not through the aegis of an amendment.

I mentioned this earlier this afternoon. I hope Senators will understand the reasoning for the longstanding practice of not going into debate or amending of the intelligence bill on the floor of the Senate. It is not that we somehow see ourselves as a sacred group which handles this in closed session, unwilling to be subject to any questions. Not by any means. The committee is prepared to entertain behind closed doors, in a secured hearing room the questions of any Member of this body relating to intelligence activities. In fact, we are ready to serve the Senate.

The Senator from North Carolina has been very careful here this afternoon in couching his questions in a very precise way, and I appreciate that.

Even as I speak, I am attempting to distinguish between matters that have been discussed openly, and those matters discussed in a classified fashion. As a result, if the Senator from North Carolina and my fellow colleagues feel that I am speaking in broad generalities, indeed I am. The reason for that, the reason for such broad generalities for myself or the Senator from Minnesota is the practice of avoiding discussion of intelligence matters on the floor of the U.S. Senate or anywhere else.

So I must say that I concur fully with the remarks of the Senator from Minnesota. I think the report required by the amendment of the Senator from North Carolina would be duplicative of other executive branch reports. I think if there is other sensitive intelligence input available, we could make it available through the select committee.

I am very concerned about Panama, as are all Members of the Senate. I do not doubt the concern felt by the Senator from North Carolina. But I hope the distinguished Senator from North Carolina will realize that when as a member of this committee I join with the distinguished chairman in opposing his amendment, I am not suggesting that he is not asking valid questions. Rather, I see my role as vice chairman of this committee as one which requires that I oppose such amendments on their form, rather than their substance. As a result, while I would also be most interested in reading the answers to the particular questions, I must in my role as vice chairman oppose the amendment.

□ 1550

Mr. HELMS. Mr. President, I must preface what I am about to say with a reiteration of what I said earlier about my respect and admiration and friendship for the distinguished chairman and vice chairman.

I don't want any misunderstanding on that point, but let me say that I believe they have offered convoluted logic as to why they feel obliged to oppose my amendment; and in doing so, they have validated the very reason for the amendment.

The truth of the matter is that this amendment does not call for open debate on this floor about whatever information is discovered about Panama or Mr. Noriega or anybody else. But what we are getting now from the intelligence community is zilch—nothing. Either they don't know, or they don't want the Congress to know.

Furthermore, Mr. President, this emphasizes—at least in my mind, and I say this most respectfully—the kind of selective judgment we have in this Chamber about whom we are going to oppose and about whom we are going to make critical comments.

The point is that Dr. Spadafora's head was either cut off or it was not. It was. That much is documented, but the rest we need to know. I cannot tell you how many fine, responsible leaders of Panama in the private sector have come to me and said, "Please, Senator, look into what is going on in our country." What is shocking is that these good, patriotic Panamanians who are asking these questions have been attacked in the Government press down there as disloyal citizens for raising fundamental issues.

The testimony has been given that two members of the defense forces, in uniform, went aboard that bus and took that man, Dr. Spadafora, off, and that was the last time he was seen alive. The next day, his body was found in Costa Rica, his head ripped off.

Are not the Members of the U.S. Senate entitled to know what our intelligence capability finds out about that?

How about the drug trafficking? Are we going to be namby-pamby about drug trafficking, when Panama is up to its armpits in it?

Money laundering: There are so many banks in Panama that they cannot find space for them all—and we know that a good many are handling drug money.

I do not mean that we have an open session on Panama here, before the Lord and everybody else, and go into detail about what we have found, when we find it, and when it is delivered to us by our intelligence capability. But I do say that Members of the U.S. Senate and the House of Representatives are entitled to know what is going on down there, from the views of our intelligence people.

It is all very well and good for somebody else to get the information, but we do not get it. How do we make an intelligent, enlightened decision about Panama—or, for that matter, any other country?

I am simply saying, in this amendment, let us have the facts. I have no notion whatsoever—as the distinguished Senator from Minnesota put it—of "putting at risk" any of our intelligence people. We do not have to do that.

I hope that this amendment, which is supported and cosponsored by a number of Senators on both sides of the aisle, of both political and philosophical persuasions, will be adopted. I hope that this rollcall vote will produce an overwhelming call by the U.S. Senate for the truth about Panama, whatever it is.

Mr. President, it may be true, as has been stated here, that our intelligence services are in constant surveillance of the situation in Panama. Who knows? But what we need, particualrly, is for the CIA to sit down and prepare a specific report for the needs of the Senate. It is one thing to monitor a situation continuously, but it is another thing to sit down and evaluate the available information in response to a particular need and a particular request. If it is necessary that it be classified—fine. But make it available.

What we want is a special focus on Panama, and I do not think we can

expect that without a particular request. We need to give our colleagues an opportunity to go on public record, to demonstrate the intense interest in the Panama problem which has been manifested to me privately by so many people, including Senators—especially Senators.

Let me reiterate one more time, and then I will conclude: I simply want the intelligence community to realize how important this information is to the U.S. Senate.

I yield the floor.

Mr. DURENBERGER. Mr. President, I do not intend to be namby-pamby on drug trafficking or money laundering, either; nor do any other members of the committee. But we are struck here this afternoon, I think, with a sort of classic situation in which each of us, dealing with problems as they occur around the world, would like to have more or as much information as we presume is available to somebody, usually the President or the head of the National Security Council or someone else. In one way or another, we have come to the conclusion in such situations that he—that is, the President—either does not have all the information or, having all that information, he is not acting the way we might act under a given set of circumstances.

I say that to my colleague because I have been through that as a Senator and as a member of this committee.

Were we, in effect, to license through the authorization bill, 535 of us, in one way or another, an attempt to satisfy, in a statutory vehicle, using the intelligence community and the limited resources of 15 Senators and 15 House Members to try to get all the detail that I think we would all like to have on a variety of subjects, we would be charting an impossible course.

Obviously, there is some precedent for the kind of request the Senator is making. There is no precedent I know of on an authorization bill. In the past, this committee has been asked by individual Senators to look at a specific country.

For example, we were asked to look at the possible connection between United States diplomatic and intelligence officials in El Salvador and human rights violations in that country. We responded to that request by a Senator with an investigation and both a classified and an unclassified report.

So it is not as though the committee is not willing, under a certain set of circumstances and on request from a Senator, to undertake an effort that is somewhat similar to the kind that the Senator is suggesting here. My objection is to the specific nature of the request on this authorizing legislation.

Frankly, I fear that the precedent that the adoption of this amendment would create would be nearly disastrous in the oversight process, and it is for that reason and no other that I object.

I yield to the Senator from Maine.

□ 1600

Mr. COHEN. Mr. President, I am going to follow up on what my colleague was saying. It would seem to me that if any Senator, especially the Senator from North Carolina, were to make a request to the chairman of the Intelligence Committee that this is a matter of importance to him, which any other Senator may have a similar request, we felt on the committee indeed Panama certainly has been a focus of a great deal of congressional attention in the past and expect it will be in the future.

As Senator DURENBERGER indicated, we are all concerned about the trafficking in drugs in Panama, Colombia, or any other region of the globe that might have an impact on us and our security.

It would seem to me the Intelligence Committee would in fact respond favorably by conducting or requesting reports to be filed by the intelligence community and then presented to that individual Member who made the request.

I think as one who still has 4 years to go on the Intelligence Committee that I would not want to see such an amendment pass, not because I am opposed to the merits—I support what the Senator is asking for—but as a matter of policy encouraging this sort of amendatory process in the authorization bill thereby setting a precedent for every other Member who might be concerned on El Salvador, on what is going on in Nicaragua, or Pakistan, Afghanistan, et cetera.

I think what we would like to do if possible is to avoid setting a precedent and yet accommodate the Senator from North Carolina by agreeing to look into the very areas that he had requested that we mandate into law.

So if the request were made I am sure it would be met with some favorable consideration.

Mr. HELMS. Mr. President, of course, I know that my friend from Maine and my friend from Minnesota and others on the Intelligence Committee will respond the best they can.

But I say again that I have found in my work as chairman of the Western Hemisphere Subcommittee that the focus on this matter is substantially less than enlightened.

Now, I must be careful at this point that I do not violate classification because I sat in on a classified hearing on Panama and I was not impressed with the quality of the information presented. I will say to my friend that among the classified documents was a letter I had written to the CIA.

This is a matter of focus. I do not know why it would be risky or harmful to focus in on this issue at the particular request of the Senate, and I think we should.

Certainly I am not questioning the good faith of the Senator from Maine. I know him and I know how he operates, and I respect him.

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

Mr. HELMS. I yield.

Mr. COHEN. It is not a matter of not agreeing with the substance of what the Senator would like to see.

Mr. HELMS. I understand.

Mr. COHEN. It is not a question of whether we think it should be classified or unclassified. To the extent it could be unclassified certainly we would like to have a complete discussion before the body. The real question is do we want to start setting a precedent for individual requests being written into law for those areas being deemed critical by individual Senators?

We think that is a bad policy where we could in fact accommodate it on an agreement basis if any Senator would make a request saying this is a serious subject matter, and indeed it is, would you as chairman of the Intelligence Committee ask for a hearing, insist upon members of the intelligence community communitywise to come in with a full and complete report that would then be available for review and discussion by that Senator requesting it or the Senate floor if it were not dealing with classified matter. That would seem to me to be a better policy to be following.

Mr. HELMS. I thank the Senator.

● Mr. KENNEDY. Mr. President, I support this amendment because I am concerned about the serious allegations of human rights abuses by General Noriega in Panama. These allegations are not frivolous. It is not only the charge that the Presidential elections were rigged. It is not only the accusation that General Noriega was personally responsible for the murder and mutilation of Hugo Spadoforo. It is not only the allegations of drug smuggling and gunrunning.

It is also the fact that critics of General Noriega are routinely rounded up and put in jail, that opposition leaders in Panama are harassed, threatened and intimidated, and that editors, labor leaders, academic figures, and business people are forced to live in a constant atmosphere of corruption and intimidation.

The United States Government knows more than it is willing to tell us about what is happening in Panama. Congress—and the American people—have a right to know the truth about these allegations. In supporting this amendment, we are in no sense attempting to refight the battle over the Panama Canal Treaty in the 1970's. Concern about human rights viola-

tions in Panama in the 1980's is broad-based in Congress and the Nation, and it is time we learned more about the current situation. I urge the Senate to adopt this amendment.●

Mr. HELMS. I am ready to vote, Mr. President.

The PRESIDING OFFICER (Mr. EVANS). Is there further debate?

The question is on agreeing to the amendment of the Senator from North Carolina.

On this question the yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], is necessarily absent.

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

The result was announced—yeas 53, nays 46, as follows:

[Rollcall No. 289 Leg.]

YEAS—53

Abdnor	Hatch	Packwood
Andrews	Hatfield	Pell
Armstrong	Hawkins (Mrs.)	Pressler
Bingaman	Hecht	Pryor
Broyhill	Heflin	Quayle
Burdick	Heinz	Roth
Cochran	Helms	Rudman
Cranston	Kassebaum	Sasser
D'Amato	(Mrs.)	Simpson
Danforth	Kasten	Specter
DeConcini	Kennedy	Stevens
Denton	Kerry	Symms
Dixon	Laxalt	Thurmond
Dole	Mattingly	Trible
Ford	McClure	Wallop
Gorton	McConnell	Warner
Gramm	Murkowski	Wilson
Grassley	Nickles	Zorinsky

NAYS—46

Baucus	Exon	Matsunaga
Bentsen	Glenn	Melcher
Biden	Goldwater	Metzenbaum
Boren	Gore	Mitchell
Boschwitz	Harkin	Moynihan
Bradley	Hart	Nunn
Bumpers	Hollings	Proxmire
Byrd	Humphrey	Riegle
Chafee	Inouye	Rockefeller
Chiles	Johnston	Sarbanes
Cohen	Lautenberg	Simon
Dodd	Leahy	Stafford
Domenici	Levin	Stennis
Durenberger	Long	Weicker
Eagleton	Lugar	
Evans	Mathias	

NOT VOTING—1

Garn

So the amendment (No. 2897) was agreed to.

□ 1620

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

Mr. DURENBERGER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table is agreed to.

COMMEMORATING THE AWARD OF THE CENTRAL INTELLIGENCE AGENCY SEAL MEDALLION TO SENATOR DANIEL PATRICK MOYNIHAN

Mr. GOLDWATER. Mr. President, a couple of weeks ago one of our distinguished colleagues, Senator DANIEL PATRICK MOYNIHAN, was honored by the Central Intelligence Agency for his many contributions to the CIA and the intelligence process while serving as a member of the Senate Intelligence Committee. As a member and then chairman of that committee, I can testify that PAT MOYNIHAN richly deserves this honor. Not only did he bring his wit and eloquence, with which we are all familiar, to the committee hearings, but his strong instinct for the subject matter along with his keen intellect brought an added dimension to our debates. Throughout his service on the committee, SENATOR MOYNIHAN adhered to a personal code that put the best interests of the United States above all else. Time and again, he kept us focused on the main issue rather than allowing us to get bogged down in fruitless side trips.

One of the best things about this service on the committee was the intermediary role which he took upon himself. Realizing that it was awfully easy for some of his colleagues to criticize the secret operations of our intelligence agencies, SENATOR MOYNIHAN became a behind-the-scenes tutor to some of his fellow Senators. During my term as chairman, PAT served as vice chairman and I can say honestly that he proved to be an invaluable assistant in managing the committee in our oversight duties. More than that, he became a friend, and I guess there just isn't any higher compliment.

Mr. President, I ask unaimous consent that my remarks as well as the citation accompanying the award be printed at this point in my remarks.

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

CENTRAL INTELLIGENCE AGENCY CITATION

DANIEL P. MOYNIHAN IS HEREBY AWARDED THE AGENCY SEAL MEDALLION

In recognition of his outstanding accomplishments as a Member of the Senate Select Committee on Intelligence from February 1977 to January 1985. He was a leader in establishing the oversight of intelligence which was and is today in the finest spirit of bipartisan government. Consistently adhering to the highest standards of personal and professional integrity in furtherance of the national security interests of the United States, Senator Moynihan clearly demonstrated that effective oversight of intelligence can be realized in a democratic nation without risk to the intelligence process. Serving with full knowledge that his achievements would never receive public recognition, he chose to align himself with the thousands of men and women who have devoted their lives to support the intelligence needs of our country. Senator Moynihan's extraordinary contributions and exemplary dedication while serving on the Senate Select Committee on Intelligence reflect great credit on himself and the Congress of the United States.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I am not aware of any further amendments to be offered. I am prepared to ask for a third reading. I will ask for a third reading.

The PRESIDING OFFICER. If there are no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4759, the companion bill in the House.

□ 1630

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

The clerk will state the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the bill.

Mr. DURENBERGER. Mr. President, I move to strike all text after the enacting clause of H.R. 4759 and that the text of S. 2477, as amended by the Senate, be substituted therefor.

The motion was agreed to.

The PRESIDING OFFICER. Is there further debate? There being no further debate, the question is on the engrossment of the amendment for a third reading and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 4759) was passed.

Mr. DURENBERGER. I move to reconsider the vote by which the bill passed.

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

The motion to lay on the table was agreed to.

Mr. DURENBERGER. Mr. President, I move that consideration of S. 2477 be indefinitely postponed.

The motion was agreed to.

Mr. DURENBERGER. Mr. President, I move that the Senate insist upon its amendment to H.R. 4759, request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. DURENBERGER, Mr. ROTH, Mr. COHEN, Mr. HATCH, Mr. MURKOWSKI, Mr. SPECTER, Mr. HECHT, Mr. MCCONNELL, Mr. LEAHY, Mr. BENTSEN, Mr. NUNN, Mr. EAGLETON, Mr. HOLLINGS, Mr. BOREN, and Mr. BRADLEY; and from the Committee on Armed Services: Mr. WARNER and Mr. HART for matters within the jurisdiction of the Armed Services Committee, conferees on the part of the Senate.

Mr. DURENBERGER. Mr. President, I wish to use this occasion to express my personal appreciation and that of the committee to members of the intelligence community in this country—to the Director of Central Intelligence, Mr. Casey, with whom we have had our periodic differences, as many have over the course of time, but there has never been a question of our mutual, bipartisan agreement on the need for strong, effective intelligence in this country. The leadership of the intelligence community in this country, in DIA, NSA, State/INR, FBI, and a variety of other areas, has probably never been stronger than it is today. That is a compliment to the individuals involved, a compliment to Mr. Casey, a compliment to the President of the United States, and it is a compliment to the mutual efforts toward congressional and executive branch commitment to good intelligence in this country.

I express my appreciation to what we commonly call the rank and file, the tens of thousands of intelligence officers, men and women throughout this country and throughout the world, many of whom have participated in deliberations of the Senate select committee on its authorizing bill during the course of this year.

I express my particular appreciation to the staff of the committee, to the leadership of the staff, Bernie MacMahon and Eric Newsom, to all who made a particular contribution this year in the area of adapting our budget requirements to the new international intelligence strategy in a way which was so persuasive that the golden objectives of the community and the committee were almost totally satisfied throughout this process.

Mr. President, I had almost completed my compliments and mentioned individuals and I turned to my right and discovered one of the most valuable members of the staff, who happens to be on my immediate right. Dan Finn has been on the committee staff several years, having earlier been on the minority staff and having been promoted, if you can call it that, to the minority counsel; then when the committee counsel job was vacated recently, he was willing to take on that job.

I think that this indicates the special spirit that exists in what we would rather call the nonpartisan, sometimes, than the bipartisan spirit of this committee, particularly the spirit of professionalism on the staff, which does not really recognize the political differences. Dan Finn, as much as anybody else, reflects that.

Mr. LEAHY. Mr. President, I also add my compliments to Dan Finn for the years he served as minority counsel and for the years he served before that in various capacities on the Intelligence Committee.

Mr. DURENBERGER. I conclude with compliments to my colleague from Vermont [Mr. LEAHY] and to our colleagues on the House side. We have had some spectacular, if you will, success in our relationship with our counterparts in the House select committee, particularly its leadership and the chairman, LEE HAMILTON, from Indiana, which has made the staff work and the work of the intelligence community, participating in the oversight process as well as the authorizing work that we have completed today, much more successful than in the past.

This is clearly a reflection of the fact that there is growth in this new process of oversight, that there is a maturity we are finally realizing, but that it is the individuals who are involved to whom we all in this country owe a debt of gratitude for their commitment to the role that intelligence plays in the national security.

Mr. LEAHY. Mr. President, I join with my good friend from Minnesota in complimenting not only the intelligence community and those who work on intelligence matters in the Senate, but the Senators who are members of the committee. They have put in an inordinate amount of time, invariably behind closed doors, usually having to take time from their other and always pressing duties.

The staff, led by Bernie MacMahon and Eric Newsome, have served all Senators on both sides of the aisle very well.

I could mention others here—Keith Hall and others on the staff of the committee. Of all the committees I have served on, I cannot think of any staff that works with such a high degree of professionalism as tirelessly or so anonymously as the Senate Intelligence Committee staff. I wish we could bring them all out and explain the responsibilities of each one. But even that would violate security, for much of their work is classified and held in compartmented fashion.

I have always had, in my 12 years in the Senate, first as a member of the Armed Services Committee and then as a member of the Appropriations Committee, an opportunity to watch the development of our intelligence community. I have seen this strong leadership provided in the Senate to strengthening our intelligence—Senator GOLDWATER, Senator INOUYE, Senator BAYH, and Senator DURENBERGER have all provided leadership. I would like to think that in some ways, I too, have helped. In all of this, there has only been really one overriding concern, not only of the select committee but also of those individuals we have worked with as directors of the CIA, directors of the FBI, and others from both Republican and Democratic administrations: To have the best intelligence agencies in the world, the best ability to gather intelligence in the world. I firmly believe that the United States today has the best intelligence services in the world.

I also firmly believe that this administration, as previous administrations, is committed to making it the best, and to continue in proving our intelligence capabilities. I am also convinced that those who lead the community strive for constant improvement. In that regard, they have received strong bipartisan support from the House and from the Senate and strong leadership, Chairman LEE HAMILTON and the members of the House Permanent Select Committee on Intelligence.

Mr. President, I hope that the intelligence services of this country realize that the Senate's unanimous vote of support for the intelligence authorization bill, after only 2 or 3 hours of debate, is a reflection of the commitment of the Senate to our intelligence services and those who lead them.

Mr. LEAHY. 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.

ORDER OF PROCEDURE

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. DOLE. Mr. President, at the appropriate time, when the distinguished minority leader is present and we have the managers here, we will move to the consideration of Calendar No. 636, the commodities futures trading bill. I understand that can probably be completed in not more than 2 hours. Hopefully following that, we could take up FIFRA, though I am not certain we can get that cleared. There is fairly heavy wrapup; in other words, a lot of things we can do after we do the CFTC bill. It is our hope that tomorrow we will start on drug enforcement legislation.

I must commend the staff members on each side who have been working for the past several days almost around the clock. What they are attempting to do before they bring the package to Senators on each side is to try to reach some consensus on areas

where we can find agreement, Republicans and Democrats, or even differences among some Republicans or some Democrats. And then where we cannot find agreement, just agree that we will offer amendments, say, on the death penalty, or exclusionary rule, or the drug czar, or some area where we cannot find agreement, at least we could set out the parameters of what we might be doing on the drug bill. That could take some time. They are very sensitive issues, very controversial in some areas. That could take through Saturday. Some time in there we need to take up the tax reform bill.

I am advised that there is now considerable sentiment in the other body that we might be able to depart here on October 3, so that may offer some encouragement even though we have been in long hours and working fairly hard. If that target could be reached, it would be worth the effort.

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

Mr. DOLE. I am happy to yield.

Mr. EXON. Will the Senator be good enough to tell us what his plans are—he outlined the upcoming legislation—about how late he anticipates we will be in tonight and will there be any windows in the schedule as viewed presently by the majority leader?

Mr. DOLE. I understand there has been a request for a window on both sides. I think a number of Senators have activities that necessitate their absence for an hour, an hour and a half, maybe 2 hours.

What we would like to do is finish CFTC and see how far we can go on FIFRA. If we could reach some agreement, not have a window, just not stay in, and go out fairly early.

Mr. EXON. I thank the majority leader.

Mr. METZENBAUM. The Senator says "fairly early." Would he give some rough estimate—does he mean 6 o'clock, 6:30, 7?

Mr. DOLE. Somewhere like 7:30 maybe.

Mr. METZENBAUM. I thank the majority leader.

□ 1650

Mr. DOLE. Mr. President, let me indicate to my colleagues what I intend to do.

First, I ask unanimous consent that the Journal of the proceedings be approved to date. Then I will ask that we may adjourn for 1 minute, and then I will ask unanimous consent that we move to the CFTC bill.

The purpose of all this is to get various items, about five items, on the calendar.

Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date, that no resolutions come over under the calendar, that the call of the calendar be dispensed with, and that the morning hour be deemed to have expired.

Mr. BYRD. Mr. President, reserving the right to object—and I will not object—the distinguished majority leader, for the RECORD, is making this request in anticipation of consent being given, and thereafter immediately moving to adjourn the Senate.

Is that correct?

Mr. DOLE. That is correct.

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

ADJOURNMENT

Mr. DOLE. Mr. President, I move that the Senate adjourn for 1 minute.

The motion was agreed to, and at 4:57 p.m. on Wednesday, September 24, 1986, the Senate adjourned until 4:58 p.m., the same day.

AFTER ADJOURNMENT

WEDNESDAY, SEPTEMBER 24, 1986

The Senate met at 4:58 p.m., pursuant to adjournment, and was called to order by the Honorable DANIEL J. EVANS, a Senator from the State of Washington.

BILLS READ THE SECOND TIME

Mr. BYRD. Mr. President, inasmuch as there are five bills on the calendar of "Bills and Joint Resolutions Read the First Time," I ask the distinguished majority leader if we could not just agree that there would be an objection to each of those five, and proceed under rule XIV, so we will not have to take them up singly.

Mr. DOLE. That is a good suggestion. I was about to ask that.

Mr. President, I ask unanimous consent that the five bills awaiting their second reading be deemed to have been read a second time, en bloc, and then I would object to their further consideration.

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

The bills referred to are as follows:

H.R. 5484, Omnibus Drug Enforcement, Education, and Control Act of 1986.

S. 2825, waiver of certain Medicaid requirements.

H.R. 4492, transfer of certain property in Iowa.

H.R. 4838, relating to treatment of airline employees in certain transactions.

S. 2850, Drug Enforcement Act of 1986.

□ 1700

Mr. DOLE. Mr. President, I do object to their further consideration.

The PRESIDING OFFICER. Objection is heard.

The measures will be placed on the calendar.

Mr. DOLE. I thank the distinguished minority leader.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. COHEN). Without objection, it is so ordered.

COMMODITY FUTURES TRADING ACT

Mr. DOLE. Mr. President, I am advised by the distinguished minority leader, Senator BYRD, there is no objection to moving to Calendar 636, S. 2045. I ask unanimous consent that the Senate now turn to Calendar 636, S. 2045, the commodity futures trading bill.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2045) to amend the Commodity Exchange Act to reauthorize appropriations to carry out such Act, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Futures Trading Act of 1986".

TITLE I—ENFORCEMENT

SEC. 101. FRAUDULENT PRACTICES.

Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(1) by designating the first and second unnumbered paragraphs as subsections (a) and (b), respectively;

(2) in subsection (a) (as so designated)—

(A) by striking out "on or subject to the rules of any contract market," in clause (2);

(B) by redesignating clauses (a), (b), and (c) as clauses (A), (B), and (C), respectively; and

(C) by redesignating subclauses (A), (B), (C), and (D) as subclauses (i), (ii), (iii), and (iv), respectively; and

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

"(c) Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of any commodity for future delivery made, or to be made, on or subject to the rules of such board of trade, exchange, or market.".

SEC. 102. EXTRATERRITORIAL SERVICE OF SUBPOENAS.

Section 6(b) of the Commodity Exchange Act (7 U.S.C. 15) is amended—

(1) in the fourth sentence, by striking out "or any State" and inserting in lieu thereof

", any State, or any foreign country or jurisdiction"; and

(2) by inserting after the fourth sentence the following new sentence: "A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country.".

SEC. 103. EX PARTE APPOINTMENT OF TEMPORARY RECEIVERS.

The proviso of the first sentence of section 6c of the Commodity Exchange Act (7 U.S.C. 13a-1) is amended by inserting within the parenthetical phrase before the closing parenthesis the following: ", and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate".

TITLE II—LEVERAGE TRANSACTIONS

SEC. 201. DEFINITIONS.

Section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) in the first proviso of the third sentence (relating to the definition of the term "commodity"), by striking out ", and transactions subject to regulation by the Commission pursuant to section 19 of this Act"; and

(2) in the sixteenth sentence (relating to the definition of the term "commodity trading advisor")—

(A) by striking out the comma after "a contract market" and inserting in lieu thereof "or"; and

(B) by striking out "or any leverage transaction authorized under section 19,".

SEC. 202. PENALTY FOR MANIPULATION OF PRICES.

The first sentence of section 9(b) of the Commodity Exchange Act (7 U.S.C. 13(b)) is amended—

(1) by inserting "or" after "4h,"; and

(2) by striking out ", or section 19".

SEC. 203. PENALTY FOR PROHIBITED TRANSACTIONS.

The first sentence of section 9(d) of the Commodity Exchange Act (7 U.S.C. 13(d)) is amended by striking out "or any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract,".

SEC. 204. PENALTY FOR USE OF NONPUBLIC INFORMATION.

Section 9(e) of the Commodity Exchange Act (7 U.S.C. 13(e)) is amended by striking out each place it appears the following: ", or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract".

SEC. 205. RELATION TO OTHER LAWS.

Section 12(e)(2) of the Commodity Exchange Act (7 U.S.C. 16(e)(2)) is amended by striking out "or 19".

SEC. 206. LEVERAGE TRANSACTIONS.

Section 19 of the Commodity Exchange Act (7 U.S.C. 23) is repealed.

SEC. 207. PRIVATE RIGHT OF ACTION.

Section 22(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 25(a)(1)(C)) is amended—

(1) by inserting "or" after the semicolon at the end of clause (i);

(2) by striking out clause (ii); and

(3) by redesignating clause (iii) as clause (ii).

SEC. 208. EFFECTIVE DATE.

The amendments made by this title shall become effective 2 years after the date of enactment of this Act.

TITLE III—REGISTERED FUTURES ASSOCIATIONS

SEC. 301. DISCIPLINARY ACTIONS.

Subsection (h) of section 17 of the Commodity Exchange Act (7 U.S.C. 21(h)) is amended to read as follows:

"(h)(1)(A) If any registered futures association takes final disciplinary action against any member of the association or any person associated with such a member or denies admission to any person seeking membership in the association, or bars any person from being associated with a member, the association shall promptly file notice thereof with the Commission.

"(B) The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate to carry out the purposes of this Act.

"(2)(A) Any action with respect to which a registered futures association is required by paragraph (1) to file notice shall be subject to review by the Commission—

"(i) on the motion of the Commission; or

"(ii) on application by any person aggrieved by the action filed within—

"(I) 30 days after the date the notice was filed with the Commission and received by the aggrieved person; or

"(II) such longer period as the Commission may determine.

"(B) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of the action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

"(C) The Commission shall establish standards for expedited procedures to be used in the consideration of the request for a stay.".

SEC. 302. COMMISSION REVIEW OF ASSOCIATION ACTION.

Subsection (i) of section 17 of the Commodity Exchange Act (7 U.S.C. 21(i)) is amended to read as follows:

"(i)(1) In a proceeding to review final disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

"(A) if the Commission finds—

"(i) on the basis of the record in the proceeding before the association and such other matters as may be presented to the Commission, that the member or person associated with a member has engaged in such acts or practices or has failed to engage in such acts or practices;

"(ii) that the acts, practices, or failures to act, are in violation of the rules of the association as specified in the determination of the association; and

"(iii) that the rules of the association are and were applied in a manner consistent with this Act,

the Commission shall, by order, so declare and, as appropriate, affirm the sanction imposed by the association, modify the sanction in accordance with paragraph (2), or remand the case to the association for further proceedings; or

"(B) if the Commission makes no such finding, the Commission shall, by order—

"(i) set aside the sanction imposed by the association; and

"(ii) if appropriate, remand the case to the association for further proceedings.

"(2) If, after a proceeding conducted in accordance with paragraph (1), the Commission finds that any penalty imposed on a member or person associated with a member is excessive, with due regard for the public interest, the Commission shall, by order, cancel, reduce, or require the remission of the penalty.

"(3)(A) In any proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the action of the association), the Commission shall, by order, dismiss the proceeding for review if the Commission determines that—

"(i) the specific grounds on which the denial or bar is based exist in fact;

"(ii) the denial or bar is in accordance with the rules of the association; and

"(iii) the rules are and were applied in a manner consistent with this Act.

"(B) If no such determination is made, the Commission shall, by order, set aside the action of the association and require the association to admit the applicant to membership in the association or to permit the person to be associated with a member.

"(4) Any person (other than a registered futures association) aggrieved by a final order of the Commission entered under this subsection may file a petition for review with a United States court of appeals in accordance with section 6(b).".

SEC. 303. RULE REVIEW PROCEDURES.

Section 17(j) of the Commodity Exchange Act (7 U.S.C. 21(j)) is amended by striking out the third sentence.

TITLE IV—AUTHORIZATION FOR APPROPRIATIONS AND MISCELLANEOUS AMENDMENTS

SEC. 401. CERTAIN PROHIBITED TRANSACTIONS.

Section 9(d) of the Commodity Exchange Act (7 U.S.C. 13(d)) is amended—

(1) in the first sentence, by inserting before the period at the end thereof the following: "if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is made through the use of any instrument regulated by the Commission, except that the prohibitions in this sentence shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this subsection"; and

(2) by striking out the second and third sentences.

SEC. 402. AUTHORIZATION FOR APPROPRIATIONS.

Subsection (d) of section 12 of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended to read as follows:

"(d) There are authorized to be appropriated to carry out this Act such sums as may be required for each of the fiscal years during the period beginning October 1, 1986, and ending September 30, 1992.".

SEC. 403. TECHNICAL CORRECTIONS.

The Commodity Exchange Act is amended—

(1) in the third sentence of section 2(a)(1)(B)(iv)(I) (7 U.S.C. 2a(iv)(I)), by striking out "Securities Exchange Commission" and inserting in lieu thereof "Securities and Exchange Commission";

(2) in the fourth full sentence of section 5a(12) (7 U.S.C. 7a(12)), by striking out "particpate" and inserting in lieu thereof "participate";

(3) in the first sentence of section 9(c) (7 U.S.C. 13(c)), by striking out "section 4k." and inserting in lieu thereof "section 4k,";

(4) in the first sentence of section 9(d) (7 U.S.C. 13(d)), by striking out "advance guarantee" and inserting in lieu thereof "advance guaranty";

(5) by repealing section 11 (7 U.S.C. 14 note);

(6) in the second full sentence of section 17(b)(2) (7 U.S.C. 21(b)(2)), by striking out "with in" and inserting in lieu thereof "within"; and

(7) in section 17(k)(1) (7 U.S.C. 21(k)(1)), by striking out "title" and inserting in lieu thereof "section".

Mr. DOLE. Mr. President, let me also indicate that there will be probably one vote on this matter. We hope we can dispose of it rather quickly.

If we can clear it there will be one vote on six treaties that will count on six votes and this could conclude the action for the remainder of the day, although we are still working to see if we can get some agreement on FIFRA that we might be able to do in the morning.

The PRESIDING OFFICER. The Chair will note the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1710

Mr. HELMS. 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. HELMS. Mr. President, what is the pending business?

The PRESIDING OFFICER. Pending at the desk is S. 2045.

Mr. HELMS. I thank the Chair.

Mr. President, I ask unanimous consent that the committee amendment be adopted and that it be treated as original text for the purpose of further amendment.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, reserving the right to object, I just want to say to my distinguished colleague that I am not handling this bill; Senator ZORINSKY is. I gather he is on his way over here.

Were you not asking unanimous consent to adopt the committee amendment?

Mr. HELMS. Yes. I am sure he would have no objection to that.

Mr. METZENBAUM. I am sure he does not. I would ask my colleague if he would just go ahead with his opening statement. I have no objection whatsoever personally. I do not know what it is, but I, at this monent, feel I should protect the position of Senator ZORINSKY.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, the Futures Trading Act of 1986, S. 2045, extends the authorization for appropriations for the Commodity Futures Trading Commission for 6 years. It also makes improvements in the Commodity Exchange Act.

Now, I am not going to discuss the specific provisions of the bill at great length. Before I even touch on the provisions, I want to pay my respects and express my gratitude to the distinguished Senator from Indiana, Mr. LUGAR, for the extraordinary help that he has given. He has taken the lead in this matter. Without his great effort, I do not know how far we would have come in terms of moving the bill to the Senate floor this afternoon. So I thank the Senator from Indiana.

Senator LUGAR chaired 2 days of full committee hearings on the bill. During these hearings, Senator LUGAR, myself, and other members of the committee collected the thoughts and suggestions of many witnesses as to the specific provisions that should be included in the bill. During the course of the committee markup, Senator LUGAR offered invaluable counsel on the form and scope of the provisions that were included, as well as those issues that were dealt with in the committee report. I very much appreciate the leadership role that Senator LUGAR has taken on this bill and on so many other things that have come before the Agriculture Committee.

Mr. President, I would also like to recognize the material contributions made to the bill by Senator ZORINSKY, ranking minority member of the committee, and by Senator MELCHER, ranking minority member of the Subcommittee on Agricultural Research, Conservation, Forestry, and General Legislation. These Senators worked diligently with Senator LUGAR, myself, and the other members of the committee to fashion a piece of legislation of which the Senate can be proud.

It is not a piece of legislation with a great deal of sex appeal. I do not imagine it will have black headlines in the morning on the front page of the newspaper. But, nonetheless, it is an enormously important piece of legislation and I am glad we have brought it this far.

Mr. President, the Commodity Exchange Act is based on the findings and conclusions of Congress that, first, transactions, known as futures and options are affected with a national public interest; second, such transactions are carried on in large volume by the public, as well as by persons engaged in the business of buying and selling commodities in interstate commerce; third, the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices of commodities and their products and byproducts; and, fourth, such transactions can be manipulated or controlled. A fundamental purpose of the Commodity Exchange Act is to ensure fair practices and honest dealing on the commodity exchanges and to control manipulative activity and speculative excesses that demoralize markets and cause injury to producers, consumers, and the exchanges themselves.

Futures trading involves the making of contracts under which the parties agree to buy and sell specified quantities of certain commodities at fixed prices for delivery at some future date. The Commodity Exchange Act requires that futures trading in commodities be conducted on a commodity exchange designated as a contract market by the Commodity Futures Trading Commission. Contracts to buy and sell commodities for future delivery are made by or through a member of a designated commodity exchange. A separate market is established for each commodity traded on a contract market. The contract markets have the authority, within limitations, to admit members and select officers; discipline and expel members; determine delivery months and contract terms; fix limits on the amount of permissible price changes during a trading day; and establish margin requirements. The contract markets, through their clearing mechanisms, also guarantee performance on the futures and options contracts.

In order to qualify for designation as a contract market, a commodity exchange must meet certain conditions and requirements, including those covering the, first, keeping of certain records and the preparation of reports on futures transactions, second, prevention of dissemination of false, misleading, or inaccurate commodity information, third, prevention of manipulation and other abusive trading practices, and fourth, inspection of records by the Commodity Futures Trading Commission and the Department of Justice. In addition, the Commission must find that transactions for future delivery in the commodity

for which designation as a contract market is sought will not be contrary to the public interest.

The Commodity Futures Trading Commission was created in order to ensure that a single agency would have the responsibility for developing a coherent regulatory program covering futures trading and related activities. Consequently, Congress vested in the Commission exclusive jurisdiction to develop and implement a strong and sound Federal regulatory policy covering futures trading.

The 1986 reauthorization of appropriations for the Commodity Futures Trading Commission and related legislation is particularly significant, since the Commission completed its first 10 years of operation in April 1985. The changes in the futures markets are reflected by the fact that, in fiscal year 1975, approximately 26 million futures contracts were traded; by 1978, the number had grown to 53.2 million contracts. This tremendous growth has continued since the last reauthorization in 1982. During fiscal year 1985, for example, 169.5 million futures and options contracts were traded on 13 U.S. commodity exchanges.

ENFORCEMENT PROVISIONS

The bill, as reported by the committee, makes several changes in the Commodity Exchange Act. Title I of the bill clarifies and strengthens the enforcement capabilities of the Commodity Futures Trading Commission. The bill makes explicit that the principal antifraud provision of the Commodity Exchange Act, section 4(b), applies to the sale of off-exchange futures contracts, and that the Commission is empowered under section 6(b) to serve its administrative subpoenas outside the United States. In addition the committee bill empowers the Commission, when it proceeds on an ex parte basis to seek a temporary restraining order freezing the assets of suspected violators, to seek the appointment of a temporary receiver to administer those assets and to perform such other duties as the court may specify.

LEVERAGE TRANSACTIONS

Mr. President, title II of the committee bill amends the Commodity Exchange Act to repeal section 19, dealing with the regulation of leverage transactions, and deletes most other references to leverages transactions from the act. Under this amendment, the Commission would neither be required nor authorized to regulate leverage transactions as a distinct form of commodity instrument. The committee bill also delays the effective date of title II for a period of 2 years from the date of enactment in order to give the two existing leverage firms an opportunity to restructure their businesses to comply with applicable State laws, to make arrangements to trade their contracts on exchanges, or to make a transition out of the business of being leverage transaction merchants.

By way of background, Mr. President, under the Commodity Futures Trading Commission Act of 1974, the Commission was given exclusive jurisdiction to regulate leverage transactions in gold and silver. In 1978, Congress added section 19 to the Commodity Exchange Act. In this section, Congress banned leverage transactions in agricultural commodities, authorized the Commission to prohibit certain leverage transactions, and extended the Commission's exclusive jurisdiction to leverage transactions in all other commodities. Between 1974 and 1982 the Commission adopted two moratoria on the entry of persons into the leverage business and a broad antifraud rule applicable to leverage transactions.

The Futures Trading Act of 1982 directed the Commission to regulate leverage transactions in gold and silver bullion and bulk coins and in other nonagricultural commodities. As a result of the direction given by Congress in 1982, the Commission issued interim final leverage regulations in 1984 and 1985, respectively, that were applicable to both long- and short-leverage transactions in gold and silver bullion and coins, copper, platinum, and certain foreign currencies. Two firms have been registered as leverage transaction merchants under these regulations.

Notwithstanding the foregoing, Mr. President, the leverage transaction issue has remained controversial at the Commission and in the futures industry. The Commission testified that the historical statutory distinction between leverage transactions and futures contracts is unjustified and that leverage transactions are legally and economically indistinguishable from futures contracts and, consequently, do not warrant separate statutory treatment.

The committee bill eliminates the statutory disparity between leverage transactions and futures contracts, but authorizes a 2-year delay in the implementation of the statutory changes to give the two existing leverage transaction merchants time to deal with this change. The two leverage firms may continue in business by undertaking the marketing of cash or installment sales transactions. These cash or installment sales would, of course, be subject to State regulation. The firms may also make arrangements to sell their contracts on exchanges designated for this purpose. The two firms could also decide to discontinue leverage sales and concentrate on the sale of other products, such as the sale of dealer and exchange traded options.

Mr. President, the committee adopted its position on leverage transactions for two reasons. First, Mr. President, the two leverage firms, as they currently conduct their business, simply do not fit within the general regulatory framework of the Commodity Exchange Act. Congress passed legislation regulating futures trading—despite the opposition of some who wanted to ban such trading—because it performs two very important functions in our economy, namely that of price discovery and the shifting of risk. Price discovery in the futures markets aids cash sellers of commodities by giving these sellers a reliable gauge to use in pricing their produce. The shifting of risk from those who wish to avoid it to those who are willing to assume it—in the hope of making a profit—facilitates trade and commerce by allowing merchants to concentrate on what they do best, the production and marketing of a product, without having to worry about changes in interest rates or the value of their inventories.

Mr. President, leverage transactions serve neither of these purposes. Consequently, there is no justification for their regulation under the rubric of the Commodity Exchange Act.

Mr. President, the second reason for the committee position on leverage is that the Federal Government does not live in an environment of unlimited resources. We Members of Congress must consider carefully whether certain Federal regulatory programs and policies are worth their cost.

Since Federal resources are limited, particularly in light of the Gramm-Rudman-Hollings deficit reduction measure, Congress must pick and choose among those programs and projects seeking funding. No one maintains that the public good derived from the sale of leverage contracts justifies the expenditures needed to adequately police it. These expenditures will go up over time, rather than down, since there are no industry self-regulatory organizations bearing a portion of the burden and cost of the regulation of leverage transactions. Expenditures to regulate leverage transactions under the Commodity Exchange Act will also take money and other resources needed to pay for regulatory programs in the futures and options trading areas. Consequently, Mr. President, the committee could not justify open-ended Government expenditures for the regulation of leverage transactions.

Mr. President, the committee resolved this dilemma by providing for repeal of the Commission's exclusive jurisdiction over the regulation of leverage transactions. This action will permit other Federal and State regulatory agencies, such as the Securities and Exchange Commission and the State securities commissions, to initiate any necessary regulatory activity in this area. No one can seriously maintain that regulation under the

Securities Acts is burdensome or unfair to the leverage transaction merchants, since most shares of stock and other investment contracts sold in the United States are subject to such regulation.

REGISTERED FUTURES ASSOCIATIONS

Mr. President, the committee bill promotes the Commission's continuing oversight program over registered futures associations. At the present time, there is only one registered futures association, the National Futures Association [NFA]. NFA's disciplinary system for violations of its rules by members or their associated persons includes a summary procedure called a member responsibility action.

Section 17(h) of the Commodity Exchange Act provides that any aggrieved person may appeal a registered futures association disciplinary action to the Commission and that the filing of such an appeal triggers an automatic stay of the disciplinary action. While the Commission may lift the stay under current law. It may do so only after notice and opportunity for a hearing. As a result, the effectiveness of the disciplinary action can be reduced, particularly when immediate action is necessary to protect markets, customers, or other NFA members.

The committee bill removes the automatic stay provisions from current law. The bill also makes the stay procedures associated with futures association disciplinary actions parallel with those for exchange disciplinary actions. Under the committee bill, the Commission is to set standards for expedited procedures to be used in the consideration of requests for stays.

Mr. President, the committee bill also amends existing law to make explicit that Commission review of NFA disciplinary action is available only for final actions, precluding the disruption of the futures association disciplinary process by untimely appeals to the Commission. The bill also authorizes the Commission to review only the record before the futures association and the submissions of the parties. The actual standards for Commission review would, however, remain essentially unchanged.

In addition, the committee bill amends section 17(i)(3), which deals with the denial of membership in registered futures associations, to conform the standards for Commission review of certain registered futures association decisions with the standards applicable to association disciplinary actions.

The committee bill also amends section 17(j) of the act to eliminate the requirement that the Commission approve additions to or changes in the rules of a registered futures association within 30 days.

AUTHORIZATION FOR APPROPRIATIONS AND MISCELLANEOUS AMENDMENTS

Mr. President, section 12(d) of the Commodity Exchange Act authorizes the appropriation of such sums as may be required to carry out the act through the fiscal year ending September 30, 1986. The committee bill extends the authorization for such appropriations for 6 years, through the fiscal year ending September 30, 1992.

In addition, Mr. President, section 9(d) of the Commodity Exchange Act makes it a felony for a Commissioner or Commission employee to participate, directly or indirectly, in commodity futures, options, or leverage transactions or, with certain limited exceptions, in investment transactions in an actual commodity. The committee bill eases some of these restrictions and empowers the Commission to administer section 9(d) in a flexible manner to assure that transactions that do not pose a conflict of interest or appearance of conflict of interest are not subject to the broad prohibitions in current law.

Mr. President, the committee amendment is the product of the thoughtful consideration of the members of the committee from both sides of the aisle. I urge my colleagues to adopt the committee amendment and to pass the bill without further amendment.

The PRESIDING OFFICER. Is the Senator from Ohio seeking recognition?

Mr. METZENBAUM. Mr. President, I ask the Senator from North Carolina if he would yield to me for a question. As I pointed out, I am not the manager of this. I am just holding the floor temporarily.

But I want to understand: What does this bill do with respect to the trading in commodity futures and is there more effective regulation of those who trade in those futures or is it a lessening of the regulation?

Mr. HELMS. Well, I will give you a one-word answer. I will say, yes. Senator LUGAR may wish to elaborate on that.

Mr. LUGAR. I thank the distinguished chairman. In response to the question of the Senator from Ohio, it seems to me that the regulation has been tightened up very substantially. I think the Agriculture Committee views with great pride the development of the Commodity Futures Trading Commission, its professionalism, the number of ways it offers services, and very complex services I might add, because of the number of instruments that they must supervise. The trading in these instruments has increased very substantially, but so has the expertise of the Commission's staff, and its general surveillance capability. Consequently, we have raised the general level of safety for the American investor.

Mr. METZENBAUM. Under present law, who provides supervision with respect to the commodity futures trading? Because, as we all know, at various points recently, as well as in years past, there has been tremendous speculation in this area by those who have nothing at all to do with agriculture but who are merely playing the marketplace.

Mr. LUGAR. Well, the committee structure of the Senate and the House, of course, provides for basic oversight procedures by the Senate Agriculture Committee and the House Agriculture Committee. Both committees have taken that oversight very seriously. We have had a number of hearings throughout the period of authorization, as various questions have been raised by constituent groups or by ourselves. The Commission itself, plus its staff, of course, has the hands-on responsibility. In my judgment, that Commission has served with great integrity.

There have been, from time to time, as the Senator from Ohio knows, questions raised, such as at the time of the silver speculation and the sale of London options contracts.

Mr. METZENBAUM. Various cornering of the market in various commodities.

Mr. LUGAR. That is right. And, after each of these there has been a very thorough analysis of how the system ought to be strengthened. And that analysis is restated in the authorization bill. It offers an opportunity for the analysis to come to fruition in the legislation.

Mr. METZENBAUM. Is there anything in the language in the legislation that weakens the power of the CFTC?

Mr. LUGAR. No, the changes were all in the direction of strengthening the powers.

Mr. METZENBAUM. I thank the Senator from Indiana. I appreciate his cooperation.

Mr. President, the manager of the bill on this side is here and I will retire gracefully to my office.

Mr. DIXON. Mr. President, will the distinguished manager of the bill or the chairman of the committee yield for a question?

Mr. HELMS. Mr. President, in 1 minute I will, I say to my friend from Illinois.

First, I ask unanimous consent, Mr. President, that the committee amendment be adopted and that it be treated as original text for the purpose of amendment.

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

The committee amendment was agreed to.

Mr. HELMS. Now, in the usual sequence, I yield to my distinguished colleague from Nebraska, Mr. ZORINSKY.

Mr. ZORINSKY. Mr. President, I thank the chairman.

I have a brief statement to make, after which I will certainly entertain a question from our distinguished colleague on the Senate Agriculture Committee, Senator DIXON, from the State of Illinois.

□ 1720

Mr. President, S. 2045, as reported by the Committee on Agriculture, Nutrition, and Forestry, will authorize appropriations to carry out the Commodity Exchange Act during fiscal years 1987 through 1992. S. 2045 will also make certain improvements in the current commodity futures regulatory program. I urge the Senate to adopt the bill as reported.

The futures markets are an intregral part of the Nation's economy. They affect consumers, investors, financial institutions, manufacturers, Government, and businesses of all types, including Nebraska wheat, corn, and soybean farmers, as well as beef and pork producers. Therefore, it is imperative that the markets be free from fraud and manipulation. Ensuring fair and honest trading of futures contracts is the primary responsibility of the Commodity Futures Trading Commission. In addition, the regulation of the futures industry is furthered by the National Futures Association.

The CFTC was established as an independent regulatory agency in 1974 by the Commodity Futures Trading Commission Act. The authorization of appropriations for the CFTC was extended in 1978 and 1982.

The 1974 Act made extensive changes in the Commodity Exchange Act and provided for Federal regulation by the Commission of all agricultural and other commodities, goods, and services traded on exchanges.

The 1982 legislation dealt with a number of difficult issues. These included speculative limits, private rights of actions, agricultural options, leverage transactions, and State antifraud jurisdiction. In addition, a jurisdictional accord between the CFTC and the Securities and Exchange Commission was established, and the futures industry was given greater authority for selfregulation.

S. 2045 will make only modest changes in the statutory authority of the CFTC. This, I believe, clearly indicates that the 1982 law has been successfully implemented.

The changes to be made by S. 2045 are in the areas of enforcement and litigation, regulation of leverage transactions, registered futures associations, and restrictions on certain investments by CFTC personnel.

Most of the provisions in the bill are designed to enable the Commission to operate more efficiently and effectively. Some of these provisions relate to judicial review of CFTC final orders and rules, service of subpoenas outside the territorial jurisdiction of the United States, and the appointment of temporary ex parte receivers to protect business records and assets. Other provisions relate to CFTC procedures for the review of disciplinary actions and denial of membership by the association.

Current law prohibits fraud in futures contracts conducted on any contract market. S. 2045 makes it clear that the Commission has authority to pursue off-exchange operators who engage in fraudulent activities.

Under current law, the CFTC is required to separately regulate leverage transactions. The bill would eliminate this requirement and, thereby, prohibit transactions involving leverage unless conducted on an exchange. The elimination of the separate regulation of the leverage industry would not be effective for 2 years after enactment of the bill. This delay is intended to allow leverage firms sufficient time to terminate—in an orderly manner—their current method of doing business.

The elimination of the separate regulation of the leverage industry is controversial. It is opposed by the administration, and I understand that the Commission was not unanimous in recommending that Congress eliminate the separate regulation by the Commission of leverage transactions. However, it is the view of the committee that leverage transactions are indistinquishable from future contracts and should be traded as such. The administration and apparently two members of the CFTC are of the opinion that continued separate regulation is warranted.

I strongly urge my colleagues to resist any attempt to make major changes in S. 2045 as reported by the committee and pass the legislation as soon as possible.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be recinded.

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

Mr. DIXON. Mr. President, I would like to make a very brief statement. The manager of the bill and the distinguished ranking member have agreed that I can make the statement now.

Mr. President, I rise today to discuss an issue of concern to me. During the hearing on S. 2045, the reauthorization of the Commodity Futures Trading Commission [CFTC], held in the Senate Agriculture Committee, Susan M. Phillips, Chairman of the CFTC, testified that the Commission "believes that the sale of futures contracts should occur on exchanges under the supervision of self-regulatory organizations." This Commission statement reaffirmed the agency's commitment to the fundamental requirement in the Commodity Exchange Act—all futures contracts, regardless of the underlying commodity, must be traded on federally approved exchanges.

It was my initial intention to offer an amendment to S. 2045 to ensure that the Commodity Futures Trading Commission would enforce the unambiguous exchange trading requirement of section 4(a) of the Commodity Exchange Act. However, as a result of my recent conversation with Chairman Phillips, as well as assurances made to me by the chairman of the Argiculture Committee, Senator HELMS, I have been assured that the Commission intends to fully execute the statutory mandate. Chairman Phillips has agreed that the Commission will undertake a comprehensive study of the off-exchange trading issue but cannot, as I understand the law, allow any off-exchange futures trading as a result of this study without first seeking enactment by Congress of a statutory amendment. It is also my understanding that the Senate Agriculture Committee will take a close look at this issue during the next session of Congress.

In the interim, however, the legal status quo must be maintained. Ultimately, the decision of whether to permit any form of exception to the exchange trading requirement for all futures contracts rests with the Congress.

I would also observe that, by regulation, the Commission has implemented a specific congressional directive and allowed the trading of commodity options only by, or through, the facilities of designated contract markets, with the narrow exceptions of trade options and dealer options. It is my understanding that this congressional intent remains undisturbed by the legislation before us and that the Commission should not permit or expand off-exchange options transactions.

I appreciate the assistance of both Chairman Phillips and Senator HELMS in reaching this agreement.

□ 1730

Mr. President, I thank the two managers of the bill very much for permitting me to make my statement.

May I say, if I may have a moment with the manager of the bill, I understand that my friend, the distinguished Senator from South Dakota, will shortly be offering an amendment to this bill that in essence would ban the trading of cattle futures. Is that the manager's understanding?

Mr. LUGAR. The Senator is correct. That is my understanding.

Mr. DIXON. As I explained to the distinguished chairman and ranking member of the Agricultural Committee, I have to leave briefly. I expect to be back on the floor by 6:15. I advise all Members that I oppose the amendment by my distinguished friend from South Dakota and would like to ask that a rollcall be requested on this particular amendment at the appropriate time.

Mr. LUGAR. I thank the Senator, and I am certain it is the intent of the distinguished chairman of the committee to ask for a rollcall vote on the Abdnor amendment.

Mr. DIXON. I thank everybody for their consideration.

Thank you, Mr. President.

Mr. LUGAR. I thank the Senator.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, in response to the statement of the distinguished Senator from Illinois, let me simply say that the Senator is correct. The Commodity Exchange Act generally prescribes all nonexchange traded futures contracts in the United States. Indeed, S. 2045 does contain a provision which amends the antifraud prohibition in section 4(b) to clarify that this prohibition also applies to off-exchange futures contracts covered by the act.

The CFTC recommended the amendment to facilitate enforcement of the law against bucket shop and boiler room operations that purvey illegal commodity instruments. This amendment was not intended and should not be interpreted to change existing law with respect to whether exchange futures contracts are covered by the act.

Let me further comment that the distinguished Senator from Illinois has made a number of points that should be addressed in the Commission's study of these issues. With or without the amendments contained in the legislation before us, the Commission has a statutory responsibility to enforce the requirements of the Commodity Exchange Act. Of course, inherent in that responsibility in both regulatory and enforcement discretion to interpret and apply the act consistent with the mandate of Congress and the public interest. I am pleased the Commission has undertaken to study the complex field of possible off-exchange instruments and look forward to receiving testimony on their report when that study is concluded. Ultimately, the decision whether to alter the statute rests with Congress, and only with Congress.

Finally, the distinguished Senator from Illinois has correctly recognized that existing legal requirements remain undisturbed by this legislation. Further, the legislation that we are considering today has no effect on the respective jurisdictions of the CFTC and the SEC as delineated in the CFTC-SEC jurisdictional agreement. Nonexchange traded commodity options have been the subject of some of the largest customer protection scandals in the last two decades. In contrast, exchange traded options have become very valuable commercial risk-shifting instruments in recent years with no reported customer protection problems. I am confident the Commission will continue to adhere to the congressional mandate in its regulation of trading in commodity options.

Mr. President, while I have the floor, I would like to make a short opening statement.

For many years U.S. futures markets have played an important role in the economy by facilitating hedging and pricing activities. Farmers and businessmen alike have used these markets to hedge selling prices and input costs. The entire international economy depends on futures markets for their price discovery functions.

I make that point at the outset, Mr. President, because clearly that is the basic fundamental understanding that one must have as to why we are in the process of having futures markets; it is because they have a price discovery function. And our entire economy, not only nationally but internationally, now depends upon that.

The Commodity Futures Trading Commission was created in 1975 in order that a single Federal agency would have responsibility for developing an efficient and effective regulatory program for a growth-oriented futures industry. Prior to this time, some futures markets were regulated by the Department of Agriculture and the Department of Commerce while others were unregulated altogether.

In 1975, futures trading was limited mostly to contracts on agricultural commodities and precious metals. Today, in addition to traditional futures markets such as gold, silver, and live cattle, futures contracts have grown to include a diverse group of instruments ranging from Treasury bond futures to futures based upon the Consumer Price Index. In 1975, approximately 26 million contracts were traded. It is estimated that nearly 169 million futures and options contracts were traded in 1985.

While futures activity has increased sixfold during this period, the enforcement resources available to the Commission have increased by only 17 percent. The creation of a self-regulatory body in 1982—the National Futures Association—has helped the regulator keep pace with this industry. The NFA's annual budget now exceeds $18 million of funds generated by membership user fees. In addition, the 1982 legislation eased some of the Commission's regulatory burden by allowing States to vigorously pursue all off-exchange trading.

The Senate Agriculture Committee's task in 1982 was a difficult one and the reforms we approved were complex and comprehensive. This year's reauthorization, however, proposes far less significant modifications to the Commodity Exchange Act. The committee held 2 days of hearings earlier this year and the calls for new reform of the Commodity Exchange Act were very limited.

The committee bill empowers the Commission to serve administrative subpoenas on persons located outside the United States in order to ensure attendance of such persons at Commission investigative hearings. Foreign citizens and those U.S. citizens located outside the territorial United States are free to participate in our futures markets. This provision simply makes clear that these participants will be held accountable for wrongful actions in a manner similar to market participants who are located in the United States. This provision does not authorize the Commission to act without considering pertinent international factors.

This legislation also authorizes the Commission to seek appointment of a temporary receiver on an ex parte basis in order to protect books, records, and assets. The period between the issuance of an ex parte restraining order and the hearing on the application for the appointment of a receiver may be as long as 15 to 20 days. During this critical period, an independent person should be present to manage the operations of the business in order to prevent disposition of assets, books, records, and other vital documents.

Without question, the most controversial aspect of this bill is an amendment recommended by the Commission that prohibits Federal regulation of leverage contracts. Without such regulation, leverage contracts would be considered off-exchange future contracts and subject to more stringent and less uniform State regulation.

The Commodity Exchange Act requires that futures contracts be traded on federally registered futures exchanges. Despite the fact that the Commission determined that leverage contracts are indeed futures contracts in disguise, the Congress has historically voted to regulate leverage separately from futures contracts which has allowed them to proceed virtually without regulation. The committee bill eliminates this disparity between leverage contracts and futures contracts. It requires that leverage contracts be traded on registered futures exchanges or else come under the jurisdiction of State regulation. Most analysts agree that either option would

likely close out the current leverage business.

At the moment, the leverage industry is limited to just two firms. The committee bill requires a 2-year delay in the implementation of the leverage changes in order to give ample time for the two existing leverage firms to adapt their business operations to these changes. The Commission testified that leverage firms could continue to sell their goods under a cash and carry arrangement which would not be prohibited under the Commodity Exchange Act.

The committee bill also gives the National Futures Association greater authority to impose disciplinary actions upon its members. Under present law, any aggrieved person may appeal an NFA disciplinary action to the Commission and the filing of such an appeal triggers an automatic stay of the disciplinary action. While the Commission may lift the stay under current law, it may do so only after notice and opportunity for a hearing. Hence, the disciplinary action may be rendered ineffective particularly when prompt action is necessary in order to protect markets and customer accounts. While the Commission would retain its authority to grant such a stay, the committee bill deletes the automatic stay requirement.

The current statute makes it a felony for a Commissioner or Commission employee to participate, directly or indirectly, in commodity futures and options markets. The committee bill eases these restrictions and authorizes the Commission to allow participation in those instances where a conflict of interest does not exist. The broad prohibition under current law has become increasingly burdensome to the Commission and its employees as the futures and options markets continue to expand into new areas. Many mutual funds and investment portfolios now use these markets as part of their day-to-day investment strategy. In order to attract the most competent personnel, the Commission cannot deny its employees the use of legitimate investment opportunities provided that nonpublic information is not being used for such purposes.

Finally, the committee bill reauthorizes the Commodity Exchange Act for a period ending September 30. The Commodity Futures Trading Commission has a total budget of less than $30 million and a reauthorization process adds a significant burden to their already limited resources. I believe their performance has been outstanding in the last 4 years. The Commission's effort at providing efficient and effective regulation warrant a longer reauthorization period in order to provide some long-term stability to their regulatory program.

To summarize, Mr. President, this legislation does not propose significant changes to the Commodity Exchange Act as was the case in 1982. Since enactment of the 1982 amendments, the Commission has discovered a few areas where their oversight authority remains inadequate. Except for the leverage issue which will be discussed at some length here today and in the conference committee, we are simply attempting to further clarify and refine the intent of the 1982 amendments. I am hopeful that my colleagues will assist me in seeking prompt approval of this legislation.

□ 1740

Mr. HELMS. Mr. President, I believe the Senator from South Dakota has an amendment.

Mr. ABDNOR. I thank the chairman. That is correct.

AMENDMENT NO. 2898

(Purpose: To remove the application of the Commodity Exchange Act to the trading of cattle)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. ABDNOR] for himself, Mr. BOREN, Mr. WALLOP, and Mr. SIMPSON, proposes an amendment numbered 2898.

Mr. ABDNOR. I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. . NONAPPLICABILITY OF COMMODITY EXCHANGE ACT TO TRADING OF CATTLE.

(a) DEFINITION OF COMMODITY.—The third sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) by inserting "(other than cattle)" after "livestock"; and

(2) by inserting "and cattle" after "except onions as provided in Public Law 85-839".

(b) REPORT ON HEDGING.—The last sentence of 4a(3) of such Act (7 U.S.C. 6a(3)) is amended by striking out "cattle, hog, or pork" and inserting in lieu thereof "hog or pork".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply to a contract of sale of cattle for future delivery that was entered into before October 3, 1986.

Mr. ABDNOR. Mr. President, I ask for the yeas and nays on this amendment.

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

The yeas and nays were ordered.

AMENDMENT NO. 2899

(Purpose: To remove the application of the Commodity Exchange Act to the trading of cattle)

Mr. ABDNOR. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. ABDNOR] for himself, Mr. BOREN, Mr. WALLOP, and Mr. SIMPSON, proposes an amendment numbered 2899 to amendment numbered 2898.

Mr. ABDNOR. 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:

Strike all after the word "Sec." and insert in lieu thereof the following:

NONAPPLICABILITY OF COMMODITY EXCHANGE ACT TO TRADING OF CATTLE

(a) DEFINITION OF COMMODITY.—The third sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) by inserting "(other than cattle)" after "livestock"; and

(2) by inserting "and cattle" after "except onions as provided in Public Law 85-839".

(b) REPORT ON HEDGING.—The last sentence of 4a(3) of such Act (7 U.S.C. 6a(3)) is amended by striking out "cattle, hog, or pork" and inserting in lieu thereof "hog or pork".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply to a contract of sale of cattle for future delivery that was entered into before the date of enactment of this Act.

Mr. ABDNOR. Mr. President, today I am offering an amendment along with my colleagues Senators BOREN, WALLOP, and SIMPSON, to eliminate cattle as a subject for trading on the commodity futures market. Simply said, our legislation delists the two contracts of cattle from the futures market.

The call to ban cattle futures comes from cattlemen themselves. The stockgrower and cattlemen associations of South Dakota, North Dakota, Colorado, Wyoming, Montana, and Arizona all have passed resolutions calling for the elimination or suspension of cattle futures trading. The American Cowman's Association has requested that the Chicago Merchantile Exchange and the Commodity Futures Trading Commission permanently drop live cattle and feeder cattle futures. Additionally, petitions calling for the ban on cattle futures have been circulated in some 30 States.

I have here with me some of these petitions. There are over 13,000 signatures on these petitions, 13,698 to be exact, from cattlemen, bankers, agribusinessmen, and others who all believe that cattle futures should be eliminated. These signatures come from all over the United States including South Dakota.

I wish to take a second so you can see these are genuine. I hope my col-

leagues will see that, to this very day, are still coming in from all places.

I just cannot help but think that when we see this kind of response, a voluntary one—it was not Senator ABDNOR who started this movement. It was a request by the people who would normally use futures, they thought they were so wonderful and desirable, and still are saying this should be eliminated and have brought in these petitions. As I said, these petitions and signatures come not only from my State but Oklahoma, North Dakota, Wyoming, Kansas, Nebraska, Texas, Illinois, Missouri, Alabama, Arkansas, Arizona, Georgia, Louisiana, Wisconsin, California, Florida, South Carolina, New Mexico, Kentucky, Pennsylvania, Ohio, Maryland, Hawaii, Michigan, Nevada, West Virginia, Indiana, Washington, Idaho, Oregon, Minnesota, and others.

So let me make it clear at this time that this is a response from far more than just the cattlemen of my State of South Dakota.

The live cattle futures were created in late 1964 and the feeder cattle futures in 1971. Last year there were more than 5 million such cattle futures contracts traded at the Chicago Mercantile Exchange [CME].

When the cattle futures market was established, cattlemen were told that it would help stabilize the cattle market and be good for the cattle industry. Cattlemen in my home State of South Dakota and across the Nation are saying that the futures have not stabilized the market. In fact, most cattlemen would argue that futures markets have made markets more volatile during the last year.

Within 2 months last spring, there were 14 limit or near-limit moves in live cattle contracts. One daily limit move of $1.50 per hundredweight results in a $16.50 per head change in the value of a 1,100-pound steer. Such volatility was dramatically illustrated on the heels of the announcement of cow slaughter numbers under the Government's Dairy Cow Termination Program.

During the period from 1960 to 1964, the difference between the high and low end of the fed cattle market was 23.6 percent. This timeframe is before live cattle futures were established. In 1985 alone, however, the fed cattle market moved 21 percent. That's a 21-percent change in just 1 year with futures as compared to a 23.6-percent change over a period of 5 years without futures.

Perhaps the November 16, 1983, edition of Farm Talk stated the sentiment of cattlemen best when it argued:

> The futures markets have become so hyper-responsive to rumor, supply and demand estimates and so inter-related to such things as the price of gold, silver, treasury bills and foreign exchange rates, that they are but tenuously connected to the real world. Futures trading is geared to benefit those with inside information and those with tremendous market clout. Unfortunately, beef producers have neither.
>
> A system can't be right with non-producers set and oversee the rules, when non-producers influence the price of commodities they never own and never intend to own.

I am not going to argue that volatility in cash prices of cattle, measured in percentage terms, has increased since the creation of futures. Studies done by the CME have indicated that volatility declined following the introduction of futures, but even in the words of the CME:

> None of these declines proved to be statistically significant. (The Impact of the Cattle Futures Market on the Cash Market: An Analysis of Current Concerns; Chicago Mercantile Exchange, July 22, 1986)

I would like to note that the CME studies compared to an 11-year period of variability in weekly steer prices before futures with a 22-year period following the introduction of futures. I'm not a trained economist, but I feel it's unorthodox to compare an 11-year period with a 22-year period.

I also would like to point out that cattle price volatility measured in dollars rather than percentage terms was higher during the 22 years following futures. During the first week after the March 28, 1986, dairy buyout announcement, for example, the panhandle price for cattle dropped almost 9 percent.

Mr. President, one of the things that really angers cattlemen and me is that the livelihoods of cattlemen are being controlled by speculators playing the futures markets. The rough-faced and windburned cattleman has no control over the price he receives. It is controlled by speculators.

In the May 29, 1986, issue of Livestock Weekly, Wade Choate of San Angelo, TX, states the following in his letter to the editor:

> As I see it, the futures have taken control of our live market and have given it to people who have no interest in our business.
>
> Probably the worst thing about the futures is that they have so much leverage on us. One load of live cattle will cost about $20,000 to place on feed. The futures trader can buy about 29 contracts or loads with the same money that we have to put up to buy one pen of cattle. They can push us around very easily.
>
> I am not complaining as a result of being on the wrong side. Our brokers would tell you that the futures have been very good to us personally the last two years. My complaint is because of what they are doing to our industry.
>
> Incidentally, I stepped into a local commodity office a little while ago. There were seven people playing the cattle commodities: one lawyer, three construction people, one beer joint operator and just two of us cow traders.

Still another problem with cattle futures is that futures prices affect cash prices. Immediately following the March 28 dairy buyout announcement, both futures and cash prices plunged. But why did the cash prices plunge? Not a single dairy cow had been slaughtered.

In the May 29, 1986, edition of the Western Liverstock Journal, Pete Crow of Albuquerque, NM, states:

> The commodities markets control the cash market. What seems to have happened is we have removed supply and demand from the market and have created future supply and future demand, for which you need a crystal ball to forecast. The fact of the matter is that the futures markets are out of control and are not working to the benefit of most producers or feeders.

Another well-stated argument about the futures' influence on cash prices is made by even those who have made their living on the floor of the CME.

In the April 24, 1986, issue of Drovers Journal, which is a mighty well respected publication, Marvin J. Walter of Carriage House Meat and Provision Co., Inc., in Ames, IA, writes:

> As one who for a period of time made a living as a floor trading member of the Mercantile, I feel more sure now than ever before that the entire cattle industry is suffering serious setbacks because of the way trading activity moves the cash beef market both up and down. Until this became so apparent, I was never critical of the futures market and, in fact, felt it was a very viable tool in the marketing process.
>
> Probably the most damaging force emerges on the floor of the exchange by floor traders and the 'mob psychology' created when they are successful in pushing the market in one direction for a prolonged period of time. Recently, of course, this movement has worked to the detriment of the cattle industry as floor traders continue to add to their short positions on the basis of some exaggerated rumors that in most cases they help create and foster.
>
> Because packers have no real incentive to step into the live cattle market and bid up prices with a rapidly declining futures market and a higher percentage of their needs tied up in contracts, the live market collapses also. Because retailers and other large beef users see the futures market dropping and they have a percentage of their purchases made against a contract, they have no real interest in stepping into a declining market. Why buy today when we can buy cheaper later as they futures market continues to decline?
>
> A very good example of this was seen on April 3 when the futures market opened and appeared to stabilize, and the cash beef market was called steady. Suddenly, the floor started selling heavily and moved the futures down the limit. By late afternoon the bottom fell out of the cash market and it was quoted $1 to $2.50 lower. This all happened even though slaughter numbers were not abnormally high and the live cattle market was already abnormally low.
>
> I suggest this just doesn't happen. The futures market has far too much influence and control of the cash and it is getting to be a serious situation. The cattle industry is being crippled in the process.
>
> Because a preponderance of those of us in the cattle and beef industry are free enterprise entrepreneurs, we are hesitant to interfer with this 'bastion' of our economy and marketing system. Rather, we sit on the sidelines and see an entire industry devas-

tated . . . Something must be done and I urge all people interested in this business to raise their voices and ask that this nonsense be stopped.

The Chicago Mercantile Exchange does not have a rule prohibiting or limiting short selling on a downward market. The New York Stock Exchange, however, has such a rule. The big board's rule to prohibit selling short on the heels of a transaction which produced a price decline or no change in price was instituted in the 1930's when such short selling was discovered to be a common way to deliberately depress stock shares. The big board's rule therefore bars short selling except where the last transaction in a stock resulted in a price increase, or uptick.

I am not asserting that there is widespread manipulation in cattle futures. Although many cattlemen across the Nation may believe such, I cannot substantiate their claim. Personally, I tend to agree with cattlemen on this subject, but manipulation is difficult to discover and prove.

It has been suggested for years that a similar rule be initiated for commodity futures trading. Very simply, the rule would prohibit selling short unless the trader had a legitimate long hedge position or unless the transaction takes place during an uptick in the market.

It is interesting to note that even large feeders who have used the futures markets for years now advocate delisting the two contracts of cattle on the futures market. Such is the case with Paul Engler, president of Cactus Feeders, Inc., the Nation's largest cattle feeding operation. I would like to read for the RECORD a portion of an article highlighting Paul Engler's thoughts which appeared in the June 1986 issue of National Cattlemen.

ENGLER ADVOCATES DELISTING

Paul Engler, president of Cactus (Texas) Feeders, Inc., the nation's largest feeding business, says flatly that the industry should work to get cattle futures contracts delisted. Engler says that the only economic justification for any futures contract is that it (1) is a useful risk management tool and (2) provides a price discovery mechanism. The cattle contract, he says, does neither.

Engler long has used futures, but he always has questioned if the cattle contract is a viable one. Cattle, as compared with soybeans, for example, are not really a deliverable commodity, he says, and the contract has suffered from the lack of long hedgers. Theoretically, the packer should be a long hedger, but has not participated that way.

Compounding the problem was 1984 tax legislation, Engler added. This legislation effectively eliminated spreads and straddles, and that eliminated much of the speculator interest in the back months. There thus is less liquidity in the back months.

There definitely is a downward bias in the futures, Engler says. The normal hedgers (cattlemen) must sell short, and there is not enough long hedger or speculator interest on the other side.

"The futures now have an overwhelming effect on the cash markets," Engler said. "People, including retailers and packers, watch the board and make buy and sell decisions in the cash markets on the basis of the futures."

Engler urges that action to delist the cattle contract be taken now. "Cattle numbers are going down," he notes. "We're turning the corner on fat and cholesterol. The next five years could be good. But the golden years will not come to pass if we keep the futures.

Those who have suffered the most from futures, Engler says, are the basic producers and ranchers. They cannot use the contract, and they have felt most of the price pressure.

Mr. Engler points out the most appropriate reason for eliminating cattle futures—that is, the shortage of long hedgers which results in a downward bias in the market.

Cattlemen are the short hedgers in the market. They are the ones that must sell their products. The problem is that there are six times more short hedgers in the market than long hedgers. If there are six times more sellers than buyers, this puts downward pressure on the market. For various reasons, legitimate buyers of cattle like retailers and packers have not used futures to a great extent for long hedges. This is why a downward bias exists.

Mr. President, there are those who say that we should not adopt my amendment now, that we should study this issue before we act. Let me tell you that cattlemen in the United States are sick and tired of studies and delays. How long must this Congress study an issue before we act? Should we wait 1 year, 2 years, or 10 years and let the cattle business die in the meantime?

No, we should take action on this issue now. Cattlemen from across the country are demanding that cattle futures be banned. Some say that we should wait for the results of the referendum being conducted by the National Cattlemen's Association [NCA] before we take action. Well, the NCA poll results will not be available for another 30 to 60 days at which time this bill will be passed and Congress is adjourned.

Study, study, study. That is all this Congress does when it faces a tough issue. I say the time for studies has expired and that it is the day of reckoning. Cattlemen across the Nation want to know who is for eliminating futures and who is not.

Cattlemen across the country are demanding that cattle futures be eliminated. They feel that instead of being a tool which they can use, the futures have become a leg iron which is contributing to the problems being faced by the cattle industry.

Some say that cattlemen are looking for a scapegoat to blame for the problems they are facing. I submit to my colleagues that cattle futures are part of the problem. The inherent downward bias in the futures market, the effect of futures on cash market prices, the control that speculators have on the prices received by real cattlemen, and the recent volatility in futures prices—all are compelling reasons why cattle futures should be eliminated.

The legitimate producers of beef are calling for elimination of cattle futures. We should heed their call.

Mr. President I ask for the yeas and nays on my second-degree amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SIMPSON. Mr. President, I commend my friend from South Dakota, my neighbor from a neighboring State, as I always do on these agricultural issues. Again, he has done a splendid job of presenting a situation which is very clear.

Last spring, I joined others of my colleagues to express our deep displeasure and concern over the effect that the USDA Dairy Termination Program had on beef cattle prices, cash prices, doing that both through letters to the Secretary of Agriculture and on the Senate floor. That was an ill-advised termination program divided into three disposal periods. I will not go into the history of that. Yet, nearly two-thirds of the total number of cattle under that whole-herd dairy buyout—that number to be slaughtered under the program—were to be disposed of prior to August 31, 1986. That was hardly what we would call an orderly marketing procedure, and that was in that bill.

I am appalled by the absolute havoc that this program has had on western cattle ranchers in South Dakota, Wyoming, Montana, North Dakota, Nebraska, Colorado—anywhere there are cattle ranchers—who take nothing out of the Federal till, while everybody comes in here and jabs around in the farm bill and picks about 31 billion bucks out of the stack, and the poor, old cowboy gets nothing; at least, I have not seen him get anything.

Here comes the whole-herd dairy buyout, and here comes this peculiar business with the commodity exchange. When they dumped the 1 million head of dairy cattle into this pathetically weak market, the value of beef was cut by about 5 billion bucks in one fell swoop.

□ 1800

Beef cattle inventories are at the very lowest levels since 1962.

We find American cattle ranchers do not have their hands out at the Federal till seeking agricultural price supports. They have always tried to exercise a market discipline.

Now, after years of low prices and drought and high interest, and the release of these additional cattle on the market, it has really been the death knell for the western cattlemen, those uncomplaining, independent western ranchers, and at the hand of a subsidized industry no less.

So I have been looking at the impact of these future trading issues on the cash price of cattle. I realize that the Commodity Futures Trading Commission completed its own study which oddly enough and surprisingly enough said there was no manipulation. Any further study, I think, should consider the elements that many cattlemen have often stressed to me and I am sure to the Senator from South Dakota, the impact of the large traders, the shortage of the long hedgers, and the use of the futures market by actual real honest-to-God cattlemen. That does not happen very often.

Since I have been nosing around in the matter I discover yet another study has been completed. That one was done by a John Helmuth, a staff economist for the Committee on Small Business, and covered a 16-month period, January 1978 to April 1979. That study found that 90 percent of the long or the buying side of the market were speculators while the largest traders, the grain companies, the meatpackers and commercial feed lots were usually on the short or selling side of the market.

That is a lopsided composition of traders in the cattle futures market. It is a bad situation for cattle producers, and the slightest negative news causes the speculators to move out of their positions. They are just scurrying out of their positions very quickly. That creates an overload of sellers with few buyers.

When the market moves the limit down in 1 day the buyers put off their purchase decisions until they think the market has hit bottom and that leads to chaos.

There is no corresponding action then on the other side and the hedgers place their sell orders as these profitable levels are reached.

Those are the two actions that create a downward bias in the market and it is very much a no-win situation for the cow-calf person.

That is why I join with Senator ABDNOR. He just does a terrific job in calling this to the attention of all of us in the Senate who recognize it—I hope that some of our brethern from the other States will realize it, too—in this amendment to remove cattle as an item for trading on the commodity futures market.

I am convinced that when that was created in 1964 it increased the absolute volatility and instability in cash prices of cattle and rather than being a tool for a cattleman to use in his favor, I feel that the future trading in cattle has contributed to some of the serious problems in the industry and that inherent downward bias in the futures market. The effect of the futures on the cash market prices, the control that the speculators have on the prices received by the real cattlemen, and the recent volatility in the future prices are all very compelling reasons to support the elimination of cattle futures.

I am deeply appreciative of Senator ABDNOR and the manner in which he has presented this issue and certainly hope we will embrace his amendment.

I thank the Chair.

The PRESIDING OFFICER (Mr. GORTON). The Senator from North Carolina is recognized.

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

Mr. President, I have such enormous respect and affection for the distinguished Senator from South Dakota that I never feel comfortable when I feel obliged to oppose a proposal made by him.

This is one of those rare occasions when I must do that. I believe that I will be joined by my distinguished colleague, Mr. ZORINSKY, and equally distinguished colleague, Mr. LUGAR.

One of the problems with this amendment is that the impact, if any, of futures trading on the cash market prices of cattle is now under study. Senator ZORINSKY and I requested this study some weeks back, as a matter of fact, the early part of the summer, as I recall. This amendment has not been the subject of hearings by the Agriculture Committee.

Because of the implications of what the Senator proposes, I would hope that we would not take such a step without knowing what we are doing.

As I mentioned, Senator ZORINSKY and I asked the Comptroller General to conduct an investigation of the cattle futures market earlier this summer and to examine the issues raised by some in the cattle industry. That study, as I say, is under way now.

In any case, Mr. President, it would be premature to have the Senate act on this matter before we know what we are acting on.

I pledge to the Senator right this moment that as soon as the results of the study are in, we will make them available to him and all other interested Senators. If the study warrants action, we will go ahead immediately into hearings; and the committee will act promptly.

Mr. President, I ask unanimous consent at this point that the text of the letter sent by Senator ZORINSKY and me to the Comptroller General be printed in the RECORD.

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

U.S. SENATE, COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,

Washington, DC, July 23, 1986.

Hon. CHARLES A. BOWSHER,
Comptroller General, General Accounting Office, Washington, DC.

DEAR MR. COMPTROLLER GENERAL: We request that the General Accounting Office conduct an investigation of the cattle futures markets. This request is made in response to the concerns expressed by several senators who are interested in the operation of the cattle futures markets and their effects on cash cattle prices.

Many cattle producers across the United States have raised questions about the effect of cattle futures trading on cash market prices for cattle during the past twenty years. Producers' concerns were heightened by the abrupt negative reaction of the cattle futures markets to the announcement of the results of the dairy whole-herd buyout program in March of this year.

The investigation of the cattle futures markets should address the following specific questions:

1. Was the reaction of the cattle futures markets to the announcement of the results of the dairy whole-herd buyout accurately based on supply/demand conditions?

2. What is the effect of the cattle futures markets (a) on price relationships between feeder cattle and fed cattle? (b) on the price discovery process? (c) on the competitive structure of the cattle industry?

3. We are informed that the use of packer contracts as a means to obtain predictable supplies of slaughter cattle has increased sharply. We are advised that one effect of this development has been an increase in short hedging in the live cattle futures markets.

a. What effect, if any, has this increased short hedging had on futures and cash prices?

b. If packer contracting becomes the prevalent method of marketing fed cattle, can cash cattle markets accurately reflect supply/demand conditions?

4. Questions have been raised about the present delivery system for the live cattle futures contracts.

a. Does the present delivery system create any upward or downward bias in cash prices for cattle?

b. Does the present delivery system create additional price volatility during the delivery month?

c. What are the advantages and disadvantages of using a cash settlement system in lieu of the present delivery system for the live cattle futures contracts?

We would appreciate the opportunity to work with your staff as it addresses these questions and sets the scope of the investigation. We may also have additional areas for examination.

The investigation should be completed by July 1, 1987. We also request that a preliminary report be presented to the Committee by January 15, 1987.

Sincerely,

JESSE HELMS,
Chairman.

EDWARD ZORINSKY,
Ranking Minority Member.

Mr. HELMS. Mr. President, I could go through a whole litany of problems that I have with the Senator's amendment.

The commercial market participants, the feedlots, the producers, packing houses, all of these and others would be deprived of hedging and price basing vehicles. Cattle prices, in quotes to producers, could very well be lowered to reflect increased risk; and cattle prices would, in any case, reflect only local conditions. If the Senator's amendment should prevail, there will be no national market for pricing or producer planning.

The CFTC itself was requested to review the cattle market by the National Cattlemen's Association, the American Cowmen's Association, and the distinguished Members of the other body.

In response to those inquiries, the CFTC reported no evidence of price manipulation or excessive speculation whatsoever.

So, Mr. President, I will not go further, but this amendment, in the judgment of this Senator, is at best premature and probably ill-advised.

But I say to the Senator again that when the report is in, and the facts are in, if the situation warrants; the committee will go immediately into hearings and will act on this issue early next year.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. ZORINSKY. Thank you, Mr. President.

On July 23, Senator HELMS and I wrote a letter to the Comptroller General, as the Senator pointed out, requesting that GAO investigate the cattle futures markets. Not everyone in the cattle industry believes that cattle futures trading should be prohibited. Since the request for the GAO investigation originated with some members of the cattle industry, I believe it is only fair that we await the results of GAO's investigation. In our letter, Chairman HELMS and I asked that the investigation be completed by July 1, 1987. We asked that a preliminary report be presented to the committee by January 15, 1987.

The pending amendment to ban trading in cattle futures has not been the subject of any congressional hearings, and it would, in my judgment, be premature to adopt it.

There are many cattlemen who use the futures markets to their advantage.

□ 1810

It should also be noted that the House-passed bill requires the House Agriculture Committee to conduct such a study.

I, therefore, urge my colleagues to reject the amendment.

Mr. ABDNOR. Mr. President, I appreciate the views and words of the chairman and ranking member of the Agriculture Committee, my friend and colleague from Nebraska, Senator ZORINSKY.

But, again, I want to point out I really have not done anything toward trying to gather up petitions. They are coming in every day—almost 14,000 names.

Let me just tell you how the petition reads:

> We as Beef Producers, Farmers, Businessmen, Bankers, that have this day signed the following petition, strongly requesting our Congress to eliminate entirely all Future Markets on all Livestock. All Future Contracts bought and sold on the Chicago Mercantile Exchange amount to 14 to 15% of all Cattle on Feed in the United States, and not taking in consideration all cattle in pastures, but yet it controls our markets daily. We ask Congress to do this quickly in order to save the Cattle Industry in the United States.

I want to say I did have a meeting out in South Dakota. I picked the State fair. It was well advertised and anyone was welcome to come. I got quite a story, "Cattlemen Back ABDNOR On Cattle Futures Trading."

I did not have anyone to bother to take the trouble at the State fair where probably more cattlemen appear than any one place I know. Not one individual there opposed the measure. As a matter of fact, they encouraged me and wanted me to know they were solidly behind it.

Now, you have contracts in this business. A bona fide cattle feeder comes in and he has to buy a contract which, as I understand it, is for at least 40,000 pounds. What disturbs me is this man that puts up every buck for those 40,000 pounds and takes them home has all the risks in the world of keeping those cattle together and finishing them out and fattening them—he has to undergo the blizzards, he has to undergo diseases, he has to undergo fluctuations in prices up and down, and all that goes with raising cattle. But the fellow who is playing the contracts from the board of trade can buy for the same dollars 29 contracts, 29 times more than the poor farmer and cattle feeder, who I can sympathize with because I have been around cattle feeding and in the business myself. I know the risks and I know all that they are undertaking.

And to think that somebody else, who does not probably even know what a cow looks like, other than it runs through the computer when he looks the figures over, he can buy 29 times the same amount as the man who actually feeds the cattle. It would seem to me the least we could do is make him put up some bucks if he wants to get into the business and participate against the feeder.

You know, even in the grain market, if you want to play the grain trade, you have to put up a lot more money than 29 to 1, I will tell you that. Maybe that would satisfy us. Maybe if they had to put up a little more of their dough to get into it and have this great influence on the market, it might be of considerable help.

I will tell you this much: As I understand it, the futures were put there for the benefit of the cattleman, not the guy who wants to play the other end. And when they come out in the numbers that are coming out telling me to get rid of it, I have got to believe there is some merit to it. That is exactly why I stand here today and ask you to support me in my proposal and my amendment.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, the distinguished Senator from South Dakota speaks, I think, poignantly and accurately about the anguish of cattlemen. It has not been a good situation. I know that each one of us who is involved in agriculture wishes the situation might improve.

Mr. President, let me just say I think the gist of the argument today is not a technical one. It is the fact that the cattle business has been in despair. Mr. President, that is not a function of the CFTC or the futures market.

The fact of life, unfortunately, in the cattle industry is that in the last 10 years the consumption of red meat has declined from 126 pounds per person in this country to 106 pounds per person. This is dramatic, almost a 20-percent decline in consumption of red meat. That means that the demand has so substantially dropped off that, in a supply-and-demand marketing situation, the price was bound to come down.

Now the distinguished Senator from South Dakota has pointed to some other factors that have accelerated that despair. One of them is the whole herd buyout provision of the farm bill that was passed last year.

With 1.2 million animals slaughtered, coming onto the market, the supply side once again was very heavy but the demand side was still declining, both moving in the same directing. Consequently, the price went down. It was bound to go down. It has absolutely nothing to do with the futures market. It has a lot to do with the despair in the cattle industry.

I would point out, Mr. President, that inexplicably there are higher slaughter rates this year than last year. That is another factor that depresses price. But I think, Mr. President, it would be a bad mistake to get confused about the mechanism of a futures contract or the markets that establish the price for cattle and the basic facts in that industry which have led to less demand, sharply less demand—for a variety of reasons—and a vast oversupply, plus an acceleration of slaughtering.

Mr. President, it is a fact that the futures markets, by and large, lead to higher prices for cattle, as they do for

other livestock. The reason that this is so, as the distinguished Senator from North Carolina has pointed out, is that the futures markets represent a national market, a national focus for demand. And it is an entirely different type of market, Mr. President.

Many persons in our country now take a look each week at what the highest available savings rates might be at savings and loans or savings banks all over the country. Why do they do that? Because often the rate of interest being offered by the local savings and loan or the local bank is lower than somewhere else in the country and, as a result, a lot of money moves to banks that offer a higher rate of interest. That national market is available, a national focus. So it is in the futures business with regard to cattle.

If, in fact, the seller of cattle was confined to the pricing situation in his own market and that local market had no reference whatever to the national market; or, now, to the international market, prices would be lower, not higher, and cattlemen would lose money, or not make as much money. They would not be able to maximize their opportunities in the way the futures markets now make possible.

The fact is that markets still attempt to have a degree of price discovery and that means, in simple terms, an opportunity for a seller of cattle to have the best options available anyplace in the United States, or the world, and to have that price reflected in what he can obtain in his own market.

So, Mr. President, let us not throw out a mechanism which has some hope, by the very way that it works, of raising prices. Let us understand that the reason prices have come down is through the natural forces of supply and demand. Many persons in the cattle industry are working very, very hard to come up with meat that is leaner, that meets nutritional needs and demands of Americans, that may offer a very good reason for Americans to increase their consumption of red meat each year.

□ 1820

I am optimistic that the cattle industry will succeed in that endeavor. We have heard much testimony before our committee which shows that this experimentation is coming along. But let us at least preserve the futures mechanism which will make it possible to maximize prices for that red meat as it comes to market in a form that Americans find more to their liking.

Mr. President, I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I have not had a chance to take a close look at this amendment offered by the distinguished Senator from South Dakota.

I want to say at the outset that I would agree with the Senator from South Dakota that there are some problems in this context, the cattle futures contract. It is apparent, at least to this Senator, that there are many unexplained disruptions in the cattle futures market which are resulting in lost cash to cattle producers. I do not believe that the Congress, nor the CFTC, has given sufficient attention to the inequities that cattlemen face in the futures market. I know that many of my cattlemen believe that the position of the futures market has been dictating the price. That is what they believe.

They believe that the futures market is driving down the cash price of cattle which, of course, is the amount of money that a rancher or farmer gets for his cattle at the sale barn or the packing plants.

The recent situation in the futures prices on the Chicago Merchantile Exchange have convinced many cattlemen that something is definitely wrong there.

The recent volatility of, and the downward pressure on, futures and cash prices had many cattlemen questioning the integrity of the beef cattle markets.

On the other hand, Mr. President, the ability to forward contract is essential. It is essential to the cattle industry, if we are to have stability in the livestock industry.

The futures markets can provide several benefits to the industries that have them. For instance, cattle futures and options in particular, first, allow for cattlemen to increase the time in which they can choose the price for their cattle from the traditional 2 weeks to 5 months or more. That is a definite benefit to the cattlemen in Iowa, South Dakota, or anywhere else.

Second, cattle futures allow the cattlemen to significantly reduce the financial risk involved in cattle feeding.

I would just point out that those who were appropriately hedged at the time of the whole herd dairy buyout announcement would have been fully protected against the 9-percent cash price drop which followed immediately thereafter. So that also could have been a benefit.

Third, I would point out that an operating cattle futures market allows cattlemen to obtain continous information on how the market is valuing cattle to be delivered up to 14 months into the future. This is a definite asset to anyone who is in the cattle business.

Mr. President, abolishing the cattle futures trading contract right now is much too precipitious an action to take at this time. The disruptions that it would cause throughout the countryside would be enormous. If you think cattlemen have lost a lot of money now, if you adopt this amendment, I grant you the cash price of cattle is going to go completely through the floor. If we have disruptions now, you ain't seen nothing yet if we adopt this amendment, because this amendment says, "Bang, no more contracts after the date of enactment of this."

No new contracts.

That is going to cause the price of cattle, I think, to go completely through the floor.

Ideally, Mr. President, we should have, I think, a strong look at the cattle contract because I do not believe that it is working properly. I would agree with many of the cattlemen who feel that way. I believe very strongly that if we do not clean up this contract, sooner or later it is going to hurt all the other CFTC contracts. But this is not the way to do it. This does not just get at those who are perhaps trying to manipulate this contract, those who are violating the limits as one speculator violated the limits 15 times in the last 5 months.

No; this really hurts the cattlemen out there in the countryside.

So I think that the real victims from this kind of amendment would be the cattlemen, and I would also point out the real victim would be the cow-calf producer out there in the countryside.

I just think, Mr. President, that we have a contract here that should provide, as I mentioned, those these benefits to our cattle producers, to the livestock industry. I think, for the most part, this contract has operated to benefit the cattle producers of America. There are anomalies. There are some things going on in this contract which I think ought to be looked at. I would hope that this amendment by the Senator from South Dakota would be rejected, and I would hope that we perhaps could move on to a study to find out why these things are occurring and to have this reported back.

As I understand it, if I am not mistaken, the Senate Agriculture Committee and the distinguished chairman and ranking member have written such a letter and have requested that study to be done.

So I think this action here is much too precipitous. I just think if this amendment is adopted on the floor of the Senate tonight, watch what happens to the cash price of cattle tomorrow. Just watch it. It will go down and you are going to leave a lot of farmers out there, who are already hurt enough, holding the bag.

As much as I agree that we ought to have a strong look at this contract, and I do believe there are some things going on that I do not like, this is far too precipitous an action to take. The real victims of this amendment, should

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it be adopted, are not those who are violating the contract, not those who are violating the limits on the Chicago market, but the cow-calf producer and the livestock producer in Iowa, Nebraska, South Dakota, and all over this country.

So, Mr. President, I do indeed hope that this amendment will be rejected at this time and that we get a good study done, taking a good, hard look at it. Then we ought to have some firm directions to the CFTC to take some actions to clean up this contract.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. I yield to the Senator from Illinois.

Mr. DIXON. Mr. President, I rise in opposition to the amendment offered by the Senator from South Dakota, Senator ABDNOR. This amendment seeks to ban the trading of cattle futures.

These contracts have been widely used by feedlot operators, family feeders, meat packers, and meat exporters. Last year, more than 5 million contracts were traded. The economic purpose of this contract has never been successfully questioned.

Unfortunately, there are often misunderstandings about what cattle futures markets are, who is in them, and how they operate. In 1982, the Congress directed the Commodity Futures Trading Commission [CFTC] to conduct a 2-year study of the manner in which large hedgers use the futures markets in live cattle. The study concluded "that the existing regulatory programs of the CFTC and the CME, Chicago Mercantile Exchange, are adequate to deter any abusive trading by large hedgers in livestock markets and to preserve or restore orderly trading in those markets. Consequently, no legislative proposals are being recommended."

An amendment similar to the one offered today by Senator ABDNOR was soundly defeated in the House. I urge a similar vote against the amendment here in the Senate.

Mr. LUGAR. Mr. President, we are at a point where I suspect the participants are prepared to conclude the debate.

In a moment, I will move to table the Abdnor amendment. I understand the Senator from Montana is approaching the floor and has a statement to make. For the moment, 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.

□ 1830

Mr. LUGAR. 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. LUGAR. Mr. President, I move to lay on the table the underlying Abdnor amendment No. 2898 and 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 lay on the table the underlying amendment of the Senator from South Dakota [Mr. ABDNOR]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. INOUYE], the Senator from West Virginia [Mr. ROCKEFELLER] are necessarily absent.

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

The result was announced—yeas 71, nays 26, as follows:

[Rollcall Vote No. 290 Leg.]

YEAS—71

Armstrong	Harkin	Mitchell
Bentsen	Hatch	Moynihan
Biden	Hawkins	Nunn
Bingaman	Heflin	Packwood
Bradley	Heinz	Pell
Broyhill	Helms	Proxmire
Bumpers	Hollings	Pryor
Chiles	Humphrey	Quayle
Cochran	Johnston	Riegle
Cohen	Kasten	Roth
Cranston	Kennedy	Rudman
D'Amato	Kerry	Sarbanes
Danforth	Lautenberg	Sasser
Dixon	Leahy	Simon
Dodd	Levin	Specter
Dole	Long	Stafford
Eagleton	Lugar	Stennis
Evans	Mathias	Symms
Exon	Matsunaga	Trible
Ford	Mattingly	Warner
Glenn	McClure	Weicker
Gore	McConnell	Wilson
Gorton	Melcher	Zorinsky
Gramm	Metzenbaum	

NAYS—26

Abdnor	Denton	Laxalt
Andrews	Domenici	Murkowski
Baucus	Durenberger	Nickles
Boren	Goldwater	Pressler
Boschwitz	Grassley	Simpson
Burdick	Hart	Stevens
Byrd	Hatfield	Thurmond
Chafee	Hecht	Wallop
DeConcini	Kassebaum	

NOT VOTING—3

Garn	Inouye	Rockefeller

So the motion to lay the amendment (No. 2898) on the table was agreed to.

The second-degree amendment (No. 2899) falls on a tabling motion.

□ 1900

Mr. HELMS. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. LUGAR. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WILSON. Mr. President, I had intended to offer an amendment which would have retained the existing authority of the Commodity Futures Trading Commission to regulate leverage transactions. Although in the interest of time I will not do so, I do wish to expand upon the importance of retaining section 19 of the Commodity Exchange Act.

Before doing so, however, I wish to express my pleasure that this important legislation to reauthorize the CFTC has made its way to the floor of the Senate. I wish to commend my distinguished colleagues, Senator HELMS and Senator LUGAR, the chairmen of the Agriculture Committee and its Subcommittee on General Legislation, for their leadership and cooperation regarding this bill and my interest in it.

I share their concern and support for enacting legislation during this Congress which will reauthorize the CFTC. This authorization process has commanded a great deal of the agency's attention and resources, and in my view, it is vitally important that Congress pass a multiyear reauthorization bill, so that the agency may again concentrate upon the task of regulating a range of complex and important activities.

One such activity involves the enforcement of existing regulations pursuant to which licensed companies may offer to consumers leverage or margin contracts for the delivery of precious metals or gold or silver coins. These regulations are intended to protect consumers from the unlicensed, sharp operators who may seek to defraud public consumers through phony commodity transactions. The continued regulatory oversight of the CFTC in order to eliminate these illegal operations is of particular importance to me because the problem of commodity fraud has been severe in southern California.

While I applaud the intention of my colleagues on the Agriculture Committee who wish to eliminate fraudulent commodity transactions, I question their means. The bill before us today would prohibit the CFTC from regulating leverage transactions, thereby putting out of business the only two leverage transaction merchants which have been licensed by the Commission. The apparent presumption in this approach is that by banning anyone from legally offering leverage contracts, somehow the illegal backroom operations will also disappear.

In all candor, Mr. President, to the extent that this approach may make any sense, I fail to perceive it. Congress neither ensures additional consumer protection nor fewer fraudulent operations by adopting legislation that

outlaws legitimate businesses and prohibit continued Federal regulations.

Of all the retail commodity dealers in California—some of them legitimate businesses and many of them not—only one of them offers the benefits of comprehensive, stringent Federal customer protection regulations. Monex International, Ltd., is a CFTC registered leverage transaction merchant located in Newport Beach, CA. It is one of only two such firms in the country licensed by the CFTC to buy and sell commodities to the public under leverage of margin contracts. The other firm is located in Florida.

Monex has been in business since 1967, nearly 20 years, it presently employs 200 people and services approximately 14,000 accounts. It has appeared before Congress each of the four times that we have considered the Commodity Exchange Act, since its enactment in 1973. And during every reauthorization year, Monex and the Florida-based leverage merchant have come before Congress in support of comprehensive regulations to protect the public from fly-by-night operators how profit on the basis of fraud and deceit.

And during each previous reauthorization, Congress concurred with their positions and instructed the CFTC to adopt regulations to govern these companies. After a decade of regulatory inertia, Congress finally demanded action from the CFTC in 1982. Consequently, in 1984, the CFTC promulgated regulations for leverage contracts.

In many ways, these regulations parallel those that the Commission imposes upon futures commission merchants that trade on exchanges. Both regulations require registration with the Commission, minimum capital requirements—$2.5 million for leverage merchants; $50,000 for futures traders—disclosure statements to customers regarding investment risks, segregation of customers' funds, and submission of regular financial reports to the CFTC. In other ways—aside from higher minimum capital requirements—the Commission's regulations of leverage businesses are more stringent that those which apply to exchanges. For example, first-time purchasers of leverage contracts have a 3-day cooling-off period during which they may rescind their investment.

In fact, in 1984, Monex invested a great deal of money—more than $1 million—to adapt its operating procedures to these regulations, in order to be federally licensed to offer leverage contracts. I ask unanimous consent that a side-by-side comparison of the CFTC's rules affecting leverage and futures contracts, which was prepared by the Department of Justice, be inserted in the CONGRESSIONAL RECORD at this point.

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

COMPARISON OF RULES AFFECTING LEVERAGE TRANSACTION MERCHANTS [LTMS] AND FUTURES COMMISSION MERCHANTS [FCMS]

LTMS	FCMS
1. LTMS must be registered with the Commission (17 C.F.R. §§ 3.17; 31.5(a)(2)).	FCMS must be registered with the Commission (7 U.S.C. § 6d; 17 C.F.R. § 3.10).
2. Associated persons of LTMS must be registered with the Commission (17 C.F.R. §§ 3.18, 31.5a(3), 31.5(b)).	2. Associated persons of FCMS must be registered with the Commission (7 U.S.C. § 6k, 17n C.F.R. § 3.12).
3. Each LTM must at all times maintain adjusted net capital equal to or in excess of $2,500,000 plus 20 percent of the market value of the amount of physical commodities subject to leverage contracts entered into by the LTM which are uncovered (17 C.F.R. § 31.9).	Each FCM must maintain adjusted net capital equal to or in excess of an amount that cannot be less than $50,000 and, depending on the size of the FCM's business and other factors, may be substantially more (17 C.F.R. § 1.7).
4. LTMS must provide their leverage customers with a disclosure document that sets forth the risks of entering into a leverage contract in language prescribed by the Commission (17 C.F.R. § 31.11).	FCMS must provide their futures customers with a disclosure statement that sets forth the risks of trading futures in langauge prescribed by the Commission (17 C.F.R. § 1.55).
5. LTMS must separately account for and segregate funds belonging to leverage customers (17 C.F.R. § 31.12).	FCMS must separately account for and segregate funds belonging to futures and options customers (17 C.F.R. § 1.20).
6. LTMS must file financial reports with the Commission on forms prescribed by the Commission (17 C.F.R. § 31.13).	FCMS must file financial reports with the Commission on forms prescribed by the Commission (17 C.F.R. § 1.10).
7. LTMS must keep books, records and other documents in the manner prescribed by the Commission (17 C.F.R. § 31.14).	FCMS must keep books, records and other documents in the manner prescribed by the Commission (17 C.F.R. § 1.31-1.37).

COMPARISON OF RULES AFFECTING LEVERAGE TRANSACTION MERCHANTS [LTMS] AND FUTURES COMMISSION MERCHANTS [FCMS]—Continued

LTMS	FCMS
8. LTMS must promptly report to their leverage customers statements of any transaction in their accounts, and must provide their leverage customers with monthly statements as well (17 C.F.R. § 31.15).	FCMS must promptly provide to their futures customers confirmation of any transaction in their accounts, and must provide their leverage customers with monthly statements as well (17 C.F.R. § 1.33).
9. LTMS are forbidden to represent to their leverage customers that they will guarantee those customers against loss (17 C.F.R. § 31.20).	FCMS are forbidden to represent to their futures customers that they will guarantee those customers against loss (17 C.F.R. § 1.56).
10, LTMS must permit first time leverage customers to rescind their leverage contracts if the customers request recission within three days from the time the customers receive confirmation of the transaction (17 C.F.R. § 31.23).	No comparable provision application to FCMS.
11. LTMS must at all times maintain cover of at least 90 percent of the amount of physical commodities subject to open long (or open short) leverage contracts entered into with leverage customers (17 C.F.R. § 31.8).	No comparable provision application to FCMS.

As this analysis makes clear, whether a customer is investing in leverage contracts or futures, he is protected by a comprehensive regulatory scheme when he deals with a CFTC-licensed merchant. Indeed, Susan Phillips, chairman of the CFTC, testified in both the Senate and House Agriculture Committees that the two licensed leverage merchants are now tightly and effectively regulated.

So what would the bill before us do? It would ban leverage transactions. Despite a decade of congressional action sanctioning these businesses, despite the implementation of Federal regulation of these businesses, and despite their reliance upon the acts of Congress and compliance with Federal

regulations, S. 2045, if enacted, would put these two legitimate firms out of business.

I understand and share the desire of my colleagues who wish to eliminate the scam operators who prey upon the public. However, I disagree with their theory that by prohibiting legal firms from engaging in this business, we will eliminate the illegal, unlicensed opertors. On the contrary, it seems clear to me that if we preclude the CFTC from keeping a watchful eye on leverage transactions, then we will be encouraging the type of unregulated environment in which scam operators will flourish.

This point of view is shared by the Reagan administration. In a letter to Agriculture Committee Chairman HELMS, the Department of Justice acknowledges that it, too, is concerned about preventing fraudulent transactions. However, the administration states that "those who are already operating outside the requirements of the law are unlikely to be affected by banning leverage contracts." The Justice Department further states that to the extent that abuses outside the law and beyond CFTC regulations may exist, "they should be addressed as an enforcement matter, not by governmental intrusion into the market to ban leverage and thereby deny consumers the benefit of transactions with qualified firms."

I concur with the administration's view that "there is every reason to believe that careful regulation of leverage merchants will prevent fraud and abuse, especially if to that regulation is added competition that enables customers to choose merchants with reputations for honesty and solvency." I ask unanimous consent that the letter from the Justice Department to Chairman HELMS, dated August 13, be printed at this point in the CONGRESSIONAL RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, August 13, 1986.

Hon. JESSE HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter contains the views of the Department of Justice ("Department") concerning S. 2045, the "Futures Trading Act of 1986", as reported by your Committee. The Department respectfully urges that S. 2045 be amended by deleting Title II as presently drafted and substituting a new subsection to Section 19 of the Commodity Exchange Act (7 U.S.C. § 23). Title II as reported would have the effect of phasing out after two years and then banning a form of off-exchange commodities transaction called "leverage contracts", now regulated by the Commodity Futures Trading Commission ("CFTC" or "Commission").

While off-exchange leverage contracts bear some resemblance to futures contracts, they differ from futures in many respects. For example, futures contracts are typically of short duration, whereas the term of leverage contracts may be as long as twenty-five years. Futures contracts are generally for larger quantities than are leverage contracts, and it is far easier for the holder of a "long" position in a leverage contract to take delivery of the commodity than it is for the holder of a "long" position in a futures contract to do so. The time for delivery under a futures contract is a specific month in the future, whereas delivery under a leverage contract can take place at any time after payment of the balance of the purchase price.

In addition, leverage contracts generally serve a different function than do futures contracts. Futures contracts serve as commercial hedging devices and as price discovery mechanisms. While leverage contracts do not serve a price discovery function and are not used in commercial hedging, holders of "long" position in leverage contracts may use them as an investment vehicle and hold them as a hedge against inflation. Perhaps the most significant difference is the manner in which they are traded. Futures are traded on organized exchanges, with clearing houses taking positions opposite that of all customers. Leverage contracts, on the other hand, are not traded on exchanges but are agreements between leverage merchants and customers, with the merchants taking a position opposite to that of their customers. Because leverage merchants are able to avoid the high fixed costs of establishing an exchange and a clearinghouse, they have greater flexibility in introducing new products, new maturity dates, new quantities of a commodity, and new delivery provisions. These differences from futures have caused some consumers to prefer trading in leverage contracts for a variety of reasons; speculation, investment, or hedging against inflation. Your Committee has recognized that leverage transactions satisfied genuine consumer demands and should not be banned. S. Rep. No. 97-384, 97th Cong., 2d Sess. 52 (1982).

Since 1975, the Commission has a broad prohibition on fraud in connection with the offer and sale of leverage contracts (17 C.F.R. § 31.3 (1985)). Since 1979, the Commission has had a moratorium on the entry of new firms into the leverage business (17 C.F.R. §§ 31.1, 31.2 (1985)). The 1984 regulations require, among other things, registration of leverage merchants and commodities with the Commission, minimum financial requirements, disclosure of risks, a three-day "cooling off" period for first time customers, and access for leverage customers to the Commission's reparations procedure. It was not until 1984 that the Commission put into effect its present comprehensive regulations for leverage contracts. The effects of the moratorium and the regulations have been to limit the writing of leverage contracts to the two firms that remain in the industry and to constrain the ability of those firms to innovate by the artificial limitation of leverage contracts to ten years' duration and longer.

Leverage transactions are not the only kinds of off-exchange transactions subject to CFTC regulation. While most of the transactions regulated by the Commission involve exchange-traded instruments, the Commission also regulates the off-exchange offer and sale of commodity options to commercial interests for use in their business (17 C.F.R. § 32.4(a) (1985)) and the off-exchange offer and sale of dealer options (17 C.F.R § 32.12 (1985)).

The Department is concerned that Title II of S. 2045 would prohibit the offer and sale of leverage contracts, as that business is presently conducted, by repealing after two years the portions of the Commodity Exchange Act that require the CFTC to regulate them as a separate type of instrument. As a consequence of the repeal of that regulatory authority, firms currently writing leverage contracts would be precluded from doing so in two years. The result would be effectively to foreclose a desired competitive alternative to the trading of futures contracts offered by exchanges. Thus, Title II would unnecessarily impair the operation of markets among willing buyers and sellers for this type of off-exchange contract.

It is now generally recognized that new goods and services and new, more efficient productive processes are major contributors to enhanced consumer welfare. New goods and services not only serve in and of themselves to increase the well-being of consumers, but they also make consumers better off by stimulating firms that did not introduce innovations (and are losing, or fear losing, business to the innovators) to imitate, and perhaps improve upon, those innovations. This constantly evolving operation of market forces reflects the process of competition in maximizing consumer choices, promoting innovation and efficiency, and enhancing consumer welfare.

The importance of innovation to the futures industry is shown by the growth of new contracts. For example, approximately two-thirds of the 1985 trading volume on the largest exchange, the Chicago Board of Trade, was accounted for by contracts that that exchange did not trade in 1975. Innovation in the futures market may, however, be less than optimal for two reasons. First, a futures contract in a particular commodity such as gold that becomes well established on one exchange may well have natural monopoly characteristics, so that there is decreased incentive for other exchanges to imitate and try to improve upon it due to the difficulty of competing successfully with the dominant exchange for that contract. Second, aside from the moratorium-constrained two-firm leverage industry, futures commission merchants and others are statutorily prevented from offering innovative off-exchange futures and products that might compete with futures. *See* 7 U.S.C. § 6(a).

An expansion of the leverage industry could be expected to enhance innovation and competition not only in the leverage industry but also in the development of other types of off-exchange transactions. Such expansion in leverage transactions could be expected to provide increased competition to futures contracts as well. A seller considering whether to offer an innovative leverage product—for example, a contract on gold—would not be deterred from doing so by the existence of a successful exchange-traded futures contract on gold in the same way that an exchange contemplating a new futures contract on gold would be, because the off-exchange seller would be providing a different investment vehicle than a futures contract. The seller of an off-exchange leverage contract would not be limited in its choice of contract terms to those suitable for exchange trading, but could differentiate its products from futures or existing leverage products in contract terms, duration, delivery provisions, contract size, or other

terms and conditions. A large number of off-exchange leverage merchants would be expected to increase the number of innovative contract features, some of which could be imitated and perhaps improved upon by the exchanges in their futures contracts. In this way innovation in off-exchange leverage transactions could lead to innovations in futures trading.

An example of how innovation in financial instruments can lead to imitation elsewhere is the development of bank-issued credit cards. Initially, merchants such as department stores and petroleum companies offered credit cards by which their customers could be extended credit on purchases of their products. Later, firms such as American Express and Diners' Club began offering credit cards by which consumers could purchase goods and services from a wide variety of sellers. Eventually, banks began to offer all-purpose credit cards for use in ordinary consumer purchasing. *See* Bergsten, *Credit Cards—A Prelude to the Cashless Society,* 8 B.C. Ind. & Comm. L. Rev. 485 (1967). Thus, had there been governmental regulation permitting firms to offer credit only on the goods and services they provided, the development of the modern credit industry with its multiple choices and conveniences may well have not developed.

Much of the debate about leverage contracts has centered on allegations of fraud and abusive practices. While the Department is, of course, concerned about preventing such practices, there is no reason to believe that such complaints are necessarily related to registered leverage merchants. The greatest danger to leverage customers would appear to be from "bucket shops" and other firms operating outside the law and CFTC leverage regulations. Those who are already operating outside the requirements of the law are unlikely to be affected by banning leverage contracts, however. Moreover, the fact that numerous complaints about fraud and abusive practices were made in the largely unregulated environment in which leverage merchants operated prior to 1984 should not be viewed as establishing that such practices have occurred or will continue under the comprehensive and stringent Commission regulations on leverage merchants now in place. If abuse outside the law and CFTC leverage regulations exists, they should be addressed as an enforcement matter, not by governmental instrusion into the market to ban leverage and thereby deny consumers the benefit of transactions with qualified firms that may seek to offer such contracts.

The new subsection that the Department proposes be added to Section 19 of the Commodity Exchange Act (previously supplied to the Committee staff) would require the Commission to remove its moratorium on the entry of new firms into the business of offering leverage contracts. The new subsection would also require the CFTC, within one year, to transmit to the appropriate Committees of Congress a report containing its findings and recommendations concerning appropriate changes in the regulatory scheme to govern leverage transactions. The report would include recommendations on how the regulatory scheme should be modified without placing an undue burden on the limited resources of the Commission, so as better to ensure the financial solvency of firms writing leverage contracts, prevent manipulation and fraud, and promote or allow product innovation by measures such as permitting short-term standardized contracts.

The Department appreciates that, in carrying out its duties under the Commodity Exchange Act, the CFTC is not compelled to promote competition if adequate safeguards against fraud or other abusive practices would thereby be abandoned. However, the CFTC has had only two years' experience in regulating the leverage industry subject to stringent regulations and no experience at all in regulating a competitive leverage industry. The proposed Commission report will assist in determining the appropriate level of regulation based upon the kinds of transactions currently engaged in and reasonably contemplated.[1]

Moreover, there is every reason to believe that careful regulation of leverage merchants will prevent fraud and abuse, especially if to that regulation is added competition that enables customers to choose merchants with reputations for honesty and solvency. Indeed, leading futures commission merchants already regulated by the Commission are potential entrants into the leverage business, and the forces of competition can be expected to help drive unsound firms and questionable practices from the marketplace. Reputable leverage merchants would have every incentive to protect their reputations by avoiding abusive or questionable practices themselves through careful selection and monitoring of principals and employees, and by reporting to the Commission fraud and abusive practices by other firms in the industry and illegal conduct by unregistered firms operating outside the law. A cautious approach by the Commission to admitting additional firms and regulating them will not only help to ensure that only highly qualified firms are permitted to offer leverage contracts, but will help to alleviate any additional burden on the Commission's resources. Moreover, it may be possible that the regulatory burdens can be shared with a CFTC-registered futures association, thus further lessening the Commission's duties with respect to leverage transaction merchants while ensuring the integrity of the more competitive marketplace.

For the foregoing reasons, the Department of Justice respectfully urges an approach to leverage contracts different than that contained in Title II of S. 2045. Rather than banning such contracts, we believe competition and consumer welfare will better be enhanced by revision of Title II along the lines we have suggested. Our approach would eliminate the ban on new entry and require a study of ways in which the regulatory scheme should be modified so as better to ensure the financial solvency of firms writing such contracts, prevent manipulation and fraud, and promote or allow product innovation. Such an approach is fully consistent with this Administration's commitment to reducing unnecessary governmental interference with free market forces and maximizing reliance on competition to promote consumer welfare.

We sincerely appreciate your consideration of these views.

[1] In comments recently filed with the Commission, the Department noted that the appropriate level of regulation for an instrument (in that case, foreign options) depends in part on whether the history of the marketing of that instrument was marked by widespread fraud and abuse. Comments of the United States Department of Justice before the Commodity Futures Trading Commission in the Matter of Proposed Rules for Regulations of Foreign Options and Foreign Futures Transactions 17 (July 8, 1986).

The Office of Management and Budget has advised this Department that there is no objection to the submission of these views from the standpoint of the Administration's program.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

Mr. WILSON. It is ironic that while the administration supports added competition in the marketplace, as do I, some observers believe that the entire campaign to rescind the CFTC's authority over leverage contracts has been prompted by fear of competition. The two licensed leverage companies have been in existence before Congress even created a CFTC. The issue of leverage regulation has been considered by Congress in 1973, 1978, 1982, and again this year. Yet, this year, for the first time, one exchange which trades futures contracts on precious metals has perceived that the two licensed leverage firms represents competition.

In my opinion, the consumers of this country, as well as our Nation's overall economy, are best served through public policy which promotes competition, not through special interest laws which eliminate it.

The amendment which I had considered introducing would have had a positive effect upon competition among leverage merchants. Specifically, it would have continued that CFTC's authority to regulate leverage contracts on gold, silver, and platinum. It would have further directed the CFTC to conduct a survey and report to Congress in 2 years regarding expansion of this industry and the resulting competition. Also, the proposal which I had been considering would have directed the Commission to review and amend existing leverage regulations to accommodate an expanded leverage industry, including any responsibilities that a user-funded futures association may be required to accept.

In addition, my amendment would have incorporated the consumer protection provisions contained in the CFTC's regulations of the leverage industry, as well as restating the existing statutory authority of the States to enforce antifraud laws against unlicensed operators who illegally sell commodity transactions.

Had I introduced an amendment, its section relating to the CFTC's continued regulatory authority would have been identical to the provision which has already been approved by the full House of Representatives. That language is supported by the Chicago Board of Trade and the Chicago Mercantile Exchange. In addition, CFTC Chairman Phillips told the House Agriculture Committee that the Commission could accept such a provision.

In my view, it is essential that any CFTC reauthorization bill retain—at a

minimum—language similar to that approved by the House and contained in my amendment. Similarly, I understand that it is essential that the Senate have an opportunity to adopt this critical reauthorization bill before our adjournment, without a lengthy and time-consuming debate on leverage transactions.

For that reason, I have not introduced an amendment and am willing to allow Senate passage of the committee's bill with some assurance from the distinguished manager of the bill, Senator LUGAR, that the leverage issue will be addressed fully by the House/Senate conferees and resolved in a more favorable way. If this should not occur, then I want the record to reflect that I will use whatever parliamentary procedures are available to prevent the Senate from adopting a conference report prior to our sine die adjournment.

Before engaging in a colloquy with the bill's distinguished manager, Senator LUGAR, I wish to express my pleasure that this important legislation to reauthorize the CFTC has made its way to the floor of the Senate. In addition, I wish to commend Senator HELMS and Senator LUGAR, the chairmen of the Agriculture Committee and its Subcommittee on General Legislation, for their leadership and cooperation regarding this bill and my interest in it.

I share their concern and support for enacting legislation during this Congress which will reauthorize the CFTC. This authorization process has commanded a great deal of the agency's attention and resources, and in my view, it is vitally important that Congress pass a multiyear reauthorization bill, so that the agency may again concentrate upon the task of regulating a range of complex and important activities.

One such activity involves the enforcement of existing regulations pursuant to which licensed companies my offer to consumers leverage or margin contracts for the delivery of precious metals or gold or silver coins. These regulations are intended to protect consumers from the unlicensed, sharp operators who may seek to defraud public customers through phony commodity transactions. The continued regulatory oversight of the CFTC in order to eliminate these illegal operations is of particular importance to me because the problem of commodity fraud has been severe in southern California.

In my view, it is essential that any CFTC reauthorization bill retain—at a minimum—language similar to that approved by the House and discussed in my written statement. Similarly, I appreciate that it is essential that the Senate have an opportunity to adopt this critical reauthorization bill before our adjournment, without a lengthy and time-consuming debate on leverage transactions.

For that reason, I have not introduced an amendment and am willing to allow Senate passage of the committee's bill with some assurance from the distinguished manager of the bill, Senator LUGAR, that the leverage issue will be addressed fully by the House/Senate conferees and resolved in a more favorable way.

Mr. LUGAR. Mr. President, the Senator from California has stated his point very eloquently. The House Agriculture Committee has voted overwhelmingly to retain Federal regulation of leverage contracts. A compromise among competing interests by the House/Senate conferees would be a normal course of events under such circumstances. Should this not occur and the Senate position prevail in the conference, I fully understand and appreciate the fact that the Senator from California would likely oppose the Senate's consideration of the conference report this year.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The distinguished majority leader is recognized and the Senate will be in order.

Mr. DOLE. Mr. President, if we could have order, there are a number of Senators who would like to know what the program is going to be.

I understand there are now a series of amendments cropping up on this minor measure. We have at least one or two on this side and one or two on the other side. One is apparently a farm bill. We have a couple on grain standards.

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent there now be a period for the transaction of routine morning business not to extend beyond 7:15 p.m. There will be no more votes tonight.

Mr. PRYOR. Mr. President, reserving the right to object.

Would the majority leader repeat what he just said. I could not hear.

Mr. DOLE. I just said based on what I am picking up around there will be no more votes, and we will just have a period for the transaction of routine morning business.

Mr. PRYOR. I thank the Senator.

Mr. MELCHER. Mr. President, will the leader yield?

The PRESIDING OFFICER. Is there objection?

Mr. MELCHER. Reserving the right to object.

Mr. HARKIN. Reserving the right to object.

Mr. BYRD. May we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. Members will withhold until the well is cleared.

Mr. MELCHER. Mr. President, will the majority leader yield for a question?

Mr. DOLE. I am happy to yield.

Mr. MELCHER. Will the majority leader have any objection to continuing long enough to offer an amendment that we believe will be accepted?

Mr. DOLE. I understand there will be so many amendments that are not going to be accepted that we better sort of find out where they are. If we can accept the Senator's amendment and if there are a couple more we can do very quickly tomorrow morning, we will. If we cannot work it out, this bill is finished for the year.

Mr. MELCHER. I thank the leader.

Mr. HARKIN. Mr. President, reserving the right to object, I inquire of the majority leader will this bill then be taken up first thing tomorrow?

Mr. DOLE. You may never see this bill again this year.

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

Mr. DOLE. I yield.

Mr. BYRD. While a goodly number of Senators are here, what time does the distinguished majority leader intend to bring the Senate in tomorrow? What is his plan to have up on tomorrow when the Senate begins its business?

Mr. DOLE. I think one thing we might do is sort of canvass the amendments on this bill but if what I am hearing is correct we are looking at farm bills and other things. We will probably not be on this bill tomorrow. There is a chance we might be on FIFRA, and then we hope to start action on the drug bill tomorrow.

The House will vote on the tax reform bill about 1 o'clock. That may be over.

We also at least have the possibility of a cloture vote tomorrow when we come in on the product liability. And if cloture is invoked I assume there will be 100 votes for it. That could take some time on the cloture before we move to proceed to that measure.

So we plan on coming in at 9:30 a.m.

Mr. BYRD. If the Senate comes in at 9:30 a.m., unless the majority leader gives the order to have a cloture vote at a time different from that which would be in accordance with the rule, if Senators could know at this point perhaps the majority leader would want to let us know now.

Mr. DOLE. I think what I need to do on that is discuss that with the minority leader a little later.

I have a couple things in mind that we might do on this vote.

Mr. BYRD. All right.

The majority leader was interested in having a vote on some treaties.

Mr. DOLE. We have about six treaties, and I understand that if every Member is here tomorrow, we could have one vote that would count as six votes on the six treaties.

Mr. EAGLETON. What time?

Mr. BYRD. I think we might very well be able to get consent for one vote on the six treaties. We would probably have that for the majority leader in the morning.

What drug bill will the Senate be taking up?

Mr. DOLE. It is my hope, and the staff is still working, it may not be any drug bill that is on the calendar. It may be a bipartisan bill that we would introduce as a substitute, call up one and then introduce the substitute, hopefully with Republican and Democratic sponsors on the parts that we can agree to, and on the areas we cannot agree we will just have to agree to offer amendments and let people vote them up or down.

Mr. BYRD. Very well.

I thank the majority leader. There will be no more rollcall votes today?

Mr. DOLE. No more rollcall votes this evening.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Mr. President, reserving the right to object, I would like to ask the majority leader if he will yield for a question.

Mr. DOLE. I yield.

Mr. HARKIN. I and several other Senators have introduced today a new farm bill. I was wondering if the majority leader was laboring under the impression this was the bill?

Mr. DOLE. No.

Mr. HARKIN. I want to make it clear we were not anticipating and I was not and no one with me on the bill that I know was going to offer that in any way. I want to make that point clear.

Mr. DOLE. I think someone else may offer a number, like soybeans, farm credit. There are Members on both sides who have grain standard amendments. I understand there are amendments that will be taken of Senator MELCHER and the Senator from Kentucky, Senator MCCONNELL.

We would like to complete action on this, but I think until we can find out and get all the competing people together, it does not serve any purpose, and I know that many Members on this side have conflicts as do Members on that side, and we were in late last night. It is going to be a long week. I think we may as well wrap it up.

The PRESIDING OFFICER. Is there objection?

Mr. MATSUNAGA. Reserving the right to object, will the distinguished majority leader yield for a question?

Mr. DOLE. I am most pleased to yield.

Mr. MATSUNAGA. At what time does the majority leader intend to adjourn the Senate this evening?

Mr. DOLE. We have quite a little wrap-up. I would think by 8 o'clock.

Mr. MATSUNAGA. Without objection, it is so ordered.

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.

□ 1930

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

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

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, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 10:22 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 1246) to establish a federally declared floodway for the Colorado River below Davis Dam.

The message also announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 2294. An act to reauthorize certain programs under the Education of the Handicapped Act, to authorize an early intervention program for handicapped infants, and for other purposes.

ENROLLED BILL SIGNED

At 11:30 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 2787. An act to extend through fiscal year 1988 SBA Pilot Programs under section 8 of the Small Business Act.

The enrolled bill was subsequently signed by the President pro tempore [Mr. THURMOND].

ENROLLED JOINT RESOLUTION SIGNED

At 4:12 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. 415. Joint resolution to provide for a settlement to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute.

The enrolled joint resolution was subsequently signed by the President pro tempore [Mr. THURMOND].

At 5:43 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that in accordance with the request of the Senate the joint resolution (H.J. Res. 686) to designate August 12, 1986, as "National Civil Rights Day" is returned to the Senate.

The message also announced that the House has passed the following bill, with amendments in which it requests the concurrence of the Senate:

S. 816. An act to establish the Pine Ridge Wilderness and Soldier Creek Wilderness in the Nebraska National Forest in the State of Nebraska, and for other purposes.

The message further announced that Mr. DAVIS is appointed as an exclusive conferee, solely for the consideration of title IX of division A of the Senate bill and sections 213, 1025, 1026, 1048, and title IX of division A of the House amendment in the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2638) entitled "An act to authorize appropriations for military functions of the Department of Defense and to prescribe military personnel levels for such department for fiscal year 1987, to revise and improve military compensation programs, to improve defense procurement procedures, to authorize certain construction at military installations for fiscal year 1987, to authorize appropriations for national security programs of the Department of Energy for fiscal year 1987, and for other purposes," vice Mr. KRAMER, excused.

The message also announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 1915. An act to establish procedures for review of tribal constitutions and bylaws or amendments thereto pursuant to the act of June 18, 1934 (48 Stat. 987);

H.R. 3077. An act to amend the Inspector General Act of 1978 to establish offices of inspector general in certain departments, and for other purposes;

H.R. 4154. An act to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such act, and for other purposes;

H.R. 4216. An act to provide for the replacement of certain lands within the Gila

Bend Indian Reservation, and for other purposes;

H.R. 4217. An act to provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolikot Dam, and for other purposes;

H.R. 4862. An act to amend the Freedom of Information Act to provide procedures for the processing of requests for confidential business information;

H.R. 4980. An act to amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for injury to persons in the free exercise of religious beliefs;

H.R. 5056. An act to permit registered public utility holding companies to own certain interests in qualifying cogeneration facilities;

H.R. 5166. An act to designate certain lands in the Cherokee National Forest in the State of Tennessee as wilderness areas, and for other purposes;

H.R. 5262. An act to establish the Bayou Sauvage Urban National Wildlife Refuge in the State of Louisiana;

H.R. 5300. An act to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987;

H.R. 5369. An act to require asbestos manufacturers to submit information on their asbestos products to the Environmental Protection Agency and to require owners of buildings containing asbestos to inspect the building and take samples of asbestos before commencing civil actions relating to asbestos, and for other purposes;

H.R. 5430. An act to amend the Gila River Pima-Maricopa Indian Community judgment distribution plan;

H.R. 5480. An act to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such Act;

H.R. 5506. An act to amend the International Claims Settlement Act of 1949 to provide that the value of claims be based on the fair market value of the property taken;

H.R. 5522. An act to authorize the release to museums in the United States of certain objects owned by the United States Information Agency;

H.R. 5526. An act to authorize the water resources research activities of the United States Geological Survey, and for other purposes; and

H.J. Res. 67. Joint resolution calling for a wildlife sanctuary for humpback whales in the West Indies.

At 7 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 394. Concurrent resolution to correct technical errors in the enrollment of the bill S. 1965.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent:

H.R. 1915. An act to establish procedures for review of tribal constitutions and bylaws or amendments thereto pursuant to the act of June 18, 1934 (48 Stat. 987); to the Select Committee on Indian Affairs.

H.R. 4862. An act to amend the Freedom of Information Act to provide procedures for the processing of requests for confidential business information; to the Committee on Governmental Affairs.

H.R. 4980. An act to amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for injury to persons in the free exercise of religious beliefs; to the Committee on the Judiciary.

H.R. 5262. An act to establish the Bayou Sauvage Urban National Wildlife Refuge in the State of Louisiana; to the Committee on Environment and Public Works.

H.R. 5369. An act to require asbestos manufacturers to submit information on their asbestos products to the Environmental Protection Agency and to require owners of buildings containing asbestos to inspect the building and take samples of asbestos before commencing civil actions relating to asbestos, and for other purposes; to the Committee on Environment and Public Works.

H.R. 5522. An act to authorize the release to museums in the United States of certain objects owned by the United States Information Agency; to the Committee on Foreign Relations.

H.R. 5526. An act to authorize the water resources research activities of the United States Geological Survey, and for other purposes; to the Committee on Environment and Public Works.

H.J. Res. 67. Joint resolution calling for a wildlife sanctuary for humpback whales in the West Indies; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

H.R. 5484. An act to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes;

S. 2825. A bill to provide for a waiver of certain requirements of title XIX of the Social Security Act with respect to care and services provided by the Medical University of South Carolina;

H.R. 4492. An act to permit the transfer of certain airport property in Algona, Iowa;

H.R. 4838. An act to amend section 408 of the Federal Aviation Act of 1958 to ensure fair treatment of airline employees in airline mergers and similar transactions; and

S. 2850. A bill to strengthen and improve the enforcement of the laws against illegal drugs, and for other purposes.

The following bills were read the first and second times by unanimous consent:

H.R. 3077. An act to amend the Inspector General Act of 1978 to establish offices of inspector general in certain departments, and for other purposes;

H.R. 5300. An act to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987;

H.R. 5480. An act to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such act;

MEASURES HELD AT THE DESK

The following bills were ordered held at the desk by unanimous consent, pending further disposition:

H.R. 4154. An act to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes;

H.R. 4216. An act to provide for the replacement of certain lands within the Gila Bend Indian Reservation, and for other purposes;

H.R. 4217. An act to provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolikot Dam, and for other purposes;

H.R. 5056. An act to permit registered public utility holding companies to own certain interests in qualifying cogeneration facilities;

H.R. 5430. An act to amend the Gila River Pima-Maricopa Indian Community judgment distribution plan.

The following bill was ordered held at the desk by unanimous consent, until the close of business September 25, 1986:

S. 2840. A bill entitled the "Superfund Amendments and Reauthorization Act of 1986".

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, September 24, 1986, she had presented to the President of the United States the following enrolled bills and joint resolutions:

S. 1963. An act to direct the Secretary of the Interior to convey certain interests in lands in Socorro County, New Mexico, to the New Mexico Institute of Mining and Technology;

S. 2703. An act to amend the Federal Aviation Act of 1958 to provide that prohibitions of discrimination against handicapped individuals shall apply to air carriers;

S. 2759. An act relating to telephone services for Senators;

S.J. Res. 207. Joint resolution to designate November 15, 1986, as "National Philanthropy Day";

S.J. Res. 317. Joint resolution to designate the month of November 1986 as "National Hospice Month";

S.J. Res. 354. Joint resolution to designate the week of October 5, 1986, through October 11, 1986, as "National Drug Abuse Education and Prevention Week";

S.J. Res. 362. Joint resolution to designate the week of December 14, 1986, through December 20, 1986, as "National Drunk and Drugged Driving Awareness Week";

S.J. Res. 402. Joint resolution designating July 2 and 3, 1987, as the "United States-Canada Days of Peace and Friendship"; and

S.J. Res. 415. Joint resolution to provide for a settlement to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute.

PETITIONS AND MEMORIALS

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

POM-860. Joint resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation.

"ASSEMBLY JOINT RESOLUTION No. 108

"Whereas, The United States Senate Budget Resolution eliminates the United States Travel and Tourism Administration (USTTA), the only official organization that coordinates international tourism policy for the United States worldwide; and

"Whereas, Tourism is the second largest private employer in the nation and generates more than $46 billion a year in salaries and wages while serving as the first, second, or third largest employer in 40 states; and

"Whereas, USTTA provides state and city tourism agencies with a worldwide network of offices and services which promote the United States as a destination of travel in general and aid in marketing those states and cities in particular; and

"Whereas, The average funding among competitive countries for equivalent agencies is nearly four times greater than federal funding for USTTA; and

"Whereas, The preservation of the profit-generating USTTA would lessen the United States balance-of-trade deficit by increasing the United States' share of tourism receipts thereby increasing our nation's real earnings; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California memorializes the President and Congress of the United States to take all measures necessary to retain the United States Travel and Tourism Administration at current or higher funding levels; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the National Conference of State Legislatures."

POM-861. Joint resolution adopted by the Legislature of the State of California; to the Committee on Finance:

"ASSEMBLY JOINT RESOLUTION No. 102

"Whereas, Agriculture is the leading industry in California accounting for more than 14 billion dollars in gross receipts from the production of nearly 250 different crops and livestock; and

"Whereas, California's agricultural economy is heavily dependent on foreign markets which account for 25 percent of California agricultural sales; and

"Whereas, The value of California's agricultural exports has declined from a high of 4.2 billion dollars in 1981 to 2.9 billion dollars in 1984 largely due to tariff and nontariff barriers facing our agricultural exports and to the competition from emerging foreign producers; and

"Whereas, Spain and Portugal have entered into full membership in the European Economic Community which will further decrease our agricultural export trade; and

"Whereas, The preservation and development of foreign markets are essential to the economic well-being of California agriculture; and

"Whereas, The next round of tariff negotiations under the General Agreement on Tariffs and Trade (GATT) is scheduled to take place in September 1986; and

"Whereas, United States agriculture in general, and California agriculture in particular, have historically been relegated to a low priority in the GATT negotiations and have received little benefit, frequently being offered as the sacrificial lamb to achieve nonagricultural concessions; and

"Whereas, Those few gains which agriculture has achieved through these negotiations are of little, if any, value due to flagrant violations of the GATT rules by foreign countries; and

"Whereas, It has become abundantly clear that the United States must make an unequivocal strong stand at the GATT negotiations to protect our rightful position in world trade and to ensure that agriculture maintains a priority status; and

"Whereas, The California State World Trade Commission has appointed a Special Trade Representative who is housed in the Governor's Washington D.C. Office and who is intimately familiar with California agriculture and the significant importance of maintaining present and developing new export markets for California's agricultural commodities; and

"Whereas, This is a prime opportunity for the Governor and the commission's special trade representative to protect and enhance the position of California agriculture through forceful, constructive, and determined participation in the GATT negotiations; now, therefore, be it

"Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to protect California agricultural interests in the forthcoming General Agreement on Tariffs and Trade (GATT) negotiations; and be it further

"Resolved, That the California State World Trade Commission is requested to direct its special trade representative in Washington, D.C., to take an active role in the forthcoming GATT negotiations and ensure that the United States negotiators recognize California agriculture's rightful position in world trade; and be it further

"Resolved, The special trade representative be requested to keep the Governor and the Legislature abreast of international trade developments, especially any proposal that might be considered by the United States negotiating team so the state will have an opportunity to analyze and present meaningful and timely input to the United States negotiators; and be it further

"Resolved, That United States negotiators be requested to obtain agreement from all GATT participants that violations of GATT rules will cease; and be it further

"Resolved, That the Clerk of the Assembly transmit copies of this resolution to the Governor, to the Director of the California Department of Food and Agriculture, to the California State World Trade Commission and its Special Trade Representative, to the President and Vice President of the United States, to the President pro Tempore of the United States Senate, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the United States Secretary of Agriculture, and to the United States Trade Representative."

POM-862. Joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources:

"ASSEMBLY JOINT RESOLUTION No. 105

"Whereas, Advancing medical technology in the area of organ transplantation has brought enhanced health to thousands of people while increasing both the need and demand for transplant operations; and

"Whereas, The public has seen an increasing number of dramatic appeals for organ donors to help a particular patient in need of a heart, liver, or other organ transplant; and

"Whereas, The federal Task Force on Organ Procurement and Transplantation is a congressionally mandated body representing physicians and scientists involved in transplantation, organ procurement specialists, hospitals, third-party payers, members of the general public, ethicists, attorneys, and representatives of the federal government; and

"Whereas, The task force has spent the last 18 months studying transplant policy in this country; and

"Whereas, The task force has recently released an extensive report on its findings; and

"Whereas, The American Council on Transplantation (ACT) is a private sector organization formed in 1983 and dedicated to increasing the availability and transplantation of organs and tissues to save and improve the lives of others. ACT is a nonprofit organization of over 700 individuals and over 80 national, regional, and local organizations representing a range of interests in organ and tissue transplantation; and

"Whereas, The American Council on Transplantation has officially endorsed in principle the work and report of the task force; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California endorses in principle the work and the findings of the federal Task Force on Organ Transplantation; and be it further

"Resolved, That the Legislature of the State of California respectfully memorializes the President of the United States and Congress to carry out the specific task force recommendation that a national organ procurement and transplantation network be established to coordinate efforts to locate potential donor organs, and that this network shall have the power to set guidelines for obtaining and using organs for the purpose of transplantation; and be it further

"Resolved, That the Chief Clerk of the Assembly send copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Secretary of Health and Human Services, to the Executive Director of the American Council on Transplantation, and to the Executive Director of the Task Force on Organ Procurement and Transplantation."

POM-863. Joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources:

"ASSEMBLY JOINT RESOLUTION No. 100

"Whereas, The right of working people to fair treatment by their employers is fundamental to the proper functioning of both our American democracy and our economy; and

"Whereas, Being out of work is a dehumanizing experience, and Americans do not go on strike for frivolous reasons; and

"Whereas, On March 7, 1986, the 6,000 members of the Independent Federation of Flight Attendants (IFFA) went on strike against Trans World Airlines (TWA) after contract negotiations reached a total impasse; and

"Whereas, The IFFA has bargained in good faith by offering to accept the same pay and benefit reductions as other TWA unions; and $5,000 per IFFA member per year over three years; and

"Whereas, TWA rejected this offer, demanding salary, benefit, and work rule concessions from IFFA members three times greater than those accepted by other TWA employees (i.e., mechanics, pilots, ground employees, nonunion personnel, and management employees); and

"Whereas, TWA seeks a substantially greater reduction in the total wage-benefit-work rule package from the IFFA; and

"Whereas, All union employees regardless of gender have the same economic need to support themselves and their families, thus requiring that due consideration for equal treatment be assured in labor negotiations and settlements for both male and female dominated unions; and

"Whereas, TWA management's present course of using inexperienced, nonunion personnel to fill the strikers' positions is causing a reduction in service; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California expresses its support for a prompt and equitable settlement of the labor dispute between the Independent Federation of Flight Attendants and Trans World Airlines; and be it further

"Resolved, That, recognizing that the regulation of interstate air traffic is a federal responsibility, the Legislature urges the President of the United States, the Secretaries of the United States Departments of Labor and Transportation, and the Congress of the United States to take all appropriate steps to bring about a prompt and equitable settlement of the labor dispute between the Independent Federation of Flight Attendants and Trans World Airlines; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Secretaries of the United States Departments of Labor and Transportation, the Speaker of the House of Representatives of the United States, each Senator and Representative from California in the Congress of the United States, the Independent Federation of Flight Attendants, and Trans World Airlines."

POM-864. Joint resolution adopted by the Legislature of the State of California; to the Committee on Small Business:

ASSEMBLY JOINT RESOLUTION No. 96

"Whereas, The United States Small Business Administration was established to foster the American spirit of entrepreneurship for individuals gifted with initiative and talent but who lack financial means to achieve their business objectives; and

"Whereas, The United States Small Business Administration has provided new entrepreneurs with counsel, expertise, and technical support to compete in the business community in an economically significant manner; and

"Whereas, The State of California recognizes that the programs of the United States Small Business Administration have strengthened the state's economic growth and welfare by developing businesses that generate state revenue, stimulating private investment and employment; and

"Whereas, The State of California recognizes that federal appropriations to the Small Business Administration are an investment in future business developments and innovations that will keep this country competitive with other industrial nations; and

"Whereas, The State of California recognizes that private entrepreneurs with the help of the Small Business Administration have stimulated the development of new products, technology, services, marketing ideas, and employment opportunities which have placed California in the forefront of business developments; and

"Whereas, The State of California recognizes that the Small Business Administration has played an important role in assisting minority business people to start their own businesses and participate in government procurement programs; and

"Whereas, The State of California's businesses are in greater need today than ever before of the services of the United States Small Business Administration as a result of the fact that they are:

"(a) Experiencing severe economic problems caused by escalating insurance costs and commercial rents.

"(b) Increasing competition from large chains.

"(c) Often subjected to greater regulation by all levels of government which requires greater knowledge and technical expertise.

"(d) Subject to greater interest rates and loan fees for capital than competing larger businesses and often entrepreneurs have difficulty obtaining private financing for startup costs, maintenance, and expansion; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California urge the President and Congress of the United States to keep the United States Small Business Administration as an independent agency with adequate funding for assisting the development of new small businesses and preservation of existing ones; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Administrator of the United States Small Business Administration."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 827. A bill to amend the Public Health Service Act to provide for the compensation of children and others who have sustained vaccine-related injuries, and for other purposes (Rept. No. 99-483).

By Mr. HATCH, from the Committee on Labor and Human Resources, without amendment:

S. 2864. A bill to provide for a Deputy Secretary of Labor, and Assistant Secretary of Labor for Administration and Management, three additional Assistant Secretaries of Labor, and for other purposes (Rept. No. 99-484).

By Mr. ANDREWS, from the Select Committee on Indian Affairs:

Report to accompany the bill (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, California, and for other purposes (Rept. No. 99-485).

By Mr. HEINZ, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

S. 430. A bill to amend and clarify the Foreign Corrupt Practices Act of 1977 (Rept. No. 99-486).

By Mr. THURMOND, from the Committee on the Judiciary, without recommendation without amendment:

H.R. 2183. A bill to amend title 28 of the United States Code to make certain changes with respect to the participation of judges of the Court of International Trade in judicial conferences, and for other purposes.

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

H. Con. Res. 67. Concurrent resolution expressing the sense of the Congress that a uniform State act should be developed and adopted which provides grandparents with adequate rights to petition State courts for privileges to visit their grandchildren following the dissolution (because of divorce, separation, or death) of the marriage of such grandchildren's parents, and for other purposes.

By Mr. THURMOND, from the Committee on the Judiciary, with amendments:

S. 2312. A bill to amend title VII of the Omnibus Crime Control and Safe Streets Act of 1968, relating to armed career criminals, to include a serious drug offense and any crime of violence as an offense subject to enhanced penalties.

By Mr. THURMOND, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 2323. A bill to exempt certain activities from provisions of the antitrust laws.

By Mr. THURMOND, from the Committee on the Judiciary, without recommendation without amendment:

S. 2424. A bill to amend the interest provisions of the Declaration of Taking Act.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

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

John W. Melcher, of Maryland, to be Inspector General, Department of Transportation;

William R. Graham, of California, to be Director of the Office of Science and Technology Policy; and

Dale D. Myers, of California, to be Deputy Administrator of the National Aeronautics and Space Administration.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. SPECTER:

S. 2863. A bill to prohibit damage to religious property; injury to persons in the free exercise of religious beliefs; to the Committee on the Judiciary.

By Mr. HATCH:

S. 2864. A bill to provide for a Deputy Secretary of Labor, and Assistant Secretary of Labor for Administration and Management, three additional Assistant Secretaries of Labor, and for other purposes; from the Committee on Labor and Human Resources; placed on the calendar.

By Mr. GORTON (for himself and Mr. EVANS):

S. 2865. A bill to amend Public Law 94-423, relating to the Oroville-Tonasket Unit, Chief Joseph Dam Project, to ensure that the design flaws in the system are corrected, and for other purposes.

By Mr. SPECTER:

S. 2866. A bill to rename the VA Medical Center;" at University Drive in Pittsburgh, Pennsylvania, the "Commando Charles E. Kelly VA Medical Center"; to the Committee on Veterans' Affairs.

By Mr. METZENBAUM:

S. 2867. A bill to amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for injury to persons in the free exercise of religious beliefs; to the Committee on the Judiciary.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 2868. A bill to amend the Indian Self-Determination Act of 1974, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. HARKIN (for himself, Mr. ZORINSKY, Mr. EXON, Mr. HART, and Mr. BURDICK):

S. 2869. A bill to provide price and income protection to family farmers through the management of the supply of the 1987 through 1999 crops of certain agriculture commodities, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SPECTER (for himself and Mr. HEINZ):

S. 2870. A bill entitled the "Steamtown Historic Designation Act;" to the Committee on Energy and Natural Resources.

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 2871. A bill to designate certain segments of the Maurice, the Manatico, and the Manumuskin Rivers in New Jersey as study rivers for inclusion in the national wild and scenic rivers system; to the Committee on Energy and Natural Resources.

By Mrs. KASSEBAUM:

S. 2872. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit applicants to file abbreviated applications for registration of pesticides or new uses of pesticides under certain circumstances, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KENNEDY:

S. 2873. A bill to require the Director of the National Institute of Child Health and Human Development to establish a grant program to fund research, training, and patient service in pediatric pulmonary medicine; to the Committee on Labor and Human Resources.

By Mr. GRASSLEY:

S. 2874. A bill to amend the Grain Standards Act of 1916 to establish the policy of providing grain of high quality to both domestic and foreign buyers, to better define the purpose of Official United States Standards for Grain and to provide for the closer regulation of dockage and foreign material in grain; to the Committee of Agriculture, Nutrition, and Forestry.

By Mr. MATSUNAGA (for himself, Mr. GLENN, Mr. BROYHILL, Mr. BURDICK, Mr. GORE, Mr. HEFLIN, Mr. INOUYE, Mr. JOHNSTON, Mr. MCCONNELL, and Mr. WILSON):

S. 2875. A bill to amend the Federal Food, Drug, and Cosmetic Act to ban the reimportation of drugs produced in the United States, to place restrictions on drug samples, to ban certain resales of drugs purchased by hospitals and other health care facilities, and for other purposes; to the Committee on Finance.

By Mr. MOYNIHAN:

S.J. Res. 419. Joint resolution to designate December 11, 1986 as "National SEEK and College Discovery Day"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. STAFFORD (for Mr. DOLE (for himself and Mr. BYRD)):

S. Res. 493. A resolution to authorize the production of documents by the Senate Permanent Subcommittee on Investigations; considered and agreed to.

By Mr. STAFFORD (for Mr. DOLE (for himself and Mr. BYRD)):

S. Res. 494. A resolution to direct the Senate Legal Counsel to represent and to authorize the testimony of former Permanent Subcommittee on Investigations employees in the case of "William E. Brock v. Frank Gerace, et al."; considered and agreed to.

By Mr. D'AMATO (for himself and Mr. BRADLEY):

S. Con. Res. 164. A concurrent resolution expressing the sense of the Congress concerning the Soviet Union's continued interference with postal communications between the United States and the Soviet Union; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 2863. A bill to prohibit damage to religious property; injury to persons in the free exercise of their religious beliefs; to the Committee on the Judiciary.

CRIMINAL PENALTIES FOR DAMAGE TO RELIGIOUS PROPERTY AND INJURY TO PERSONS EXERCISING RELIGIOUS FREEDOM

Mr. SPECTER. Mr. President, I am introducing a bill to amend chapter 13 of title 18 of the United States Code to impose criminal penalties for damage to religious property and for injury to persons in the free exercise of religious beliefs. This is an identical bill which was approved on Monday, September 22, in the House of Representatives.

Religiously motivated violence, which can involve simple vandalism such as defacing the walls of a synagogue with a swastika or more dangerous acts of destruction such as arson or bombing, appears to be a growing problem. In Pennsylvania, the number of reported incidents increased 85 percent in the past year.

Synagogues and black churches are believed to be the target of the overwhelming majority of religiously motivated crimes of destruction. Current Federal law permits prosecution of religiously motivated violence in limited circumstances. First, the Federal Government can prosecute persons who engage in religiously motivated violence while acting under color of law, as well as those acting in concert with persons acting under color of law. However, these instances are rare.

Second, the Federal Government can prosecute religiously motivated violence if explosives are used or are attempted to be used or arson or attempted arson is involved and, first, the offender flees across the State line with intent to avoid prosecution or, second, the property damage is used in or affects interstate or foreign commerce. Thus, the Federal unlawful flight provision would not permit prosecution if the underlying offense was defacing property, one of the most common forms of damage sustained by synagogues.

This bill adds a new section to title 18 of the U.S. Code which would make it an offense: to travel in interstate or foreign commerce or to use a facility or instrumentality of interstate or foreign commerce with intent to deface, damage, or destroy any religious real property because of the religious character of the property; to travel in interstate or foreign commerce or to use a facility or instrumentality of interstate or foreign commerce with intent to obstruct, by force or threat of force, any person in the free exercise of religious beliefs. This bill authorizes: a fine and imprisonment for any term of years or for life or both if death results from religiously motivated violence; a fine and imprisonment for not more than 15 years or both if serious bodily injury results; and a fine and imprisonment for not more than 5 years or both in any other case. The maximum fine authorized by 18

U.S.C. 3623 is $250,000 if the defendant is an individual and $500,000 if the defendant is an organization. This bill defines: "religious real property" to mean any church, synagogue, religious cemetery, or other religious real property; and "serious bodily injury" as a substantial risk of death, unconsciousness, extreme physical pain, or protracted loss, or impairment of the function of a bodily member, organ, or mental faculty.

This bill does not supplant or replace local law enforcement authority and responsibility, but strengthens the Federal response when one is called for. The scope of existing Federal laws is inadequate to augment State and local enforcement in a substantial manner. Existing Federal laws do not adequately express the moral condemnation of the escalating numbers of hate crimes being committed in our society. It is important to send a strong signal that religiously motivated violence will not be tolerated. Enactment of this legislation would go a long way to ensure that right of every person to be protected from fear, harassment and physical harm which may be imposed upon them by reason of their religion.

By Mr. GORTON (for himself and Mr. EVANS):

S. 2865. A bill to amend Public Law 94-423, relating to the Oroville-Tonasket Unit, Chief Joseph Dam project, to ensure that the design flaws in the system are corrected and for other purposes; to the Committee on Energy and Natural Resources.

AUTHORIZATION FOR OROVILLE-TONASKET IRRIGATION PROJECT

● Mr. GORTON. Mr. President, in 1976, Congress authorized the construction of an irrigation system between the towns of Oroville and Tonasket in Okanogan County, WA. The system was designed as a state-of-the-art replacement for a 70-year-old gravity irrigation system to provide water for 10,000 acres of orchards and cropland and to provide fisheries enhancement for the area. Unfortunately, Mr. President, this modern state-of-the-art system has turned out to be a constant state-of-disrepair system that has failed to meet the needs of the farmers who depend on it for their livelihood.

For 2 years, the growers who use the system have been plagued by a system that simply does not work properly. Rather than bringing clean usable water to the apple, cherry, and pear orchards of the Oroville-Tonasket region, the system is clogged with sand, silt, vegetation, and debris which is choking filters, blowing sprinkler heads, and generally doing a poor job of irrigating the land it was designed to serve.

For some farmers, the problems with the system are literally driving them out of business. Edna Schertenleib is one orchardist whose problems with the system are severe and aren't getting any better. During high water last spring she had to clean the filter screens on her farm by hand every half hour; otherwise the system clogged and shut down. Unfortunately, Mr. President, Edna's difficulties are multiplied across most of the irrigation project.

Mr. President, after 2 years of meetings and negotiations with Bureau of Reclamation officials to try and find solutions to the problems besetting the system, the irrigators and the irrigation district personnel are fed up. The time has come to take action to correct the problems in the system. Pursuant to this goal, today, Senator EVANS and I are introducing a bill to increase the authorization for the Oroville-Tonasket project to a level which will permit the Bureau to pay for the repairs that need to be made to the system. Earlier this year, the Bureau requested a $76-million authorization level for the project to cover delays in construction and inflation. Our bill, which is identical to H.R. 5468 introduced by Congressman SID MORRISON in the House of Representatives, would increase this authorization to $88 million. I am convinced that some or all of this increase will be necessary to properly address the fundamental design flaws in the present system.

Mr. President, the time has come for action. Yesterday, Congressman MORRISON and I met with Dale Duvall, the Commissioner of the Bureau of Reclamation, and asked him to take a personal role in correcting the ills of the system and to give assurances to the farmers and orchardists who use it that they can expect a timely resolution to their problems. Mr. Duvall has agreed to do just that. He guaranteed us that previously considered plans for 1 or 2 years of study to determine the nature of the problem have been scrapped and that immediate interim measures are forthcoming. These will be followed by a more comprehensive plan to fully correct the design for the system.

I am pleased that we finally have the attention of the Bureau of Reclamation at the highest level. I will continue to urge the Bureau to make a swift and complete resolution to the system's problems at the earliest possible date.●

By Mr. SPECTER:

S. 2866. A bill to rename the VA Medical Center at University Drive in Pittsburgh, PA, the "Commando Charles E. Kelly VA Medical Center;" to the Committee on Veterans' Affairs.

COMMANDO CHARLES E. KELLY VA MEDICAL CENTER

● Mr. SPECTER. Mr. President, I am introducing legislation today to rename the VA Medical Center at University Drive in Pittsburgh, PA, as the "Commando Charles E. Kelly VA Medical Center."

Charles E. Kelly was a World War II hero from the Pittsburgh area. Known as "Commando Kelly," he was the first enlisted man to receive the Congressional Medal of Honor in that war for singlehandedly fighting off a German platoon in Italy in 1943, while serving with the 36th Texas Division. His outstanding and exemplary courage inspired many people during World War II, especially in Pittsburgh and western Pennsylvania.

Commando Kelly was a patient at the Pittsburgh VA Medical Center and died at the age of 64 years.

Many VA medical centers are, appropriately, named after war heroes, and Commando Charles E. Kelly is most deserving of this honor.

The Department Executive Committee of the American Legion, Department of Pennsylvania, passed a resolution on September 6, 1986, supporting legislation to redesignate the VA Medical Center after Commando Kelly, and I am pleased to introduce such legislation today.

I ask unanimous consent that the full text of the 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. 2866

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the VA Medical Center at University Drive in Pittsburgh, Pennsylvania, shall be designated and hereafter known as the Commando Charles E. Kelly Medical Center, in honor of the late Charles E. Kelly.

Any reference to such center in law, regulation, map, document, record, or other paper of the United States shall be held and considered to be a reference to the Charles E. Kelly VA Medical Center.●

By Mr. METZENBAUM:

S. 2867. A bill to amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for injury to persons in the free exercise of religious beliefs; to the Committee on the Judiciary.

CRIMINAL PENALTIES FOR DAMAGE TO RELIGIOUS PROPERTY

● Mr. METZENBAUM. Mr. President, I am introducing today a bill which would make it a Federal crime to engage in religious intimidation. This bill would make it unlawful to use the facilities of interstate commerce to deface religious property, or obstruct by force or threat of force a person's enjoyment of the free exercise of religion.

This kind of violence is not new, but there is evidence that its incidence is on the rise. Though some States have statutes which provide remedies for this kind of violence, there is a need for a clear comprehensive Federal remedy for interferences with the free exercise of religion, a Federal constitutional right. If adopted, this legislation would not displace State efforts to address this problem. Rather it would be evidence of a national commitment to stop a form of violence dangerous to one of our most cherished freedoms.

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

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

S. 2867

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

SECTION 1. CRIMINAL PENALTIES FOR DAMAGE TO RELIGIOUS PROPERTY AND INJURY TO PERSONS IN THE FREE EXERCISE OF RELIGIOUS BELIEFS.

Chapter 13 of title 18, United State Code, is amended by adding at the end the following new section:

"§ 247. Damage to religious property; injury to persons in the free exercise of religious beliefs

"(a) Whoever, travels in, or uses a facility or instrumentality of, interstate or foreign commerce with intent to—

"(1) deface, damage, or destroy any religious real property, because of the religious character of that property; or

"(2) obstruct, by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs;

shall be punished as provided in subsection (b) of this section.

"(b) The punishment for a violation of subsection (a) of this section shall be—

"(1) if death results, a fine in accordance with this title and imprisonment for any term of years or for life, or both;

"(2) if serious bodily injury results, a fine in accordance with this title and imprisonment for not more than fifteen years, or both; and

"(3) in any other case, a fine in accordance with this title and imprisonment for not more than five years, or both.

"(c) As used in this section—

"(1) the term 'religious real property' means any church, synagogue, religious cemetery, or other religious real property; and

"(2) the term 'serious bodily injury' means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.".

SEC. 2. TECHNICAL AMENDMENT.

The table of sections for chapter 13 of title 18, United States Code, is amended by adding at the end the following new item:

"247. Damage to religious property; injury to persons in the free exercise of religious beliefs.".●

By Mr. DOMENICI (for himself and Mr. BINGAMAN)

S. 2868. A bill to amend the Indian Self-Determination Act of 1974, and for other purposes; to the Select Committee on Indian Affairs:

INDIAN SELF-DETERMINATION AMENDMENTS OF 1986

● Mr. DOMENICI. Mr. President, I am most pleased to introduce a bill to improve the Indian Self-Determination and Education Assistance Act of 1974. Senator BINGAMAN and I are cosponsors of this Senate version of H.R. 4174, the Indian Self-Determination Amendments of 1986.

This legislation is supported by the All Indian Pueblo Council, the Eight Northern Indian Pueblos Council, and the Five Sandoval Indian Pueblos. They have all been disappointed with the performance of the original 1974 Self-Determination Act, Public Law 93-638. The original law mandated Governmentwide participation. To date, the main participants have been only the Bureau of Indian Affairs [BIA] and the Indian Health Service [IHS].

Public Law 93-638 called for:

An orderly transition from Federal domination of programs and services for Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

In the 10 years of "638" activity, many tribes have been awarded "638 contracts" for conducting what would have otherwise been Government-operated programs mainly in education and health.

While the Indian Pueblos and tribes would like to run many more of the Government programs operating to their benefit, there are some major obstacles to their ability to do so. First of all, the Secretary of any Federal Department may decline to allow such a contract for several reasons. Declinations occur if the Secretary finds that: First, services to Indians under the proposed contract will not be satisfactory; second, adequate protection of trust resources is not assured; or third, the proposed project or function to be contracted cannot be properly completed or maintained by the proposed contract. In addition to declination, the Federal Government may rescind a 638 contract.

There is also much consternation about the meaning of section 106(h) of Public Law 93-638. This section requires that the contract amount "shall not be less than [the amount that] the appropriate Secretary would have otherwise provided for in his direct operation of the program." [25 U.S.C. 450j(h)]. The BIA, for example, routinely retains 20 to 40 percent of program amounts for "residual functions of oversight" and other administrative activities.

The issue of contract support costs for operating a 638 contract is another vital issue in Indian self-determination. Recurring shortfalls in agreed-upon support costs have led to many administrative and legal actions to recover costs. This complicated arena of indirect costs and costs that are added because the Federal Government is no longer the provider, for example, liability insurance and depreciation, is a continuing focus of friction in the day-to-day reality of 638 contracting.

Our bill, Mr. President, clarifies the activities that are subject to the Indian self-determination concept. We also attempt to resolve many of the complicated contract support cost issues and the administrative processes for initiating and maintaining a 638 contract. Our aim is to place more trust in the Indian people and their ability to serve their own people. They should not have to face major administrative obstacles in seeking to provide needed services. The Indian people of this land should be supported with consistency and clarity in their efforts to become self-sufficient. The rules of the contracting game should not be as shifting sands.

In his testimony before the House Committee on Interior and Insular Affairs, Ross O. Swimmer, Assistant Secretary for Indian Affairs at the Department of Interior, stated his support for these needed improvements. For example, the Assistant Secretary supports the expansion of 638 activity to construction projects on trust lands. On the complicated question of indirect costs or contract support costs, Mr. Swimmer prefers the establishment of an "administrative fee." He is working with the inspector general and others to work out the details for this needed change.

I am pleased to note that Senator ANDREWS, chairman of the Senate Select Committee on Indian Affairs, has expressed his interest in solving this recurring and complicated issue. I look forward to working with his committee to find the best solutions to encouraging the Indian people of this country to improve their ability to operate and improve service programs for Indian people.

By strengthening and clarifying congressional intent, we can do a lot for helping Indian tribal administrators to focus their attention on serving their people rather than constantly doing battle with Federal bureaucrats who want to bicker over responsibilities, funding, and oversight. If we are successful, we may actually reduce the bureaucracy and enhance the position of Native Americans to direct their own lives.●

● Mr. BINGAMAN. Mr. President, I join my distinguished colleague, the senior Senator from New Mexico, Mr. DOMENICI, in introducing this bill, the Indian Self-Determination Amendments of 1986.

On August 11, 1986, the House passed a similar version, H.R. 4174. At present this measure is pending in the Senate Select Committee on Indian Affairs. Other than the addition of a technical amendment to clarify application of this legislation to certain Alaska Native tribes, this measure is substantively identical to the House bill.

At the urging of the Pueblos in New Mexico and other Indian tribes I am persuaded that Congress needs to take a second look at the Indian Self-Determination Act. Originally intended to promote economic self-sufficiency among tribes, this law has now become an impediment to tribes achieving such independence. Although it is late in the 99th Congress and the Senate select committee may be unable to hold hearings before we adjourn, my intent is to at least bring it before the Senate for discussion.

I urge my colleagues to study this bill and urge their support for strengthening the Indian Self-Determination Act to correspond with its original intent.●

By Mr. HARKIN (for himself, Mr. ZORINSKY, Mr. EXON, Mr. HART, and Mr. BURDICK):

S. 2869. A bill to provide price and income protection to family farmers through the management of the supply of the 1987 through 1999 crops of certain agricultural commodities, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SAVE THE FAMILY FARM ACT

● Mr. HARKIN. Mr. President, I have a bill that I am introducing today on behalf of myself and Mr. ZORINSKY, Mr. EXON, Mr. HART, and Mr. BURDICK.

Mr. President, we have titled our bill the Save the Family Farm Act because, Mr. President, we turn once again to continue the fight for a farm program that will save and not destroy our family farm system of agriculture.

My cosponsor on the House side, Congressman GEPHARDT, and I are introducing today a new bill—the Save the Family Farm Act—because it's become clear, 1 year after its misguided inception, that the 1985 farm bill is not working.

The present farm bill is busting the taxpayers to the tune of $35 billion this year, it's busting our farmers with more surpluses and lower prices, and it's destroying our small towns and small businesses across America.

Yet, this administration brags about how much money it is spending on farm programs. That is like Henry Ford bragging about all the production costs he put into the Edsel. Well, the 1985 farm bill is an Edsel, and no amount of fine-tuning or new paint jobs will make it any better.

We were told by this administration and its supporters in Congress that the 1985 farm bill would lower commodity prices and increase exports.

Well, they got it half right. They got commodity prices down—way down. But for the past 3 months in a row, U.S. agricultural imports have exceeded exports—the first time this has happened since 1959.

This fall, farmers across the Nation face the prospect of bumper harvests with no place to store their grain.

If we continue down this same road, we are headed for higher unpaid set-asides and a repeat of this disastrous 1983 PIK Program.

The road we are on now is leading to the destruction of the family farm system of agriculture in America.

The time has come for a new direction in farm policy.

If our goal is a cost-effective farm bill that increases net farm income and reduces the deficit, the Save the Family Farm Act is the only ballgame in town.

The bill embodies two basic concepts:

First, a nationwide producer referendum in all major food and feedgrains and dairy. If a majority of producers in any given commodity approve, then a supply-management program would go into effect.

In brief, the supply-management program would be based on bushel allotments and market certificates. The acreage reduction would be progressive, so bigger farmers would set aside a greater percentage of their land than smaller farmers. However, in no case would the set-aside on any one farm exceed 35 percent.

The bill also contains a credit provision which provides for interest-free loans to be given to States for States to administer to farmers. Any farmer who had over a 40 debt-to-equity ratio or any farmer who was already undergoing bankruptcy or foreclosure would be eligible for such loans.

To conclude, I believe there are three compelling reasons that we have to have a change in our farm policy direction:

First, it is the only bill yet offered in Congress that would actually lower the deficit. Government payments would be drastically reduced. There would be no more $20 million payments to huge corporate farmers in California, or any other State.

Last year the Congressional Budget Office conducted a study of this bill that showed it would save $42 billion over 5 years. But that was based upon the anticipated costs of the farm bill that we now have before us. But with farm costs now far higher, we fully expect that this bill will save in the neighborhood of $15 billion to $20 billion per year—or approximately $60 billion over 4 years.

Second, it is the only bill yet offered in Congress that would increase net farm income. And it will do this, not by busting the taxpayers of this country, but by providing the farmers with a fair price in the marketplace. A study by the Food and Agriculture Policy Research Institute at the University of Missouri and Iowa State University showed this approach could increase farm income to $74 billion annually—almost three times the current level.

And third, this is the only bill that has widespread, grassroots support from farmers across this country. At the St. Louis Farm Congress held last week, 2,000 farmers from 38 States endorsed this approach. Forty percent of the farmers in attendance at that conference were Farm Bureau members. It has been endorsed by the National Farmers Union, the American Agriculture Movement, the National Farmers Organization, the Save the Family Farm Coalition, and a host of other farm organizations.

This farm bill works, it saves money, and it has the support of America's family farmers. The current program is broke and it's no use even trying to fine-tune it. We want to save our family farms and we need a new direction. That's why we're introducing this bill today.●

Mr. President, I ask unanimous consent that an editorial appearing in the Baltimore Sun be printed in the RECORD.

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

[From the Baltimore Sun, Sept. 23, 1986]

NEW DIRECTION FOR FARM POLICY

After less than a year, the farm bill is bearing bitter fruit. Huge commodity surpluses dot the heartland. Exports still are sagging. Government is squandering more than $30 billion this year on a price-support system that has become an entitlement program for the biggest and richest farm owners. Today, Sen. Tom Harkin and Rep. Richard Gephardt present an intriguing alternative.

Dubbed the "Save the Family Farm Act," the legislation would allow farmers to vote every four years on whether to continue present policies or give the agriculture secretary the power to set production limits on each major commodity. If a majority agreed, the USDA would set a production quota based on export demand, domestic consumption and average acreage yields. The bill would require larger producers to lay idle a greater percentage of their land than smaller farmers—to a maximum of 35 percent of total acreage. Under this supply-management program, federal subsidies, would be wiped out. The loan rate (which essentially sets the amount a farmer can borrow) would be substantially increased.

There are some clear advantages to a supply-management approach. First, it would break the production-only cycle that plagues the farm bill (lower prices force farmers to produce more per given unit, thus further lowering prices). Second, it would make farmers' income a reflection of market prices, not a government paycheck. Finally, by wiping out subsidies, it would save the government about $20 billion this

year alone, enough to make a huge dent in the federal deficit.

But reform bears a cost. Higher commodity prices, for example, would mean higher food prices—about 4 percent across the board. But is food too cheap now? Is paying the real cost of food more fiscally odious than continuing to enjoy low government-subsidized prices? Further, production controls are likely to have an impact on the GNP and perhaps some minimal effect on agriculture-related businesses and employment. Will that be economically painful, or will the changes be minimal, balanced out by fiscal relief from a burgeoning deficit and sagging exports?

Lawmakers must arrive at a consensus on such questions. But with the clock running out on the 99th Congress, the Harkin-Gephardt initiative almost certainly will not get sufficient debate time. More critical matters than the supply-management concept remain in the legislative forefront. The starting failure of the farm bill has shown that supply and demand must play a dominant role in influencing the production and pricing of farm products. A supply-management program moves resolutely in that direction.

Mr. ZORINSKY. Mr. President, farm program costs continue to skyrocket, while net farm income continues to decline. These trends will surely endure, and may in fact accelerate, unless we change the course of Federal farm policy.

We continue to intentionally reduce the value of one of our most critical national assets—our food production. As we do so, we deplete our Treasury and bankrupt our farmers, lenders, agribusinesses, and entire rural communities.

We continue to overproduce for illusory markets. We continue to offer our agricultural commodities for sale at prices below their costs of production. And we continue to spend vast sums of taxpayer dollars in an attempt to protect our Nation's farmers and consumers from the misguided farm policies of this administration.

In addition, the current stress the farm economy is undergoing is propelling us to the point of having to make a decision on whether to spend billions of Federal tax dollars in "bailing out" the Farm Credit System. I find it anomalous that many of the same people who make the argument that the Farm Credit System should not be permitted to compete with other lenders by loaning money below cost apparently have no such compunctions against farmers selling their produce below cost.

The current farm crisis begs for a solution that reduces Government costs. Mandatory supply management does both, and has the added attraction of permitting farmers themselves to decide whether they want such a program.

Time is running out. The longer we continue along the course of our current policy, the closer the damage comes to being irreparable. Our family-based system of agriculture, once lost, cannot be restored.

I am, therefore, pleased to be a cosponsor of the Save the Family Farm Act. The legislation contains significant provisions that deserve immediate consideration by Congress.

As in the case of most legislation, there are provisions in the bill I do not wholeheartedly endorse. I would expect changes and improvements in the legislation prior to any final passage by Congress.

Too, it may be too late to act on the legislation prior to the adjournment sine die of this Congress.

However, the introduction of the legislation places on the legislative agenda the question of adopting mandatory supply management programs and making other significant changes in the current farm programs.

In that connection, I contemplate introducing a bill that would require the Secretary of Agriculture to carry out a mandatory production control program for wheat—subject to approval in a farmer referendum.

I am determined to do all I can to restore prosperity to American agriculture. The simple fact of the matter is that we must seek a legislative alternative to "staying the course" with the 1985 farm bill.

By Mr. SPECTER (for himself and Mr. HEINZ):

S. 2870. A bill entitled the "Steamtown Historic Designation Act"; to the Committee on Energy and Natural Resources.

● Mr. SPECTER. Mr. President, I am today introducing legislation to designate the Steamtown collection in Scranton, PA, as a national historic site. I am joined by my distinguished colleague from Pennsylvania, Senator HEINZ, in introducing this bill, which is a companion to legislation introduced by Congressman JOSEPH MCDADE in the House of Represenatives.

The Steamtown collection is one of the world's largest collections of steam and railroad memorabilia. Founded by F. Nelson Blount, the collection was originally located in North Walpole, NH, and Bellows Falls, VT. After years of planning, however, the collection was gradually moved to Scranton, PA, officially arriving there on February 4, 1984. Since September 1984, Steamtown has been running its "living exhibit" excursions between Scranton and Moscow, PA. The former DL&W Yards of South Washington Avenue in Scranton are being rebuilt for museum display purposes.

The Steamtown collection includes approximately 40 steam locomotives and 100 assorted pieces of other railroad rolling stock. Of particular note is Locomotive No. 2317, a heavy 4-6-2 Pacific-type locomotive originally built for the Canadian Pacific Railway by Montreal Locomotive Works in 1923. Steamtown spent nearly 3 years restoring this locomotive. While most of the Steamtown collection is now in Scranton, only a few representative pieces are currently on public display. The balance are stored until they can be properly shown at the rehabilitated yards.

The establishment of the Steamtown Museum is an extraordinarily positive development both from the point of view of the museum and from the point of view of the city of Scranton. Scranton's history has long been intertwined with that of railroads, and the museum offers great potential for economic development for a city still recovering from the deterioration of the anthracite coal mining industry and the railroad industry.

Mr. President, it is entirely fitting for Steamtown to be designated a national historic site. The railroads not only served as a cornerstone for the industrialization of the United States, but also supply some of the fondest memories in our national consciousness. The romance of these trains is apparent to all who encounter them, even those who were born long after the age of steam locomotion. And it is especially appropriate that this site be located in Pennsylvania, which has long served as one of the great railroad centers of the world.

Mr. President, I would like to commend Congressman MCDADE for taking the initiative on this matter. He does an outstanding job representing his district and this worthwhile initiative is a tribute to his leadership. The intrinsic value of a project like Steamtown is obvious, and the potential it holds for revitalizing and giving a renewed sense of pride to the city of Scranton can hardly be exaggerated. This bill will provide appropriate Federal recognition to Steamtown, while authorizing $35 million for the administration of Steamtown National Historic Site. Although we are faced with a enormous pressure in completing our business in the 99th Congress, I urge my colleagues to give this bill their prompt and favorable consideration before the scheduled adjournment date.

Mr. President, I ask unanimous consent that the text of the bill be included in the RECORD.

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

S. 2870

SEC. 1. DESIGNATION AS NATIONAL HISTORIC SITE.

The property known as "Steamtown", consisting of the historic roundhouse, switchyard, and associated buildings, track, and rolling stock, and located on approximately 40 acres in Scranton, Pennsylvania, is hereby designated as the Steamtown National Historic Site, and shall be administered by the Secretary of the Interior as a unit of the National Park System. The Sec-

retary of the Interior shall administer the Steamtown National Historic Site through cooperative agreements and grant agreements as appropriate, with the owner or owners of the property pursuant to which the Secretary may provide financial and technical assistance in planning, interpretation, maintenance, preservation, and appropriate public use of the site in order to further public understanding and appreciation of the development of steam locomotives in the region.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS

There is authorized to be appropriated $35,000,000 for the administration of the Steamtown National Historic Site and for assistance to the owner thereof pursuant to the agreements referred to in Sec. 1.

● Mr. HEINZ. Mr. President, I am pleased to join my colleague Senator SPECTER in introducing legislation which would make Steamtown U.S.A. an official component of the National Park System.

Steamtown U.S.A., located in Scranton, PA, is a unique museum and "living exhibit" to America's steam age. Steamtown contains one of the world's largest collection of steam and railway memorabilia. The collection includes approximately 40 steam locomotives and 100 assorted pieces of other railroad rolling stock. A planned museum complex to display this memorial to the age of steam centers around a historic roundhouse, locomotive and erecting shops, and rail yards.

The "living exhibit" excursions provide visitors with an exhilarating 13-mile train ride, powered by a steam-propelled locomotive, through spectacular countryside between Scranton and Moscow, PA. A planned expansion will take the trip up to the scenic Pocono region and the Delaware Water Gap.

The legislation which Senator SPECTER and I have introduced would allow the Park Service to develop and run this steam age museum while the nonprofit Steamtown Foundation operates the trains and works on locomotive restoration.

Even in its early stages, Steamtown has shown its popular appeal by attracting over 215,000 visitors from throughout the Nation. The State of Pennsylvania recognizes the importance of Steamtown, and is providing $1 million over the next 2 years. Private contributions are also financing Steamtown, but the backing of the Federal Government through the legislation we have introduced is essential to insure its continued success and expansion.

Congressman MCDADE has introduced a similar bill in the House of Representatives as H.R. 5555 and the entire Pennsylvania delegation has joined on H.R. 5555 as cosponsors.

I urge my colleagues to join Senator SPECTER and I as cosponsors of this bill which is designed to preserve an important part of our Nation's history for the education and enjoyment of future generations.●

By Mr. BRADLEY:

S. 2871. A bill to designate certain segments of the Maurice, the Manantico, and the Manumuskin Rivers in New Jersey as study rivers for inclusion in the National Wild and Scenic Rivers System; to the Committee on Energy and Natural Resources.

DESIGNATION OF NEW JERSEY STUDY RIVERS

● Mr. BRADLEY. Mr. President, it is my pleasure to send the following bill to the desk on behalf of myself and my distinguished colleague from New Jersey, Senator LAUTENBERG. The purpose of this legislation is to direct the Department of the Interior to study the potential addition of the Maurice River, the Manantico Creek, and the Manumuskin River in southern New Jersey to the National Wild and Scenic River System. Companion legislation, introduced by Congressman WILLIAM HUGHES, is being considered in the House of Representatives where hearings are scheduled on September 30.

Mr. President, the National Wild and Scenic River Act, passed in 1968, offered the first Federal protection for the Nation's rapidly disappearing network of free-flowing rivers and streams. This landmark law preserves selected rivers and river corridor landscapes which possess outstanding scenic, recreational, historic, and cultural values. The Maurice, Manumuskin, and Manantico Rivers fit this description, and each of these rivers was recommended in 1977 by the commissioner of the New Jersey Department of Environmental Protection for inclusion in the national inventory of scenic rivers.

The Maurice River has its headwaters in small tributaries in Gloucester and Salem Counties. In its progress toward the Delaware Bay, the river meanders through wooded and wetland terrain. As the river nears the bay, it widens and becomes tidal. The river winds in broad loops past the communities of Laurel Lake, Port Elizabeth, Mauricetown, Dorchester, Leesburg, Shell Pike and Vivalre. The Manantico and Manumuskin Rivers also have a rich diversity, passing through fresh water wetlands, swamp forest, upland forest, and local communities.

These rivers host a variety of plant and animal life, including a number of threatened and endangered species. Additionally this river area is lauded as one of the finest for canoeing in the coastal region and is recognized for its pristine water quality.

Mr. President, those who live in southern New Jersey would like to assure that these rivers' water quality and recreational opportunities are maintained through sound planning and management. The Wild and Scenic Rivers Act would provide this protection through the development of a management plan. The proposed study has the support of all the local municipalities.

Mr. President, the Wild and Scenic Rivers Act has been successful in preserving a number of our Nation's free-flowing rivers. The Maurice, Manantico and Manumuskin Rivers are excellent candidates for the preservation and protection afforded by this act. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2871

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

SECTION 1. DESIGNATION AS STUDY RIVERS.

Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding at the end thereof the following:

"(92) MAURICE, NEW JERSEY.—The segment from Shell Pile to the point three miles north of Laurel Lake.

"(93) MANUMUSKIN, NEW JERSEY.—The segment from its confluence with the Maurice River to the Pennsylvania-Reading Seashore Railroad line.

"(94) MANANTICO, NEW JERSEY.—The segment from its confluence with the Maurice River to the base of the dam at Manantico Lake.".●

● Mr. LAUTENBERG. Mr. President, I am pleased to join my colleague from New Jersey, Senator BRADLEY, in introducing legislation to designate sections of three New Jersey rivers for inclusion in the National Wild and Scenic Rivers System. This bill would name certain segments of the Maurice, Manumuskin, and Manantico Rivers in New Jersey as study rivers. This is the first step in the wild and scenic designation process. Our distinguished colleague in the House of Representatives, BILL HUGHES, earlier introduced a similar bill, H.R. 5343.

The Wild and Scenic Rivers Act, enacted in 1968, expressed the national policy of balancing the need for dams and other construction at appropriate sections of rivers with the need to preserve selected rivers and sections of rivers in their free-flowing condition. It was the intent of Congress to protect such rivers and the natural resources surrounding them, for their scenic, recreational, historic, cultural, and other outstanding qualities. There are currently 68 rivers in the Wild and Scenic System.

Mr. President, Senator BRADLEY and I earlier introduced S. 2287, to direct the National Park Service to study the Great Egg Harbor River in New Jersey for possible inclusion in the Wild and Scenic System. The House of Representatives approved companion legislation also sponsored by Representative HUGHES. Designation of the Great Egg Harbor, along with specified portions of the Maurice, Manumuskin and Manantico Rivers will provide New

Jersey with its first wild and scenic rivers designated by the Congress.

The Maurice, Manumuskin, and Manantico Rivers are located in a sparsely developed region in the southern portion of New Jersey. The Manumuskin is a tributary to the Maurice River which flows into the Delaware River Bay. Together, these two rivers possess some of the most delicate species of animal and plant life in the State.

The Maurice contains many of the physical remnants of New Jersey's once prosperous oyster harvesting and processing industry. Many species of reptiles and amphibians, including the threatened and endangered tiger salamander, and corn and pine snakes, inhabit the Maurice. This type of environment is unique to New Jersey and represents an important part of the Atlantic coastal landscape.

The water quality of the Manumuskin River is of the highest in the State. The Manumuskin encompasses a diverse stretch of wetlands, swamp forests and upland forests. It is the site of an historic church which dates back to the American Revolution. One species of plant found along the Manumuskin appears in only five locations throughout the world. This fall, thousands of migrating waterfowl, rail birds, and bobolink will stop along the river.

Large portions of the Maurice, Manumuskin, and Manantico lie within the boundaries of the Pinelands National Reserve, one of our most valuable natural resources. Inclusion of these rivers within the Wild and Scenic System would enhance protection of these areas in cooperation with the Federal, State, and local efforts through the Pinelands comprehensive management plan.

Local support for the protection of these rivers is overwhelming. My constituents have been working hard to preserve and protect important portions of the Maurice, Manumuskin, and Manantico Rivers. The National Park Service strongly supports inclusion of these rivers in the Wild and Scenic Rivers System. Designation of these rivers by the Park Service as study rivers would represent the culmination of years of efforts by local individuals, the State of New Jersey, conservation groups, and the Federal Government who wish to preserve them for the enjoyment of residents and visitors alike.

Mr. President, these rivers are part of one of the few remaining unspoiled natural areas on the entire east coast. The beautiful rivers which flow through southern New Jersey should be preserved for future generations. I urge my colleagues to support this legislation, and I look forward to working with the local communities, the State of New Jersey, and the Park Service in protecting these important natural resources.●

By Mrs. KASSEBAUM:

S. 2872. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit applicants to file abbreviated applications for registration of pesticides or new uses of pesticides under certain circumstances, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

PESTICIDE PRICE COMPETITION ACT

● Mrs. KASSEBAUM. Mr. President, the bill I am offering today eliminates the data compensation provisions of FIFRA. In addition, it provides for the use of an abbreviated application for registration of generic pesticides. Enactment of this measure would, in effect, place manufacturers of generic pesticides on equal footing with generic pharmaceutical manufacturers.

My purpose in proposing this legislation is simply to cut production costs for farmers. This measure could provide savings in the range of $200 million to $500 million annually in the pesticide bills of American farmers. These savings would be achieved by making it easier and quicker to bring generics onto the market.

Let me emphasize that this legislation is not intended to deprive manufacturers who originate pesticides from receiving an ample return on their investment. Current law recognizes the substantial research and development costs involved in pesticide production by providing a 17-year exclusive marketing right over registered pesticides. Manufacturers are eligible for research and development tax deductions and credits as well. In addition, the FIFRA reathorization bill reported by the Senate Agriculture Committee, S. 2792, extends the patent life of pesticides for up to 5 years.

I believe these provisions offer adequate incentives for innovation. Yet, the truth is that barriers to market entry do not end with the expiration of a patent when it comes to pesticides. In short, at the same time we have gone to great lengths to protect the investments of original manufacturers, we have done nothing to advance the interests of pesticide consumers who would benefit from greater generic competition.

When we granted patent term extension to pharmaceutical products in 1984, we at the same time made it easier for generic products to come onto the market. Rather than duplicating tests of a drug, a generic manufacturer now only has to prove to the Food and Drug Administration that it can produce an identical chemical compound in order to begin marketing it.

This general approach has also been endorsed by the administration. In a March 10, 1986, letter to Senator STROM THURMOND, Health and Human Services Secretary Otis Bowen strongly recommended that legislation providing for patent term extension of veterinary drugs be amended. The Secretary proposed that a provision be added to enable manufacturers to obtain premarket approval of generic drugs without having to duplicate the safety and effectiveness studies required for approval of the original drug. Mr. President, I ask unanimous consent that the full text of Secretary Bowen's letter appear in the RECORD following my remarks.

Now, we will soon be considering patent term extension for pesticides without removing road blocks to production of generic products. I would like to explain briefly how onerous those roadblocks are.

Current law requires that an enormous amount of health and safety data be submitted to the Environmental Protection Agency [EPA] in order to register a pesticide product. Without EPA registration, a pesticide may not be put on the market. A generic producer has two options for meeting this requirement.

One, the producer can generate his own data—which takes anywhere from 5 to 7 years. In so doing, the generic producer is duplicating work that has already been done.

The producer's second option is to buy the right to cite the data previously submitted to EPA by the originator of the product. The amount of the data compensation due is determined by a system of binding arbitration which was set up in the 1978 amendments to FIFRA.

The law does not contain any explicit standard for determining compensation. Thus, the only guidance we have as to the effects of the arbitration process is the single case which has been completed under it—Stauffer Chemical Co. versus PPG Industries (1983).

In that case, the arbitration award to the original manufacturer—Stauffer Chemical—amounted to 50 percent of the cost of the data plus a 10-year royalty. The royalty amount was intended to represent the value to the generic manufacturer of being able to enter the market much sooner than would otherwise be possible. In all, the value of the award is estimated to exceed $15 million—an amount five times the actual cost of producing the data.

Commenting on this case, an analyst with the Congressional Research Services notes:

> This award was so large that it could effectively foreclose secondary registrants by making the cost of entering the market so uncertain that few if any firms would be willing to take the risk, and for smaller firms, making the up-front costs so high they could scarcely take the risk.

This system simply doesn't make sense. Generic drug manufacturers have never had to pay for data which has already been filed with the Food and Drug Administration. Why should pesticides be different?

Clearly, this situation works against the American farmer who is trying to cut costs and operate at maximum efficiency. The monopoly held by original pesticide producers extends long beyond the expiration of a patent, as a potential generic competitor must either spend 5 to 7 years duplicating data or debate whether it is worth the financial risk to purchase that data.

Either way, the bottom line is that farmers pay more for pesticides. Mr. President, I ask unanimous consent that an article on this subject by George Anthan of the Des Moines Register be printed in the RECORD following my remarks.

Farmers spend about $3.4 billion on pesticides every year. Competition within the industry would significantly reduce prices, as illustrated by past experience when generics have come onto the market. The price of phostoxin, for example, has dropped nearly 20 percent since a generic version became available in 1982. Treflan has seen a price drop of nearly 25 percent since a generic appeared on the market last year.

It is particularly important that we act soon to address this situation. Over the next 5 years, 21 pesticides widely used by American farmers will come off patent. These pesticides constitute about 43 percent of the entire pesticide market.

Congress, by deciding to inject a healthy dose of competition into the pesticide industry, could give the farmer a real break. And, this could be done without further drain on the U.S. Treasury.

Mr. President, I ask unanimous consent that the text of my bill appear in the RECORD at this point.

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

S. 2872

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Pesticide Price Competition Act".

SEC. 2. ABBREVIATED APPLICATIONS FOR REGISTRATION OF PESTICIDES AND NEW USES OF PESTICIDES.

(a) IN GENERAL.—Section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(c)) is amended by adding at the end thereof the following new paragraph:

"(9) ABBREVIATED APPLICATIONS.—

"(A) An applicant may file with the Administrator an abbreviated application for the registration of a pesticide, or for an application for an amendment adding a new use to the registration of a pesticide, in accordance with this paragraph.

"(B) The application shall contain—

"(i) information to demonstrate that—

"(I) the pesticide is identical or substantially similar chemically to a pesticide previously registered under this Act;

"(II) the conditions of use recommended in the labeling proposed for the pesticide have been approved for the previously registered pesticide; and

"(III) the labeling proposed for the pesticide is the same as the labeling approved for the previously registered pesticide, except for differences approved by the Administrator under other provisions of this Act; and

"(ii) a certification that to the best of the knowledge of the applicant no data that has been previously submitted to the Administrator for the previously registered pesticide is entitled to exclusive use under paragraph (1)(D)(i).

"(C) Notwithstanding any other provision of law, paragraphs (1)(D) (other than clause (i)), (2)(B)(v), and (2)(D) shall not apply to an application filed under this paragraph.

"(D) Nothing in this paragraph shall be construed to supersede part II or III of title 35, United States Code.".

(b) TABLE OF CONTENTS.—Section 1(b) of such Act (7 U.S.C. prec. 121) is amended by inserting between the items relating to sections 3(c)(8) and 3(d) the following new item:

"(9) Abbreviated applications.".

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, March 10, 1986.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: There is pending before the Committee, S. 1093, a bill "To amend the patent law to restore the term of the patent in the case of certain products for the time of the regulatory review period preventing the marketing of the product claimed in the patent." We take this opportunity to inform you of our views on that bill. We understand that S. 1093 is scheduled for mark-up on March 11, 1986 before the Subcommittee on Patents, Copyrights and Trademarks.

Our views focus on S. 1093 as it would affect veterinary drugs, which are regulated by the Food and Drug Administration (FDA) under the Federal Food, Drug, and Cosmetic (FDC) Act. S. 1093 would authorize the restoration of patent time lost due to Federal premarket requirements for veterinary drugs, pesticides, and agricultural chemicals.

In summary, we support patent restoration for veterinary drugs, but urge the Committee to add an additional provision that would enable manufacturers to obtain Federal premarket approval to market generic versions of these drugs without having to duplicate the potentially costly and time-consuming safety and effectiveness studies that are required of pioneer manufacturers. Without such a provisions, there would appear to be no need for patent restoration since the current Federal requirement for duplicative testing would continue to serve as an effective economic barrier to competition even after the expiration of patents that would be restored by this legislation.

The Department of Health and Human Services traditionally has supported patent restoration for the products that require the premarket approval of FDA. These products often entail high development costs, the risk of failure and small potential markets. In addition, innovators typically lose years of patent exclusivity because of testing requirements and regulatory review. We are mindful of the paradox that the careful and time-consuming scientific review needed to confirm safety and effectiveness may be reducing initiatives to develop new veterinary drugs. Streamlining the regulatory process will help. However, the FDA premarket approval system must continue to be thorough enough to assure safety and efficacy even if that means living with a process that takes longer than we would ideally prefer. We want to encourage innovation, but not at the expense of safety. Consequently, we support patent extension for veterinary drugs as a means of encouraging innovative research.

Patent restoration would have little meaning, however, if Federal regulatory barriers had the effect of preventing the marketing of virtually identical generic products after patents expire. Such a situation existed for human drugs until 1984, when the Congress enacted legislation that both extended patents associated with human drugs and removed regulatory barriers that effectively prevented the development of many generic human drugs. The situation still exists, however, for veterinary drugs.

Consequently, in addition to patent extension, we strongly support the enactment of an explicit statutory authority that would allow a manufacturer to market a generic version of a veterinary drug without having to duplicate the time-consuming and costly studies that are necessary to demonstrate that the original version of that drug is safe and effective. The generic manufacturer only would have to demonstrate in an "abbreviated" application for marketing approval to FDA that it is capable of manufacturing an equivalent product.

FDA presently allows abbreviated applications for generic versions of veterinary drugs that were approved before 1962, the year in which Congress amended the FDC Act to require that both human and veterinary drugs be shown to be effective as well as safe. A similar procedure has not been established for post-1962 veterinary drugs. As a consequence, the duplicative testing for safety and effectiveness that generic manufactuers must conduct for post-1962 drugs constitutes an effective economic barrier to their development. In this respect, the Federal drug approval process unwittingly serves as a quasi-patent whose term never expires.

We have concluded, therefore, that both patent restoration and an abbreviated approval procedure ought to be included in the same legislation so that they may be considered and, hopefully, enacted together. We continue to believe that it is good public policy to link the two concepts in order to foster research for new products and at the same time encourage competition and lower prices. In our view, it would be unfair to consumers as well as to the industry as a whole if one were enacted but not the other or if a substantial time lag occurred between the enactment of both. We would be pleased to work with the Committee to add an abbreviated application provision to S. 1093.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

OTIS BOWEN, M.D.,
Secretary.

[From the Des Moines Register, Sept. 14, 1986]

FARMERS' PURSE STRINGS MAY TIE UP CHEMICAL LEGISLATION

(By George Anthan)

The already shaky agreement over legislation to re-authorize the Federal Insecticide, Fungicide and Rodenticide Act could unravel because of an important sticking point involving farmers' pocketbooks.

The lengthy and complex debate in Congress over FIFRA, under which farm and garden chemicals are regulated, has involved representatives of the chemical industry and environmentalists, but farmers have a huge financial stake in the situation.

Negotiations have taken years, but a series of compromises this year involving the industry and environmental groups has cleared the way for both houses of Congress to take up the bill before they adjourn this fall.

The House and Senate Agriculture committees have approved versions of the new bill under which FIFRA would be extended for five years. The new law would require that pesticides must be "registered" by the Environmental Protection Agency and that some 600 pesticides in use when the original law was passed in 1971 must be tested for their health effects. The "re-registration" of these pesticides would be financed through fees paid by the manufacturers.

The controversy is over "data compensation," splitting the mostly big companies whose research brings pesticides into the market and the mostly smaller companies and cooperatives who later want to enter the market and produce the same pesticides as generic products at a lower cost to farmers.

Farmland Industries Inc., a farm cooperative based in Kansas City, has estimated that over the next five years, patents on some 45 percent of pesticides now in use will expire and that if these products can be produced by generic manufacturers, the potential saving to farmers would range from $420 million to $500 million a year.

Tim Galvin, an aide to Congressman Berkley Bedell, whose subcommittee developed the House version of FIFRA, says the issue of how to compensate the big pesticide "innovators" is "very divisive, almost intractable."

The larger chemical companies pay for the research necessary to bring new pesticides into the market and to get them registered by the EPA. In return, they get a 17-year exclusive right to sell the products. Once the patent expires, other firms, in most cases smaller, can move in and produce the pesticides under "generic" labels.

But, under current law, companies seeking to enter the market with a pesticide on which the patent has expired have been forced to compensate the innovators more then five times their cost of generating the data filed with EPA.

Farmland Industries officials told Congress recently that "when a human drug comes off patent, for example, a generic producer has only to prove to the Food and Drug Administration that it is capable of producing an identical chemical compound and is then authorized to begin marketing. . . ."

But FIFRA provides that the question of how much a pioneering firm is to be compensated for the scientific data it generated to gain approval for the pesticide will be determined through binding arbitration. In a case involving Stauffer Chemical Co., the original developer of a product, and PPG Industries Inc., which wanted to enter the market, arbitrators gave Stauffer an award valued at almost $16 million, 90 times what PPG had considered reasonable.

The Congressional Research Service notes in a report that "this award was so large that it could effectively foreclose secondary registrants by making the cost of entering a market so uncertain that few firms would be willing to take the risk. . . ."

The Senate version of the FIFRA bill greatly pleases the large chemical companies because it allows patents on new pesticide products to be extended for up to five years, depending on how long the product was undergoing regulatory review by EPA. The Senate bill also gives smaller companies the right to begin health tests on such a pesticide up to two years before the patent expires.

The House bill includes some provisions for non-binding arbitration. But Farmland emphasizes that any new law that's passed should include a ceiling on the amount of compensation that could be paid to a company which developed a pesticide.

Farmland cites data showing dramatic drops in the prices of some pesticides that were produced under generic labels. The data show that Phostoxin, a product that has been produced generically since 1982, has dropped in price by almost 20 percent. Treflan has had generic competition since last year, Farmland stated, and has experienced a price cut of almost 25 percent.

In contrast, the cooperative contends, several leading pesticides that have no generic competition have had significant price increases in recent years.●

By Mr. KENNEDY:

S. 2873. A bill to require the Director of the National Institute of Child Health and Human Development to establish a grant program to fund research, training, and patient services in pediatric pulmonary medicine; to the Committee on Labor and Human Resources.

PEDIATRIC PULMONARY RESEARCH ACT

● Mr. KENNEDY. Mr. President, today I am introducing legislation which will bring a significant benefit to infants and children with diseases of the lungs. It will place the existing pediatric pulmonary centers program within the National Institute for Child Health and Development and authorize funding for them at $12 million.

Despite tremendous progress in the diagnosis and treatment of childhood lung disease in the last two decades, it remains the leading cause of death in children below 1 year of age and an important cause of morbidity and mortality in children of all ages. In 1984 respiratory diseases were the leading cause of death among 43,364 children who died in the first year of life. Respiratory illnesses and their complications among children were the leading cause for missed school days, doctor visits, prescribed medication, and hospitalizations. Respiratory diseases of children annually cause 319 million days of restricted activity, and 165 million days of bed disability and more than 50 percent of school absenteeism.

There is evidence that early injuries to the lung can be magnified in later years and that childhood respiratory diseases may be predisposed to chronic adult lung disease. Strategies must be developed to identify those diseases early. Because of the potential of long-term sequelae, modes of prophylaxis must be developed to reduce their incidence. Ways must be found to reduce their later consequences.

Mr. President, I would like to give some specific examples. Hyaline membrane disease is the principal cause of infant mortality. Survival following this dread disease has increased markedly. However the long term natural history of this disease must be more clearly established and strategies must be developed through basic and clinical research to prevent, minimize and treat long term sequelae.

Asthma affects 2.4 million children under the age of 17 years. There have been major advances in our understanding of this complex disease. New strategies are needed to ensure patient and parent compliance with treatment and to provide specific interventions that can prevent many of these hospitalizations.

Cystic fibrosis [CF] is one of the most common inherited diseases in caucasians and, in the United States, occurs with a frequency of 1 in 2,000 live births. The search for a metabolic defect or marker that might be used for early diagnosis or to identify the genetic carrier continues to elude us. Although the treatment of CF is improving, many unanswered questions remain regarding the long-term care of children with this disease.

There are 3.5 million episodes of pneumonia or bronchiolitis in childhood. Many of these are of viral origin. The relationship between these episodes and the development of chronic lung disease in later life is clear. We need to define the epidemiology of these diseases, the host virus interaction, and the factors influencing development of chronic lung disease and use this knowledge to devise protective and therapeutic strategies.

Most people have heard of sudden infant death syndrome [SIDS]. Most probably do not know that sleep associated airway problems in children not only include SIDS but other conditions as well. Conditions called the obstructive sleep apnea syndrome, nocturnal asthma, spasmodic croup, and others. Recognition of these problems is difficult and sophisticated sleep physiology laboratories are presently required. Parents who have lost one child to SIDS desire reassurance that this will not happen again. Study of all of these disorders may supply some answers.

Congress in 1968 recognized the staggering impact of pediatric lung diseases, and established the Pediatric

Pulmonary Centers Program. The goal of the centers was to increase the supply of trained pediatric lung specialists and to provide a regionalized network of care facilities that could provide a full spectrum of specialized services for children with the most serious lung diseases.

Unfortunately, the program has suffered because over the years it has received insufficient attention and funding. The administration of the project has been moved repeatedly and its source of funding has been insecure. Initially, 10 centers were funded by the Regional Medical Program Services. In 1973, administration went to the Office of Maternal and Child Health within the Bureau of Community Health Services. Since 1982 the centers have been funded from a fixed percentage of the Maternal and Child Health Services block grant. In fiscal year 1985 there are only eight centers surviving, with a total budget of $2 million. This commitment is far below that which is needed for the centers to adequately address the many problems of childhood lung disease. This bill will place the centers under the responsibility of the National Institutes of Health and provide the additional resources that are necessary to rebuild and expand the program.

This bill would create a network of comprehensive centers, specializing in the alleviation of children's lung disease and would attract top professionals to bridge the gap between research and services. This bill would allow for a better definition of the natural history of childhood respiratory diseases. It will contribute to the application of new but yet to be proven therapeutic nodalities. It will stimulate restructuring of the health care delivery system to reduce hospitalization and increase chances of long-term remissions. In addition, I hope that this bill will become a focus of public discussion about the need to improve pediatric pulmonary research and care.

The centers can be instrumental in the development of strategies for reducing the morbidity and mortality of childhood respiratory disease while safely and reasonably reducing health care costs. The resources are available to meet the challenge; all that is required is a renewed national commitment to fight lung disease in children and their long-term effects in adults. I urge my colleagues to support this bill.

I ask that by unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2873

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pediatric Pulmonary Research Act of 1986".

FINDINGS

SEC. 2. Congress finds that:

(1) Respiratory diseases remain a leading cause of death and a significant cause of morbidity in children of all ages.

(2) There is an increased need for pediatric pulmonary research and improvements in pediatric pulmonary care as a result of the improving survival rate of prematurely-born children.

(3) There is growing evidence that premature birth, childhood respiratory infections, and exposure to pollutants in the environment as a child may contribute to the development of lung disease as an adult.

(4) Congress has set a goal of creating a number of pediatric pulmonary centers to provide a network of facilities to treat children with serious lung disease and that goal has not been realized.

(5) There is still a need to train an adequate number of personnel in pediatric pulmonary medicine.

(6) It is an appropriate role for the Federal Government to support research centers in areas such as cancer, heart disease, and pulmonary disease in order to bridge the gap between research and service and to provide opportunities for interdisciplinary care.

(7) Because of the need to increase Federal attention to pediatric pulmonary research, training, and services, it is necessary to provide clear legislative authority for a separate grant program in pediatric pulmonary medicine.

GRANT PROGRAM

SEC. 3. (a) Subpart 7 of part C of title IV of the Public Health Service Act is amended by adding at the end thereof the following new section:

"PEDIATRIC PULMONARY MEDICINE

"SEC. 452. (a) The Director of the Institute shall establish a grant program in pediatric pulmonary medicine.

"(b) Grants under the program established under subsection (a) may be made to—

"(1) public or nonprofit universities;

"(2) schools of medicine;

"(3) research institutions; or

"(4) other public or nonprofit agencies providing pediatric pulmonary services.

"(c)(1) Grants under the program established under subsection (a) may be used to fund basic and clinical research, interdisciplinary clinical training, and model patient services and treatment, in pediatric pulmonary medicine.

"(2) Grants under the program established under subsection (a) may not be used for—

"(A) cash payments to intended recipients of health services;

"(B) the purchase or improvement of land, the purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility, or the purchase of major medical equipment;

"(C) satisfying any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

"(D) providing funds for research or training to any entity other than a public or nonprofit private entity.

"(d)(1) Applications for grants under the program established under subsection (a) shall be submitted to the Director of the Institute and shall contain such information as the Director determines to be necessary.

"(2) The Director of the Institute shall establish criteria for the selection of grant recipients from among eligible applicants. Such criteria shall provide for the selection of at least 4 grant recipients each year and of recipients which are dispersed geographically.".

(b) Section 408(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(3) To carry out section 452, there are authorized to be appropriated $12,000,000 for each of the fiscal years 1987, 1988, and 1989.".●

By Mr. MATSUNAGA (for himself, Mr. GLENN, Mr. BROYHILL, Mr. BURDICK, Mr. GORE, Mr. HEFLIN, Mr. INOUYE, Mr. JOHNSTON, Mr. MCCONNELL, and Mr. WILSON):

S. 2875. A bill to amend the Federal Food, Drug, and Cosmetic Act to ban the reimportation of drugs produced in the United States, to place restrictions on drug samples, to ban certain resales of drugs purchased by hospitals and other health care facilities, and for other purposes; to the Committee on Finance.

PRESCRIPTION DRUG MARKETING ACT

Mr. MATSUNAGA. Mr. President, with Senators GLENN, BROYHILL, BURDICK, GORE, HEFLIN, INOUYE, JOHNSTON, MCCONNELL and WILSON as original cosponsors, I am introducing today the "Prescription Drug Marketing Act of 1986."

Our bill would protect the American consumer by establishing much-needed stricter control over the distribution of prescription drugs manufactured in the United States. Studies and congressional hearings over a period of several years have revealed that the American consumer, purchasing a prescription drug ordered by his or her doctor, can no longer do so in the full confidence that the drug will be safe and effective.

The problem is not one of inadequate safeguards in the pharmaceutical manufacturing process. Our system of testing, manufacturing, and introducing new drugs into the marketplace is the safest in the world, albeit very slow at times.

But what happens to a prescription drug after it is tested, approved, manufactured, and sold? Too often it enters a "gray market" known as the "diversion market" where it may be counterfeited, improperly stored, improperly relabeled or repackaged, or improperly shipped. Diverted drugs often reenter the normal distribution system and are then resold to the unsuspecting consumer by an equally unsuspecting retailer. Such drugs, with a fraudulent expiration date, can be sold after their potency has lapsed.

Congressional and public attention was focused on this issue in 1984, when the G.D. Searle Co. discovered that its Ovulen 21 birth control pill had been counterfeited. Approximately 2 million of the counterfeit pills had been imported and distributed in the

United States before the fraud was discovered, with an ease that startled investigators. Further investigation revealed that 36 percent of American pharmaceutical manufacturers had experienced problems with counterfeit drugs.

How do prescription drugs get into the "diversion market"? In some cases, a bogus charitable organization is established which buys drugs and medical supplies from a manufacturer for export and use overseas. Upon arrival in the country for which it is destined, the shipment of drugs never leaves the docks but is reshipped back to the United States, where it is resold at a profit.

Nonprofit hospitals and charitable organizations often buy pharmaceuticals from the manufacturer at a discount. If excess supplies are purchased, the excess may be resold and then resold again to be purchased unwittingly at an attractive price by a reputable retailer, who then passes on the savings to his customers. Salesmen's samples may be sold rather than given to physicians, or in some cases, a physician may sell samples he or she receives. Sometimes, shipments of drugs are simply stolen and then resold. Under existing law, it is practically impossible to trace the source of drugs not purchased directly from a manufacturer.

If counterfeits could be kept off the market, and if diverted drugs were always properly stored, labeled and shipped, the consumer might benefit from resales of diverted drugs at lower prices. Unfortunately, that is not the case. Our bill, which is identical to a House measure now awaiting markup in the House Committee on Energy and Commerce, would close some of the loopholes in existing law and make it more difficult for diverted drugs to enter the normal distribution chain. This legislation would do the following:

First, prohibit the reimportation of American drugs sold abroad, except in a bona fide emergency;

Second, prohibit the selling or trading of drug samples, and the resale of drugs purchased by health care institutions and charities; and

Third, require wholesalers to disclose the sources of drugs they purchase.

Mr. President, time is growing very short in this session of Congress, but I hope that the introduction of the "Prescription Drug Marketing Act" will help focus attention on what can only be described as an approaching scandal. I hope that the bill will receive favorable consideration, if not this year, then in the new Congress.

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

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

S. 2875

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

SECTION 1. SHORT TITLE AND REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the "Prescription Drug Marketing Act of 1986".

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act.

SEC. 2. FINDINGS.

The Congress finds that:

(1) American consumers cannot purchase prescription drugs with the certainty that the products are safe and effective.

(2) The integrity of the distribution system for prescription drugs is insufficient to prevent the introduction and eventual retail sale of substandard, ineffective, or even counterfeit drugs.

(3) The existence and operation of a wholesale submarket, commonly known as the "diversion market", prevents effective control over or even routine knowledge of the true sources of merchandise in a significant number of cases.

(4) Increasing amounts of drugs are being reimported to the United States as American goods returned. These imports are a health and safety risk to American consumers because they may have become subpotent or adulterated during foreign handling and shipping.

(5) The ready market for prescription drug imports has been the catalyst for a continuing series of frauds against American manufacturers and has provided the cover for the importation of foreign counterfeit drugs.

(6) The existing system of providing samples of drugs to physicians through manufacturer's sales representatives has been abused for decades and has resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.

(7) The bulk resale of below wholesale priced prescription drugs by health care institutions, for ultimate sale at retail, helps fuel the diversion market and is an unfair form of competition to wholesalers and retailers that must pay otherwise prevailing market prices,

(8) The effect of these several practices and conditions is to create an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs will be sold to American consumers.

SEC. 3. REIMPORTATION.

Section 801 (21 U.S.C. 381) is amended by redesignating subsection (d) as subsection (e) and on inserting after subsection (c) the following:

"(d)(1) Except as provided in paragraph (2), no drug subject to section 503(b) which is manufactured in a State and exported may be imported into the United States unless the drug is imported by the person who manufactured the drug.

"(2) The Secretary may authorize the importation of a drug the importation of which is prohibited by paragraph (1) if the drug is required for emergency medical care.".

SEC. 4. SALES RESTRICTIONS.

Section 503 (21 U.S.C. 353) is amended by adding at the end the following:

"(c)(1) No person may willfully sell or trade or offer to sell or trade any sample of a drug subject to subsection (b). For purposes of this paragraph and subsection (d), the term 'sample' means a drug which is not intended to be sold and is intended to promote the sale of the drug.

"(2) No person may—

"(A) sell, purchase, or trade, or

"(B) offer to sell, purchase, or trade,

in bulk any drug subject to subsection (b) which is purchased by a public or private hospital or other health care facility or any other establishment exempt from registration as a pharmacy licensed under State law for the use of the hospital, facility, or establishment, except that a hospital or other health care facility which is a member of a group purchasing organization may purchase or otherwise secure such a drug for its own use from other hospitals or facilities which are members of such organization.

"(3) No person may willfully sell or trade or offer to sell or trade any drug which is subject to subsection (b) and which was donated or supplied at a reduced price to a charitable organization described in section 501(c)(3) of the Internal Revenue Code or 1954, except that such an organization may sell or trade any such drug to an affiliate of the organization.".

SEC. 5. DISTRIBUTION OF SAMPLES.

Section 503 (as amended by section 4 of this Act) is amended by adding at the end the following:

"(d)(1) Except as provided in paragraph (2), no sales representatives, employee, or agent of a drug manufacturer may distribute any sample of a drug subject to subsection (b) which is manufactured by such manufacturer. This subsection does not prohibit the distribution of a drug in connection with its investigational use under regulations promulgated under section 505(i).

"(2) The manufacturer of a drug subject to subsection (b) may, in accordance with this paragraph, distribute samples of such drug to practitioners licensed to prescribe such drugs. Such distribution of samples shall be made by mail or common carrier and shall be made in response to a written request for samples made on a form approved by the Secretary. Practitioners receiving samples distributed under this paragraph shall provide the manufacturer making the distribution a receipt for the samples received. Each drug manufacturer which makes distributions under this paragraph shall maintain the receipts received for samples distributed and maintain a record of distributions which identifies the drugs distributed and the practitioners receiving the drug. Receipts and records required to be maintained by a drug manufacturer shall be made available to Federal and State officials engaged in the regulation of drugs and in the enforcement of laws applicable to drugs.

SEC. 6. WHOLESALE DISTRIBUTORS.

Section 503 (as amended by section 5 of this Act) is amended by adding at the end the following:

"(e)(1) Each person who is engaged in the wholesale distribution of drugs subject to subsection (b) shall provide to each purchaser of such drugs a statement identifying—

"(A) the manufacturer of the drug, and

"(B) each sale of the drug (including the date of the sale) before the sale to such purchaser.

"(2)(A) No person may sell at wholesale and in interstate commerce drugs subject to subsection (b) in a State which does not require such person to be licensed in accordance with standards prescribed under subparagraph (B).

"(B) The Secretary shall issue regulations establishing minimum standards, terms, and conditions for the licensing of persons to make sales at wholesale and in interstate commerce of drugs subject to subsection (b). Such standards shall prescribe requirements for the storage and handling of such drugs and for the establishment and maintenance of records of the sales of such drugs.".

SEC. 7. PENALTIES.

(a) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331) is amended by adding at the end the following:

"(t) The importation of a drug in violation of section 801(d)(1), the sale, purchase, or trade of a drug in violation of section 503(c), the distribution of a drug sample in violation of section 503(d), and the failure to comply with the requirements of section 503(e).".

(b) PENALTIES.—Section 303 (21 U.S.C. 333) is amended—

(1) by inserting "(1)" after "(a)",

(2) by redesignating subsection (b) as paragraph (2) and by striking out "subsection (a) of this section" in such subsection and inserting in lieu thereof "paragraph (1)", and

"(3) by inserting after subsection (a) the following:

"(b) Notwithstanding subsection (a), any person who violates section 301(t) because of an importation of a drug in violation of section 801(d)(1) or because of a sale, purchase, or trade of a drug in violation of section 503(c) shall be imprisoned for 10 years and fined not more than $100,000.".

SEC. 8. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect upon the expiration of 90 days after the date of the enactment of this Act.

(b) WHOLESALE LICENSES.—The Secretary of Health and Human Services shall promulgate the regulations required by section 503(e)(2)(B) of the Federal Food, Drug, and Cosmetic Act (as added by section 5 of this Act) not later than 180 days after the date of the enactment of this Act. Section 503(e)(2)(A) of such Act shall take effect upon the expiration of 2 years after the date such regulations are promulgated and take effect.

Mr. GLENN. Mr. President, I rise today to join Senators MATSUNAGA, BURDICK, JOHNSTON, GORE, HEFLIN, INOUYE, WILSON, BROYHILL, and MCCONNELL to introduce the Prescription Drug Marketing Act of 1986. In introducing this legislation, we are attempting to address the problems surrounding the widespread practice of diverting prescription drugs, which is employed by an unacceptable number of pharmacists, drug store owners, wholesalers, and salespersons.

Currently, pharmaceutical manufacturers are permitted to donate or sell at reduced prices prescription drugs to charitable organizations, nonprofit hospitals, physicians, and foreign countries. However, once given or sold, the recipients of these drugs may not resell them for profit. Unfortunately, congressional hearings have revealed that for many of these recipients the financial temptation has been too great, and the risk too small, to resist reselling these drugs. "Drug diversion" is the term used to describe this practice.

A direct consequence of drug diversion is that, while the integrity of many of these drugs may be maintained, some of these pharmaceuticals are exposed to unacceptable shipping and handling procedures which render the drugs impotent and/or potentially dangerous. Frequently the drugs are resold and reshipped so many times that they have surpassed the expiration date provided by the manufacturer by the time patients use them. Unfortunately, a number of retail drug outlets have given in to the competitive pressures brought on by drug diversion and stock diverted drugs on their store shelves.

As the senior Democratic member of the Senate Special Committee on Aging, I am particularly concerned about the problem of drug diversion as it relates to our elderly population. Individuals over the age of 65 represent 12 percent of our population, yet they consume about 30 percent of all prescription drugs. Because many older Americans are taking multiple medications, it is often difficult to tell whether one specific medication is having its intended effect. Due to this situation, the elderly must place a particularly strong trust in their pharmacists and the drug manufacturers to ensure that they receive the high-quality drugs prescribed by their physicians. In some cases, the frail elderly or their caregivers themselves fall victim to ageist stereotypes and place the entire blame for their deteriorating or stagnant conditions on the fact that they are old. Many of these people do not even consider the possibility that their medications might be at fault.

The Food and Drug Administration [FDA], in its opposition to the bill we are introducing today, has accurately stated that we do not have an abundance of hard data that links public health problems to drug diversion. On a national level, we certainly do need more definitive information. However, in my home State of Ohio, we now know that a number of quality control and health problems do exist. While I would hope that our Ohio State Board of Pharmacy—one of the most active and productive State oversight agencies investigating the drug diversion problem in the Nation—has located, charged and punished every individual who has participated in the drug diversion scam, the magnitude of the problem precludes that as a realistic possibility.

The House Energy and Commerce Subcommittee on Investigations conducted a 2-year investigation which examined the problems associated with the large underground drug diversion market. At one of the subcommittee's hearings, the executive director of the Ohio State Pharmacy Board, Mr. Franklin Z. Wickham, testified that during the last year the Ohio Board of Pharmacy has charged 104 pharmacists, drugstores, and wholesalers with buying and selling illegally-diverted drugs. The diversion practices of one Southwestern Ohio wholesaler were so blatant that the board fined him $2 million and revoked his license to sell pharmaceuticals. Mr. Wickham recently informed my office that, in one case, the board discovered that high school students were being hired to relabel diverted drugs, and then substituted diabetic medicine for heart medicine. The unfortunate recipient of this medicine was a heart patient who suffered initially unexplainable reactions to this incorrectly marked drug.

In addition to the Ohio-specific problems, during a recent 6-month period, the House investigation found that more than $10 million worth of U.S. pharmaceuticals, some illegally exported and potentially dangerous, made their way around the world and back into the United States. One company alone in California obtained drugs, worth approximately, $2.5 million from 40 hospitals and then resold them in the drug diversion market. Needless to say, both the hospitals and the company were the benefactors of substantial and illegal profits.

As a result of the subcommittee investigation, Congressman Dingell introduced legislation in the House of Representatives that is identical to the bill we are introducing today in the Senate. Our bills would, among other things, first, prohibit the reimportation of American drugs sold abroad, second, prohibit the selling or trading of drug samples and the resale of pharmaceuticals by health care institutions or charities, and third, require wholesalers to disclose the sources of drugs they purchase.

For laudable and understandable reasons, the National Association of Retail Druggists [NARD] strongly supports the Prescription Drug Marketing Act of 1986. First, they want consumers to be able to rest assured that they are receiving high quality medicines from their local retail druggist. Second, they want to stay in business; they are finding that it is virtually impossible to compete with the drug diversion market.

Other interested groups include consumers and their advocates, drug manufacturers, the FDA, the Congress, and State and local governments. Although some provisions in this bill are troublesome to some of these groups, it is my hope that we can work out a package which is acceptable to everyone concerned. I am more than willing to work toward this goal as long as we

end up with a solution which protects one of our most vulnerable groups of citizens—the consumers of prescription drugs.

While it is true that we do not yet know of thousands of health problems that can be directly linked to drug diversion, we do know that the potential for abuse is as unlimited as the creativity of the criminal mind. Until we limit this potential, sure as night follows day, we will undoubtedly witness problems of tragic proportions in the future. In my book, an ounce of prevention has always been worth a pound of cure.

Mr. President, I urge all of my colleagues to join with us in supporting this important legislation.

ADDITIONAL COSPONSORS

S. 430

At the request of Mr. HEINZ, the name of the Senator from New York [Mr. D'AMATO] was withdrawn as a cosponsor of S. 430, a bill to amend and clarify the Foreign Corrupt Practices Act of 1977.

S. 522

At the request of Mr. HATCH, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 522, a bill to amend the Civil Rights Act of 1964 to protect the rights of the unborn.

S. 812

At the request of Mr. HEINZ, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 812, a bill to amend the Export Administration Act of 1979 to authorize controls on the export of capital from the United States.

S. 945

At the request of Mr. THURMOND, the names of the Senator from Georgia [Mr. NUNN] and the Senator from Montana [Mr. MELCHER] were added as cosponsors of S. 945, a bill to recognize the organization known as the National Association of State Directors of Veterans' Affairs, Inc.

S. 1026

At the request of Mr. PRESSLER, the name of the Senator from Texas [Mr. GRAMM] was added as a cosponsor of S. 1026, a bill to direct the cooperation of certain Federal entities in the implementation of the Continental Scientific Drilling Program.

S. 1054

At the request of Mr. HEINZ, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of S. 1054, a bill to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such act, and for other purposes.

S. 1817

At the request of Mr. TRIBLE, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 1817, a bill to suspend temporarily most-favored-nation treatment to Romania.

S. 2030

At the request of Mr. PRYOR, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 2030, a bill to establish an alternative procedure for the review of bid protests under the Competition in Contracting Act, and for other purposes.

S. 2181

At the request of Mr. D'AMATO, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 2181, a bill entitled the "Construction Industry Labor Law Amendments of 1986."

S. 2454

At the request of Mr. MURKOWSKI, the names of the Senator from Massachusetts [Mr. KENNEDY], the Senator from Pennsylvania [Mr. SPECTER], the Senator from North Carolina [Mr. BROYHILL], and the Senator from Colorado [Mr. HART] were added as cosponsors of S. 2454, a bill to repeal section 1631 of the Department of Defense Authorization Act, 1985, relating to the liability of Government contractors for injuries or losses of property arising out of certain atomic weapons testing programs, and for other purposes.

S. 2479

At the request of Mr. TRIBLE, the name of the Senator from Indiana [Mr. QUAYLE] was added as a cosponsor of S. 2479, a bill to amend chapter 39 of title 31, United States Code, to require the Federal Government to pay interest on overdue payments, and for other purposes.

S. 2802

At the request of Mr. TRIBLE, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 2802, a bill to prohibit foreign assistance to countries which fail to take steps to prevent and punish the laundering of drug-related profits in their territory, and for other purposes.

S. 2861

At the request of Mr. GRASSLEY, the name of the Senator from Hawaii [Mr. MATSUNAGA] was added as a cosponsor of S. 2861, a bill to provide for research, education, and information dissemination concerning Alzheimer's disease and related dementias.

SENATE JOINT RESOLUTION 339

At the request of Mr. HATCH, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of Senate Joint Resolution 339, a joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week."

SENATE JOINT RESOLUTION 348

At the request of Mr. GLENN, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of Senate Joint Resolution 348, a joint resolution to designate the week beginning November 24, 1986, as "National Family Caregivers Week."

SENATE JOINT RESOLUTION 388

At the request of Mr. LEVIN, the names of the Senator from Indiana [Mr. LUGAR], the Senator from Arkansas [Mr. PRYOR], the Senator from Wisconsin [Mr. KASTEN], the Senator from Ohio [Mr. GLENN], the Senator from Michigan [Mr. RIEGLE], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Illinois [Mr. DIXON], the Senator from Nebraska [Mr. EXON], the Senator from Arkansas [Mr. BUMPERS], the Senator from Connecticut [Mr. DODD], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Massachusetts [Mr. KERRY], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Illinois [Mr. SIMON], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from New York [Mr. MOYNIHAN], the Senator from Minnesota [Mr. BOSCHWITZ], and the Senator from Minnesota [Mr. DURENBERGER] were added as cosponsors of Senate Joint Resolution 388, a joint resolution designating the week beginning January 4, 1987, as "National Bowling Week."

SENATE JOINT RESOLUTION 396

At the request of Mr. HATCH, the names of the Senator from Alabama [Mr. HEFLIN], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of Senate Joint Resolution 396, a joint resolution to designate the week of October 26, 1986, through November 1, 1986, as "National Adult Immunization Awareness Week."

SENATE JOINT RESOLUTION 401

At the request of Mr. GORE, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of Senate Joint Resolution 401, a joint resolution to designate the week of October 12, 1986, through October 18, 1986, as "National Job Skills Week."

SENATE JOINT RESOLUTION 403

At the request of Mr. ROTH, the names of the Senator from Illinois [Mr. SIMON], the Senator from South Dakota [Mr. ABDNOR], and the Senator from South Dakota [Mr. PRESSLER] were added as cosponsors of Senate Joint Resolution 403, a joint resolution to designate 1988 as the "National Year of Friendship with Finland."

SENATE JOINT RESOLUTION 404

At the request of Mr. D'AMATO, his name was added as a cosponsor of Senate Joint Resolution 404, a joint resolution to designate October 1986 as "Polish American Heritage Month."

SENATE CONCURRENT RESOLUTION 145

At the request of Mr. STEVENS, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of Senate Concurrent Resolution 145, a concurrent resolution to encourage State and local governments and local educational agencies to require quality daily physical education programs for all children from kindergarten through grade 12.

SENATE CONCURRENT RESOLUTION 155

At the request of Mr. SIMON, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of Senate Concurrent Resolution 155, a concurrent resolution expressing the support of the Congress for a transition to democracy in Paraguay.

SENATE CONCURRENT RESOLUTION 163

At the request of Mr. DECONCINI, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of Senate Concurrent Resolution 163, a concurrent resolution expressing the sense of the Congress that the total number of Soviet diplomatic agents and consular officers in Washington, DC, and San Francisco should be reduced to equal the total number of American diplomatic agents and consular officers in Moscow and Leningrad.

SENATE RESOLUTION 464

At the request of Mr. ROTH, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of Senate Resolution 464, a resolution to designate October 1986 as "Crack/Cocaine Awareness Month."

SENATE RESOLUTION 492

At the request of Mr. PRESSLER, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of Senate Resolution 492, a resolution to express the sense of the Senate that the Motion Picture Association of America incorporate a subcategory in the voluntary movie rating system to identify clearly films which depict drug use in a benign or favorable light, and give a "D" rating to movies that so depict drug use so that parents can make an informed choice about the movies their children attend.

AMENDMENT NO. 2405

At the request of Mr. RIEGLE, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of amendment No. 2405 intended to be proposed to S. 2638, a bill to authorize appropriations for military functions of the Department of Defense and to prescribe military personnel levels for such Department for fiscal year 1987, to revise and improve military compensation programs, to improve defense procurement procedures, to authorize certain construction at military installations for fiscal year 1987, to authorize appropriations for national security programs of the Department of Energy for fiscal year 1987, and for other purposes.

AMENDMENT NO. 2866

At the request of Mr. PRESSLER, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of amendment No. 2866.

SENATE CONCURRENT RESOLUTION 164—RELATING TO SOVIET INTERFERENCE WITH POSTAL COMMUNICATIONS BETWEEN THE UNITED STATES AND THE SOVIET UNION

Mr. D'AMATO (for himself and Mr. BRADLEY) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 164

Whereas normal postal relations between the residents of the United States and the Soviet Union serve an important and useful purpose toward mutual understanding between both nations, thereby furthering the cause of peace in the world;

Whereas the integrity of the mail service between the United States and the Soviet Union is being called into question by mailers in the United States who assert that postal items are systematically not being delivered to various addresses and addressees in the Soviet Union;

Whereas the nondelivery of mail which is deliverable as addressed and which does not contain prohibited articles is a violation by the Soviet Union of internationally recognized human rights guaranteed to all persons by Article 12 of the Universal Declaration of Human Rights, and is also a violation by the Soviet Union of the provisions of the Helsinki Final Act calling for the freer flow of information between signatory states;

Whereas such nondelivery also violates the Acts of the Universal Postal Union;

Whereas the Congress of the United States has on several occasions addressed this issue and has collected voluminous evidence of Soviet postal malfeasance, and Members of Congress continue to receive complaints of such malfeasance to the present time;

Whereas none of the letters sent in a special mailing to Dr. Andrei Sakharov by our colleagues Senators Boren, Bradley, Cohen, D'Amato, and Denton, and Representatives Biaggi, Courter, Frank, Gilman Lagomarsino, and Lowery were delivered by Soviet postal employees;

Whereas postal service serves as a lifetime for individuals living within Soviet Bloc nations; and

Whereas the Universal Postal Union Congress in Hamburg, Germany, adopted 5 resolutions in July 1984 in response to Soviet postal malfeasance: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress—

(1) that the President—

(A) through the Secretary of State, should express to the Government of the Soviet Union the disapproval of the American people regarding innumerable instances of Soviet violations of the above-mentioned international agreements;

(B) should raise the issue of Soviet noncompliance with the above-mentioned agreements at the upcoming summit meeting; and

(C) should, through the Secretary of State, raise the issue of Soviet violation of the Helsinki Final Act at the follow-up meeting of the Conference on Security and Cooperation in Europe scheduled to convene in Vienna in November 1986; and

(2) that the United States Postal Service—

(A) should increase its efforts in combatting Soviet postal malfeasance; and

(B) should undertake a full investigation with regard to the undelivered letters sent to Dr. Andrei Sakharov by 11 Members of Congress, and inform the Congress, as well as the Universal Postal Union, of its findings.

● Mr. D'AMATO. Mr. President, I am pleased to submit today a concurrent resolution dealing with a situation that concerns not only a great number of this Senator's constituents from New York, but also many citizens across our Nation. I am referring to the continuing practice of the authorities of the Soviet Union of interfering with mail delivery between its citizens and persons living outside the Soviet Union, particularly our citizens here in the United States.

The uninterrupted flow of written correspondence is a vital component of normal relations and understanding between nations, as well as of the emotional link between individuals. As we know, millions of people move across borders every year, either permanently or temporarily. They leave behind them friends, relatives, and loved ones with whom they naturally wish to correspond. In addition, there are many people who wish to receive information from outside their national borders to acquaint themselves, if only through reading, with other peoples and cultures.

The right of individuals to communicate freely has long been recognized. As early as 1874, the Universal Postal Union was founded in Bern, Switzerland, to establish standards for international mail service. The UPU has since become a specialized agency with the United Nations. Article 12 of the United Nations Declaration on Human Rights established the principle of freedom of correspondence, stating:

> No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence. . . . Everyone has the right to the protection of the law against such interference.

I would add that the right to freedom of communication is so obvious that, following the adoption of the Helsinki accords in 1975, the Guardian of London wrote:

> The right of private citizens to receive letters through the post may have been too elementary for inclusion in the famous Helsinki Final Act. However, the denial of this right is inconsistent with the general principles of free contact and certainly with the spirit of the Final Act.

And yet, the Soviet Government, a member of the United Nations and a

signatory state of the Helsinki accords, blatantly continues to interfere with normal postal communications between the Soviet Union and the United States. Extensive investigation by the Committee on Post Office and Civil Service in the United States House of Representatives has revealed instances of massive interference with mail entering and leaving the Soviet Union. As a result of hearings held between 1979 and 1984, the committee has accumulated over 2,500 pieces of evidence of Soviet postal malfeasance.

If I may must mention just one single, but enormously instructive, example: In 1979, an Estonian man in the United States received a signed delivery receipt for a letter that he wrote to his son in prison in Soviet-occupied Estonia. Only later did he learn that his son had died and was buried back in 1976. According to former KGB agent Stanislav Leuchenko, the KGB is in charge of monitoring and stopping mail that the authorities do not want to reach their destination. He also has stated that when the workload of unmonitored mail gets too great for the KGB manpower, the sacks of unopened mail are just thrown away. The authorities are particularly diligent about stopping invitations from Israel to Soviet Jews who wish to emigrate from reaching their destination.

Mr. President, the recitation of Soviet postal violations—nondelivery of mail, forged delivery receipts, illegally returned letters and parcels, et cetera—would take more time than this body has at its disposal. As I have stated, it is all on record, documented in reports of the House Postal and Civil Service Committee. In addition, I should mention that a number of Members of Congress, including this Senator and the cosponsor of this resolution, the distinguished Senator from New Jersey, sent registered letters to Dr. Andrei Sakharov last year. None of the letters reached their destination, as was confirmed by Dr. Sakharov's wife Elena Bonner, when she was in the United States this spring.

The concurrent resolution that I am submitting today calls upon the President to express, through the Secretary of State, the disapproval of the American people over Soviet postal interference and to raise this issue at the Geneva Summit Conference and the Vienna followup meeting of the Helsinki accords. In addition, it calls upon the United States Postal Service to increase its efforts in combating Soviet postal malfeasance and, specifically, to investigate the circumstances of the nondelivery of mail to Dr. Sakharov and to report its findings to the Congress and the UPU.

Mr. President, the Soviet Union claims that it wishes to increase contacts between the peoples of our two nations. Soviet officials take great pains to point out what they claim is a huge information gap between our citizens and reality in the Soviet Union. This concurrent resolution should provide an impetus for resolving this problem, by increasing the flow of information between our citizens. I urge my colleagues to support this, concurrent resolution.●

SENATE RESOLUTION 493—AUTHORIZING PRODUCTION OF DOCUMENTS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. STAFFORD (for Mr. DOLE, for himself and Mr. BYRD) submitted the following resolution; which was considered and agreed to:

S. RES. 493

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs possesses documents relating to the financial activities of the subcommittee;

Whereas, the United States Attorney for the District of Columbia has requested access to certain of those records to assist him in fulfilling his own investigatory responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that documents, papers, and records under the control or in the possession of the Senate are needed in any investigation for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That the chairman and ranking minority member of the Permanent Subcommittee on Investigations, acting jointly, are authorized to provide to the United States Attorney for the District of Columbia pertinent records relating to the subcommittee's financial affairs for the years 1980-1986.

SENATE RESOLUTION 494—AUTHORIZING REPRESENTATION BY THE SENATE LEGAL COUNSEL

Mr. STAFFORD (for Mr. DOLE, for himself and Mr. BYRD) submitted the following resolution; which was considered and agreed to:

S. RES. 494

Whereas, in the case of *William E. Brock v. Frank Gerace, et al.,* Civil Action No. 85-3669, pending in the United States District Court for the District of New Jersey, the defendants have obtained subpoenas for the testimony of David Faulkner and Michael C. Eberhardt, former employees of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a)(2) (1982), the Senate may direct its counsel to represent former employees of the Senate with respect to subpoenas issued to them in their official capacity;

Whereas, by the privileges of the United States Senate and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that testimony of former employees of the Senate is or may be needful for use in any court for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent David Faulkner and Michael C. Eberhardt in the case of *William E. Brock v. Frank Gerace, et al.*

Sec. 2. That David Faulkner and Michael C. Eberhardt are authorized to testify in the case of *William E. Brock v. Frank Gerace, et al.,* except concerning matters which are privileged and subject to a determination that they have relevant information which is not so protected from disclosure.

AMENDMENTS SUBMITTED

FEDERAL-AID HIGHWAY ACT

COCHRAN (AND OTHERS) AMENDMENT NO. 2890

Mr. COCHRAN (for himself, Mr. THURMOND, and Mr. MELCHER) proposed an amendment to the bill (S. 2405) to authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes; as follows:

On page 56, on line 20, insert after "steel" ", cement, cement clinker,".

SPECTER AMENDMENT NO. 2891

Mr. SPECTER proposed an amendment to the bill S. 2405, supra; as follows:

On page 62, strike out lines 20 through 23, and insert in lieu thereof the following:

(1) $14,200,000,000 for fiscal year 1987;

(2) $14,200,000,000 for fiscal year 1988;

(3) $14,200,000,000 for fiscal year 1989; and

(4) $14,200,000,000 for fiscal year 1990.

TREASURY, POSTAL SERVICE, EXECUTIVE OFFICE OF THE PRESIDENT, AND RELATED AGENCIES APPROPRIATION, 1987

GORTON AMENDMENT NO. 2892

(Ordered to lie on the table.)

Mr. GORTON submitted an amendment intended to be proposed by him to the bill (H.R. 5294) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending Septem-

ber 30, 1987, and for other purposes; as follows:

On page , between lines and , insert the following new section:

SEC. . None of the funds appropriated or made available by this Act shall be used to implement Internal Revenue Service Regulation section 41.4481-1(a)(2) or any ruling or procedure which attains the same or similar result.

FEDERAL-AID HIGHWAY ACT

GORTON AMENDMENT NO. 2893

Mr. GORTON proposed an amendment to the bill S. 2405, supra; as follows:

At the appropriate place, insert the following:

SEC. . None of the funds appropriated or made available by this Act shall be used to implement Internal Revenue Service Regulation section 41.4481-1(a)(2) or any ruling or procedure which attains the same or similar result.

SPECTER AMENDMENT NO. 2894

Mr. SPECTER proposed an amendment to the bill S. 2405, supra; as follows:

On page 62, strike out lines 21 through 23, insert in lieu thereof the following:

(2) $14,200,000,000 for fiscal year 1988;

(3) $14,200,000,000 for fiscal year 1989; and

(4) $14,200,000,000 for fiscal year 1990.

SYMMS AMENDMENT NO. 2895

Mr. SYMMS proposed an amendment to the bill S. 2405, supra; as follows:

On page 28, line 24, strike all through page 29, line 15.

INTELLIGENCE AUTHORIZATION ACT

HELMS AMENDMENT NO. 2896

Mr. HELMS proposed an amendment to the bill (S. 2477) to authorize appropriations for fiscal year 1987 for intelligence activities of the United States Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes; as follows:

On page 4 of the bill, after line 2, add the following new section:

"SEC. 104. The classified report of the Select Committee on Intelligence which accompanies this Act is hereby amended to include the material contained in the classified supplement to the aforesaid report which was prepared on September 24, 1986. The classified supplement incorporates additional directions to the Intelligence Community on the following subjects: Competitive analyses of key intelligence topics; survivability of national technical means of intelligence collection; availability of the report of the President's 1980 Transition Team study of intelligence; training on combatting Marxism-Leninism; integration of military, political and economic aspects of national estimates on the Soviet Union; integrated national estimate on the Soviet Union; assessment of the effects of Soviet data denial; Foreign Broadcast Information Service analyses; reconnaissance capability; protection of polygraph information; role of the Defense Intelligence Agency; and intelligence policy regarding Panama."

HELMS (AND OTHERS) AMENDMENT NO. 2897

Mr. HELMS (for himself, Mr. PELL, Mr. DENTON, Mr. HATCH, Mr. KERRY, Mr. WALLOP, Mr. ZORINSKY, Mrs. HAWKINS, Mr. MCCLURE, Mr. SYMMS, Mr. HECHT, Mr. THURMOND, and Mr. MATTINGLY) proposed an amendment to the bill S. 2477, supra, as follows:

On page 24 of the bill, after line 4, add the following new section: "Section 604. The Director of Central Intelligence shall provide a report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives not later than March 1, 1987, whether and to what extent the Defense Forces of the Government of Panama have violated the human rights of the Panamanian people, are involved in international drug trafficking, arms trafficking, or money laundering, or were involved in the death of Dr. Hugo Spadafora."

COMMODITY EXCHANGE ACT AMENDMENTS

ABDNOR (AND OTHERS) AMENDMENT NO. 2898

Mr. ABDNOR (for himself, Mr. BOREN, Mr. WALLOP, and Mr. SIMPSON) proposed an amendment to the bill (S. 2045) to amend the Commodity Exchange Act to reauthorize appropriations to carry out such act, and for other purposes, as follows:

At the end of the bill, add the following new section:

SEC. . NONAPPLICABILITY OF COMMODITY EXCHANGE ACT TO TRADING OF CATTLE.

(a) DEFINITION OF COMMODITY.—The third sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) by inserting "(other than cattle)" after "livestock"; and

(2) by inserting "and cattle" after "except onions as provided in Public Law 85-839".

(b) REPORT ON HEDGING.—The last sentence of 4a(3) of such Act (7 U.S.C. 6a(3)) is amended by striking out "cattle, hog, or pork" and inserting in lieu thereof "hog or pork".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply to a contract of sale of cattle for future delivery that was entered into before October 3, 1986.

ABDNOR (AND OTHERS) AMENDMENT NO. 2899

Mr. ABDNOR (for himself, Mr. BOREN, Mr. WALLOP, and Mr. SIMPSON) proposed an amendment to amendment No. 2898 proposed by Mr. ABDNOR (and others) to the bill S. 2045, supra, as follows:

Strike all after the word "Sec." and insert in lieu thereof the following:

NONAPPLICABILITY OF COMMODITY EXCHANGE ACT TO TRADING OF CATTLE

(a) DEFINITION OF COMMODITY.—The third sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) by insertng "(other than cattle)" after "livestock"; and

(2) by inserting "and cattle" after "except onions as provided in Public Law 85-839".

(b) REPORT ON HEDGING.—The last sentence of 4a(3) of such Act (7 U.S.C. 6a(3)) is amended by striking out "cattle, hog, or pork" and inserting in lieu thereof "hog or pork".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply to a contract of sale of cattle for future delivery that was entered into before the date of enactment of this Act.

PRODUCT LIABILITY ACT

HOLLINGS AMENDMENT NOS. 2900 THROUGH 2974

(Ordered to lie on the table.)

Mr. HOLLINGS submitted 75 amendments intended to be proposed by him to the bill (S. 2760) to regulate interstate commerce by providing for a uniform product liability law, and for other purposes, as follows:

AMENDMENT NO. 2900

On page 25, strike all from line 19 through line 6.

AMENDMENT NO. 2901

On page 3, strike lines 9 through 25.

AMENDMENT NO. 2902

On page 2, strike lines 7 through 14.

AMENDMENT NO. 2903

On page 3, strike lines 1 through 8.

AMENDMENT NO. 2904

On page 4, strike lines 1 through 5.

AMENDMENT NO. 2905

On page 4, strike lines 6 through 11.

AMENDMENT NO. 2906

On page 4, strike lines 12 through 20.

AMENDMENT NO. 2907

On page 4, strike lines 21 through 22.

AMENDMENT NO. 2908

On page 4, strike all from line 23 through line 2 on page 5.

AMENDMENT NO. 2909

On page 5, strike lines 3 through 8.

AMENDMENT NO. 2910

On page 5, strike lines 9 through 25.

AMENDMENT NO. 2911

On page 6, strike all from line 1 through line 11 on page 7.

AMENDMENT NO. 2912

On page 7, strike lines 12 through 13.

AMENDMENT No. 2913

On page 7, strike lines 14 through 17.

AMENDMENT No. 2914

On page 7, strike lines 18 through 22.

AMENDMENT No. 2915

On page 7, strike all from line 23 through line 8 on page 8.

AMENDMENT No. 2916

On page 8, strike all from line 9 through line 5 on page 9.

AMENDMENT No. 2917

On page 9, strike lines 6 through 12.

AMENDMENT No. 2918

On page 9, strike lines 13 through 18.

AMENDMENT No. 2919

On page 9, strike all from line 19 through line 6 on page 10.

AMENDMENT No. 2920

On page 10, strike lines 7 through 17.

AMENDMENT No. 2921

On page 10, strike lines 18 through 24.

AMENDMENT No. 2922

On page 11, strike all from line 1 through line 23 on page 12.

AMENDMENT No. 2923

On page 12, strike all from line 24 through line 2 on page 13.

AMENDMENT No. 2924

On page 13, strike lines 3 through 15.

AMENDMENT No. 2925

On page 13, strike all from line 17 through line 10 on page 17.

AMENDMENT No. 2926

On page 17, strike all from line 11 through line 17 on page 18.

AMENDMENT No. 2927

On page 18, strike all from line 18 through line 10 on page 19.

AMENDMENT No. 2928

On page 19, strike all from line 20 through line 2 on page 21.

AMENDMENT No. 2929

On page 21, strike all from line 3 through line 9 on page 22.

AMENDMENT No. 2930

On page 22, strike all from line 10 through line 11 on page 24.

AMENDMENT No. 2931

On page 24, strike lines 13 through 18.

AMENDMENT No. 2932

On page 24, strike all from line 10 through line 22 on page 26.

AMENDMENT No. 2933

On page 26, strike all from line 23 through line 8 on page 29.

AMENDMENT No. 2934

On page 29, strike all from line 9 through line 15 on page 33.

AMENDMENT No. 2935

On page 33, strike all from line 16 through line 24 on page 34.

AMENDMENT No. 2936

On page 35, strike all from line 1 through line 17 on page 37.

AMENDMENT No. 2937

On page 37, strike all from line 18 through line 21 on page 38.

AMENDMENT No. 2938

On Page 38, strike all from line 22 through line 9 on page 39.

AMENDMENT No. 2939

On page 39, strike all from line 10 through line 18 on page 40.

AMENDMENT No. 2940

On page 40, strike all from line 19 through line 16 on page 41.

AMENDMENT No. 2941

On page 41, strike all from line 18 through line 7 on page 43.

AMENDMENT No. 2942

On page 11, strike lines 8 through 13.

AMENDMENT No. 2943

On page 11, strike all from line 14 through line 16 on page 12.

AMENDMENT No. 2944

On page 12, strike lines 17 through 20.

AMENDMENT No. 2945

On page 12, strike lines 21 through 23.

AMENDMENT No. 2946

On page 13 strike lines 22 through line 2 on page 14.

AMENDMENT No. 2947

On page 14, strike lines 3 through 14.

AMENDMENT No. 2948

On page 14, strike all from line 15 through line 18 on page 15.

AMENDMENT No. 2949

On page 15, strike all from line 19 through line 7 on page 16.

AMENDMENT No. 2950

On page 16, strike lines 8 through 13.

AMENDMENT No. 2951

On page 16, strike lines 14 through 24.

AMENDMENT No. 2952

On page 17, strike lines 1 through 10.

AMENDMENT No. 2953

On page 17, strike all from line 12 through line 17 on page 18.

AMENDMENT No. 2954

On page 18, strike all from line 19 through line 6 on page 19.

AMENDMENT No. 2955

On page 19, strike lines 7 through 14.

AMENDMENT No. 2956

On page 19, strike lines 15 through 19.

AMENDMENT No. 2957

On page 19, strike lines 22 through 26.

AMENDMENT No. 2958

On page 20, strike lines 1 through 2.

AMENDMENT No. 2959

On page 20, strike lines 3 through 13.

AMENDMENT No. 2960

On page 20, strike lines 14 through 21.

AMENDMENT No. 2961

On page 20, strike all from lines 22 through line 2 on page 21.

AMENDMENT No. 2962

On page 21, strike lines 4 through 9.

AMENDMENT No. 2963

On page 21, strike lines 10 through 17.

AMENDMENT No. 2964

On page 21, strike lines 18 through 25.

AMENDMENT No. 2965

On page 22, strike lines 1 through 4.

AMENDMENT No. 2966

On page 22, strike lines 5 through 9.

AMENDMENT No. 2967

On page 22, strike lines 11 through 17.

AMENDMENT No. 2968

On page 22, strike all from lines 18 through line 4 on page 23.

AMENDMENT No. 2969

On page 23, strike lines 5 through 14.

AMENDMENT No. 2970

On page 23, strike all from lines 15 through line 6 on page 24.

AMENDMENT No. 2971

On page 24, strike lines 7 through 11.

AMENDMENT No. 2972

On page 24, strike lines 13 through 18.

AMENDMENT No. 2973

On page 24, strike all from line 20 through line 10 on page 25.

AMENDMENT No. 2974

On page 25, strike lines 11 through 18.

METZENBAUM AMENDMENT NOS. 2975 THROUGH 3028

(Ordered to lie on the table.)

Mr. METZENBAUM submitted 54 amendments intended to be proposed by him to the bill, S. 2760, supra; as follows:

AMENDMENT No. 2975

On page 3, line 1, strike subsection (2) through line 8 and redesignate all subsequent subsections accordingly.

AMENDMENT No. 2976

On page 3, line 20, after "any" delete "life,".

AMENDMENT No. 2977

On page 3, line 9, strike paragraph (3) of subsection (a) through line 25 and redesignate all subsequent paragraphs accordingly.

AMENDMENT No. 2978

On page 4, line 14, after "compensable under State law," strike "in the amount of $100,000, and."

AMENDMENT No. 2979

On page 6, line 1, strike paragraph (11) of subsection (a) through page 7, line 11, and redesignate all subsequent paragraphs accordingly.

AMENDMENT No. 2980

On page 9, line 13, strike paragraph (1) of subsection (b) through line 18 and redesignate subsequent paragraph accordingly.

AMENDMENT No. 2981

On page 13, line 6, delete all after the word "Act" through line 9 and insert in lieu thereof the following: "in which the claimant discovered or should have discovered the harm and its cause for which damages are sought on or after that date."

AMENDMENT No. 2982

On page 13, line 24, strike "For the purposes of this title, an offer shall be limited to a claim for payment of the claimant's net economic loss, pursuant to section 205 of this title, and any dignitary loss."

AMENDMENT No. 2983

On page 17, line 11, insert the following: "(i) For purposes of this section attorney's fees and costs shall be awarded only when applicable state or federal law does not provide for the award of costs in civil actions."

AMENDMENT No. 2984

On page 18, line 25, strike out "judgment an amount" and insert in lieu thereof the following:

"judgment—

"(1) an award for additional damages in an amount equal to 50 percent of the judgment plus 1 percent of the increased judgment per month for each month after the date on which the defendant rejected the offer of settlement until the date of entry of judgment against the defendant; and

"(2) an amount".

AMENDMENT No. 2985

On page 19, line 9, strike "The court shall reduce such amount if the court determines that the defendant had a reasonable basis for rejecting the offer of settlement made by a claimant in accordance with section 201 of this title because the case involved a novel question of law or complex questions of fact."

AMENDMENT No. 2986

On page 20, line 12, after "exceed" strike "two times the claimant's economic loss or $50,000, whichever is less", and insert in lieu thereof "$50,000".

AMENDMENT No. 2987

On page 20, line 5, strike out "$250,000" and insert in lieu thereof "$1,000,000".

AMENDMENT No. 2988

On page 20, line 13, strike out "$50,000" and insert in lieu thereof "$100,000".

AMENDMENT No. 2989

On page 20, between lines 13 and 14, insert the following:

(3) The provisions of paragraphs (1) and (2) of this subsection shall not apply if the claimant establishes by a preponderance of the evidence that the noneconomic loss suffered was the result of conduct manifesting a manufacturer's or a product seller's conscious or flagrant indifference to the safety of those persons who might be harmed by a product.

AMENDMENT No. 2990

On page 20, strike subsection (b) through line 2, and redesignate all subsequent subsections accordingly.

AMENDMENT No. 2991

On page 20, line 3, strike paragraph (1) of subsection (c) through line 8.

AMENDMENT No. 2992

On page 20, line 9, strike paragraph (2) of subsection (c) through line 13.

AMENDMENT No. 2993

On page 20, line 22, strike subsection (e) through page 21, line 2.

AMENDEMENT No. 2994

On page 20, line 18, after "loss" strike "The jury shall not be instructed regarding the limitations on damages specified in subsections (b) and (c) of this section, but the award of damages in any such action shall be reduced by the court in accordance with such limitations."

AMENDMENT No. 2995

On page 22, line 5, strike subsection (c) through line 9.

AMENDMENT No. 2996

On page 26, strike lines 7 through 12.

AMENDMENT No. 2997

On page 26, strike lines 13 through 22.

AMENDMENT No. 2998

On page 26, strike all from line 24 through line 9 on page 27.

AMENDMENT No. 2999

On page 26, lines 24 and 25, delete the following: ", if otherwise permitted by applicable law,"

AMENDMENT No. 3000

On page 26, line 26 after "by" strike "clear and convincing" and insert in lieu thereof "a preponderance of the".

AMENDMENT No. 3001

On page 27, strike all from line 17 through line 14 on page 28.

AMENDMENT No. 3002

On page 28, strike all from line 15 through line 8 on page 29.

AMENDMENT No. 3003

On page 27, line 17, strike subsection (c) through page 29, line 8.

AMENDMENT No. 3004

On page 29, strike lines 10 through 18.

AMENDMENT No. 3005

On page 29, line 13, after "harm", delete "and"; insert in lieu thereof ","; and, after "its cause," insert the following: "and the potential cause of action for relief from injuries due to the harm,"

AMENDMENT No. 3006

On page 29, line 10, after "(a)" insert "(1)".

At line 19, insert the following:

"(a)(2) In any case in which the claimant is unable to determine the identity of the product manufacturer or seller that caused the harm, the claimant shall file a complaint against an unnamed product manufacturer or seller. Upon the filing of the complaint, the court shall toll the statute of limitations provided in subsection (a) of this section for one year, for the purpose of allowing the claimant to determine the identity of the product manufacturer or seller."

AMENDMENT No. 3007

On page 29, strike all from line 19 through line 5 on page 32.

AMENDMENT No. 3008

On page 32, strike lines 6 through 9.

AMENDMENT No. 3009

On page 32, strike lines 11 through 21.

AMENDMENT No. 3010

On page 32, lines 19 and 20, delete "of court costs, fees, and expenses (including attorney's fees)" and insert following: "provided for by existing state law of court costs, fees, expenses and attorney's fees reasonably attributable to such conduct."

AMENDMENT No. 3011

On page 32, line 26, after "expenses," insert the following: "as provided by state law,".

AMENDMENT No. 3012

On page 32, strike all from 22 through line 12 on page 33.

AMENDMENT No. 3013

On page 33, strike lines 13 through 15.

AMENDMENT No. 3014

On page 33, strike lines 17 through 25.

AMENDMENT No. 3015

On page 34, strike lines 1 through 13.

AMENDMENT No. 3016

On page 33, line 19, after the word "action", insert the following: ", the insurer of any such person, and, in a civil action in which damages are sought for harm occurring in a workplace, the claimant's employer and its insurer".

AMENDMENT No. 3017

On page 34, strike lines 14 through 24.

AMENDMENT No. 3018

On page 35, strike lines 3 through 14.

AMENDMENT No. 3019

On page 35, strike lines 15 through 22.

AMENDMENT No. 3020

On page 35, line 10, insert after the word "harm" the following: "if under the applicable federal or state workers compensation law the plaintiff will continue to receive payments after an award of damages under this Act."

AMENDMENT No. 3021

On page 35, strike all from line 23 through 15 on page 36.

AMENDMENT No. 3022

On page 36, strike lines 16 through 22.

AMENDMENT No. 3023

On page 36, strike all from line 23 through line 13 on page 37.

AMENDMENT No. 3024

On page 37, line 18 strike the heading "Several Liability for Noneconomic Damages";

On page 37, line 19, strike section 308 through page 38, line 21, and redesignate all subsequent sections accordingly.

AMENDMENT No. 3025

On page 40, line 11, strike subsection (b) through line 18.

AMENDMENT No. 3026

On page 42, line 4, immediately after the period, add the following: "Necessary data shall include annual compilations of premiums collected and closed claims paid out for each separate line of liability insurance. The annual compilation shall be collected for each calendar year beginning not later than 1984.".

AMENDMENT No. 3027

On page 43, line 8, insert the following:

TITLE V—STUDY TO BE CONDUCTED BY GENERAL ACCOUNTING OFFICE

SEC. 501. The General Accounting Office shall provide to the Congress one year after the date of enactment of this Act a study of the feasibility of establishing a reinsurance program operated by the federal government and funded by the insurance industry.

AMENDMENT No. 3028

On page 43, line 8, insert the following:

TITLE V—STUDY TO BE CONDUCTED BY GENERAL ACCOUNTING OFFICE

SEC. 501. The General Accounting Office shall provide to the Congress one year after the date of enactment of this Act a study of the feasibility of creating a federal Office of Insurance to monitor the insurance industry and establish regulatory standards for state insurance commissions.

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MATHIAS. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-385 Russell Senate Office Building, on Monday, September 29, 1986, at 2 p.m., to continue the oversight hearing begun on July 30, 1986, on the operations and functions of the Office of the Sergeant at Arms of the Senate.

For further information regarding this hearing, please contact Carole Blessington of the Rules Committee staff on x40278.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry, be authorized to meet during the session of the Senate on Wednesday, September 24, 1986, in order to consider the nomination of Jim R. Billington, to be a member of the Farm Credit Administration Board, Farm Credit Administration.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Wednesday, September 24, to hold a hearing on emerging criminal groups/Asian.

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

ADDITIONAL STATEMENTS

SENATOR PACKWOOD'S SPEECH AT WILLAMETTE UNIVERSITY

● Mr. HATFIELD. Mr. President, as the 2d session of the 99th Congress draws to a close, issues of civil liberties continue to confront the Senate. Whether they arise in the context of legislation to combat the drug problem, enact immigration reform or provide funding for the next fiscal year, these issues demand careful attention. This fact was recently brought to light by my distinguished colleague and friend from Oregon, Senator PACKWOOD. In a speech at Willamette University in Salem, OR, Senator PACKWOOD outlined the forces that cause the erosion of our civil liberties and challenged us to be vigilant to preserve and protect them for the generations to come.

Mr. President, I commend the speech to my colleagues and ask that Senator PACKWOOD's speech be printed in the CONGRESSIONAL RECORD.

SENATOR BOB PACKWOOD ON CIVIL LIBERTIES

The year was 1956. The place was Oregon. The document was the general election ballot of November of that year. The issue was fishing. The ballot description read, "prohibiting certain fishing in coastal streams."

Now go back almost 800 years. The year was 1215. The place was Runnymede, England. The document was the Magna Carta. This issue was fishing. Article 33 of the Magna Carta reads, "All fish weirs shall be removed from the Thames, the Medway and throughout the whole of England except on the sea coast." I was struck by the fact of how many issues that we deal with today seem to be eternal.

When you look at the history of government—ours for 200 years—England's for almost 600 years prior to that—it is a continual struggle of men and women to secure for themselves certain liberties that governments wish to take away.

The battle is not usually fought against those who are intent upon doing evil. It is usually fought against those who are intent on doing good—as they see it.

This country is full of good men and women intent upon helping us. Some would prevent us from driving cars in national parks. Others would require us to wear helmets while riding motorcycles. Some would insist upon protecting us against smoking—for our own good, of course. Some would muzzle the press. These people are well-intentioned.

These well-intentioned people are convinced they are right. They sincerely believe they are so right, that if you disagree with them, they are sure you are wrong. Then it's only a short step to "the end justifies the means," because they believe the end is so "right." When these people gain control of government, they become dangerous. The more I read history, and the longer I watch government operate, the more convinced I am that almost anyone can withstand adversity. If you want to test a person's character, give that person power.

If we are going to protect our civil liberties against those who are in power, we must do battle in the first trench. We don't wait until we have been shoved and pushed to a hilltop where we are surrounded and circumscribed by a government run by men and women of good intent trying to help us.

Often, when we have to battle in that first trench to protect our liberties, it is not against somebody who wants to prevent driving in national parks or to stop us from smoking. The first trench is usually a battle to defend some radical or bomb thrower or political dissident, or someone whose life style differs from those in power. We must make sure that the procedures for their defense are kept secure. A government that can put that person in prison or abuse that person's rights, without what all of us would regard as due process, can easily turn that procedure against us. Government will try just that if we choose to do something that the government, in its wisdom, thinks is not proper.

I want you to go back with me a bit through the history of England and the United States to see what England did over a period of almost 600 years, why they did it, and why we copied it almost verbatim into our Constitution and into our Bill of Rights.

England's experience was substantially different from ours. To begin with, they don't have a written constitution. All of the civil liberties of England are simply a series of parliamentary acts, or in some cases, decisions of common law courts. The English experience with government, through the centuries, was that government, be it a government of the king, or a parliamentary government—will try to take away certain liberties from the citizenry.

Initially in English history, it was presumed the monarch would try to abuse civil liberties and the parliament would protect them. Therefore, many of England's early civil liberty battles were struggles pitting the king against the parliament.

What's the first thing the king would try to do in those early days when parliament was still a fledgling institution? Of course, he would try to rule without a parliament. Parliament was a hindrance. Parliament wanted to restrict his right to imprison

people and arrest people and start wars. So the easiest thing to do was to have no parliament meet. In 1330, parliament passed a statute that said, "It is accorded that parliament shall be holden once every year or more often if need be." How did we phrase it 450 years later in our Constitution? "The Congress shall assemble at least once every year." This would insure that a President would not try to set aside Congress' right to gather and assemble.

When parliament was secure in its right to meet, the next avenue that the king would use would be to imprison members for what they said on the floor of parliament. If we can't keep them from meeting, at least we can put them in prison if they say anything adverse. So the English Bill of Rights—the English Bill of Rights in 1689—simply said that, "The freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament." How did we say it in Article I, Section V, of the Constitution? "Senators and Representatives . . . for any speech or debate in either House shall not be questioned in any other place."

Well, all right, if parliament must meet, and the members of parliament are entitled to say what they want, the king would next try to keep the citizens and parliament apart. Therefore, he would not allow citizens to petition parliament for grievances they might have against the king, and if they did so petition, try to imprison them for it.

So again, the English Bill of Rights says simply, "It is the right of the subjects to petition the king and all commitments and prosecutions for such petitioning are illegal." And how did we say it in our Bill of Rights? "Congress shall make no law . . . abridging the right of the people . . . to petition the government for a redress of grievances."

The battle continued to secure, and secure once again, more strongly, our liberties. It was a continual struggle to prevent government from taking away our right to dissent, our right to assemble, our right to a different life style, our right to appear and ask that the government change, in short—from taking away our basic political liberties.

The king found that the parliament was becoming more and more obdurate. They wouldn't give him the money for the wars that he wanted. In fact, to get any money at all to sustain his army, he found that he had to turn to parliament more often than he liked. However, one avenue to save money in the military budget was simply to quarter the soldiers and the sailors in the homes of the citizens, and make the citizens pay for their room and board. And so the English Petition of Right in 1628, says, "Your majesty will be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come." What did we say in our Bill of Rights? "No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner prescribed by law."

In addition to securing parliamentary right vis-a-vis the king, Englishmen also continually strengthened individual liberties. The Magna Carta says: "No free man shall be seized or imprisoned or stripped of his rights or posessions, or outlawed or exiled or deprived of his standing in any other way. . . except by the lawful judgment of his equals or by the law of the land." We said it more simply in our Bill of Rights. "No person shall be deprived of life, liberty or property without due process of law."

The king, thus, thwarted in his effort to prohibit fair trials, next turned to the concept of setting bail so high that a person could not afford it, or threatening punishment so cruel that a person would confess, rather than face the punishment. So in the English Bill of Rights, it simply says, "Excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted." A hundred years later in our Bill of Rights we said, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

All right, said the king, if I can't hold the man without bail, or threaten him with cruel and inhumane punishment, I'll simply let the cloud of guilt hang over his head and delay his trial for years. No you won't, said the Magna Carta, and they phrased it as follows: "To no one will . . . we deny or delay right or justice." Our Bill of Rights says, "in all criminal prosecutions, the accused shall enjoy the right to speedy and public trial by an impartial jury."

I'll try the man over and over, and over again, until I finally get a conviction, said the king. Parliament didn't even have to address itself to that. The courts of law themselves in the pleas of autrefois acquit and autrefois convict said, "a man shall not be brought into danger . . . for one and the same offense more than once." We said it in our Bill of Rights as follows: "No person shall be subject for the same offense to be twice put into jeopardy of life or limb."

Finally, when all else would fail, the king would extract confessions by torture, and use the confession in court for conviction. So the Magna Carta put it this way. "In future, no official shall place a man on trial upon his own unsupported statement." Almost 600 years later, we said it in the 5th amendment as follows: "No person shall be compelled in any criminal case to be a witness against himself."

There are many more examples from English history that we have adopted and incorporated in our Constitution and Bill of Rights. As a matter of fact, we added two protections England didn't have—freedom of the press and freedom of religion. These both grew out of our colonial experience. One of the basic tenants of our colonial history was religious diversity. We wanted that protected and, therefore, prohibited the establishment of a national church. In addition, because of the efforts of England to throttle the colonial press, we added the protection in our Bill of Rights of freedom of the press.

A key fact to remember is that our civil liberties may be as easily abused by a President, as by a Congress. England even learned that long before we became a nation. As I said earlier, from the time of the Magna Carta to the English civil war in the 1640's, the feeling in England was that the king was likely to abuse liberties, and the parliament was likely to protect them. The common citizen never paused to think that a parliament might abuse their liberties until the English civil war. In the 1640's the King and the parliament divided and fought. The parliament was full of diverse factions, but they united against the King. Parliament finally won. They beheaded the King. Then the parliamentary factions fell to fighting among themselves. One of the parliamentary factions, the Puritans—whose religious kin had left England 20 to 30 years before to come to this country—gained control of parliament. They gained it completely when a Puritan army man named Colonel Pride stood at the door of parliament in 1948. In what has come to be known as "Pride's Purge," he turned away all members of parliament who did not agree with the Puritan party then headed by Oliver Cromwell. Fifty-three members of parliament—the Puritan faction—were left to govern England. They proceeded to abuse the rights of all Englishmen. Finally, Oliver Cromwell, and his instrument of tyranny, the New Model Army, could not stand even the fifty-three. They were dismissed, and parliament dissolved. The second civil war started. Winston Churchill, in his *History of the English-speaking Peoples* phrases it so eloquently when he says, "The story of the second civil war is short and simple. The king, the lords and commons, landlords and merchants, the city and the countryside, the church, the Scottish army, the Welsh people, and the English fleet all now turned against the New Model Army. The army beat the lot. And at their head was Cromwell. . . . It was a triumph of some 20,000 resolute, ruthless, disciplined military fanatics over all that England ever wished or ever willed."

From that day onward, the documents of English liberty make it obvious that neither the king nor parliament were to abuse Englishmen.

American history reveals the same sorry examples. Congress or the President can violate our liberties. It was Congress which first passed the Alien and Sedition Acts, clearly violating our First Amendment liberties. It was President Jackson who approved efforts in southern states to prohibit the receipt through the mail of abolitionist tracts mailed from the north. It was Woodrow Wilson's attorney general who lent his name to the infamous "Palmer red raids" in which efforts were made to round up alleged "red" sympathizers in 1920. It was President Franklin Roosevelt, with the immediate concurrence of Congress, who authorized the internment of native born American citizens of Japanese ancestory in World War II. It was a Congress that abused our liberties during the McCarthy era of the 1950's. It was the President who abused our liberties during the Watergate era.

If history has taught us anything, it is that there is no foolproof, safe haven which can serve as the repository of our liberties. On occasion, Congress, the President and even the courts can be swept away by the passion of the moment.

From the prospective of one who is a practicing politician, I hope we always will remember that passion can obscure judgment. We should remember that governing officials, in dictatorships and democracies, find it easy and convenient to bend to transitory, popular prejudices which would subjugate individual liberties. Those of us in public office should always remember that we can never err enough on the side of protecting individual liberty and freedom. We who have been elected to a position of public trust, should be willing at all costs to withstand the buffets of a temporary storm that would trammel, or even extinguish, our freedom for the alleged common good.

A few years ago we celebrated our 200th anniversary as a nation. We should remember that we celebrated not just 200 years of American liberty. In addition, we celebrated almost 800 years of Anglo-Saxon history during which men and women have been tortured and imprisoned, have fought and died so that we today can say what we want,

do what we want and be what we want. In short, they have given us the blessings of political liberty. It is the greatest blessing anyone could ever give to us. All I ask is that you cherish it, preserve it, and protect it and pass it on to our children a bit more secure than we received it.●

THE U.S. HEALTH CARE REVOLUTION

● Mr. SIMON. Mr. President, I would like to submit for the RECORD remarks made by Joseph A. Califano, Jr., former Secretary of Health, Education and Welfare, before the Economic Club of Detroit.

He addresses issues we are facing—and sometimes not facing—during this health care revolution. How are we going to pay for the increasing cost of health care? If there is a limited pool of resources, who will receive health care services? How is health care delivery going to change to reflect the current population, cost, and medical technology?

Improved medical technology has reshaped health care, but it has also created new moral dilemmas. Because of the high cost of the technology, we must now determine who will have access to its benefits. The escalating cost of medical care is bringing Americans face to face with the prospect that health care rationing may occur.

Mr. Califano does a commendable job of describing the health care changes in the last 3 years for the Chrysler Corp. More important, he outlines the major issues to be considered in the coming years on health care delivery and I urge my colleagues to read his thoughtful observations I do not agree with every recommendation he makes, but he is facing issues squarely that we are now ducking.

The remarks follow:

AMERICA'S HEALTH CARE REVOLUTION

(Remarks of Joseph A. Califano, Jr.[1])

A revolution in the American way of health is under way, and it is likely to be as far-reaching as any economic and social upheaval we have known.

At stake is who gets how much money out of one of America's top three industries, who suffers how much pain how long, and who gets the next available kidney, liver, or heart: in short, who lives, who dies, and who pays.

The revolutionary forces at work are profound. Science is serving up incredible biomedical breakthroughs that hold the promise of remarkable cures and the threat of unacceptable costs. The graying of America presents a burgeoning elderly population, who consume the most expensive high-tech medicine and who already strain our capacity to provide adequate medical and nursing care. In law and religion, our judges, ethicists and moral theologians are confounded by the Pandora's box of medical discoveries that insists they reexamine questions as fundamental as when life begins and ends.

Fed up with waste and inefficiency, the biggest buyers of health care—governments, corporations and unions—are changing the way doctors, hospitals, and other providers are used and paid, and reshaping financial incentives that encourage patients to seek unnecessary care.

Guiding this revolution is a delicate and treacherous business because there's so much of value to preserve. If the American health care colossus has become far too costly and mercenary, the American way of health has been miraculous.

The miracles are everywhere to be seen: vaccines that have virtually eliminated most childhood diseases; the high technology of microsurgery, kidney dialysis, vital-organ transplants, machines that scan the body and the brain and do the work of the heart, pharmaceutical inventions to remedy everything from headaches and depression to hypertension and epilepsy. We have conquered diseases that have killed millions over many centuries, and we have extended life expectancy beyond the wildest predictions of just a generation ago.

We have the most advanced medical technology on this earth, and an abundance of superb specialists and hospitals.

But the soaring cost of care threatens to deny even the affluent access to the miracles we have come to expect and the billions we've spent have not given millons of uninsured Americans basic health care.

Medicine's high priests, the doctors, have said once too often, and with an arrogance we no longer accept, that only they know what to prescribe, where to treat us, and how they should be paid.

Corporations, unions, governors, mayors legislatures, every president since Lyndon Johnson—all the institutions or people speak and act through—have attacked the profligacies of the American health care industry.

Examples of exorbitance and skewed values abound: a 75-year-old man dies after less than seven hours of emergency surgery for a ruptured aneruysm. His widow gets bills for $23,000. Another widow received a bill of $250,000 for her husband's five and a half months in an intensive care unit battling emphysema that killed him. A California man spent ten days in a hospital for a mild heart attack, and received doctor and hospital bills totaling more than $25,000 before the hospital reluctantly agreed to transfer him to a Veterans Administration facility where he was eligible for free care.

But there are signals of change:

Hospital admissions, lengths of stay, and occupancy rates dropped in 1984 and again in 1985.

Medicare, once predicted to go bust by the end of this decade, looks solvent until late in the next.

Cigarette consumption has gone down.

The early results of America's health care revolution make it clear that we can provide quality health care to all at a reduced cost. To achieve that goal, we must recognize that the revolution is just beginning.

Three years ago at this Detroit Economic Club I announced Chrysler's plans to control health care costs. I said we would work with the United Auto Workers, our employees, and the hospitals and physicians who serve the Chrysler family, to change the structure of a health care system that had become supplier-dominated and inefficient, and was not delivering the best possible care to our employees.

Today I can announce that Chrysler has saved more than $100 million in health care costs since that effort began and that it expects to save at least another $250 million—a quarter of a billion dollars—over the next five years. Throughout this effort, we have provided better quality care for our employees at less cost, and that's something we will continue to do.

We have achieved these remarkable results by working hand in hand with the United Autoworkers. Indeed, the contract we signed last October will produce savings in our total health care bill of $130 million over its term.

Chrysler has put the brakes on the growth of its health care bill. Year-to-year increases in employee health care costs have plunged from more than 15 percent in both 1981 and 1982 to less than 4 percent in 1985. Even with tough 1985 targets, Chrysler health care costs were $25 million under budget. For 1986, although our new preferred providers will be in place for no more than half the year, we project an increase of less than 2 percent.

We have cut our retiree costs from a 20 percent increase in 1982 to a small, but unprecedented reduction in 1985. For 1986, despite the 23 percent increase in Medicare deductibles and copayments, which we pay dollar-for-dollar, we expect to hold retiree cost increases to less than 3 percent. Without the increase in Medicare deductibles and copayments, Chrysler's 1986 costs for retirees would be less than its 1984 costs.

We have been able to achieve these savings and at the same time provide better quality care to our employees and retirees. We've substituted just-as-effective generic drugs for high-priced brand names, established dental health maintenance organizations, mounted health promotion programs with financial incentives—for example charging smokers 75 percent more than non-smokers for company life insurance—and cut over—and misuse of podiatrists and surgeons.

The big bucks have come from our move on unnecessary hospitalization.

First, we changed our view of hospitals. At Chrysler, we now regard them as institutions to stay out of, settings of last resort, places to go for treatment only when all else fails.

Second, we directly confronted hospitals with high profiles of unnecessary admissions or needlessly extended stays. Let me give one example.

We asked a team of physician experts to examine our Michigan hospital expenses for non-surgical low-back pain treatment. They found that two-thirds of the hospitalizations at the eight Detroit area hospitals with the most admissions—and 85 percent of the total hospital days (2,264 out of 2,679 days)—were inappropriate. In fact, three of the hospitals audited did not have one single appropriate admission. The admissions, it turned out, were largely for bed rest, which is both safer and cheaper at home.

We confronted the doctors and administrators with our findings. Initially resistant, they eventually agreed to take action. The result: in the first 6 months following our intervention, the eight hospitals reduced their admissions for low-back pain by 64 percent!

[1] Mr. Califano was Secretary of Health, Education and Welfare from 1977 to 1979, and President Lyndon Johnson's assistant for domestic affairs from 1965 to 1969. He is presently senior partner in the Washington office of the law firm of Dewey, Ballantine, Bushby, Palmer & Wood, and chairman of the health care committees of Chrysler Corporation and American Can Company. His most recent book, "America's Health Care Revolution: Who Lives? Who Dies? Who Pays?," was published by Random House last month.

For those who doubt how much more there is to be done, let me release our latest findings on lower back pain admissions from our studies at other Chrysler locations. These new audits by our physicians expose widespread unjustified hospitalization in low back pain cases.

In St. Louis 72 percent of the audited admissions and 90 percent of the hospital days were inappropriate;

In Indiana 66 percent of the admissions and 87 percent of the hospital days were inappropriate.

In Delaware 34 percent of the admissions and 68 percent of the hospital days were inappropriate.

Needless to say, we are going to confront the offending hospitals and physicians.

Third—and of critical importance—we instituted a prescreening program for hospitalization. Chrysler will not pay for hospitalization in non-emergency, non-maternity cases unless the need for admission is confirmed in advance by a second, independent, medical opinion. Where hospitalization is warranted, a specific number of days for reimbursement is approved before admission. If the admitting physician believes the stay should be extended beyond that period, he must go to Blue Cross in advance, explain why, and get approval.

This year we are introducing a major specialized preferred provider initiative. Chrysler will fully pay a number of benefits only if delivered through preferred providers that Chrysler contracts with. These benefits include vision care and podiatry services. Employees and their doctors will have a strong financial incentive to use these providers; going to others will require employees to make substantial copayments. A joint Chrysler-UAW committee has begun work to explore the creation of additional preferred providers—for substance abuse, psychiatric services, outpatient radiology, and medical equipment.

Moreover, we are contracting with the lowest responsible bidder to provide outpatient laboratory tests to our employees. Chrysler will only pay full cost for such tests if they are performed by that laboratory. We expect savings from the laboratory and podiatry programs to exceed $3 million each in the first full year. We expect to establish similar arrangements for prescription drugs.

These preferred providers are a win/win situation for Chrysler and its employees. The company's costs go down and the employee gets better care with lower copayments. We expect, for example, that our prescription drug program will reduce employee copayments by at least 40 percent and still give Chrysler significant savings.

These are substantial achievements for Chrysler, and other companies—notably General Motors and Ford—are also taking giant steps to provide employees better quality care at less cost. But we must not let self-congratulation weaken our vigilence. The toughest work of America's health care revolution lies ahead. There's a job for each of us.

What remains to be done?

We should promptly eliminate at least 400,000 unnecessary hospital beds.

Within 10 years we will need only half the hospital beds we have today.

Closing hospitals is hard labor. Everyone admits we have too many hospital beds in America—they're just all in someone else's town, city, or neighborhood. Even with Detroit's occupancy rate down to less than 70 percent and expected to drop further, a new hospital has just opened on the east side and another one is under construction—at a time when the metropolitan area should be embarking on a program to close down at least 5,000 of its 20,000 beds within five years.

The desirability of reducing the number of hospital beds and consolidating facilities is not limited to cost savings. Concentration of surgical procedures in fewer hospitals will mean better medical care. Patients are more likely to die in hospitals where fewer operations are performed. A patient is seven times more likely to die during a coronary by-pass operation in a hospital that performs only 100 such operations a year than in a hospital that performs 350. No patient in Detroit—or any city—should go to a hospital without asking how often that hospital treats the ailment for which he or she is being admitted.

We must reduce extreme and unwarranted variations in the practice of medicine.

A 1984 Massachusetts survey of surgery rates revealed startling variations in medical practice: if you lived in Hingham in 1984, you were four times more likely to have your gall bladder removed than if you lived in Holyoke and had the same symptoms. Residents of Fairhaven, Fitchburg, and Framingham are fifteen times more likely to have tonsillectomies than people living in other Bay State areas where antibiotics are used to treat tonsillitis.

A recent study of 4.4 million Medicare beneficiaries living in 13 major regions, from Philadelphia to southern California, revealed that the erratic practice of medicine is a national phenomenon. Researchers found that, for 67 of the 123 medical and surgical procedures studied—more than half—residents of the areas with the highest rates were at least three times as likely to be treated as those in areas with the lowest rates. If you lived in the areas with the highest rates, for the same symptoms, you were 11 times more likely to get a hip operation, 6 times more likely to have a knee replaced, 3 times more likely to have coronary bypass surgery, 5 times more likely to get a skin biopsy, and 26 times more likely to receive hemorrhoid injections. And these stunning variations had no apparent relationship to health status.

For the same symptoms, the rate of major cardiovascular surgery is twice as high in Des Moines as in Iowa City. And while the incidence of heart attack is the same in Palo Alto and North San Diego, North San Diego's rate of cardiovascular surgery is 66 percent higher.

Adoption of more conservative surgical and medical practice styles by doctors could easily produce a 40 percent reduction in money spent for hospitalization alone—a savings of more than $60 billion a year.

We need to strengthen quality and nourish competition by giving individual and corporate purchasers the information they need to make intelligent health care choices.

Central to a free market with few controls and a variety of payment systems for physicians, hospitals, and other suppliers is an informed purchase of medical services.

It is imperative to get lots of information out: what hospitals and doctors charge, how successful they are in handling different types of patients, what kinds of diseases they treat most frequently, how often they use drugs or resort to surgery.

We need to loosen the hammerlock monopoly of doctors over the practice of medicine.

Medical technology makes it possible to provide in the home and the doctor's office diagnosis and treatment, like chemotherapy, dialysis and intravenous therapies and feeding, that once could only be delivered in a hospital. Today nurses can perform a host of tasks once reserved for doctors, such as examining, diagnosing and treating many wounds and sprains and common respiratory ailments. Early results of a Memorial Sloan-Kettering program indicate that many cancer patients can be treated just as effectively on an outpatient basis as in the hospital.

The physical monopoly over the practice of medicine should be eased to reflect the realities of modern technology, reduce medical featherbedding, eliminate obsolete work rules and allow paraprofessionals to provide many medical services just as competently and far less expensively. Government and private insurance programs should be tilted more toward care in the home and doctor's office.

We need to overhaul our medical malpractice system.

The cost of malpractice insurance is paid not by doctors and hospitals but by all of us as taxpayers and patients, and in 1984 it came to $4 billion of our health care bill—to say nothing of the billions of dollars we paid for unnecessary tests ordered by doctors anticipating lawsuits.

States should limit the amount of recovery to modest payment for pain and suffering, and largely link damages to costs of health care, replacing loss of income due to inability to work, and disability costs. Contingent legal fees should be sharply reduced.

Malpractice itself needs to be redefined. The tests doctors truly need to diagnose and treat their patients should be sufficient for their lawyers to prevail in the courtroom.

For doctors, reform of malpractice laws begins at home, with reform of their own medical discipline systems. Professional medical disciplinary systems are too often not doing their job. In 1984 state medical boards in Nevada, Utah, Oregon, and Mississippi each disciplined more than one physician out of every hundred. But boards in New York, Massachusetts, Nebraska, Hawaii, and the District of Columbia disciplined fewer than one per thousand.

We need to devise and adopt case management systems to cope with high cost cases.

Preliminary analysis of Chrysler's 1984 health care data indicates that 3.4 percent of Chrysler's insured accounted for 43.5 percent of the company's hospital payments. Our review of these high cost cases reveals that they are often life-style related diseases and that millions of dollars were wasted—and ineffective care provided—because no one was managing the care of these patients and aggressively pressing them to change their lifestyles, and because there was insufficient flexibility in the benefits package. For example, some patients who could have been more humanely and inexpensively treated at home were kept in the hospital because the benefit package provided only limited home care services.

As a result, Chrysler and the United Auto Workers have agreed to develop a system to better manage the care of patients. Our objective is to provide higher quality care at far less cost. In adopting case management systems, we will be insensitive to potential privacy issues and avoid an intrusive approach.

We need to adopt sophisticated health promotion programs.

Each of us can do more for our own health than any doctor, any hospital, any machine, or any drug.

Heart disease is America's number-one killer. Daily newspapers and television give the impression that coronary bypass surgery, modern cardiopulmonary techniques, miracle hypertension pills, human heart transplants, and in the future, animal and artificial heart transplants are the way to battle heart disease.

Right?

Couldn't be more wrong.

Since 1970 our nation has experienced a dramatic 25 percent decline in deaths from coronary heart disease. The major reasons? Improved eating habits—the reduction in cholesterol—accounted for almost one-third of the drop. The decline in cigarette smoking was responsible for another quarter. Individuals, by changing personal habits, were responsible for more than half the decline in deaths from heart disease. In contrast, coronary care units accounted for only 13 percent; cardiopulmonary resuscitation, 4 percent; bypass surgery, 3 percent; and the widely used hypertension pills only 9 percent.

Virtually all factors that substantially increase likelihood of heart disease are within the patient's, not the doctor's control: smoking, alcohol and drug abuse, a high-cholesterol diet, obesity, lack of exercise, stress.

British Prime Minister Winston Churchill put it characteristically well on a visit to his personal physician because of headaches, wheezing, aches, pains, and shortness of breath. "You've got to stop smoking a dozen cigars a day and staying up half the night drinking a bottle of cognac," his doctor admonished. "If I wanted to do that," Churchill shot back, "I wouldn't need you."

In a free country, pursuit of a healthy lifestyle is voluntary. But we can certainly take a host of actions to encourage Americans to choose wisely, and to bear the cost when they don't.

Business is just beginning to wake up to its potential for creating a healthy America. One of the most ambitious efforts is Johnson & Johnson's Live for Life program. Started in 1979, the program now involves 30,000 employees at 50 locations in the United States, Puerto Rico, and Europe.

Johnson & Johnson reports these early results:

25 percent of all employees who smoked in 1980 had stopped by 1982; 40 percent of the smokers in the program had stopped.

The average heart efficiency of all employees increased 11 percent over a two-year period—more than halfway toward the 20 percent maximum increase any individual can achieve.

The average blood pressure of all employees dropped by three points.

Hospital costs plummeted 35 percent.

Absenteeism went down 20 percent.

In the sixth year, savings per employee reached three times costs.

Finally, we need to continue our efforts as purchasers of health care to negotiate hard for the best quality care at the lowest possible price.

There is plenty more fat to be eliminated. Hospital profits hit record levels in 1984 and 1985 profit margins were even higher. Medical care inflation in 1985 was double that of the economy as a whole.

At Chrysler, we're proud of our efforts to hold down health care costs over the last three years, but we're not standing still. We're proving that action by health care purchasers can pay off in a big way in lower costs and better care, and we're convinced we've just scratched the surface of the savings potential.

Our next major move will be on Medicare costs. We have been analyzing these costs for the past two years and we are convinced that we can stem their rise and provide better health care, at least for our own retirees, by integrating the delivery of Medicare benefits into our own far more efficient health care system. We think there is a better way to provide the very best in health care for our retirees who are eligible for Medicare, a way which can set an example for corporations that employ millions of other beneficiaries.

Over the past two years Medicare has contracted with health maintenance organizations to provide benefits to eligible members. The HMOs agree to provide all Medicare benefits to a patient for 95 percent of the average annual fees Medicare would otherwise expect to pay fees-for-service doctors and hospitals. If costs exceed 95 percent, the HMO absorbs them; if costs are less, the HMO passes the difference on to its members in lower premiums or additional benefits.

Chrysler wants to make a similar arrangement with Medicare. We are prepared to provide all Medicare benefits for eligible retirees for 95 percent of the average cost to Medicare. The company would put itself at risk, paying anything above 95 percent and keeping anything below 95 percent. With a Medicare budget that will soon hit $100 billion, the potential savings for taxpayers from this and similar efforts by companies and unions can be measured in billions, not just millions, of dollars.

We are exploring this idea with the United Auto Workers. We are prepared to do it with the UAW ourselves, but we know other companies, particularly General Motors, have similar interests and we think a joint program would be desirable. I called Secretary of Health and Human Services Otis Owen last week to tell him about this and he is interested in exploring the idea with us. I believe this presents an exciting and effective way for the private and public sectors in a partnership to provide better quality care at lower cost to American taxpayers.

Hard-nosed bargaining by business and governments and competition among providers will bring down costs and give us a system efficient enough to provide quality care for all at a reasonable cost. But pressures of vigorous competition leave little space to provide Robin Hood care for the elderly, the poor and the unemployed—even by well-intentioned cost-shifting. In such an environment, government must protect the vulnerable, and assure them access to medical services, or they will be squeezed out of the health care system.

What a tragedy it would be, if we finally got a health care system efficient enough to enable us to provide high quality care to all our citizens, and we failed to fulfill this obligation in social justice!

Whether we're smart enough and disciplined enough to do that may well determine whether there is a first-class health care system for our children. And time is short.

America is at the dawn of the first four-generation society in the history of the world. That dawn can be the start of a brilliant era in which great-grandparents pass on a rich, living inheritance of love and wisdom to their great-grandchildren, or it can be the start of a frightening era of death control.

Which era dawns will depend on our moral values and compassion, and in large measure on our ability to create an efficient health care delivery system, with its attention turned to keeping people well.

As the twentieth century makes way for the twenty-first, we will become a society in which it will be common to have two generations of the same family in retirement, on social security, on Medicare, receiving nursing care.

The implications of this demographic transformation are stunning in every aspect: voting patterns, shifts of political power, demands on economic resources and social service systems, housing, income redistribution. But, nowhere is the aging of America more freighted with opportunity and danger than in the area of health care.

The issues of who lives and who dies, and at what cost, are complex and confounding. The omnivorous appetite of health care for our financial resources adds an urgency that demands action, under threat that our society will be torn apart by a debate over death control that will make the debate over abortion seem like genteel tea-party chatter. Unlike fetuses, the old can speak and vote for themselves.

Today, 12 percent of our population is 65 or older. When the baby boom ripens into the senior boom in the first quarter of the next century, some 20 percent of our population—about 60 million Americans—will be 65 or older.

And the composition of our older citizens is changing. Those who now live to be 65 have a life expectancy of 82. By the end of this century, almost 50 percent of those over 65 will be 75 or older.

The effect of the aging of our population on health care costs is sobering. We've all followed the Perils-of-Pauline saga of Medicare's trust fund. But, few Americans have even begun to think about the unfunded health care liabilities of our nation—which for the Fortune 500 alone exceed their assets.

We must create an efficient health care delivery system.

The stark alternative is a terrifying triage for the American people. In "The Painful Prescription," a book published by Brookings, the authors argue persuasively that, like Great Britain, we will soon ration health care in our country.

We always have had rationing, of course, related to individual economic wealth. But, with Medicare, the government becomes the rationer of health care for those who use and need the acute care system most.

Bluntly put, Uncle Sam will soon be playing King Solomon with your father and mother, and mine, and with you and me.

We face a frightening specter in our nation as medical technology and spiraling costs combine to blur the lines in hospital rooms among natural death, euthanasia, suicide and murder.

Without the most energetic pursuit of efficiencies, we will soon face a world in which there is no kidney dialysis for people over 55, no hip operations (or artificial hips) for those over 65, a world in which eligibility for expensive anti-cancer therapy will be based on statistical assessments of success, and key organ transplants will be severely limited to special cases of virtually certain recovery—all as defined in pages and pages of government regulations. In other words, unless we act, we will soon face a world of bureaucratic death control.

What kind of vision for the future is that? It's not a very pleasant one. But, in Great

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Britain, that future is now. That's just about what they do today.

We in America are fortunate because we still have time to avoid that fate. We can learn from Britain's experience. We have a far more productive society. We can well afford to provide quality medical care to all. But we must have a health care system which eliminates inefficiencies and reduces the cost of care for our society as a whole.

The central fact about health care and costs in America is that we can do something about them. We can't create heaven on earth, but we have the capacity to provide quality care for all at reasonable cost. We can shape a competitive system of excellence, and motivate doctors and hospitals to provide less expensive care, and patients to stay healthy. We have the moral depth and Judeo-Christian roots to face the bewildering ethical issues our scientists pose with their ingenious inventions.

Our fate is in our hands. The uncertainties are not in knowing what to do, not in science, not in economics. The uncertainties lie in our ability to discipline ourselves and our individual and collective wills to act with courage and compassion.

A health care system as efficient and fair as it is miraculous is at long last within our reach, if we have the daring and persistence to finish the health care revolution.

Who lives? Who dies? Who pays?

That's up to you.●

BUDGET SCOREKEEPING REPORT

● Mr. DOMENICI. Mr. President, I hereby submit to the Senate a revised budget scorekeeping report for this week, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report also serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 24, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of congressional action on the budget for fiscal years 1986 and 1987. The estimated totals of budget authority, outlays, and revenues for each fiscal year are compared to the appropriate or recommended levels contained in the most recent budget resolutions, Senate Concurrent Resolution 32 for fiscal year 1986, and, Senate Concurrent Resolution 120 for fiscal year 1987. This report meets the requirements for Senate scorekeeping of section 5 of Senate Concurrent Resolution 32 and is current through September 23, 1986. The report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

Since my last report it has been determined that the Federal Government will receive in 1987 its share of the Louisiana Outer Continental Shelf escrow funds that were ordered to be paid by the Consolidated Omnibus Reconciliation Act of 1985 (Public Law 99-272). These receipts were assumed in the 1987 budget resolution, Senate Concurrent Resolution 120. This changes budget authority and outlays.

With best wishes,
Sincerely,

RUDOLPH G. PENNER.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 99TH CONGRESS, 2D SESSION, AS OF SEPTEMBER 23, 1986

[In billions of dollars]

	Current level [1]	Budget resolution (S.Con.Res.32)	Current level +/— resolution
Fiscal year 1986:			
Budget authority	1,053.0	1,069.7	−16.7
Outlays	980.0	967.6	12.4
Revenues	778.5	795.7	−17.2
Debt subject to limit	2,094.7	[2] 2,078.7	16.0
Fiscal year 1987:			
Budget authority	634.1	1,093.4	−459.3
Outlays	735.1	995.0	−259.9
Revenues	845.6	852.4	−6.8
Debt subject to limit	2,094.7	[2] 2,322.8	−228.1
Direct loan obligations	20.4	34.6	−14.1
Guaranteed loan commitments	33.1	100.8	−67.7

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] The current statutory debt limit is $2,111.0 billion.

FISCAL YEAR 1986, SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONGRESS, 2D SESSION, AS OF SEPTEMBER 23, 1986

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			777,794
Permanent appropriations and trust funds	723,461	629,772	
Other appropriations	525,778	544,497	
Offsetting receipts	−188,561	−188,561	
Total enacted in previous sessions	1,060,679	986,159	777,794
II. Enacted this session:			
Commodity Credit Corporation urgent supplemental appropriation, 1986 (Public Law 99-243)			
Federal Employees Benefits Improvement Act of 1986 (Public Law 99-251)		4	
VA home loan guarantee amendments (Public Law 99-255)		−51	
Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272)	−4,259	−6,001	765
Department of Agriculture urgent supplemental, 1986 (Public Law 99-263)			
Advance to hazardous substance response trust fund (Public Law 99-270)			
FHA and GNMA Credit Commitment Assistance Act (Public Law 99-289)		−380	
Federal Employees Retirement Act of 1986 (Public Law 99-335)			−90
Temporary extension of certain housing programs (Public Law 99-345)		−304	
Military Retirement Reform Act (Public Law 99-348)	−25		
Urgent supplemental appropriations, 1986 (Public Law 99-349)	−3,508	475	
Panama Canal Commission Authorizing Act (Public Law 99-368)	18	16	
Total	−7,773	−6,240	675
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses			

FISCAL YEAR 1986, SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONGRESS, 2D SESSION, AS OF SEPTEMBER 23, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
V. Entitlement authority and other mandatory items requiring further appropraition action:			
Compact of free association	3	3	
Special benefits (Federal employees)	14	14	
Family social services	100	75	
Payment to civil service retirement [1]	(37)	(37)	
Total entitlements	118	93	
Total current level as of September 23, 1986	1,053,024	980,012	778,469
1986 budget resolution (S. Con. Res. 32)	1,069,700	967,600	795,700
Amount remaining:			
Over budget resolution		12,412	
Under budget resolution	16,676		17,231

[1] Interfund transactions do not add to budget totals.

Note.—Numbers may not add due to rounding.

FISCAL YEAR 1987, SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONGRESS, 2D SESSION, AS OF SEPTEMBER 23, 1986

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			843,799
Permanent appropriations and trust funds	733,558	647,692	
Other appropriations		195,861	
Offsetting receipts	−165,990	−165,990	
Total enacted in previous sessions	567,568	677,563	843,799
II. Enacted this session:			
Federal Employees Benefits Improvement Act of 1986 (Public Law 99-251)		2	
Technical Corrections Amends to Food Security Act (Public Law 99-253)	50	50	
VA home loan guarantee amendments (Public Law 99-255)		49	
Food Security Improvements Act of 1986 (Public Law 99-260)	−115	−115	
White Earth Reservation Land Settlement Act of 1985 (Public Law 99-264)	10	10	
Consolidated Omnibus Budget Reconciliation Act of 1986 (Public Law 99-272)	155	−3,553	2,503
FHA and GNMA Credit Commitment Assistance Act (Public Law 99-289)		−178	
Federal Employees' Retirement System Act of 1986 (Public Law 99-335)	−150	−1,670	−666
Judicial Improvements Act (Public Law 99-336)	2		
Temporary extension of certain housing programs (Public Law 99-345)		−85	
Military Retirement Reform Act (Public Law 99-348)	−47	146	
Urgent supplemental appropriations, 1986 (Public Law 99-349)	−278	−914	
Panama Canal Commission Authorizing Act (Public Law 99-368)		2	
Omnibus Diplomatic Security and Anti-Terrorism Attack Act (Public Law 99-399)	1	1	
Children's Justice and Assistance Act (Public Law 99-401)	10		
Total enacted this session	−362	−6,254	1,837
III. Continuing resolution authority			

FISCAL YEAR 1987, SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONGRESS, 2D SESSION, AS OF SEPTEMBER 23, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
IV. Conference agreements ratified by both Houses: Socorro County land conveyance (S. 1963)	−1	−1	
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Payments to the CIA retirement fund	126	126	
Claims, defense	156	150	
Payment to the foreign service retirement trust fund [1]	(173)	(173)	
Range improvements	10	7	
BLM: Miscellaneous trust fund	([2])	([2])	
Compact of free association	42	42	
Administration of territories	35	30	
Payments to air carriers, DOT	32	30	
Retired pay—Coast Guard	370	341	
Maritime, operating-differential susidies		297	
BIA: Miscellaneous trust funds	1	1	
Social services block grant	2,700	2,538	
Family social services	758	584	
Guaranteed student loans	3,219	2,580	
Higher education facilities loans and insurance	19		
Government payment for annuitants	1,459	1,301	
Retirement pay for PHS officers	83	81	
Medicaid	19,595	19,241	
Medical facilities guarantee and loan fund	20	19	
Payments to health care trust funds [1]	(20,826)	(20,826)	
Special milk program	16	11	
Child nutrition programs	4,212	3,791	
Federal unemployment benefits and allowances	103	102	
Advances to unemployment trust fund [1]	(9)	(9)	
Special benefits (general retirement and Federal employee retirement)	257	257	
Black lung disability trust fund	549	549	
Supplemental security income	7,846	7,846	
Special benefits for disabled coal miners	698	638	
Assistance payments	7,350	7,350	
Child support enforcement	599	583	
Payments to social security trust funds [1]	(501)	(501)	
Veterans insurance and indemnities	5	4	
Veterans readjustment benefits	750	723	
Veterans compensation	10,300	9,360	
Veterans pensions	3,684	3,385	
Veterans burial benefits	138	138	
Salaries of judges	104	103	
Fees and expenses of witnesses	46	37	
Compensation of the President	([2])	([2])	
Payment to civil service retirement trust fund [1]	(4,557)	(4,557)	
National wildlife refuge fund	6	6	
Military pay raises and benefits	1,566	1,539	
Total entitlements	66,855	63,793	
Total current level as of September 23, 1986	634,060	735,100	845,636
1987 budget resolution (S. Con. Res. 120)	1,093,350	995,000	852,400
Amount remaining:			
Over budget resolution			
Under budget resolution	459,290	259,900	6,764

[1] Interfund transactions do not add to budget totals.
[2] Less than $500 thousand.

Note.—Numbers may not add due to rounding.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS

● Mr. RUDMAN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35, for Mr. John Graykowski, a member of the staff of Senator DONALD W. RIEGLE, JR., to participate in a program in Vienna, Austria, sponsored by the "Z-bank" Foundation of Vienna, from September 18–19, 1986.

The committee has determined that participation by Mr. Graykowski in the program in Vienna, at the expense of the "Z-bank" Foundation, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Senator ORRIN G. HATCH, Mrs. Hatch, and Mr. Mike Pillsbury, Mr. Dee Benson, and Ms. Wendy Higginbotham, members of Senator HATCH's staff, to participate in a program in South Africa, sponsored by the South Africa Vocational Endowment, from August 30 to September 7, 1986.

The committee has determined that participation by Senator HATCH, Mrs. Hatch, and Mr. Pillsbury, Mr. Benson, and Ms. Higginbotham in the program in South Africa, at the expense of the South Africa Vocational Endowment, was in the interest of the Senate and the United States.●

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE FOR THE GREAT BASIN NATIONAL PARK ACT OF 1986

● Mr. MCCLURE. Mr. President, with regard to S. 2506, a bill to establish a Great Basin National Park in the State of Nevada, and for other purposes, I request that the Congressional Budget Office estimate of the costs of this measure be printed in the RECORD at this point. The cost estimate was not available at the time the report was filed.

The cost estimate follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 22, 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 S. 2506, the Great Basin National Park 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.

SEPTEMBER 22, 1986.

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

1. Bill Number: S. 2506.
2. Bill Title: Great Basin National Park Act of 1986.
3. Bill Status: As ordered reported by the Senate Committee on Energy and Natural Resources, September 17, 1986.
4. Bill Purpose:

S. 2506 would establish the Great Basin National Park and would authorize the Secretary of the Interior to acquire lands within its boundaries. The bill also would abolish the Lehman Caves National Monument, incorporating the old monument site into the new park.

Section 3 of the bill addresses management of the park. Specifically, the bill would require the Secretary of the Interior to publish a management plan for the park that addresses grazing (which would be permitted to the extent that it now occurs on this land), fishing, and wildlife management. Subject to existing rights, park lands would not be open to mining or other commercial use.

Section 5 of the bill would authorize appropriations totaling $1 million for the acquisition and development of the park. In addition, any funds still available for the Lehman Caves National Monument would be used for the park.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Authorization level	1.0				
Estimated outlays	0.2	0.4	0.2		

The costs of this bill fall within budget function 300.

BASIS OF ESTIMATE

For purposes of this estimate, it is assumed that S. 2506 will be enacted by early in fiscal year 1987 and that the full amounts authorized will be appropriated. Outlays have been estimated on the basis of information obtained from the Department of the Interior (DOI) and do not include any spending of the $200,000 authorized for the acquisition of lands and interests within the park. According to the DOI, there is no private ownership of lands within the park, and the $200,000 would only be needed for the acquisition of any subsurface rights that may be identified in the agency's management plan.

No amounts have been included for the operation and maintenance of the park because it is expected that existing annual appropriations for the Lehman Caves National Monument will be sufficient for this purpose. Additional expenses for maintaining lands transferred from the Humboldt National Forest are not expected to be significant.

6. Estimated cost to State and local governments: None.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Deb Reis (226-2860).
10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.●

POLISH-AMERICAN HERITAGE MONTH

● Mr. D'AMATO. Mr. President, I rise today to join my distinguished colleague from Illinois as a cosponsor of Senate Joint Resolution 404, a resolution to designate October 1986 as "Polish-American Heritage Month." It is particularly appropriate that, in this year, the centennial year of the Statue of Liberty, we honor a people who have contributed so abundantly to our great country and to the world.

Polish-Americans are distinctly featured in so many areas of American achievement, particularly in our Nation's struggle for freedom against the British in the Revolutionary War. One such contributor was the legendary Pole, Gen. Casimir Pulaski. This Polish-American was introduced to George Washington by Benjamin Franklin in 1777. General Pulaski distinguished himself by fighting courageously in the American Revolution. He served our patriotic forces with special honor in the Battle of Brandywine. In Poland, he also was active in the struggle against foreign domination. This opposition to external control is noteworthy, especially in light of the current situation that prevails in Poland. General Pulaski is honored once a year in New York, where over 100,000 Polish-Americans march with pride in a parade to commemorate this renowned man.

Another Revolutionary hero of Polish heritage was Thaddeus Kosciuszko. Kosciuszko remained attached to his beloved homeland, but he also exhibited a strong devotion to America and its quest for freedom. Kosciuszko was instrumental in the defeat of the British at Saratoga and, subsequently, he was given 500 acres of land as a reward for his valiant service. In his will, he stipulated that this land be sold and that the proceeds be used to educate slaves.

These two noble men exemplify the rich tradition inherent in the Polish character and demonstrate a desire by Poles everywhere to uphold the principles of liberty and self-determination.

Mr. President, the contributions of other Poles to science and culture are equally impressive. The father of modern astronomy, Nicolaus Copernicus, established himself as a predominant figure in the annals of scientific history. His authoritative treatise, "Concerning the Revolutions of the Celestial Spheres," validated the previously unrecognized concept that the planets revolved around the Sun and not around the Earth. Poles have acquired prominence in other fields as well. The great 19th century composer and pianist Frederic Chopin serves as a further illustration of Polish accomplishment.

Today, there are many Poles who are principal players in the world forum. Pope John Paul II, the first Polish Pope, provides inspirational guidance for the Roman Catholic Church and for people facing adversity everywhere. Nobel Peace Prize winner and labor leader Lech Walesa serves as an example for others with his policy in advocating a peaceful solution to the problems that presently plague Poland. These men, through their diplomatic efforts, represent the virtuous qualities so much a part of the Polish character.

In the United States, we are also inspired by the leadership provided by such Polish-Americans as Edmund Muskie, our first Polish-American Senator, and Zbigniew Brzezinski, former National Security Adviser. These individuals have contributed much to our country, our heritage, and mankind as a whole. I am pleased to honor such a determined, freedom-loving people.

SOVIET JEWRY: THE CALL TO CONSCIENCE

● Mr. HEINZ. Mr. President, today I want to share with the Senate and the American people several stories of courage and persecution, several stories of Soviet Jews who are struggling to secure a simple right that we here in the United States take for granted: the right to emigrate.

These cases are not among the more celebrated of the Soviet refuseniks. The names have not figured high on the list of refuseniks that official American requests seek to have let go. These cases have come to my attention because constituents in Pennsylvania have alerted me. But the desire of these Soviet Jewish families to emigrate, their desire to leave the Soviet Union and go to Israel or the United States, where they can practice the religion of their fathers without fear of persecution, is as strong as that of more familiar refusenik figures.

The first case is the Mendeleyev family of Moscow. They applied to leave the U.S.S.R. more than a decade ago. Oscar is an engineer but, like all refuseniks, can find no regular work. His wife, Shelley, works as a pediatrician, but with reduced pay and privileges. Their twin sons have grown into young men during their long wait for emigration, and could soon be drafted for service into the Soviet military.

If they are drafted before exit visas are granted, all hope of the Mendeleyev's leaving the U.S.S.R. could vanish. For the Mendeleyevs, time may be running out.

In Minsk, the Reingolds have been waiting 3 years for a response to their application to emigrate to Israel. Gennady and Bella applied to emigrate, along with their son Alexander and Bella's parents, sister, and brother-in-law. Some of the extended family has already made it to Israel.

The Reingolds, because they live in a remote location, do not receive many foreign visitors, who can be a lifeline of hope for refusenik families enduring the cold isolation of official ostracism. They have only the mail to connect them with the outside world, with their relatives in Israel.

Another case involves the family of Felix and Mila Levitas, of Kiev. With their children Yuric and Rivka, Felix and Mila have long lived in Kiev. But in June of this year they suddenly left, Felix for Turkmenistan, and the rest of the family to Moscow to live with friends. Their relatives in Pennsylvania are not quite sure why they left Kiev, or what will come next.

We do know that they have suffered the typical fate of refuseniks—loss of employment, endless waiting, harassment from official Soviet society. They applied to emigrate to the United States back in 1978, and still they wait.

All these families—the Mendeleyevs, the Reingolds, the Levitas—have the right to emigrate from the Soviet Union, a signatory of the Helsinki accords. But they are all refused, punished, and made to wait interminably to learn their eventual fate. Our power to help them directly is very limited. What we can do is to make sure their heroic behavior does not pass unnoticed. We can keep their cause, their names in front of the Soviet authorities, living example of Moscow's disregard for its solemn international commitments on human rights.

Mr. President, I call on the Soviet Government to live up to its own pronouncements, its own international commitments, to universal standards of justice and human rights. The Senate and the American people join me when I say to the Kremlin, on behalf of the Mendeleyevs, the Reingolds, and the Levitas—let them go.●

NAUM AND INNA MEIMAN: A BLATANT VIOLATION

● Mr. SIMON. Mr. President, I would like to commend Gerald Batist for his article "Why Can't These Soviet Cancer Patients Leave?" which appeared in the Washington Post on Sunday, September 21, 1986. There can never be enough publicity for the Soviet cancer victims who should be able to obtain experimental treatment or second opinions in the West. The Soviets continued refusal to permit these cancer-stricken refuseniks to obtain treatment is a violation of the Soviet-signed Helsinki accords.

Naum and Inna Meiman are close friends who know only too well the harshness of refusal by the Soviet Government. Inna has had four operations for tumors on her neck. A fifth tumor grows larger each day, yet the Soviets will not allow Inna and Naum to come to the West for experimental treatment.

I ask that the Batist article appear in the RECORD.

The article follows:

WHY CAN'T THESE SOVIET CANCER PATIENTS LEAVE

(By Gerald Batist)

Under the best circumstances, with the latest developments in treatment available in modern hospitals, cancer is a horrible disease. Cancer patients in the Soviet Union, I found during my visit there last spring, face even grimmer prospects. For the average Soviet cancer patient, there is no choosing a physican for treatment—the patient accepts whoever is assigned to the case; there is no seeking a second opinion; there is no opting for alternative treatment or traveling to another city for better treatment.

But there is a group of Soviet cancer patients whose problems are even worse and whose burden is all the greater—perhaps too great to bear.

I saw this cruel burden firsthand when I met with Soviet cancer patients, involuntarily separated from their families and denied the chance to get treatment that might save or lengthen their lives. Knowing what I know about cancer and the tremendous effect a patient must make to overcome it, I believe that keeping a patient separated from loved ones is a kind of death sentence, that their will to live is undermined by their isolation.

Five Soviet cancer patients have been denied permission to join their blood relatives in the West where they could consider alternative treatments in the loving and supportive environment of their families. I visited some of these cancer patients in Moscow, spending time with them and listening to them describe their feelings of loneliness and isolation.

Rimma Bravve is a 31-year-old woman who is dying of ovarian cancer and has been told by her Soviet physicians that they can do nothing more to arrest her cancer. She lives in a dark and dingy apartment in Moscow with her husband, Vladimir, and his family. She last saw her mother 10 years ago, and her sister six, when each was granted an exit visa.

Vladimir met me before we visited Rimma. He carefully reviewed her medical history and explained that she is so emotionally fragile that she is afraid of even the mention of her cancer. I am familiar with this reaction. The powerlessness of a cancer patient, particularly when the physician gives no hope, is overwhelming. It is a feeling of profound loneliness and helplessness that for some is too strong even to ponder, much less empower with words.

I thought of how my patients cope with it, and I recalled a woman of about Rimma's age. She had just been diagnosed with an incurable malignancy and was very depressed. I first met her when she and her parents attended a patient-and-family psychological-support group I ran on a cancer ward in Washington. They sat clutching one another as they listened to other patients and family members discuss not only their illnesses, but also their everyday lives, their short- and long-term goals and their attempts at maintaining normal routines.

Finally, just as we were about to adjourn, this young woman spoke, introducing herself and her parents. She said that she had been afraid to talk about her cancer, but that sitting there with her family, listening to others in the same situation, she had discovered that "the sun also rises each day for cancer patients." After that initial session, with time, and the loving support of her family, she slowly came to better terms with her fate and found the courage to enjoy experiences with greater intensity, to make the most of each day.

Like all the cancer patients I visited in the Soviet Union, Rimma and Vladimir are outcasts in their society. They are Jewish and have expressed a desire to emigrate. Dismissed from work, socially ostracized, and carefully scrutinized by neighbors, it is difficult to imagine the sun rising for her even in health. Guarded conversations over a tapped telephone with her mother and sister are Rimma's only connection to hope, her only sense of a future.

As I was leaving, Rimma said in a strained English, "Good luck in your difficult journey." With sincere modesty, I answered that my visits were not difficult. Thinking that she had misspoken, she ran to her Russian-English dictionary and returned to say, "Good luck in your noble journey." Vladimir escorted me out. He asked nothing for himself, but accepting the painful future, wondered if I could provide Rimma with pain medications when the time came, since he was uncertain of the care he could count on. In that instant I felt more powerless than he and was awestruck by his protective caring and courage. More terrifying was the thought that this young woman would die without even trying some experimental treatments that I believe might help.

I met Benjamin Bogomolny on a dim street. A tall, boyish man, at age 40 he is one of the longest-standing "refuseniks," denied permission to emigrate for more than 20 years. All of his immediate family members live in the West. He and his wife, Tatyana, have experienced harassment, house arrest and searches, joblessness and disgrace in their struggle to rejoin their family members outside the Soviet Union.

We were greeted at the door by Tatyana, an articulate and compelling woman of 47 years who, until her application to emigrate, was a translator. She has not seen her father or sister for more than six years. They live in San Francisco. She took me to another room where, she said, we could discuss her illness without upsetting Benjamin.

She had had a radical mastectomy for breast cancer four months earlier and was receiving chemotherapy because the tumor was found to have spread to her lymph nodes. She was in obvious pain, a complication of the surgery, and was weakened by the drugs. Yet her spirit was forceful and deliberate. She quoted William Blake and Walt Whitman with passion as she described her isolation, her fears, her determination. Between Tatyana and Benjamin, all 26 of their living relatives are in the West, yet the Soviets do not consider them a divided family as defined by the Helsinki accord. The utter absurdity of this situation shocked me.

She had been offered further surgery to remove her ovaries as a preventive measure—not a common practice in the West—but she was uncertain. She had "confessed" her refusenik status to her doctor and thankfully found a sympathetic ear. I wondered how my colleague, her doctor, must be feeling—trying to maintain his patient's spirits during this difficult treatment in the midst of such utterly distressing circumstances. Western physicians have long recognized that the psychological and emotional state of the patient can have direct impact on both tolerance of and response to treatment. Yet Tatyana's emotional state could not be more stressful. Her response to this helpless situation is to take what control she can, to use the power of words that she so dearly loves: In speaking to Westerners, she asks them to do what they can to "rescue" her and others like her from isolation.

Her struggle for control of her own destiny takes fascinating shapes: Benjamin, trained as an engineer, has begun evening medical courses at her insistence. "They have taken everything away from us. The only way I can get back is by making Benjy the most brilliant doctor." If she must, Tatyana will fashion her own physician, one who she knows can provide her with strength and understanding.

The Bogomolnys have been visited over the years by hundreds of westerners, including some prominent politicians. Among them is San Francisco Mayor Dianne Feinstein. Tatyana spoke of her with moving admiration and affection. When I returned from the Soviet Union, I found the mayor to have the same feelings for Tatyana. She asked me to convey a private note and pink bathrobe to Tatyana. Little gestures like these, that we may take for granted in the West, are often the most we can do to pierce the isolation of those I visited in the Soviet Union.

It was just after Chernobyl and visitors to the Soviet Union were scarce. I sent the robes to one couple in Los Angeles, but they changed their plans at the last moment and returned it ot me. I finally found a New Yorker who agreed to take it with him during his visit to Moscow. By the time Tatyana received the robe it had traveled more than 10,000 miles, but I am told that she immediately wrapped it around her scarred body to feel the strength in solidarity with the mayor.

On June 2, 1986, six months after Tatyana's diagnosis, she and Benjamin were again refused permission to leave and were given no reason. The Soviet visa official said, "If you need a reason, we'll find one."

A few months ago, I received a call from Leon Charny who lives in Massachusetts. Charny's brother Benjamin was one of the patients in Moscow. Leon and Benjamin are very close, their parents having died long ago. Benjamin has been both brother and father to Leon. In 1979 they decided to emigrate. Leon was permitted to leave that same year, thinking that Benjamin would shortly follow. But that was not to be. For inexplicable reasons Benjamin was refused. But more shocking to the brothers was Benjamin's newly diagnosed malignant melanoma. This deadly skin cancer added an even more traumatic dimension to their forced separation. Soon after, Benjamin suffered a series of dangerous heart attacks requiring hospitalization.

Benjamin is 48 years old and lives with his wife, Yadviga, and his daughter and son-in-law, Anna and Yuri Blank. As a refusenik, Benjamin has been denied the right to work in his field of mathematics. In recent months his tumor has recurred, with visibly growing masses in his neck, yet his cardiologists insist that his heart cannot withstand further surgery. In North America it is now indeed a rare patient who cannot be carried through surgery because of a cardiac condition, yet because the Soviets will not allow him to emigrate, Benjamin cannot have access to this know-how. Perhaps more importantly, he cannot feel the warm embrace of his brother Leon, the other half of the family that their parents created.

Since June, Leon has fought desperately to tell his brother's story to the world, to

lay bare the absurdity of this cruel situation. Following a press conference in Boston attended by some of the most prominent cancer specialists in America, a television network sent a camera crew to interview Benjamin in Moscow.

The following day Leon and I appeared on the morning news show. There, live before millions of viewers, Leon was shown film footage of his brother, whom he has not seen in more than seven years. I sat beside Leon and watched his stunned silence as tears welled up in the eyes of this reserved and dignified man. He sat speechless shaken with joy at this "reunion" and pain at the persistent separation. I wondered how in this modern age such a macabre situation could actually exist.

The sadness of this situation is enhanced by the recognition that once Benjamin and his family are allowed to leave, his struggle with cancer goes on. Yet if he must die, it should be only after every available treatment has been tried. And, if he cannot be saved, at least he should not be forced to die in the utter loneliness of his present circumstances, cut off from his beloved brother. This is, as I learned in my own oncologic practice, the key ingredient in finding peace of mind for both patient and family.

Inna Meiman is critically ill. The tumor on her neck grows larger each week and her Soviet doctors have no therapy to offer. Since the fourth operation in December 1985, she has become progressively weaker and more despairing. Inna is 53 years old and lives alone with her 75-year-old husband, Nahum. They are not permitted to leave the country. The reason given is that theoretical work in mathematics performed by Nahum over 30 years ago still makes him a security risk. This claim is denied even by the president of the Soviet Academy of Sciences, yet it remains the excuse of this inhumanity. When Nahum speaks to westerners, he pleads desperately for his beloved, ailing wife.

Earlier this month, amidst the bustle of the U.S. Capitol, several of us gathered at a press conference in a crowded Senate hearing room—doctors, family members, government leaders—to tell the story of these sad souls. As we each spoke, journalists dutifully recorded the facts, the faces, the photographs of the patients.

When the telephone rang, a shudder ran through the room as we all focused on the faceless voice. In the midst of the tragic stories we had just described, Tatyana's voice cried out with courage, determined to be heard, fearless of the consequences. "We have nothing more to lose", she had long ago told me, determined to maintain her dignity.

Her father Ilya, now 75, caressed the phone as he talked to his daughter and spoke out publicly for the first time in all these years of separation. In impassioned Russian, this dignified, decorated war veteran cried, "If there is a God, my daughter should be with me!"

As I looked around the room, tears filled everyone's eyes as they stared at the speaker phone. In her strength, Tatyana Bogomolny had made us feel the depths of helplessness, yet also renewed our fierce determination.

As a cancer doctor, I have faced impossible challenges many times, yet the solution here is so simple and attainable—let them leave. Tatyana left us with one request—"please don't forget us." She pleaded not only for herself but for Rimma, Benjamin, Inna and also Leah Maryasin, another cancer patient separated from relatives in the West.

Looking around the room, sensing the common core of humanity that has been touched by the pleas, I knew that they will be remembered.●

ABORTION AND INFORMED CONSENT: GEORGIA

● Mr. HUMPHREY. Mr. President, this anonymous letter from Georgia brings an added dimension to our discussion of post-abortion trauma: The damage done to women's families. Women who have written to my office regretting their decision to submit to abortion discuss their own mental and physical sufferings. The health effects on women warrant swift action in the Congress. But we need to realize that this gruesome procedure also takes its toll on other family members.

In most surgical procedures, husbands are included in the decisionmaking process. Too often, this is not so with abortion. The Supreme Court has determined that the father (not to mention grandparents and other relatives) essentially has no right to protect the life of his child. As a result, he is considered to be of slight or no concern in the so-called counseling process preceding abortion. I find this astonishing. Abortion, as hoped for by its promoters, has indeed become a "private" affair, to the detriment of women and men all over the country.

Thus we see that the tendency to give insufficient information regarding abortion procedures and consequences is not limited to potential mothers, but also to fathers and other family members. According to this letter, neither husband nor wife were prepared for what they now experience. Like so many others, they were led to believe that abortion would provide a "quick-fix" in an embarrassing situation. So the outrageous lack of informed consent is magnified, being extended to the woman and to her family. Rather than solving family problems, we observe that abortion is tearing American families to shreds. Rather than enhancing opportunities for women, abortion cripples them along with their families.

I hope my colleagues will join me in cosponsoring S. 2791, which will require that women be given adequate information regarding abortion. Perhaps then we will begin to see healing take place in our families rather than disaster when they confront an unplanned pregnancy.

The letter follows:

MAY 19, 1986.

DEAR SENATOR GORDON HUMPHREY: I encourage and support the stand you are taking against abortion. It's the most controversial issue in America. I have had two abortions and would like to share my story with you.

Four years ago (age 19), I had an abortion. Six months later, I was pregnant again and decided to marry the father of both babies. Because of embarrassment on his side of the family, we aborted our second child also. We told our families I had a miscarriage.

We were encouraged by our "pro-choice" friends to have this "simple medical procedure." We realize now that it was the worst mistake we had ever made.

I went through, and still go through, severe mental problems—visualizing the procedure in my mind, hating myself, grieving and wanting to escape from the whole situation. No one ever told me about the emotional side effects after having an abortion.

My husband is now experiencing severe depression and has been referred to a counselor at a psychiatric hospital. My husband is terrified of having children. He is afraid of having physically or mentally handicapped children. Our marriage is falling apart and he is emotionally torn apart.

You can see how the abortions have affected me and my husband. Imagine the other millions of people (men and women) involved in abortions. God help this country if it continues. People can not live as normally after an abortion as they had before. Abortion is viewed by many as the solution to a "problem pregnancy." It is opening the door to worse problems.

It is too easy and inexpensive to have an abortion. Women are physically and mentally unbalanced during pregnancy to begin with. Clinics should have a day or two waiting period after the initial "counselling appointment". The above is simply a suggestion if the abortion laws in this country can't be abolished.

(Name withheld upon request.)

GEORGIA.●

ORDERS FOR TOMORROW

RECESS UNTIL 9:30 A.M.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. on Thursday, September 25.

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

RECOGNITION OF CERTAIN SENATORS

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that following the recognition of the two leaders under the standing order, there be special orders in favor of the following Senators for not to exceed 5 minutes each: HAWKINS, PROXMIRE, MURKOWSKI, BRADLEY, and MCCONNELL.

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

ROUTINE MORNING BUSINESS

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that following the special orders, there be a period for the transaction of routine morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for not more than 5 minutes.

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

BILL HELD AT DESK—S. 2840

Mr. ARMSTRONG. I ask unanimous consent that S. 2840, Superfund, be

held at the desk until close of business Thursday, September 25.

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

INTERNATIONAL CLAIMS SETTLEMENT ACT AMENDMENTS

Mr. ARMSTRONG. I ask unanimous consent that the Senate turn to H.R. 5506, the International Claims Settlement Act of 1949, just received from the House.

Mr. BYRD. Reserving the right to object, Mr. President. I have no objection.

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

The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5506) to amend the International Claims Settlement Act of 1949 to provide that the value of claims be based on the fair market value of the property taken.

The Senate proceeded to consider the bill.

● Mr. MURKOWSKI. Mr. President, today I rise in support of H.R. 5506, a bill to amend the International Claims Settlement Act of 1949. This legislation will strengthen the position of the U.S. Government when negotiating with foreign governments and will protect U.S. businesses abroad.

The bill codifies the basis by which the Foreign Claims Settlement Commission determines the value of expropriated property belonging to U.S. citizens. That standard, consistently recognized by Congress, is "Fair Market Value". This standard, as applied to an operating business enterprise would generally be the "Going Concern" value of the enterprise. In addition, the bill establishes a presumption that in the case of service industries, the appropriate basis for valuation is the going concern value of the enterprise.

H.R. 5506 codifies the principle that the amount of compensation due is not to be influenced by pre-expropriation of postexpropriation actions by the taking government which may have depressed the value of the property. The standard enunciated in the bill conforms to accepted principles of international law established by a long history of treaty practice and decisions of international judicial and arbitral tribunals; it is based primarily upon the standard established by Congress in title V of the International Claims Settlement Act.

In the past, legislation concerning the Foreign Claims Settlement Commission has not contained an explicit reference to the compensation standard required by international law, with the exception of the Cuban Claims Act of 1964. Without the definition of a compensation standard, the potential exists for decisions inconsistent with international law, which would harm current and future U.S. investment abroad.

I commend our colleagues in the House for their prompt action on this legislation. With this bill as guidance, the Commission's decisions should apply clearly the proper standards of international law and foreign governments will be on notice that the U.S. Congress will take all appropriate steps to protect U.S. business abroad. I urge my colleagues to approve H.R. 5506.●

The PRESIDING OFFICER. If there be no amendment to be proposed, the question is on the third reading of the bill.

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

Mr. ARMSTRONG. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

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THE CALENDAR

Mr. ARMSTRONG. Mr. President, I would like to inquire of the minority leader if he is in a position to pass or indefinitely postpone any of the following calendar items: Calendar No. 894, S. 2048; Calendar No. 923, S.J. Res. 329, Calendar No. 924, S.J. Res. 339; Calendar No. 926, S.J. Res. 395; Calendar No. 927, S.J. Res. 396; Calendar No. 928, S.J. Res. 401; Calendar No. 929, S.J. Res. 413; Calendar No. 930, H.J. Res. 547; Calendar No. 952, H.J. Res. 721; Calendar No. 953, H.J. Res. 611; Calendar No. 954, S. 1935; Calendar No. 956, H.J. Res. 710; Calendar No. 959, S. 2750; Calendar No. 960, H.R. 1344; Calendar No. 961, S. 2062; and Calendar No. 962, S. 2788.

Mr. BYRD. Mr. President, all of these calendar items have been cleared on this side by all Members and we are ready to proceed with the understanding that Calendar Orders 923 and 928 as enumerated by the distinguished acting Republican leader are for the purpose of postponement.

Mr. ARMSTRONG. 928 and 923?

Mr. BYRD. Yes.

Mr. ARMSTRONG. I thank the minority leader and with that understanding I ask unanimous consent that the calendar items just identified be considered en bloc and passed or i.ndefinitely postponed en bloc and that all committee reported amendments and preambles be considered agreed to.

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

DESIGNATION OF SHIPWRECK OF THE "TITANIC" AS AN INTERNATIONAL MARITIME MEMORIAL

The Senate proceeded to consider the bill (S. 2048) to encourage international efforts to designate the shipwreck of the R.M.S. *Titanic* as an international maritime memorial and to provide for reasonable research, exploration and, if appropriate, salvage activities with respect to the shipwreck.

Mr. WEICKER. Mr. President, as the cosponsor with Senator PELL, I urge my colleagues to support S. 2048, legislation that would designate the *Titanic* an international maritime memorial. The bill directs the United States to negotiate with other nations to establish international guidelines for research, exploration, and, if appropriate, salvage of the shipwreck. The bill was recently reported out of the Senate Foreign Relations Committee and the House companion bill, H.R. 3272, was passed last December.

You all know the story of the "unsinkable" *Titanic*, which, in 1912, collided with an iceberg off the coast of Newfoundland and sunk 2½ miles to the ocean floor. Over 1,500 lives were lost, and the tragic event changed maritime history forever. New regulations that would provide increased safety at sea were implemented in the years following the disaster.

The joint United States-French team which discovered the *Titanic* was under the direction of Dr. Robert Ballard of Woods Hole Oceanographic Institution. The team initially located the shipwreck with an unmanned submersible, and Dr. Ballard's latest trip to the site this past July was in the three-man submersible *Alvin*.

Using sophisticated undersea technology, Dr. Ballard found an underwater museum: thousands of artifacts were strewn over the ship and ocean floor. The remotely operated camera attached to *Alvin* traveled down the grand staircase to view the ballroom with its chandelier still hanging. Uncorked champagne bottles and unbroken fine china survived the 2½-mile fall to the bottom. Dr. Ballard and his colleagues determined that on impact with the iceberg, the portion of the hull where the gash was supposed to be had actually buckled where the steel plates popped their rivets and separated. Throughout, the scientific expedition proceeded with its mission while maintaining the archeological history of the site.

The passage of this legislation serves several purposes: it provides a forum to resolve the potential conflicts of interest between scientists, salvors, archeologists, and family and friends of those who perished. An understanding of how to treat the shipwreck lies in legislation that will commemorate the

lives lost and allow the rest of the world to see and learn from the tragic event. S. 2048 does just that.

Since the shipwreck lies in international waters, the bill seeks to promote a spirit of cooperation between countries, a spirit that would create a common goal: to stimulate research and exploration on the *Titanic* and encourage those who would be involved in those activities to refrain from physically disturbing the wreck or recovering artifacts until there has been fair opportunity to develop international guidelines or agreements. Specifically the bill directs the Secretary of State to consult with the Administrator of the National Oceanic and Atmospheric Administration when negotiating with interested nations. Full participation in the guideline development process by other interested U.S. Federal agencies, academic and research institutions, and the public is encouraged.

This legislation has the support of the administration and requires no authorization of funds. The bill does not prohibit U.S. citizens from exploring or salvaging activities in the absence of similar restrictions on citizens of other interested nations.

Again, I urge swift passage of this legislation, so the *Titanic* can receive the proper treatment she so richly deserves.

The bill was ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2048

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "R.M.S. Titanic Maritime Memorial Act of 1986".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the R.M.S. Titanic, the ocean liner which sank on her maiden voyage after striking an iceberg on April 14, 1912, should be designated as an international maritime memorial to the men, women, and children who perished aboard her;

(2) the recent discovery of the R.M.S. Titanic, lying more than twelve thousand feet beneath the ocean surface, demonstrates the practical applications of ocean science and engineering;

(3) the R.M.S. Titanic, well preserved in the cold, oxygen-poor waters of the deep North Atlantic Ocean, is of major national and international cultural and historical significance, and merits appropriate international protection; and

(4) the R.M.S. Titanic represents a special opportunity for deep ocean scientific research and exploration.

(b) PURPOSE.—The Congress declares that the purposes of this Act are—

(1) to encourage international efforts to designate the R.M.S. Titanic as an international maritime memorial to those who lost their lives aboard her in 1912;

(2) to direct the United States to enter into negotiations with other interested nations to establish an international agreement which will provide for the designation of the R.M.S. Titanic as an international maritime memorial, and protect the scientific, cultural, and historical significance of the R.M.S. Titanic;

(3) to encourage, in those negotiations or in other fora, the development and implementation of international guidelines for conducting research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic; and

(4) to express the sense of the United States Congress that, pending such international agreement or guidelines, no person should physically alter, disturb, or salvage the R.M.S. Titanic in any research or exploratory activities which are conducted.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the term—

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA);

(b) "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government;

(c) "R.M.S. Titanic" means the shipwrecked vessel R.M.S. Titanic, her cargo or other contents, including those items which are scattered on the ocean floor in her vicinity; and

(d) "Secretary" means the Secretary of State.

SEC. 4. COMMENDATION.

The Congress of the United States highly commends the members of the joint international expedition which discovered the R.M.S. Titanic.

SEC. 5. INTERNATIONAL GUIDELINES.

(a) The Administrator is directed to enter into consultations with the United Kingdom, France, Canada, and other interested nations to develop international guidelines for research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic, which—

(1) are consistent with its national and international scientific, cultural, and historical significance and the purposes of this Act; and

(2) promote the safety of individuals involved in such operations.

(b) In carrying out subsection (a), the Administrator shall consult with the Secretary and shall promote full participation by other interested Federal agencies, academic and research institutions, and members of the public.

SEC. 6. INTERNATIONAL AGREEMENT.

(a) The Secretary is directed to enter into negotiations with the United Kingdom, France, Canada, and other interested nations to develop an international agreement which provides for—

(1) the designation of the R.M.S. Titantic as an international maritime memorial; and

(2) research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic consistent with the international guidelines developed pursuant to section (5) and the purposes of this Act.

(b) In carrying out the requirements of subsection (a), the Secretary shall consult with the Administrator, who shall provide research and technical assistance to the Secretary.

(c) The Secretary and the Administrator shall report semiannually to the Committee on Merchant Marine and Fisheries and the Committee on Foreign Affairs in the House of Representatives and to the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation in the Senate on the progress of the negotiations and consultations.

(d) Upon adoption of an international agreement as described in subsection (a), the Secretary shall provide notification of the agreement and recommendations for legislation to implement the agreement to the Committee on Merchant Marine and Fisheries and the Committee on Foreign Affairs in the House of Representatives and to the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation in the Senate.

SEC. 7. SENSE OF CONGRESS REGARDING CONDUCT OF FUTURE ACTIVITIES.

It is the sense of Congress that research and limited exploration activities concerning the R.M.S. Titanic should continue for the purpose of enhancing public knowledge of its scientific, cultural, and historical significance: *Provided*, That, pending adoption of the international agreement described in section 6(a) or implementation of the international guidelines described in section 5, no person should conduct any such research or exploration activity which would physically alter, disturb, or salvage the R.M.S. Titanic.

SEC. 8. DISCLAIMER OF EXTRATERRITORIAL SOVEREIGNTY.

By enactment of this Act, the United States does not assert sovereignty, or sovereign or exclusive rights or jurisdiction over, or the ownership of, any marine areas or the R.M.S. Titanic.

NATIONAL HOME CARE WEEK

The joint resolution (S.J. Res. 339) to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week," was considered, ordered to be engrossed for a third reading, read the third time and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 339

Whereas organized home health care services to the elderly and disabled have existed in this country since the last quarter of the eighteenth century;

Whereas home health care, (including skilled nursing services, physical therapy, speech therapy, social services, occupational therapy, health counseling and education, and homemaker-home health aide services), is recognized as an effective and economical alternative to unnecessary institutionalization;

Whereas caring for the ill and disabled at home emphasizes the dignity and independence of the individual;

Whereas the Federal Government has supported home health services since the enactment of the medicare program, with the number of home health agencies providing services increasing from less than five hundred to more than five thousand; and

Whereas many private, public, and charitable organizations provide these and similar services to millions of patients each year preventing, postponing, and limiting the need for institutionalization and enabling such patients to remain independent: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America

in Congress assembled, That the week of November 30, 1986, through December 6, 1986, is designated as "National Home Care Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate programs, ceremonies, and activities.

NATIONAL INSTITUTES OF HEALTH CENTENNIAL YEAR

The joint resolution (S.J. Res. 395) to designate the period October 1, 1986, through September 30, 1987, as "National Institutes of Health Centennial Year," was considered, ordered to be engrossed for a third reading, read the third time and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 395

Whereas the National Institutes of Health over the past 100 years, has grown from a one-room laboratory of hygiene within the Stapleton Marine Hospital on Staten Island, New York, to become one of the largest and most respected biomedical research centers in the world;

Whereas the National Institutes of Health, as an agency of the Department of Health and Human Services, is the Nation's flagship in mankind's continuing battle to conquer disease;

Whereas the National Institutes of Health continuously contributes to the discovery of new knowledge that leads to longer lives and better health for all people;

Whereas the National Institutes of Health provides national leadership in a critical partnership of the Government, academic, and private sectors;

Whereas the National Institutes of Health conducts research in its own laboratories, supports the research of non-Federal scientists in universities, medical schools, hospitals, and other public, private, and voluntary research institutions throughout this country and abroad;

Whereas the National Institutes of Health fosters training and career development of future research scientists, sponsors the enhancement of research resources, and promotes improvements in biomedical communications;

Whereas the National Institutes of Health facilitates the assembly of United States and foreign biomedical scientists and promotes the exchange of scientists and scientific information between the United States and other countries;

Whereas the National Institutes of Health supported the work of 60 Noble Prize winners before their selection as laureates;

Whereas the National Institutes of Health has contributed to the great strides of the past 100 years in the control and virtual worldwide elimination of epidemic diseases such as cholera, smallpox, yellow fever, and bubonic plague, and the prevention in this country of childhood diseases such as diphtheria, polio, tetanus, and pertussis;

Whereas the National Institutes of Health has stimulated biomedical research that has played a role in the 70-percent reduction in the death rate in the United States since 1900;

Whereas the National Institutes of Health has pioneered new methods for the detection and treatment of diseases and has promoted their widespread dissemination into medical practice;

Whereas grantees and scientists of the National Institutes of Health work at the forefront of biomedical technologies that open up new opportunities in medical research;

Whereas the next 100 years will undoubtedly see the National Institutes of Health lead the world in ways of promoting health and preventing disease;

Whereas the Congress of the United States has consistently supported the National Institutes of Health to maintain America's preeminence in medical research; and

Whereas the Congress of the United States looks to the National Institutes of Health for progress in overcoming the disease that afflict the people of this country: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the period of October 1, 1986, through September 30, 1987, is designated as "National Institutes of Health Centennial Year", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such year with appropriate ceremonies and activities.

NATIONAL ADULT IMMUNIZATION AWARENESS WEEK

The joint resolution (S.J. Res. 396) to designate the week of October 26, 1986, through November 1, 1986, as "National Adult Immunization Awareness Week," was considered, ordered to be engrossed for a third reading, read the third time and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 396

Whereas influenza and pneumonia are among the top killers of American adults, especially elderly Americans;

Whereas fewer than 12 percent of the adult population is adequately protected against these diseases or against other highly infectious diseases including measles, rubella, diphtheria, and hepatitis B;

Whereas less than half of Americans over 60 are inoculated against the deadly tetanus toxoid;

Whereas the lives of tens of thousands of American adults could be spared this year simply by taking vaccines that are approved as safe and effective by the United States Food and Drug Administration and are readily available to the public; and

Whereas the Surgeon General of the Public Health Service has repeatedly called on this Nation to prevent the massive costs of health care through a program of preventive health care, of which a major role is played by inoculation against infectious diseases: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of October 26, 1986, through November 1, 1986, is designated as "National Adult Immunization Awareness Week". The President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

LEARNING DISABILITIES AWARENESS MONTH

The joint resolution (S.J. Res. 413) to designate the month of October 1986 as "Learning Disabilities Awareness Week," was considered, ordered to be engrossed for a third reading, read the third time and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 413

Whereas millions of Americans suffer from one or more learning disabilities;

Whereas it is estimated that ten million American children have been diagnosed as suffering from learning disabilities;

Whereas most learning-disabled persons are of normal or above normal intelligence but cannot learn to read and write in the conventional manner;

Whereas it is important for parents, educators, physicians, and learning-disabled persons to be aware of the nature of learning disabilities and the resources available to help learning-disabled persons;

Whereas early diagnosis and treatment of learning-disabled children gives such children a better chance for a happy and productive adult life;

Whereas the courage necessary for learning-disabled persons to meet their special challenges should be recognized;

Whereas hundreds of national and local support groups for learning-disabled persons, parents of learning-disabled children, and professionals who work with learning-disabled persons have made important contributions to the treatment of learning disabilities;

Whereas research and study have contributed to public knowledge about learning disabilities, but much remains to be learned; and

Whereas public awareness of and concern about learning disabilities may encourage the establishment of the programs necessary to promote early diagnosis and treatment of learning disabilities and to help learning-disabled persons and their families cope with their learning disabilities: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 1986 hereby is designated "Learning Disabilities Awareness Month", and the President of the United States is authorized and requested to issue a proclamation calling upon all public officials and the people of the United States to observe such month with appropriate programs, ceremonies, and activities.

POLISH AMERICAN HERITAGE MONTH

The Senate proceeded to consider the joint resolution (H.J. Res. 547) to designate October 1986 as "Polish American Heritage Month."

Mr. SIMON. Mr. President, I am pleased that House Joint Resolution 547, designating October 1986 as "Polish American Heritage Month," was favorably passed out of the Judiciary Committee on September 19, 1986. I introduced this joint resolution as Senate Joint Resolution 404 on August

15, 1986, and am pleased to note that there are now 30 cosponsors.

Polish Americans have contributed richly to our culture. They have excelled in education, arts and sciences, diplomacy, the military, sports, and entertainment. Polish Americans are justly proud of their contributions to American society.

Polish American Heritage Month will also help focus attention on the plight of the people of Poland, and that of the once free trade union Solidarity. Although a number of political prisoners were recently released, the struggle for human dignity and freedom in that country is far from over. By honoring Polish Americans, we also send a message of hope to those fighting for a free Poland.

Mr. President, I ask that House Joint Resolution 547 be adopted by the Senate, so that we may usher in October 1986 as "Polish American Heritage Month."

The joint resolution was ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

NATIONAL JOB SKILLS WEEK

The joint resolution (H.J. Res. 721) to designate the week of October 12 through 18, 1986, as "National Job Skills Week," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

NATIONAL APLASTIC ANEMIA AWARENESS WEEK

The joint resolution (H.J. Res. 611) to designate the period of December 1, through 7, 1986, as "National Aplastic Anemia Awareness Week," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

PASSENGER SHIP ACT

The Senate proceeded to consider the bill (S. 1935) to direct the secretary of the department in which the Coast Guard is operating to cause certain vessels to be documented as vessels of the United States so as to be entitled to engage in the domestic coastwise trade, and for other purposes, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike out all after the enacting clause, and insert the following:

That this Act may be cited as the "Passenger Ship Act of 1986".

SEC. 2. (a) The Secretary of the department in which the Coast Guard is operating (hereinafter referred to as the "Secretary") shall, during the period beginning on the date of enactment of this Act and ending August 31, 1988, monitor the status of efforts to construct in the United States passenger vessels, or to refurbish as required by law in the United States passenger vessels built in the United States, with accommodations for at least six hundred passengers.

(b) During the period referred to in subsection (a) of this section, the Secretary shall publish notice in the Federal Register within thirty days after either the substantial completion of construction or refurbishment of any vessel described in subsection (a) of this section that was not operating on the date of enactment of this Act as a documented passenger vessel of the United States with the privilege of engaging in the coastwise trade.

(c) Sections 3 through 10 of this Act shall take effect on September 1, 1988, unless before such date the Secretary has made determinations and published notice of such determinations in the Federal Register (as required by subsection (b) of this section) with respect to at least two vessels.

SEC. 3. Notwithstanding section 12106 or 12107 of title 46, United States Code, section 8 of the Act of June 19, 1886 (46 App. U.S.C. 289), section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), or any other similar provision of law, the Secretary may, from applications submitted in accordance with this Act, document vessels not otherwise qualified to be documented as vessels of the United States with the privilege of engaging in the coastwise trade, if—

(1) each such vessel is in compliance with all other requirements of law or regulations applicable to vessels engaging in the coastwise trade;

(2) any alterations, repairs, or rebuilding of each vessel that are necessary to bring the vessel into compliance with the requirements of part B of subtitle II of title 46, United States Code (relating to inspection and regulation of vessels) and regulations issued under that part, or any conversion to eliminate cargo space necessary to bring the vessel into compliance with paragraph (5) of this section, are performed in the United States;

(3) all future nonemergency alterations, repairs, or rebuilding of each such vessel after it is documented under this section are performed in the United States pursuant to the then applicable laws, so long as the vessel remains documented as a United States vessel;

(4) each such vessel is owned at the time of documentation by a citizen of the United States, as defined in the applicable laws prescribing the qualifications of vessels to engage in the coastwide trade;

(5) transportation in each vessel is limited solely to passengers and their personal luggage, personal property and personal motor vehicles transported on a basis other than on a ferry service basis;

(6) the owner of each such vessel has agreed to enter into a contract with the United States for the inclusion of enhanced military features at Government expense; and

(7) the Secretary determines—

(A) that each such vessel is a modern, efficient and economical vessel;

(B) that each such vessel has twin screws and is not less than ten thousand gross registered tons;

(C) that each such vessel has accommodations for not less than six hundred passengers with modern facilities;

(D) that each such vessel has a remaining useful economic life of not less than ten years after documentation under this section; and

(E) in consultation with the Secretary of the Navy, that each such vessel will be suitable for conversion to a troop ship for use in time of war or national emergency.

SEC. 4. (a) An application for documentation under this Act shall be submitted to the Secretary no later than September 1, 1989. A separate application shall be submitted for each vessel to be considered by the Secretary for documentation.

(b) The Secretary shall charge a fee of $3,000 for each application submitted.

(c) Not later than March 1, 1990, the Secretary shall select vessels which meet the requirements for documentation under this Act.

(d) The Secretary shall notify the applicant that such applicant's vessel has been selected for documentation under this Act.

SEC. 5. A vessel selected for documentation under section 4 of this Act may enter the coastwise trade no later than two years after the date of the Secretary's notification of selection under section 4(d) of this Act.

SEC. 6. The owner, operator, or successor in interest of a vessel documented under this Act shall not offer substantially similar service as determined by the Secretary, to that service offered on September 1, 1988, by the owner, operator, or successor in interest of a coastwise passenger vessel constructed in the United States. If such substantially similar service offered by the owner, operator, or successor in interest of a coastwise passenger vessel constructed in the United States is terminated, a vessel documented under this Act may offer such service.

SEC. 7. The owner or operator of a vessel documented under this Act shall not offer, except in accordance with this section, substantially similar service to that service offered or advertised after September 1, 1988, by an owner, operator, or successor of a coastwise passenger vessel constructed in the United States, if—

(1) the owner, operator, or successor in interest of the coastwise passenger vessel constructed in the United States certifies to the Secretary, within two years after the date the vessel documented under this Act enters the coastwise trade, that such owner, operator, or successor in interest is offering or advertising the service pursuant to a certificate of financial responsibility for indemnification of passengers for nonperformance of transportation issued in accordance with the Act entitled "An Act to require evidence of adequate financial responsibility to pay judgments for personal injury or death, or to repay fares in the event of nonperformance of voyages, to establish minimum standards for passenger vessels and to require disclosure of construction details on passenger vessels, and for other purposes", approved November 6, 1966 (46 App. U.S.C. 817e), by the Federal Maritime Commission;

(2) the Secretary determines that the service offered or advertised is substantially similar to that service offered by the owner or operator of the vessel documented under this Act, and the Secretary notifies the owner or operator of the vessel documented under this Act that such owner or operator shall terminate the service no later than three hundred and fifty-six days after such notification; and

(3) the coastwise passenger vessel constructed in the United States enters the service certified to the Secretary under paragraph (1) of this section no later than three hundred and sixty-five days following notification under paragraph (2) of this section.

SEC. 8. (a) For the purposes of section 6 and 7 of this Act, the term "coastwise pas-

senger vessel constructed in the United States" means—

(1) a vessel built in the United States which (A) is documented under the laws of the United States, (B) is offering services in the coastwise trade on September 1, 1988, and (C) has accommodations for not less than six hundred passengers with modern facilities; or

(2) a vessel built in the United States after September 1, 1988 which (A) is documented under the laws of the United States, and (B) has accomodations for not less than six hundred passengers with modern facilities.

(b) In determining under sections 6 and 7 of this Act whether a coastwise passenger vessel is offering service substantially similar to service offered by vessels documented under this Act, the Secretary shall consider, among other things—

(1) the frequency of the comparable service;

(2) the relative size and class of service of the competing vessels;

(3) the number and geographic location of competing ports of call; and

(4) the overall itineraries of the competing vessels.

SEC. 9. The Secretary shall modify the certificate of documentation of a vessel to reflect the imposition or removal of a restriction resulting from the operation of this Act.

SEC. 10. The Secretary may prescribe rules and regulations to carry out the provisions of this Act.

The amendment was agreed to.

Mr. DANFORTH. Mr. President, I am offering today S. 1935, the Passenger Ship Act of 1986, as reported by the Committee on Commerce, Science, and Transportation.

S. 1935, as reported, is designed to revitalize the domestic cruise vessel industry without adversely impacting on current efforts to build and refurbish deepwater cruise vessels in the United States. The legislation would permit the documentation and operation of certain foreign-built cruise vessels in the coastwise passenger trade if construction or refurbishment of two U.S.-built deepwater passenger vessels has not been substantially completed by September 1, 1988.

Much concern has been expressed about the inability of U.S.-flag vessel operators to participate in an expanding domestic market for the entertainment, convention, and vacation services provided by luxury deepwater cruise vessels. Only two such vessels now operate in our coastwise trade under U.S.-flag, both off Hawaii, and none has been built in the United States in 30 years. Although the need to revitalize the cruise ship industry has been widely recognized, there has, until now, been no agreement about how to do so.

The legislation I am offering today succeeds where previous legislative efforts have failed to forge a consensus. I believe the reason for the widespread support of this bill is that it is a compromise that accommodates the national interest in a strong U.S.-built fleet while allowing for the entry of foreign-built vessels if domestic interests cannot meet the demand for cruise services by substantially completing construction or refurbishment of two U.S.-built vessels in the next 2 years.

If, as I hope, efforts by domestic interests are successful in substantially completing two U.S.-build vessels in the next 2 years, no foreign-built vessels will be permitted to enter the coastwise trade under this bill. If not, then foreign-built vessels will be allowed in, subject to the protective provisions of the bill that are designed to safeguard existing and prospective U.S.-flag cruise vessel operators offering substantially similar service.

Mr. President, S. 1935 was reported without objection by the Commerce Committee. It enjoys the support of virtually all interested segments of the public, and I ask my colleagues to support it.

Mr. STEVENS. Mr. President, the Committee on Commerce, Science, and Transportation has reported S. 1935, the Passenger Ship Act of 1986. Chairman DANFORTH has submitted a statement explaining the purpose of the legislation, and I concur fully with his assessment.

S. 1935 provides the Secretary of Transportation with the authority to permit certain foreign-built cruise vessels to operate in the coastwise passenger trade, provided that the U.S. shipbuilding industry has not substantially completed the construction or refurbishment of two U.S.-built luxury cruise vessels by September 1, 1988.

This issue has sharply divided the Senate Commerce Committee for 4 years now. We have finally been able to strike a balance between the need to revitalize the domestic cruise vessel industry and the need to provide the U.S. shipbuilding industry with the first opportunity to meet the demands of an expanding market.

Mr. President, S. 1935 was reported without objection by the Commerce Committee. I ask my colleagues to support quick consideration of this important legislation.

Mr. INOUYE. Mr. President, I support S. 1935, because I believe it will provide an opportunity to increase the size of our domestic passenger cruise industry without undermining the objectives of our cabotage laws.

In each of the last three Congresses we have been urged, albeit unsuccessfully, to chip away at our cabotage laws, and enact legislation to permit foreign-build cruise vessels to be reflagged, with Jones Act privileges. Proponents of these measures have maintained that it is financially not feasible to build a passenger cruise vessel in a U.S. shipyard, and if we are to have a domestic cruise industry we must permit foreign-built vessels to be reflagged with coastwise privileges.

In the past I have opposed these efforts because I felt that if foreign-built vessels were allowed into our domestic trades it would:

Assure that no passenger cruise vessels will be built in U.S. shipyards. The capital costs of a U.S.-built vessel would make it noncompetitive with a foreign-built vessel which, of course, would have a much lower construction cost.

In this connection, a U.S. shipyard—American Ship Building Co.—has publicly announced that it will build two cruise vessels, and operate them in our Jones Act trades. It will not do so, however, if foreign-built vessels are permitted in the Jones Act trades.

Enable these foreign-built reflagged vessels to compete with the only two U.S.-built vessels now operating in our Jones Act trades. Such an occurrence would, of course, be completely at odds with the purposes and objectives of our cabotage laws.

When the Commerce Committee considered S. 1935 in executive session I was therefore prepared to oppose it.

As the committee debated the matter it seemed clear to me that all of the members wanted the cruise vessels operating in our domestic trades to be U.S.-built, if that is a realistic possibility. and, if not, the committee wanted to ensure that any foreign-built reflagged vessels would not compete against current or future U.S.-built vessels.

Out of the committee's deliberations on S. 1935, came a compromise in the nature of a substitute which I believe ensures a reasonable opportunity for refurbishment or construction of cruise vessels in U.S. yards, such as American Ship Building Co. proposes; while at the same time ensuring that if such refurbishment or construction does not materialize within a reasonable time, foreign-flag passenger vessels may be reflagged with Jones Act privileges.

The heart of the compromise is, of course, the two provisions intended to achieve those objectives.

The first provides that if the construction or refurbishment of two vessels in U.S. yards is "substantially completed" by August 31, 1988, no foreign-built vessels may be reflagged with Jones Act privileges.

The second provides that if construction or refurbishment is not completed by that date, those foreign-built vessels which are reflagged under the legislation may not offer Jones Act service which is "substantially similar" to that which is currently being offered by U.S.-built vessels or may be offered by future U.S.-built vessels.

The tests for what constitutes "substantial completion" and "substantially similar service" are not set out in bill itself. They are, however, precisely spelled out in the committee report, and I would like to read the pertinent text because those tests are critical.

The committee report explains the test of "substantial completion" as follows:

Section 2 requires the Secretary of the Department in which the Coast Guard is operating (Secretary) to determine and publish notice of the "substantial completion" of construction or refurbishment of U.S.-built cruise vessels with accommodations for at least 600 passengers. The committee intends that the Secretary consider construction or refurbishment of a vessel to have reached the stage of "substantial completion" when (1) the keel has been laid; (2) firm, irrevocable commitments and financing have been placed to complete the vessel; (3) at least 50 percent of the financing has been expended or contractually obligated; (4) sufficient work and associated arrangements have been concluded so as to make it likely that the vessel will be engaged in the actual transportation of passengers on a commercial basis in the 1989 season or shortly thereafter; and (5) advance bookings for such service are being offered and advertised pursuant to a certificate of financial responsibility and indemnification of passengers for nonperformance of transportation. The committee intends that the Secretary, in determining whether a vessel has reached the stage of "substantial completion", consider and make appropriate allowance for unavoidable delays caused by force majeure, acts of God, and other events beyond the control of personal constructing or refurbishing a vessel.

In the event foreign-built vessels do enter our domestic trades, the committee report expressly states that the Secretary of Transportation must find that service offered by a foreign-built vessel is "substantially similar" and thus prohibited, if it would cause economic harm to the existing or proposed service of a U.S.-built vessel in a specific market. The report states the test as follows:

While the factors enumerated in section 8 are intended to guide the Secretary in determining whether service by a foreign-built vessel would cause economic harm to a domestic operation and thus be "substantially similar", the committee intends that they be illustrative rather than exclusive.

The committee intends that the Secretary interpret "substantially similar" service to mean more than merely identical service. In addition to offering identical service, a foreign-built vessel documented under the bill could, for example, capture part of the Hawaiian cruise market if it offered cruise service between the mainland and Honolulu; offered cruise service from the mainland to Hawaii, and return by air; or offered cruise service to Honolulu with an air tour of other islands. Such service causing economic harm to a domestic operator would be prohibited as "substantially similar" within the meaning of section 8.

In other words, if the proposed service or actual service of a foreign-built vessel would siphon-off passengers in a particular market from the service or proposed service of a U.S.-built vessel, it would be "substantially similar," and thus prohibited.

Mr. President, I believe S. 1935 is in the national interest and urge its enactment.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to authorize the coastwise operation of certain passenger vessels.".

NATIONAL CHILDREN'S TELEVISION AWARENESS WEEK

The joint resolution (H.J. Res. 710) to designate the week beginning October 12, 1986, as "National Children's Television Awareness Week," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

PROPERTY TAX FUND FOR THE HOULTON BAND OF MALISEET INDIANS

The bill (S. 2750) to establish a property tax fund for the Houlton Band of Maliseet Indians in furtherance of the Maine Indian Claims Settlement Act of 1980, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2750

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986".

DEFINITIONS

SEC. 2. For purposes of this Act—

(1) The term "Houlton Band Tax Fund" means the fund established under section 3.

(2) The term "Houlton Band trust land" means land or natural resources acquired by the Secretary of the Interior and held in trust by the United States for the benefit of the Houlton Band of Maliseet Indians in accordance with section 5(d) of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1724(d); 94 Stat. 1789).

(3) The term "amended Maine Implementing Act" means the Maine Implementing Act (defined in section 3(e) of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1722(e); 94 Stat. 1787)) as amended by—

(A) the "Act to amend the Maine Implementing Act with respect to the Houlton Band of Maliseet Indians", enacted by the State of Maine in chapter 675 of the Public Laws of 1981, and

(B) the State of Maine in chapter 672 of the Public Laws of 1985.

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "Houlton Band of Maliseet Indians" has the meaning given to such term by section 3(a) of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1722(a)).

HOULTON BAND TAX FUND

SEC. 3. (a) There is hereby established in the United States Treasury a fund to be known as the Houlton Band Tax Fund in which shall be deposited $200,000 in accordance with the provisions of this Act.

(b)(1) Income accrued on the land acquisition fund established for the Houlton Band of Maliseet Indians pursuant to subsections (c) and (d)(1) of section 5 of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1724; 94 Stat. 1789) shall be transferred to the Houlton Band Tax Fund. No transfer shall be made under this subsection if such transfer would diminish such land acquisition fund to a balance of less than $900,000.

(2) Whenever funds are transferred to the Houlton Band Tax Fund pursuant to paragraph (1), the Secretary shall publish notice of such transfer in the Federal Register. Such notice shall specify when the full amount of $200,000 has been transferred to the Houlton Band Tax Fund.

(c) The Secretary shall manage the Houlton Band Tax Fund in accordance with the first section of the Act of June 24, 1938 (25 U.S.C. 162a), and shall utilize the principal and interest of such Fund only as provided in subsection (d) and for no other purpose.

(d) Notwithstanding the provisions of section 3727 of title 31, United States Code, the Secretary shall pay out of the Houlton Band Tax Fund all valid claims for taxes, payments in lieu of property taxes, and fees, together with any interest and penalties thereon—

(1) for which the Houlton Band of Maliseet Indians are determined to be liable under the terms of section 6208-A(2) of the amended Maine Implementing Act,

(2) which are final and not subject to further administrative or judicial review, and

(3) which have been certified by the Commissioner of Finance and Administration of the State of Maine as valid claims (within the meaning of section 6208-A(2) of the amended Maine Implementing Act) that meet the requirements of this subsection.

(e) Notwithstanding any other provision of law, if—

(1) the Houlton Band of Maliseet Indians is liable to the State of Maine or any county, district, municipality, city, town, village, plantation, or any other political subdivision thereof for any tax, payment in lieu of property tax, or fees, together with any interest or penalties thereon, and

(2) there are insufficient funds in the Houlton Band Tax Fund to pay such tax, payment, or fee (together with any interest or penalties thereon) in full,

the deficiency shall be paid by the Houlton Band of Maliseet Indians only from income-producing property owned by such Band which is not held in trust for such Band by the United States, and such Band shall not be required to pay such tax, payment, or fee (or any interest or penalty thereon) from any other source.

(f) The Secretary shall, after consultation with the Commissioner of Finance and Administration of the State of Maine and the Houlton Band of Maliseet Indians, prescribe written procedures governing the filing and payment of claims under this section and section 6208-A of the amended Maine Implementing Act.

HOULTON BAND TRUST LAND

SEC. 4. (a) Subject to the provisions of section 3 of this Act, the Secretary is authorized and directed to expend, at the request of the Houlton Band of Maliseet Indians, the principal of, and income accruing on, the land acquisition fund established for such Band under subsections (c) and (d)(1) of section 5 of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1724; 94 Stat. 1789) for the purposes of acquiring land or natural resources for such Band and for no other purpose. Land or natural resources so acquired within the State of Maine for such

Band shall be held in trust by the United States for the benefit of such Band.

(b)(1) Land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of the Houlton Band of Maliseet Indians may be alienated only by—

(A) takings for public use pursuant to the laws of the State of Maine as provided in subsection (c),

(B) takings for public use pursuant to the laws of the United States,

(C) transfers authorized by section 5(g)(3) of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1724(g)(3); 94 Stat. 1791), or

(D) transfers made pursuant to an Act or joint resolution of Congress.

All other transfers of land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of such Band shall be void ab initio and without any validity in law or equity.

(2) The provisions of paragraph (1) shall not prohibit or limit transfers of individual use assignments of land or natural resources from one member of the Houlton Band of Maliseet Indians to another member of such Band.

(c)(1) Land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of the Houlton Band of Maliseet Indians may be condemned for public purposes by the State of Maine, or any political subdivision thereof, only upon such terms and conditions as shall be agreed upon in writing between the State and such Band after the date of enactment of this Act.

(2) The consent of the United States is hereby given to the State of Maine to further amend the amended Maine Implementing Act for the purpose of embodying the agreement described in paragraph (1).

(d)(1) Lands and natural resources may be acquired by the Secretary for the Houlton Band of Maliseet Indians only if the Secretary has, at any time prior to such acquisition—

(A) transmitted a letter to the Secretary of State of the State of Maine stating that the Houlton Band Tax Fund contains $200,000, and

(B) provided the Secretary of State of the State of Maine with a copy of the procedures for filing and payment of claims prescribed under section 3(f).

(2)(A) No land or natural resources may be acquired by the Secretary for the Houlton Band of Maliseet Indians until the Secretary—

(i) files with the Secretary of State of the State of Maine a certified copy of the deed, contract, or other conveyance setting forth the location and boundaries of the land or natural resources to be acquired by the Secretary, or

(ii) files with the Secretary of State of the State of Maine a certified copy of any instrument setting forth the location and boundaries of the land or natural resources to be acquired.

(B) For purposes of subparagraph (A), filing with the Secretary of State of the State of Maine may be made by mail and, if such method of filing is used, shall be considered to be completed on the date on which the document is properly mailed to the Secretary of State of the State of Maine.

RESTORATION OF FEDERAL RECOGNITION TO CERTAIN INDIAN TRIBES

The Senate proceeded to consider the bill (H.R. 1344) to provide for the restoration of Federal recognition to the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas, and for other purposes, which had been reported from the Select Committee on Indian Affairs, with an amendment to strike out all after the enacting clause, and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act".

REGULATIONS

SEC. 2. The Secretary of the Interior or his designated representative may promulgate such regulations as may be necessary to carry out the provisions of this Act.

TITLE I—YSLETA DEL SUR PUEBLO RESTORATION

DEFINITIONS

SEC. 101. For purposes of this title—

(1) the term "tribe" means the Ysleta del Sur Pueblo (as so designated by section 102);

(2) the term "Secretary" means the Secretary of the Interior or his designated representative;

(3) the term "reservation" means lands within El Paso and Hudspeth Counties, Texas—

(A) held by the tribe on the date of the enactment of this title;

(B) held in trust by the State or by the Texas Indian Commission for the benefit of the tribe on such date;

(C) held in trust for the benefit of the tribe by the Secretary under the plan developed pursuant to section 105(g); and

(D) subsequently acquired and held in trust by the Secretary for the benefit of the tribe.

(4) the term "State" means the State of Texas;

(5) the term "Tribal Council" means the governing body of the tribe as recognized by the Texas Indian Commission on the date of enactment of this Act, and such tribal council's successors; and

(6) the term "Tiwa Indians Act" means the Act entitled "An Act relating to the Tiwa Indians of Texas," and approved April 12, 1968 (82 Stat. 93).

REDESIGNATION OF TRIBE

SEC. 102. The Indians designated as the Tiwa Indians of Ysleta, Texas, by the Tiwa Indians Act shall, on and after the date of the enactment of this title, be known and designated as the Ysleta del Sur Pueblo. Any reference in any law, map, regulation, document, record, or other paper of the United States to the Tiwa Indians of Ysleta, Texas, shall be deemed to be a reference to the Ysleta del Sur Pueblo.

RESTORATION OF FEDERAL RECOGNITION, RIGHTS, AND BENEFITS

SEC. 103. (a) FEDERAL RECOGNITION.—Federal recognition of the tribe and of the trust relationship between the United States and the tribe is hereby restored. The Act of June 18, 1934 (48 Stat. 984), as amended, and all laws and rules of law of the United States of general application to Indians, to nations, tribes, or bands of Indians, or to Indian reservations which are not inconsistent with any specific provision contained in this title shall apply to the members of the tribe, the tribe, and the reservation.

(b) RESTORATION OF RIGHTS AND PRIVILEGES.—All rights and privileges of the tribe and members of the tribe under any Federal treaty, statute, Executive order, agreement, or under any other authority of the United States which may have been diminished or lost under the Tiwa Indians Act are hereby restored.

(c) FEDERAL SERVICES AND BENEFITS.—Notwithstanding any other provision of law, the tribe and the members of the tribe shall be eligible, on and after the date of the enactment of this title, for all benefits and services furnished to federally recognized Indian tribes.

(d) EFFECT ON PROPERTY RIGHTS AND OTHER OBLIGATIONS.—Except as otherwise specifically provided in this title, the enactment of this title shall not affect any property right or obligation or any contractual right or obligation in existence before the date of the enactment of this title or any obligation for taxes levied before such date.

STATE AND TRIBAL AUTHORITY

SEC. 104. (a) STATE AUTHORITY.—Nothing in this Act shall affect the power of the State of Texas to enact special legislation benefitting the tribe, and the State is authorized to perform any services benefitting the Tribe that are not inconsistent with the provisions of this Act.

(b) TRIBAL AUTHORITY.—The Tribal Council shall represent the tribe and its members in the implementation of this title and shall have full authority and capacity—

(1) to enter into contracts, grant agreements, and other arrangements with any Federal department or agency, and

(2) to administer or operate any program or activity under or in connection with any such contract, agreement, or arrangement, to enter into subcontracts or award grants to provide for the administration of any such program or activity, or to conduct any other activity under or in connection with any such contract, agreement, or arrangement.

PROVISIONS RELATING TO TRIBAL RESERVATION

SEC. 105. (a) FEDERAL RESERVATION ESTABLISHED.—The reservation is hereby declared to be a Federal Indian reservation for the use and benefit of the tribe without regard to whether legal title to such lands is held in trust by the Secretary.

(b) CONVEYANCE OF LAND BY STATE.—The Secretary shall—

(1) accept any offer from the State to convey title to any land within the reservation held in trust on the date of enactment of this Act by the State or by the Texas Indian Commission for the benefit of the tribe to the Secretary, and

(2) hold such title, upon conveyance by the State, in trust for the benefit of the tribe.

(c) CONVEYANCE OF LAND BY TRIBE.—At the written request of the Tribal Council, the Secretary shall—

(1) accept conveyance by the tribe of title to any land within the reservation held by the tribe on the date of enactment of this Act to the Secretary, and

(2) hold such title, upon such conveyance by the tribe, in trust for the benefit of the tribe.

(d) APPROVAL OF DEED BY ATTORNEY GENERAL.—Notwithstanding any other provision of law or regulation, the Attorney General of the United States shall approve any deed or other instrument which conveys title to

land within El Paso or Hudspeth Counties, Texas, to the United States to be held in trust by the Secretary for the benefit of the tribe.

(e) PERMANENT IMPROVEMENTS AUTHORIZED.—Notwithstanding any other provision of law or rule of law, the Secretary or the tribe may erect permanent improvements, improvements of substantial value, or any other improvement authorized by law on the reservation without regard to whether legal title to such lands has been conveyed to the Secretary by the State or the tribe.

(f) CIVIL AND CRIMINAL JURISDICTION WITHIN RESERVATION.—This State shall exercise civil and criminal jurisdiction within the boundaries of the reservation as if such State had assumed such jurisdiction with the consent of the tribe under sections 401 and 402 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes." and approved April 11, 1968 (25 U.S.C. 1321, 1322).

(g) PLAN FOR ENLARGEMENT OF RESERVATION.—The Secretary shall negotiate with the tribe concerning the enlargement of the reservation and, not later than two years after the date of the enactment of this Act, shall develop a plan for the enlargement of the reservation for the tribe. The plan shall include provisions for the acquisition of land to be selected from available public, State, or private lands within El Paso or Hudspeth Counties, Texas. Upon approval of such plan by the tribe, the Secretary shall submit such plan, in the form of proposed legislation, to the Congress.

(h) NOTIFICATION AND CONSULTIVE REQUIREMENTS FOR PLAN.—To assure that legitimate State and local interests are not prejudiced by the enlargement of the reservation for the tribe, the Secretary, in developing the plan under subsection (g) shall notify and consult with all appropriate officials of the State of Texas, all appropriate local government officials in the affected area in the State of Texas, and any other interested party. The consultations required under this subsection shall include—

(1) the size and location of the additions to the reservation;

(2) the effect the enlargement of the reservation would have on State and local tax revenues;

(3) the criminal and civil jurisdiction of the State of Texas with respect to the reservation and persons on the reservation;

(4) the provision of State and local services to the reservation and to the tribe and members of the tribe on the reservation; and

(5) the provision of Federal services to the reservation and to the tribe and members of the tribe and the provision of services by the tribe to members of the tribe.

(i) CONTENTS OF PLAN.—Any plan developed for the enlargement of the reservation shall provide that the Secretary shall not accept any real property in trust for the benefit of the tribe or bands unless such real property is located either within El Paso or Hudspeth Counties, State of Texas.

(j) STATEMENT APPENDED TO ENLARGEMENT PLAN RESPECTING IMPLEMENTATION OF NOTIFICATION AND CONSULTATIVE REQUIREMENTS.—The Secretary shall append to the plan a detailed statement describing the manner in which the notification and consultation prescribed by subsection (h) was carried out and shall include any written comments with respect to the enlargement of the reservation for the tribe submitted to the Secretary by State and local officials and other interested parties in the course of such consultation.

TIWA INDIANS ACT REPEALED

SEC. 106. The Tiwa Indians Act is hereby repealed.

SEC. 107. (a) Gaming, gambling, lottery or bingo as defined by the laws and administrative regulations of the State of Texas is hereby prohibited on the tribe's reservation and on tribal lands.

(b) Whoever violates the provisions of subsection (a) of this section shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(c) Nothing in this section shall be construed as a grant of civil regulatory jurisdiction to the State of Texas.

SEC. 108. (a) For a period of three years after enactment of this Act, the tribe's membership shall consist of—

(1) the individuals listed on the Tribal Membership Roll approved by the tribe's Resolution No. TC-5-84 approved December 18, 1984, and approved by the Texas Indian Commission's Resolution No. TIC-85-005 adopted on January 16, 1985; and

(2) a descendant of an individual listed on that Roll if the descendant (i) has ⅛ degree or more of Tigua-Ysleta del Sur Pueblo Indian blood, and (ii) is enrolled by the tribe.

(b) Notwithstanding subsections (a) and (c) of this section

(1) the tribe may remove an individual from tribal membership if it determines that the individual's enrollment was improper; and

(2) the Secretary, in consultation with the tribe, may review the Tribal Membership Roll. If the Secretary determines that an individual enrolled by the tribe does not meet the criteria for membership set out in the tribe's Resolution No. TC-5-84, then the Secretary may, after affording an opportunity for an administrative appeal by such individual or by the tribe, declare such individual ineligible for Federal services provided to Indians because of their status as Indians.

(c) Nothing in this section shall be interpreted as limiting the authority of the tribe to determine its membership criteria or the eligibility or ineligibility of an individual to membership in the tribe, for purposes other than eligibility for Federal Indian services.

TITLE II—ALABAMA AND COUSHATTA INDIAN TRIBES OF TEXAS

DEFINITIONS

SEC. 201. For purposes of this title—

(1) the term "tribe" means the Alabama and Coushatta Indian Tribes of Texas (considered as one tribe in accordance with section 202);

(2) the term "Secretary" means the Secretary of the Interior or his designated representative;

(3) the term "reservation" means the Alabama and Coushatta Indian Reservation in Polk County, Texas, comprised of—

(A) the lands and other natural resources conveyed to the State of Texas by the Secretary pursuant to the provisions of section 1 of the Act entitled "An Act to provide for the termination of Federal supervision over the property of the Alabama and Coushatta Tribes of Indians of Texas, and the individual members thereof; and for other purposes." and approved August 23, 1954 (25 U.S.C. 721);

(B) the lands and other natural resources purchased for and deeded to the Alabama Indians in accordance with an act of the legislature of the State of Texas approved February 3, 1854; and

(C) lands subsequently acquired and held in trust by the Secretary for the benefit of the tribe;

(4) the term "State" means the State of Texas;

(5) the term "constitution and bylaws" means the constitution and bylaws of the tribe which were adopted on June 16, 1971; and

(6) the term "Tribal Council" means the governing body of the tribe under the constitution and bylaws.

ALABAMA AND COUSHATTA INDIAN TRIBES OF TEXAS CONSIDERED AS ONE TRIBE

SEC. 202. The Alabama and Coushatta Indian Tribes of Texas shall be considered as one tribal unit for purposes of this title and any other law or rule of law of the United States.

RESTORATION OF FEDERAL RECOGNITION, RIGHTS, AND BENEFITS

SEC. 203. (a) FEDERAL RECOGNITION.—Federal recognition of the tribe and of the trust relationship between the United States and the tribe is hereby restored. The Act of June 18, 1934 (48 Stat. 984), as amended, and all laws and rules of law of the United States of general application to Indians, to nations, tribes, or bands of Indians, or to Indian reservations which are not inconsistent with any specific provision contained in this title shall apply to the members of the tribe, the tribe, and the reservation.

(b) RESTORATION OF RIGHTS AND PRIVILEGES.—All rights and privileges of the tribe and members of the tribe under any Federal treaty, Executive order, agreement, statute, or under any other authority of the United States which may have been diminished or lost under the Act entitled "An Act to provide for the termination of Federal supervision over the property of the Alabama and Coushatta Tribes of Indians of Texas, and the individual members thereof; and for other purposes." and approved August 23, 1954, are hereby restored and such Act shall not apply to the tribe or to members of the tribe after the date of the enactment of this title.

(c) FEDERAL BENEFITS AND SERVICES.—Notwithstanding any other provision of law, the tribe and the members of the tribe shall be eligible, on and after the date of the enactment of this title, for all benefits and services furnished to federally recognized Indian tribes.

(d) EFFECT ON PROPERTY RIGHTS AND OTHER OBLIGATIONS.—Except as otherwise specifically provided in this title, the enactment of this title shall not affect any property right or obligation or any contractual right or obligation in existence before the date of the enactment of this title or any obligation for taxes levied before such date.

STATE AND TRIBAL AUTHORITY

SEC. 204. (a) STATE AUTHORITY.—Nothing in this Act shall affect the power of the State of Texas to enact special legislation benefitting the tribe, and the State is authorized to perform any services benefitting the tribe that are not inconsistent with the provisions of this Act.

(b) CURRENT CONSTITUTION AND BYLAWS TO REMAIN IN EFFECT.—Subject to the provisions of section 203(a) of this Act, the constitution and by laws of the tribe on file with the Committee on Interior and Insular Affairs is hereby declared to be approved for the purposes of section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476)

except that all reference to the Texas Indian Commission shall be considered as reference to the Secretary of the Interior.

(c) AUTHORITY AND CAPACITY OF TRIBAL COUNCIL.—No provision contained in this title shall affect the power of the Tribal Council to take any action under the constitution and bylaws described in subsection (b). The Tribal Council shall represent the tribe and its members in the implementation of this title and shall have full authority and capacity—

(1) to enter into contracts, grants, agreements, and other arrangements with any Federal department or agency;

(2) to administer or operate any program or activity under or in connection with any such contract, agreement, or arrangement, to enter into subcontracts or award grants to provide for the administration of any such program or activity, or to conduct any other activity under or in connection with any such contract, agreement, or arrangement; and

(3) to bind any tribal governing body selected under any new constitution adopted in accordance with section 205 as the successor in interest to the Tribal Council.

ADOPTION OF NEW CONSTITUTION AND BYLAWS

SEC. 205. Upon written request of the tribal council, the Secretary shall hold an election for the members of the tribe for the purpose of adopting a new constitution and bylaws in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

PROVISIONS RELATING TO TRIBAL RESERVATION

SEC. 206. (a) FEDERAL RESERVATION ESTABLISHED.—The reservation is hereby declared to be a Federal Indian reservation for the use and benefit of the tribe without regard to whether legal title to such lands is held in trust by the Secretary.

(b) CONVEYANCE OF LAND BY STATE.—The Secretary shall—

(1) accept any offer from the State to convey title to any lands held in trust by the State or the Texas Indian Commission for the benefit of the tribe to the Secretary, and

(2) shall hold such title, upon conveyance by the State, in trust for the benefit of the tribe.

(c) CONVEYANCE OF LAND BY TRIBE.—At the written request of the Tribal Council, the Secretary shall—

(1) accept conveyance by the tribe of title to any lands within the reservation which are held by the tribe to the Secretary, and

(2) hold such title, upon such conveyance by the tribe, in trust for the benefit of the tribe.

(d) APPROVAL OF DEED BY ATTORNEY GENERAL.—Notwithstanding any other provision of law or regulations the Attorney General of the United States shall approve any deed or other instrument from the State or the tribe which conveys title to lands within the reservation to the United States.

(e) PERMANENT IMPROVEMENTS AUTHORIZED.—Notwithstanding any other provision of law or rule of law, the Secretary or the tribe may erect permanent improvements, improvements of substantial value, or any other improvement authorized by law on the reservation without regard to whether legal title to such lands has been conveyed to the Secretary by the State or the tribe.

(f) CIVIL AND CRIMINAL JURISDICTION WITHIN RESERVATION.—The State shall exercise civil and criminal jurisdiction within the boundaries of the reservation as if such State had assumed such jurisdiction with the consent of the tribe under sections 401 and 402 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes." and approved April 11, 1968 (25 U.S.C. 1321, 1322).

SEC. 207. (a) Gaming, gambling, lottery or bingo as defined by the laws and administrative regulations of the State of Texas is hereby prohibited on the tribe's reservation and on tribal lands.

(b) Whoever violates the provisions of subsection (a) of this section shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(c) Nothing in this section shall be construed as a grant of civil regulatory jurisdiction to the State of Texas.

The amendment was agreed to

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

MARTIN LUTHER KING, JR. FEDERAL BUILDING AND UNITED STATES COURTHOUSE

The Senate proceeded to consider the bill (S. 2062) to designate the Federal Building and U.S. courthouse to be constructed and located in Newark, NJ, as the "Martin Luther King, Jr. Federal Building and United States Courthouse."

Mr. LAUTENBERG. Mr. President, I am pleased that the Senate is considering legislation that I introduced to designate the new Federal courthouse planned for Newark, NJ, as the "Martin Luther King, Jr. Federal Building and United States Courthouse."

It is most appropriate to name the new Federal courthouse in Newark after Dr. King. He spent his life fighting for freedom. His name is synonymous with justice. And our Federal judicial system represents justice.

The Martin Luther King, Jr. Federal Building and United States Courthouse will serve generations of New Jerseyans. The name on the building will remind them of the heritage of Dr. King each time they enter it to conduct Government business. The civil rights and humanitarian values that Dr. King embodied are fittingly memorialized by this soon-to-be-built Federal office building and courthouse.

Mr. President, I would like to note that before I introduced this bill, I asked Mrs. Coretta King for permission to use her husband's name. I am pleased to report that she made an exception to her usual policy and did agree to my request.

By naming this building after Dr. King, we will provide a small, yet very special tribute to his memory. The true legacy of Dr. King lives on in the hearts and minds of those who were affected by his life. But a physical monument is also an important and visible reminder of the King legacy.

I urge passage of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2062

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Building and United States Courthouse to be constructed and located at Walnut and Orchard Streets in Newark, New Jersey, shall be known and designated as the "Martin Luther King, Jr. Federal Building and United States Courthouse". Any reference in any law, regulation, document, record, map, or other paper of the United States to such building and courthouse is deemed to be a reference to the Martin Luther King, Jr. Federal Building and United States courthouse".

JACOB WEINBERGER FEDERAL BUILDING

The bill (S. 2788) to designate the Federal building located in San Diego, CA, as the "Jacob Weinberger Federal Building," was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2788

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

SECTION 1. DESIGNATION OF BUILDING.

The Federal building located at 325 F Street in San Diego, in the State of California, commonly known as the Old Federal Courthouse, shall hereafter be known and designated as the "Jacob Weinberger Federal Building".

SEC. 2. LEGAL REFERENCES TO BUILDING.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the Federal Building referred to in section 1 is hereby deemed to be a reference to the "Jacob Weinberger Federal Building".

H.R. 5056 TO BE HELD AT THE DESK

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that once received from the House, H.R. 5056, dealing with public utility holding companies, that it be held at the desk pending further disposition.

Mr. BYRD. No objection.

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

HOUSE CONCURRENT RESOLUTION 391 TO BE HELD AT THE DESK

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that once the Senate receives from the House, House Concurrent Resolution 391, a concurrent resolution calling on the Governments of the Soviet Union, Poland, and Czechoslovakia to cease activities causing harmful interference to the broadcast of Voice of America and RFE/RL, Inc., it be held at the desk pending further disposition.

Mr. BYRD. No objection.

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

H.R. 4217 TO BE HELD AT THE DESK

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that once the Senate receives from the House, H.R. 4217, a settlement with the Papago Indian Tribe regarding Tat Momolokote Dam, it be held at the desk pending further disposition.

Mr. BYRD. No objection.

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

H.R. 4216 TO BE HELD AT THE DESK

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that once the Senate receives from the House, H.R. 4216, to resolve water claims of the Papago Tribe on the Gila Bend Reservation, it be held at the desk pending further disposition.

Mr. BYRD. No objection.

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

H.R. 5430 TO BE HELD AT THE DESK

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that once the Senate receives from the House H.R. 5430, to distribute judgment funds of the Gila River Community, it be held at the desk pending further disposition.

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

SEQUENTIAL REFERRAL OF H.R. 4212, A BILL TO REAUTHORIZE THE DEEP SEABED HARD MINERAL RESOURCES ACT

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that when H.R. 4212, a bill to reauthorize the Deep Seabed Hard Mineral Resources Act, and for other purposes, is reported by the Committee on Energy and Natural Resources, it be sequentially referred to the Committee on Commerce, Science, and Transportation for its consideration for a period not to extend beyond 3 calendar days, provided that, if H.R. 4212 is not reported at such time, the Committee on Commerce, Science, and Transportation shall be immediately discharged of further consideration thereof, and H.R. 4212 shall be placed directly on the calendar.

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

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"WE THE PEOPLE" CALENDARS

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of House Concurrent Resolution 375, dealing with "We the People" calendars, which is being held at the desk.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 375) designating the 1987 United States Capitol Historical Society "We The People" calendar as the official congressional calendar for the Bicentennial of the United States Constitution.

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 375) was agreed to.

The preamble was agreed to.

Mr. ARMSTRONG. 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.

RULEMAKING PROCEDURES REFORM ACT OF 1985 REFERRAL

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that once the Judiciary Committee reports S. 1145, Rulemaking Procedures Reform Act of 1985, it be referred to the Rules Committee for a period of 15 calendar days for the purpose of considering portions of section 3 of the bill.

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

H.R. 4154 HELD AT THE DESK

Mr. ARMSTRONG. Mr. President, I would now like to return to H.R. 4154 and ask unanimous consent that once the Senate receives from the House H.R. 4154 dealing with maximum age requirement it be held at the desk pending further consideration.

Mr. BYRD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The distinguished minority leader.

Mr. BYRD. Mr. President, I remove the reservation.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

PROGRAM

Mr. DOLE. Mr. President, at 10:30 a.m., a live quorum will begin under the provisions of rule XXII, to be followed by a cloture vote on the motion to proceed to the product liability bill. If cloture is invoked, it is the majority leader's intention to remain on the motion until disposed of. Therefore, a late session is expected.

If cloture is not invoked, it would be the majority leader's intention to begin consideration of the drug reform bill, although I might alter that to indicate that I think as we speak there are efforts on the so-called Commodity Futures Trading Commission bill to work out some of the problems that were raised here earlier with Senators on both sides who are seeking to offer amendments. I understand a couple of the amendments can be accepted. The Melcher amendment can be accepted. The McConnell amendment can be accepted. Maybe those who have grain standards amendments can get together and cosponsor an amendment.

We are not quite certain what the distinguished Senator from Oklahoma, Senator BOREN, may have, what his amendment may be. It could be he might be willing to offer that on another bill that we hope to take up tomorrow; that would be the FIFRA bill, S. 2792.

But I am quite certain we will have a number of votes. It is our hope that about noon, or shortly thereafter, 1 or 2 o'clock—if we can work it out—to begin the debate on the bipartisan drug enforcement package.

It is also my hope, depending on what happens earlier in the day on cloture, that we might agree on the treaty votes. I think every Senator is in town, at least on this side of the aisle, with the exception of Senator GARN. He will be out, in any event, for this year. So we may do that.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I move that the Senate stand in recess until 9:30 a.m., on Thursday, September 25, 1986.

The motion was agreed to; and, at 7:50 p.m., the Senate recessed until Thursday, September 26, 1986, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 24, 1986:

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH

Wallie Cooper Simpson, of New York, to be a member of the National Council on Educational Research for a term expiring September 30, 1988, reappointment.

NATIONAL SCIENCE FOUNDATION

The following-named persons to be members of the National Science Board, National Science Foundation, for terms expiring May 10, 1992:

F. Albert Cotton, of Texas, vice Peter T. Flawn, term expired.

Mary Lowe Good, of Illinois, reappointment.

John C. Hancock. of Missouri, vice Peter David Lax, term expired.

James B. Holderman, of South Carolina, vice Jay Vern Beck, term expired.

James L. Powell, of Pennsylvania, vice Homer A. Neal, term expired.

NATIONAL OCEANIC AND ATOMOSPHERIC ADMINISTRATION

Subject to qualifications provided by law, the following for permanent appointment to the grades indicated in the National Oceanic and Atmospheric Administration:

To be lieutenants

Richard B. Koehler
Joanne F. Flanders

To be lieutenants (junior grade)

Jon E. Rix
John E. Lowell, Jr.
Thomas W. Hurst
David M. Mattens
Mark W. Hulsbeck
Kenneth Kramer
Thomas K. Porta
Morgan S. Lynn
Stephen G. Brezinski
Suzanne D. LaReau
John W. Lovell

To be ensigns

Michael P. Lynch
Robert W. Poston
Wade J. Blake
Timothy C. O'Mara
Brian K. Taggart
Richard A. Fletcher
E. Allen Rice
David S. Savage
Brenda L. Whynot
John M. Steger
Kevin M. MacKay
Patricia D. Grant
Alison J. Veishlow
Michele G. Bullock
Scott J. Brown
James Vicedomine
Raymond C. Slagle
DeWayne J. Nodine
Bruce A. Stoneback
Mary J. Murphy
William A. Hartzell
Robert D. Fellows
Daniel W. Cheng
Richard Borden
Brent M. Bernard
Tina Bertucci
Christopher S. Moore
Carl D. Hoffman
Edward R. Cassano

IN THE ARMY

The following-named officers for permanent promotion in the U.S. Army in accordance with the appropriate provisions of title 10, United States Code, section 624:

CHAPLAIN

To be lieutenant colonel

Black, Jerry W., [redacted]
Cooper, John H., [redacted]
Dodd, Paul W., [redacted]
Farr, David R., [redacted]
Golden, David O., [redacted]
Gruebmeyer, Mark H., [redacted]
Jolin, Ernest W., Jr., [redacted]
Kim, Stephen K., [redacted]
Lizor, Joseph S., Jr., [redacted]
Lonergan, James B., [redacted]
Mayer, Gary E., [redacted]
McCall, Dan D., [redacted]
Miller, Joseph E., [redacted]
Neshiem, Vaughn R., [redacted]
O'Connell, David A., [redacted]
Pejakovich, George, [redacted]
Peterson, Donald A., [redacted]
Pingel, Gilbert H., [redacted]
Plummer, Roy G., [redacted]
Richter, Robert J., [redacted]
Schmid, Wayne L., [redacted]
Schmit, Louis L., [redacted]
Stephenson, Douglas R., [redacted]
Sullivan, Edward J., [redacted]
Teer, John F., [redacted]
Thorne, Carrol W., [redacted]
Vickers, Robert C., [redacted]
Wells, John A., [redacted]
Whalen, Frank J., [redacted]
Wichner, Erwin, [redacted]

DENTAL CORPS

To be lieutenant colonel

Albritton, James E., Jr., [redacted]
Allen, Francis E., [redacted]
Bagley, Dwight E., [redacted]
Bandy, Rufus Y., III, [redacted]
Berman, Michael B., [redacted]
Bice, Ronald W., [redacted]
Billman, Michael A., [redacted]
Blair, Robert C., [redacted]
Bond, John L., [redacted]
Bowers, James E., [redacted]
Britton, Joseph A., [redacted]
Brown, Carolyn M., [redacted]
Burleigh, John D., [redacted]
Cameron, Stephen M., [redacted]
Camp, Larry R., [redacted]
Campbell, Jerry C., [redacted]
Carroll, Bernard L., [redacted]
Casey, Glenn R., [redacted]
Clarke, Michael E., [redacted]
Colvin, Charles J., [redacted]
Diamond, Richard., [redacted]
Engle, Rosemary E., [redacted]
Estey, Allan W., [redacted]
Gaston, Max L., [redacted]
Groom, Thomas D., [redacted]
Guerin, Richard D., [redacted]
Harper, Bradford W., [redacted]
Herring, Herman W., Jr., [redacted]
Hnarakis, Emanuel J., [redacted]
Hogans, William R., [redacted]
Infantino, Lillian M., [redacted]
Jones, Charlottee K., [redacted]
Judah, Michael W., [redacted]
Katagihara, Rodney H., [redacted]
Leeds, Robert C., [redacted]
Lewis, John F., Jr., [redacted]
Lui, Chiu L., [redacted]
Macpherson, Michael G., [redacted]
Mariscal, Roque., [redacted]
Mathieu, Gregory P., [redacted]
McDougle, Michael, [redacted]
Moeller, Donald R., [redacted]
Nedderman, Theodore A., [redacted]
Parker, Merle H., [redacted]
Pilgrim, James J., [redacted]
Primack, Patrice D., [redacted]
Prior, Robert F., [redacted]
Pugh, Richard J., [redacted]
Putnam, James M., [redacted]
Raulin, Leslie A., [redacted]
Reid, David E., [redacted]
Richter, Norman W., Jr., [redacted]
Rockman, Roy A., [redacted]
Rupell, Orville L., III, [redacted]
Russell, Kendall F., [redacted]
Shufford, Earl L., [redacted]
Shurtleff, Joseph L., [redacted]
Startzell, James M., [redacted]
Stone, Stephen D., [redacted]
Stout, Herbert C., [redacted]
Sykes, Fred L., [redacted]
Thompson, Bruce H., [redacted]
Thornton, Linda J., [redacted]
Threadgill, James M., [redacted]
Tupa, James E., [redacted]

MEDICAL CORPS

To be lieutenant colonel

Allen, Theodore L., [redacted]
Bacon, Jonathan P., [redacted]
Becker, William K., Jr., [redacted]
Benton, Frank R., [redacted]
Blanchett, Leo M., III, [redacted]
Blough, John M., [redacted]
Boudreau, Ellen F., [redacted]
Brown, Jerry L., [redacted]
Brugman, John L., [redacted]
Bryan, George E., II, [redacted]
Clayton, James E., [redacted]
Colman, Lauren K., [redacted]
Cooper, Sharon P., [redacted]
Diallo, Thierno, [redacted]
Diaz, Rafael R., [redacted]
Eckberg, David J., [redacted]
Eggebroten, William E., [redacted]
Evenson, Eric T., [redacted]
Falbey, Robert J., [redacted]
Ferguson, Clifford L., [redacted]
Fernandez, Bueno C., [redacted]
Flynn, Frederick G., [redacted]
Garcia, Julio E., [redacted]
Gardner, John W., [redacted]
Garrett, Wayne L., [redacted]
Georgitis, William J., [redacted]
Gooding, Daniel E., [redacted]
Gruenther, Raymond C., [redacted]
Hanna, John H., [redacted]
Hardy, James T., [redacted]
Hays, Robert C., [redacted]
Henry, Anthony R., [redacted]
Hickey, Deborah L., [redacted]
Holmes, Stephen M., [redacted]
Hostetter, Robin E., [redacted]
Icochea, Rosendo S., [redacted]
Jarrett, David G., [redacted]
Jenkins, Terry R., [redacted]
Kray, Kenneth T., [redacted]
Krug, Ernest F., III, [redacted]
Lammie, John J., [redacted]
Lee, Seok Y., [redacted]
Leib, Richard C., Jr., [redacted]
Lelonek, Edward A., [redacted]
Levin, Marc W., [redacted]
McKinney, Gary E., [redacted]
Mehta, Rajesh R., [redacted]
Michael, Rodney A., [redacted]
Mills, Glenn M., [redacted]
Mong, Dennis P., [redacted]
Mosby, John A., [redacted]
Olazabal, Raul P., [redacted]
Panvelkar, Gopal V., [redacted]
Papazoglou, Savvas, [redacted]
Park, Young C., [redacted]
Payne, John B., [redacted]
Pelegrina, Miguel A., [redacted]
Perkins, Denver E., Jr., [redacted]
Pezzarossi, Angel G., [redacted]
Potter, Donald E., Jr., [redacted]
Rumisek, John D., [redacted]
Sanchez, Rene J., [redacted]
Schipul, Arthur H., Jr., [redacted]
Shaw, Timothy J., [redacted]
Sinha, Karabi, [redacted]
Snyder, Clyde R., [redacted]

Taylor, David N., [redacted]
Thornton, John W., III, [redacted]
Ting, Stanislaus, [redacted]
Urban, Edward S., [redacted]
Vierra, Lawrence A., [redacted]
Virmani, Renu, [redacted]
Webb, David L., [redacted]
Westmoreland, Lewis H., [redacted]
Wilcosky, Bernard R., Jr., [redacted]
Williams, Robert E., [redacted]
Wilson, Bruce E., [redacted]
Wolf, Charles R., III, [redacted]