HARKIN, Mr. HATCH, Mr. HATFIELD, Mr. HEFLIN, Mr. HELMS, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. INHOFE, Mr. JEFFORDS, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr. KEMPTHORNE, Mr. KENNEDY, Mr. KERREY, Mr. KERRY, Mr. KOHL, Mr. KYL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. LUGAR, Mr. MACK, Mr. MCCAIN, Mr. MCCONNELL, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Mr. MURKOWSKI, Mrs. MURRAY, Mr. NICKLES, Mr. NUNN, Mr. PACKWOOD, Mr. PELL, Mr. PRESSLER, Mr. PRYOR, Mr. REID, Mr. ROBB, Mr. ROTH, Mr. SANTORUM, Mr. SARBANES, Mr. SHELBY, Mr. SIMON, Mr. SIMPSON, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, Mr. WARNER, and Mr. WELLSTONE) submitted the following resolution; which was considered and agreed to:

S. RES. 157

Whereas, the Honorable Robert C. Byrd has served with distinction and commitment as a U.S. Senator from the State of West Virginia since January 3, 1959;

Whereas, he has dutifully and faithfully served the Senate six years as Senate Majority Leader (1977–80, 1987–88) and six years as the Senate Minority Leader (1981–1986);

Whereas, his dedicated service as a U.S. Senator has contributed to the effectiveness and betterment of this institution;

Whereas, he is one of only three U.S. Senators in American history who has been elected to seven 6-year terms in the Senate;

Whereas, he has held more Senate leadership positions than any other Senator in history: Now, therefore, be it

Resolved, That the U.S. Senate congratulates the Honorable Robert C. Byrd, the senior Senator from West Virginia, for becoming the first U.S. Senator in history to cast 14,000 votes.

Sec. 2. The Secretary of the Senate shall transmit a copy of this resolution to Senator Robert C. Byrd.

AMENDMENTS SUBMITTED

THE COMPREHENSIVE REGULATORY REFORM ACT OF 1995

CHAFEE AMENDMENTS NOS. 1861–1870

(Ordered to lie on the table.)

Mr. CHAFEE submitted 10 amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill (S. 343) to reform the regulatory process, and for other purposes; as follows:

AMENDMENT NO. 1861

On page 8, strike paragraph (4) (lines 11 through 13) and insert the following:

''(4) an explanation of the factual conclusions upon which the rule is based; and''.

AMENDMENT NO. 1862

On page 11, strike lines 2 through 10 and insert the following: ''give an interested person the right to petition for the issuance, amendment, or repeal of a rule.''.

AMENDMENT NO. 1863

On page 30, at the end of line 22, add the following: ''The court shall, to the extent practicable, consolidate all petitions with respect to a particular action into one proceeding for that action.''.

AMENDMENT NO. 1864

On page 34, strike subsection (i) with respect to termination of rules (lines 20 through 25) and insert the following:

''(i) COMPLETION OF REVIEW.—If an agency has not completed review of the rule by the deadline established under subsection (b), the agency shall immediately commence a rulemaking action pursuant to section 553 of this title to repeal the rule and shall complete such rulemaking within 2 years of the deadline established under subsection (b).''.

AMENDMENT NO. 1865

Beginning on page 35, strike subsections (a), (b) and (c) of section 624 (page 35, line 10, through page 38, line 5) as modified by the Dole Amendment No. 1496 and insert the following:

''(a) CONSTRUCTION WITH OTHER LAWS.—The requirements of this section shall supplement, and not supersede, any other decisional criteria otherwise provided by law. If, with respect to any rule to be promulgated by a Federal agency, the agency cannot comply as a matter of law both with a requirement of this section and any requirement of the statute authorizing the rule, such requirement of this section shall not apply to the rule.

''(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

''(1) the benefits from the rule justify the costs of the rule;

''(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

''(3) the rule adopts the alternative with greater net benefits than the other reasonable alternatives that achieve the objectives of the statute.

''(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may (and if the agency head has a nondiscretionary duty to issue a rule, shall) promulgate the rule, if the agency head finds that—

''(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

''(2) the rule adopts the alternative with the least net cost of the reasonable alternatives that achieve the objectives of the statute.''.

AMENDMENT NO. 1866

On page 39, lines 12 and 13, strike ''may be considered by the court solely for the purpose of'' and insert in lieu thereof the following: ''may not be considered by the court except for the purpose of''.

AMENDMENT NO. 1867

On page 39, strike subsection (e) with respect to interlocutory review (page 39, line 18, through page 40, line 7) as modified by the Nunn Amendment No. 1491.

AMENDMENT NO. 1868

Strike section 636 with respect to deadlines for rulemaking (page 40, line 8 through page 41, line 12) and insert the following:

''§ 626. Deadlines for Rulemaking

''(a) STATUTORY.—All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 6 months after the date of the applicable deadline.

''(b) COURT-ORDERED.—All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 2-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 6 months after the date of the applicable deadline.

''(c) OBLIGATION TO REGULATE.—In any case in which the failure to promulgate a rule by a deadline occurring during the 2-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 6 months after the date of the applicable deadline.''.

AMENDMENT NO. 1869

On page 68, line 3, insert after ''subchapter'' the following: ''and the requirements of section 624''.

AMENDMENT NO. 1870

Beginning on page 74, strike subparagraphs (E), (F), and (G) (page 74, line 22, through page 75, line 8) and insert the following:

''(E) unsupported by substantial evidence in a proceeding subject to section 556 and 557 or otherwise reviewed on the record of an agency hearing provided by statute; or

''(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.''.

THE HANFORD LAND MANAGEMENT ACT

GORTON (AND OTHERS) AMENDMENT NO. 1871

(Ordered referred to the Committee on Energy and Natural Resources.)

Mr. GORTON (for himself, Mrs. MURRAY, Mr. HATFIELD, and Mr. PACKWOOD) submitted an amendment intended to be proposed by them to the bill (S. 871) to provide for the management and disposition of the Hanford Reservation, to provide for environmental management activities at the reservation, and for other purposes; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Enhanced Environmental Cleanup and Management Demonstration Act of 1995''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress hereby finds that—

(1) Defense Nuclear Facilities were used to produce nuclear weapons materials to defend the United States in World War II and thereafter. These facilities played a critical role in securing the defense and overall welfare of the country.

(2) Defense Nuclear Facilities are now among the most contaminated sites in the country. Many are listed on the National Priorities List compiled pursuant to the

Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Contamination and inadequate waste management practices at Defense Nuclear Facilities pose threats to workers, surrounding communities, and the environment.

(3) Although the Department has begun to address the contamination and manage its waste, it has achieved too little progress for the significant amount of money spent.

(4) Problems with environmental restoration and waste management at Defense Nuclear Facilities are attributable to a number of factors. Among these is inefficient management by the Department at headquarters and at the Defense Nuclear Facilities, including outmoded contracting procedures, lack of competition, cumbersome bureaucratic processes, and the lack of a clear chain of command. All of these things have contributed to confusion and inefficiency at many Defense Nuclear Facilities.

(5) Internal orders issued by the Department of Energy often hinder compliance with environmental laws and add unnecessary cost to environmental restoration.

(6) Regulatory requirements applicable to Defense Nuclear Facilities can be complex and, at times, redundant. Frequently, the Department is accountable to several regulatory agencies.

(7) Cleanup decisions are often made without consideration of the future land uses.

(b) PURPOSES.—The purposes of this Act are to require significant regulatory reform measures, and to require that Defense Nuclear Facilities be managed more efficiently.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) The term ''adjoining State'' means any State other than a host State, the border of which is located within 50 miles of a Defense Nuclear Facility.

(2) The term ''Defense Nuclear Facility'' means a former or current Defense nuclear production facility now owned and managed by the Department of Energy.

(3) The term ''Department'' means the Department of Energy.

(4) The term ''environmental agreement'' means an agreement, including an interagency agreement, between the department of Energy and/or the Environmental Protection Agency that sets forth requirements and schedules for achieving compliance with Federal or State environmental laws.

(5) The term ''Hanford Reservation'' means the Defense Nuclear Facility located in southeastern Washington owned and managed by the Department of Energy.

(6) The term ''host State'' means a State with a Defense Nuclear Facility located within its boundaries that is subject to this Act.

(7) The term ''interagency agreement'' means an agreement entered into pursuant to the provisions of section 120(e) of the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(e)).

(8) The term ''Land Use Council'' means, with respect to a Defense Nuclear Facility, a congressionally chartered council with the authority to develop a future land use plan at such facility.

(9) The term ''Secretary'' means the Secretary of Energy.

(10) The term ''Site Manager'' means a presidentially appointed Department of Energy official delegated with full authority from the Secretary to oversee and direct all operations at a Defense Nuclear Facility.

(11) The terms ''TPA'' and ''Tri-Party Agreement'' mean the Hanford Federal Facility Agreement And Consent Order as amended among Washington State, the Department, and the Environmental Protection Agency.

SEC. 4. APPLICABILITY.

(a) HANFORD RESERVATION.—The Department's Hanford Reservation in southeastern Washington shall be subject to this Act.

(b) OTHER DEFENSE NUCLEAR FACILITIES.—A Governor of a State hosting a Defense Nuclear Facility the fiscal year 1995 environmental management budget of which was $500,000,000 or more may submit a request to the President that the facility be covered by the terms of this Act. Within 60 days after receipt of such a request, the President shall, unless the President determines that such application is not in the national interest, appoint a Site Manager for the facility pursuant to section 5. Thereafter, such Defense Nuclear Facility shall be subject to this Act.

SEC. 5. SITE MANAGER.

(a) POLICY.—The President shall appoint, within 60 days after enactment of this Act, a Site Manager for the Hanford Reservation. For other Defense Nuclear Facilities, the President shall appoint a site manager, within 60 days of receipt of a request from the Governor of a host State submitted pursuant to section 4(b). The Site Manager shall be appointed from a list of 3 candidates for such position to be provided by the Secretary.

(b) SCOPE.—In addition to other authorities provided for in this Act, the Site Manager for a Defense Nuclear Facility shall have full authority to oversee and direct all operations at the facility including the authority to—

(1) enter into and modify contractual agreements to enhance environmental cleanup and management at the Defense Nuclear Facility;

(2) manage congressionally appropriated environmental management funds allocated to the Defense Nuclear Facility, with the ability to transfer funds among accounts in order to facilitate the most efficient and timely cleanup of the Facility;

(3) negotiate amendments to the Tri-Party Agreement or other environmental agreements for the Department;

(4) manage Department personnel at the Facility; and

(5) carry out recommendations of the Department of Energy Office of Environmental Health and Safety where the Site Manager determines that those recommendations are consistent with the goals set forth in this Act, except that if the Site Manager elects not to carry out such recommendations, the Site Manager shall provide to the Governor of the host State and the Secretary a statement of the reasons therefor.

Decisions by the Site Manager to disregard recommendations made by the Department of Energy's Office of Environmental Health and Safety shall take effect unless the President determines within 21 days of implementation of the issuance of the decision that the particular decision is not in the national interest and where the State concurs with the President's opinion. In such cases, the President and the host State shall certify within such 21-day period that the recommendation does not add prohibitively to costs at the site and that the alternative meets important environmental or human health or safety concerns.

(c) ADDITIONAL DUTIES.—The Site Manager for any Defense Nuclear Facility subject to this Act shall prepare the following for each remedy selected under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 at such facility if the cost of the remedy exceeds $25,000,000:

(1) An analysis of the incremental costs and incremental risk reduction or other benefits associated with the selected remedy

(2) An assessment of the costs and risk reduction or other benefits, including protection of human health or the environment, or the fostering of economic development, associated with implementation of the selected remedy.

(3) A certification of each of the following:

(A) That the assessment under paragraph (2) is based on an objective and unbiased scientific and economic evaluation.

(B) That the remedy will substantially advance the purpose of protecting human health or the environment against the risk addressed by the remedy.

(C) That there is no alternative remedy that is allowed by the statute that would achieve an equivalent reduction in risk in a more cost-effective manner.

The assessments and certifications required under this paragraph may be set forth in several documents or a single document, as determined by the Site Manager. Completion of such assessments and certifications shall not delay selection or implementation of a remedy and shall be completed prior to or concurrent with the selection of a remedy.

(d) CLEANUP STANDARDS.—The Site Manager shall select remedial actions for a Defense Nuclear Facility in accordance with the provisions of section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(d)), except that the remedial actions need not attain any relevant and appropriate standard, requirement, criteria, or limitation.

(e) METRIC SYSTEM.—The Site Manager for any Defense Nuclear Facility subject to this Act may exempt the facility from the requirements of the Metric System Conversion Act of 1975 (15 U.S.C. 205a and following).

SEC. 6. DEPARTMENT ORDERS.

(a) EXISTING ORDERS.—The internal orders of the Department of Energy, whether or not they have been adopted as regulations, shall not apply at a Defense Nuclear Facility subject to this Act 60 days after the confirmation of the Site Manager except for those orders that the Site Manager deems essential for the protection of human health or the environment, or to the conduct of critical administrative functions.

(b) NEW ORDERS.—The Site Manager of a Defense Nuclear Facility subject to this Act may adopt a new order only after finding that the order is essential to the protection of human health or the environment, or to the conduct of critical administrative functions, and, to the extent possible, will not unduly interfere with efforts to bring the Defense Nuclear Facility into compliance with environmental laws, including the terms of any environmental agreement.

SEC. 7. STATE EXERCISE OF REGULATORY AUTHORITY.

(a) STATE EXERCISE OF AUTHORITIES UNDER CERCLA.—(1) Notwithstanding any other provision of law, a host State may exercise the authorities vested in the Administrator of the Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) at any Defense Nuclear Facility subject to this Act if the host State complies with the provisions of this section.

(2) A host State that elects to exercise the authorities vested in the Administrator of the Environmental Protection Agency under the Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 shall notify the Administrator in writing. Within 60 days of the Administrator's receipt of the State's notification, the Administrator shall provide for the orderly transfer of her authorities at the Defense Nuclear Facility to the host State. The host State and the Department shall amend any existing interagency agreement to reflect the transfer of authorities at the Defense Nuclear Facility.

(3) A host State that elects to exercise the authorities vested in the Administrator of the Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 shall retain its authority under section 310 of that Act (42 U.S.C. 9659) to enforce compliance with any requirement of an interagency agreement with the Department, including the authority to compel implementation of a remedy selected by the State and shall have the authority granted under section 109 of that Act (42 U.S.C. 9609(a)(1)).

(4)(A) At a Defense Nuclear Facility where the Administrator's authorities under section 120(e)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(e)(4)) have been transferred to the host State pursuant to this section, and the host State does not concur in a remedy proposed by the Site Manager, the parties shall enter into dispute resolution as provided in their interagency agreement.

(B) The final level of such disputes shall be to the Site Manager and the Governor of the host State, and if the Site Manager and the Governor do not reach agreement, the host State shall select the final remedy: *Provided, however*, That before reaching the final level of dispute, the remedy selection dispute shall be reviewed by a mediator selected by the host State and the Site Manager. The mediator shall be experienced in contaminated site remediation, and radionuclide exposure issues. The mediator may consult with representatives of the National Academy of Sciences, and other qualified experts as the mediator deems necessary. If the mediation does not result in the parties reaching agreement, the mediator shall recommend the remedy he deems appropriate. The mediation process shall be completed as quickly as possible, and in no event shall take more than 90 days to complete. If the Governor disagrees with the mediator's recommendation, the host State shall issue the final determination on the dispute, with a written rationale for such determination.

(C) In selecting a remedy, the Site Manager, the mediator, and the host State shall consider the remedy selection criteria in section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621), and in the National Contingency Plan, the provisions of this Act, and the assessment and the certification prepared by the Site Manager under section 5(c) of this Act.

(5) Remedial actions selected for Defense Nuclear Facilities or portions thereof shall be consistent with the Future Land Use plan developed by the Land Use Council. Remedial actions, including cleanup standards, shall be selected using reasonable maximum exposure scenarios that are consistent with the future land uses set forth in the Future Land Use plan. Appropriate institutional controls shall be implemented whenever the concentration of hazardous substances remaining after completion of the remedial action would pose a threat or potential threat to human health under a residential use exposure scenario.

(b) REDUNDANCIES.—The host State shall integrate, to the maximum extent possible, the requirements of applicable laws over which it has jurisdiction, to eliminate redundancies that do not contribute to the environmental management program.

(c) ADJOINING STATES.—(1) The Site Manager shall provide to any adjoining State those opportunities for review and comment regarding any response action at a Defense Nuclear Facility that are provided pursuant to section 121(f)(1)(D),(E),(G), and (H) by the Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(f)(1)(D),(E),(G), and (H)).

(2) A host State shall enter into negotiations with, and is authorized to enter into a Memorandum of Understanding with, an adjoining State addressing issues of mutual concern regarding a Defense Nuclear Facility. Nothing in this paragraph shall delay implementation of this section.

(3) If a host State brings an action to compel implementation of a remedial action pursuant to this section, an adjoining State may intervene as a matter of right in such action.

(d) PENALTIES.—All funds collected by the host State from the Federal Government as penalties or fines imposed for the violation of any environmental law at a Defense Nuclear Facility shall be used by the host State only for projects to protect the environment at or near the facility from threats resulting from the facility or to remedy contamination associated with the facility.

SEC. 8. COMPLIANCE WITH NATIONAL ENVIRONMENTAL POLICY ACT.

The Site Manager shall integrate, to the maximum extent possible, the requirements of the National Environmental Policy Act (42 U.S.C. 4321) with other applicable State and Federal regulatory requirements. Where an analysis of environmental impacts and public comment process has been completed under other applicable law, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 and following) or State environmental laws, for any decision, project, or action conducted at a Defense Nuclear Facility, and the Site Manager determines that the analysis and process are substantially equivalent to that required by the National Environmental Policy Act, the Site Manager need not conduct another environmental analysis or public comment process under the National Environmental Policy Act.

SEC. 9. LAND USE COUNCIL.

(a) COUNCIL ESTABLISHED.—There is hereby established a Land Use Council for each Defense Nuclear Facility for which a Site Manager has been appointed under this Act. Each Land Use Council shall develop a future land use plan for all lands within the Defense Nuclear Facility boundaries that are managed under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and are listed on the National Priorities List. The Council shall not specify future land use for lands outside National Priority List site boundaries. At the Hanford Reservation, the Council shall not specify future land use for the Fitzner-Eberhardt Arid Lands Ecology Reserve or the Wahluke Slope. The plan shall be given full consideration in developing and selecting remedial actions for the Defense Nuclear Facility.

(b) MEMBERSHIP.—Each Land Use Council shall make decisions by majority vote. The members of the Council for a Defense Nuclear Facility shall include the Site Manager for the Defense Nuclear Facility who shall be a voting member and the following additional members appointed by such Site Manager:

(1) One voting member nominated by the Governor of the host State.

(2) One voting member nominated by the elected officials of counties and cities contiguous to or within 15 miles of a Defense Nuclear Facility.

(3) One nonvoting member consisting of the chair of the site advisory board, established by the Department at the Defense Nuclear Facility or such members designee.

(4) One nonvoting member appointed by the national laboratory in closest proximity to the Defense Nuclear Facility.

(c) PLAN ADOPTION.—The Land Use Council shall adopt, within 24 months after confirmation of the Site Manager, a Future Land Use plan for the Defense Nuclear Facility. To support remedial action decisions, the Council shall use a phased approach in developing a future land use plan. Prior to completion of the full plan, but no later than 9 months after the Site Manger's confirmation, the Council shall adopt land use plans for portions of the Facility to support scheduled remedial action decisions as requested by the Site Manager.

(d) CONTENT OF THE PLAN.—The Future Land Use Plan for a Defense Nuclear Facility shall include—

(1) lands that should be retained by the Department for its use or for the maintenance of institutional controls needed to protect the public or environment from hazardous substances or radioactive materials;

(2) lands designated for industrial use;

(3) lands designated for commercial use;

(4) lands designated for residential use;

(5) lands designated for agricultural use;

(6) lands designated for recreational use; and

(7) lands designated for open space.

(e) PLAN CRITERIA.—In developing the Future Land Use Plan, the Land Use Council shall consider information it deems appropriate, including—

(1) the degree to which lands within the Defense Nuclear Facility could be reasonably remediated given technological considerations;

(2) the cost of remediation;

(3) the risks to human health and the environment;

(4) the land use history of the facility and surrounding lands, current land uses of the facility and surrounding lands, recent development patterns in the proximity of the facility, and population projection for the area;

(5) land use plans prepared for adjacent lands and for the facility, including for the Hanford reservation, the report of the Future Site Working Group;

(6) Federal or State land use designations, including Federal facilities and national parks, State groundwater or surface water recharge areas, recreational areas, wildlife refuges, ecological areas, and historic or cultural areas;

(7) the proximity of contamination to residences, sensitive populations or ecosystems, natural resources, or areas of unique historic or cultural significance;

(8) the potential for economic development; and

(9) recreation, open space, cultural, and other noneconomic values.

(f) CONSULTATION.—In preparing the land use plan, the Council shall consult with—

(1) adjoining States,

(2) affected Indian Tribes,

(3) affected local governments,

(4) appropriate State and Federal agencies, and

(5) the public.

All Council meetings shall be open to the public and shall be scheduled and conducted to promote public participation. Adjoining States, affected Indian Tribes, affected local governments, appropriate State and Federal agencies, and the public shall be given an opportunity to comment on the land use plans prior to their adoption. The Council shall advise commentors of the disposition of their comments.

SEC. 10. TECHNOLOGY DEMONSTRATIONS.

(a) IN GENERAL.—The Site Manager shall promote the demonstration, certification, verification, and implementation of new environmental technologies at Defense Nuclear Facilities.

(b) CRITERIA.—The Site Manager shall establish a program at the Defense Nuclear Facility for testing environmental, waste characterization and remediation technology at the site. In establishing such a program, the Site Manager is authorized to—

(1) establish a simplified, standardized and timely process for the testing and verification of new technologies;

(2) solicit and accept applications to test environmental technology suitable for waste management and environmental restoration activities at Defense Nuclear Facilities, including prevention, control, characterization, treatment, and remediation of contamination; and

(3) enter into cooperative agreements with other public and private entities to test environmental technologies at the Defense Nuclear Facility.

(c) SAFE HARBORS.—At the request of the Site Manager, the Secretary shall seek to provide regulatory or contractual ''safe harbors'' to limit liability of companies using technology approved for use at a Defense Nuclear Facility for use at other Department of Energy facilities.

(d) NUCLEAR MATERIAL.—When source, special nuclear, or by-product materials are involved, agreements with private entities under section 9, subsection (b), shall—

(1) provide indemnification pursuant to section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d));

(2) indemnify, protect, and hold harmless the contractor from and against all liability, including liability for legal costs, for any preexisting conditions at any part of the Defense Nuclear Facility managed under the agreement;

(3) indemnify, protect, and hold harmless the contractor from and against all liability to third parties (including liability for legal costs and for claims for personal injury, illness, property damage, and consequential damages) arising out of the contractor's performance under the contract, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct; and

(4) provide for indemnification of subcontractors as described in subparagraphs (1), (2), and (3).

SEC. 11. CONTRACT REFORM AND FEDERAL GOVERNMENT OVERSIGHT.

(a) CONTRACTING STRATEGIES.—The Site Manager, in entering into and managing all contracts at Defense Nuclear Facilities (including contracts for design, construction, operation and maintenance of treatment, storage and disposal facilities), may ensure effective, efficient and consistent implementation of the Federal Acquisition Regulation (hereinafter in this section referred to as ''FAR'') and the Federal Acquisition Streamlining Act (hereinafter in this section referred to as ''FASA'') requirements and shall—

(1) encourage market-based management and practices;

(2) maximize competition in new procurements;

(3) maintain an effective capability to recompete existing contracts;

(4) maximize efficient and effective use of multiyear contracting practices that enhance commercialization and privatization;

(5) maximize use of incentives and performance guarantees;

(6) assure coordination and integration of all contractor-developed designs, plans, and schedules;

(7) maximize application of best commercial standards and specifications in all contracts;

(8) consult to maximum extent possible, the host State regarding contracting strategies and oversight, including project plans, facility designs, and schedules and cost estimates; and

(9) maximize use of fixed-price contracts in lieu of cost-plus reimbursement contracts.

(b) MULTIYEAR CONTRACTING.—The Site Manager is authorized to enter into and implement multiyear contracts, in accordance with FAR and FASA requirements and the provisions of this Act for the design, construction, operation and maintenance of treatment, storage and disposal facilities by private entities. The Site Manager shall do so when the Site Manager determines that such a contract will maximize public resources and result in efficient and timely environmental improvements. In entering into such a contract, the Site Manager shall not jeopardize the funding of environmental agreement obligations. The Site Manager may use Department of Defense FAR multiyear funding and termination liability procedures in lieu of civilian agency FAR procedures if the Site Manager demonstrates this to be beneficial to the United States.

(c) ASSISTANCE IN IMPROVING CONTRACTING STRATEGIES AND GOVERNMENT OVERSIGHT.—The Site Manager shall obtain the expertise necessary to implement performance oriented incentive based contracting and procurement practices. To accomplish this, the Site Manager may obtain the involvement of qualified representatives from other Federal agencies in—

(1) developing improved contracting strategies, and participating in selection of contract sources; and

(2) the oversight and administration of contracts.

The Secretaries of involved agencies shall ensure selection of qualified and knowledgeable representatives to assist and advise the Site Manager. The Site Manager may also, to the extent allowed by the FAR separately consult with the private sector.

SEC. 12. ENVIRONMENTAL AGREEMENTS NOT AFFECTED.

Nothing in this Act shall impair the force or effect of any environmental agreement, except to authorize re-negotiation to incorporate the changes required to comply with provisions of this Act.

SEC. 13. REPORT TO CONGRESS.

Two years after the effective date of this Act, and every two years thereafter, the Site Manager for each Defense Nuclear Facility subject to this Act shall submit to Congress a report evaluating progress or cleanup made under the provisions of this Act. The report shall identify efficiencies achieved and moneys saved through implementation of this Act and shall identify additional measures that would increase the pace and lower the cost of environmental management activities at the facility. The Site Manager shall also report specific actions undertaken to implement business and contracting strategies that maximize the use of fixed price and incentive based contracting in lieu of cost reimbursement contract arrangements. The Site Manager shall also specify in his report the utility of commercial standards, specifications and practices, as well as improvements in the effectiveness and efficiency of Federal contract oversight and administration activities within his purview.

SEC. 14. NATIONAL HISTORIC PRESERVATION ACT.

Federal structures at a Defense Nuclear Facility smaller than 100,000 square feet shall be exempt from the National Historic Preservation Act (16 U.S.C. 470 and following) unless the Site Manager deems these structures appropriate for National Historic Preservation Act protection, and deems that such action will not delay cleanup activities or increase cleanup costs at the facility. National Historic Preservation Act review for structures larger than 100,000 square feet shall be limited to no more than 30 days.

SEC. 15. ENVIRONMENTAL HEALTH AND SAFETY.

The Department of Energy Office of Environmental Health and Safety shall enforce safety and health activities at Defense Nuclear Facilities.

SEC. 16. PRIVATIZATION OF WASTE CLEANUP AND MODERNIZATION ACTIVITIES OF DEFENSE NUCLEAR FACILITIES.

(a) CONTRACT AUTHORITY.—Notwithstanding any other law, the Site Manager may enter into 1 or more long-term contracts, with a private entity located within 75 miles of a Defense Nuclear Facility, for the procurement of products or services that are determined by the Site Manager to be necessary to support environmental management activities at such facilities, including the design, construction, and operation of treatment, storage, and disposal facilities.

(b) CONTRACT PROVISIONS.—A contract under subsection (a)—

(1) shall be for a term of not more than 30 years;

(2) may include options for 2 extensions of not more than 5 years each;

(3) when source, special nuclear, by-product, hazardous materials are involved, shall include an agreement to—

(A) provide indemnification pursuant to section 170d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d));

(B) indemnify, protect, and hold harmless the contractor from and against all liability (including liability to 3rd parties for legal costs and for claims for personal injury, illness, property damage, and consequential damages) relating to pre-existing conditions at any part of the Defense Nuclear Facility arising out of the contractor's performance under the contract unless such liability was caused by conduct of the contractor which was negligent or grossly negligent or which constituted intentional misconduct; and

(C) provide for indemnification of subcontractors as described in subparagraphs (A) and (B);

(4) shall permit the contractor to obtain a patent for and use for commercial purposes a technology developed by the contractor in the performance of the contract;

(5) shall provide for fixed or performance based compensation; and

(6) shall include such other terms and conditions as the Site Manager considers appropriate to protect the interests of the United States.

(c) PREFERENCE FOR LOCAL RESIDENTS.—In entering into contracts under subsection (a), the Site Manager shall give preference, consistent with Federal, State, and local law, to entities that plan to hire, to the maximum extent practicable, residents in the vicinity of the Defense Nuclear Facility who are employed or who have previously been employed by the Department of Energy or a private contractor at the facility.

(d) PAYMENT OF BALANCE OF UNAMORTIZED COSTS.—

(1) DEFINITION.—For purposes of this subsection, the term ''special facility'' means land, a depreciable building, structure, or utility, or depreciable machinery, equipment, or material that is not supplied to a contractor by the Department.

(2) CONTRACT TERM.—A contract under subsection (a) may provide that if the contract is terminated for the convenience of the Government, the Secretary shall pay the unamortized balance of the cost of any special facility acquired or constructed by the contractor for performance of the contract.

(3) SOURCE OF FUNDS.—The Secretary may make a payment under a contract term described in paragraph (2) and pay any other costs assumed by the Secretary as a result of

the termination out of any appropriations that are available to the Department of Energy for operating expenses, not including funds allocated to environmental management activities at the site, for the fiscal year in which the termination occurs or for any subsequent fiscal year.

(e) LIMITATION.—Funds appropriated pursuant to this or any other Act enacted after the date of enactment of this Act may be obligated for a contract under this section only—

(1) to the extent or in such amounts as are provided in advance in an appropriation Act, and

(2) if such contract contains each of the following provisions:

(A) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that contract.

(B) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for such contract for such fiscal year.

(C) A statement that such a commitment given under the authority of this section does not constitute an obligation of the United States.

(f) LEASE OF FEDERALLY OWNED LAND.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Site Manager may lease federally owned land at a Defense Nuclear Facility to a contractor in order to provide for or to facilitate the construction of a facility in connection with a contract under subsection (a).

(2) TERM.—The term of a lease under this paragraph may be either the expected useful life of the facility to be constructed, or the term of the contract.

(3) TERMS AND CONDITIONS.—A lease under paragraph (1) shall—

(A) require the contractor to pay rent in amounts that the Site Manager considers to be appropriate; and

(B) include such other terms and conditions as the Site Manager considers to be appropriate.

(g) COMMERCIAL STANDARDS.—The Site Manager shall, whenever practicable, apply commercial standards to contractors used in the performance of a contract under subsection (a).

SEC. 17. PREFERENCE AND ECONOMIC DIVERSIFICATION FOR COMMUNITIES AND LOCAL RESIDENTS.

(a) PREFERENCE.—In entering into a contract or subcontract with a private entity for products to be acquired or services to be performed at a Defense Nuclear Facility, the Site Manager and contractors under the Site Manager's supervision shall, to the maximum extent practicable, give preference to an entity that is otherwise qualified and within the competitive range (as determined under section 15.609 of title 48, Code of Federal Regulations, or a successor regulation, as in effect on the date of the determination) that plans will—

(1) provide products and services originating from communities within 75 miles of the facility;

(2) avert, to the maximum extent practicable, the dismissal of employees employed by the Department or a private contractor at the facility, and protect, to the maximum extent possible, the continuity of service and benefits of such employees;

(3) hire residents living in the vicinity of the facility, especially residents who have previously been employed by the Department or its contractors at the facility, to perform the contract; and

(4) invest in value-added activities in the vicinity of the facility to mitigate adverse economic development impacts resulting from closure or restructuring of the facility.

(b) APPLICABILITY.—Preference shall be given under subsection (b) only with respect to a contract for an environmental management activity that is entered into after the date of enactment of this Act.

SEC. 18. JURISDICTION.

The United States District Court for the district in which a Defense Nuclear Facility is located shall have exclusive jurisdiction over any claims arising under this Act with respect to such facility.

SEC. 19. STABLE FUNDING.

It is the sense of the Senate that stable levels of funding are essential to carry out this Act. The Site Manager and the President are encouraged to seek funding levels not lower than that allocated during fiscal year 1996

SEC. 20. EXPIRATION.

The provisions of this Act shall expire 10 years after its enactment, but Congress may review and revoke any provisions of this Act after 5 years if Congress determines that enactment of this Act has not accelerated cleanup or reduced costs at the Defense Nuclear Facility.

Mr. GORTON. Mr. President, the Department of Energy's defense nuclear complex—and Hanford in particular—has been maligned and criticized long enough. Today, in a truly bipartisan spirit, my colleagues and I are offering substantive, workable, and dramatic solutions to the Nation's Environmental and Waste Management Program. Congressman HASTINGS and I have worked with Senator MURRAY, the State of Washington, and with the support of our delegation, to forge a creative new course for the Department of Energy and its massive cleanup operations. The old paradigm of bureaucratic cleanup is being tossed. Accountability and responsibility are the new standards to be employed at Hanford and other DOE sites. As most of us know, Hanford is no small problem—in complexity or cost. This amendment's foundations lie in four areas: Leadership, future land use, regulatory reform, and privatization. Those ideas have been cooperatively crafted into the legislation being introduced today. Let me emphasize some of Hanford's shortcomings, and how we have set out to correct them.

LEADERSHIP

DOE is plagued with a gaping absence of firm, decisive leadership. Likewise, Hanford and its communities suffer from an overabundance of committees, review processes, open-ended debates and rule by consensus, rather than decision. This process simply has not worked. Paper-shuffling bureaucrats in Washington, DC try to manage, direct, and understand paper shuffling bureaucrats in Richland. Part of this is simply fear: Third party lawsuits, disproportional stakeholder influence, and uncertainty over DOE's future has driven management into circular uncertainty. If Richland can't do it, DC will—if DC is not to blame, then the field staff is at fault. Accountability seems to be lost and cleanup ultimately is left in a vapid holding pattern.

This amendment changes the nature of leadership at Hanford and puts complete authority for cleanup decisions—and all other site operations—under the site manager's purview. To emphasize the importance of the task, and the quality of the person in charge, the President shall appoint the site manager for Hanford, with the advice and consent of the Senate. With this step, DOE headquarters is tacitly removed from the decisionmaking process. Accountability and responsibly are focused locally. There will be no room for excuses if the job is not being done promptly and properly.

LAND USE

Any attempt to deal with Hanford's cleanup problems must tackle the enigmatic, yet important, issue of how clean is clean. To determine how clean certain portions of land will be, you must decide thresholds of cleanliness, and ultimately determine what those lands will be used for once the job is finished. This amendment invests proportional authority for these decisions into local voices, as these are the people most affected by cleanup and future land use issues. Today the Federal Government has complete authority for the use, and final disposition, of 562 square miles in Washington State. We wanted to give local imput some teeth—more than merely an advisory role. To do that, we established a process that enables State and local representatives to be on equal footing with the Federal Government in land use decisions. In that vein, this amendment establishes a land use council to make difficult, yet essential, decisions on how clean portions of the site will be. Our amendment does not address final disposition of land, and specifically exempts the Hanford ALE and REACH from the land council's purview. This is a bold attempt to tackle what is perhaps the most contentious, and difficult, issue to address at Hanford and our other defense nuclear facilities.

REGULATORY REFORM

Like the proverbial kitchen with too many cooks, DOE's defense nuclear facilities suffer from an overabundance of regulators—each with an agenda and each with the potential to make a job significantly more cumbersome than it needs to be. Contrary to rumors and unfounded, naive speculation, we are not gutting environmental or safety laws at Hanford. Indeed, we are streamlining the process. Under this amendment, Washington State becomes the sole regulator at Hanford—a job it is prepared, and capable, to do. We have worked closely with the Governor and attorney generals' offices to ensure the conditions under which Washington will accept these new responsibilities. Currently, three regulators govern site cleanup at Hanford: EPA, DOE, and Washington State. EPA, for example, has only 8 employees at Hanford. A surprising statistic, yet its influence is disproportional to the role it plays.

The added presence of another regulator, however, forces DOE to follow many of the same regulations and processes Washington State already requires. One regulator simplifies the oversight role, and arguably increases safety, saves money, and assures compliance.

PRIVATIZATION

As I have said many times in the past, engaging private sector know-how will make for better, cheaper, quicker cleanup. He have included the major portions of the privatization bill I sponsored with Congressman HASTINGS. Privatization is not the only solution for Hanford's problems, as the rest of this amendment demonstrates. it is, however, a significant portion of how we are going to expedite fast cleanup for lower cost. There have been numerous statements of general support for privatization—this amendment codifies those abstract thoughts into concrete legislation. Provided it thinks clearly before it acts, DOE will truly benefit from the enhanced privatization tools it receives under the provisions of this Act.

Mrs. MURRAY. Madam President, today I am pleased to submit a substitute amendment with my colleagues, Senators GORTON, HATFIELD, and PACKWOOD, that I believe will dramatically improve the way business is done at the Hanford Reservation in Washington State.

Hanford is the biggest, most toxic defense nuclear facility in the United States. Its recent annual budgets have cost American taxpayers almost $2 billion per year. Hanford is home to 80 percent of this Nation's spent plutonium. Its radioactive and other toxic materials are being stored in dangerous conditions and/or are already seeping into the ground water, toward the Columbia River. In other words, Hanford is a costly mess.

Earlier this year, Senators JOHNSTON and MURKOWSKI introduced their vision of how to improve cleanup at Hanford. In S. 871, which this amends, they suggest abandoning the environmental agreement between the Federal Government and the State of Washington and allowing the Department of Energy to establish its own cleanup agenda and environmental standards. We cannot support that approach because we believe the people of the region must have a say in the way cleanup is conducted. The people of the Tri-Cities proudly built Hanford; they deserve a role in restoring Hanford.

So, we take a different approach and offer a comprehensive bill addressing many issue impacting the cost and speed of cleanup at Hanford. The most fundamental and sweeping concept of the bill is its emphasis on increasing the role of the State in regulating cleanup. We create a single regulator primarily applying a single law: The State assumes jurisdiction of CERCLA, or Superfund. The amendment also reaffirms the Tri-Party Agreement, ensuring the people of the Tri-Cities and Washington State continue to have a voice in Hanford cleanup and restoration.

Anther important aspect of this amendment is its emphasis on the adjacent community and its stability. The people of the Tri-Cities have worked hard to help America win the cold war. They have sacrificed their environment and given of their working lives. This amendment encourages new companies to provide a continuity of benefits and preferential hiring to former site employees. It urges private contracts to be let to companies based in the area. It also encourages greater privatization and commercialization of new technologies in order to attract new businesses to the area—and then keep those companies there after cleanup is completed.

The amendment contains several other concepts I would like to emphasize. It streamline decisionmaking by giving a presidentially-appointed site manager significantly more authority to make decisions, transfer money, negotiate contracts, waive duplicative regulations, manage personnel, and select cleanup remedies. The amendment also establishes a land use council to help define cleanup objectives and standards for areas on the Superfund national priorities list. Finally, it urges a stable level of funding for cleanup to allow long-term planning.

I want to conclude by saying that this truly is a bipartisan amendment. We elected officials, Democrats and Republicans representing both State and Federal Government, put our energy together to find solutions to the problems facing Hanford. We worked long and hard and none of us got everything we wanted. Had I been the sole author of this amendment, it would have been a different bill. However, I strongly support most of this amendment and believe it will hasten cleanup and benefit the people we represent—and the people who elected us and this Nation's taxpayers. I look forward to continuing to work with my colleagues in the Senate and with Representatives HASTINGS and DICKS, Governor Lowry, and Attorney General Gregoire to push this amendment and make it the law.

THE CONGRESSIONAL GIFT REFORM ACT OF 1995

MCCAIN (AND OTHERS) AMENDMENT NO. 1872

Mr. MCCAIN (for himself, Mr. LEVIN, Mr. COHEN, Mr. WELLSTONE, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. KYL, Mr. MCCONNELL, Mr. GRAMS, Mr. BURNS, Mr. ABRAHAM, Mr. WARNER, and Mr. HARKIN) proposed an amendment to the bill (S. 1061) to provide for congressional gift reform; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. AMENDMENTS TO SENATE RULES.

Rule XXXV of the Standing Rules of the Senate is amended to read as follows:

''1. (a)(1) No Member, officer, or employee of the Senate shall knowingly accept a gift except in conformance with this rule.

''(2) A Member, officer, or employee may accept a gift (other than cash or cash equivalent) which the Member, officer, or employee reasonably and in good faith believes to have a value of less than $20, and a cumulative value from one source during a calendar year of less than $50. No formal recordkeeping is required by this paragraph, but a Member, officer, or employee shall make a good faith effort to comply with this paragraph.

''(b)(1) For the purpose of this rule, the term 'gift' means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

''(2)(A) A gift to the spouse or dependent of a Member, officer, or employee (or a gift to any other individual based on that individual's relationship with the Member, officer, or employee) shall be considered a gift to the Member, officer, or employee if it is given with the knowledge and acquiescence of the Member, officer, or employee and the Member, officer, or employee has reason to believe the gift was given because of the official position of the Member, officer, or employee.

''(B) If food or refreshment is provided at the same time and place to both a Member, officer, or employee and the spouse or dependent thereof, only the food or refreshment provided to the Member, officer, or employee shall be treated as a gift for purposes of this rule.

''(c) The restrictions in subparagraph (a) shall not apply to the following:

''(1) Anything for which the Member, officer, or employee pays the market value, or does not use and promptly returns to the donor.

''(2) A contribution, as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) that is lawfully made under that Act, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

''(3) A gift from a relative as described in section 107(2) of title I of the Ethics in Government Act of 1978 (Public Law 95–521).

''(4)(A) Anything provided by an individual on the basis of a personal friendship unless the Member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the Member, officer, or employee and not because of the personal friendship.

''(B) In determining whether a gift is provided on the basis of personal friendship, the Member, officer, or employee shall consider the circumstances under which the gift was offered such as:

''(i) The history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between such individuals.

''(ii) Whether to the actual knowledge of the Member, officer, or employee the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift.

''(iii) Whether to the actual knowledge of the Member, officer, or employee the individual who gave the gift also at the same time gave the same or similar gifts to other Members, officers, or employees.

''(5) A contribution or other payment to a legal expense fund established for the benefit of a Member, officer, or employee, that is