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Senate

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

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Sovereign God of our Nation, we ask You for the supernatural gift of wisdom. The Bible tells us wisdom is more precious than rubies, more important than riches and honors. Solomon called wisdom a "tree of life to those who lay hold of her." Your gift of wisdom enables true success, righteousness, justice, and equity. The Talmud reminds us that the aim of wisdom is repentance and good deeds. With wisdom, we turn our lives back to You in authentic repentance and commit ourselves to do and say what You guide.

Thank You for the clear invitation to receive wisdom given us by James, Jesus' brother: "If any of you lacks wisdom, let him ask of God who gives to all liberally and without reproach, and it will be given him."—James 1:5.

Having asked for wisdom, we praise You in advance for the x ray vision to see beneath the surface of issues and discern what is Your will for us and our beloved Nation. Bless the women and men of this Senate with a special measure of wisdom today. Through our Lord and Saviour. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT of Mississippi, is recognized.

Mr. LOTT. Thank you, Mr. President.

SCHEDULE

Mr. LOTT. Mr. President, this morning we are scheduled to have 30 minutes of debate prior to a vote on the motion to invoke cloture on the substitute amendment to S. 830, the FDA reform bill. This is the second cloture vote we have had to have on this very important bipartisan legislation to re-

form the Food and Drug Administration so that medicines and medical devices can get to the American people in a responsible and reasonable period of time so that they don't have worse health conditions, or even death in many instances. We are scheduled to have a rollcall vote at 10 a.m. this morning on cloture, if it is required. And we had hoped to go ahead and do that and then go back to the Interior appropriations bill and complete that, and then come back to FDA.

We have a Senator that has an illness this morning who would like very much to be able to make this vote. So we are contacting all of the managers of the legislation that is pending this morning, including the Interior appropriations committee, to see if we can maybe take some additional time this morning on Interior appropriations. If we can get that worked out, we may delay that 10 o'clock vote until either say 11:15 or 12:15 in an effort that I know all Members would want to make to accommodate this Senator who is anxious not to miss the vote.

So we will ask our colleagues on both sides to cooperate as we try to use this time for constructive debate and see then exactly what time we could expect these votes to occur.

Under the consent agreement that we entered into last week, Members have until 10 a.m. today to file second-degree amendments to the FDA reform bill. After the disposition of that cloture vote and/or the FDA reform bill, depending on what we can work out, then we will resume consideration of H.R. 2107, the Interior appropriations bill. Senators can expect additional votes throughout the day either on the FDA reform package or on the Interior appropriations bill.

I will ask the managers of the FDA bill to work with us on this and cooperate with us so that we can have some orderly consideration of both the FDA and the Interior appropriations bill. Hopefully we will go to Interior after we invoke cloture again on FDA reform, then allow Senators that are in-

terested to continue to work together, and then see if we can get an agreement to complete action on FDA reform in a reasonable time this week.

Does the Senator from Vermont want me to yield at this point?

Mr. JEFFORDS. Yes. If the Senator will yield, my understanding was when we went home this weekend that we would be ready to close the bill and have all amendments with time agreements. Now my understanding from the minority is that they are not in agreement on one particular provision of the substitute. Thus, I would believe we should go forward with the cloture vote. We are ready, though, with a number of amendments for which I believe we have agreements. We could address those in the interim while we try to work out the final amendment.

Mr. LOTT. I was under the impression last week that there was one remaining issue where there was disagreement, and there was a lot of discussion about that—the so-called cosmetics portion of the bill. I was not involved in the substance of that discussion. But I understand Senators did work out an agreement and that matter has been resolved. But I understand as well that there is another issue.

I just wonder how long this is going to go on.

Mr. JEFFORDS. I do, too. I understood that all matters were taken care of. But now I understand from the leader of the minority that is not the case—that they still have this problem with respect to one provision. But we are ready to go ahead with all of the other amendments and believe we should expeditiously go to the cloture vote whenever the situation presents itself, as the leader outlined.

Mr. LOTT. I thank the Senator from Vermont. I know he is committed to getting this legislation completed. There are very few bills that I have seen that have such broad bipartisan

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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support as this one does. It is costing millions of dollars to comply with the ridiculous delays from FDA, and the American people are being deprived of medicines and devices that should be approved much quicker. Some of them are just impossible to explain.

I hope that we can complete action this week.

I appreciate the efforts and the leadership of the Senator from Vermont.

Mr. HARKIN. If the leader will yield, I have a question.

So we are not having a cloture vote at 10 a.m. Was there a unanimous-consent agreement entered into that I missed before I came onto the floor?

Mr. LOTT. No. There was no unanimous-consent agreement.

Mr. HARKIN. Are we not voting at 10 o'clock?

Mr. LOTT. We have a Senator that is unavoidably detained that really is anxious to be present on that vote. We are trying to accommodate his schedule, as I know the Senator from Iowa would want us to do. We are working with the managers of both this bill and Interior appropriations and the interested Senators to see when we might have that vote. We would at some point try to enter into an agreement as to when it would be.

Mr. HARKIN. Are we going on the FDA bill?

Mr. LOTT. We will talk about it for a little while. But at 10 o'clock we will advise Members whether we are going to have a vote, or when we are deferring it to.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. HUTCHINSON). Under the previous order, leader time is reserved.

FOOD AND DRUG ADMINISTRATION MODERNIZATION AND ACCOUNTABILITY ACT OF 1997

The PRESIDING OFFICER. The Senate will now resume consideration of S. 830, with the time until 10 a.m. to be equally divided.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 830) to amend the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to improve the regulation of food, drugs, devices, and biological products, and for other purposes.

The Senate resumed consideration of the bill.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

MODIFIED COMMITTEE SUBSTITUTE AMENDMENT
NO. 1130

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

Mr. President, we are here to discuss yet again the need for cloture on S. 830, the FDA Modernization and Accounting Act. We have already had 14 hours

of floor debate on this measure and we have not yet discussed this amendment. This will be the second time that cloture has been voted on regarding this measure. The first vote was 89 to 5 to invoke cloture. The Senate has spoken. And, yet, we are here to repeat ourselves again and again.

My colleagues have already heard repeatedly from both sides of the aisle about the strong bipartisan commitment to crafting this measure, about the months of negotiations, deliberation and collaboration with the administration, the minority, and outside groups. Literally dozens of accommodations have been made and agreements reached. No one disputes that this is a good bill. No one should dispute that we have moved forward, or that we should move forward, with our debate on the remaining issues. Now we should move forward on that debate.

This measure accomplishes two very important objectives. First, it modernizes the way that the Food and Drug Administration accomplishes its mission. It streamlines the review and approval process for medical devices, pharmaceutical, and biological products. In so doing, it helps to ensure that the best and safest medical technology available in the world would be available to the American people. In so doing, it helps ensure that the best medical technology jobs will continue to be available for the American people.

Second, this measure authorizes the Prescription Drug User Fee Act—or PDUFA, as it is known. Everyone agrees that PDUFA has been immensely successful in helping FDA do its job better and more efficiently.

Mr. President, congressional authorization for PDUFA expires in 15 days. At the end of September this successful and innovative program will be at serious risk. It is the height of irony that a program like PDUFA that was designed to reduce delay at the FDA is now at risk of becoming bogged-down in a procedural delay on the Senate floor.

I would argue that the time for delay is over, and that the time for the Senate to do its work it was sent here to do is now.

Almost 50 amendments have been filed on this measure. And, frankly, virtually all of them are nongermane, or they have been worked out, or they can be worked out. A single provision remains that may require some extended debate, and we should move to its consideration and an up-or-down vote on it as soon as possible.

Last week we spent almost 15 hours talking about uniformity for cosmetics. We have an agreement on that provision, thanks to the efforts of Senator GREGG.

I say that we should move on. I say we complete this debate, and finish this measure, and let's vote.

Mr. President, I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, with all due respect to my friend and colleague, the majority leader, the fact of the matter is by the votes that we had last week requiring that we have some opportunity to examine a very important provision—and that is the preemption of various States' ability to protect their public—we have seen a rather dramatic change in the language of the provision that will continue to permit the States to protect their public. That was very important for the protection of the American public. I know that there are some people around here who want to see the trains run on time. But some of us—not only those of us here but the National Governors' Conference, the public health organizations, the women's network organizations that deal with women's health issues—a wide range of consumers believe, quite deeply, that we are absolutely within our rights to make sure that this provision was offered and changed, and we did so. And, by doing so, the public health interest is preserved.

Now here we are on the floor of the U.S. Senate the morning after having seen the headlines from two national journals—yesterday in the Wall Street Journal, talking about a particular prescription drug called fen/phen, that had been moved through, rushed through the FDA. It has been linked to everything from brain damage in animals to primary pulmonary hypertension; a rare but fatal lung disease; millions of Americans tried the drugs to slim down; some 60 million people worldwide were estimated to have taken the drug; the straw that broke the camel's back was a heart valve problem which now has been widely recognized.

Here is an item in the Washington Post. Two diet drugs are pulled off the market. Why? Because the products were used for purposes for which the drug was not approved.

We are talking about an identical provision in this body with regard to medical devices—the use of the medical device for purposes for which it has not been approved.

We have seen the whole world being awakened to this particular health problem. Some of us are trying to making sure that we don't have headlines like this in 3 months, 4 months, or 6 months with regard to the medical device issue. That is what we are talking about.

Mr. President, I would just point out that there are about six little words that, if the majority would be willing to accept, would move us right ahead, and get us very short time agreements on the other elements.

Let me just point out. Mr. President, there are the two provisions with regard to medical devices—one they call class II—devices which represent about 5 percent of the devices. Those are the new devices.

In the language of this bill, it says, whether or not there is reasonable assurance of safety effectiveness, if the proposed labeling is neither false nor misleading.

"Neither false nor misleading," that is in regard to class III devices. But, if you look at class I and II devices with regard to the representations that are made involving the FDA, there is no such language.

If the majority will take the language that we propose for class III and apply that to class I and II, we will call this cloture vote off. What person in the United States of America wants to permit medical devices to be approved if we cannot have agreement by the manufacturers that their statements to the FDA reflect the true uses for the devices?

My goodness, are we in that big of a hurry? That is why this issue is important. Now, the majority leader says we have just one more item. We are glad to deal with this issue, and we have offered compromise language to deal with it. It is of vital importance and we will have a chance later to discuss the health hazards associated with it. The medical device industry, which has been enormously cooperative in working out other provisions on this, had refused to go along with our proposed language. Medical device labeling has important health implications.

You can rush this through and say the rest of the bill is fine. It is fine. Senator JEFFORDS and his Republican colleagues deserve great credit. My Democratic colleagues deserve great credit. But do we have to be reminded again that the FDA has the responsibility for the protection of the public health. If we do, we don't need to look any farther than reading this morning's newspapers. All we are saying is let's not do with medical devices what was done with regard to these diet medicines. I think that is an important health matter. So do the overwhelming majority of patient coalitions and public health coalitions.

If the industry wants to debate that, we are going to take the time to debate it. If there are Members on the floor of the U.S. Senate who want to take the position that we don't need this change in the bill language on medical device regulation, let them make that case on the floor of the U.S. Senate. Because that is the case they are going to have to make, because the amendment has been filed. If the majority indicates they will accept that, that's all fine and well. Our amendment will ensure that FDA is able to comprehensively examine the safety of medical devices. We will move through this legislation very rapidly indeed. But this is one Senator who is not prepared to roll over on that issue. We will have the opportunity during the course of this morning or this afternoon or tonight or tomorrow, or however long it takes, to go through the various instances where medical device labeling could pose an important and significant public health

threat, a threat to the American people.

There may be those who do not think this is an important issue. I believe the overwhelming majority of the American public will think so. As they are reading their papers this morning and listening to those who say, let's rush this bill on through, I would think some Americans would say, let's take another look at what we have in this legislation, particularly with regard to the medical device provisions.

Mr. President, with all respect to my friend and colleague, we have talked about this. Senator DURBIN has talked about sections 404 and 406. This particular issue is the key issue.

If we can get the language in the bill ensuring that we will not permit the medical device industry to restrict the FDA's ability to make a full study of medical device safety, I think we would move ahead with the legislation.

I withhold the remainder of my time. The PRESIDING OFFICER. Who yields time?

Mr. JEFFORDS. Mr. President, I must answer that charge.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. To inflame this issue into being one of false information and filing of misleading information is totally incorrect. The issue here is not that. The issue here, on each of these medical devices, is whether or not they must file every conceivable, possible use that FDA thinks might be made of it. FDA should focus rather on the use that it is intended for or any other use that the manufacturers know it will be intended for. There is nothing involving false or misleading information. That, of course, is under the control of the FDA and that would be a serious matter with the FDA. It could, and should deny approval of a device where a manufacturer deliberately files false and misleading information.

Let us set the record straight. Manufacturers cannot file false and misleading language. To raise that as the issue is to really differ from what the important issue is, and that is how long do Americans have to wait to get access to important, new medical devices. In Europe it takes much less time and it is much more expeditiously handled. We can have the same kind of treatment here while ensuring that they are safe and effective for their intended use. For any device that is intended for a particular use and it is known by doctors to be effective for another use, that's fine. That is the practice of medicine. Doctors sometimes find other, valuable uses for medical devices. That is how medical practice and innovation proceeds—and we don't want the Federal Government telling doctors how to practice medicine.

But for the manufacturer to search out every conceivable use and then to study every conceivable possible use ends up in delays of these devices coming onto the market. That means that

Americans, doctors and patients, are unable to utilize medical innovations that are more readily available in Europe. So I wish we would get away from making this into a "false and misleading language" filing. There is no such issue here as that. The question is how much right does the FDA have to require a manufacturer to understand and get involved with the practice of medicine where some other use might be made. That is the issue.

I think there are ways we can solve this, but not just by raising it to the issue of emotionalism. That is not the solution here. There is no problem having false or misleading information filed on a medical device approval application, because that is against the law. I yield the floor.

Mr. KENNEDY. Mr. President, how much time do we have?

The PRESIDING OFFICER. The Senator from Massachusetts has 2 minutes 32 seconds remaining.

Mr. KENNEDY. I yield the remaining time to the Senator from Iowa. I think we will have more time later.

Mr. HARKIN. I thank the Senator for yielding. Let me agree with Senator KENNEDY on this issue. The stories in the paper this morning ought to alarm us all about the need to proceed very cautiously and very carefully about what we are doing. I spent a lot of time looking at devices. I had amendments on the bill itself, when it was in committee, on devices. The FDA has the authority now, if a device is used for a certain purpose, to make sure that there are not misleading or false advertising proposals. But when they want to use the device for a purpose for which it is not intended, there is nothing in the bill to prohibit that. That is what we are talking about, and I think we have to proceed very cautiously and carefully here.

Mr. President, I did want to talk about another issue. I thank Senator JEFFORDS and Senator KENNEDY for their hard work and leadership on this bill. I think we all agree we need some reform of FDA. I have been in favor of that. We need to streamline the processes. I agree with Senator JEFFORDS in that regard. There are many positive provisions in this bill.

AMENDMENT NO. 1137 TO MODIFIED COMMITTEE SUBSTITUTE AMENDMENT NO. 1130
(Purpose: To establish within the National Institutes of Health an agency to be known as the National Center for Complementary and Alternative Medicine)

Mr. HARKIN. Mr. President, I am disappointed, however, that an essential element was not included. A major goal of FDA reform was to include access to medical innovations without compromising public safety. I have an amendment, amendment No. 1137, which speaks to that. I would like to call up that amendment at this time and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: The Senator from Iowa [Mr. HARKIN], for himself, Mr. HATCH, Mr. DASCHLE, and Ms.

MIKULSKI, proposes an amendment numbered 1137 to modified committee substitute amendment No. 1130.

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

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

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. HARKIN. Mr. President, further, I ask unanimous consent that this amendment be in order, notwithstanding any vote on cloture.

The PRESIDING OFFICER. Is there objection to the request?

Mr. JEFFORDS. I reserve the right to object. What is the regular order here with respect to amendments?

The PRESIDING OFFICER. Amendments are in order to both the substitute and the bill.

Mr. JEFFORDS. At this time, prior to cloture?

The PRESIDING OFFICER. Amendments may be called up prior to the cloture vote.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. Is there objection to the request?

Mr. JEFFORDS. I object at this time.

The PRESIDING OFFICER. Objection is heard. The Senator from Iowa has the floor.

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

The PRESIDING OFFICER. The Senator has 15 seconds.

Mr. HARKIN. Mr. President, this is cosponsored by a number of Senators on both sides of the aisle, Senators HATCH, DASCHLE, MIKULSKI, myself, and a number of Senators on both sides of the aisle. I don't believe it is going to be objected to.

However, we are facing the problem of cloture. That's why I asked for unanimous consent. I am sorry the manager of the bill would not allow this amendment to be in order.

The PRESIDING OFFICER. The Senator from Vermont controls the remaining time.

Mr. JEFFORDS. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Vermont has 5 minutes 26 seconds remaining.

Mr. JEFFORDS. I yield the remaining time to Senator COATS.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I don't need all the 5 minutes. I would be happy to yield back to the Senator from Vermont to wrap up before the cloture vote. It is unfortunate that we are in this position again. We had a substantially bipartisan, overwhelming vote to invoke cloture on the motion to proceed. I believe the vote was 89 to 5. I think that indicates a very broad level of support for the need to move forward with this legislation that was 2½ years in the making. There is obviously a widespread, general consensus

that FDA reform is necessary to provide better protection for the health and safety of Americans and to provide access to drugs and devices that Americans have been denied due to delays at FDA. We are trying to expedite that process. We are trying to bring in expertise from outside to help FDA, whether it is through the tax that is levied on prescription drug companies that goes to hire additional workers and provide additional resources for FDA, or whether it is for outside agencies, certified by FDA, to help them in the process of reviewing this tremendous backlog of applications for health-improving, and in many cases lifesaving, devices and drugs.

What we are trying to do here is give FDA the kind of support and resources it needs, along with a pretty good shove in the right direction, to bring our agency up to world class standards and up to the task of effectively dealing with this exciting explosion of technology through which the American people can reap great benefits.

I regret once again we have to go to a cloture vote. We just ran into a problem here, procedurally, with the amendment, the Senator from Iowa fearing that cloture would cut off his ability to offer a relevant amendment under cloture. I would say to the Senator from Iowa, none of us really wants to go to cloture. But in order to move this bill forward, it appears that we have to invoke cloture once again.

I know under the rules of cloture, it limits the amendments as to relevancy. No one in favor of FDA reform wants to keep going through this process of invoking cloture, but unfortunately we have to do it in order to move the bill forward.

Again, 2½ years in the making, there were extensive hearings in the Labor Committee, efforts on a bipartisan basis to resolve problems and disputes, votes in committee, negotiations post-committee action, 30-some concessions or modifications in response to concerns that were raised postcommittee on this. So, none of us here supporting and promoting the movement forward of this legislation is trying to delay anything. We are just trying to expedite it. Nor are we trying to say, "Our way or no way." There has been extensive negotiation, extensive accommodation, extensive work to move this bill forward in any way that we possibly can.

So I urge my colleagues, as we did a week or so ago, I urge my colleagues to vote with us on cloture. We have no other choice, other than lengthy debate over items and issues that have been discussed over and over and over and voted on and negotiated. Clearly, we know where the Members of the U.S. Senate stand, both Republicans and Democrats, liberals and conservatives. There is about as widespread support for this reform bill as any major legislation that has come before the Senate as long as I have been in here, for 9 years. It is time to move for-

ward. Regretfully, we have to do it once again with a cloture motion.

I urge my colleagues to help us move this very needed and very important legislation the next step forward.

I yield back any remaining time I have to the Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, as to the Senator from Iowa, I apologize that we are in an awkward situation this morning. I have assured him that we will have a hearing in October on NIH with respect to alternative forms of medicine. I look forward to that because I agree with him on that issue.

UNANIMOUS-CONSENT AGREEMENT

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the previously scheduled cloture vote be postponed to occur at 12:15 p.m. today, and further, that second-degree amendments may be filed up to 10 a.m. this morning. I further ask consent that following debate this morning regarding the FDA reform bill, the Senate resume consideration of the Interior appropriations bill until the cloture vote.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, reserving the right to object, I do not object to moving the vote to 12:15 today. I understand the leader wants to get to the Interior appropriations bill. I do not want to unduly delay that provision. However, it says under the proposal, "I ask consent that following the debate this morning regarding the FDA reform bill, that the Senate resume * * *." We would like to have at least a limited period of time. I know the Senator from Iowa wanted to speak. I was wondering if we can at least get a half hour debate on the FDA reform bill before finishing. It says here, "I further ask consent that following the debate this morning," I was wondering whether "following the debate" could go until 10:30?

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, under the circumstances, I reserve the right to object since an additional proposal has been made here. Can I inquire of the Senator from Massachusetts exactly what he is proposing to add here?

Mr. KENNEDY. The Senator from Iowa wanted to be heard on a matter. I wanted to speak just briefly to clarify the record. I was wondering if we can divide that time between now and 10:30—we took up some of the time between 9:30 and 10 for debate and discussion—and then go to Interior.

Mr. LOTT. Mr. President, further reserving the right to object, we are moving at this time to accommodate one of our Senators who has a health problem right now. It does disrupt the whole schedule. We have work we need to do on Interior appropriations. If we delay it further and then come back to it and have to go off it at 12:15, it just confuses and complicates the whole process.

We have asked the managers of the Interior appropriations bill—now we have interrupted them—to come to the floor. They are scheduled to be on the floor. I know the Senator from Iowa is working to try and get an amendment included. I feel confident that will be done at some point. At this time, I have to object to the expansion of the unanimous consent request that was offered by the Senator from Massachusetts and support the request that was made by the Senator from Vermont.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, under those circumstances and to accommodate the Member, I will not press this, although I do think we will have an opportunity to address these issues later in the morning.

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

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The PRESIDING OFFICER. The clerk will report the Interior appropriations bill.

The legislative clerk read as follows:

A bill (H.R. 2107) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1998.

The Senate resumed consideration of the bill.

Pending:

Ashcroft amendment No. 1188 (to committee amendment beginning on page 96, line 12 through page 97, line 8) to eliminate funding for programs and activities carried out by the National Endowment for the Arts.

Mr. LOTT. Mr. President, just so we will be clear what we have agreed to, Senator GORTON and the other manager of the bill will be here to, again, further debate amendments on the Interior appropriations bill. They have been good partners on this appropriations bill and have worked out some of the areas where there have been disagreements, but there will be amendments and, I presume, votes throughout the day on a number of issues, including the National Endowment for the Arts issue, perhaps on some mining issues. I understand perhaps the Senator from Arkansas has an amendment.

But we need to make progress on the Interior appropriations bill because we hope to finish it tonight or tomorrow and then go to FDA at some point. I hope we can work out a reasonable agreement where we can complete the debate on the Food and Drug Administration reform bill, and we hope to then pretty quickly, either late this week or early next week, go to the District of Columbia appropriations bill. That would be the 13th and last appropriations bill that we would have to deal with this session, and then we could focus the rest of next week and the next week on adopting conference reports to the appropriations bills. We will need to move them very quickly.

It will be my intent to try and hold time and focus on getting those conference reports agreed to.

I appreciate the cooperation of all Senators as we try to accommodate one of our most beloved Senators who has a problem this morning, and we will begin with the Interior appropriations momentarily. 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. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SMITH of Oregon). Without objection, it is so ordered.

Mr. GORTON. Mr. President, we are now on the Interior appropriations bill once again. I believe that the first vote on that bill will be on the Ashcroft-Helms amendment to strike the appropriation for the National Endowment for the Arts. There has been discussion of several other amendments relating to that endowment. I believe it appropriate to continue that debate until the cloture vote at noon. I know that the majority leader hopes, and I hope, that shortly after we get back on the Interior appropriations bill, after our FDA vote, that we will begin to vote on amendments relating to the National Endowment for the Arts. In any event, that is the subject at the present time. I invite all Members who are interested in any of the amendments on the National Endowment for the Arts to come to the floor and speak on that subject between now and noon.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, is time controlled?

The PRESIDING OFFICER. There is no time.

Mr. GREGG. Mr. President, I wish to rise in support of the bill which has been brought forth by the Senator from Washington. I think he has done an extraordinary job in developing this appropriations language in this bill relative to the Interior and various departments which the Interior impacts. I especially want to thank him for his sensitivity relative to the Northeast.

There is a different view in this country between the Northeast and the West on a number of issues that involve land conservation and the question especially of protecting lands, public lands. In the Northeast, especially in northern New England, we are still struggling with the fact that we would like to protect some additional lands. We have a spectacular place called the White Mountain National Forest in New Hampshire, and it is the most visited national forest in the country. In fact, it receives more visitors per year than Yellowstone, which is a national park. It is under tremendous pressures from popular use because it is so close to the megalopolis of New York, Boston, and Washington.

It is an extraordinary place, but to maintain it and to maintain its character, it requires that we continue to address some of the inholding issues around the national forest, and the Senator from the West has been sensitive to the Senators from the East on this point. I thank very much the Senator from Washington for his sensitivity in allowing us to go forward in this bill and complete the purchase of a very critical piece of land called Lake Tarleton in New Hampshire.

In addition, he has assisted us in a number of other areas in this bill, and I thank him for it.

I also want to talk about a position that has been brought forward in this bill relative to the National Endowment for the Arts, because I think the Senator from Washington has reached the appropriate balance in the language which he has put in this bill relative to the National Endowment for the Arts.

The National Endowment for the Arts, as we all know, has been a lightning rod of controversy, especially on the House side, less so on our side of the aisle, because of some of the things that the Endowment over the years has funded, which have been mistakes, to say the least.

But the fact is that there is a role, in my opinion, it is a limited role, but there is a role for the Federal Government and for State governments in the area of assisting the arts in this country.

Arts are an expression of the culture of a country or a nation, an expression of the attitude, personality, and the strength of a nation. The ability to have a vibrant arts community in a nation is critical, I believe, to the good health and the good education of a nation.

The Federal role, in participating in this, should be one of an incubator. The Federal role should be one as the starter of the initiatives. And the dollars which are put in this bill for the purposes of assisting the NEA and the Humanities Council are just that—they are startup dollars.

Essentially, these dollars multiply two times, three times, sometimes five times their basic number.

Mr. HUTCHINSON. Would the Senator yield for a question?

Mr. GREGG. I am happy to yield to the Senator from Arkansas for a question.

Mr. HUTCHINSON. The Senator explained some, I think, valid points concerning the role of our Government support for the arts. My question concerns the very, very high administrative costs that the National Endowment has experienced, approaching 20 cents on the dollar in administration, and the fact that the distribution of the funds from the National Endowment have gone primarily to very few cities in the country. In fact, I think one-third of all of the direct grants go to six cities in the United States. And the fact is that the Whitney Museum in

one exhibit received \$400,000, received as much as the entire State of Arkansas last year.

So my question is, if we are to continue a Government role in funding the arts, would it not be better to eliminate the National Endowment, block grant those funds directly to the States, cutting out the 20 percent in administrative costs and the inequities in the funding formulas for the funding decisions of the National Endowment—and of course I have offered an amendment that would do exactly that—and provide 45 of the 50 States with more money for the arts than they currently receive under the status quo approach that we find in this bill?

Mr. GREGG. That is a good question. I think it is one of the questions which we need to answer as we go forward with this bill. And there are a number of amendments—I think the Senator has one; and I believe there are other Senators who are offering them—as to the proper allocation of the dollars between the States and between the National Arts Council which administers the Federal moneys.

But if I can come back to that point, I want to talk generally about the need for Government support of the arts; and then in the allocation area I would like to come back to that. Because I think, first, we have to reach a consensus that there is a need for any dollars in the arts community to come from the Federal Government or from the State governments, and that consensus is a long way from being reached. Certainly on the House side they appear to be very resistant to that.

My view is, as I was saying earlier, that there is a need for the Federal Government to play a role as basically the initiator of arts activities, as the incubator that allows the multiplier to occur that creates funding for the arts.

As Governor of New Hampshire I had the same issue before me as to whether or not the State government should be involved in funding the arts. And at a time when we were having the most severe recession probably ever in the history of the State of New Hampshire, regrettably, and we were having to curtail our funding in a variety of areas and cut them back dramatically, I maintained the arts funding, in fact increased it a little bit in the State because I felt strongly that, first, it gave definition and it gave a way of viewing our culture that was critical and, second, it also had a very positive impact, especially in New Hampshire, on our tourist industry.

The arts—performing arts especially; but all forms of arts—go hand in hand, at least in New Hampshire, with the ability of the tourist industry, which happens to be our largest employer, to be a successful and vibrant industry.

So there is an economic benefit of significant proportions to having a strong arts community. The investment which the State or the Federal Government makes in the arts community pays back not only in the way of getting more people involved in the

arts, getting more schoolchildren involved in the arts, getting more parents involved with their kids in the arts, but also in the manner of producing economic activity which is fairly significant.

The Senator from Arkansas has raised a very legitimate issue. I know his amendment raised this issue, an issue I raised in committee as a member of the authorizing committee. I sit on both the authorizing committee and have the good fortune to work with the Senator from Washington on the Appropriations Committee. But he has raised the issue, what is the proper allocation here? I think that is proper for debate. How much of the money should be retained with the central arts planning here in Washington and how much should go out to the States?

I have always felt a larger percentage should go out to the States because I think that you get more benefit for the dollars spent at the State level. Therefore, a change in the formula would be something that I might well be amenable to. I have actually proposed such changes in committee. But I do think there is also a role, and I do not happen to believe we should eliminate a central arts council that manages a percentage of the dollars out of Washington.

Why is that? Basically because there are a number of national efforts which do transcend State lines which need to get their funding out of a national fund as versus out of a State fund.

For example, I believe the No. 1 item chosen by the NEA this year to fund—they have a competition obviously and, unfortunately, sometimes they choose some really poor ideas—but the No. 1 item that was agreed to on their list was to bring back out of mothballs the Egyptian exhibit which is now owned by the Brooklyn Museum. This is one of the most expansive exhibits of Egyptian art and artifacts in the world. It is competitive with the English collection and not completely competitive but certainly representative of even the collections in Cairo.

These items had been sort of put in storage and collecting dust. Now the Brooklyn Museum has decided to bring them back. And I believe they are taking this around the country. It will be exceptionally educational for a large number of schoolchildren who participate in seeing this exhibit. It will be a national effort. That is the type of initiative that really should be supported from the national level as versus having to be absorbed by, for example, the State of New York which will obviously benefit from this exhibit but actually the whole country will benefit from it because it is going to travel around the country. There are other items, yes, that obviously are of a national nature and, yes, most of those institutions which are of a national nature, whether it be the New York Symphony or some sort of major proposal in Chicago or Los Angeles are centered in your major urban areas. That is just a fact of life. They are centered there for a variety of reasons and, therefore,

those major urban areas do get a disproportionate amount of the national share of the NEA funding.

But that is inevitably going to happen that way as long as you have a national program that is trying to move these various cultural activities across the country. You are going to have to have a place where they are located where they start. The Boston Pops is in Boston, but it certainly has an impact across the country. Therefore, the main art centers of this Nation—and they do happen to be in your major urban areas—are always going to receive a disproportionate amount of the funds. So that does not bother me so much.

What I do think is legitimate is the question of the proper allocation between the funds going to the National Endowment for the Arts versus going to the States. I do think we can take another look at that formula. I know the Senator from Arkansas is going to make a very aggressive and effective point for restructuring that formula, for restructuring the entire institution.

I look forward to hearing his position on this. But I did want to make these initial comments first in support of the overall bill which I think the Senator from Washington has done an extraordinarily good job on and, second, in support of the basic thrust of his proposals relative to the endowments which are going to be the most controversial items I guess we will be hearing about on the floor. I yield back my time.

Mr. HUTCHINSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. Thank you, Mr. President.

Just responding to some of the comments of my colleague concerning the National Endowment for the Arts and the need to preserve and maintain that national entity, I think that if the record is examined, as it has been examined by the General Accounting Office and the inspector general's office, that the record of the National Endowment is not only deplorable but fails to justify its continued funding and continued existence.

The issue of whether or not the Government plays a role in funding for the arts aside, the best means of providing the limited funding, the \$100 million approximately that has been appropriated for arts this year directly in the NEA, I think is clear that that money would best be used by eliminating the existence of the National Endowment and allowing the funds to flow directly to the Governors, to the various States for distribution to those programs and those projects and those artists within the States that are most deserving.

In fact, the notion that we are better off with a national endowment that

funds six States disproportionately, that funds certain congressional districts and certain States disproportionately, cannot be validated and cannot continue to be justified.

We have a General Accounting Office report indicating that the administrative costs of the NEA, at almost 20 cents on the dollar, is higher than most other Federal agencies, much, much higher than the National Endowment for the Humanities.

The mission statement for the National Endowment is simply that they are to broaden access to the arts. In effect, they are mandated to provide arts to underserved areas in this country. Yet, if you look at where the National Endowment today is sending those funds, it in no way corresponds to the mission that they have been given by this Congress to serve those areas which are, if you will, culturally deprived or who have less access to these arts programs.

Six cities getting over one-third of the direct grants from the NEA cannot be justified. When we had—and the chairman is on the floor this morning—our hearing on the National Endowment in April, and Jane Alexander came in and testified before us, I questioned her as to why, in view of the mission of the NEA to provide arts for underserved areas, in view of that mission, why, out of 12 grant proposals from the State of Arkansas last year, was only 1 approved and the Arkansas Arts Council got approximately \$400,000 last year. That equates to little more than many grants for single exhibits across this country.

Her answer was that it is only in certain select States that we find the environment such to foster the arts. And she gave the analogy of growing apples. She said, apples grow everywhere, but there are certain areas of the country in which they are more productive. I think the implication that there are parts of this country that do not have potential artists, there are parts of this country that among their populations do not have those ready to blossom into writers and sculptors and authors, I think, is the very epitome of the elitism that the American people find so offensive by the National Endowment.

So to my colleagues who believe that there is an important role that the Government plays in subsidizing and supporting arts, to those of my colleagues who feel very adamantly that we must show our support to culture and to the arts in general in this country by providing some seed money, I ask you to consider the possibility that we would be far better off eliminating the controversial and I think indefensible actions of the National Endowment, eliminate the NEA as it has traditionally existed, and allow that appropriation, exactly the same amount of money, the \$100 million to be sent directly to the States on this basis: A \$500,000 grant to every State, \$200,000 to every territory, the remainder of the appropriation to be distributed on a strictly per capita basis.

I ask you, could anything be more fair than that? If we took that simple formula, and we said that there will only be 1 percent spent for administrative costs on the Federal level, that the Department of Treasury can spend no more than \$1 million to write those checks, and that the State arts councils or the State legislatures or the Governors can spend no more than 15 percent in overhead, that if we adopt that simple formula, the result is that 45 of the 50 States will come out ahead, that 45 of the 50 States will have more resources to fund arts in their States than under the current status quo which this bill, with all due respect, maintains.

I simply ask my colleagues in the Senate, how can we, with a straight face, no matter which side we are on on the concept of whether the Government ought to be involved in the arts, how can we, with a straight face, face our constituents and say, we are going to defend 20 percent administrative costs, we are going to defend one-third of the grants going to six cities, we are going to defend three-fourths of the grants going to congressional districts represented by Democrats?

I just want to tell you, Mr. President, I do not believe those congressional districts represented by Democrats in this country are intrinsically less cultured or more culturally deprived or in more need of those arts grants than those congressional districts that happen to be represented by Republicans. Yet there has been a clear bias, with 75 cents out of every \$1 going to congressional districts represented by Democrats.

It has been very selective funding by a group of elitists in Washington, bureaucrats in Washington, who make themselves the arbiters of what is good art and what is culture and where it should be funded.

So I say consider an option that would say we will end the National Endowment, we will block grant the money to the States on a fair, fair, fair formula based upon the resident population. The result is that 45 States are going to have more money for the arts, more money to help the local writer, more money to go to the schools for education programs in the arts, more money to help that struggling artist who may not have an opportunity and may not happen to live in the six blessed cities that have been honored by the NEA with over one-third of the grants.

So when this amendment is debated and when this amendment is voted on, I trust later today, I ask my colleagues to look at that breakdown, to look at that chart, and to consider the fact that their State will come out ahead, that their Governor, their State legislature, or their State arts council will have more money to support their local efforts than under the status quo.

Remember that we are not responsible to a few culture elitists. We are responsible to our constituents in our

States for how those limited resources are spent and how we can support the arts. I believe it is fair. I believe it is equitable. I believe it makes eminent common sense. If we will just break out of our lock that the status quo has held over us in the disproportionate influence that this group at the NEA has had in this Congress and consider that there might be a better way, then I think the moral high ground is certainly on behalf of this amendment. I ask my colleagues to support it later today.

I yield the floor.

Mr. SESSIONS. If the Senator from Arkansas has a minute, I would like to ask a question or two about this subject. I certainly support him in his effort.

I believe it was Senator HELMS yesterday who talked about substantial grants being given to Harvard University, which has an endowment of over \$6 billion, I believe, and Yale University. Does the Senator know if those figures are correct? Are there universities, let me ask, in Arkansas who could use funding from the National Endowment for the Arts equally as those great universities?

Mr. HUTCHINSON. I thank the Senator from Alabama for his question and thank him for his support and cosponsorship of this amendment.

My answer is an unequivocal yes, that is accurate; the incidents that Senator HELMS cited, to my knowledge, are accurate. And I secondly answer your question by saying, yes, there are many institutions in Arkansas very interested in the arts, very interested in promoting the arts within the State of Arkansas, many that have a great relationship with the local schools and foster arts education in those local schools who would rejoice at having additional funds.

The State of Arkansas would more than double what would be available for arts in the State of Arkansas by going to the block grant approach.

Senator GREGG, commenting earlier, was defending the distribution of these funds to a few select cities—one-third of all grants going to six cities. I say that many of those institutions currently receiving grants, like the Boston Symphony or like the Metropolitan Opera, are very well endowed, have very high annual incomes, have a huge base of support, and are less needy and less dependent upon any kind of Federal help than, say, the University of Arkansas or the University of Central Arkansas, or the University of Arkansas at Pine Bluff, or the many other fine institutions in Arkansas that would be able to work with our local schools and the Arkansas Arts Council, which received just a little over \$400,000 last year. That was all the State of Arkansas received. The Whitney Museum by itself received almost as much as the State of Arkansas, and if I am correct, I believe the State of Alabama was in a similar dilemma.

Mr. SESSIONS. Whitney funding almost matched the entire funding of the State of Alabama. It is a concern.

We have one of the finest Shakespeare festivals in the world. As a matter of fact, the Shakespeare theater in Montgomery is well renowned, and people have contributed very heavily of themselves. The former Postmaster General Winton Blount had gone beyond the call of duty in helping create this facility. We only got \$15,000 for that premier, world-class facility that is supported substantially by the gifts of local residents.

Let me ask you, if the money came to the State, would they be able if they so chose to give more money to the Shakespeare theater in Montgomery? Would they be able to do that?

Mr. HUTCHINSON. That, of course, is the whole concept behind our amendment—local control. Send the money back to the States, the Governors, the State legislatures, and the State arts council would have the discretion to increase funding.

In the case of Alabama, and I do not have the exact numbers in front of me, but the amount of resources available to the State of Alabama would be greatly enhanced under the block grants approach in which we send a \$500,000 grant to every State, and then simply distribute it on a per capita basis. That would allow the State of Alabama to give much more to the Shakespearean theater.

I was interested to hear your comments yesterday quoting Anthony Hopkins and his appreciation for that Shakespeare theater there in Montgomery.

So the needed resources would be much more available, and that would be controlled locally. So inasmuch as there was local support in Alabama for increased funding, I think the opportunity would be much enhanced.

Frankly, I am puzzled why anyone would oppose the approach that you and I are offering. I can understand the 5 States that would lose funding being opposed to this, but the 45 States and the Senators from the 45 States that would see their funding for the arts increased under our approach while eliminating bureaucracy in Washington, it is really difficult for me to see how someone objects to that.

Mr. SESSIONS. Let me ask the Senator this, and this is something I think we failed to think enough about, Mr. President. This money that is being spent in our States, the decision of where and how to spend that money primarily is being decided by a group of people in Washington. Under this procedure not only will 45 States have more money—correct me if I am wrong—45 States will have more money, but they will also have more control and be able to make the decisions that they feel would be the best use of that money; is that correct?

Mr. HUTCHINSON. Senator SESSIONS, you are exactly right. One of the areas that this Republican-controlled

Congress has pushed for most strongly has been local control. In welfare reform, in a whole host of areas, we said, "Let's flow that power back out of Washington, back to the States."

There is no better example, I think, of where we could do that than in the area of the arts. We not only have a 20-percent overhead that we are paying just by having this bureaucracy of almost 150 employees dispensing this money, but we have a small group that makes decisions on what will be funded across this country, if you will, making themselves the arbiters of what is good art, and the control of our constituents is minimized because of the distance, the inability to really affect the decisions that are made.

So, yes, I think the citizens of Alabama, the citizens of my home State of Arkansas, will have much greater input dealing with the Arkansas Arts Council or the Alabama Legislature, or the Governor's office than trying to affect the decisions that are made in Washington, DC, by a select group.

Mr. SESSIONS. I understand one of the grants that was reported yesterday went to Philipps Academy, one of the most exclusive private prep schools, I think, in America. That is what I understood the reference to be. Do you think there are schools, public schools, throughout Arkansas and Alabama and other States in this Nation that would also likewise be able to make a claim for this money? And are any of those receiving any moneys from the National Endowment for the Arts in Arkansas and Alabama? In Alabama no private or public schools are receiving money as happened in the Northeast.

Mr. HUTCHINSON. I believe those local schools in rural communities across our States and all across this country have a much more legitimate claim to those funds than where those funds have gone under the current status quo of the NEA.

I grew up in a town with a population, when I lived there, of 894. I can remember in junior high school it being one of the great thrills when we were able to take a field trip 40 miles to the University of Arkansas and watch a Shakespearean play. That is the first time I had ever seen a Shakespearean play.

Those kind of opportunities to the small communities of this country would be increased so much if we eliminated the Washington bureaucracy and allowed that money to flow back to the States.

The objectionable art, Senator SESSIONS, that you cited yesterday, that Senator HELMS spent a great deal of time on, that has characterized much of the debate around the NEA in recent years—if a local arts council, the State arts council, or State legislature or Governor made a decision to fund something that the mass of the people found highly objectionable, I guarantee you they will be more responsible in that State legislature or that State arts council, or that Governor will be

far more responsive to the complaints of the people than a faraway bureaucracy in Washington, DC, in some ivory tower making those decisions.

Mr. SESSIONS. Mr. President, I agree with that and I support this bill wholeheartedly.

I had an outstanding conversation with the three leaders and directors of three orchestras in Alabama. They are concerned about funding. They need the little funding that we do get. It helps them. They do not want to lose that. I can understand that. I asked them if we could come up with a way that will leave the bureaucracy and put more money in your hand, with more freedom to spend it as you wish, would you support that? And they said, yes, of course they would.

I know some people believe and have committed themselves to supporting the National Endowment for the Arts, but the truth is it is not performing in a good and healthy way, it is not doing a good job of putting money to the arts, it is not invigorating the arts and providing leadership for an enhancement of the good and beautiful and fine in America. Too often, it is, in fact, participating in a degradation of the quality of art in America.

What we need to do is make sure it is done right. I believe the people at the Alabama Arts Council, the arts councils in the other States around this country, if given the opportunity, would spend that money wisely. They would be much less likely to give it to the arcane, the pornographic, the bizarre, and the just plain silly that is so often happening today. It is just not acceptable.

It is time for this body to follow through. It is time for this body, after years of begging and pleading with the National Endowment for the Arts to do a better job to manage their money better, to put an end to it and make sure that what we do actually supports the arts in an effective way. That is why I support this amendment.

I am so proud of the Senator from Arkansas for his outstanding work on it, the Senator from Michigan, Senator ABRAHAM, and the Senator from Wyoming, Senator ENZI, for their outstanding teamwork in putting this proposal together, which is a win-win situation for all America. It puts more money in the arts, and it will eliminate waste, bureaucracy, and silly funding projects.

I think it is a good bill, and I urge my colleagues to support it.

I yield the floor.

Mr. DOMENICI. Mr. President, I want to use just a few moments this morning to talk about this appropriations bill that is pending before the Senate and two projects under the Land and Water Conservation Fund that the distinguished chairman, Senator SLADE GORTON, had put into the bill but subjected them to prior authorization: The so-called Headwaters acquisition in California which could cost \$250 million; is that correct, Senator GORTON?

Mr. GORTON. That is correct.

Mr. DOMENICI. And the so-called New World Mine in Montana, which is an effort to acquire a mine before it is mined. That is in Montana. I believe it would cost \$65 million.

Now, I am not here on the floor of the Senate to tell the Senate that these projects are good, should be done, or should not be done. But I am here to tell them absolutely and unequivocally that if the administration, through whatever source, is telling Senators that the budget agreement reflected that these projects should be funded, I am here to tell the Senate that is not true.

Now, if the administration wants to say these are their high-priority items, which they have told the distinguished chairman, they are free to do that. In fact, they are free to do anything. Let me tell you that in the ritual and integrity of the agreement, they have spoken about these projects and some others. But we did not agree how the \$700 million in new money that we included in this budget agreement should be spent. So one would say, well, how should it be spent? Well, obviously, it was to be spent in a typical manner of spending money out of the land and water conservation fund. Congress and the White House have to work together to decide what they want to do. There is no priority treatment in this budget arrangement in any way, shape, or form.

Now, what I would like to do just visually for everyone so that they will understand. I have before me and I am holding up an agreement called the bipartisan budget agreement, May 15, 1997. Now, it is historic. Nothing like this has ever been done in the history of the Senate, where the leadership from the Senate and House signed an agreement with the White House to do things in a budget. In this agreement, if you look at it, from its 1st page until its 24th page, and two attached letters relevant to taxes, you will not find the names of these two acquisitions—Headwaters Forest or the New World Mine—mentioned. It is not in this agreement. Now, one might say, does it have to be? Yes. If it is a priority item that negotiators agreed would be done, it is in this agreement. If anybody wants to look at it, they can do so.

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

Mr. DOMENICI. Yes.

Mr. GORTON. But I take it, Mr. President, that the \$700 million for the land and water conservation fund is, in fact, in that agreement, is that correct?

Mr. DOMENICI. Senator, I am going to turn to that right now. It is in the agreement. Anybody who wants to look at it can look at page 19. There is a chart in here that says what this fund is about. Essentially, it says that we have decided that \$700 million can be set aside, at the option of the Congress, to be used for land acquisition, and a budget flow even shows how it will be

spent. And the language says the \$700 million, if spent for priority Federal land acquisition, can be done in excess of the caps for discretionary spending. That is why the U.S. House did not even put it in their appropriations bill, because there is nothing in this agreement that mandates it. It says that if you include \$700 million for land acquisition, then when you spend it, the budget credits it to the appropriations committee.

Mr. GORTON. But I ask the Senator from New Mexico, there is nothing there that mentions any specific project?

Mr. DOMENICI. I assumed everybody would be looking at the agreement. You are correct. Verbally, I state there are three footnotes, there are two charts, and nowhere in that do these two projects appear. They are not mentioned.

Mr. GORTON. I thank the Senator from New Mexico.

Mr. DOMENICI. Senator, I want to tell you one other thing. The two instruments that judge our budget responsibility, vis-a-vis the President, what have we agreed to do with our President—frankly, they are not enforceable and everybody knows that, but we have agreed to do it. Might I say that this chairman, Senator SLADE GORTON, has taken the agreements that are stated and he has followed them. As a matter of fact, one found on page 24 of the agreement and is also in the budget resolution, which I will talk to in a moment, was approximately a \$74 million increase for Indian tribal priority allocation funding. Senator GORTON had a meeting and asked, "Is that a priority agreement that we agreed with?" I said, "Yes." He said, "So it will be funded." Is that not right?

Mr. GORTON. The Senator is correct.

Mr. DOMENICI. Now, the only other instrument that has anything whatsoever to do with implementing this 24-page historic agreement is the budget resolution itself because what we chose to do is to put in the budget resolution the priority requirements of this agreement. So that if you look at page 23 of the budget resolution, you find a description of the \$700 million for land acquisitions and exchanges, but no mention of any single project—not a single project mentioned. It merely states very precisely what I told the Senate 4 minutes ago when I said how the \$700 million was to be set up. That is what it says.

But conversely, throughout this agreement, throughout this budget resolution, when we have agreed on a specific program in this agreement, it is found in this resolution. So, Senator, if you want to look at this agreement and say, what did the Congress and the President say about Head Start, that might be a question you could put to me. I would say that we agreed in this agreement that Head Start was a priority. Lo and behold, you will find in the budget resolution that Head Start, in the function on education, is listed,

and guess what? The dollar amount that we agreed upon is in the budget resolution.

Now, frankly, I think it is absolutely patent that had we agreed to these two projects—and I repeat that I am not sure how I will vote when we really have them before us in a proper mode. I am not sure how I will vote in the committee that authorizes them. But the pure simplicity of what I have just explained would say that if we agreed to these two projects, you would find them in one of these agreements. In fact, if you found them in the 24-page agreement, you would find them in the function of the budget that funds these kinds of projects, and they would be stated there. Now, I note the chairman is on the floor with a question. I am pleased to yield.

Mr. GORTON. So, I ask the Senator from New Mexico, then the bill that I drafted and is being debated on the floor here today regarding appropriations for the Department of the Interior includes both the \$700 million for the land and water conservation fund and a specific mention and, therefore, a degree of priority, for the New World Mine and for the California redwood purchase; this bill, in fact, goes beyond and is more specific than the budget agreement itself, is that not correct?

Mr. DOMENICI. No question. But you might say, in this respect, it is contemplated that if the Congress, and thus the Senate as the initiator, at some point in time wanted to implement the \$700 million fund, they would at some time have to decide what they are going to spend it on. At that point in time, however they decided, the White House and Congress would engage in a political dialog in the normal way, with each having its strengths; namely, a vote here, and namely, the President says I don't want it, do it another way; that is typical. That would be envisioned as part of how you would decide how to spend it.

Mr. GORTON. And so when the chairman of the Committee on Energy and Natural Resources, the Senator from Alaska [Mr. MURKOWSKI], chairing the committee on which, incidentally, each of us serves as well, states that he has a number of questions about the very complicated transactions for these two projects proposed by the President and wishes to deal with those in the normal course of authorizing legislation, he, the Senator from Alaska, in the view of the Senator from New Mexico, is taking a quite reasonable position?

Mr. DOMENICI. As a matter of fact, the budget agreement doesn't say whether he should authorize them or not authorize them. The budget agreement speaks of allocating this money to this committee. But as I said, it does not prescribe the spending of the money in this committee on these projects. That is a legislative matter to be dealt with with the executive branch in the normal relationship that we have on spending money. It seems to me that the last thing that makes

this argument most rational is that if you didn't put the \$700 million in at all, there could not be a letter sent around saying "you violated the budget agreement."

As a matter of fact, the letter being sent by the administration—frankly, I want everybody to know I am trying desperately to get everybody to comply with the budget agreement. We are not complying in every respect. Nobody is finding this Senator running around saying you don't have to. Maybe others are, but I am not. Frankly, when the administration, under letter of September 11, a statement of administration policy, on the first page of that communication, it says: "In addition, the committee bill contains provisions that violate the Bipartisan Budget Agreement, such as the provision to require additional unnecessary authorizing language for key land acquisition in Montana and California."

It urges the Senate to strike that. They can urge that we strike it, but we are not striking it because it violates the budget agreement; we may or may not do it for some other reason. So, Senator, I wanted to come down here and make sure, since many Senators have stopped me and asked me if we agreed to these two projects, my answer is no.

Now, are we forbidden from agreeing upon them and the \$700 million to be used for them? Absolutely not. You are not disagreeing with that. As a matter of fact, you spend it. But you are saying that before we spend it we want to see what the authorizing committees say about that. I believe, to assume that you cannot authorize a project for the land and water conservation fund, which would give its resources from the \$700 million, is arguing an uncertainty. I mean, that can't be. We never said anything about that. Congress retained that right. Anything we didn't agree upon, the Congress can do. It is just that they can't do anything inconsistent with it.

I could go on, Senator, but I think the Senate will take my word that if you look at the agreement and find specifics that are priorities, you will find them in the budget resolution, which this Senate passed overwhelmingly. There's a lot of things in it that Senators said they didn't know were in it. That is not my fault. I will tell you that specifics like Head Start and specifics like a new program for literacy are found in the agreement as priorities, and they are found in the resolution—resolved that—priorities such as these shall be funded to the extent of so many million dollars.

Mr. GORTON. The Senator from New Mexico believes, under those circumstances, we are obligated to keep our part of the agreement?

Mr. DOMENICI. The Senator from New Mexico feels that if we don't follow those, that a letter like this one from the administration, under cover of September 11, could clearly say this bill does not fund a priority item that

was agreed upon. Therefore, it violates the budget agreement. I would not be here saying the correspondence is inaccurate, incorrect. It would be wrong. In this case, it is not.

Mr. GORTON. I thank the Senator from New Mexico.

Mr. DOMENICI. I just ask the Senator, because I don't intend to speak longer and clutter the RECORD unnecessarily, but would he think I should make the bipartisan agreement a part of the RECORD?

Mr. GORTON. Why don't you make the relevant page of the bipartisan agreement a part of the RECORD.

Mr. DOMENICI. Mr. President, I ask unanimous consent that page 19 of the agreement between the executive branch and the Congress be printed in the RECORD for purposes of showing how the priority land acquisition was described on the page of the agreement.

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

Environmental reserve fund

[Outlay increases in millions of dollars]

Orphan share spending:	
1998	200
1999	200
2000	200
2001	200
2002	200
5-Year Spending	1,000
10-Year Spending	2,028

The proposal would provide new mandatory spending for orphan shares at Superfund hazardous waste cleanup sites. Orphan shares are portions of financial liability at Superfund sites allocated to non-Federal parties with limited or no ability to pay.

The funds will be reserved for this purpose based on the assumption of a policy agreement on orphan share spending.

Priority Federal land acquisitions and exchanges

[Outlay increases in millions of dollars]

Priority Federal Land Acquisitions and Exchanges:	
1998	300
1999	150
2000	150
2001	100
2002	100
5-Year Spending	700
10-Year Spending	700

Under this proposal, up to \$315 million would be available from the Land and Water Conservation Fund (LWCF) to finalize priority Federal land exchanges in FY 1998 and FY 1999.

Funding from the LWCF for other high priority Federal land acquisitions and exchanges (totaling \$385 million) would be available in fiscal years 1999 through 2001.

The funding will be allocated to function 3000 as a reserve fund exclusively for this purpose.

Mr. DOMENICI. I don't choose to put the budget resolution in the RECORD because it was adopted. I assume if anybody wants to refer to any changes on education or to find specifics on the crime section where we obligated funds for the FBI, et cetera, I assume you can look in the budget resolution and find it.

I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, I have not heard every speech on the question of the National Endowment for the

Arts. I know about the principal amendments. Frankly, the amendments that most intrigue me are those that propose for block grant. I am not sure I am going to vote for anything that provides for a block grant, based on what I know about the proposals that are being made. But I will come back to that in just a moment.

I would like to share with my colleagues one of the reasons I am a strong supporter of the National Endowment for the Arts. If I were "king," we would be putting over \$1 billion a year into the program, maybe more than that, because I personally feel that it provides the kind of cultural benefit that is not only sorely lacking in this country, but is diminishing. Mr. President, \$100 million represents one-tenth of 1 percent of our \$1.6 trillion-plus budget. That is 38 cents for every American citizen to provide programs that enrich the culture of this Nation and give a lot of youngsters who would not otherwise have the opportunity the absolute, abject joy of enjoying music, good literature, and dance.

I can tell you that no nation has ever really prospered well that didn't have a culture that embraced the performing arts and the fine arts.

I am sorry Mapplethorpe ever got a grant. That is the thing that set off the firestorm in the country, from which we have never recovered in the Congress. But let me go back.

I grew up in Charleston, AR, with a population during the Depression of 851 people. The only cultural enrichment we got in that town was a high school band. It was started when I was a sophomore in high school. So I took band and became a trumpet player and later became trumpet player in the University of Arkansas band as well as drum major of the Razorback Band—because I had learned some music in the high school band. I might add that we were extremely fortunate because we had an unusual band director, a brilliant man. He used to gather some members of the band at his home in the evening. We listened to great music—Mozart, Bach, Beethoven, Sibelius—and that is when I developed, as a very young teenager, a keen appreciation for symphonic music. We went to Jackson, MS, to a regional band contest, and our sextet won first place. Not only were we learning something about good music, but we were also learning something about how one builds his ego, his self-esteem, and his pride out of this little town.

So when I went to the University of Arkansas, as I said, I was in the band, sang in the university chorus, went to all the drama presentations, and then I went into the Marine Corps.

After the war—I told this story a couple of years ago on the floor of the Senate—I was waiting to come home. I was in Hawaii. One day I saw a bulletin saying that anybody interested in Shakespeare should show up at such and such a barracks this evening at 7 o'clock. So I went. Lord knows I had

never been exposed to Shakespeare. The man who had put the sign up and who was going to teach Shakespeare turned out to be a Harvard professor of Shakespearean literature. He had a tape recorder. Tape recorders were unheard of then. I had never seen a tape recorder, and I certainly had never spoken into one, and, therefore, I didn't know what my voice sounded like.

So, after giving us about a 1-hour lecture on Shakespeare, he took his tape recorder, and he said, "I am going to deliver a couple of lines from Hamlet's Speech to the Players." He had a magnificent baritone voice with that Shakespearean accent. He spoke into his microphone, "Speak the speech, I pray you." And then he went on. I could tell it to you now. I do not want to bore you with it. But I can still remember every word of it.

So, when he played it back, it was so beautiful to hear this mellifluous voice. Then he handed it to me and said, "Here, you do it." He put the lines in front of me, and I spoke into the tape recorder. Then he played it back. I could not believe how poorly I spoke.

You know, I took a vow that evening that I did not want to sound like that. I wanted to have a rich tone of voice like he had. But, more than anything else, I discovered that there was a lot of literature that I knew nothing about that could be very enriching.

So, I came back, and I studied diction and debate. I began, on occasions when I got a chance, to go to all the drama presentations. Most people in this audience are frustrated actors. But my point is all of that had such a powerful influence on my life. I daresay, if it had not been for those experiences, I would have never been Governor of my State, and I certainly wouldn't be standing here as a U.S. Senator. These are the sort of experiences that the National Endowment for the Arts funds for so many youngsters, experiences that they would never otherwise have.

When I was Governor, my wife was looking for some way to use her position as First Lady to benefit the children of Arkansas. Nancy Hanks, who was then Chairman of the National Endowment, came to Arkansas at Betty's invitation. Betty talked Nancy Hanks into giving her a \$50,000 grant to do a small pilot program of art in the first grade. Betty had been an art major. She thought children ought to be exposed to art in the first grade.

So, the National Endowment, because of her appeal to Nancy Hanks, gave her \$50,000, and she started a few programs. Today programs of that sort are common. Every first grade in Arkansas has art. It is mandated now.

She had a little left over from the \$50,000, so she decided she would take it down to the prison and see if any of the inmates had any talent for art. It was absolutely amazing how much talent the inmates had. All I could think about was how many of those people might not have been in prison if some-

body had picked up on either their artistic talent or maybe some musical talent that had never been explored.

Do you know something, Mr. President? When I became Governor of my State, the prisons were in such horrible condition that they were under the control of the Federal courts. We couldn't do anything in the prisons without Federal court approval, they were so terrible. I was sort of hesitant to go down there. But I went. I was doing everything I could to improve the condition of our prisons. You know what Winston Churchill said once that you can tell more about a civilization by the way they treat their elderly and the conditions of their prisons than anything else. It is a strange thing but probably true.

So, I started going down to have lunch with the inmates. I would visit with them. I visited with the hardened killers that were on death row. I can tell you, I don't believe in all my conversations with the inmates in the Arkansas prisons that I ever visited one who had a role in the senior class play in high school, who played in the band, who had a college degree—though there were a few there—or who owned his own home. Nobody is shocked at that. We know who is in the prisons—people from broken homes, people who are uneducated, and people who never had a dog's chance as far as learning anything about art, literature, or music.

I can tell you that the \$100 million we spend on this program may be the most productive money we spend. It is tragic that it is not at least 10 times more than it is. You think about the greatest Nation on Earth, the United States, spending 38 cents per person per year to support the arts while Canada and France spend \$32, almost 100 times more per person than we do. In Germany, it is \$27 per person. My colleague and I share a concern. I heard his speech a moment ago. He comes at it a little differently than I would. But certainly his argument about how much our home State gets is, in my opinion, a valid argument. We got about \$400,000 this year. I think that in the past we have gotten as much as \$500,000. But, if you disbursed the \$100 million of the National Endowment for the Arts money according to population, we would get \$1 million. We have 1 percent of the population of this country. We would get \$1 million. We feel a little slighted.

But there is another dimension to it. That is, if we are going to do block grants to the States, some money should be held aside for national programs that serve all of the States, such as PBS, public broadcasting. I see a lot of fine shows on PBS that are partially funded by NEA grants. In my opinion, many of those shows would not be there for all to enjoy without that funding. If you didn't have the National Endowment, a lot of national programs that benefit everybody, even National Public Radio in Alaska and West Virginia, would not exist.

Second, the national programs that are funded by the National Endowment for the Arts raise an average of \$12 in matching money for every dollar that NEA provides. In my State, we leverage \$3 in matching funds for all the money you send to Arkansas. And we are proud of that.

So, I am not so sure that, if you put these block grants out, you are not going to wind up losing a lot of matching dollars.

Senator KAY BAILEY HUTCHISON from Texas has an amendment that has some appeal to me. It provides 75 percent of the money in block grants. I think maybe 60 percent for openers would be better. So I am not totally opposed to that. But I am not going to vote for any proposal to block-grant money that does not carry with it a mandate for matching money. If we are going to match money, as we do in Arkansas now, \$3 for every \$1, why not require the same of block grant recipients?

When you consider how much money the arts produce in this country—between \$30 and \$40 billion a year—and you think about how much income tax we collect a year from the arts, we are big winners. The \$100 million is peanuts compared to the \$3.4 billion in revenue the arts generate in this country.

I am not going to take much more time here. I see we have other speakers wishing to speak. But there are some national programs that we need to continue funding with this money. The YMCA is putting culture programs in its facilities throughout the country with NEA support. There are a lot of NEA-funded regional dance tours, a lot of national dance tours, and programs for children everywhere.

Incidentally, when I played in the high school band we thought we were pretty good. At the bi-State band contest with Oklahoma, the Iowa State band performed on the stage of the Fort Smith High School. I had never heard a really great band before. We only had 30 members in our band. Here was this Iowa State band with 150 members, and when that conductor brought his baton down, I thought I was going to faint. I had never heard such music. So it was, the first time I ever went to a symphony. I am telling you, these things are important to the culture of this country. I do not for the life of me understand the antipathy that some of the Members of this body have for what I consider to be absolutely essential and basic to the character of this country. It is important that we give a lot of citizens of this country access to the performing and fine arts. That would never happen if it were not for this program.

I look forward to the day—I will not be here, Mr. President, after next year—but I yearn for the day when we treat this program with the respect and the money it deserves. And, like so many other things, if we do away with it and let that bulwark of our culture slip into oblivion, we will pay a very heavy price for it.

I yield the floor.

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

Mr. WELLSTONE. Mr. President, I can only add a little bit to what the Senator from Arkansas has just said. I wish he would not be leaving the Senate. I have told him that a hundred times, but I will say it one more time.

Mr. President, as a Senator from Minnesota, I rise in support of the National Endowment for the Arts and the National Endowment for the Humanities. I am troubled we are out here on the floor, again defending the Federal role in really supporting the arts in communities all across our country. Some of my colleagues are arguing that, with their block grant proposals to States, they really support the NEA. This will just get the money to States in a more efficient manner, a more timely manner. But these amendments do nothing more—and I think everybody should be aware of this before they cast their votes—than cut off the lifeblood of the National Endowment for the Arts. That is exactly what these amendments do. I think that is the purpose of these amendments.

There is a bitter irony to the timing of these amendments, because Jane Alexander has done such an excellent job of reorganizing the endowment. I come to the floor to recognize her fine work and to support the NEA. When Ms. Alexander was confirmed as Chairwoman of the NEA, she made a commitment that she was going to work closely with the Congress, that she would take necessary steps to reorganize the Endowment, and she has done that and, as a matter of fact, I think her effort has been nothing short of heroic. She has, through her leadership, helped form and lead a NEA that touches the lives of all citizens, regardless of their age, their race, their disability, their economic status or, I might add, their geographic location. Jane Alexander has been blessed with a lifetime of creativity and accomplishment and she has blessed our country with that creativity. She has done a marvelous job of bringing the arts into our classrooms and into every corner of our Nation.

Now, again we are out here having to defend the NEA. The budget is pathetically low. We could do much more to fire the imaginations of children all across the country. Yet we have another attack on the NEA, out here on the floor today.

In my State of Minnesota, the NEA has given support to the American Composers Forum, the Minnesota Alliance for Arts and Education, Gray Wolf Press, the Duluth Superior Symphony, the Rochester Civic Music Guild, as well as the nationally renowned Dale Warren Singers, the Saint Paul Chamber Orchestra, and the Guthery Theater.

In addition, because of support from NEA, national theater and dance groups have visited many rural com-

munities all across the State of Minnesota. The NEA has supported some wonderful partnerships in Minnesota, including a partnership between the Minnesota Orchestra Association and the science museum, which has created an interactive work between actors, the full orchestra, and fifth and sixth graders. That is what this is all about.

One grant we are especially proud of that really goes to Minnesota, but goes to the whole Nation—and one of the most important things about these grants is the way in which a grant can go, in this particular case to the Minneapolis Children's Theater Company—and what they have done is this grant has supported the development and production of a new work which is called the Mark Twain Storybook, which has toured 35 communities in 9 States, from Fergus Falls, MN, to Mabel, MN, to Skokie, IL, offering a total of 73 performances and 5 workshops.

Sometimes when my colleagues look at funding that goes to particular States, they forget that one of the things the NEA has done under Ms. Alexander's leadership is taking a chance, this particular case on the Minneapolis Children's Theater Company, which is marvelous, and they then take that on the road and reach out to 9 States, 73 performances, 5 workshops. This is enriching work.

I just would like to make the point that the block grant amendments are not friendly amendments. As I say, they undercut the very heart of what NEA is about, which is national leadership of the arts in our country. We as a national community make a commitment to the arts. We understand how important the arts are to enriching the lives of all of our citizens. We make it one of our priorities—not much of a priority, because we have had attacks on the NEA over the past few years and it is so severely underfunded—but, nevertheless, we as a national community understand that we make a commitment to leverage the funding and to get it to organizations to, in turn, get it to communities all across the country.

The block grant proposal takes us in the exact opposite direction. I really do believe that the timing of these amendments is just way off. One more time, I just want to repeat for colleagues that regardless of the words that are uttered and regardless of the intentions of colleagues, I think the effect of these block grant amendments is to just cut off the very mission, the very lifeblood, the very richness, the very importance of what the NEA is all about.

We are only talking about \$100 million. It is an agency that has been severely undercut because of attacks of past Congresses. But I will tell you something, people in the country have rallied behind the NEA, I think in large part because of Ms. Alexander's leadership. We have an agency that is bringing the arts into classrooms and bring-

ing arts into the communities all across our country. We have an agency which has done a marvelous job of being in partnership with local communities and States, doing a really superb job.

Mr. President, I also want to have printed in the RECORD a letter from James Dusso, who is assistant director of the Minnesota State Arts Board. He writes in behalf of Robert Booker, who is the Minnesota State Art Board executive director, who is currently away at a conference, making it very clear that the Minnesota State Arts Board is opposed to the block grant amendments, making it very clear that Minnesota, and I think many, many people in the arts community, appreciate the work of NEA, and making it very clear that these amendments, rather than improving NEA's work, would severely undercut what this agency has been about.

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

MINNESOTA STATE ARTS BOARD,
St. Paul, MN, September 8, 1997.

Hon. PAUL WELLSTONE,
U.S. Senate,

DEAR SENATOR WELLSTONE: I am writing on behalf of Robert C. Booker, the Minnesota State Arts Board's executive director, who is currently away from the office at a conference addressing enhanced accessibility to the arts for people of all abilities.

It is my understanding that the Senate is currently discussing the amount and the type of support to be provided to the National Endowment for the Arts. In that light, I think it is important that you are aware of the following:

The National Endowment for the Arts currently provides over two million dollars to the state in grants to the Minnesota State Arts Board and Minnesota arts organizations.

Since 1994 the Arts Board has experienced a 48% reduction in support from the National Endowment for the Arts. This decrease parallels the NEA overall budget cuts from \$175 million to the current \$100 million and reflects their ongoing problems in Congress.

Minnesota is proud of the outstanding caliber of its cultural institutions and its arts community. The citizens of this State and our corporations and foundations have provided extensive financial support to the arts in order to achieve their current high artistic level. Within our state borders, we are proud to have world-class arts organizations and artists of international stature.

Because of the quality of the arts in Minnesota, we consistently have been ranked third to fifth among all states in receiving National Endowment for the Arts support.

Under a block grant funding structure at the National Endowment for the Arts, Minnesota would drop to sixteenth or lower in the amount of federal support it receives for the arts.

Block grants would minimize, if not eliminate, any national leadership for the arts in the country.

NEA support historically has been a valuable tool in leveraging matching private support for the arts. Block grants to states would take that tool away from arts organizations, hampering their ability to raise needed private support.

Please let me know if you have any questions, or if there is any additional information I can provide.

Sincerely,

JAMES DUSSO,
Assistant Director.

Mr. WELLSTONE. I think these amendments represent a different kind of attack. We had amendments to just eliminate the NEA. We may have one of those amendments on the floor now, maybe, to eliminate NEA. We have had amendments in the past to severely undercut the funding for NEA.

I just don't know what will satisfy colleagues. Jane Alexander made a commitment to us that she would be very tough in her management, she would do the necessary reorganization work, she would take all of her creativity and use that creativity to make the NEA an agency that clearly was rooted in communities all across our country. And for Minnesota, for rural America, the east coast, west coast, North and South—that is exactly what has been done. So I hope we will defeat these amendments and we can as a Senate vote for a commitment which is a national community commitment that we care about the arts, that we are committed to enriching the lives of children, all children in this country, and we are committed to making sure the arts reaches out and touches all of our citizens no matter their income, no matter their race, no matter disability, no matter age. That, I think, is what its mission is all about, and I think the NEA under Ms. Alexander's leadership deserves the strong support of the Senate. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, today we are for arts. Last week we were for education. Before that we were for housing. In fact, we are in about a 60-year cycle where the way you show you are for something is to have the Federal Government take the money of working Americans and spend that money for them on the thing you want to show that you are for. For 60 years, the choice that has been presented on the floor of the Senate is a choice about whether or not you are for something based on spending the Federal taxpayer's money on it. The choice is not, "Are you for art?" in the sense that you want to let working families keep their money to invest it in art, the choice is not whether you are for education but letting families decide how to spend their money on education. For 60 years, the only real choice we have had is whether or not we are for things based on spending the taxpayer's money.

It is like the compassion debate we have in Washington. Compassion is not what you do with your money, it's what you do with the taxpayers' money.

Rather than getting into all of the different elements of the debate today, I want to talk about this central point. This is the 12th appropriations bill that

we have dealt with this year, and when it is passed today, we will have spent \$268,195,000,000 on just domestic appropriations. Nobody knows how much money that is. I have a constituent, Ross Perot, who knows what a billion dollars is, but nobody knows what \$268 billion is. But it comes down to \$2,126 for every working American. When we pass this bill, we will have, in the last few weeks, spent \$2,126 of the income on average of every working person in this country, and what we have decided and, in fact, what we are debating about the arts today is whether or not we are going to spend their money on this purpose.

I know we hear our President say the age of big Government is over, but the plain truth is that next year, we are going to spend more money in Government as a percentage of the income of working Americans than we have ever spent in the history of the United States of America. We are going to have the largest Government that we have ever had in the history of America next year as a result of the money that we are spending here, as a result of the money that we have committed to programs we call entitlement programs and as a result of money that is being spent by State and local government. In other words, the tax burden on the average working American next year will be higher than it has ever been in the history of the country in terms of how much of their money the Government will be taking.

How does this debate about the arts fit into that big picture? It seems to me that we are having the wrong debate. The debate here shouldn't be whether or not you are for the arts based on how much money the Government is going to take from working people and spend on arts. Why don't we have a debate about who should do the spending?

I was examining the figures on spending for the National Endowment for the Arts, for the National Endowment for the Humanities, and the Corporation for Public Broadcasting, programs where we are taking money out of the paychecks of working American families and we are bringing the money to Washington and deciding on their behalf that we want to spend it on NEA, NEH, and the Corporation for Public Broadcasting.

We have heard a lot of debate about whether we are spending it wisely, whether what is being defined as art with the expenditure of our taxpayer money through NEA is, in many cases, art. I think the vast majority of Americans would say in many cases it is not.

But the point is, if we took those three agencies and eliminated them, we could give an art and entertainment tax credit of about \$200 to every working family in America. It is in that context that I want to talk about the National Endowment for the Arts, because what we are deciding today is not that we are for the arts by voting to continue funding NEA. What we are

deciding is that by funding NEA, NEH, and the Corporation for Public Broadcasting that we are doing more for the average working family in terms of the arts and the humanities and access to information through broadcasting than they could do if they were able to keep \$200 more and spend it as they chose.

Granted, I am sure there are some here who would get up and say, "Wait a minute, with this \$200, we are funding the symphony, and if we let working families keep the \$200, they might go see Garth Brooks, they might decide to spend it going to three or four Texas A&M football games." I guess I would argue that families ought to have a right to choose what is art and what is entertainment to them rather than delegating that responsibility involuntarily through the IRS to 100 Members of the Senate.

In a very real sense, this is the choice that working families are making. How many families would choose to get an Internet hookup rather than to fund public broadcasting if they had the choice to make? How many families would choose to get the cable rather than to fund public broadcasting?

So my point is, this is not a debate about whether you are for the arts or not. This is a debate about whether Government should be the final decisionmaker about what is art and what should be funded.

Our colleague from Minnesota said, "Well, this is only \$100 million." Well, \$100 million is a lot of money.

I personally would like to begin the process of making fewer decisions in Washington so that we could have more decisions made back home. I think part of our problem in the arts, part of our problem in Government, is that too many spending decisions are made around these committee room and Cabinet tables and too few decisions are made by families sitting around their kitchen tables. The question that we face as Republicans is, if we are not for less Government and more freedom, what are we for? What do we stand for? If we really want to reduce the size of Government and to let people keep more of what they earn to invest in their own family and their own future, to invest in their own art, to invest in their own entertainment, to invest in their own education and housing and nutrition, if that is what we really want, where do we begin?

We are not eliminating a single program in the Federal Government this year that I am aware of. Not a single program in the Federal Government will be terminated as a result of this budget which will spend a record amount where we are increasing discretionary spending and, in the process, deciding that the Government ought to direct more goods and services and where they go.

I don't, quite frankly, know a better place to start than the National Endowment for the Arts. It is not that I am against the National Endowment for the Arts or the National Endowment for the Humanities or against

public broadcasting. But the question is, why not eliminate these programs and let working families keep \$200 more per family and decide what they want to invest that in, what brings the most to their family. It seems to me that that is the choice.

As I understand it and they proliferated a little, we have three amendments that are before us in some form. One of the amendments would block grant the money to the States and eliminate the National Endowment for the Arts by giving the money directly to the States. Another amendment would give 75 percent of the money to the States, have 20 percent of the money go to national art organizations and give the National Endowment for the Arts 5 percent so we can maintain their infrastructure. The third proposal is to eliminate the National Endowment for the Arts.

Since I see all three of these as an improvement over the status quo, I am going to vote for all three of them. But the position that I want to take today and make clear is that you are not saying whether or not you are for the arts based on how you vote on spending the taxpayers' money. I am for the arts, but I think families ought to have the right to decide what is art and what is not art. I think families ought to have the right to make these decisions. I don't think we should be making those decisions for them.

Finally, if we are really serious about less Government and more freedom, if you really believe that Government is too big and too powerful and too expensive, if you really believe that having the average family give Government almost a third of its income is too much, if you believe all of those things, as I do, I don't see how you can then justify having the Government take \$100 million from working families to spend on what we define as art.

So I think this is a fundamental choice. I would have to say that for 60 years, I think we have been making it the wrong way. For 60 years, we have been losing in the appropriations process, because the choice is always spending money and being for something, rather than not spending money. What I would like to do is to have the ability to put all these appropriations bills out here and go through them one by one and basically decide, would you like to do less of this and let families keep more of this money themselves? I think when we start changing the way we make these decisions, when we start looking at them from a bigger perspective, I think ultimately freedom will start winning in this debate instead of losing.

The vote on NEA today is not a vote about arts to me, it is a vote about freedom. It is a question of whether or not we want the Government, with the highest tax burden in American history set to be imposed on working families next year, to spend another \$100 million trying to tell people what is and what is not art, and I think given our

record on the subject and given the issue itself, that we would be better off letting families keep this money. If they call Garth Brooks art, I call it art. If they would prefer spending their money on an Internet connection instead of public broadcasting, or if they would prefer going to Texas A&M football instead of going to the symphony, maybe there is wisdom in each and every household. And what is wisdom in each and every household can hardly be folly, even in the greatest nation in the world.

I yield the floor.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I spoke at length yesterday. I will try not to beat that record, but I do want to make a few comments.

First of all, if you take \$100 million and divide it by 250 million, you come up with about 38 cents a person and that represents what the endowment costs. I think we have to put in focus what we spend on the arts and why we spend it there.

We had some excellent presentations yesterday and we had some this morning on different views of how the money for the Endowment ought to be spent. I guess if you analyzed the Senate, we would have probably 70 or 80 people who say, "OK, let's spend the money, but we have a different way to spend it."

A number would spend it with more going to the States. Some would spend it with all going to the States. Others would spend it in different proportions. But I guess that if it was just a question of whether there ought to be that much money out there available, that we would have a big vote, 70, 80 votes in the Senate, and that is what we need to do—analyze and figure out whether the way we are spending it is the best way.

That, I think, is what is being asked of this body, and I think is being asked of the people throughout the country: Are we spending too much on administration? Are we directing too much of the money to the big cities? Are we spending too much in other areas rather than out in the States? So I hope we keep that in mind as we go forward and examine the amendments that we will be faced with.

I would also like to point out some of the very excellent points that were made by other Senators yesterday. I think Senator BENNETT from Utah probably made one of the best presentations I have heard on why the Endowments are so important and what it does mean to have your particular program get the stamp of approval. As he stated, it is like the Good Housekeeping Seal of Approval for a program. What this does is allow you to not only utilize the money, the small amount of money you get from the Endowment, but to use that as a fundraiser to be able to let people know, "Hey, this is a good program and it has

the sanction of the Endowment and, therefore, you should help us put that program on." It was an excellent presentation.

We have had others this morning, Senator TIM HUTCHINSON and others, as well as Senator HUTCHISON of Texas saying, well, yes, it is a good program, but more of it ought to be distributed to States and a lot less of it ought to be spent from Washington.

I spent my time yesterday stating that I might have an amendment which would spend more of the money in the area of education, indicating that the studies demonstrate that those people who participate in programs of art and music do substantially better on SATs than those who do not. I think that is something we should take note of. And there are a lot of reasons for that.

Some of the basic problems we have in education is the lack of discipline and respect by students. Both of these qualities come along with the arts and the programs with the arts—I delineated a number of those programs that I have viewed as I traveled around the country where students have done exceptionally well, from the east coast to the west coast. When the authorization bill came out of the committee, we suggested that NEA ought to look at trying to evaluate and assist the rest of the country, understand which programs do work, what programs are helpful in improving the access to the arts in education.

Also, as I pointed out yesterday, there are many programs which have been successful in the cities around the country in helping those who are impoverished. I mentioned one program in New York City where there was a horrible situation—so many young people had come from homes of violence, where a member of a family had been killed. Through art and art therapy they were able to bring out the horrible experiences in that child's life and begin to open up a vista of perhaps a life without violence and fear introducing instead hope and other positive things like that.

I think there is a general consensus—or close, a substantial number of Members of this body—that we ought to keep the Endowment but perhaps take a look at how those funds are utilized. So I expect that the Senator from Alaska will have an amendment along those lines.

Also, I would like to just raise a few things. I did not talk about the importance of the Endowment in extending the benefits of the arts and the benefits of museums around the country.

For instance, the Portland Arts Museum moves out to support the Northwest Film Festival, showcasing the works of artists from Alaska, Idaho, Montana, and Washington; the Paul Taylor Dance in New York received a grant to tour through Alaska, Texas, and California; the NEA-supported Educational Broadcasting Corporation in New York to put "Great Performances" and "American Masters" on TV

for the enjoyment of millions. The New England Foundation for the Arts received a grant to bring the "Dance on Tour" program to Connecticut, Maine, New Hampshire, Rhode Island, Vermont, and Massachusetts. The YMCA in Chicago received a grant to expand its Writers Voice centers—writing workshops for young people—to Georgia, New Hampshire, Florida, and Rhode Island.

States have little incentive to fund projects which benefit people outside its borders, yet it is those partnerships which enrich our Nation. These are examples of why national leadership is important. So I hope that as we move forward we remind ourselves that there are many activities of the Endowment other than some of the areas of controversy that we have heard of.

Mr. President, I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Washington.

Mr. GORTON. Mr. President, we are less than 30 minutes from moving on to another subject, the cloture vote on the bill relating to the Food and Drug Administration. If I may, I would like to summarize where we are on this interesting and multifaceted debate on the National Endowment for the Arts.

The Senator from Missouri, Mr. ASHCROFT, who is present on the floor, and Senator HELMS have proposed an amendment that will terminate the National Endowment for the Arts in much the same way as the House of Representatives has already voted.

I hope that we will be able to vote on that amendment in not too great a time after the completion of whatever the majority leader seeks to do with respect to the Food and Drug Administration bill. The Senator from Missouri may very well tell us how much more time he thinks he needs on his amendment.

After that, logically the next amendment would be that proposed by the Senator from Michigan [Mr. ABRAHAM], which would also close down the National Endowment for the Arts but would transfer the money to, I believe, the National Park Service for the preservation of historic American treasures.

The next proposal would be that of the Senators from Alabama and Arkansas who would essentially block grant the entire appropriation for the National Endowment to the States; following that the proposal by the Senator from Texas [Mrs. HUTCHISON], that would have 25 percent, roughly, governed by the National Endowment for the Arts here and 75 percent block granted for the States.

Those are the proposals that have been discussed on the floor at some length yesterday afternoon and this morning. I hope that we can reach an orderly method for voting on each of those amendments so that the will of the Senate with respect to the National Endowment will be made known.

I regret deeply to say that my partner on this bill, Senator BYRD, is indis-

posed today and will not be able to be here at all, something he regrets. He hopes that maybe at least some of these votes could be postponed until tomorrow. I will have to leave that up to the majority leader, who I think wants to move forward as quickly as we possibly can.

It is appropriate now, however, I think, for me to state my own view at least on the four amendments that are in front of us. My views reflect those of the Appropriations Committee and, most particularly, my subcommittee. I believe the National Endowment for the Arts does in fact play a constructive role in culture in the United States. I believe that reforms in the last 2 or 3 years have cut down tremendously on some of the truly objectionable grants which were rightly objected to by the vast majority of the American people.

So with respect to the first two amendments, I will vote no. I also am unable in my own mind to feel that we would somehow deal more sensitively if all of these grants were decentralized to State arts commissions.

Finally, I find myself somewhat in sympathy with the proposal of the Senator from Texas. I believe that perhaps a greater focusing, but not a universal focusing, on State and regional arts organizations may well be appropriate but that there are also grants that are appropriately national in nature and that many of the institutional grantees, while they may be located in a particular city or a particular State, have an impact on the arts that goes far beyond the locale of their principal office, their museum, their symphony orchestra or their opera company.

Because, however, the Ashcroft-Helms position has governed the House of Representatives, my inclination is to vote against all of these amendments that change the present system simply because we will have to take into account the views of the House of Representatives in a conference committee, a conference committee that I think is likely at least to come out with a proposal that is perhaps closer to that of the Senator from Texas than any other that I have heard at this point.

So at the present time, unless I am persuaded to the contrary, Mr. President, I am going to suggest to the Members of this body that they leave the appropriation for the National Endowment for the Arts contained in the bill as it is before us now untouched and discuss the very important questions that all of them have raised with the House of Representatives that has taken a quite different view in a conference committee. With that, I yield the floor.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 1188

Mr. ASHCROFT. Mr. President, thank you very much.

I rise to address the issue of the National Endowment for the Arts and

some of the arguments that have been raised in this debate.

I think it is important that we debate this issue thoroughly. I think it is important that we have the discussion of as many Members of this body on this issue made as explicitly as is possible for the American people.

I am not in any rush to judgment or to election on this. To say because the House of Representatives has taken a position that here the Senate should not take a position or that it should merely endorse the position of the Committee on Appropriations I think is to do less than the American people expect of us.

The American people understand that the issue before us is whether or not arts are to be funded by Government and whether that is a role for Government to play. We must look at the reason why we have Government, the reason why we take money from people that they have earned and they cannot spend on their own families. That is a major issue. And whether or not we are going to take it and then give some of it back to a State where we do not have the ability to control it, or whether we are going to give part of it to the State and we are going to control the rest of it, is another major issue.

I think we ought to debate these things. So I, frankly, want the Senate to move forward, and I want us to move forward with dispatch and make sure that we do not unduly delay things. But this is an issue worthy of the American people, it is worthy of our understanding. I think there are substantially basic, philosophic items that are of importance here: Does the Government have a responsibility to shape the culture by paying for artistic expression, and by paying for some artistic expression and not paying for other artistic expression? I think that is a very important point.

I say that it is important to understand that both artists and nonartists are on both sides of this issue. There are people who love the arts so much that they do not want the Government to contaminate the arts. They feel that when the Government gets in the position of starting to say that this art is good and is worthy of being subsidized and this other art over here is not good and is not worthy of being subsidized, they think that is likely to distort the arts and to leave the arts in a situation of impurity, with artists who are seeking not to express themselves but to express what the bureaucrats in Washington or in a State capital would want them to express.

As a matter of fact, that is exactly the point that Jan Breslauer, the critic from the Los Angeles Times, has written about. Eloquent she states—and as a matter of fact, it is more than an eloquent statement. This is a rather embarrassing indictment of the National Endowment for the Arts. Let her words speak this position as I quote them. And she says—or he says. I do

not know whether Jan, J-a-n, is a "he" or "she." I apologize if there would be any offense in what I have said.

[T]he endowment has quietly pursued policies rooted in identity politics—a kind of separatism that emphasizes racial, sexual and cultural differences above all else. The art world's version of affirmative action * * *.

She is describing the way the bureaucracy, known as the National Endowment for the Arts, has operated, that it has emphasized separatism, emphasizing racial, sexual, and cultural differences above all else.

I think we need to get to an America that emphasizes our identity, the common things we enjoy, the freedom we embrace, not the differences we have. I think the Statue of Liberty has stood there without wincing for a long time. She stood through hurricanes and the tests of time, storms, good times and bad, in war and in peace, but I think she winces a little bit when she thinks about all the people that have come here to pursue common goals of freedom being driven by Government to be separate, to be forced apart.

Jan Breslauer says, "The Endowment has quietly pursued policies rooted in identity politics," this idea of separating us into separate identities. I kind of like a single identity for the United States of America. What are the different identities, she says, that are being emphasized by the National Endowment for the Arts? She says that the National Endowment is pushing us into separate racial identities, that it is pushing us into separate sexual and cultural identities. These differences are being elevated, instead of minimized, in the way, she says, the funds are given out from the National Endowment for the Arts.

Fundamentally, I do not believe that Government should be striving to drive wedges between Americans. Whether it is an arts program or anything else, I think we ought to come to the point where we realize there is only one word that ought to describe us in a way that unites us, and it is "America." I don't need someone to try and push me into some politics of separatism or some identity politics and provide a basis for separating me from my fellow Americans. I think the great unity of America is so very important.

I think of the millions of lives lost in the Civil War for unity, so that this would be one Nation united under God with liberty and justice for a few or for this group or that group, with preferences? No, for all.

The National Endowment for the Arts "has quietly pursued policies rooted in identity politics—a kind of separatism that emphasizes racial, sexual, and cultural differences, above all else." These are not my words. These are not the words of some individual who is against art. These are words from a critic from the Los Angeles Times. The art world's version of affirmative action, to prefer people on the basis of their group identity rather than to prefer people on the basis of their own merit. The United States of America is a place where individuals

should have the ability to succeed or fail based on their own merit. She says the art world's version of affirmative action, and its policies have had a profoundly corrosive effect on American art.

A corrosive effect—I don't know how you can define that as lifting up the arts or improving the arts. We have heard individuals come to the floor over the last several days and say the reason we need this is because it allows the arts that are sponsored to be shared with the entire culture. Do we want to corrode the arts before we share them?

I want to mention I believe there are some artistic endeavors here that are supported that are good ones. Sure there are. You are spending \$100 million, you will probably have some good ones. The question is, Is this what Government is for, to take the hard-earned money of individuals and say we can spend that money better on art than you can spend it on your family?

At a time when real wages for individuals for over half the Americans, according to a recent national article in one of our business journals, are lower than they were in 1989, some 8 years ago, do we still believe that we want to take money that people could be spending on their own families and we want to spend it on art that separates us, that emphasizes racial differences, cultural differences, that has a corrosive effect on the arts itself? That is incomprehensible.

Some people think it is great to have the symphony, it is great to have great art and they think about the great artists of the past, they think about artists from my State whose works are shown in art galleries of this country and have been for hundreds of years. But that is not all that we are talking about here.

Here is a piece of art that is interesting to me. This art was funded by the National Endowment for the Arts. This is a poem. No, Senators, this is not the title of the poem, this is a poem. This poem, spelled L-I-G-H-G-H-T, I am not sure what it means—maybe light—this poem cost the taxpayers \$1,500. This was the subject of a grant. Now, this is the English version of the poem, I have to tell you. This is not the French or the German version. Maybe it is the German version of the poem. Maybe it is not the English version. This is it. This is why we would tax individuals, take money that they earned, working hard on their jobs, and we want to say to the rest of the world, this is what you should be doing.

I was stunned by the fact that my colleagues came to the floor and said we need this not because the arts need the money. They recognize it is 1 percent of the art funding in the country. As a matter of fact, less than that. But 1 percent of the art funding in the country comes from the Government. But we need it so we can have the Good Housekeeping Seal of Approval, that somehow when Government comes and puts its seal of approval on things like

this, it signals to the country that this is what we are supposed to really look up to.

I am sure getting this poem around to schoolchildren will inspire lots of them to be poets. I don't know whether this is a typographical error or whether this is profoundly insightful, but I don't think it is inspirational. I don't think we have to have the U.S. Government taking tax money from people who get up early and work hard all day and go home late, families with two parents working, one to pay the Government, the other to support the family. I don't think we do that in order to be able to put a Good Housekeeping Seal of Approval on this.

I want to talk a little bit about this concept that you put a Good Housekeeping Seal of Approval on things by having Government tell people what is good and what is bad. Let me just indicate that one of my colleagues yesterday spoke, and I quote from the CONGRESSIONAL RECORD of September 15, 1997:

The National Endowment for the Arts is something like a Good Housekeeping Seal of Approval put on a local effort which allows people who are running that local effort to then go out and do their fundraising and say you see what we have here is really a class operation. It is something worthy of your support, worthy of your private contributions. Look, it's good enough that the National Endowment for the Arts has put their seal of approval on it.

And the argument is that somehow the American people don't have the intelligence or the judgment or the capacity to know what values they want expressed in their culture. They need someone from the Federal Government to tell them that this is great poetry and that they should buy it or subsidize it.

I don't believe the genius of a democracy is having the Government tell people what is good or bad. The genius of a democracy is not that the Government informs the people. The genius of a democracy is that the people inform the Government. The genius of a democracy is that the collective wisdom of the people is reflected in what is done in Washington. We have inverted the flow of information here. The people are supposed to be represented in Washington to do the will of the people. The Government is not supposed to be represented by a good seal of approval so that the people can then do the will of Government. The whole idea of a democracy is not that the Government puts its good seal of approval on anything and then the people do it. The ideal of a democracy is that the people express their wisdom to the Government, sending their representatives to achieve the will of the people, not the will of the Government.

It is kind of amusing to me that we have this information flow. We are so conditioned to believing that Washington is the source of wisdom that now

we have to tell the people what good poetry is, and stuff like this is good enough for their support or something else is good enough for their support. You would think we would learn that the central government is not the place to direct investment, whether it be in art or whether it be in industry.

There are different cultures, there are different ways to do government. There are different ways to allocate resources. One way is to have central planning, to have the Government make the decisions, encourage or allocate the resources on its own. That is a way which was tried for a long time.

Communism was a system which said we will do central planning. We will not trust the marketplace. We will not trust the judgment that people will reach on their own. We will trust the central planners, the superior intellects of Government to make those decisions. We will ask them to decide how many potatoes are grown and how many cars are made and how many TV's are made, and with the superior wisdom of centralized government, we can tell the people how things are and it will all be better.

I love the joke Ronald Reagan used to tell about the guy going to buy a car.

The guy said, "You have to wait 10 years for your car but on the 12th day of February, 10 years from now, in the morning, we are going to deliver your car to you."

The guy said, "Oh, no, you can't deliver the car on the 12th day of February 10 years from now."

The car salesman says, "Why not?"

He says, "Well, the plumber is coming then."

The whole point is planned allocation of resources by central government is a failure, an abject failure.

Yet we have people come to the floor of the Senate and say people really do not know the good art from the bad art, what to support, what not to support, and they need the Government to come look and be the Good Housekeeping Seal of Approval. We cannot trust the private marketplace, the will of the people, the understanding of the people to allocate the resources that they ought to put or want to put into art. We have to confiscate resources from them and then we have to use those resources as some sort of gold stock. This is what you must support, you ought to support this, this is great.

Well, if you put the Good Housekeeping Seal of Approval on material that emphasizes, above all else, racial, sexual, and cultural differences, in the words of Jan Breslauer, the art critic, what we have is the Government telling us what is good and telling us that all these things that divide us are good and the things that unite us are not worthy of funding.

In my judgment, I think we should have learned something. We should have learned that when the Founders of this great country considered this question, they voted overwhelmingly

not to have the Federal Government involved in subsidies for the arts. This is not new. This idea came into being in Lyndon Johnson's plan for a Great Society. We know how the governmentalism of the Great Society has been so eminently successful in other areas—such as attempting to deal with poverty. We see there are more children on poverty now than there were when the so-called Great Society began. And in an attempt to deal with situations where there were children being born to parents who would not be parents—there were no families there, really—we have seen that problem exacerbated and intensified rather than assuaged or reduced. Here we have one of the Great Society programs and here is another one that says we know best from Government.

In the area of the Great Society, as it relates to the welfare program, we have that figured out that the central government should not have a sort of a Good Housekeeping Seal of Approval. We have abandoned the old Federal approach that says there is a way you are going to do this and this is the way, the truth, and I guess it would not be the light, would it? The Federal Government's welfare program, we found out, was a failed program.

I yield to the Chair, if there is an item that needs to be brought to my attention.

The PRESIDING OFFICER. Under a previous order, the hour of 12:15 having arrived, the Senate is to conduct a cloture vote.

Mr. ASHCROFT. I ask unanimous consent for 1 more minute in which to conclude my remarks.

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

Mr. ASHCROFT. I thank the Chair. It is clear to me that the National Endowment for the Arts takes resources from taxpayers to spend in a way that the Government thinks it can spend better than taxpayers. Even art critics indicate that that taking has not only a bad effect on people, it divides them, seeks to separate them, but it has a corrosive effect on the arts. I believe that having the Government establish values that it tries to impose on people is a denial of the genius of America, which is when the American people impose their values on Government, not when the Government imposes its values on the people. The so-called Good Housekeeping Seal of Approval theory of support for the National Endowment for the Arts reveals the bankruptcy of the concept of Government telling people what they should believe and what they should value.

I thank the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Since the Senator from Missouri has taken all the time, I ask unanimous consent that I may have an additional 60 seconds before the vote to make some comments.

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

Mrs. BOXER. I thank Senators for their indulgence. I do not have the time to lay out all the reforms that we have made in the National Endowment for the Arts, nor to give you the details on how every single dollar that my colleague talked about is leveraged by \$12 in every community across this great country of ours, because the arts, just as they are in the military, preserve our culture. We spend twice as much on military bands as we do on the National Endowment for the Arts. If the military bands make a mistake and play a song that we don't think is appropriate, we don't stop funding the military bands, because they are a very important part of our culture. If a postman acts wrong and is obnoxious, we don't stop delivering the mail.

So I think it is very important that when we go back to this debate—and I think right now it won't be for a couple of days—that we lay out all of the reforms that have been made and all of the wonderful programs, such as the Youth Symphony, the ballet, and all the things we do with the arts, and have a fair debate.

I thank the Chair, and I yield the floor.

FOOD AND DRUG ADMINISTRATION MODERNIZATION AND ACCOUNTABILITY ACT OF 1997

The Senate continued with the consideration of the bill.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the substitute amendment to Calendar No. 105, S. 830, the FDA reform bill:

Trent Lott, James M. Jeffords, Pat Roberts, Kay Bailey Hutchison, Tim Hutchinson, Conrad Burns, Chuck Hagel, Jon Kyl, Rod Grams, Pete Domenici, Ted Stevens, Christopher S. Bond, Strom Thurmond, Judd Gregg, Don Nickles, and Paul Coverdell.

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the modified committee amendment to S. 830, the FDA Administration Modernization and Accountability Act, shall be brought to a close?

The yeas and nays are required under the rule, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New York [Mr. D'AMATO] is necessarily absent.

Mr. FORD. I announce that the Senator from West Virginia [Mr. BYRD] is necessarily absent.

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

The result was announced—yeas 94, nays 4, as follows:

[Rollcall Vote No. 239 Leg.]

YEAS—94

Abraham	Feinstein	Lugar
Allard	Ford	Mack
Ashcroft	Frist	McCain
Baucus	Glenn	McConnell
Bennett	Gorton	Mikulski
Biden	Graham	Moseley-Braun
Bingaman	Gramm	Moynihan
Bond	Grassley	Murkowski
Boxer	Gregg	Murray
Breaux	Hagel	Nickles
Brownback	Harkin	Reid
Bryan	Hatch	Robb
Bumpers	Helms	Roberts
Burns	Hollings	Rockefeller
Campbell	Hutchinson	Roth
Chafee	Hutchison	Santorum
Cleland	Inhofe	Sarbanes
Coats	Inouye	Sessions
Cochran	Jeffords	Shelby
Collins	Johnson	Smith (NH)
Conrad	Kempthorne	Smith (OR)
Coverdell	Kerrey	Snowe
Craig	Kerry	Specter
Daschle	Kohl	Stevens
DeWine	Kyl	Thomas
Dodd	Landrieu	Thompson
Domenici	Lautenberg	Thurmond
Dorgan	Leahy	Torricelli
Durbin	Levin	Warner
Enzi	Lieberman	Wyden
Faircloth	Lott	
Feingold		

NAYS—4

Akaka	Reed
Kennedy	Wellstone

NOT VOTING—2

Byrd	D'Amato
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The PRESIDING OFFICER. On this vote, the yeas are 94, the nays are 4. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

ORDER OF PROCEDURE

Mr. WYDEN. Mr. President, I ask unanimous consent to proceed as if in morning business for 10 minutes.

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

NOMINATION OF GENERAL SHELTON

Mr. WYDEN. Mr. President, I have asked for this time to notify my colleagues that I no longer intend to object to the U.S. Senate proceeding to the nomination of General Shelton to be Chairman of the Joint Chiefs of Staff.

Last Thursday morning, I announced publicly that I would object to the Senate proceeding to General Shelton's nomination. My colleague from Oregon, Senator SMITH, supported me in this effort. We did so not out of any reservation about the general's qualifications but because he is about to become the Nation's top ranking military officer.

Mr. President, General Shelton is in a position to assure that the military—and in this case the Air Force—respond to rather than ignore the requests of the Congress and our constituents. It is not too much to ask that the Nation's top general help us address the con-

cerns of the widows of the American airmen who have died serving our country. What they have wanted is simply to have the Air Force explain the reasons for the crash of a C-130 off the coast of California last November that killed 10 airmen on board. In April of this year, the Air Force informed the widows and families that the cause of the crash was engine failure due to fuel starvation. No further explanation was offered at that time. When the widows and families sought further explanation, they were told that the case was closed. Later that month, they came to me, and asked if we could help. I approached my colleague, Senator SMITH. And, at every step of the way, Senator SMITH has been exceptionally helpful in our joint efforts to work to make sure that the Air Force would provide the loved ones of these airmen an answer to what happened in this tragedy. The families, my colleagues, have a right to know.

We asked that an independent group be allowed to review the file. We asked that information about the crash be made available to the families. We asked that the Air Force give the National Transportation Safety Board's aviation experts access to the file.

The denying of the request to provide the National Transportation Safety Board access to the files was especially difficult for Senator SMITH and I to understand, because in the interim the Air Force had allowed a private contractor to look at these materials. On September 10, the National Transportation Safety Board informed us that, based on the limited data available, the Board was unable to determine whether the Air Force had conducted a thorough investigation.

Having exhausted all other avenues to get this critically needed information for Oregon families, it was my hope that we could command some attention at higher levels of the military by appealing to the soon-to-be most senior officer. General Shelton's staff responded quickly. The Air Force has now proposed an agreement with the National Transportation Safety Board that should provide us the information we seek. It is a solid agreement and we wish to thank the Air Force for the prompt response to this case.

The agreement between the Air Force and the National Transportation Safety Board is supported by the widows and the Oregon families, and provides for a joint, high-level review of the accident involving King-56 and other C-130 incidents. The agreement calls for the team to issue a preliminary report within 90 days. It is our hope the full participation of the National Transportation Safety Board in a manner that assures its independence of action will finally get the families and the widows the answers they have awaited for so long.

I want to yield to my colleague, Senator SMITH. Before I do, I thank the chairman of the Armed Services Committee, Senator THURMOND, and Sen-

ator MCCAIN, his colleague, and Senator LEVIN, for assisting Senator SMITH and me. In yielding to my colleague, I again express my appreciation and thanks for the opportunity to work together on this matter in a bipartisan way.

Mr. President, I yield the remainder of my time to my colleague from Oregon, Senator SMITH.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I thank my colleague, Senator WYDEN, for yielding. I publicly commend my senior colleague from Oregon, with whom it has been my great pleasure to stand on this issue and ask for justice for our State. I want to point out a very pivotal role that Senator STROM THURMOND played in breaking a logjam, if you will, for the State of Oregon. For a very long time now, Senator WYDEN and I have been trying to get answers from the Air Force for widows and orphans, literally, as to why their loved ones, these airmen, perished in this tragic accident. For one reason or another, we were stalled and put off at every turn.

It was Senator THURMOND who, when he heard of Senator WYDEN's hold on this nomination—and, frankly, my encouragement of that—that he intervened in our behalf. I acknowledge it. I thank him. He asked me to go immediately with him to the cloakroom where we got on the phone with the Chief of Staff of the U.S. Air Force.

We laid out the terms of a deal that will include a new investigation into C-130 air transports generally, and this one in particular. It was promised to Oregon's families, that these widows and orphans would be given the information they need as to why this accident occurred. It was promised that a member of the National Transportation Safety Board would be a part of this investigative team. And I think that is important for the Air Force that has, in my State, lost some credibility. I thank the Air Force for their promise to provide to our State, and this issue generally, the kind of investigation that was conducted for Commerce Secretary Ron Brown, who perished in an accident in Bosnia.

So, I thank the Air Force for responding. I regret it took this level of intervention, but I compliment my senior colleague for his leadership on this. I have been proud to stand with him. I am grateful to Senator THURMOND. I am thankful the Air Force has come around to help us on this issue. I only hope that out of all of this will come information that will protect our men in the Air Force who fly C-130 air transports from this ever occurring again to anyone else.

With that, I encourage my colleagues in the Senate to vote for the confirmation of the Chairman of the Joint Chiefs of Staff and I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, it was a pleasure to work with the Senators from Oregon to resolve this matter. I am very pleased it has been resolved.

EXECUTIVE SESSION

Mr. THURMOND. I now ask unanimous consent that the Senate immediately proceed to executive session to consider the following nomination, reported from the Armed Services Committee, Calendar No. 244, Gen. Henry H. Shelton.

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

NOMINATION OF GEN. HENRY H. SHELTON FOR APPOINTMENT AS CHAIRMAN OF THE JOINT CHIEFS OF STAFF

The PRESIDING OFFICER. The clerk will report.

The bill clerk read the nomination of Gen. Henry H. Shelton to be Chairman of the Joint Chiefs of Staff.

Mr. THURMOND. Mr. President, I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid on the table, any statements relating to the nomination appear at this point in the RECORD, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I ask unanimous consent I may speak as in morning business.

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

WILEY K. CARTER

Mr. COCHRAN. Mr. President, the U.S. Senate lost one of its most colorful and well liked staff members last Thursday night when my administrative assistant, Wiley Carter, died. His sudden and unexpected death at 61 years of age following surgery at a hospital in Jackson, MS, has deeply saddened us all. He began his work with me as manager of my campaign for reelection to the U.S. House of Representatives in 1974. In that turbulent election year, with his good assistance we received over 70 percent of the vote. After the election, Wiley joined my congressional staff in Mississippi where he served as my liaison to local governments and case worker. Two years later he became a member of my Washington staff and soon thereafter became my administrative assistant.

During these 23 years of close association, I developed a deep appreciation for Wiley Carter. His warm good nature

was constant, his loyalty never failing, and his enthusiasm an ever present inspiration. He was adept at handling constituents' problems, and he reminded all of us by his example that one of our highest priorities was to help solve the problems of the people of our State and to treat everyone who called on us with respect and courtesy. He really loved his job. He loved people. He loved politics. He loved campaigns. He loved Mississippi State University. But, most of all he loved his family. He cared about his children and his efforts to support and assist them in every possible way were well known.

One experience with Wiley and his wife Gwen, and their children, and their extended family is particularly memorable for me. We were all in Starkville, MS celebrating the donation of his political memorabilia and papers to the Mississippi State University Library. The love the family members felt for each other was obvious to me, and the pride they had in seeing Wiley's career celebrated with such ceremony—well attended by many friends—was evidence of their deep appreciation of him. And, he loved every minute of it as he should have.

One of his former classmates said to me, "Where did Wiley get any papers? When he was in school at State, he didn't have any papers."

Of course, there were a lot of clippings, photographs, and letters that had accumulated over a career dating from the organization of the Mississippi Young Democrats in the 1950's and the Carroll Gartin and John Bell Williams campaigns for Governor, to the present.

The skills he developed along the way led our mutual friend, Bill Simpson, to say to me recently, "Wiley Carter in my book is the best street politician in Mississippi."

I didn't know whether that was such a high compliment or not until I told Wiley what Bill had said about him, and Wiley said, "You know, that's one of the best compliments I've ever gotten."

In this day of cynicism about politics and government, more Wiley Carters would be good to have. People who devote their energy to doing their best to make our government respond to the needs of ordinary people and respect the opinion of average citizens.

Wiley engendered good will wherever he went. He warmed our hearts, and he put a smile on our faces.

Without Wiley, life will not be as interesting, and political campaigns won't be the same either. He would say, for example, "In a campaign, if you haven't heard a rumor by noon, you ought to start one." Wiley organized a War Room before Lee Atwater and James Carville made the term famous. He was so well-liked by so many in Mississippi and here in Washington too. A Capitol Hill policeman, Andy Anders, was one of the first Washington friends whom I called on Friday morning. Andy had taken his vacation a few years ago to come visit Mississippi at Wiley's suggestion, and

Wiley gave him the royal treatment. They walked up to the State Capitol. The legislature was in session. He introduced him to Gov. Kirk Fordice, the Speaker of the House, and many others. Of course Andy was impressed and delighted.

That says a lot about Wiley and his capacity and his sense of duty to reciprocate true acts of friendship and kindness.

There will never be another one like him. We all are so fortunate that we have had the benefit of his unique insights into human nature and his example of loyalty to his friends and family.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I join my colleague to express my sadness at the loss of our friend and THAD's administrative assistant, Wiley Carter. I extend my sympathy to Senator COCHRAN and his staff, and certainly to the family and all the many friends that Wiley Carter had in Mississippi.

Senator COCHRAN did a wonderful job of talking about his indomitable spirit. He was a lovable guy, a great pleasure to be around. He was a friend of mine. And on many occasions when I needed advice and counsel, I can remember seeking out Wiley Carter. He did always have good spirits. I have never seen anybody who actually enjoyed Government and politics, which is the art of Government, any more than Wiley Carter. He was dedicated to maintaining an America in which we want our children to grow up. I am not the only person to note that more Wileys would serve us all well.

In the initial part of his 40-year career, Wiley worked for the State's economic development department, the Mississippi Democratic Party, former Lt. Gov. Carroll Gartin and former U.S. Representative John Bell Williams of Mississippi. But it was during his 23-year stint as Senator COCHRAN's administrative assistant that people throughout Mississippi knew him best.

Wiley spent much of that time crisscrossing our State, listening to its citizens, and working on THAD's behalf to carry out their mission. People trusted Wiley. They were comfortable sharing their concerns with him, and they knew that their words would go straight to THAD's ear.

THAD and I were not the only ones who counted on Wiley's knowledge. Very few people knew more about Mississippi politics than Wiley, and in past years, few young political hopefuls in our State have considered a run for office without first consulting him. He also provided advice and perspective for many who had been around for quite a while, and he did it with his infectious smile and sense of humor.

His wit always seemed to put political life in perspective. While running Senator COCHRAN's Senate race, Wiley

quipped, "In a campaign, if you haven't heard a good rumor by noon, you better start one." Needless to say, Wiley knew how to have fun in serious situations, and he always got the job done.

Wiley's outstanding work and invaluable knowledge were not the only reasons he was well loved by Mississippians. Many benefited from his tireless work as an ambassador for his beloved Mississippi State University. Wiley was a servant of the people, and he was one of them.

He is best described as the kind of person who never met a stranger or knew an enemy. He reached out to individuals at all levels, and his friendliness was contagious. Quite simply, everyone liked Wiley.

I understand that the church in Jackson couldn't hold all those who showed up yesterday to pay tribute and show appreciation for Wiley. To anyone whose life he touched, this is no surprise.

There is not a story that can be told or a memory brought to mind about Wiley that wouldn't bring a smile to the faces of those who knew him, which is a tribute in itself to his character. Wiley will be sorely missed, but more importantly, he will be fondly remembered.

I am sure all my colleagues in the Senate join me in extending condolences to the members of his family, to his friend Senator COCHRAN, and to the many others who loved him.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I know we all join in expressing those feelings about Wiley. They were so adequately and eloquently expressed. We appreciate that.

UNANIMOUS-CONSENT AGREEMENT

Mr. JEFFORDS. Mr. President, I ask unanimous consent that when the Senate reconvenes at 2:15 there be an hour for debate only on the FDA bill to be equally divided between Senators JEFFORDS and KENNEDY, and immediately following that hour the Senate will resume the Interior appropriations bill.

The PRESIDING OFFICER. Is there objection?

Mr. ASHCROFT. Reserving the right to object, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER (Mr. ASHCROFT). The Chair, in his capacity as a Senator from the State of Missouri, asks unanimous consent that the order for the quorum call be rescinded.

Without objection, it is so ordered.

For the pending request for unanimous consent, no objection being heard, without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 1:25 p.m., recessed until 2:14; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

FOOD AND DRUG ADMINISTRATION MODERNIZATION AND ACCOUNTABILITY ACT OF 1997

The Senate continued with consideration of the bill.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. I yield 10 minutes to the Senator from Connecticut.

Mr. DODD. Mr. President, I thank the Chair and I thank my colleague from Vermont, the chairman of the committee.

Let me begin these brief remarks by commending all of our colleagues on the Labor and Human Resources Committee. This has been a long process, 2½ to 3 years. The Presiding Officer is a member of this committee as well and all have worked very hard, I think, to bring a bill which I think most would agree is a very good bill.

There obviously still are some issues that will have to be resolved, but this has been a very fine product that has been assembled by both Democrats and Republicans for the first time in several decades of reforming the Food and Drug Administration and the processes by which we bring important pharmaceutical products and medical devices to patient groups and individuals across this country in an efficient, safe, and expeditious fashion.

Let me begin as well by thanking our colleagues for their overwhelming support earlier today of the cloture motion to proceed with this bill. Mr. President, 94 Senators, of both parties, loudly and clearly told us they are ready to move forward to reauthorize PDUFA and begin debating the other critical reforms this bill contains.

There is no Federal agency with a more direct or significant impact on the lives of the American people than the Food and Drug Administration. The foods that we serve our family, the medicines we take when we are sick, even the drugs we give our pets are all approved and monitored by the Food and Drug Administration. We must not lose the opportunity that we have before the Senate today to enact legislation that ensures that the FDA has the authority it needs to bring safe and effective products to the American people quickly, efficiently and safely.

I again thank both Senator JEFFORDS and Senator KENNEDY for their perseverance on this issue. Time after time they have been willing to return to the bargaining table after many others would have just walked away. With open minds and good faith they have extensively negotiated this bill line by line.

Mr. President, we have now come to a point where issues on which Members were previously completely polarized—third-party review of medical devices, off-label dissemination of information, health claims for food products, the number of clinical trials needed for drug approval, and just today, national uniformity of cosmetics—we have now reached agreement.

I don't know that any of us would have thought unanimity possible on these provisions even a month or two ago. Yet here we are, this afternoon on this day, with full agreement on all but a handful of issues, or less.

I know we have a better bill for all the arduous negotiations that have occurred. As an example of how far we have come, let me just briefly describe third-party review of medical devices. The bill would expand the pilot program currently administered by the FDA. This is a program, I should note, that is supported by the FDA as a way to make more efficient use of its resources.

In last year's debate on this issue, which many may recall as being one of the more acrimonious, we were told that this provision was a nonstarter, no room for compromise, subject closed.

This year, I am pleased to say a spirit of bipartisanship and compromise has prevailed. Senator HARKIN, Senator KENNEDY, and Senator COATS, the Presiding Officer, worked diligently to draft language that ensures that higher risk devices are not inappropriately included in this pilot program and that strong conflict of interest protections are in place.

Late last week, again on an issue that appeared unresolved, national uniformity for cosmetics, we have reached agreement. Senator GREGG of New Hampshire has offered what I think is a very reasonable compromise. In the area of packaging and labeling, States can continue to regulate where the FDA has not acted. Conflicting State requirements that could confuse consumers will be removed. But where the FDA has not chosen to act, where it does not have either the manpower nor the authority to protect the public, States can still play their historic role in regulating cosmetics.

This is the kind of effort, Mr. President, made over and over again on this bill—some 30 times just since the markup 2 months ago that we have made improvements in this legislation. A great many of us take pride in the product that we have created—a bill that would speed lifesaving drugs and devices to patients and that clearly retains the FDA as the undisputed arbiter of the safety and effectiveness of the products.

I will speak about some of the positive reforms contained in this bill, as well.

At the heart of this bill is the 5-year reauthorization of PDUFA, the Prescription Drug User Fee Act, a piece of legislation remarkable for the fact

that there is unanimous agreement that it really works. PDUFA has set up a system of user fees which drug companies pay to the FDA. These fees have enabled the agency to hire more staff. As a result, drug approval times have been cut almost in half, getting new and lifesaving therapies to patients more quickly.

In addition, by improving the certainty and clarity of the product review process, S. 830 encourages U.S. companies to continue to develop and manufacture their products in the United States, not an insignificant matter. The legislation emphasizes collaboration early on between the FDA and industry during the product development and product approval phases. This will prevent misunderstandings about agency expectations and we think should result in quicker development of approval times.

Mr. President, in addition, S. 830 establishes or expands upon several mechanisms to provide patients and other consumers with greater access to information and lifesaving products. For example, the legislation will give individuals with life-threatening illnesses greater access to information about the location of ongoing clinical trials of drugs.

Based on a bill originally championed by Senators SNOWE of Maine and DIANNE FEINSTEIN of California, I offered an amendment in committee, which I was pleased to see adopted, to expand the existing AIDS database to include trials for all serious or life-threatening diseases.

Experimental trials offer hope for patients who have not benefited from treatments currently on the market. Currently, patients' ability to access experimental treatments is dependent on their spending large amounts of time and energy contacting individual drug manufacturers just to discover the existence of trials.

Mr. President, this is not a burden that we should place on individuals already struggling with chronic and debilitating diseases. This database will provide one-stop shopping for patients seeking information on the location and the eligibility criteria for studies of promising treatments.

Mr. President, I am particularly pleased that this legislation incorporates the Better Pharmaceuticals for Children Act, legislation originally introduced by our former colleague from Kansas, Senator Kassebaum, and now cosponsored by myself and Senator DEWINE of Ohio, along with Senator KENNEDY, Senator MIKULSKI, Senator HUTCHINSON, Senator COLLINS, and Senator COCHRAN.

This provision, Mr. President, addresses the problem of the lack of information about how drugs work on children, a problem that just last month President Clinton recognized publicly as a national crisis.

According to the American Academy of Pediatrics, only one-fifth of all drugs on the market have been tested for

their safety and effectiveness on children. This legislation provides a fair and reasonable market incentive for drug companies to make the extra effort needed to test their products for use by children.

It gives the Secretary of Health and Human Services the authority to request pediatric clinical trials for new drug applications and for drugs currently on the market. If the manufacturer successfully conducts the additional research, 6 extra months of market exclusivity would be given.

I recognize that there are a few matters unresolved in this bill despite the best efforts of all involved, and we will need to hold votes on those issues. One issue, which I plan to discuss further when we debate the bill this week, involves section 404 of the bill, which relates to the FDA's medical devices. This provision, the so-called labeling claims provision, clarifies current law by stating that while reviewing a device for approval, FDA should look at safety and efficacy issues raised by the use for which the product was developed and for which it was marketed.

Again, this is current law. Unfortunately, in a few instances the FDA has inappropriately expanded the scope of its review by requiring manufacturers to submit data on potential uses of the product. Some have raised concerns that under this provision a manufacturer could propose a very narrowly worded label for a device and that the FDA would be barred from asking for information on other obvious uses.

I don't believe this is the case. The FDA retains its current authority to not approve a device if features of the device raise new questions of safety and efficacy. Clearly, if a bad actor device manufacturer attempted to get a misleading label past the FDA, the agency would have full authority to disapprove the product.

Again, I urge, on this matter, that some common ground be sought to see if we cannot resolve this, but I do believe the present legislation is more than adequate to protect the concerns that have been raised about a use for a device beyond what its intended purpose would be.

I was pleased to join Senator JEFFORDS, the chairman of the committee, as the first Democratic cosponsor of this bill. I thank him again for the hard work and long hours that he and his staff, as well as Senator KENNEDY, Senator MIKULSKI, Senator WELLSTONE, Senator COATS, Senator GREGG and others, have contributed.

Mr. President, this has been a long process, and while there are still some outstanding issues, I think this committee deserves a great deal of credit for having been open to the suggestions of others. There are about 50-some-odd amendments that are kicking around that may be offered. I don't know how many will actually survive the germaneness test when they are raised, but I hope, for those who are bringing up new matters here that we have not

had a chance to look at, that they would reserve those unless there is an overwhelming need for them. In many cases, if the matters had been brought before the committee earlier, we might have been able to handle them.

We have a few days left to get the bill done. PDUFA goes out of existence on September 30. We have been 2½ years at this now. My hope is we will not delay this to such a degree that we lose a historic opportunity to make a difference. When it takes 14 to 17 years to get some cancer treatments approved, there is something fundamentally wrong with that kind of a process. We ought to be able to make it far more efficient than that and also be able to provide people with the safety that they demand. It is a wonderfully encouraging thing in this country, when we think how many places we go and how many products we ingest and how many products we apply to our bodies and to our children and families, that we have a high sense of confidence that when we do that, it is safe and, by and large, efficient and effective. We don't want to lose that.

We also believe in this day and age with all the technology available to us that we ought to be able to not give up on safety or efficacy and be able to move that process forward.

I thank my colleague from Vermont for yielding.

Mr. KENNEDY. Mr. President, I yield 7 minutes to the Senator from Illinois.

Mr. DURBIN. I thank the Senator from Massachusetts for yielding.

We can all remember 2 years ago when there was a debate on Capitol Hill about closing down the Federal Government. Rush Limbaugh and people like him went on the radio and said, "Go ahead and do it, no one will notice. No one will notice if you close down these Federal agencies. They are just a drain on the Treasury and our tax dollars."

But the agency that we are talking about today is an agency you would notice immediately—immediately—because the Food and Drug Administration, as small as it is by Federal standards, is one of the most important. There is not a single thing you buy in the drugstore or look at in your medicine chest at home that the Food and Drug Administration has not taken a look at to make sure it is safe for you, your kids, and your family.

That is why this FDA reform bill is so critically important to this Nation to make sure we make this agency more efficient. I want to salute the Senator from Vermont and the Senator from Massachusetts. They have had their differences on issues, but I think most Senators, Democrats and Republicans, agree reform is needed. This bill is a step in the right direction.

It is in that spirit that I will offer several amendments. Let me tell you about two that I think people should take notice of. If you went out today and decided to buy a car for your family—a few years ago I went out and

bought a Ford—you will have your name and address entered into a computer. If at some later date something is found wrong with that car, the brakes are faulty or there is some mechanism on the door that is not safe, they will notify you, they will track you down, and they will send you a notice. A lot of Americans have received them, "Come on in to our shop, and we will fix your car." That is reasonable. None of us want to drive an unsafe vehicle.

My amendment says is it not now reasonable, when it comes to heart valves and pacemakers and items like that, that we do the same thing? If you or your loved one is told by the doctor you need a pacemaker, you think long and hard about it but say, "Doctor, if you think that is what I need to live, so be it." You go through the surgery, and everything works out just fine. Wouldn't you like to be on a list somewhere so that if a defect is found in that pacemaker 6 months, a year, or 2 years later, that you can be notified? That is what my amendment says. Track and surveillance, find the customers that use the products. If there is a change, let the customers know, let the people know, so they can go back to their doctor, back to the hospital. I don't think that is unreasonable.

The second thing is we want to move some of the drug surveillance, for example, and drug approval off the Food and Drug Administration campus and take it to third-party reviewers. Now, this is being done in Europe and other places. It is not unreasonable that we would go to a laboratory and say, "You do the testing, you read the results; you tell us whether this drug is ready for the market." I think that is a reasonable thing for us to try to do, under supervised circumstances. But my amendment says let us make certain, absolutely certain, that this third-party reviewer does not have an economic interest in the drug company seeking approval. Would you trust a reviewer who just happened to have a thousand shares of stock of the company making the product that he is deciding whether it will go to market or not? Would you have second thoughts if that person was being offered a job by the same company whose drug he is reviewing just happened to get a vacation in the Caribbean last summer at the expense of the same company?

Conflict of interest statutes are important here. If we are going beyond the Federal Government and we are going to have private laboratories doing this, for goodness sakes, let's be certain that their judgment and decisions are based on sound science and not on financial gain. That is what my second amendment will do.

I think these will move us along toward making the FDA an even better agency. There are a lot of critics of the Food and Drug Administration. I have worked closely with this administration for over 12 years. Some of the fin-

est people in Government are working out there. Sometimes they are frustrated that we wish they would bring things to market more quickly. Did you read the newspaper this morning? Occasionally, things are moved to the market that aren't safe. Thank goodness, the FDA can say it is time to take the item off the market, or decide the benefits are not outweighed by the problems this drug creates. We have to keep this agency strong and independent and above political criticism. The two amendments which I will be offering on the floor are an attempt to do that.

I thank the Senator from Massachusetts for yielding.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator from Massachusetts has 25 minutes, 20 seconds under his control.

Mr. KENNEDY. I yield myself 20 minutes, Mr. President.

The PRESIDING OFFICER. The Senator is recognized for 20 minutes.

Mr. KENNEDY. Mr. President, I thank my colleague and friend from Illinois for reminding us how important this debate is here on the floor of the U.S. Senate. We are talking about the agency of Government that has the prime responsibility for protecting the health of the American consumer. We all have an interest in making sure that medical products are available earlier. Every one of our families have benefited from the innovation and resourcefulness of the medical device industry and from the advances of pharmaceuticals. I doubt there is any Member of the body that has not. So all of us want to be able to make sure that medical advances will be available to the American public.

We are in a situation today where the United States through the FDA is leading the world, in terms of approving new drugs as well as medical devices. That has changed from recent years. I think all of us have seen some very dramatic and important progress made in recent years. As I have said many times before, I want to give a tribute to the chairman of our committee who has worked tirelessly on this issue. He has brought together those individuals on our committee and outside that have differing views, all struggling to try and advance the interest of the public health. I think he has made remarkable progress in moving us forward to where we are today. But there are important remaining items that I hope we can dispose of in the Senate within a reasonable time period so that the process could move forward. I take exception from the understanding of the language that has been included in this bill with regard to ensuring that the consumers of medical devices and users of medical devices have the kind of protection that has been referred to here by my friend and colleague, the Senator from Connecticut, and others.

I have here, Mr. President, a letter from the Secretary of Health and Human Services, which indicates that they have four major concerns with this particular legislation. One of them was the area of cosmetics. Another area is environmental considerations, and another area is device manufacturing procedures. But the other important area is the one that I am going to address here today, and that is what I call the safety issue, the fen/phen issue as it applies to medical devices.

The Secretary, speaking for the President of the United States, has identified this as being a major issue. So when others gather around and say, "Look, we have debated this and discussed it, why are we bringing these matters up in this debate at this time?" The reason that we are bringing it up is, as the Secretary of Health and Human Services has recognized, there are very powerful health consequences we ought to take note of and deal with and that we ought to alter and change.

It isn't only the Secretary of HEW. Here is the National Women's Health Network, who points out:

The network is extremely concerned with the section 404, which prevents FDA from requiring medical device companies to perform complete reviews on the safety and effectiveness of a medical device. This must be amended to give FDA the authority to verify that the label is not false or misleading. Section 404 is a serious danger to women's health, which must be fixed before S. 830 is acted upon by the Senate.

Then the Patients' Coalition indicates a similar concern. It outlines probably eight or nine major issues and section 404 is one of them.

The Consumer Federation of America wrote:

We are writing in support of your amendment to change section 404 to prevent serious injuries to patients and consumers from medical devices with false or misleading labels.

This isn't just the Senator from Massachusetts that is saying this. Here is the Secretary of HEW saying it. Here are the primary groups defending women's health and consumers' health, all who have joined in recognizing the dangers that this particular provision provides, and why it is so important that we are going to change it and alter it.

The Consumer Federation says:

Section 404 has been crafted to permit medical device manufacturers of class II devices to limit FDA's review of the safety and effectiveness of a device based upon conditions of use listed on the label. Even if it were clear from the device's technical characteristics that its real use would be for risky purposes, FDA would be prevented from looking beyond the conditions of use on the label.

There it is. That is what the issue is. The Consumer Federation understands it. They are pointing out that 404 was crafted to permit the device manufacturers of class 2 devices to limit FDA's review of the safety and effectiveness of a device based upon conditions of use listed on the label. Even if it were clear from the device's technical characteristics that its real use would be for

risky purposes, FDA would be prevented from looking beyond the conditions of use of the labels.

That is what we are addressing, Mr. President, and why this is important. Mr. President, all we have to do is look at today's newspapers. Look at this morning's newspapers, the Washington Post, Wall Street Journal, all across the Nation, talking about the off-label use of pharmaceuticals, those pharmaceuticals that were used on an off-label basis. That is similar to the issue we are talking about here today with regard to medical devices, the off-label use of medical devices.

But the issue that we have before the Senate this afternoon is more insidious. Why? Because it says that if a medical device company is submitting an application for a certain use, FDA can't look at any other uses even if there is a clear intention—and we are glad to spell out what that criteria would be—for example predominant use—to use the device or market the device for another use. That is what we are interested in—having FDA look at the safety and efficacy of a use clearly intended by the design of the medical device.

I am going to illustrate this in just a few moments. The issue is whether the FDA has the authority to look at whether that medical device has been tested for the off-label use, which is the clear intention of the medical device company. And the answer is, no, they cannot. This isn't off-label use of two products that are being put together and then prescribed by various medical professions. This is the guardian of the American public, the FDA, that is being denied the ability to look beyond the label at the technological differences of a device in terms of safety and effectiveness. That is the issue.

Now, there are those that say—and we heard the argument by my friend from Connecticut—that FDA inherently retains that power. If they do, let's spell it out. If we spell it out, we haven't got a problem. But the Secretary of HEW does not believe they have the inherent power. The Consumer Federation doesn't believe they have the inherent power. The various patient groups don't believe they have the inherent power. The various groups that are out there protecting the public, virtually none of them believe they have the inherent power. If they have it, let's spell it out. We can work that language out. We have been attempting to do that for a considerable period of time, but we have not been able to do so.

The answer on the other side is, well, we can't anticipate every possible use that a medical device might have and we are not going to submit safety data for every possible use and that FDA shouldn't get in the minds of various doctors using that medical device, for whatever purpose. That is not the argument. That will be the argument you will hear out here on the floor of the Senate. That isn't what we are talking about.

We are talking about a limited number of medical device companies that will go to FDA and abuse this process because they are able to get through the process with a label that in so many respects matches a previously approved one, but the medical device has an entirely different technology that clearly indicates a different intended use. That is what we are talking about.

For example, the new lasers that are being approved by the FDA labeled as general lasers that are for cutting various tissue, but clearly designed to treat prostate cancer. We want the FDA to be able to say, if you are going to use that for prostate cancer, we want to make sure that it is safe and efficacious. We don't want to permit the medical device industry to submit false and misleading statements.

That is a powerful statement. But I daresay if they are going to submit a statement that says they are going to use a particular medical device for one purpose and FDA can demonstrate that the company has intended the device for another purpose, and they are already involved in, advertising and promoting that particular medical device in countries all over Europe for an entirely different purpose, I say that is false and misleading. The Members of the U.S. Senate are going to have a chance to decide whether or not they are going to stand and say we will not permit the medical device industry to submit false and misleading information on labeling. We will see how that vote will go.

We include false and misleading under what they call the PMA's, which means the various medical devices that have to go through a more elaborate procedure. We have protections against false and misleading advertising on that. But we are going to say that the American public shouldn't be assured that when the medical device industry submits a particular product, that they do not submit information that is false and misleading. And what we mean by that is that they have an intention to use that various medical device for an entirely different purpose for which there have not been adequate safety standards established or safety records advanced. That is the issue, Mr. President.

That is a very, very important health issue. It is a very important one. You can say it is only one section out of a whole piece of legislation, but it is very important. First of all, let me review very quickly about how medical devices are approved in the FDA, so that we understand and put this into some criteria.

I want to go through examples of some of the problems that we are facing today. I'd like to let the American people make judgments and decisions about whether they think adequate safety information should be available for digital mammography and digital diagnostic x rays. Let the American people judge whether these devices

should be used in surveying women who may have cancer when they haven't been approved for that.

Mr. President, let's get back to where we are today. In the light of today's revelations about fen/phen should we be thinking about a provision in this bill that would allow device manufacturers to get their products approved for off-label use on the basis of a false and misleading label.

There are two stories in the Wall Street Journal—one yesterday and one today—as well as one in the Post today, which tell us why the Senate should give a resounding “no” to this fen/phen device division.

The first article explains in detail how an unscrupulous drug company engaged in a broad conspiracy to illegally promote the use of a product for treatments that have not been shown to be safe and effective. This conspiracy involved the laundering of money, deceptive deals, and hospital physicians' coercion of honest employees who objected to these corrupt practices. Fortunately, companies which engage in these kind of fraudulent practices are the exception rather than the rule. But it is precisely the exceptions that make a strong FDA so critical.

The second story outlines the tragic results of off-label use of two approved drugs, dexfenfluramine and fenfluramine. These two drugs, used in unapproved combination for weight reduction, were found to have caused irreversible heart damage in thousands of women. In addition, there are early revelations that fenfluramine phentermine, known as fen/phen, had also caused severe heart damage.

This is truly appalling—women receiving medical assistance for weight reduction, assistance they have been led to believe was entirely safe but which has not been tested adequately for that use—ended up suffering severe heart damage.

The provision that is before us, rather than increasing protection for American consumers against products that have not been safe and effective, would actually reduce those protections. It would permit a device manufacturer to design a product for one use and falsely claim on the label submitted to the FDA that the device was for a different use. The FDA would be barred from protecting consumers. It would require the FDA to accept the manufacturer's label at face value. The FDA under this legislation has to accept the labeling that the manufacturer has put forward, even if it were false or misleading. Fen/phen should teach us that the American consumers deserve to be protected against unsafe product uses. But the provision before us goes in exactly the opposite direction. That is why the President has threatened to veto it. That is why a broad coalition of consumer health groups oppose it. And that is why the Senate should reject it.

Mr. President, as we know, there are two categories of medical devices. Let me give a brief explanation of how the

FDA regulates and clears medical devices for marketing. It will help clarify the need for this amendment.

Under the current law, the manufacturers of new class I and class II devices get their products onto the market by showing that they are substantially equivalent to devices already on the market. For example, the manufacturer of a new laser can get that laser onto the market if it can show the FDA that the laser is substantially equivalent to a laser that is already on the market.

Similarly, the manufacturer of a new biopsy needle can get that biopsy needle onto the market by showing that it is substantially equivalent to a needle already on the market. These manufacturers are obligated to demonstrate substantial equivalence to the FDA by showing that the new product has the same intended use as the old product, and that the new product has the same technological characteristics as the old product. If the new product has different technological characteristics, these characteristics must not raise new types of safety and effectiveness questions in order for the product to still be substantially equivalent to the older product.

So, if the product is substantially equivalent and doesn't raise new safety effectiveness questions, it moves on through. The logic of the process for bringing medical devices onto the market is simple. If the product is very much like an existing product, it can get to market quickly, but if it raises new safety or effectiveness questions, those questions should be answered before it gets on the market.

This process for getting new medical devices on the market, commonly known as the 510(k) process, is considered by most to be the easier route to the market. That process accounts for how 95 percent of all devices get to the market. Devices that are not substantially equivalent class I or class II devices already on market must go through a full premarket review. Thus, device manufacturers have an incentive to get new products on the market through the 510(k) process. In fact, well over 90 percent of the new devices get on the market through the submission of a 510(k) application. Section 404 of the bill prohibits the FDA from requiring safety and effectiveness data on any device following the 510(k) route except for uses the manufacturer chooses to put on the label, even if the label is false and misleading—even if the manufacturer says, "We are just going to use it for cutting tissue, we are not going to use it for prostate cancer," knowing full well that they intend to use it for prostate cancer. All the world knows that they are going to use that device for prostate cancer. The FDA is prohibited from saying, "Let us see where the safety is." Where is the safety information on that? That, Mr. President, is the issue.

Let me give you a few more examples.

On the biopsy needle for breast tumors, the needle is labeled for performing a biopsy. But the design clearly indicates that it is designed to remove tumors. Here you have a case where you have a small needle with a very narrow opening at the one end which is used for testing a biopsy of a particular tumor. Now the manufacturer comes in with a much broader needle, a much wider needle, and says, "Look, our needle is for the same thing, just to biopsy the tumor." The design clearly indicates that it is built to remove tumors. Under the bill language, FDA could not ask for safety and efficacy data for the needle's use for tumor removal, even though that is clearly indicated by the designer of the device. The company comes in, and says, "Look, we have a biopsy needle right here. Sure, ours is a little larger. But this biopsy needle is really absolutely intended to do the same thing as the others out there and, therefore, we are substantially equivalent," even though they are out there advertising that this needle can be used for removing a tumor. They don't have to provide any safety information about how safe or effective that device is for the removal procedure.

There is also the "laser for cutting" issue. The labeled use is for general cutting. But the laser has been adapted specifically and clearly to cut prostate tissue. Under the bill language, FDA could not ask for safety and efficacy data for cutting prostate tissue.

Digital mammography is currently approved and labeled for diagnostic x rays—which are used to confirm the suspicion of a breast tumor. If digital mammography is clearly going to be used for screening, based on the design of the instrument, which requires a higher degree of accuracy, FDA should be able to look at the effectiveness of that technology for that use. Without this assurance, too many women may undergo biopsies or be misdiagnosed. But this bill would prevent FDA from asking for the data needed to protect women.

Orthopedic implants—plates and screws for long bones—some implants are made to be removed after the bone has healed and, therefore, labeled for short-term use. But if the FDA determines from the design of the device, or from the particular materials that the implant will clearly be left in the patient on a long-term basis, FDA should be able to ask for safety and efficacy data. For example, how does the bone react to having the implant there over a long period of time? Is the bone weaker? But this bill would prevent the FDA from asking these questions.

Mr. President, I can go on, and will go on when we have the more general debate. But these stories exemplify the issue. The issue is safety. The issue is protecting the safety of the American consumer in regards to the use of medical devices which clearly demonstrate that the dominant use of those medical devices differs from what is put on the label.

It would surely seem to me that men and women of reason would be able to work this out in a spirit of order to provide those protections. But we have been unable to do so. Being unable to do so we should understand the real implications. As when you have the off-label use of fen/phen, and the concern of the American people and all of the newspapers all over the country. You would think that here in the U.S. Senate we would be thinking about how we are going to provide further protections for the American people instead of fewer protections. Here in this particular medical device provision, we are hamstringing the FDA and its ability to gather data on safety and efficacy when it is so clear that the devices are going to be used for in a manner that differs from the one claimed.

That is why many of us—not only the administration, but many public health groups and organizations that represent women—have been so concerned about this issue.

I withhold the remainder of my time. The PRESIDING OFFICER. Who yields time?

Mr. JEFFORDS. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized to speak for 10 minutes.

Mr. JEFFORDS. Mr. President, I think I would like to talk a little bit about where we are right now in the process.

We had an agreement this last weekend which would have allowed us to dispose of this bill without the necessity of going through the cloture process. But then fen/phen happened. All of a sudden the Nation is alarmed and concerned, and reasonably so. But to bring the pharmaceutical fen/phen issue into the device issue is disingenuous. The situation with fen/phen is that two different, approved drugs were used in combination on the basis that doctors found out that when used in combination they were more effective in achieving their purpose of reducing weight. It was determined by some astute doctors who noted that there were some problems being caused with respect to heart valves that there was a relationship between those problems and the drug combination. This was brought by the doctors to the attention of FDA, and the FDA immediately alerted the marketplace and called for a prompt in-depth evaluation. On the basis of further data the companies voluntarily removed them from the market.

Now we are talking about a very, very different issue when it comes to the device issue discussed by the Senator. For instance, let's go back to fen/phen. If a drug company had to test its drug in combination with every other drug that is on the market with which it might reasonably be expected to be used in combination, it would take decades before anything would be approved. Right now I have had a whiplash. I am taking two different drugs to

manage the injury. But I don't think anybody has done a study to figure out whether Ibuprofen and the other drug I am taking is going to create some problem for me. I hope they don't spend all of that time researching that question because we would never get anything approved. That is certainly the case with the devices, we must not allow the FDA to endlessly question device manufacturers about how physicians might or might not use their product in the future, especially if the manufacturer does not seek permission to market or promote for that use.

Again, we had an agreement going into this week that we would argue this device thing out, and then we would vote on it. Now that is off because of fen/phen. So we are now in the a post-fen/phen situation.

But let us remember that we just had a vote. It was 94 to 4 that we ought to go forward. Why? Last week we were delaying consideration over 6 pages of a 152-page bill, we are now talking about 2 pages of a 152-page bill. I agree that section 404 is an important issue. We need section 404 to correct problems at FDA.

Also, I am concerned that my good friend from Massachusetts is getting into an emotional argument about the security of people in this Nation, and that somehow we are threatening their security by this particular provision—I have been chastised in my own State, and perhaps the country, saying I am threatening the lives of all Americans with this bill. That is life in politics. You have to take that.

Let me talk about the issue that we have with respect to the devices.

While the past has been marked by advances for both patients and the economy, the present is increasingly troublesome, and the future is by no means assured. For both premarket-approved products and the 510(k) product—that is, nearly identical products—the FDA's review requirements have become more burdensome and are taking more time. This has resulted in the delay of approving new devices. That is the issue here. Should we have to wait years to get something which will help us, help our health, help save our life, because FDA wants to explore hypothetical uses of the product by physicians, acting on their own initiative?

This has resulted in the delay of approving new devices. Furthermore, the current regulatory system is not keeping pace with medical innovation. U.S. patients face delayed access to the newer, more advanced generations of devices. In some cases, Americans are going abroad to take advantage of these technologies. U.S. device firms are themselves moving production and research facilities to other countries.

A study conducted by Medical Technology Consultants, MTCE Ltd., found that patients in the United States wait up to three times as long as their European counterparts for Government approval of new medical devices. The

study also found that higher risk, breakthrough medical devices were approved in Europe within 80 to 120 days, provided the manufacturer has passed an EU facility inspection, which is completed within 120 days. Similar devices take an average of 773 days to be approved in the United States. New lower risk devices entered the European market with no delay once a manufacturer has passed the initial facility inspection. Similar devices take an average of 178 days to be approved in the United States.

The FDA already takes four times as long to approve breakthrough medical devices as is allowed by U.S. statute—it has to do them faster—according to the Health Industry Manufacturers Association, HIMA. The approval times for these devices have nearly doubled since 1990. The FDA's record on approving incremental improvements to existing devices is similar, with approval times also nearly doubling since 1990. Manufacturers will not continue to research and develop devices in the United States—they will all be overseas—if they face such egragious delays. Patients presently have to wait for devices stuck in the FDA's pipeline, and manufacturers have little incentive to bring new devices into that pipeline in the first place.

According to another study conducted by the Wilkerson Group, a New York-based independent consulting firm, FDA delays in approving devices will lead to the loss of U.S. jobs to nations where approval processes are more streamlined—an estimated 50,000 jobs over the next 5 years. Governments in Ireland, the Netherlands and elsewhere have already begun to highlight the impediment of FDA regulatory delay in their marketing materials to attract United States businesses overseas. Such actions will erode our Nation's medical research infrastructure over time.

So we are going to be getting them all from Europe. That is not going to help us obtain better health care for our citizens.

I would say one of the problems we have had, and the reason we have PDUFA and everything else, is to try to help the FDA be more efficient and effective in getting through their duties. It is important that we become more effective and efficient in reviewing these devices. I point out we here in this country have a wonderful record, but it can be a better record.

Certainly another thing I would like to point out—why are the patients' representatives in favor of amendments that we have and consumers opposing them at times? Because consumers, obviously, are looking at it from a different perspective. They are not ill. They don't need it. So they say, "Don't do anything that might hurt us. It is better to be safe and take a long time and delay it, than it is to put it on the market." That's fine. But if you are a patient, you say, "Hey, wait a minute. I am willing to take a little

risk. I am willing to take a little risk. I'm in bad shape." So you have to keep those things in mind when you listen to the arguments. In most all the cases, the patients certainly are on one side, in a sense, and the consumer is on the other.

With that, I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 2 minutes.

Mr. KENNEDY. I yield 1 minute to the Senator from Rhode Island.

Mr. REED. I thank the Senator from Massachusetts for yielding time. Very briefly, what we have done in the overall FDA law is create an incentive for companies, under section 510(k) to get approval of class I and II devices, to go out and pick out existing devices and say the new device is substantially equivalent. This, I think, provides pressure for companies to go out and simply say we are going to do exactly what these other devices do, even though their new design might have many more capabilities. This is not an academic problem.

Take, for example, the issue of a biopsy needle. Typically these needles are very small. They remove a very small amount of tissue, about the size of a pencil tip. If the FDA was presented with a new biopsy needle that was claimed to be simply for biopsy of tissue but in fact removed 50 times that amount of tissue, a much, much larger bit of tissue, the suspicion would be that this is not just for biopsies, it's actually to remove the lesion. Yet under this law, today, as we speak, they could not look behind that claim on the label. They could not look behind it and say, give us some data about the removal of lesions. This is a serious public health problem. That is what we are addressing today. I hope, with Senator KENNEDY's direction and leadership, we can resolve this along with Senator JEFFORDS and his colleagues. I yield the remainder of my time.

Mr. JEFFORDS. I yield to the Senator from Indiana 2 minutes.

Mr. COATS. Mr. President, I don't intend at this particular point to get in a specific discussion over section 404. I just urge—clearly, there is a differing point of view. We heard from Senator DODD from Connecticut, who was involved in the drafting of the bill; and Senator JEFFORDS from Vermont, the committee chairman, explained this. This was someone who was directly involved in the 404 question and has been drafting the language and negotiating the language. This is clearly an issue we are going to have to address. The committee debated it. There has been negotiation subsequent to that. We are now in a position where we are going to have to agree to disagree. I just urge the Senator from Massachusetts, at the earliest possible time—I know it can't be done today given the problems we

have with scheduling the Interior appropriations bill—to bring the amendment to the floor and then let us have the debate and then let the Senate work its will by vote and then go forward. Hopefully, this is not something that is going to further delay passage and then implementation of FDA reform.

Every day we delay, many things happen, most of them bad. No. 1, we move ever closer to September 30, at which time the PDUFA, the drug prescription user fee which is used to provide the individuals with the resources necessary to expedite drug approval, expires. That expires on September 30. The House has yet to act on this. They are waiting for the Senate to act. We are trying to wrap up appropriations bills. The clock is ticking and we need to move forward with this so we can allow the House to go forward, get into conference, get the bills back here.

I wonder if I can ask additional time from the Senator from Vermont? Maybe an additional minute or two. I don't know how much time is left.

Mr. JEFFORDS. The Senator can have whatever time he wants.

Mr. COATS. I thank the Senator from Vermont.

Mr. President, it is going to be extraordinarily difficult for us to finish our business on this bill, unify the different positions between the House and the Senate, and get the legislation to the President of the United States before September 30 so we do not have to lay off people at FDA, so we do not have to further delay review of devices and drugs and health-saving and health-improving and lifesaving products for the American people. That is what all this is about, is expediting the process; not to short-circuit the process but just to bring some efficiencies to the process.

The United States lags dramatically behind our foreign competitors. But more important than that, we have American citizens who are being denied access to health-improving and lifesaving drugs and devices because of this huge backlog at FDA. So, we can continue to go through these debates, as the Senator from Vermont said, 2 pages out of 150 pages—an important part but a small part of the entire, overall reform bill.

I hope we can come to some reasonable agreement in terms of bringing forward amendments; where there are disagreements, agreeing to a time limit on debate of those amendments, let each side present their case and then let the Senate vote on the matter and then move forward. Delay, delay, delay simply postpones what is, or at least what I believe is, inevitably going to happen and what should happen. That is that a majority of the Members of the U.S. Senate, on a bipartisan basis, and a majority of the Members of the U.S. House of Representatives, on a bipartisan basis, and the vast majority of the American people, want to see changes in the current FDA so they

can bring lifesaving devices and drugs and health-improving devices and drugs safely but efficiently to the marketplace so that people can utilize those without having to get on a plane and go to Mexico or a foreign country, so we do not have to keep shifting manufacturing facilities and jobs out of the United States into areas which have a more reasonable and effective review process.

Many of us thought the device section was resolved and closed and that—at least last week it was presented that the only remaining item left on the agenda was the cosmetics. We went through great drama here over the problem with cosmetics. Now cosmetics has been agreed to. All of a sudden we are back onto devices. Many of us are concerned that even if this issue is resolved, we will suddenly have a new issue appear that will further delay the steps that we need to take here in the Senate to move this legislation forward.

So, I ask our colleague from Massachusetts if we could at least set some schedule here to ensure that we do not go another week, that at least this week we complete debate on the amendments, move to final passage, and then allow the House of Representatives to begin their process. I am not asking him to respond. It's just a plea here that we have spent 2½ years, and each day we delay we run into problems with reauthorization of PDUFA and we run into serious, considerable delay in terms of bringing in the processes which will allow us to more efficiently do the work, the legitimate work, of the Food and Drug Administration.

How much time is left? I will be happy to yield whatever time is remaining back to the Senator from Vermont.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I just say to my good friend from Indiana, as well as the Senator from Vermont, I think if we could work this particular provision out we would probably be able to end this legislation today—to-night. I think this is really the last remaining major issue.

I know the Senator mentions the cosmetic issue and then this new issue was raised. This was one of the four items that were identified in the President's letter. I have identified this issue previously. We had a brief discussion on section 404 during the cosmetic debate.

But this, I believe, is really the last issue. There are other issues that other colleagues have spoken about, but I urge early time considerations if we are able to resolve this legislation. I shall try to do the best I can to continue to work on these issues.

If I can ask consent to have 1 more minute and then 1 more minute on his side, too? I ask unanimous consent to have 1 more minute on either side.

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

Mr. KENNEDY. We will try to work with the Senator hoping that we might now be able to work something out that will meet both the legitimate objectives that the Senator has and the concerns that I have discussed and share with the administration. I am not suggesting that FDA read the minds of all the device companies and determine every conceivable way that a device might be used. Instead that they be limited to the very narrow case where there is a predominant or dominant use or clearly defined use that would be intended that was not on the label. Perhaps an advisory group could make these decisions. I am not interested in trying to anticipate every possible use, just in those very narrow areas which I think pose a threat.

I will try to explore a compromise with both the Chair and the Senator. We are going to the Interior bill and then come back to the FDA reform bill, but as I indicated to Senator JEFFORDS earlier I thought there could be a very timely disposition of all of the remaining amendments.

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

Mr. KENNEDY. I thank the Chair.

Mr. JEFFORDS. Mr. President, I ask unanimous consent for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I will say, we will continue to cooperate to bring this to an expeditious ending. I thought we had that agreement. I am ready to enter another one. I hope by the time the Interior bill is over, we will have one. I urge us to work together. I yield back whatever time I have.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I am not sure what unanimous consent is required.

The PRESIDING OFFICER. One minute, I believe.

Mr. COATS. Mr. President, I ask unanimous consent for 1 additional minute to respond to the remarks of the Senator from Massachusetts.

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

Mr. COATS. Mr. President, the Senator from Massachusetts offers expediting of this process. No one wants to keep delaying it. We have been in negotiation for months, if not years. This particular item has been discussed, debated, turned upside down, dissected. I think we are at the point where the best way we can expedite this is simply to have the amendment offered, have the debate, let the Senate work its will. There are Members on both sides who are willing and able to present the case, and then let the Senate work its will.

Having said that, this Senator has on two occasions now responded to the Secretary of Health and Human Services, who personally called and asked

that I look at new language. I said I will be happy to look at new language, but it just seems every time we look at new language and make a concession, there is another issue that pops up. We made 30 some concessions. We don't want to have 31 and then 32.

I appreciate the offer of the Senator from Massachusetts, and we will continue to operate in that spirit.

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

DEPARTMENT OF THE INTERIOR
AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The PRESIDING OFFICER. The clerk will report the Interior appropriations bill.

The bill clerk read as follows:

A bill (H.R. 2107) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1998, and for other purposes.

The Senate continued with the consideration of the bill.

Mr. KENNEDY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GORTON. 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. 1188

Mr. GORTON. Mr. President, what is the order of business?

The PRESIDING OFFICER. The Ashcroft amendment is the pending business.

Mr. GORTON. Mr. President, I understand that the proponents of the Ashcroft-Helms amendment are not willing to vote on that amendment today and wish that vote to take place tomorrow so that they have a greater opportunity to discuss it both here on the floor of the Senate and in public. I am firmly of the opinion, because that is the amendment that deals with the National Endowment for the Arts in the most radical fashion, that it should be voted on first, because if it is defeated, there are other amendments, including one sponsored by the Presiding Officer, that may get a fairer and broader view if they are voted on in an appropriate sequence.

So I intend, and I believe the majority leader intends, to try to see to it that all Members who wish to speak on the National Endowment for the Arts and any of the four amendments that have been offered and spoken to so far have the opportunity to do so and that, at an appropriate time tomorrow, we vote first on the Ashcroft-Helms amendment, second on the Abraham amendment, third on the amendment of which the Presiding Officer is the sponsor, fourth, the amendment of Senator HUTCHISON of Texas, with I hope relatively small or short debate times in between the amendments, hoping

that people will have had the ability to say all they wish to say about them in the course of discussing all of them together. There is no agreement at this point that this will be precisely the procedure, but I think it is likely.

In the meantime, for the remainder of the afternoon, we are open for business. There are two controversial provisions relating to Indian matters. I am attempting to get the other Senators, in addition to myself, to the floor as soon as possible to consider those. They will not require a vote but will take a certain degree of discussion.

I have been told that Senator BUMPERS will be willing to present one or more amendments this afternoon, to have them debated and perhaps to have a vote by early this evening. Assuming that he and/or his staff are within hearing, I hope that he will come to the floor as soon as possible and present his amendment and will notify his opponents or ask us to notify his opponents of the fact that he is doing so, so that we can talk about them.

We should not waste this afternoon, Mr. President. If we get some business accomplished today, there is still a very real possibility that we can finish debate on the Interior appropriations bill by tomorrow evening and go on to other questions. The debate so far has been healthy. I look forward to any Member who wishes to come to the floor and propose an amendment. With that, I yield the floor.

Mr. DOMENICI. Will the Senator yield?

Mr. GORTON. Yes, I will be happy to.

Mr. DOMENICI. Mr. President, I want to ask the Senator a question. I think he knows I am interested in the two Indian issues, and I gather at some point he is going to try to get the three or four Senators who have been working on this with him here?

Mr. GORTON. I asked, or caused to be asked, Senator CAMPBELL, chairman of the Indian Affairs Committee, Senator MCCAIN, yourself, Senator STEVENS, and Senator INOUE to gather together as soon as most of us can make it. I think the lead in that is Senator CAMPBELL as chairman of the Committee on Indian Affairs. As soon as we can arrange that, even if we are on something else, I will see if we can interrupt and get this part of the bill completed.

Mr. DOMENICI. I thank the Senator very much. I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. 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. SPECTER. I ask unanimous consent that I be recognized for 10 minutes to speak as if in morning business.

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

NEED FOR INDEPENDENT COUNSEL IN CAMPAIGN FUNDRAISING PROBE

Mr. SPECTER. Mr. President, the competency and appearance of integrity, if not the integrity itself, of the Department of Justice was called into sharp question when Attorney General Reno, FBI Director Freeh, and CIA Director Tenet briefed the Senate Intelligence Committee last Wednesday and the Senate Governmental Affairs Committee on Thursday.

In last week's briefing, the CIA Director advised that an individual, referred to here as "X", who had been identified in many news accounts as a major foreign contributor to political campaigns and campaign committees, has made significant contributions as part of a plan of the Government of China.

The CIA Director further advised that the CIA obtained that information about "X" from the FBI, and it only put the FBI information on "X" together with the news reports on "X" after an analysis which was made following a request by Senator BENNETT at the July 1997 FBI-CIA briefing of the Governmental Affairs Committee.

The FBI Director advised that the information about "X" had been in the FBI files since September or October of 1995 on one report and since January 1997 on a second report. The FBI Director advised that the Governmental Affairs Committee was not told about that information at the July 1997 briefing because the FBI did not know it had the information.

These disclosures raise a fundamental question of whether the FBI deliberately withheld the information or was not competent enough to know what information it had in its own files. Either alternative is a strong indictment of the FBI.

With the new information on "X," the question is: Where do we go from here on dealings with the Department of Justice and the FBI?

When the FBI Director said the FBI did not know the FBI had the information on "X" in its files, based on my extensive dealings with Director Freeh, I accept and believe that he personally did not know the FBI had the information in its files. Frankly, I am not so sure that others in the FBI did not know of the import of that data.

This matter obviously adds fuel to the fire on recent questions about the FBI and Director Freeh's leadership of that agency. There are questions on many matters, including the FBI laboratory, the FBI's handling of the interrogation of Mr. Richard Jewel in the Atlanta pipe bombing case, the FBI allowing White House people to look at confidential personnel background files, and the FBI's handling of the Ruby Ridge incident after Judge Freeh became director, as well as before.

But notwithstanding those matters, I believe that Director Freeh is doing his job about as well as it can be done with that giant agency which is ever-expanding and taking on new worldwide assignments. But I do believe that Director Freeh is going to have to find out what went wrong here, take corrective action, including punitive measures, if warranted, and establish procedures to protect against its recurrence.

It is really not a very complicated matter. All that is required is an index of names like "X" who have connections with the Government of China and then to cross-check those names against people who have appeared in the news media as major contributors to candidates or campaign committees.

When I refer to this context, it is obviously not intended to be a comment on any special group. It is hard to understand why that cross-checking of a simple index was not done by the FBI. And it is even harder to understand why the Department of Justice investigators did not find out about it, if in fact they did not.

In a context where the Attorney General has consistently refused to petition the court for appointment of an independent counsel, it may well be that either consciously or subconsciously, those under her command may be less inclined to pursue, vigorously, leads which may embarrass the administration. After all, the fundamental purpose of appointing independent counsel was to have someone in charge who was not allied with the administration, not beholden to the administration, and not motivated in any way to favor the administration.

It is not unusual, as a matter of common experience, for subordinates to do what they think their superiors want whether or not they correctly speculate on their superior's wishes. Beyond giving a clear signal to all the subordinates, an independent counsel would be in a position to press hard on a continuing basis for people to make all searches and analyses which were not done here.

Leadership and intensity establish a tone and purpose. From numerous indicators, that tone and purpose are not present in the current Department of Justice.

The Attorney General said at last Thursday's briefing that she was "not comfortable now" to discuss cooperation with the Governmental Affairs Committee but would "want to sit down and talk with the Department of Justice task force."

There are two problems with her statement. First, she had ample time to discuss the matter with the task force since she had met with the Intelligence Committee the day before and certainly had some advanced knowledge prior to that meeting. Second, she has continually said she would be willing to consider our request, but consistently there has been no followup.

The Governmental Affairs Committee was further advised at last

Thursday's briefing that if in the future the Department of Justice found information like that on "X", they would "very seriously consider and talk about bringing that information to the committee." That is palpably insufficient.

An independent counsel should be appointed so that the individual can press to obtain all such information on a continuing basis and so that there is no doubt about the duty of all units in the Department of Justice, including the FBI and other governmental agencies, to follow the direction of the independent counsel.

In short, Mr. President, we have a situation here where the FBI has information in its files since September or October 1995—almost 2 years ago—and other information since January 1997. That information is very important in linking an individual who is reputed to be a major campaign contributor, as noted in many news accounts, with a plan of the Government of China. Yet, that information was not made available to the Governmental Affairs Committee, and on the representation of the FBI not even known to the FBI.

It came to light only because the FBI provides that information to the CIA. And the CIA had done an independent analysis at the request of Senator BENNETT. Absent that request by Senator BENNETT, absent the independent analysis of the CIA, today, we would not have that important link as we seek to understand the puzzle, put together the pieces on the so-called dotted lines, and understand what is going on in this matter.

If we had independent counsel vigorously pursuing these matters and a clear-cut understanding throughout the entire Department of Justice and all Federal agencies, then we would have a realistic opportunity to get to the bottom of whatever is going on and take the corrective action.

This is another link that I suggest is a very, very powerful link in the chain of evidence and circumstances really demanding appointment of independent counsel.

I thank the Chair and yield the floor.

In the absence of any other Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The Senate continued with consideration of the bill.

AMENDMENT NO. 1188

Mr. ASHCROFT. Mr. President, I am aware there are other Members of this

body who are going to be coming to the floor to speak on other amendments. However, because of the absence of debate at this moment, I will add additional thoughts to the thoughts I have already expressed regarding the need to cease funding the National Endowment for the Arts.

I have made my position clear here, and I hope I can add something by way of suggesting that there are a variety of reasons why it is time for us to stop spending the hard-earned resources of taxpayers to theoretically support or engender culture or the arts in this country.

I find it somewhat amusing for individuals to suggest we need to have a Federal subsidy in order for people to be artistic. For us to come to that conclusion involves us in what is a substantial repudiation of American heritage, culture and art.

We began as a nation long before the midnight ride of Paul Revere. As a matter of fact, we remember the poem:

'Twas late in April of '75.
Hardly a man is still alive
That can remember that special day and year
Of the midnight ride of Paul Revere.

Those who say you have to have subsidies in order to have art or poetry would have to wonder how that poem ever came into existence. Or they might say you have to have a subsidy in order to have quality art. Well, I don't know, but I believe that some of the poems and some of the art and some of the literature of bygone days will stand inspection very well and stand in comparison very well with items that have been produced more recently.

So I want to say for the first several hundred years of this culture on this continent we managed to muddle through, but I don't think we muddled through it all. We mastered, through creating things that were truly artistic and truly things of value, the kind of art that would speak to people and that they could understand.

I was interested in noting an article by William Craig Rice, who is a poet and an essayist, who teaches expository writing at Harvard University. As an individual who went to a competing institution, I am not accustomed to citing Harvard University, but you would think if there would be anyone who would be able to have insight about this, it might be someone from Harvard University, and you might expect them to be uniform in their support of the NEA. He lists objections to the NEA. He says that the NEA refused to fund a conservatory in New York City because its students were required to master the human figure in drawing like the old masters did. They could actually draw people and not just put paint on paper. That disqualified the particular institution from participating in the NEA funding.

He points out that the NEA said that being able to draw people that looked like people would hamper the creativity of artists.

I wonder whether the NEA has this figured out. I don't believe that people are not creative because they can draw the human figure. I don't think you would want to say that Rembrandt was not a creative individual. I don't think you would want to say Thomas Hart Benton, from my home State, with his ability to capture people at work, people bringing this Nation into existence, people conducting themselves in a way that makes America strong—was not a creative individual. He showed people in the fields, he showed people in the Civil War, he showed people at play, but he showed America as America was and for the strength of it. I don't think being able to do that hampers creativity.

William Craig Rice, who is a poet and essayist, who teaches expository writing at Harvard, says, "The NEA recently refused funding to an art colony on aesthetic and sociopolitical grounds and then made the inclusion of performance artists and installation artists a condition of future funding." So you start criticizing people because they are the wrong sociopolitical mix.

Here we have the National Endowment for the Arts taking taxpayers' resources, trying to impose on people some political correctness or sociopolitical correctness, the right kind of mix, in order to satisfy the bureaucracy. These kinds of things—denying funding because they insist that people learn how to draw so that they are recognizable figures, denying funding because there is an inappropriate sociopolitical mix among the artists—sound to me like Government management of what people are thinking and of the kind of people with whom they would associate. It seems to me that is not what we earn money for and pay taxes for: so Government could discriminate against someone because they were not of the right sociopolitical mix.

Mr. Rice, of Harvard University, further writes that "Nowadays, NEA grants are weighted toward multiculturalism, a political cause."

I wonder if, really, we as Americans want to try to foster and advance political causes through a subterfuge which we might label as the National Endowment for the Arts.

Now, his is not the only voice that has been raised in the arts community against the NEA. His is not the only voice which has alleged that the NEA is really an enemy of the arts, which he does say. He puts it this way: "The marketplace, with its potential for democratic engagement and dissemination, is hardly the enemy of the arts. The burgeoning American theater of the 19th century owed nothing to Washington. In fact, any system of selective, expert-dictated federal support for the arts would have been anathema to the rollicking impresarios of that era." He says had we had a National Endowment for the Arts a century ago, it would have hurt the arts in America, it would have curtailed, it would have stifled the creativity of individuals in the arts community.

Responding to a written piece by Robert Storr and Lawrence W. Levine, Rice puts it this way: "What both authors fail to recognize in their own examples is that the NEA actually harms artists and the arts by its methods of selective sponsorship and top-down control."

America prides itself on the freedom of expression, free speech, the ability of people to stand and speak their mind, and America has also understood that speech is not merely what you say but it is your ability to communicate. If you want to communicate artistically, in poetry, graphically or pictorially, that is one of the privileges and rights of an American, within certain bounds of decency to protect children and others from obscenity. We say you are entitled to be able to express yourself. We have never thought that the Government should be meddling in the way people express themselves. It should not be subsidizing one person's expression as opposed to another person's expression.

Here is a good reason for it. Here the author says, "The NEA actually harms artists and the arts by its methods of selective sponsorship and top-down control."

We have to measure what is meant by free speech. I don't think we would say that one of the things included in free speech is top-down control. The control of speech is the kind of thing we associate with other cultures.

Now, we know about what happened in Eastern Europe, we know what used to happen in the Soviet Union, and we abhor what we hear about the control of communication in China. Yet we have an arts bureaucracy which is saying to the arts community, if you want to have the favor of your Government, you have to be willing to participate in a system of selective sponsorship and top-down control.

To put it additionally, Jan Breslauer, of the Los Angeles Times, in a special to the Washington Post said it this way: The effect on the American art system is "pigeonholing artists and pressuring them to produce work that satisfies a politically correct agenda rather than their best creative instincts."

You have to understand, it takes me a minute to put this in perspective. Artists might operate at their best creative instincts in one system and they might distort or twist what they would otherwise say in order to satisfy something else in the other. She is saying that the National Endowment for the Arts pigeonholes artists, it gets them to create within a very confining space, a space they didn't create, but a place where they would be put if they wanted to satisfy the bureaucracy. Then it says it pressures them to produce work that is politically correct rather than work that is the best of what they can offer.

America succeeds when it operates at its highest and best. America fails when it accommodates or induces peo-

ple to operate at their lowest and least. I think it is tragic that we have in the National Endowment for the Arts what is confessed by the art critic of the Los Angeles Times, the person who spends her endeavors studying art and commenting on art, a situation where artists are pigeonholed and pressured to produce work that satisfies a politically correct agenda rather than producing work that reflects their best creative instincts. I think that is a pretty serious charge.

I think there are other reasons why the National Endowment for the Arts ought to be zeroed out in funding. It does not spend money well. It is not really something authorized under the Constitution. The founders of this country considered it, they voted on it, they rejected it. Somehow, the elasticity that some people find in the Constitution is supposed to now grow with the document to include something that no one ever voted to ratify as part of the Constitution but somehow it is appropriate now but it was not appropriate back then.

The National Endowment itself is not an efficient organization. It spends 20 percent of its resources on overhead, so that by sending the money to Washington, DC, we get a 20 percent shrink factor immediately just by including the bureaucracy in that which we are pursuing.

So my judgment is that we ought to think carefully about saying what the House has said. Let's stop. This thing was never intended as a governmental responsibility by those who constructed this country and founded it and developed the Constitution to limit what we would do. This was not to be within the limits. Let's stop the waste of money. Let's stop the frivolous things that are done.

I was interested to see one of the projects, and I mentioned this before. This represents a poem funded by the National Endowment for the Arts. This is not the title for the poem, this is the entirety of the poem. I had represented earlier that I think this is the English version of the poem but because this is not a word which I recognize in the English dictionary, it could be some other language version of the poem. This poem cost taxpayers \$1,500 to write. So it would be about \$214 a letter we paid for this poem. I wonder if this deserves what some Members of this body have called the need for the Federal Government to be placing the Good Housekeeping Seal of Approval on various art projects.

It is obvious to me that the average American is not smart enough to recognize this as genius and it may take the special imprimatur of the U.S. Government to tell us just how profound this is—whatever it is—and that we should support this because, well, because Government says to support it.

There are those who came to the floor yesterday who said we need the National Endowment for the Arts not because it is a big part of arts funding—they recognize it is 1 percent or

less. The truth of the matter is 99 percent of arts funding comes from other sources. They said we need it because when the National Endowment for the Arts funds something, it tells everybody that it is something good and that by putting that sort of Good Housekeeping Seal of Approval on it, it lets people know to support it as opposed to people being able to make up their own minds.

I have to concede the argument is partly correct. I don't think the average American would think this is worth \$1,500 unless he was told it was by his Government. It may be that, once told by Government that these seven letters are worth \$214 apiece, the average American citizen will nod in complete complicity and agreement, and say, "Well, Thelma, I never thought of it that way before, but now that the Federal Government has told me of the value of those letters, whatever they mean, I sure hope we get a chance to do that over and over again." Well, as a matter of fact, they do get a chance to do it over and over again.

But the truth of the matter is, there is something more profound than the light that I would make of this poem—would I be making light of light poetry? I don't know whether that means light or not. The truth is—and it is a fundamental truth—that the values are not to be ascertained in this culture by Government and then imposed on the people. The genius of America is that the values are to be developed by the people and imposed on the Government. The genius of a democracy is that people have values that they say should be reflected in their Government and not that the Government has values that it imposes upon citizens.

Similarly, when they said that we need this kind of guidance from Government so that we will know what to support in the marketplace, that smacks of marketplace planning of other economies. You know, communism is the system whereby the government decided what should be produced and what should not be produced. It allocated the resources of the culture. It said, well, we are going to have this many potatoes and airplanes, and we are going to have this many chairs, and we are not going to allow the marketplace to operate. They tried that for 70, 80 years. Cuba is still trying it; so is North Korea, and their people are in serious distress, and we hear the subject of relief over and over again to try to give them something to eat. But in this country, we have all said that the marketplace should determine this, and we don't believe Government should decide how to allocate resources.

Finally, most of the world has come to that conclusion. The Soviet system tried to manage production based on the values of the central government and say how money ought to be spent, and it collapsed. And when it came down, it wasn't long before the Berlin wall fell, too. Thankfully, the people

are free there, and they are rejoicing over their freedom, and the government that was at the center of things no longer tells them what to produce or what not to produce. It is their privilege as free citizens to decide about how things ought to be produced and when and where. The marketplace either rewards them or punishes them. If they don't produce things that are particularly good, they don't sell well. That has a way of suggesting that they should change their minds.

Here we have the National Endowment for the Arts with the argument or suggestion that it is a good thing to have Government telling people from the center of the Nation what they should or should not reward with their own support. Well, frankly, that is a failed system. I could understand short memories, but it seems to me that while we are continually reminded of the poverty of that system and the abject failure of that system by countries like North Korea and Cuba, we should at least remember long enough to know that we should not be embracing some sort of resource allocation strategy in the United States of America whereby we put a Good Housekeeping Seal of Approval on seven letters that may make some sense somewhere, and say, folks, with our help, you can learn to recognize a real buy in art when we tell you that it is a real buy.

I appreciate the opportunity to make these remarks. I appreciate the opportunity for the debate to go forward on the National Endowment for the Arts. I think it is time to say to the American people, who are taxed at a higher level than ever before, we believe you work hard for your resources and we should not take your hard-earned dollars and try to tell you what to support and what not to support artistically. We should let you have some of those resources to spend, believing you can spend your resources better on your own family than we can subsidize what the Government has decided is art.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER (Ms. Collins). The Senator from Washington is recognized.

Mr. GORTON. Madam President, I note the presence on the floor of Senator CAMPBELL, who is the chairman of the Committee on Indian Affairs. He and I and Senator STEVENS, Senator INOUE, Senator DOMENICI, and Senator MCCAIN have had extensive discussions over sections 118 and 120 of this bill, both of which relate to appropriations for or conditions under which Indian tribes operate in our American system. Both are of considerable importance.

We have reached agreement with respect to the bill and with respect to what will take place after this bill has passed. In that connection, I think it will be a matter of some intense relief to many of my colleagues that what we are going to do is not require a rollcall vote at this point. So it does seem to

me, in the absence of any Member here who is willing to send up an amendment that will require a rollcall vote, that we should go through this matter. Two of the Senators are present on the floor. I believe others are coming.

With that, I yield the floor and hope that the Chair will recognize Senator CAMPBELL.

Mr. CAMPBELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. CAMPBELL. Madam President, I have an amendment, but before I send it to the desk, I want to make a few remarks on H.R. 2107, the fiscal year 1998 Interior spending bill. I certainly want to commend the managers, Senator GORTON and Senator BYRD, for their efforts in constructing a spending bill that balances the competing interests of the approximately 27 different agencies and programs included under the jurisdiction of this committee. As the chairman of the Committee on Indian Affairs, I want to acknowledge both Senator GORTON's and Senator BYRD's efforts in funding Indian programs that are administered through the Bureau of Indian Affairs and Indian Health Service at the levels that meet or exceed the President's fiscal year 1998 budget request.

Overall, the funding for these two agencies, which accounts for the great bulk of Federal spending on Indian-related programs, is significantly increased over fiscal year 1997 enacted levels to the tune of about \$150 million. The committee has given priority to funding basic services that are provided to Indian communities through tribal priority allocation [TPA] of the BIA and through direct services provided by the Indian Health Service, while also funding several important construction initiatives, of which there is currently a tremendous backlog.

While I have supported the priorities given to funding Indian programs, I have shared my concern with many colleagues over two provisions that remain in the bill. Senator GORTON has alluded to those two sections, section 118 relating to the means testing of TPA funding, and section 120 relating to the broad waiver of immunity imposed on tribal governments. Both are broad policy-related items that I felt should not be included in this spending measure.

I am happy to announce that after several meetings—and Senator GORTON alluded to one we had yesterday afternoon—with concerned Members on these provisions, an acceptable accommodation has been made with regard to both of these provisions. At the appropriate time, I will offer an amendment that will reflect this agreement.

I want to speak briefly to each of these provisions and why, as presently written, they would adversely impact tribal government activity to a degree that is all but unknown.

As I informed my colleagues on the Appropriations Committee prior to

markup, these two provisions constitute a dramatic departure from existing Federal Indian policy, which is based on promoting tribal economic development, tribal self-sufficiency, and strong tribal governments. Sections 118 and 120 would seek to condition the receipt of TPA funding, requiring in section 120 that Indian tribal governments unilaterally waive their immunity from any and all lawsuits. Further, section 118 would require all tribal governments that receive TPA funding to be subjected to a form of means testing analysis of all the available tribal resources as a determining factor in future TPA funding allocations.

The nature of these provisions would suggest that because TPA funding constitutes approximately \$760 million, or over half of the overall BIA operating budget, there needs to be some higher level of accountability to the Congress and to the taxpayer over how these funds are allocated and that the appropriate means to this end is the proposed blanket waiver of immunity and an imposed means testing formula allocation.

I want to be very clear and try to inform my colleagues that the impacts of these provisions, if enacted, have yet to be fully contemplated. We can't begin to contemplate what effect they would have on the native American people.

For example, with regard to a broad waiver of immunity, as proposed in section 120, we could ask several questions:

What are the potential liabilities that would be incurred by the executive branch agencies who serve as the Federal trustees to Indian tribal governments and, therefore, would have to defend the tribal governments in lawsuits?

What specific actions would become the purview of the Federal courts under a broad waiver of immunity? Is it limited to non-Indian disputes with Indian tribes, or could any and all intertribal disputes also be heard in Federal court?

More importantly, what will be the impact on the Federal courts as a result of section 120? Would it simply clog the courts with more litigation?

Further, regarding section 118, we should ask:

What resources should be included in any analysis of how to better allocate TPA funding?

Could the BIA begin to implement any alternative allocation method beginning in fiscal year 1998, which begins in just 2 weeks, without any public input or hearings?

These are very practical problems that arise when addressing both of these provisions. It is for these reasons that I have strongly advocated that the appropriate authorizing committees be involved in finding practical solutions to these very complex issues. As the chairman of the Committee on Indian Affairs, I have made it very clear that I am committed to examining these

issues through the hearing process. I have told that to Senator GORTON and have followed it with a letter to him guaranteeing that we would hear a bill and we would also attempt to have a markup by April 30, 1998.

Madam President, I want to thank my colleagues for their wisdom in supporting this accommodation.

I ask unanimous consent that the pending amendment be temporarily set aside.

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

EXCEPTED COMMITTEE AMENDMENT BEGINNING ON PAGE 52, LINE 16

The PRESIDING OFFICER. The question before the Senate is the excepted committee amendment beginning on page 52, line 16.

The excepted committee amendment is as follows:

SEC. 118. (a) No funds available in this Act or any other Act for tribal priority allocations (hereinafter in this section "TPA") in excess of the funds expended for TPA in fiscal year 1997 (adjusted for fixed costs and internal transfers pursuant to other law) may be allocated or expended by the Bureau of Indian Affairs (hereinafter in this section "BIA") until sixty days after the BIA has submitted to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives the report required under subsection (b).

(b) The BIA is directed to develop a formula through which TPA funds will be allocated on the basis of need, taking into account each tribe's tribal business revenues from all business ventures, including gaming. The BIA shall submit to the Congress its recommendations for need-based distribution formulas for TPA funds prior to January 1, 1998. Such recommendations shall include several proposed formulas, which shall provide alternative means of measuring the wealth and needs of tribes.

(c) Notwithstanding any other provision of law, the BIA is hereby authorized to collect such financial and supporting information as is necessary from each tribe receiving or seeking to receive TPA funding to determine such tribe's tribal business revenue from business ventures, including gaming, for use in determining such tribe's wealth and needs for the purposes of this section. The BIA shall obtain such information on the previous calendar or fiscal year's business revenues no later than April 15th of each year. For purposes of preparing its recommendations under subsection (b), the BIA shall require each tribe that received TPA funds in fiscal year 1997 to submit such information by November 1, 1997.

(d) At the request of a tribe, the BIA shall provide such technical assistance as is necessary to foster the tribe's compliance with subsection (c). Any tribe which does not comply with subsection (c) in any given year will be ineligible to receive TPA funds for the following fiscal year, as such tribe's relative need cannot be determined.

(e) For the purposes of this section, the term "tribal business revenue" means income, however derived, from any venture (regardless of the nature or purpose of the activity) owned, held, or operated, in whole or in part, by any entity (whether corporate, partnership, sole proprietorship, trust, or cooperative in nature) on behalf of the collective members of any tribe that has received or seeks to receive TPA, and any income from license fees and royalties collected by any such tribe. Payments by corporations to shareholders who are shareholders based on stock ownership, not tribal membership, will not be considered tribal business revenue under this section unless the corporation is operated by a tribe.

(f) Notwithstanding any provision of this Act or any other Act hereinafter enacted, no funds may be allocated or expended by any agency of the Federal Government for TPA after October 1, 1998 except in accordance with a needs-based funding formula that takes into account all tribal business revenues, including gaming, of each tribe receiving TPA funds.

AMENDMENT NO. 1197 TO THE EXCEPTED COMMITTEE AMENDMENT BEGINNING ON PAGE 52, LINE 16

(Purpose: To provide for tribal priority allocations.)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Colorado [Mr. CAMPBELL] proposes an amendment numbered 1197 to the excepted committee amendment beginning on page 52, line 16.

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

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

The amendment is as follows:

On page 52 beginning on line 16, strike all through page 54, line 22, and insert in lieu thereof the following:

SEC. 118 Any funds made available in this Act or any other Act for tribal priority allocations (hereinafter in this section "TPA") in excess of the funds expended for TPA in fiscal year 1997 (adjusted for fixed costs, internal transfers pursuant to other law, and proposed increases to formula driven programs not included in tribes' TPA base,) shall only be available for distribution—

(1) to each Tribe to the extent necessary to provide that Tribe the minimum level of funding recommended by the Joint/Tribal/BIA/DOI Task Force on Reorganization of the Bureau of Indian Affairs Report of 1994 (hereafter "the 1994 Report") not to exceed \$160,000 per Tribe; and

(2) to the extent funds remain, such funds will be allocated according to the recommendations of a Task Force comprised of two (2) representatives from each BIA area. These representatives shall be selected by the Secretary with the participation of the tribes following procedures similar to those used in establishing the Joint/Tribal/BIA/DOI Task Force on Reorganization of the Bureau of Indian Affairs. In determining the allocation of remaining funds, the Task Force shall consider the recommendations and principles contained in the 1994 Report. If the Task Force cannot agree on a distribution by January 31, 1998, the Secretary shall distribute the remaining funds based on the recommendations of a majority of Task Force members no later than February 28, 1998.

Mr. CAMPBELL. Madam President, I am very pleased to offer this substitute amendment that our colleagues have worked on, which accomplishes several things.

First of all, it holds the tribes harmless to the fiscal year 1997 TPA levels; it follows the recommendations of the 1994 Joint Tribal/DOI/BIA Task Force report by providing funding to the 309 small and needy Indian tribes; it provides \$15.5 million for fixed costs and internal transfers; it provides for \$17.1 million in increases to formula-driven programs; instead of having the BIA or the Congress allocate the remainder, it

creates a mechanism comprised of Interior and BIA officials and tribal representatives from around the country to distribute the remaining \$27.8 million.

I think that is probably all we need for an explanation.

With that, I move the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Madam President, first of all, I want to express my appreciation and high regard for the leadership of my friend from Colorado, Senator CAMPBELL, on this issue. In his role as chairman of the Indian Affairs Committee, he has taken an active and vigorous role on Native American affairs. I am proud of the job he is doing. I know I reflect the view on both sides of the aisle on the outstanding job that he is doing. We all recognize he is uniquely qualified—uniquely qualified, Madam President—to address the issues that affect Native Americans in our society today.

Second, I thank the Senator from Washington, Senator GORTON. He has strongly held views on these issues, as we know. Senator GORTON's issues have been made clear to those of us on the Indian Affairs Committee, of which he is a distinguished member. He has worked very hard on these issues. We have significant and profound philosophical differences, but our debate and discussions on these issues have been characterized by respect for each other's views. I have the utmost regard not only for his views, but Senator GORTON has long experience in these issues dating back to when he was attorney general of the State of Washington and tried cases before the U.S. Supreme Court regarding Native Americans.

I understand his advocacy, and, frankly, sometimes his frustration. I am very pleased to see the path of the agreement is that the chairman of the Indian Affairs Committee has agreed to hold hearings to consider Senator GORTON's legislation, which is the proper way to carry out our legislative work.

I did point out to Senator GORTON—and he knows full well—that his proposal will probably not receive the majority approval of the Indian Affairs Committee. But the purpose of hearings and the purpose of the debate and discussion is to educate our colleagues. I am very pleased that Senator GORTON will withdraw that provision which would have provoked profound, intense, and emotional debate on the floor of the Senate and has decided, albeit with some reluctance because of his impatience over his view of our failure to address these issues, to agree to take it through the Indian Affairs Committee.

I thank Senator GORTON. I really do, because without his agreement and his position as chairman of the subcommittee, he had every right—even though I disagreed from time to time

about legislating on appropriations bills—to bring this issue to the floor as part of his bill. We proved in recent days that we do give the utmost respect to committee chairmen and subcommittee chairmen in their work.

I thank Senator STEVENS, chairman of the full committee. Senator STEVENS, who is as knowledgeable on Native American issues as anyone in this body, played a key role in negotiating the agreement and settlement that we came to, along with my friend, Senator DAN INOUE, who is most respected, along with Senator CAMPBELL, on these issues.

Senator DOMENICI, I might point out, in his usual articulate, vigorous, and certainly nonconfrontational fashion played an important role in the spirit of the discussions that we had in Senator STEVENS' office.

The upshot of it all is that really, Madam President, there are six old guys here that know each other pretty well. We know that we have to act in what is the best interests of Native Americans, the interests of this body, and, very frankly, the continued bipartisan—indeed, nonpartisan—addressing of Native American issues.

I think we have a very, very good resolution. It would not have been possible without all the figures that I mentioned, and I believe that we will continue.

If I could, finally, caution my colleagues, there will continue to be issues before this body and the Nation concerning Native Americans. There is population growth, which brings Native American tribes and non-Native Americans into collision with one another. There is an increase in Indian gaming, which in the view of many Americans has made all Indians rich. And, by the way, that is far, far from the case. There is a total of about 10 tribes that have become wealthy. There is continued issues, such as taxation. There will be continued Supreme Court decisions, including the recent ones concerning and affecting the State of Alaska.

I urge my colleagues to get involved in understanding these issues. But I have some comfort in the knowledge that we have experienced people such as Senator CAMPBELL, Senator INOUE, Senator STEVENS, Senator GORTON, and Senator DOMENICI who have many, many years of experience with these issues.

Again, I thank my colleagues for resolving this very difficult issue in a more than amicable fashion.

I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Madam President, I thank my good friend from Arizona for his comments concerning my participation in the dialogue on this amendment which has just taken place in my office. Let me state at the outset that I believe that in this country there is a period of rising expectations on the

part of our Alaska Native and native American peoples that there will be more assistance coming to them from the Federal Government. And, of course, we all seek to have greater self-determination on the part of those people who are part of the Indian tribes and native peoples of our country. The great difficulty is that this is not just an expectation but an increasing demand now for additional money to enable these peoples to carry out the legitimate roles that they have in their own tribal and native organizations. This comes at a time when we are living under a budget ceiling with diminishing resources, as far as the Department of Interior is concerned, caused primarily, in my opinion, because of the vast increase—the enormous increase—in the amount of interest we are paying on the national debt, which is literally squeezing out a lot of the items that we were able to afford previously. We are working on that in connection with the balanced budget process. But it is hard for many people on the reservations in the contiguous States and small villages throughout my State, and throughout our Nation, to understand that there is a limit on the amount of money we have available to put into such funds, like the Tribal Priority Allocation Fund. We face this year a situation where there is a budget request for an increase in money. Yet, because of actions that have taken place in the last 3 years, there are almost 100 percent more tribes in number than we previously dealt with under this account. Those are primarily in my State, the State of Alaska. Alaska now has 226 different entities that are called tribes by the Department of Interior. In the past, they were Native villages. The population of the Native villages belonged to the several different tribes in our State.

The net result of this is that, despite the increased request for funds, it is not really possible to meet these legitimate requests, and, as I said, in some instances, demands for increased money. This has led to a series of alternative suggestions—some from the Senator from Washington, as the chairman of the Appropriations subcommittee dealing with these issues, and others from those who serve on our Indian committee, led by my good friend from Colorado. And I say to the Senate that I think it is time that we really have some more information to deal with this. I know some people are reluctant to solicit that information. But I have joined the Senator from Washington in asking the GAO to do some examination into the various types of options that may be available to Congress to deal with these increasing demands which exceed our ability to provide funds in all these areas.

It does seem to me that we have to realize, despite our own personal feelings that some people might have on the subject, that the people who live on Indian reservations and in these very

isolated Indian and Native communities in my State are literally the poorest of our poor. They are the people that need our consideration, and our help, more than any I know in the Nation. Many of us have spent years trying to find ways to help them deal with their problems. There has been no real panacea. We have not discovered a way yet. But we clearly now have increasing participation in governmental affairs in a democratic way in most of these tribes and villages of our Nation.

I am hopeful that these tribal priority allocations will, in fact, be used to provide a greater degree of democracy, a greater degree of participation, and a greater attempt to satisfy the needs of the people who should be receiving the benefits of the Federal money that we provide through the Bureau of Indian Affairs. We all have some serious questions about the BIA. It is an institution that may well have outlived its usefulness in the sense of being able to deal with the problems of the native American and Alaska Native people. But, for the time being, it is the only institution we have.

As Members of Congress we are vitally interested in the affairs of the Indian tribes and Alaska Native people. We need to take more time in trying to not only work out the differences among us, but also work out solutions with respect to how the Federal Government can further the aspirations of these people to become more able to deal with the problems of the present and the future and better able to find a way to preserve their own culture and have greater participation in American affairs.

For that reason, I am pleased that we have had these meetings. I think that the meetings that have taken place between the Senators who are on the Appropriations Committee and the Indian Affairs Committee have been most helpful for us not to only understand one another but understand some of the problems that are different. They are different in Colorado, they are different in Arizona. They are different in Hawaii. Most people do not think of Hawaii having Indian problems. But there are issues involving the indigenous peoples in Hawaii that are very, very complex. My friend from Hawaii is spending a lot of time on this issue, as is the Senator from New Mexico, and legitimately so.

Our constituents, by the way, don't all make the same requests. They don't necessarily seek the same goals. They don't even seek the same solutions to their common goals. What I'm saying is that it is not an easy thing right now for us to deal with this issue in appropriations.

Therefore, I am delighted as the chairman of the Appropriations Committee that we have this commitment from the Indian Affairs Committee that there will be hearings on the subject, that there will be really an examination in depth into the possible solutions to the problems presented by

these issues arising out of the allocation of funds in the tribal priority allocation.

I thank the Senator from Washington for his willingness to step down from some of the requests he has made of the Senate, and to give us a chance to go back and get some basic data and information that will be necessary for us to deal with this. I hope and pray we will deal with it next year in a fair and open way, and find a way to ensure that the moneys that are available are made available first to those who have the greatest need for them, and particularly that the people who are seeking this money understand what it is for. It is for assistance in maintaining the governance of these tribes and villages. These aren't slush money accounts. They are very strictly limited by law, and we want to make certain that they are, in fact, used for the benefit of the people who are on reservations, as well as in those very isolated villages in my State.

Let me thank all of the Members who have participated in this. I do hope that the Senate will accept our compromise amendment to the amendment on this subject that was originally in the bill as reported from our committee.

I thank all concerned for their participation.

Mr. INOUE addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Hawaii.

Mr. INOUE. Mr. President, thank you very much.

Mr. President, this is a battle day—an important day in Indian country. And I am certain that Indian country applauds the resolution that has been reached concerning sections 118 and 120 of this bill.

So, Mr. President, I rise to join my colleagues in applauding and commending the distinguished Senator from Washington for making this day possible.

I am well aware—and I am certain that all of us are well aware—of the controversy that sections 118 and 120 have engendered over the past 2 months. It has been a difficult time for all of us.

Indian country has been vocal in its opposition to these provisions—and I believe rightly so—for these sections go to the very essence and the very foundation of our relationship with Indian governments.

As my chairman, the distinguished Senator from Colorado, Senator NIGHTHORSE CAMPBELL, has indicated, section 118 will cause us to revisit the commitments this Government made to Indian nations in over 800 solemn treaties. Most Americans are not aware that our relationship with the Indian country is based upon treaties, the Constitution of our land, decisions of the Supreme Court, and the laws of this land. These 800 treaties enable the United States to exercise dominion and control over 500 million acres of land which once belonged exclusively to our

Nation's first citizens. As Chairman CAMPBELL has indicated, section 120 would have stripped tribal governmental attributes of one of the most fundamental attributes of their sovereignty.

So, in the days ahead, I hope we can focus our attention on the concerns that sections 118 and 120 were designed to address in a venue that will enable the full participation of those who would be most directly affected by these provisions, the tribal governments and the citizens of Indian country. For it is my sincere belief that the solutions to these matters can be found in Indian country and that the tribal government leaders will join us in this effort, and that is the way it should be. If we are to legislate, it should be only after we have given careful and thoughtful consideration to these matters. We should have the benefit of all affected citizens, Indians and non-Indians, and whatever we come up with ought to have the benefit of some consensus.

With this in mind, I have given my personal assurance to the chairman of the Interior appropriations subcommittee, the Senator from Washington, that we will seriously and deliberately address these matters in the authorizing committee. We have received assurances of the chairman of that committee, Senator BEN NIGHTHORSE CAMPBELL.

In the interim, I am pleased we have been able to reach agreement and that we have done so in a manner that will enable us to work together in partnership with Indian country as well as other affected citizens to assure the best outcome within the context of our history, our laws and our policy.

So, Mr. President, once again, may I applaud and commend my friend from Washington, Senator SLADE GORTON.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, in the interests of clarity in dealing with two related but distinct issues, I have asked, and the Senator from Colorado has agreed, to deal separately with two amendments on his part to sections 118 and 120. So, while most of the speakers have talked about each, to this point, now, before we vote on the proposal of the Senator from Colorado, I am going to address only section 118, the section that calls, in the form in which it was reported by the Indian Affairs Committee, for a study not only of the needs of Indian communities across the land but the resources available to those Indian communities to support, in whole or in part, their governmental entities.

These tribal priority allocations, in the amount of just over three-quarters of a billion dollars, are directed at the activities, on the broadest possible scale, of the self-governing Indian tribal organizations all across the United States, numbering several hundred in total. And there are, it seems to me, two distinct questions even as we deal with this appropriation of more than three-quarters of a billion dollars of

the money of all of the taxpayers of the United States. The first is: Is the historic distribution of money from this account to the various Indian tribes done in a fair and rational manner? And, if not, what can be done to improve that method of distribution?

The second and quite distinct question is whether or not full support of Indian tribal governments is a permanent duty of the people of the United States; a form of entitlement or a matter of discretion in which the people of the United States, in addition to encouraging the development of self-governing institutions, are also entitled to demand on the part of successful Indian governments an increasing duty of self-support of these governing institutions—the tribal legislatures, the court systems, the police systems, and the like, systems that in our Federal system are paid for by the people of the United States in connection with this Congress, the people of the States with their legislatures, and the people of cities, counties, and towns with respect to their governing institutions. And we ran into opposition in connection with each of these; a protection of the status quo in connection with each.

I took over the chairmanship of this subcommittee 2 years ago, and for 2 years asked the Bureau of Indian Affairs, when it justified its budget, about the formula through which it distributed its moneys to Indian tribes, without getting a satisfactory answer. Asked whether or not it had any ability to determine the relative needs of the varying tribes in the United States, the reluctant, ultimate answer was, no, the Bureau of Indian Affairs didn't have that kind of information, did not know in any detail the income of tribal governments through gaming, through gambling operations, through natural resource extraction, through rental of its properties and the like.

Moreover, it became quite clear that the Bureau of Indian Affairs didn't care to get that information. The reason that the Bureau of Indian Affairs doesn't really care about getting that information is that it does, in fact, believe that these payments are a permanent entitlement, a permanent burden on all of the other taxpayers of the United States, and that, therefore, while perhaps an examination of needs is appropriate, an examination of resources is not appropriate in any respect whatsoever.

With both of those propositions I disagree. While section 118 that exists in the bill today does not change the system and require a mandated distribution on the basis of a system of needs, which of course implies something about the resources that cover these needs on the part of each individual tribe, it became evident that there is so much disagreement in Indian country with even a determination of the facts on which we can make a later determination of needs and resources that section 118 was unacceptable.

The proposal that Senator CAMPBELL has made, and with which I agree, deals

rather narrowly with the distribution of the money in this appropriations bill, increased by something more than \$75 million over the current year, and most particularly with the way in which any excess over last year's distribution and over a formula already developed in the Bureau of Indian Affairs will be made. In that connection, it is a significant step and it is something with which I agree. Because it is insufficient, however, because it doesn't even mention either needs or resources, in my view something else very significantly is needed.

Before I get into that, however, much of the debate on the other side of this issue, many of the newspaper editorials, have spoken of the appropriation for tribal governments, so-called TPA, as an entitlement based on treaty—because there are several hundred treaties with various Indian tribes, the last of which was ratified in 1868—that we are in fact dealing with an entitlement, that we should not look at relative needs, we should not look at the ability to provide for governments through the resources of Indian tribes at all because this is a matter of treaty obligation between the Government of the United States and these various Indian tribes.

I wish to make the point, as we look forward to a future debate on this issue, that there is no such treaty right. Mr. President, there is no such treaty right. We found one treaty with one tribe that calls for payment in perpetuity of several thousand dollars a year. Most Indian treaties, however—and we use here the treaty of Point Elliott in my own State, a treaty signed in 1855, that includes a clause very much like this one:

In consideration of the above cession [that is the lands the Indians were signing away] the United States agree to pay to the said tribes and bands the sum of \$150,000 in the following manner.

And it sets out declining annual payments for a period of 20 years, ending, presumably, in 1875, or in 1876. That is the typical Indian treaty with respect to a fiscal obligation on the part of the people of the United States. Obviously, that period of time ran out over a century ago. The optimism with which it was signed, the implication being that by that time the Indians would be integrated into the larger society, did not take place, and the Congress of the United States has gone through several phases of attitudes toward Indian tribes, toward their integration, toward their self-determination and the like. We are now in a period of time in which the strong public opinion, and opinion in this Congress, is in favor of self-determination, conscious self-determination in the Indian institutions.

The point I am making here is not to disagree with that policy. I think it is a perfectly appropriate policy and one that I have supported. The point that I am making here is that it is a discretionary policy, and that this three-quarters of a billion dollars is appro-

riated as any other discretionary account is in the Congress of the United States. Therefore, it is totally appropriate for us to determine whether we think the money is being well spent, whether we think it is being fairly distributed, whether we think there is a better formula, whether we think there should be some obligation on the part of wealthier tribes to pay all or part of the cost of their own tribal governments.

So we have taken a sample number of tribes with respect to this year's distribution, about 20, on this chart. I may say that this is not one of these telescoped graphs that only works between No. 100 and No. 200. This graph goes from zero to \$2,452. Tribal allocation per person to the Pequot Tribe in Connecticut from this year's distribution is \$2,452. That is the tribe with the most successful gaming operation in the United States. Unemployment in the Pequot Tribe is zero.

At the other end of the scale, the Fond du Lac Tribe, which gets \$24 per person in its TPA allocation, has 67-percent unemployment.

This, of course, doesn't include anything like all the tribes in the United States. I think it is a fair sampling, and any Member who desires to know where on this scale a tribe in his or her State falls can get that information through us. But you have a range of between \$24 per capita and \$2,452 per capita—a range of 100 to 1. The net result of failing to deal with that issue this year is that the ratio will be greater in 1998 in the bill we are voting on, it will be greater than it is at the present time.

The original formula, I think, dates from sometime in the 1930's. Under those economic circumstances, having no relation to the present day, these tribes' governing authorities, of course, have various powers. Some provide more services than others do. But nonetheless, each year's change has made this system worse and is exacerbated.

I will show you the same chart in a slightly different form, Mr. President. This form works from the Rosebuds in the Dakotas, which have the highest unemployment, 95 percent, down to the Pequots that have zero. In other words, to the best of our ability to determine need—because we don't have all of the figures, unemployment figures have to be a shorthand here for need—the most needy tribe gets \$225 per capita. Again, the Pequots, \$2,400. But if we don't want to take that one, let's take this one in Alabama; it is \$1,195.

Interestingly enough, the second highest distribution here is to the tribe that has the second highest unemployment. But the obvious import of these charts is that there is simply no relationship whatsoever—no relationship whatsoever—between the need, the economic poverty, the unemployment on a given Indian reservation and the distribution of moneys to the governing

body of that institution from the Federal Government pursuant to these TPA's.

One further point, of course, in connection with this question about treaties, most of the tribes in the United States are not treaty tribes. The Senator from Alaska referred to the fact that by fiat, the administration created, I think, a couple of hundred new tribes in Alaska, none of which are treaty tribes, but all of which, by that administrative action, will in a year or so fall into this kind of distribution of money. So the distribution has nothing to do with whether or not tribes are treaty tribes or nontreaty tribes. The tribes really don't have anything to say about the issue.

We are distributing the money at the present time in a manner that is highly irrational. As a consequence, Mr. President, Senator STEVENS and I have authored a letter dated today to the Comptroller General of the United States in the General Accounting Office, asking for a General Accounting Office study of the system I have described here, how we got to that system and how we can do better.

Our request does, of course, include in it a request to the GAO to make a determination, not only of the needs of the tribes, but of their ability to meet those needs with their own resources. We may well learn from the GAO that even it cannot answer that question, because the tribes will not release a sufficient degree of information for us to make an intelligent decision. Then we will be told what kind of legislation is necessary so that Congress can deal with this matter in a rational fashion.

I ask unanimous consent that the letter that Senator STEVENS and I have authored to the General Accounting Office 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 APPROPRIATIONS,
Washington, DC, September 16, 1997.

JAMES F. HINCHMAN,
*Acting Comptroller General, General Accounting
Office, Washington, DC.*

DEAR MR. HINCHMAN: We are writing to request that the General Accounting Office ("GAO") immediately undertake a study of issues related to the distribution of funds by the Bureau of Indian Affairs ("BIA") through Tribal Priority Allocations (TPA). The GAO is requested to complete the study and submit a report by June 1, 1998. The study should address in detail the following:

- (1) any inequities in the current distribution of TPA funds among Tribes;
- (2) the results of the distribution of TPA funding in FY 98 (to the extent such results are available);
- (3) the tribal and non-tribal resources, including tribal business revenue, available to each Tribe for meeting governmental needs;
- (4) the extent to which each Tribe can or should, in whole or in part, become self-sufficient, in terms of its ability to provide government services, through the use of resources available to it;
- (5) the impact of recognition of new Tribes on TPA funds;
- (6) recommendations for determining the level of funding needed for a Tribe to provide governmental services; and

(7) recommendations for a formula for the distribution of TPA funds that takes into account the disparate needs, population levels, treaty obligations and other legal requirements with respect to the provision of governmental services, and the resources available to each Tribe to provide such services.

In undertaking the study the GAO should consider the formulas currently used by the BIA for the distribution of funds for other programs, the formulas previously used by the BIA or other federal agencies for the distribution of funds under the Indian Priority System that was developed after enactment of the Indian Reorganization Act, and any formulas recommended by the 1994 Joint Tribal/DOI/BIA Task Force on Reorganization of the BIA, the Commission on Reservation Economics, the American Indian Policy Review Commission, and any other relevant commissions or reviews.

In evaluating the resources available to each Tribe for meeting governmental needs, the GAO should enumerate in its report the nature and availability of the information BIA needs to determine accurately the level of resources available to each Tribe for the provision of governmental services. The report should include recommendations regarding any changes in law that may be necessary in order to obtain such information and what constitutes a de minimus level of revenue for which the cost of reporting or assessing such revenue would outweigh the benefit of obtaining that information. For the purposes of this study, the GAO should consider the term "tribal business revenue" to mean income, however derived, from any venture owned, held, or operated, in whole or in part, by any entity on behalf of the collective members of any Tribe. Such term shall also include any income from license fees or royalties collected by a Tribe. The term "any venture" includes any activity conducted by an entity, regardless of the nature or purpose of the activity, and shall include any entity regardless of how such entity is organized, whether corporate, partnership, sole proprietorship, trust, cooperative, governmental, non-profit, or for-profit in nature.

The recommended formula for the distribution of TPA funds should include a means of assigning priority among Tribes for the allocation of funding, so that those with the greatest need for governmental services and the fewest resources to meet that need, relative to the needs and resources of all other Tribes, are given the highest priority. The GAO shall include as an appendix to the report suggested legislative language to accomplish any changes in law or regulation necessary to ensure the distribution of TPA funds according to the recommended formula.

Thank you for your prompt attention to this request. If you or your staff have any questions regarding this request, please contact Anne McInerney of the Senate Subcommittee on Interior and Related Agencies at 224-2168.

With best wishes,

Cordially,

SLADE GORTON.
TED STEVENS.

Mr. GORTON. I do want to say this, Mr. President. A number of compliments have been made about the way in which Members deal with issues that are highly controversial and on which they have great differences of opinion. I say, with respect to every one of those who have spoken here today, that I have gotten from each of them the greatest consideration, even when they have disagreed with me.

Each of them holds his views as firmly as I do and as significantly as I do.

The chairman of the committee has agreed, and will speak to that later, to dealing with a specific bill on the other subject. I haven't asked him to deal with this subject in his committee, but I rather suspect that he is going to wish to do so in order to be able to deal rationally and intelligently with this issue as well.

So I have not gained the goal that I have set for myself when I was writing this bill to make substantive changes, but we are going to be able to vote these issues intelligently in the course of the next year in a way that has not been done in this Congress, certainly since I first arrived here in 1981 and probably for some time before that.

I believe the debate on this issue is long overdue, Mr. President. I am persuaded, quite persuaded, that we can't engage in it in its full substantive fashion at the present time, for lack of information, and that what we are doing here is going to give us a greater ability to make our points at some time in the future.

For their cooperation in seeing to it that we are moving forward on this issue, I thank each one of them, and we will be back here, I suspect, at some time in the future to debate this and the other issue more on its merits. Because the other issue is distinct from this one, I hope as soon as others who wish to speak on it have spoken, we will adopt the proposal, the amendment proposed by the Senator from Colorado, and then move on to the second one, and I will have a set of different remarks on that one.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask the distinguished Senator from Colorado, Senator CAMPBELL, and the distinguished Senator from Washington, Senator GORTON, would it be appropriate for me to speak now or would they rather proceed with something else? If they have to introduce a measure and want to get it done, it will be all right with me.

Mr. President, I say to my fellow Senators, I think the important thing for the hundreds of thousands of Indians in the United States and Indian country and the 10 percent of the population of the State of New Mexico who are Indian people. There are 22 different Indian tribes and pueblos in my State, living in a completely different style, but all Indians nonetheless.

The most important thing for them is we have won today. We did not lose on the issue of sovereignty as it pertains to their immunity in their court systems. We did not lose, in an appropriations bill, without adequate hearings, without adequate information on one of the most complex and historic-filled situations in our Government and our governance. We won, because those decisions to take away tribal judicial immunity, whether it be for 1

year or forever, have been withdrawn from this bill.

I thank the distinguished Senator, Senator SLADE GORTON, for withdrawing his judicial immunity provision. I think it has become absolutely and unequivocally discernible by everyone that is a very complicated issue.

Later, I am sure, in this discussion, we are going to hear proposals about how that is going to be fleshed out and how we are going to talk about judicial immunity, the right to sue Indian tribes or not to sue them in the courts of America and the courts of the States. We are going to hear discussions perhaps on how hearings ought to be structured to get to the bottom of certain issues where inequity may require that some modifications be made. But essentially, for the Indian leaders and the Indian people who came here by the hundreds, at least, this year, their tremendous concern about what was going to happen to them if this occurred is gone from the scene.

The Senator from New Mexico is fully aware that the distinguished Senator, Senator GORTON, desires to fix some things that he feels are wrong with Indian law and the distribution of money, and he feels that just as strongly as I feel that we ought to be very careful about what we do and that it is not a simple proposition. Even the two graphs that were put up that show the disparity in incomes and the disparity in the distribution of our Federal resources don't tell the complete picture.

The picture is one of a tribal allocation system evolving over time filled with history, filled with court decisions, filled with Senators who have purposely helped certain tribes and not helped others, which causes some of these funding levels to be out of whack.

Nonetheless, the needs in Indian country are not debatable, because for every Indian person that has an average American income and an opportunity for a job and some assets, tribal or otherwise, that are significant, my guess would be 50 that don't have these assets. For every one that does, my guess would be 50 don't, 50 are poor. Their tribes are poor. Their reservations are economically depleted. So I suggest, as I did early on when the issue of means testing arrived, that we ought to be equally concerned about the needs of the Indian people.

Frankly, the GAO letter that my friend, Senator GORTON, proposes, is fully within his rights. Any Senator can write to the GAO, whether it is joined by the chairman of the Appropriations Committee or whether it is the most junior Member here. You can write to GAO and ask them for information. Now I intend to ask them to assess the needs of the Indian people: How poor are they, and why are they poor? I want to ask them what physical needs they have—water systems, sewers, roads—for they live, in most cases, in a pretty bad economic situation and a pretty deteriorated public environ-

ment with reference to infrastructure and the like.

So it is mighty easy to say, let's fix this formula and have somebody in government formulate a new means test for us, but I will tell you, it is a lot more difficult to find out what our responsibility should have been over the years and how much of the Indians' plight is because of the laws we have and our failure to take care of the related trust responsibilities that we have.

The history of Indian people versus the United States of America is as old as some of the Supreme Court opinions written by Justice Chief Marshall back in 1830's. I am sure Senator GORTON, who is an expert on the legal debates, knows about all those cases. While I am not as legally perfected, I know that there is not one simple evolution of the relationship of the Indian people to the American Government and to the States. It has evolved because of court opinions, it has evolved because Presidents have articulated American policy with reference to Indians. President Nixon articulated a policy of self-governance and self-determination, which has then been carried out by the Government of the United States.

So the next time we debate this issue, we will not just have three exhibits here, one of which quotes from one treaty, for I am sure that more than one of us will be steeped in the history of how we got to where we are. It is not going to be as simple as devising a new means formula and distributing federal money based upon some kind of new means testing.

It may be that treaties don't govern all of these responsibilities, but I can guarantee you, the statutes are filled with commitments to the Indian people. Before we have this next debate and during the next hearings, we ought to be talking about all of those statutes that said we are going to educate the Indian people, and then we never provided enough money; that says we are going to house them, and then did not provide enough money. Where does that come into the equation?

We said we wanted economic prosperity for Indians—but until the 1980's through the highway trust funds, we hardly funded any roads for them. I can remember, when I arrived in 1973, \$10 million was the level of funding for Indian roads. We were thrilled to get it up as high as \$30 million. When we included Indians in our highway trust funds for the first time, the funding jumped dramatically to \$80 annually, and in the most recent highway bill 6 years ago, we finally got it over the \$150 million mark for all of Indian country out of the highway trust funds. In spite of them paying into the funds everytime they bought gasoline, we weren't building any roads from this fund for them until the mid 1980's.

Just a few remarks on judicial immunity. I believe it is incumbent upon the Indian leadership of this country to work with us, those of us who are genu-

inely concerned about their well-being and protecting their rights to self-termination and self-governance. We ought to work on some of the troubling areas where the lack of judicial review is something that is beginning to offend many people and that many of us who are protective of our Indian people are beginning to ask questions about.

In that regard, Senator GORTON, in conversations that are off the record and not on the Senate floor, has talked about the fact that maybe the solution isn't a total waiver of their judicial immunity. Maybe we need to examine these judicial areas that cry out for some kind of equity and fairness. I assume in the next year those will be looked at by various committees.

But in the final analysis, the important thing that happened here today is that, in my humble opinion, fairness prevailed because it would have been grossly unfair to waive tribal sovereign immunity. In fact I think it would have been wrong in the appropriations process to waive judicial immunity across Indian country so that Indian tribes can be sued by almost anyone for anything in any court. I believe we would have wreaked havoc on Indian governance and we would have destroyed the tribes of our country in many cases. And this too is an evolving situation.

For in many of the cases where we have cited that the Indian tribes cannot be sued, they have insurance, I say to Senator INOUE. We found many of them are in fact settling lawsuits because they bought liability insurance. We have even found that some of the suits that people talked about here on the floor were indeed covered by liability insurance. So those who sued tribes were not without a remedy.

But let us say the process has worked because we have not jumped precipitously into changing that very large body of law with reference to the governance and status of a recognized Indian tribe in terms of the courts of our land and judicial review of their actions.

And on the previous issue on means testing, in summary, I believe that justice prevailed and the right thing is done by us not acting to establish some formula or even indicate that we are setting down that path.

All we have done today is to set in motion some questions to the Government, the GAO. As indicated, there might be a lot of other questions of them. Then, in due course, means testing will be looked at in a manner that it should be looked at by appropriate committees.

I thank Senator GORTON. I was privy to the meetings where this resolution was finally arrived at. I was not there at every meeting, but nonetheless I was there in time. I was there in time to make sure that some ideas that were apparently gaining credence were denied their credence. And I feel very good about that. And we are now back together saying, let us work together and see what we can do.

I say to Senator CAMPBELL, as chairman of the committee, our new chairman, I have served on your committee for a while, never as chairman because I could not do that, but I pledge to you my support as we move through the next year or so in trying to solve some of these problems. I am firmly convinced that it will not be a simple proposition of "let's have a means testing formula," because there will be a lot more to it before we finish as we try to understand just what we ought to be doing in fairness.

I yield the floor.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I think it is certainly appropriate, for a few moments, to speak to the issue at hand here on the floor and my support for what the Senator from Washington has chosen to do with the two issues that he brought to the Interior appropriations bill dealing with native Americans and sovereign immunity.

I discussed these issues with him at length and certainly with native Americans of my State—four different tribes. I have spent a good number of hours discussing this issue and how it relates to their rights and how it relates to the rights of all citizens in this country.

I am extremely pleased also to have worked very closely with the Senator from Colorado who I respect greatly for his opinions in this area and certainly his long-term knowledge about issues of native Americans because he is so proudly one of those amongst us who can claim that title and does so proudly and represents them so well in this body.

I am pleased that we are willing to take this back to hearings. It is an issue of immense proportion for both non-Indian citizens of our country and Indian citizens because of the nature that is evolving upon many of our reservations and the questions that are mounting outside of them as it relates to fairness and equity.

In my State of Idaho we have at this moment some conflict that must, I think, in the end be resolved so that there is a sense of fairness for all parties involved. There is now on both sides of this issue a lack of that sense. I hope that we can resolve some of it. It is our responsibility. We are talking about Federal law and the recognition of that law and that which has built up around it now for well over a century.

I certainly trust my colleague from Colorado to deal with it in an evenhanded, straightforward way and the Senator from the State of Washington who forced this issue upon us, in the right way, to cause us to look at something that sometimes we are not willing to or we find difficult to deal with.

Yet there are times in our country's history when it is appropriate to look at what we intended in the past and how it has revolved into the present and whether it fits today's modernness

or if there are some reasonable adjustments that can be made within law that affect people in their lives. That certainly is our responsibility.

So I thank both of my colleagues for their willingness to cooperate and work with each other and to resolve, out of what could have been substantial conflict, an approach that I think in the end meets all of our interests in a way that serves this body and native Americans in our country well along with non-Indian citizens.

I yield back my time.

Mr. INOUE addressed the Chair.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator from Hawaii is recognized.

Mr. INOUE. Mr. President, as my distinguished friend from New Mexico suggested, the matter before us is a very complex one. The history that we will be considering in the days ahead, when we debate this matter, is also a complex one filled with tragedy and filled with sadness.

It is true, as stated by my friend from Washington, that many of the tribes are not treaty tribes. But I will explain why I believe it is not so.

Mr. President, when the first European came upon this land, anthropologists have suggested there were anywhere from 10 million to 50 million native Americans residing in the present 48 States. Today, the number is less than 2 million.

The history of our relationship with our first citizens is not a very happy one, Mr. President. In the early days, we looked upon them and counted upon them to help us in our wars. The record indicates that if it were not for certain tribes belonging to the Iroquois Confederacy, General Washington and his troops at Valley Forge could very well have perished. These Indians traveled hundreds of miles carrying food on their backs so that our troops would be fed.

Well, that was a long time ago, Mr. President. But this is part of our history. There was a time when Indians sent ambassadors here because they were sovereign nations, just as sovereign as Britain or France or China or Japan. And we treated them as sovereigns.

So sovereign nations conferring with other sovereign nations usually come forth with an agreement which we call treaties.

Our history shows that we entered into 800 treaties with Indian nations. Of that number, 430 never came to this floor. They are somewhere in the archives of the Senate of the United States. For one reason or another, we decided not to act upon these treaties, treaties that were signed either by the President of the United States or his designated representative. They were solemn papers, documents that started with very flowery words such as: "As long as the sun rises in the east and sets in the west, as long as the rivers flow from the mountains to the oceans, this land is yours."

It is true, as I indicated, that not all Indian nations are treaty nations, because 430 of the 800 treaties were not ratified, were not even discussed, were not debated, were not considered. But most of the remaining treaties are treaties that were signed in perpetuity.

It is true that there are some that were not signed in perpetuity. But most of them had the flowery language: "As long as the sun rises in the east and sets in the west, that is yours."

Then we decided that the 370 remaining treaties may have been a mistake. And, Mr. President, this is a chapter that many of us would try to forget and it is almost difficult to believe. But we proceeded to violate provisions in every one of them.

Ours is a proud Nation. We always point to other nations and say, "You have violated a treaty. You have violated START II. You have violated the nuclear proliferation treaty," and we convince ourselves that we always fulfill every provision in our treaties. Yes, today we do so.

But there was a time when we disregarded these solemn promises. After the treaties were signed, we decided that Indians were a nuisance. That is a harsh word to use, but we established a policy of extermination. We may not have used that word, but the actions we took were extermination.

We often hear about the trail of tears. We have had hundreds of trails of tears. For example, the Cherokees were rounded up in the Carolinas—thousands of them. They were rounded up in the summertime, and in the wintertime, with their summer attire, some in shackles, had to travel across the country to Oklahoma. It is no surprise that over half of them perished. These were the trails of tears.

Oklahoma, Mr. President—we hate to admit this—is a dumping ground. There are tribes there that cannot trace their ancestral land in Oklahoma. What are the Apache doing in Oklahoma? What are the Seminoles doing in Oklahoma? What are the Cherokees doing in Oklahoma? They were sent there, and oftentimes sent to areas that no one wanted. Yes, if we found gold on certain land, that treaty was violated.

So, Mr. President, this is a very complex issue. After the Indian wars—and we oftentimes look back to those days with great pride; there were great soldiers, great generals, like General Custer—at the end of the Indian wars, as a result of wartime death, disease, and such, the Indian population of the land had come down to 250,000—250,000.

Yet, with this background, with this history, I think we should recall this footnote.

In all of the wars that we have been involved in since World War II of this century, native Americans have put on the uniform to participate in the defense of our freedoms, our liberties, our Constitution, our people, and our land. They have sent more men on a per capita basis than any other ethnic group.

More men from Indian reservations served in Desert Storm on a per capita basis than any other ethnic group.

In fact, we oftentimes look at that great statue of the raising of the flag at Iwo Jima on Mt. Suribachi. It should be noted that of the five Americans that are raising the flag, one is an Indian. That has been the contribution of Indian men and Indian women throughout our history. They have done so notwithstanding their strange and tragic history in the back. So I think they have earned the right to say, "Let's not break any more treaties." Enough is enough.

Mr. President, like my distinguished friend from Washington, my friends from Colorado, New Mexico, Arizona, and Alaska, I look forward to this great debate where we can finally with some definitiveness and with some depth discuss our relationship with the first citizens.

In closing, I will read part of the statement of Governor Stevens of the State of Washington when he asked the tribe in the Pacific Northwest to sign the treaty of Point Elliott. The Governor used some extraordinary words:

There will be witnesses. These witnesses will be tides. You Indians know that the tide goes out and comes in, that it never fails to go in or out. You people know that streams that flow from the mountains never cease flowing. You people know the sun rises and sets and never fails to do so. Those are my witnesses. And you Indians, your witnesses and these promises will be carried out and your promises to me and the promises to the Great Father made to you will be carried out as long as these three witnesses continue.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. CAMPBELL. I thank Senator INOUE for those very thoughtful comments. Until he introduced a bill just a few years ago that established a museum of the American Indians as part of the Smithsonian—and I was a House sponsor when I was on the House side—until that happened, there was a common saying here in Washington, DC, by Indians throughout the Nation. That saying was, "There are more dead Indians in Washington than live ones." It was because at that time there were over 16,000 remains, mostly skulls, but other body parts, housed by the Smithsonian.

Senator DOMENICI, when he was here, I think put it in a good and proper perspective. We are dealing with a couple of sections. My primary opposition was not that I was trying to lock anybody out from debate, but I felt it was the wrong vehicle for putting these very, very important policy changes on an appropriations bill. But Senator DOMENICI put it in a proper perspective. Since he did, I will make a point of that, too.

Senator INOUE mentioned the number of treaties that were dealt with. It is my understanding that 374 were ratified by the U.S. Senate and 374 broken—every single one—but not by the Indians. That is something that ought to be in a historical perspective when we talk about section 120 or 118.

Most of the things that the Indians lost in the centuries past were done through two manners: either at gunpoint or through some subterfuge. Certainly if they had known the value of Long Island, they would never have sold it for \$27 worth of beads. In the case of the Black Hills, they did not have a choice; it was at gunpoint, as many other lands were, too.

Some authorities, including Herman Viola, head of the National Archives and a prominent author on American Indians, has written about 14 thoughtful books on American Indians, and he says in some writings that estimates are as high as 30 million aborigine people—30 million—died in North and Central America between 1492 and 1992—30 million. It was not like this place wasn't inhabited. There were complete nations.

If you go back in history and you look at the great cities of Cahokia, which disappeared 400 years before the landing of Columbus, which had 20,000 acres in cultivated crops and astronomers, doctors, artists, and every imaginable kind of profession in their own way—gone, 400 years before anybody landed on a boat here from any of the European countries.

The great city of Tenochtitlan, which the modern city of Mexico City is built on top of, had thousands of years of their own history before the coming of post-Columbian people. I live about half an hour from Mesa Verde, called the Cliff Dwellings. They were there before Christ walked the Earth, the people living on the mesas, planting their corn, raising their kids, praying to their Lord, passing on generation to generation. They left there almost 400 years before Columbus even got here.

So when we talk about who owes what to whom around here, I think it is very important that we remember that Senator DOMENICI and Senator INOUE have tried to put this in a proper perspective. They were a culture. They did not have prostitution. They did not have jails. They did not have communicable diseases. They did not have unemployment. They did not have taxes, by the way, Mr. President. They did not have welfare, mental institutions, literally all of the social problems that we now think are consuming America, eating up America. They did not have those. They could not even swear. They could not even swear. They had no swear words in the Indian language.

They were a pretty good culture. We could learn a lot from them. We did not learn very much because we found it was easier to take things at gunpoint or to get one to sell out another. That was common in those days. If the negotiators with the Federal Government could not talk some of the chiefs out of the land, they would simply say, "OK, we will set up our own chiefs. We will set up these guys over here. They belong to the tribe. We will say they are the guys that have the authority to sign the agreements and the treaties." That is the way some of the land disappeared.

If we decided we could not deal with the Government of France or Great Britain or any other foreign country, we would simply say, we will set up our own puppet leaders in your country and then we will sign an agreement with them and that will become the law of the land. That is how a lot of the land disappeared.

They had none of these problems. It was not in their nature and it was not in their culture. They inherited it all. Many, many tribes are still trying to find their center, find their way, and make a better life for themselves and their kids. It is an uphill battle all the way because this Government, by and large, has never been very sensitive of their needs.

If you remember, historically, in fact, the Bureau of Indian Affairs was not part of the Department of the Interior when it was set up. It was part of the Department of War. Do you think anybody that sets up a framework to try to find fairness after fighting decades of battle, where some of their own people were lost in their battles, do you think they will be fair? Probably not.

That is what led to the rise of the Surgeon General in the 1800's asking the War Department to send out a request to collect body parts from American Indians. If they were already dead, that was OK, dig them up and send them in. If they were not, kill them and then send them in. The point of that whole study is a matter of historical record. It was to do one thing: They took measurements of the skulls, the bones; they measured how far apart were the eyes, and the cranial cavity and so on, and in their infinite wisdom decided, because those measurements were different from the Anglo majority of this country, they could not have had the intelligence to own land. That was one of the reasons and one of the driving forces of westward expansionism.

I didn't want to get into a big history lesson here, but that is all a matter of record.

It seems to me that if Senator DOMENICI and Senator INOUE did anything, they tried to put this in a proper perspective. There have been many, many bills and many laws passed dealing with American Indians where they have had very little input and no voice in this body. All they are asking now is to have a voice in this body by having these bills introduced in a legislative forum so they can speak to them, too, and not just slipped in in an appropriations bill.

In the past, there have been many devastating laws passed by this Congress. Certainly one was simply called relocation. That was not so long ago, it just happened in the 1950's, in which Congress decided Indians had lived on reservations long enough and they could be assimilated, and they uprooted families and sent them to the city and taught them to be electricians, plumbers, automobile mechanics, and after they finished school,

they dumped them on the streets of Los Angeles, New York, Fresno, and all over this country with no jobs and no skills or ability to get the jobs with which they could make a living doing the things they had been taught under relocation.

That is the reason why we have such high alcoholism rates among urban Indians now, still to this day, 40 years after the relocation act.

In its infinite wisdom, this body decided, through the Termination Acts of the 1950's, they would arbitrarily say the Indians have been living around the city long enough, therefore we will not call them Indians now but terminate them as a legal body. The heck with the whole treaties, the heck with what we agreed to, our word is no good, we will terminate them. I have never understood that. It is like telling a black American you have been around the cities long enough, you are no longer black. I don't know how they could have even done that, but they did it.

To this day, many of those tribes that were terminated and left in limbo, not quite in the Anglo world and certainly not in the Indian world because they were no longer legally Indians, and they have been trying to find their center. That is why in the last few years we have allowed more and more tribes to go through the Bureau's procedure to be reinstated as tribes.

I guess in closing I should say we do an awful lot around here based on the law book. It seems to me we ought to do a little more based on the Good Book. You can be legally right and morally wrong. Everybody in this body knows that. I think we can put something in place that might be legally right and stand up in any court of law, but we have to ask ourselves, was that the right thing to do? Was that a fair thing to do to 2 million people without their input, without them knowing, without them having a voice? I don't think so.

If you look at the unemployment rate on the charts that Senator GORTON showed, it was 95 percent on the reservation in Pine Ridge, SD. When you talk about a 9 percent unemployment nationwide, this country comes unglued. We think we are in a major catastrophe if we have a 9 percent unemployment. Try 40, 50, 80, 90, or 95 percent, like in Pine Ridge, SD, and all the dysfunctional problems, including fetal alcohol syndrome. One out of five or six babies born is destined to lead a life in an institution because his mother drank too much because she didn't know the difference or did not know it would hurt her unborn baby. Try to apply those statistics to the outside world.

Half of our high school kids don't finish high school. We have kids sniffing glue, eating paint, blowing spray paint in their face, burning our their mind. They don't know what they are doing because they have not had proper education or training. We have a suicide rate on some reservations where one

out of every two girls, one out of every two, tries suicide before she is out of her teenage years, and one out of every three boys, and too many of them succeed.

That is the historical perspective that I try to put this in when I say we went the wrong way in trying to add this to an appropriations bill with no input. I am delighted and honored that so many Senators came forward and spoke to this, and at least for this year, we got it right and we are telling people this Nation is no better than a human being when we give our word. We are now in the process of dealing with fast-track for NAFTA, expanding that; we dealt with the Chemical Weapons Ban Treaty, and we are dealing with another treaty dealing with landmines. They are all going to affect millions of people. It just seems to me that if this Nation can give their word in treaties to everybody else in the world that live halfway around the world, we can darn sure give our word to the first Americans and keep it.

With that, Mr. President, I would like to get back to the amendment and clarify that. I did ask unanimous consent on the pending question that is now referred to as section 118, beginning on page 52, line 16; is that correct?

The PRESIDING OFFICER. The Senator's amendment does propose a substitute for that language. The Senator is correct.

Mr. CAMPBELL. I am not sure. Did I ask for the yeas and nays?

Mr. GORTON. No. I think we are ready to vote on the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment by the Senator from Colorado?

If not, the question is on agreeing to amendment No. 1197 by the Senator from Colorado.

The amendment (No. 1197) was agreed to.

Mr. CAMPBELL. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

EXCEPTED COMMITTEE AMENDMENT BEGINNING
ON PAGE 52, LINE 16, AS AMENDED

The PRESIDING OFFICER. The question is now on the Committee amendment, amended by the amendment of the Senator from Colorado.

The excepted committee beginning on page 52, line 16, as amended, was agreed to.

Mr. CAMPBELL. Mr. President, I will move to section 120.

EXCEPTED COMMITTEE AMENDMENT BEGINNING
ON PAGE 55, LINE 11

The PRESIDING OFFICER. The question before the Senate is the excepted committee amendment beginning on page 55, line 11.

The text of the excepted committee amendment is as follows:

TRIBAL PRIORITY ALLOCATION LIMITATION

SEC. 120. The receipt by an Indian Tribe of tribal priority allocations funding from the Bureau of Indian Affairs "Operation of In-

dian Programs" account under this Act shall—

(1) waive any claim of immunity by that Indian tribe;

(2) subject that Indian tribe to the jurisdiction of the courts of the United States, and grant the consent of the United States to the maintenance of suit and jurisdiction of such courts irrespective of the issue of tribal immunity; and

(3) grant United States district courts original jurisdiction of all civil actions brought by or against any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.

Mr. CAMPBELL. I ask unanimous consent that the committee amendment referred to as section 120, beginning on page 55, line 11, be withdrawn.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The excepted committee amendment beginning on page 55, line 11, was withdrawn.

Mr. CAMPBELL. Mr. President, I wasn't going to speak to that, but I might make one comment. As I read the language of the bill, there were so many unanswered questions. One that came to mind was this. As I understand section 120, tribes who did not want to give up their sovereign immunity would be denied Federal funds. If they did willingly give up Federal funds, then they would not have had to give up their sovereign immunity, which seemed strange to me because the tribes that are the most destitute and therefore the most dependent on Federal help, would have been the ones who would have had to give up immunity and therefore would have been sued more, where the very few, perhaps 1 out of 100, who do have a casino and have some money, simply would have said we don't want Federal money, we have enough; therefore, their immunity would have been intact. It seems that paradox should be the thing that we discuss in a proper forum, which is the committee legislation.

With that, I have no further comments, Mr. President. I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, section 120 of the bill is a section that conditioned tribal priority allocations on the abandonment of a doctrine called sovereign immunity on the part of Indian tribes. There has been much said during the course of the day about justice, about simple justice, about there being more important concerns than the letter of the law. With that proposition, I find myself in agreement. And the proposal with respect to sovereign immunity was aimed at just precisely that goal—simple justice.

In fact, Mr. President, there is a letter to the editor in the Washington Post today that goes under the title of "Simple Justice."

I ask unanimous consent that this letter be printed in the RECORD at this point.

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

[From the Washington Post, Sept. 16, 1997]

SIMPLE JUSTICE

I read with disappointment the comments of Sens. Ben Nighthorse Campbell and John McCain regarding Sen. Slade Gorton's provision to the Interior Appropriations bill that would require Indian tribes to waive their sovereign immunity from suit before they can receive federal funds ["Keeping Our Promise to the Indians," op-ed, Sept. 10]. Their argument misses the point.

Sen. Campbell said recently that the legislation that would provide my family access to the federal court system to seek justice for my son's death would pass over his [Campbell's] "dead body." Now Sen. McCain has joined the rhetoric.

On Oct. 25, 1994, two of my sons were returning home from a school function in our farm pickup truck. When Jered, 18, and Andy, 16, were crossing an intersection on an Indian reservation, a tribal police vehicle hit their truck at a speed calculated at 68 mph. My son Jered was killed instantly, and Andy suffered serious injuries.

I then learned that my family has no recourse in the federal and state court systems, because tribes have protection for such actions under the principle of sovereign immunity. According to University of Washington law professor Ralph Johnson, sovereign immunity is based on European law—"you can't sue the King." There are no kings in America. Sovereign immunity is not a right held by Native Americans; it is an authority granted to them by Congress.

I was told that my only avenue to seek justice would be through the tribe's makeshift court system that operates without a constitution. Indian tribal courts have routinely shown their inability to administer justice fairly. The tribes don't even have to allow a person to seek damages against them if they choose not to.

Sen. Gorton has written a provision that tribes receiving federal tax dollars must accept responsibility for their actions in the same court system that every other American must. This proposal is a simple and fair one. Sen. Campbell's objection to this legislation is denying my family's right to seek justice for a tragic incident that has profoundly changed our lives forever.

When Sen. Campbell talked about this legislation passing over his "dead body," it hit a deep and emotional chord with me; that is why I am urging the passing of this legislation. But the death I speak of is real, no political talk. The justice I ask for is no more than any other American enjoys when not dealing with Indian reservations.

The two senators wrote that Native Americans "don't come from large voting blocs, and most cannot afford the kind of access in Washington other Americans have." In addition to that, they referred to Native Americans as a "silent minority".

The Center for Responsive Politics totaled the monies spent by Native American interests on lobbying, soft-money donations to national and state party committees, individual contributions and PACs to be \$4,248,464. Common Cause listed the top 25 gambling industry soft-money donors during the 1995 and 1996 campaign cycle. The No. 1 donor was an Indian tribe, as was the ninth, 16th, 17th, 18th, 20th and 23rd.

I am just the father of a son who was killed on a reservation. I have spent \$20,000 of my own money to seek justice for his death—money earned by working on my farm. If the Native Americans who have spent more than \$4 million influencing politicians are the "si-

lent minority," I wonder where that leaves me in the senators' eyes.

BERNARD GAMACHE

Wapato, Wash.

Mr. GORTON. The simple justice referred to in this article is the death of an 18-year-old high school student in an automobile accident in the lower Yakima Valley in the State of Washington. That accident, according to the father of the boy and the police agencies, took place when a Yakima tribal policeman ran a red light in a pursuit and broadsided the pickup being driven by the young man and killed him.

The Yakima Tribe, the employer of that police officer, cannot be sued because of the doctrine of sovereign immunity. In other words, there is no State or Federal court in which the father, the author of this letter, can seek simple justice. He is absolutely precluded by the doctrine of sovereign immunity. Now, if that police vehicle had belonged to the Yakima County sheriff's office, a suit could have been brought against Yakima County. If it had belonged to the Washington State Patrol, the father could have brought a lawsuit against the State of Washington—but not against the Yakima Tribal Council, the employer of that police officer.

The Yakima Tribal Council states that the facts are somewhat different and that perhaps the police officer was not negligent. Neither you nor I, Mr. President, nor any Member of this body can be certain of those facts. But it is for exactly that reason that we set up courts in the United States, so that there could be a neutral body to make that determination and to reward damages where a judge and a jury felt damages were due.

So when we discuss this question of tribal immunity, we aren't dealing with an abstraction, we are dealing with a very real question of justice involving very real people and involving responsibilities that are undertaken by every other governmental corporation in the United States.

During the course of the debate over sovereign immunity, we have also heard, as one of the principal defenses, that it is created by these 367 treaties with Indian tribes. Unlike the debate on the previous question, a treaty-created right of financial support, I can't put a display behind me here showing a treaty and what it does to deal with tribal immunity because, bluntly, there isn't a word about sovereign immunity in any one of those 367 treaties. The reason is not surprising. Governmental immunity from lawsuits is not a concept that traces from that relationship. It is a doctrine of English common law that you could not sue the king, a common law inherited by the United States upon our Declaration of Independence in 1776, and abandoned, in most part, by the Government of the United States, by the governments of varying States, and through them by local governments all across the United States. One of the most recent

statements of a Member of the Supreme Court on sovereign immunity is Justice Stevens, in 1991:

The doctrine of sovereign immunity is founded upon an anachronistic fix. In my opinion, all governments, Federal, State, and tribal, should generally be accountable for their illegal conduct.

And, of course, Mr. President, we never, under our system of judgment, allow the determination of whether or not something is illegal to be made by the person accused of illegality. We use an independent court system for that determination. The Supreme Court has dealt very specifically with the question of where the authority to make that determination about Indian tribal sovereign immunity is lodged.

Chief Justice Rehnquist, in 1991, at the end of a series of cases on this subject, wrote:

Congress has always been at liberty to dispense with such tribal immunity or to limit it.

It is not a matter contained in any treaty. It is a matter that the Constitution of the United States of America lodges right here in the Congress of the United States.

Now, I have agreed to the amendment that was just accepted because the Senator from Colorado, the Senator from Hawaii, and others have also graciously agreed that a subject that, for all practical purposes, has not previously been taken up by the Committee on Indian Affairs will in fact be taken up.

I will, in the next few days or weeks, introduce a bill on sovereign immunity. They have agreed that there will be a series of hearings in which we will hear from victims of sovereign immunity, like the author of this letter, and from many others, and hear the justification of the various tribes for the retention of this anachronistic concept. They have also agreed that we will have a markup and a vote on such a proposal in the committee.

My friend, the Senator from New Mexico, who is not here now, who vociferously and successfully argued for the removal of this section from this bill, has said, as he just did a few moments ago, that he feels that there may be real room, in connection with this doctrine, for changes, for some removal of that tribal immunity, even if not a total abandonment of it. I find that to be a most encouraging statement. I hope he reflects on others of his own view. The particular example that he has used is one that is pretty close to home, because as long ago as 1981 when I was attorney general of the State of Washington, I was involved in a lawsuit in which the Supreme Court of the United States made the judgment that Indian tribal smoke shops were required to collect the State's cigarette tax on the sale of cigarettes to non-Indians and to remit them to the State. It is curious that now we are debating actively just how much more we should pile on in the way of cigarette taxes in order to discourage smoking.

But in the 17 years since the Supreme Court made that decision, a decision renewed in another case in the Supreme Court of the United States just a few years ago, Indian tribes have systematically and successfully ignored the judgment of the Supreme Court of the United States and have refused to collect those cigarette taxes, and sell cheap cigarettes, often to minors, without collecting the State sales tax, and to successfully defy the Supreme Court because the smoke shops are considered tribal enterprises and the State taxing authorities can't sue to enforce the collection of those taxes because of the doctrine of sovereign immunity. Just what justification we are going to get in these hearings for defying decisions of the Supreme Court of the United States and selling cheap cigarettes in the year 1997 and 1998 I am not sure about. I am going to be very interested in listening to that argument. We are talking about fairness here. We are talking about taxes that support the schools to which members of the tribe go. We are talking about a tax system that creates fair competition between sellers who hold that tribal immunity and those who do not. And, in a third area, we need to examine whether or not the ordinary forms of contract law ought to allow the enforcement of contracts, as against a claim of tribal immunity preventing a determination as to whether a contract has been violated or not.

Those are three areas. I don't know that they are necessarily exclusive, and probably the considerations in each one of them may be different.

Should States be allowed to enforce the collection of taxes that the Supreme Court says they have lawfully imposed? Should persons alleging violations of contract be able to go into a court to get a fair and equitable determination of whether a contract has been violated? Should the victim of negligence, or even an intentional harm in an automobile accident, or an assault, or the like, be able to seek redress in the courts of his or her State, or his or her Federal system, against an Indian tribe under pretty much the same circumstances in which they can seek that redress against any other governmental entity in the United States?

The Supreme Court, Mr. President, has said the buck stops here. It is up to us to make that decision. We have not even talked about it for 20, 30, or 40 years.

I think it is a major step forward that we will in fact talk about it. I suspect that it will still be a controversial issue, though it may be that the Senator from New Mexico has come up with a way for us to say, "Well, perhaps we are not going to go all the way; perhaps we will try to deal with areas which are really quite open and shut, and see whether or not it works to the administration of justice; whether or not it does undercut any kind of tribal right of self-determination."

That offer, as well as the generous statements from the Senator from Hawaii, and the Senator from Colorado, I greatly welcome. And I think we can deal with this in an orderly fashion of committee hearings and committee action.

I now think perhaps for the first time we have some hope that we may not only be able to talk about the issue but to come to some kind of an accommodation in which we meet somewhere in the middle of the road—hopefully we will not get hit by a car on the way—and see whether or not we can't move forward on this.

So, I agree with the amendment of the Senator from Colorado which has just been agreed to. I thank him for his agreement to move forward on an issue on which he feels strongly, just as I do. But that, of course, is the way in which we deal with controversial issues, and I look forward to the next round.

Mr. President, I think we have exhausted this subject. With respect to the bill as a whole, we will return I believe to the debate over the various amendments on the National Endowment for the Arts. The majority leader informs me that he in the strongest possible terms wishes to complete all action on this bill by adjournment tomorrow. Once Members who wish to speak to the National Endowment for the Arts, or any other issue, come to the floor and do so, we will have a further opportunity this evening.

There is an amendment on forest roads to be proposed by Senator BRYAN of Nevada, which I understand will be proposed early tomorrow, which will be highly controversial. And this will require a vote. The Senator from Arkansas, Mr. BUMPERS, and the other Senator from Nevada, Mr. REID, may well have settled the controversy involving them, and others.

So I am not certain, on the Bryan amendment and the various amendments on the National Endowment for the Arts, that there are any others that will require rollcall votes. If there are, I urge Senators, or their staffs, to notify us and come to the floor and discuss them.

We need to pass this bill. We need to get it into a conference committee. There are many controversial differences with the House bill.

With that, Mr. President, and the request of anyone who wants to say anything tonight to say it, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

THE NATIONAL ENDOWMENT FOR THE ARTS

Mr. REED. Mr. President, last November, the people of Rhode Island gave me the great honor of succeeding one of this Chamber's true giants: Sen-

ator Claiborne Pell. Throughout his years of service, Senator Pell committed himself to increasing access to education and, fittingly, his name has become synonymous with the fight to open the doors of higher education to all of our Nation's citizens, regardless of income.

Senator Pell also dedicated himself to increasing access to the arts for all Americans, regardless of an individual's or a community's wealth. He recognized the power of the arts to inspire people of all ages, through national and local exhibitions as well as arts education. With his wise and steadfast leadership, Congress made a commitment to advancing these aims, creating a National Endowment for the Arts.

I am proud to follow in Senator Pell's footsteps in supporting the NEA and a strong Federal commitment to the arts. Across the country and in my home State of Rhode Island, the arts enhance our culture and strengthen our economy.

The events of recent years in Rhode Island's capital city of Providence are a testament to the power of the arts. The last half decade has seen the revitalization of Providence's downtown area. One major factor in this rebirth has been the emergence of Waterplace Park, which uses architecture to take advantage of the Woonasquatucket and Providence Rivers' natural beauty. This summer, with NEA support, the WaterFire exhibition was introduced to the park. In the few short months since its installation, this artistic display has already encouraged thousands of Rhode Islanders to rediscover Providence's treasures.

The arts have also contributed to Providence's revival in other ways. Institutions like the recently renovated Providence Performance Arts Center and Trinity Repertory Company, both of which receive NEA support, provide our State's residents with opportunities to see well-renowned and innovative theatrical works. In addition, the passage of new tax incentives for artists residing in downtown Providence has attracted a vibrant and increasingly active artistic community to the city. Taken together, these developments led USA Today to name Providence a "Renaissance City" in 1996.

The Federal investment in the NEA is minimal. The \$100 million this bill would provide for the NEA, for which I commend the chairman and ranking member of the subcommittee, represents less than 40 cents for each of our Nation's citizens.

But with this tiny investment, the NEA does great things, offering our Nation's citizens increased access to all forms of the arts. In my State, the NEA supports not only theatrical productions, but also the work of the Children's Museum of Rhode Island, the youth concerts given by the Rhode Island Philharmonic Orchestra, and the interactive music program that Rhode Island Hospital offers to its patients. In my hometown of Cranston, the NEA

supports the annual Labor and Ethnic Heritage Festival, which brings people of diverse backgrounds together to celebrate and learn about each others' traditions and cultures.

These programs reach a wide range of Rhode Islanders, but even those who choose not to participate in these events benefit from NEA support and our State's vibrant arts communities. There is a close relationship between the arts in Rhode Island and economic growth.

Working closely with the NEA, the Rhode Island State Council on the Arts supports many arts organizations, social service organizations conducting arts programs, and arts educators. One of the Rhode Island Council's funding categories, which supports 26 of the State's largest arts organizations, is known as general operating support. In 1995-96, the council's grants in this category totaled \$355,000, with an average grant size of \$10,000.

For this investment of \$355,000, the State of Rhode Island saw an enormous return. The 26 general operating support organizations directly contributed more than \$24 million into the Rhode Island economy. More than 1.1 million people attended these organizations' programs last year, further spurring the economy. Using modest Department of Commerce multipliers, these figures suggest that the activities of the general operating support organizations alone contributed a total of more than \$97 million to Rhode Island's economy last year. The figure for all arts organizations would be even greater.

These impressive findings are repeated on a national scale. Recent studies have shown that the national nonprofit arts industry generates some \$36.8 billion annually in economic activity; supports 1.3 million jobs; and produces \$790 million in local government revenue and \$1.2 billion in State revenue. For each dollar the NEA invests in communities, there is a twentyfold return in jobs, services, and contracts. Without question, this is a wise investment of our resources.

We must also recognize the importance of national leadership in the arts, which only a strong, sufficiently funded National Endowment can provide. As my colleague from Utah, Mr. BENNETT, noted yesterday, the NEA's seal of approval helps countless organizations across the country to raise matching funds from private sources to support the arts.

In addition, by identifying arts education and increased access to the arts as its priorities, the NEA has promoted these issues nationwide. In recent years, we have seen a resurgence of our commitment to include the arts in elementary and secondary school curricula in Rhode Island, largely spurred by the NEA's emphasis on how exposure to the arts helps young people to grow more proficient in all subjects.

I am proud to serve on the Labor and Human Resources Committee, which has examined many of these issues. I am also proud to be a cosponsor of S.

1020, which the committee passed earlier this year by a bipartisan 14-to-4 vote. S. 1020 reauthorizes and continues to reform the NEA, while maintaining a strong Federal commitment to the agency and its ideals. I look forward to the consideration of this important legislation on the Senate floor.

Standing on this floor 32 years ago, Senator Pell observed that "the arts throughout history have greatly enriched all truly worthwhile civilizations. The arts can put into tangible form the highest of man's creative ideas, so that they may become permanently memorable."

Today, I wish to echo Senator Pell's wise counsel. I urge my colleagues to support the NEA at the funding level requested by the subcommittee and to preserve a strong Federal commitment to the arts.

VANISHING TREASURES

Mr. DOMENICI. Mr. President, I would like to take a moment to bring an issue to the Senate's attention related to the National Park Service and its new initiative called Vanishing Treasures.

In a number of park units throughout the Southwest, the Park Service is responsible for maintaining and interpreting numerous ruins and historic structures, some that date back over 1,000 years.

One example of the wonderful ruins that exist in our National Parks is the Chetro Ketl kiva found in Chaco Canyon in New Mexico; a fascinating structure demonstrating the advanced architectural skills of the ancient Anasazi culture.

Many of these structures have become unstable and are constantly being degraded, primarily by the effects of the harsh desert climate. Furthermore, the almost artistic skill required in the stabilization methods that are necessary to preserve these structures is being lost because of the emphasis on other programs within the Park Service.

The Vanishing Treasures initiative will provide a 10-year program to stabilize these kinds of ruins to the point where they can be preserved by routine maintenance activities. Additionally, the initiative will place an emphasis on the training of younger employees, both permanent and seasonal, in the skills needed to perform this needed work.

In all, over 2,000 prehistoric and historic structures in 41 Park Service units, and countless numbers of future visitors will benefit from the work performed under this initiative.

The bill before us provides \$1.5 million for this program, which is \$0.5 million more than provided by the House, and \$2 million less than requested by the administration.

I hope that the chairman will work with me to ensure the Senate level is at least maintained in conference, and I look forward to working with him to explore other opportunities to see that this initiative has sufficient resources to do this important work.

I ask unanimous consent that additional material be printed in the RECORD.

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

VANISHING TREASURES INITIATIVE

Vanishing Treasures (+\$3,500,000; 18 FTE): The initiative proposed here would enable the NPS to reduce threats to ancient prehistoric ruins and historic structures that have grown to serious proportions in recent decades. "Vanishing Treasures" will improve the preservation of over 2,000 prehistoric and historic ruins in 41 parks in the arid west, all located within the Intermountain Field Area of the Park Service. The NPS estimates that half of these structures, the remains left by ancient American Indian societies such as the Anasazi, their historic descendants, and later pioneers, are in less than good condition. About 60 percent of these structures are being impacted severely or substantially, mainly by weathering and erosion. The severely impacted structures are at risk of collapse in the near future. Others are deteriorating a bit less quickly, but with continued deferred maintenance this process will accelerate. Also of special concern is the poor documentation of these structures, about 60 percent of which are not well recorded and are poorly known.

An estimated 20 million visitors annually come to see these prehistoric and historic ruins and to learn about the ancient and historic cultures that created them. This visitation contributes over \$1.6 billion to the economies of the States where the parks are located, helping to create over 33,000 jobs there. If the NPS is unable to maintain these structures, they will be lost. There is no Servicewide base funding for this program in FY 1997.

"Vanishing Treasures" is proposed as a 10-year program to bring NPS capability and the prehistoric and historic structures to a condition in which they will be preserved by routine preservation maintenance activities. The initiative includes: immediate emergency actions to be carried out in the first year; documentation, planning and management of projects to be carried out over the 10-year period of the initiative; a focus on skilled maintenance expert development and training; and provisions for appropriate expertise in other disciplines to make the program successful. Projects will be carried out by parks or centers, depending upon the nature of each project. Following is a summary of the four components of the Vanishing Treasures program:

Emergency Needs. Wind, rain, ice, snow, visitor use, site looters and vandals, insects, birds, rodents, and other forces wear down, break up, and deteriorate prehistoric structures unless counteractive steps are taken. Lack of such steps in recent decades has placed some structures in grave danger. In FY 1998, \$2.045 million will fund the most acute emergency preservation projects where collapse and permanent loss of irreplaceable resources is imminent. Approximately 18 to 24 projects will be undertaken to meet most of the acute emergency need. A few examples of types of projects to be undertaken include:

Wupatki and Walnut Canyon National Monuments: These units include 202 sites that have standing prehistoric architecture, including large interpretive sites as well as smaller sites whose structural conditions have been identified as threatened with imminent loss. Only one position is currently devoted to ruins preservation.

Chetro Ketl, Chaco Culture National Historical Park: Large elevated circular kivas are a hallmark of Classic Bonito Phase great

house architectural design. Among many, only Kiva G in the Chetro Ketl ruin has been extensively excavated. Kiva G is a series of eight superimposed, independently constructed ancient kivas, representing at least 18 separate prehistoric construction episodes and elevated 35 feet in the central building mass of the ruin. A support system of masonry and wooden piers, wooden sheathing, and steel beams installed more than 60 years ago to preserve the site have rusted, twisted, bowed, fractured, and rotted so that stresses are now transmitted to the prehistoric walls the system was intended to protect. The area is hazardous to the very workers who preserve the walls. Because of the extreme height and mass, collapse would be catastrophic to the kiva and 15 surrounding rooms. Funding would allow a structural/safety evaluation, design plan, and preservation treatment for this important resource.

Fort Union National Monument: In late July of 1995 a major architectural feature located in the Quartermaster's Office fell, and in the summer of 1996 another wall gave way to strong winds. Resources needed preservation work at Fort Union include but are not limited to a minimum of 250,872 square feet of adobe, 83,725 cubic feet of rock foundations, 25 new and replacement braces, and an undetermined amount of fired brick in over sixty structural remains.

Mesa Verde National Park: This park and two associated units protect 5,000 documented prehistoric sites, including 585 cliff dwellings and 45 mesa-top towers. Only about 100 of these sites have received treatment over the last ninety years, and structures renowned for their remarkable state of preservation are deteriorating at an alarming rate. Collapsing walls, undermining foundations, sagging roofs, rising damp and eroding mortar all place the integrity of this architecture in danger. Moreover, the recent fires at Mesa Verde National Park revealed as many as 500 new sites that will add further to the conservation workload.

Upper Ruin, Tonto National Monument: Unexcavated Room 15 contains as much as eight feet of dirt fill, creating immense stress between it and adjacent excavated Rooms 7 and 14. Stress is exacerbated as seasonal rains swell the fill with moisture. Walls are bulging and cracking despite various temporary shoring and runoff diversions. Without correction, the inevitable collapse will soon destroy important prehistoric architecture and unstudied archaeological deposits.

[From the New Mexico Journal, Sept. 2, 1997]
SUN, WIND, RAIN CRUMBLE RUINS
PRESERVATION EFFORTS HINDERED BY LACK OF FUNDS

(By Peter Eichstaedt)

CHACO CANYON, N.M.—Harsh winds, driving rains, and an unrelenting sun are as common here as the timeless stone and dried mud dwellings of the ancient Anasazi.

But wind, rain and sun could spell the end of these mysterious ruins unless measures are taken soon to preserve them, say National Park Service officials.

The common notion is "you don't need to fix them because they're ruins," says Dabney Ford, archaeologist at the Chaco Culture National Historic Park.

Because most visitors come and go quickly, spending only an hour or two at the parks, they rarely notice the annual deterioration of the ruins, Ford says in a recent interview.

"There are some genuine disasters," she says of Chaco and 40 other national parks, monuments and historic sites across the West in need of preservation. Walls are falling down and sites are being washed away by flash floods and downpours, she says.

To generate public sympathy and federal funds to preserve these ruins, Ford and other national park employees earlier this year launched a drive to secure \$3.5 million from Congress.

But Congress, scheduled to reconvene this week, is poised to provide less than a third of that request.

If approved, the money would begin a 10-year project called the "Vanishing Treasures Initiative" to improve and protect more than 2,000 prehistoric and historic ruins in 41 national parks in New Mexico, Arizona, Colorado, Texas, Utah and Wyoming.

The money would also set up a mentor program where the parks' experienced Native American preservationists would train another generation to do the work, Ford says.

GONE WITH THE WIND

As Ford leans into the wind while balanced on the rim of a large round kiva, she points to a bulge in the sandstone masonry work below her feet.

The bulge has been caused by underground moisture that has weakened the ancient mud mortar between carefully laid rock. Natural pressure did the rest, she says.

The rock must be removed and replaced, she says. "It takes about one hour to repair one square foot."

The hands-on work is done by Navajos such as Charles Lanell, who began working part-time at Chaco Canyon in 1973 and who uses techniques that preserve the historic integrity of the sites, she says.

The parks also face a loss of expertise, Ford says, because the most knowledgeable of the Native American restoration specialists are soon to retire. There are no apprentices to replace them, she says.

What repairs are performed on the ruins are dire emergencies, Ford says, and only as much work is done as can be paid out of various park funds.

In some cases, the best thing to do for preservation is simply to backfill some of the multi-room stone structures and kivas, Ford says. Burying these ruins protects them from the ravages of rain, wind and sun.

"We haven't been taking care of these things," she says. "There are reasons, and they are mostly fiscal."

The situation at Chaco is not unique. At Aztec Ruins in Aztec, N.M., ancient rock walls are tilting and some have fallen. Some of the country's best-preserved and hand plastered rooms are being washed away by periodic rains that leak through deteriorating chamber roofs, says Barry Cooper, Aztec Ruins' superintendent.

Mike Sherris, facility manager at Aztec, was among the three people who launched the preservation program.

"They just were not well-funded for many years," Sherris says of preservation work at Aztec and other monuments. "We're going to lose sites here if we don't maintain them."

A third major ruin in New Mexico also has been deteriorating.

Mike Schneegas, facility manager at Salinas Pueblo Missions National Monument, near Mountainair, also helped initiate the program.

The preservation needs at Salinas "were much greater than we thought," he says. With just three or four seasonal employees to do the repair work, "we just can't keep up."

Erosion is the biggest problem at Salinas and threatens the many towering rock walls, he says. Moisture from the soil creeps into the mud mortar and weakens the walls.

A little bit of preservation work goes a long way and can save money in the long run, he says. Repairing a deteriorating wall is much cheaper than rebuilding one.

FINDING A MEANS

Like other federal agencies in recent years, the National Park Service suffered

deep budget cuts and preservation funds were lost, Ford says.

"We've downsized and it's been for the good," she says, but "money is tight" and budgets focus on simply keeping the parks open.

The House and Senate, in separate measures in July, proposed \$1 million and \$1.5 million respectively for the Vanishing Treasures program.

In addition, another \$2 million has been proposed for "stabilization" work across the country, only a portion of which would be used by the western parks, says Jerry Rogers, superintendent of the Southwest Office of the Park Service.

The \$2 million will be available to all 375 parks and historic sites in the country, Rogers says, while the Vanishing Treasures funds are just for the 41 parks in the West.

"The final amount for Vanishing Treasures will presumably be worked out in a conference committee and will be somewhere between \$1 million and \$1.5 million," he says.

Rogers says he hopes to get more money in future years, but is happy about any money Congress provides.

"The need for \$3.5 million is very real," he says. "We understand the difficulties Congress faces in setting priorities. The National Park Service will make Congress glad it gave us what they did."

AMENDMENT NO. 1200

(Purpose: Clarifies that funds provided for land acquisition in south Florida may be used for acquisitions within Stormwater Treatment Area 1-E)

Mr. GORTON. Mr. President, I send an amendment to the desk sponsored by Senators MACK and GRAHAM, and ask for its immediate consideration.

The PRESIDING OFFICER. If there is no objection, the pending committee amendments are set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for Mr. MACK and Mr. GRAHAM, proposes an amendment numbered 1200.

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

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

The amendment is as follows:

On page 19, line 2, strike the colon and insert in lieu thereof "": Provided further, That the Secretary may provide such funds to the State of Florida for acquisitions within Stormwater Treatment Area 1-E, including reimbursement for lands, or interests therein, within Stormwater Treatment Area 1-E acquired by the State of Florida prior to the enactment of this Act: "

Mr. MACK. Mr. President, I rise today to thank the distinguished chairman of the subcommittee for his hard work in getting this bill to the floor today. I also want to express my personal thanks for his including a truly historic appropriation for land acquisitions related to the Everglades restoration effort in my State of Florida. I would like to take a moment of the Senate's time today to engage the Senator from Washington in a colloquy.

As the chairman well knows, the restoration effort encompasses all of south Florida, from the Kissimmee River in the north to the Florida Keys in the south. I understand that while

the \$66 million has been allocated for land acquisitions in Everglades National Park, the bill contains language allowing the Secretary to use these funds to purchase lands elsewhere in the south Florida ecosystem. Is that correct?

Mr. GORTON. The Senator from Florida is correct. The legislation before us today allows the Secretary to use this funding to assist the State of Florida in acquiring land in Stormwater Treatment Area 1—East, should he determine it appropriate and deemed necessary by the Secretary.

Mr. GRAHAM. I join my colleague from Florida in thanking the chairman for his hard work on behalf of the Everglades. As my friend from Washington is aware, the Federal Government—under an agreement enshrined in the Everglades Forever Act of the State of Florida—is committed to purchase land for Stormwater Treatment Area 1—East. This land will be used to create a buffer marsh bordering on the Everglades agricultural area to help restore water quality. As I understand it, nothing in the bill before us today prevents the Secretary from using a portion of the Everglades National Park land acquisition funding to assist in STA-1E land acquisitions. Is that correct?

Mr. GORTON. The Senator is correct. The Secretary may use the funding in this provision to improve and restore the hydrological function of the Everglades watershed. Nothing here prevents the Secretary from providing park acquisition funding to assist the State of Florida in the purchase of land for the project you described.

Mr. GRAHAM. I appreciate the chairman's comments and assistance.

Mr. MACK. I thank the chairman for his work on behalf of Florida's environment and for his help here today. I yield the floor.

Mr. GORTON. Mr. President, this amendment has been cleared by the managers on both sides and is non-controversial. I recommend its adoption.

Mr. REID. I would say these amendments have been cleared on this side, on behalf of Senator BYRD.

I urge the adoption of this amendment.

The PRESIDING OFFICER (Mr. GRAMS). If there is no objection, the amendment is agreed to.

The amendment (No. 1200) was agreed to.

AMENDMENT NO. 1201

(Purpose: To permit the Virgin Islands to issue parity bonds in lieu of priority bonds)

Mr. GORTON. Mr. President, I send an amendment to the desk sponsored by the junior Senator from Alaska. I ask unanimous consent the pending committee amendment be set aside and we proceed to the consideration of the Murkowski amendment.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for Mr. MURKOWSKI, proposes an amendment numbered 1201.

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

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

The amendment is as follows:

Sec. . (a) PRIORITY OF BONDS.—Section 3 of Public Law 94-392 (90 Stat. 1193, 1195) is amended—

(1) by striking "priority for payment" and inserting "a parity lien with every other issue of bonds of other obligations issued for payment"; and

(2) by striking "in the order of the date of issue".

(b) APPLICATION.—The amendments made by subsection (a) shall apply to obligations issued on or after the date of enactment of this section.

(c) SHORT TERM BORROWING.—Section 1 of Public Law 94-392 (90 Stat. 1193) is amended by adding the following new subsection at the end thereof:

"(d) The legislature of the government of the Virgin Islands may cause to be issued notes in anticipation of the collection of the taxes and revenues for the current fiscal year. Such notes shall mature and be paid within one year from the date they are issued. No extension of such notes shall be valid and no additional notes shall be issued under this section until all notes issued during a preceding year shall have been paid."

Mr. MURKOWSKI. Mr. President, the amendment that I am offering would amend the Revised Organic Act of the Virgin Islands to permit the Virgin Islands to issue parity bonds rather than priority bonds as now required under the organic legislation. The amendment would also permit the Virgin Islands to issue short-term revenue bonds in anticipation of the receipt of taxes and other revenues. These are authorities generally available to the States. The Governor requested this authority. The Delegate supported the legislation. The administration testified in support of the provisions and the Committee on Energy and Natural Resources unanimously adopted the provisions as part of S. 210, which has passed the Senate. Inclusion of this language on this measure may facilitate providing the Government of the Virgin Islands with this authority and I thank the managers of this legislation for their cooperation.

Mr. GORTON. Mr. President, I believe this amendment has been cleared by both sides and we are prepared for its adoption.

Mr. REID. This amendment has been cleared. On behalf of Senator BYRD, I urge its adoption.

The PRESIDING OFFICER. If there is no objection, the amendment is agreed to.

The amendment (No. 1201) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1202

(Purpose: Technical amendment clarifying that committee provision regarding Forest Ecosystems Health and Recovery Revolving Fund applies only to Federal share of receipts)

Mr. GORTON. Mr. President, I send an amendment to the desk for myself and Senator BYRD.

This is a technical amendment regarding the Bureau of Land Management's Forest Ecosystems Health and Recovery Revolving Fund. The Recovery Fund is used for the planning, preparing and monitoring of salvage timber sales and forest ecosystem health and recovery activities. The amendment clarifies that the Federal share of any receipts derived from treatment funded by the account shall be deposited back into the Recovery Fund. A percentage of the receipts that are collected from salvage timber sales are returned to the States.

That applies to only the Federal share of receipts.

I ask unanimous consent the pending committee amendment be set aside and this amendment be considered.

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

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for himself and Mr. BYRD proposes an amendment numbered 1202.

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

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

The amendment is as follows:

On page 6, line 20, strike "Any" and insert in lieu thereof "The Federal share of".

Mr. GORTON. Mr. President, the amendment has been agreed to by both sides.

The PRESIDING OFFICER. If there is no objection, the amendment is agreed to.

The amendment (No. 1202) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1203

(Purpose: Technical amendment clarifying provision allowing TPA funds to be used for repair and replacement of school facilities)

Mr. GORTON. Mr. President, I send a further amendment to the desk sponsored by myself and Senator BYRD. It is another technical amendment clarifying the provision allowing TPA funds to be used for repair and replacement of school facilities.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON], for himself and Mr. BYRD, proposes an amendment numbered 1203.

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

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

The amendment is as follows:

On page 32, beginning with the colon on line 13, strike all thereafter through "funds" on line 18 and insert in lieu thereof the following: "Provided further, That tribes may use tribal priority allocations funds for the replacement and repair of school facilities which are in compliance with 25 U.S.C. 2005(a) so long as such replacement or repair is approved by the Secretary and completed with non-Federal tribal and/or tribal priority allocations funds".

Mr. GORTON. Mr. President, the amendment is technical. In response to the growing backlog of unmet need for replacement and repair of BLA schools, the committee recommended that tribes be allowed to use their Tribal Priority Allocations funds for replacement and repair of schools if they wish. The technical amendment we are recommending today would clarify that, if a Tribe decides to use its TPA funds for the improvement, repair, or replacement of a school, that work must be preapproved by the Secretary of the Interior. In addition, future work must be completed with TPA or non-Federal Tribal funding. The Bureau correctly noted after the committee included the original language that, absent such conditions, it cannot currently meet the needs as they exist now. We are attempting to give Tribes some options; however, we do not wish to simply add to the need.

The PRESIDING OFFICER. If there is no objection, the amendment is agreed to.

The amendment (No. 1203) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. GORTON. I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Mr. President, I would like to spend a few moments discussing the issues pertaining to the National Endowment for the Arts. There are a number of amendments which are either already filed at desk or will be filed between now and, I gather, tomorrow afternoon. There will be further debate on this tomorrow as well. But I wanted to add additional comments, as well as to reiterate some of the points I made yesterday, both in support of the amendment which I have filed, as well as the general issues that have been raised by a number of the others who have spoken with regard to the NEA.

Again, I would like to begin as yesterday by pointing out that, like many of the people here in the Senate, I am a strong proponent of the arts; a supporter. In our State we have a number of outstanding institutions too numerous to mention without forgetting im-

portant ones. I will just say in our State we make a major commitment and investment in arts activities. There are problems, though, as have been discussed at great length in the last day and a half, with the way the National Endowment for the Arts has functioned. I don't have specific criticisms of individuals, but I do think the results have been ones that have raised concerns. They have been concerns I have had since I came to the Senate in 1995.

The principal concern I have is that the way we have proceeded has sort of established an ongoing debate which, on the one hand, has people arguing that the funding of specific types of, either arts institutions or artists, has meant that, in effect, tax dollars have been used for unacceptable or, in some cases it is argued, obscene activity. On the other hand, we hear from those who seek to be recipients of NEA grants, the argument that every time we add more controls here in Congress on the way these dollars are distributed, we are in effect performing a type of censorship on art and creativity in our country.

My fear is that ultimately this leads us in a direction where there is a no-win outcome. Everybody loses. I met and discussed this with Jane Alexander. We have talked. I have outlined to her my concern that all it will take is one or two or maybe three more objectionable or provocative grants and we could well see an immediate cessation of support for the National Endowment or for any concept like it. In my State, that would be a bit of a problem because a lot of the institutions, I think, need lead time before we would totally cease support.

Also, I think if we continue this debate we are really, in many ways, undermining the arts themselves. Because every time we have national focus on the problems with respect to artistic activity in this country, I think if anything it causes people not only to want to see fewer tax dollars supporting the NEA, and more strings attached to those tax dollars, but I think it diminishes the overall level of interest in and positive feelings toward arts activities.

I also am concerned, and have expressed this before, about the way the NEA makes its decisions. Because, as we have seen in the very excellent presentation by the Senator from Arkansas and the Senator from Alabama and others, the Senator from Texas as well, the distribution of these dollars has not been in any sense based on any kind of ratios based on population or similar criteria, but rather are very disproportionately focused in a small number of communities in our country. I think a lot of people, at least in my State, probably in others as well, are frustrated, again, with the sort of Washington knows best mindset that makes those allocations.

When I came to the Senate I spent a lot of time trying to decide how best to

address the problem. The conclusion I reached in 1995, about which I have spoken on this floor since, which I worked on when I was a member of the Labor Committee, which I have written about in editorials, is that we ought to move in the direction of a private, privately financed, privatized NEA. In my judgment, moving us outside a situation where it is supported with direct tax dollars will allow the National Endowment to retain its independence, to not have to get embroiled in this debate between censorship and obscenity; to fund projects that this national entity would decide makes sense, and not have to worry about whether there would be political consequences each time it made said decisions.

I believe such an approach is in the best interests of the arts. I certainly think it's in the best interests of the NEA. And I think it's in the best interests of the taxpayers who sent us here to make these decisions.

Privatization of the NEA cannot happen overnight. So when I was first elected to the Senate, I proposed a 5-year plan to slowly reduce the Federal Government's support for the NEA, giving that entity the opportunity, the time necessary to become privately chartered, to raise money, to build the kind of support necessary to sustain itself at least at the current levels, and in my judgment it would be sustained at a much greater level if it was privately supported.

I believe, if we provide a similar kind of timeframe from now forward as I originally contemplated—that is through the year 2000, that is now 3 years away—that would be adequate to accomplish this mission.

So, first we need time. Second, we would need to provide, I think, some mechanism, some assistance to the NEA to allow it to move to a situation where it was privately supported. As I say, my proposal is that it be phased out over 3 years. That will give organizations who are looking to receive support, lead time to make long range plans. It will give the NEA time to build support in the private sector for its continuance.

As a consequence, I am offering an amendment that would set in motion the first year of that 3-year plan, by reducing the budget for the NEA accordingly, by approximately one-third. At the same time, I think we need to provide help. Consequently, my amendment would provide the NEA with the authorization to go forward and use some of its dollars to begin the fund-raising activities needed for it to be an independent entity.

In addition, it would be my plan, if my amendment is agreed to, to subsequently introduce a sense-of-the-Senate resolution which would encapsulate the full privatization plan that I contemplate. It would also be my plan to work with other interested Members of the Senate to provide additional tools that would make it more feasible for the NEA to function in a private sense.

For example, ideas which we have looked at already would be the creation of a special postage stamp which would be marketed and sold at a greater amount than 32 cents, with the proceeds being made available to the private entity.

Other ideas which have been discussed would include such things as a tax checkoff on the tax form through which people could direct a small number of dollars they would otherwise be paying to the NEA. So, in fact, the people who really wanted to support it would be given this opportunity. There are a variety of other ways that we can do it.

The point is, I believe it is very feasible to generate private-level support at least as great as we are providing currently, at approximately \$100 million a year. I say that for the following reasons. First of all, we already know that in this country the arts are supported on an annual basis by approximately \$9 billion of activity and support of this type.

In addition, we have specific institutions, arts institutions, in this country, such entities as the Lincoln Center, the Metropolitan Museum of Art and many others, that have an annual operating budget considerably greater than the National Endowment for the Arts. So it is certainly the case that support is out there across this country to provide the kind of resources necessary for the entity to function privately and absolutely would be the case if such funds were available if we provided some of the tools that I mentioned earlier.

In addition, as I have indicated in previous speeches on this, I think there are a number of other mechanisms that could be available to the National Endowment for the Arts if it became a private entity to raise funds. They range from fundraising events, where the artists, the very artists, in fact, who come and knock on our doors urging us to support the entity, could produce and support fundraising activities on behalf of that private entity.

My belief is that such events, whether they are simple dinners or they are concerts and performances of that sort, could generate enormous amounts of money. In fact, I was noting the other day that one of the artists who has been down to see Members of Congress, Garth Brooks, just had a concert in Central Park, NY. Approximately 700,000 people attended that concert. It was broadcast on the HBO network. I am sure a huge amount of revenue was generated by the event. Those are the kinds of things I would think artists would be available to do in support of the NEA, especially those artists who have come to us and have said, this is a worthwhile project that ought to be supported.

I also believe there could be support generated for special events. As I pointed out in the Labor Committee when I brought a similar amendment before that committee a couple of

years ago, each year during the various televised awards ceremonies celebrating the arts, such as the Oscars, the Emmys, the Tonys, the country and western musical award shows, and so on, we hear a great deal of support expressed for the NEA by the very performers who attend those events and give away awards. Those programs are literally built around the appearance of these pro-NEA entertainers, and it is my suspicion that those programs generate extraordinarily substantial profits for the networks that broadcast them. Indeed, I believe just a couple of years ago it was estimated that the Academy Awards show drew a worldwide audience of over 500 million people.

Certainly, that is the type of programming that could be turned into a fundraising opportunity for a private entity supporting the arts. Indeed, as I pointed out a couple of years ago, only 5 percent of the audience that watched were still willing to pay to watch through a pay-per-view broadcast of that type of program. It would generate more revenue, given the rates that one charges for those pay-per-view shows, more revenue than the NEA's current budget.

Again, all these are opportunities that I think exist out there, and I believe we should move in the direction of providing the NEA with the chance to benefit from that type of support.

There are others as well: Collaborative efforts of artists ranging from the kind of support we saw a few years ago for USA for Africa when the "We Are the World" recording produced approximately \$60 million of support for that cause, to similar types of collaboration, or the possibility of reimbursements for commercially successful grants and events which the NEA provides the seed money for.

In short, Mr. President, a variety of opportunities, I think, exist, and I think, therefore, it is feasible for the private entity to at least generate the type of support that we provide annually and, in my judgment, probably considerably more support as if it truly was, as I believe it can be, a national level organization.

Another question, of course, that also has been raised by my amendment is, are there other important American treasures—perhaps arts related, perhaps not—that we ought to be considering funding? So what my amendment does, in addition to beginning the process of privatization of the NEA, is to expend the dollars which would be reduced from the NEA's budget on the preservation of American treasures, the restoration of national treasures. Let me outline the specifics.

First of all, \$8 million for the restoration of the Star Spangled Banner. The cost to transfer the flag to begin its restoration will be approximately \$1 million alone. It was recently reported in the media that the total cost could run as high as \$15 million. Currently, the Smithsonian's calculating this

amount will not confirm this number, but the \$8 million we would earmark in my amendment represents a responsible amount to begin the preservation effort of the Star Spangled Banner itself, the actual flag which prompted Francis Scott Key to write America's National Anthem.

The amendment would also provide \$8 million for the preservation of Presidential papers. Our former Presidents were prolific writers, Mr. President. Their works survive to this date. Private enterprises worked for over 40 years to preserve the works of Jefferson, Adams, Madison, Franklin, and other Founding Fathers, and they will not survive another two centuries.

The National Archives has focused its resources on preserving modern electronic records of local and State archives. The National Historic Publications and Records Commission once provided about one-third of the funding for the preservation of the Presidents' works, but has recently announced that the projects will now have to contend with whatever is left after it has satisfied the local archives proposal.

The fact is the preservation of Presidential papers is now at some risk. As a consequence, approximately \$8 million of these earmarked funds would go to maintaining active support adequate to maintain our Presidents' documents.

Two million dollars in this amendment is directed at the restoration of Ellis Island, the site of the arrival of so many people in the United States. On islands 2 and 3, the old hospital ward, the crematorium and housing for immigrants are in desperate condition and appear in the same condition as when they were abandoned by the U.S. Coast Guard in 1954.

The National Trust for Historic Preservation has listed these buildings as 1 of the 11 most endangered historic sites in America. The \$2 million which my amendment would earmark to Ellis Island restoration would prevent water intrusion and provide the ventilation and other support services necessary to preserve this national treasure.

There are other components, as well, to my amendment, one which would go toward helping to address a serious problem at Mount Rushmore, to maintain that facility in good condition, as well as preservation of the manuscripts and original works of great American composers which are at some risk now of being, like the Presidents' papers, inadequately supported.

In short, my amendment does several things. It sets us on the course to privatize the National Endowment for the Arts as opposed to an immediate abolition, a 3-year timeframe in which we would slowly give that entity the opportunity to move in the direction of privatization.

Second, it would protect and provide support to protect key national treasures—the Star Spangled Banner, our Presidential papers, the manuscripts and original works of great American

composers, Ellis Island, and Mount Rushmore.

Finally, I think it would help end the division that continues to exist at all levels with respect to the National Endowment for the Arts. By making the Endowment a private entity, we will take this issue, this very divisive issue, out of the Congress, give the arts the opportunity to act and give this entity the opportunity to act in an independent fashion without a lot of strings and a lot of limitations and allow us, as a consequence, I think, to move on in other directions.

We would still have a national entity. We would still have that entity supporting worthwhile projects as it deemed, but we would no longer have the ongoing battle I have outlined between the argument on the one hand that we are too often using taxpayers' dollars for objectionable activities and the argument on the other that every time we apply strings to these dollars, we are engaging in a form of censorship.

Mr. President, I think this is the right course to follow because it would accomplish the goals I have set forth, and tomorrow I will be speaking in greater detail on this during the debate time that has been set aside.

At this point, I yield the floor. I thank the Presiding Officer for the time.

Mr. HUTCHINSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

AMENDMENT NO. 1196

(Purpose: To authorize the President to implement the recently announced American Heritage Rivers Initiative subject to designation of qualifying rivers by Act of Congress)

Mr. HUTCHINSON. Mr. President, I ask unanimous consent to set aside the pending committee amendments and call up amendment No. 1196.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. HUTCHINSON] proposes an amendment numbered 1196.

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

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

The amendment is as follows:

On page 152, between lines 13 and 14, insert the following:

TITLE VII—AMERICAN HERITAGE RIVERS INITIATIVE

SEC. 701. AMERICAN HERITAGE RIVERS INITIATIVE.

(a) IN GENERAL.—During fiscal year 1998 and each fiscal year thereafter, the President and other officers of the executive branch may implement the American Heritage Rivers Initiative under Executive Order 13061 (62 Fed. Reg. 48445) only in accordance with this section.

(b) DESIGNATION BY CONGRESS.—

(1) NOMINATIONS.—The President, acting through the Chair of the Council on Environ-

mental Quality shall submit to Congress nominations of the 10 rivers that are proposed for designation as American Heritage Rivers.

(2) PRIORITIZATION.—The nominations shall be subject to the prioritization process established by the Clean Water Act (42 U.S.C. 7401 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), and other applicable Federal law.

(3) CONSULTATION WITH PROPERTY OWNERS.—To ensure the protection of private property owners along a river proposed for nomination, all property owners holding title to land directly abutting river bank shall be consulted and asked to offer letters of support for or opposition to the nomination.

(3) DESIGNATION.—The American Heritage Rivers Initiative may be implemented only with respect to rivers that are designated as American Heritage Rivers by Act of Congress.

(c) DEFINITION OF RIVER COMMUNITY.—For the purposes of the American Heritage Rivers Initiative, as used in Executive Order 13061, the term "river community" shall include all persons that own property, reside, or regularly conduct business within 10 miles of the river.

Mr. HUTCHINSON. Mr. President, this amendment supports one of our most fundamental rights, the right of property ownership. This fundamental right, I believe, is threatened by an Executive order signed by the President on September 11 designating the American Heritage Rivers Initiative. This initiative is intended "to help communities and protect the river resources in a way that integrates natural resource protection, economic development, and the preservation of historic and cultural values."

Who could be opposed to that? That, I think, is a goal that all of us share. However, in the eyes of those who live along these historic rivers, this initiative is just another Washington power grab for valuable river front property. It is another Washington intrusion under the guise of a program that has never—has never—been authorized or appropriated.

This Executive order allows for eight Cabinet Departments—the Departments of Defense, Justice, Transportation, Agriculture, Commerce, Housing and Urban Development, Interior, and Energy—along with four Government agencies—the EPA, the NEA, the NEH, and the Advisory Council on Historic Preservation—to decide what happens to America's rivers. I ask you, what does a Washington bureaucrat know about the Arkansas River or the White River, or any of the 16 leading candidates to be designated as American heritage rivers?

I have listened to my constituents, and they want vibrant river front communities that are reflective of the needs of the values of the local community in which they live and work. They want a community-led process that will make the right decisions for their particular community, not a federally dominated process that could dictate to property owners how they can use their land.

The amendment that I offer allows for the river front renaissance that so

many of our communities desperately need, while offering protections for the average property owner and members of the community that must live with the decisions that are made.

My amendment provides the necessary safeguard for property owners and communities, while at the same time allowing these river communities to benefit from the Federal funds that are available to improve their polluted or damaged river areas and spur economic development.

Specifically, my amendment requires that the list of 10 rivers, nominated through the American Rivers Heritage Initiative, be submitted for congressional review. It also ensures that the nominations for the initiative will be subject to existing priorities that have been established by the Clean Water Act and the Safe Drinking Water Act.

Most importantly, this amendment ensures protection of private property owners who live and own property along the river proposed for nomination as an American heritage river. It requires that all property owners holding title to land directly abutting the river bank shall be consulted, shall be asked to offer letters of support or letters of opposition to the nomination as an American heritage river.

This amendment also protects vital community interests by defining what constitutes a river community. Under the Executive order—a flawed Executive order, indeed—anyone who is so inclined can nominate a river or have input into the nomination process without any relationship—business, property ownership, any kind of connection—anywhere near the river under consideration.

My amendment defines the river community as those persons who own property, reside, or who regularly conduct business within 10 miles of the river considered for designation. This ensures that the real interest of the community is truly reflected in the development, design, and operation of a river that receives the designation of an American heritage river.

This, I think, is an important issue. It is an issue that many of my constituents have been energized about. It has just recently come onto the scene, in one sense, because the Executive order was issued September 11, and the President is seeking to implement this. So I think it is appropriate for us on this Interior appropriations bill to provide some safeguards and to ensure that while the initiative moves forward, that the right of the property owners along these rivers is protected; that there is a process that is in place to ensure that those who are most vitally affected by the initiative will have input in the process, will have some input, have some say as to whether or not that river should be so designated.

While it ensures the environmental protections of the Safe Drinking Water Act and Clean Water Act, it will also ensure that these communities, many

times with damaged rivers and polluted waters, will have access to vital Federal funds to ensure that those communities can be reinvigorated.

So I ask my colleagues to join me in support of this amendment as a safeguard for private property and for American communities.

Thank you, Mr. President. I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I share many of the sentiments expressed by my colleague from Arkansas. I believe that he has brought up an important issue, an issue that should not be decided simply by fiat from the President and the President's administration, but one that ought to be carefully considered here by the Congress.

Without having read every word of his amendment, I am inclined to tell him that I agree with it. I must tell him at the same time, in this relatively empty Senate Chamber, as he knows, his amendment will be quite controversial. I am certain it will require a rollcall. For that reason, I am particularly happy that he did bring it up tonight so that other Members can consider its provisions so that it can be debated further tomorrow. But while I had said not too long ago that I did not know of a number of other amendments that will require a rollcall, I will have to amend that statement and say that I think that the amendment of the Senator from Arkansas will require a rollcall.

I do hope that he and others will speak on it tomorrow. I just say that I think the statement he has made is correct, that this is an issue in which the Congress should be involved.

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

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

THEMES FOR BANKRUPTCY REFORM IN THE 105TH CONGRESS

Mr. GRASSLEY. Mr. President, I rise today to address an important topic which will be coming before the Senate in the near future. In 1994, Congress created the Bankruptcy Review Commission and charged this Commission with developing suggestions for changing the bankruptcy code. As the ranking member of the subcommittee with jurisdiction over bankruptcy at that time, I assisted in creating the Commission. When I became the chairman of the subcommittee after the 1994 elections, I fought to ensure that the Commission was funded. The Commission's report is due on October 20, 1997.

I will have much to say at that time about the Bankruptcy Review Commission and the way in which it was conducted. As some of my colleagues may know, there have been some troubling instances that have come to my attention regarding the way the Commission has operated.

For now, however, I simply want to outline my views on the substance of bankruptcy reform.

I believe that the current bankruptcy system needs to be fixed in several ways. Under current law, it is just too easy to declare bankruptcy. And it is too easy for people who declare bankruptcy to avoid repaying their debts when they have the ability to do so. Of course, decades of irresponsible and runaway spending by Washington has set a bad example for the American people, so Congress bears some of the responsibility for this new attitude of deficit living that seems to push many Americans into bankruptcy.

With record numbers of personal bankruptcies in this country, American businesses are losing millions of dollars a year to bankruptcy. And this results in higher prices for homes, cars and other consumer goods for those Americans who pay their bills on time, and as agreed. In other words, those of us who play by the rules are picking up the tab for those who don't.

I think that Congress needs to tighten the bankruptcy system so that bankruptcy is reserved for only those Americans who really need the extraordinary protections of the bankruptcy code. At the same time, I'm very aware that creditors can sometimes use abusive tactics. In fact, Sears was recently forced to pay a multi-million dollar settlement for engaging in abusive activity. So, in my opinion, bankruptcy reform which will help creditors get more of what they are owed should also include reforms to enhance protections for debtors from harsh or abusive conduct.

Section 707(b) is one example of a situation where the bankruptcy code sends the wrong signal to the American people and may encourage irresponsible conduct. Section 707(b) allows a bankruptcy judge to dismiss a chapter 7 case only to prevent substantial abuse. In other words, Section 707(b) says that it's OK to abuse the bankruptcy system somewhat, so long as you don't abuse it so much that the abuse becomes substantial. I think we in Congress ought to change this to say that debtors can't abuse the bankruptcy system at all. The consideration of Section 707(b) will be very important when Congress considers reforms in the context of consumer bankruptcy.

I also believe that chapter 11 of the bankruptcy code needs fundamental reform. In hearings before my subcommittee on how bankruptcy disrupts funding for education, I learned that many businesses which attempt to reorganize flounder for too long, thereby deleting the assets of the company. That's less money for creditors and em-

ployees of the company. I think that this should change. The Bankruptcy Review Commission has adopted a proposal to speed things up for small businesses in chapter 11 cases. I look forward to supporting that proposal in the next session of Congress.

I believe that Congress needs to look long and hard at the way attorneys are compensated in bankruptcy. It seems to me, from the reports I receive from around the country, that attorneys are using up the assets of the bankruptcy estate without really contributing very much. And attorney's fees are paid ahead of—and at the expense of—schools, workers and children entitled to child support. I think that's something we need to change. I'm a little disappointed that the Review Commission did not really get into this issue, but it is something that I will be pursuing in the bankruptcy reform bill.

Another area which needs attention is the effect of the new global economy on bankruptcy. With the increase in international trade, many complex questions arise when a multinational company declares bankruptcy. Right now, international insolvency is an issue where there isn't very much international cooperation. The United Nations recently approved a model law on international insolvency and bankruptcy and I look forward to considering that model law in the coming year. In the United States, we put a great deal of emphasis on reorganizing companies under chapter 11. Chapter 11 protects jobs and creditors. But other nations don't put such an emphasis on reorganization. So these foreign nations sometimes aren't as respectful of our bankruptcy laws as they should be. Of course, the United States has exercised a leadership role in the area of international bankruptcies for many years through section 304 of the Bankruptcy Code which recognizes the validity of foreign bankruptcies. It is time to take the next step and make sure that all companies—wherever they are located—are treated fairly when they confront the bankruptcy laws of a foreign nation. If companies fear that they won't be treated fairly under a foreign nation's bankruptcy system, they may be less willing to invest. And that would hamper international trade, which America needs if it is to remain a strong and vibrant economy.

Mr. President, unfortunately there is a very parochial perspective among many bankruptcy professionals. The idea has somehow flourished that bankruptcy should be as broad and all-encompassing as possible. I don't share this point of view. I think we have to remember that bankruptcy should be a last resort. And that means the bankruptcy laws should be narrow and provide only as much relief as is necessary. The so-called automatic stay provides a clear example of the parochial attitude of many in the bankruptcy community. The automatic

stay is a court injunction which automatically arises whenever anyone declares bankruptcy. Earlier in this Congress, as part of the authorizing legislation for the Chemical Weapons Convention, I authored an amendment which gives the Government an exception to the automatic stay so that public health and safety regulations can be enforced. So, the philosophical question posed by my amendment is this: Which policy should win out, bankruptcy policy or public health and safety policy? For me, that choice is simple. I want to protect the American people from unsafe food and unsafe airlines. But many in the bankruptcy community believe that Congress should make the opposite choice.

When we begin the process of bankruptcy reform, I will be looking to find other instances in which the Bankruptcy Code harms the public so that Congress can make changes to protect the public.

The broad themes that I believe will dominate bankruptcy reform in the 105th Congress, include the following: Promoting personal responsibility; protecting consumers, debtors, and the public; promoting international commerce; and protecting States' rights where possible.

I look forward to coming before the Senate next year with a good bankruptcy reform bill which promotes these themes. I hope to do that in a bipartisan manner. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KEMPTHORNE. I ask unanimous consent that the order for the quorum call be rescinded.

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

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

(The remarks of Mr. KEMPTHORNE and Mr. CHAFEE pertaining to the introduction of S. 1180 and S. 1181 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak therein for up to 5 minutes each.

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

THE BOSNIAN ELECTIONS

Mr. BIDEN. Last weekend the people of Bosnia and Herzegovina went to the polls to elect municipal governments. These local elections had been postponed from last year because of tampering with registrations, chiefly by the Bosnian Serbs.

I am happy to report, Mr. President, that this year's municipal elections were a success. Despite dire threats of violence against refugees and displaced persons who wanted to cross over to their former homes to vote, over 2 days not one single incident of serious violence occurred in the entire country.

Why? Because SFOR, led by recently reinforced American troops, made clear to all parties that violence would not be tolerated.

Every single time over the past several years when the West has been forceful in its behavior, the ultra-nationalists in Bosnia have backed down.

The elections were carried out by the Organization for Security and Cooperation in Europe [OSCE], in which the United States is an active member. The OSCE deserves a great deal of credit for its successful labors.

The results of the elections will not be known for several days. Already, however, some encouraging signs are emerging. In Tuzla, the Muslim Party for Democratic Action [SDA] conceded defeat by Mayor Selim Beslagic's multi-ethnic joint list. I met Mayor Beslagic last month. He represents just the kind of democratic, tolerant, pragmatic politician that can rebuild Bosnia.

Until now the three ethnically based parties that profess to represent the interests of the Muslims, Serbs, and Croats have dominated the airwaves and the patronage system. Tuzla—and perhaps other cities in both the federation and the Republika Srpska—show that if SFOR and the international community guarantee equal access, their monopoly on power can be broken.

Moreover, it is likely that thanks to absentee voting and to the protection offered by SFOR to returning refugees, the election may reverse the vile ethnic cleansing of the war. For example, the town of Drvar in western Herzegovina was 97 percent Serb until the town's inhabitants were driven out in the fall of 1995. Last weekend the Croats who displaced the Serbs did their best to harass returning Serb voters. International election officials from the OSCE, however, insisted that the Serbs be allowed to vote.

Several other towns like Jajce and Srebrenica, site of the largest civilian massacre in Europe since World War II, may see their former inhabitants, in these two cases Muslims, forming the governments.

The international community is now faced with the stark question of whether it will enforce the results of the elections by guaranteeing that the newly elected councils not remain governments in exile.

Enforcing the election results, of course, means that the right of refugees and displaced persons to return must be honored. In most cases that would be able to be accomplished only by the international community under the protection of SFOR.

Mr. President, I believe we have no choice in this matter. Both for moral and practical reasons we must move rapidly to enforce resettlement of refugees. This will be a difficult task, and time is short before the onset of the Balkan winter. Most likely we will have to begin with highly visible demonstration returns in one to two selected towns. But we must keep the democratic momentum going.

Rebuilding shattered Bosnia is an immense undertaking. Now for the first time in years, there has been a string of successes. The United States has been the prime mover in these, and we must continue our valuable and honorable work.

I thank the Chair and yield the floor.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, September 15, 1997, the Federal debt stood at \$5,388,983,472,859.37. (Five trillion, three hundred eighty-eight billion, nine hundred eighty-three million, four hundred seventy-two thousand, eight hundred fifty-nine dollars and thirty-seven cents)

Five years ago, September 15, 1992, the Federal debt stood at \$4,033,874,000,000. (Four trillion, thirty-three billion, eight hundred seventy-four million)

Ten years ago, September 15, 1987, the Federal debt stood at \$2,353,169,000,000. (Two trillion, three hundred fifty-three billion, one hundred sixty-nine million)

Fifteen years ago, September 15, 1982, the Federal debt stood at \$1,113,183,000,000 (One trillion, one hundred thirteen billion, one hundred eighty-three million)

Twenty-five years ago, September 15, 1972, the Federal debt stood at \$436,866,000,000 (Four hundred thirty-six billion, eight hundred sixty-six million) which reflects a debt increase of nearly \$5 trillion—\$4,952,117,472,859.37 (Four trillion, nine hundred fifty-two billion, one hundred seventeen million, four hundred seventy-two thousand, eight hundred fifty-nine dollars and thirty-seven cents) during the past 25 years.

HISPANIC HERITAGE MONTH

Mr. HATCH. Mr. President, it is with great pleasure that I join with my colleagues in celebrating Hispanic Heritage Month.

Since 1968, we have formally recognized and celebrated the tremendous contributions of Hispanic-Americans to the history, strength, security, and development of our great nation. This year, we once again embark on this

month-long celebration. It is right to honor more than five centuries of contributions by Hispanics to the development not only of our great nation, but of the Western Hemisphere and the world.

As I look back on the history of my own State I see the many great contributions Hispanics have made to its development and progress. It was Father Escalante who first chartered the territory of what is now Utah and made way for the major trade routes that followed. It was through the determination, sweat, and dedication of Mexican-Americans and other Hispanics, working alongside nonHispanics that our railroads, great steel plants, and mining industries were established, making our State competitive in national and global markets. And our State is home to many great Hispanic-Americans, past and present, including Antonio Amador, former Vice-chair of the U.S. Merit Systems Protection Board; Judge Andrew Valdez, Maria Garciaz, the executive director of Neighborhood Housing Services, Inc.; and John Medina, chair of Utah's Coalition of La Raza.

My experience has shown me that Hispanics are a strong and proud people, loyal, patriotic, courageous, and dedicated to their families, their country, and their communities. Hispanics have a strong work ethic and tremendous faith in the American dream. They have made great contributions to the advancement of all people in every area, to music, the arts, science, engineering, mathematics, and government.

I am thrilled to see so many wonderful Hispanic role models help light the way for Hispanic youth to attain the American Dream.

Jaime Escalante, the Garfield High School mathematics teacher, helped an unprecedented number of Hispanic students prepare for and pass the advanced placement tests in calculus. And, Amalia V. Betanzos, president of the John V. Lindsay Wilcat Academy, an alternative high school with tremendous success rates, has helped us all to see what faith and encouragement can do for the soul.

Such great recording artists as Los Lobos, the late Selena, Freddy Fender, and Gloria Estefan have brought joyous latin rhythms into our homes and our hearts. Great authors, like Luis Valdez, Victor Villasenor, and Nicholasa Mohr, and great screen artists like the late Raul Julia, Andy Garcia, Jimmy Smits, Edward James Olmos, and Rita Moreno have entertained while they inspired us. And the leadership and foresight of Permanent United Nations Representative and former Congressman Bill Richardson, and Carmen Zapata, director and co-founder of the Bilingual Foundation of the Arts, helps pave the way for our children as they enter the 21st century.

And, of course, Nancy Lopez, Chi Chi Rodriguez, Pedro Morales, Gigi Fernandez, and Trent Dimas are but

five of the great athletes who have shared with us the pride and success born of great sacrifice and a hunger for perfection. We are proud of their accomplishments. It is important that, when they win, all America cheers.

But for all their contributions to the strength of our Nation, many Hispanics have not yet fully shared in the dream. The national dropout for Hispanics exceeds 30 percent—for nonHispanics the rate is 11 percent, and for blacks, the rate is 12 percent—the highest for any ethnic group, and their educational attainment levels are among the lowest for any ethnic group. Hispanic children are most likely to be among America's poor, even though Hispanic males have the highest labor participation rates. Hispanics are most likely to lack health insurance and access to regular health care, yet suffer disproportionately from certain diseases. We must do better.

As the youngest and fastest growing minority community in the Nation, Hispanics must share equally in the benefits and opportunities of this great Nation, so that our country might grow stronger and compete in global markets.

For this reason, in 1987, Senator JOHN CHAFFEE and I established the U.S. Senate Republican Conference Task Force on Hispanic Affairs, which now numbers 24 Senators. The task force provides a unique forum for Hispanic leaders to raise awareness and support on the national level for key issues facing the Hispanic community in the areas of education, economic development, employment, and health. The task force is aided by a bipartisan, volunteer advisory committee, for whose service we are very grateful.

We have made great strides and we continue to progress. But I long for the day when a task force on Hispanic affairs no longer exists because there is no longer a need; because Hispanics will have succeeded in full measure in joining the ranks of the public officials, the managers, the CEO's and presidents of corporations, the teachers, doctors, lawyers, the U.S. Senators, Congressmen, and Presidents of the United States. As we gather this month to celebrate Hispanic Heritage Month, let us celebrate the accomplishments of this year's Hispanic Heritage Awards: Andy Garcia, Nancy Lopez, Amalia V. Betanzos, Nicholasa Mohr, Bill Richardson, and Carmen Zapata.

And, let's also give a nod to those many, many other Hispanic-Americans, whose daily contributions often go unrecognized, but whose legacy continues to demonstrate the viability of the American dream.

Mr. CAMPBELL. Mr. President, today I join my friend and colleague from Utah, Senator HATCH, and other colleagues in recognition of Hispanic Heritage Month and to offer a few remarks regarding the Hispanic tradition in my home State of Colorado and their many contributions to our great country.

To begin with, Colorado is the Spanish word for red, thus we owe the name of our State to Hispanics. The town where I live is Ignacio which is Spanish for Ignatius, and the county I live in is La Plata which is Spanish for silver. To the east you will find Alamosa, San Luis, Monte Vista, Antonio, Las Animas and La Junta, to name but a few towns in Colorado.

As you can see, Mr. President, in my State it is next to impossible to look in any direction without being reminded of Hispanic heritage and influence. More than two thirds of the territory of the 48 contiguous States was discovered, settled or governed by Spanish speaking people. The Hispanic tradition in the United States is as new as the families who enter every year in search of a better life and as old as 1513 when Ponce de Leon landed on the east coast of the peninsula he called La Florida.

Hispanics have enriched us with their cultural traditions and their commitment to la familia, the family. Their language, art, music, literature and food are today very much part of the American landscape. These contributions help make America stronger.

Let us not forget their contributions in defense of our country. Hispanic blood has been spilled in every conflict and war since the Civil War when John Ortega of the U.S. Navy was awarded the Congressional Medal of Honor on December 31, 1864, and as late as May 24, 1970 when it was awarded to Louis Rocco of Albuquerque, NM, for service in Vietnam. In between these two distinguished soldiers, Hispanics have been awarded 36 more medals making them the most decorated minority in our history proportionate to their numbers. Jose P. Martinez of Ault, CO, is also a past recipient of this highest honor we can bestow on our fighting men and women.

Equality is a value central to the promise of America, and we must be conscious and proactive in insuring that equal opportunity is available to all who serve and contribute to the betterment of our country. Hispanics have fought for the idea and ideals of America and are deserving of an equal share of all of its rewards, not more, not less, but equal. That is the promise of America, and it is the promise we must make, and keep, to America's Hispanics.

Mr. President, throughout my life, both personal and public, Hispanics have honored me with their friendship and support. It is with great pleasure I honor them here on the floor of the U.S. Senate in recognition of Hispanic Heritage Month.

Mr. McCAIN. Mr. President, I am pleased to speak today as co-chair of the Senate Republican Task Force on Hispanic Affairs about this month's festivities honoring Hispanic heritage. Although this special month has been celebrated every year at this time since 1968, Hispanics have been making

tremendous contributions to our Nation and to my State of Arizona for many generations.

American culture has been enriched by numerous Hispanic influences. Many Americans claim Hispanic culture as their own in everything from food to music, and even celebrate their holidays. This month, set aside by Presidential proclamation, marks several historical events including Independence Day for Mexico, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua and El Dia de la Raza.

It is important to recognize the rich variety of backgrounds that make up this burgeoning segment of society. All too often the various groups that make up Hispanics are lumped together and non-Hispanics forget the dynamic differences between Mexicans and Puerto Ricans or Salvadorans and Cubans, for example. But when Hispanics come together—tied by social and cultural similarities—they form a powerful group that we need to listen to closely.

With more than 22 million Hispanics living in the United States, their importance cannot be understated. The number of Hispanic children is only exceeded by the number of non-Hispanic white children. This generation of children will enter all sectors of public and private life and shape the course of the Nation. And our Nation will be a better place for it.

Their contribution to the economy is significant, with studies indicating that Hispanic businesses remain the fastest growing segment of the small business community. In Arizona alone, the current Hispanic buying power is approximately \$6.8 billion with an expected growth of 2.3 percent annually.

While these statistics are compelling, surprisingly, there is much more to be done. The Hispanic dropout rate has hovered around 30 percent for the past 20 years, and Hispanics are the minority least likely to have health insurance. The negative repercussions of these conditions are not acceptable and are detrimental to America's future.

To further the social and economic well-being of Hispanics we must address their needs with conscientious policy and remember these in all our legislative efforts. That is why I am co-chair of the Senate Republican Task Force on Hispanic Affairs. The task force helps ensure that the needs of the Hispanic community are represented in Federal policy. Through meetings and forums, I speak with Hispanics both in Arizona and from all over the country.

Some of the Hispanics we will be hearing from and recognizing this month include Sandy Ferniza, president of the Arizona Hispanic Chamber of Commerce [AHCC], who recently received the Exemplary Leadership Award. She is credited with turning AHCC into an agency that provides technical assistance and training to small businesses across the State. Also there is Mr. William Y. Velez, a mathematics professor at the University of Arizona, who this month received the

Excellence in Science, Mathematics and Engineering Mentoring Presidential Award. He recruits Hispanic and native American students to study mathematics. We thank them for their contributions to America's future.

During Hispanic Heritage Month we will learn about the colorful and proud heritage of the Hispanic people who are dedicated to their families, communities, and country. And when this month's celebrations have come to a close, let us not forget that the success of Hispanic Americans is critical to the future of the United States.

Mr. DEWINE. Mr. President, I am very pleased to join my colleagues here today in recognizing Hispanic Heritage Month.

Americans of Hispanic descent are in this country because they, their parents, or grandparents, or great-grandparents, or even more distant ancestors, made a choice. They were decisive, motivated individuals who made an act of faith in America.

They came here, much as my own great-great-grandfather, Denis DeWine, did back in the 1840's—because they wanted a chance at a brighter future. And in return, they were willing to work hard to build up this country.

That same spirit lives on in today's U.S. Hispanic community—and we ought to look at that spirit as an inspiration to ensure that America remains the kind of place people would want to come to.

There's one area of law I'm working on that is especially important in this context. I'm talking about the attempts to change America's immigration law and make it more restrictive. I read one article in which advocates of restriction repeatedly called new Americans “aliens”—not “immigrants” but “aliens,” as if they were a different kind of people from us, who come from someplace as strange as outer space.

I call these people something else. I call them Americans.

Now, we all know that there's nothing new about anti-immigrant movements. We've had them again and again, throughout American history. But we have established a proud tradition in this country of overcoming them, of resisting the temptation to turn inward to ourselves—of welcoming new people and new ideas, and choosing hope over fear.

When Franklin Roosevelt reminded America that even those who came over on the Mayflower were immigrants—when John F. Kennedy wrote a book called “A Nation of Immigrants”—when Ronald Reagan moved the Nation with stories about how the light from Liberty's torch was keeping hope alive for millions of people in oppressed countries—they were expressing something truly fundamental about what it means to be an American. And make no mistake about it—that same spirit is still alive and well in today's America.

Ohioans of Hispanic ancestry have helped build the Buckeye State into an

economic and cultural powerhouse. We are grateful to these fellow Ohioans, because they took the talents they or their ancestors were born with to a foreign land, and chose to bestow their benefits to us.

In fact, next week the Hispanic Youth Foundation [HYF], an organization that provides financial assistance to undergraduate and graduate students seeking degrees in areas of political science or other fields related to government of public service, will meet in Washington, DC, to distribute scholarships to only seven outstanding students. I am proud to announce that one of the seven students receiving this scholarship award is from the great State of Ohio.

I join all my fellow citizens in saying thank you—and saluting Ohio's Hispanic community on the occasion of Hispanic Heritage Month.

REPORT OF DRAFT LEGISLATION
ENTITLED “THE EXPORT EXPANSION AND RECIPROCAL TRADE AGREEMENTS ACT OF 1997”—
MESSAGE FROM THE PRESIDENT—PM 65

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance.

To the Congress of the United States:

I am pleased to transmit a legislative proposal entitled the “Export Expansion and Reciprocal Trade Agreements Act of 1997.” Also transmitted is a section-by-section analysis.

This proposal would renew over 60 years of cooperation between the Congress and the executive branch in the negotiation and implementation of market-opening trade agreements for the benefit of American workers and companies.

The sustained, robust performance of our economy over the past 5 years is powerful proof that congressional-executive cooperation works. We have made great strides together. We have invested in education and in health care for the American people. We have achieved an historic balanced budget agreement. At the same time, we have put in place trade agreements that have lowered barriers to American products and services around the world.

Our companies, farms, and working people have responded. Our economy has produced more jobs, more growth, and greater economic stability than at any time in decades. It has also generated more exports than ever before. Indeed, America's remarkable economic performance over the past 5 years has been fueled in significant part by the strength of our dynamic export sector. Fully 96 percent of the world's consumers live outside the United States. Many of our greatest economic opportunities today lie beyond our borders. The future promises still greater opportunities.

Many foreign markets, especially in the developing world, are growing at tremendous rates. Latin American and Asian economies, for example, are expected to expand at three times the rate of the U.S. economy over the coming years. Consumers and industries in these countries prize American goods, farm products, services, and the many expressions of American inventiveness and culture. While America is the world's greatest exporting nation, we need to do more if we want to continue to expand our own economy and produce good, high-wage jobs.

We have made real progress in breaking down barriers to American products around the world. But many of the nations with the highest growth rates almost invariably impose far higher trade barriers than we do. We need to level the playing field with those countries. They are the nations whose markets hold the greatest potential for American workers, firms, and agricultural producers.

Today, the United States is the world's strongest competitor. The strength of the U.S. economy over the past several years is testimony to the creativity, productivity, and ingenuity of American firms and workers. We cannot afford to squander our great advantages by retreating to the sidelines and watching other countries conclude preferential trade deals that shut out our goods and services. Over 20 such agreements have been concluded in Latin America and Asia alone since 1992. The United States must continue to shape and direct world trading rules that are in America's interest and that foster democracy and stability around the globe.

I have pledged my Administration to this task, but I cannot fully succeed without the Congress at my side. We must work in partnership, together with the American people, in securing our country's future. The United States must be united when we sit down at the negotiating table. Our trading partners will only negotiate with one America—not first with an American President and next with an American Congress.

The proposal I am sending you today ensures that the Congress will be a full partner in setting negotiating objectives, establishing trade priorities, and in gaining the greatest possible benefits through our trade agreements. The proposal expands upon previous fast-track legislation to ensure that the Congress is fully apprised and actively consulted throughout the negotiating process. I am convinced that this collaboration will strengthen both America's effectiveness and leverage at the bargaining table.

Widening the scope of consultations will also help ensure that we will take all of America's vital interests into account. That is particularly important because today our trade agreements address a wider range of activities than they once did. As we move forward with our trade agenda, we must con-

tinue to honor and reinforce the other values that make America an example for the world. I count chief among these values America's longstanding concern for the rights of workers and for protection of the environment. The proposal I am transmitting to you recognizes the importance of those concerns. It makes clear that the agreements we conclude should complement and reinforce those values.

Ever since President Franklin Roosevelt proposed and the Congress enacted America's first reciprocal trade act in the depths of the Great Depression, the Congress and the President have been united, on a bipartisan basis, in supporting a fair and open trading system. Our predecessors learned from direct experience the path to America's prosperity. We owe much of our own prosperity to their wisdom. I urge the Congress to renew our longstanding partnership by approving the proposal I have transmitted today.

WILLIAM J. CLINTON.

THE WHITE HOUSE, September 16, 1997.

MESSAGES FROM THE HOUSE

At 11:29 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that pursuant to the provisions of 22 U.S.C. 276d, the Speaker appoints the following Members of the House to the Canada-United States Interparliamentary Group, in addition to Mr. HOUGHTON, chairman, appointed on March 13, 1997: Mr. BEREUTER, Mr. GOSS, Mr. STEARNS, Mr. MANZULLO, Mr. ENGLISH of Pennsylvania, Mr. SANFORD, Mr. HAMILTON, Mr. OBERSTAR, Mr. PETERSON of Minnesota, Ms. DANNER, and Mr. HASTINGS of Florida.

At 5:15 p.m., a message from the House of Representatives, delivered by Mr. Hays, 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 amendments of the Senate to the bill (H.R. 2016) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 1998, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2159) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1998, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. CALLAHAN, Mr. PORTER, Mr. WOLF, Mr. PACKARD, Mr. KNOLLENBERG, Mr. FORBES, Mr. KINGSTON, Mr. FRELINGHUYSEN, Mr. LIVINGSTON, Ms. PELOSI, Mr. YATES, Mrs. LOWEY, Mr. FOGLIETTA, Mr. TORRES, and Mr. OBEY, as the managers of the conference on the part of the House.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2944. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the cumulative report on rescissions and deferrals dated September 1, 1997; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Agriculture, Nutrition, and Forestry, to the Committee on Armed Services, to the Committee on Banking, Housing, and Urban Affairs, to the Committee on Energy and Natural Resources, to the Committee on Finance, to the Committee on Foreign Relations, to the Committee on Governmental Affairs, and to the Committee on the Judiciary.

EC-2945. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, report on the impact of the closure of the Wagner Indian Health Service Hospital; to the Committee on Indian Affairs.

EC-2946. A communication from the Secretary of Defense, transmitting, a notice of a retirement; to the Committee on Armed Services.

EC-2947. A communication from the Assistant Secretary of Defense (Force Management Policy), transmitting, pursuant to law, a notice relative to institutions of higher education; to the Committee on Armed Services.

EC-2948. A communication from the Acting Director of Communications and Legislative Affairs, U.S. Equal Employment Opportunity Commission, transmitting, pursuant to law, the report of the Office of Field Programs for fiscal year 1995; to the Committee on Labor and Human Resources.

EC-2949. A communication from the Secretary of Education, transmitting, pursuant to law, the report of the summary of Chapter 2 annual reports for the 1994-1995 school year; to the Committee on Labor and Human Resources.

EC-2950. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, the report of the texts of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC-2951. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on the status of Exxon and Stripper Well Oil Overcharge Funds as of December 31, 1996; to the Committee on Energy and Natural Resources.

EC-2952. A communication from the Director of the Office of Rulemaking Coordination, Department of Energy, transmitting, pursuant to law, two rules including a rule entitled "Energy Conservation Program for Consumer Products" (RIN1904-AA68, AA76); to the Committee on Energy and Natural Resources.

EC-2953. A communication from the Acting Under Secretary of Defense (Comptroller), transmitting, pursuant to law, the report of a violation of the Antideficiency Act; to the Committee on Appropriations.

EC-2954. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Ruling 97-40; to the Committee on Finance.

EC-2955. A communication from the Chief of the Regulations Branch, U.S. Customs

Service, Department of the Treasury, transmitting, pursuant to law, a rule entitled "The Port Passenger Acceleration Service System Program" (RIN1515-AB90); to the Committee on Finance.

EC-2956. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of a memorandum of justification to draw down articles, services, and military education and training; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted on September 15, 1997:

By Mr. ROTH, from the Committee on Finance, discharged pursuant to section 1023 of P.L. 93-344:

S. 1144. A bill disapproving the cancellation transmitted by the President on August 11, 1997, regarding Public Law 105-33.

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. D'AMATO (for himself and Mr. SARBANES) (by request):

S. 1179. A bill to amend the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KEMPTHORNE (for himself, Mr. CHAFEE, Mr. BAUCUS, and Mr. REID):

S. 1180. A bill to reauthorize the Endangered Species Act; to the Committee on Environment and Public Works.

By Mr. KEMPTHORNE:

S. 1181. A bill to amend the Internal Revenue Code of 1986 to provide Federal tax incentives to owners of environmentally sensitive lands to enter into conservation easements for the protection of endangered species habitat, to allow a deduction from the gross estate of a decedent in an amount equal to the value of real property subject to an endangered species conservation agreement, and for other purposes; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. ABRAHAM, and Mr. GRAMM):

S. 1182. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to limit consideration of nonemergency matters in emergency legislation and permit matter that is extraneous to emergencies to be stricken as provided in the Byrd rule; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one Committee reports, the other Committee has thirty days to report or be discharged.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. D'AMATO (for himself and Mr. SARBANES) (by request):

S. 1179. A bill to amend the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program; to the Committee on Banking, Housing, and Urban Affairs.

THE NATIONAL FLOOD INSURANCE REAUTHORIZATION ACT OF 1997

Mr. D'AMATO. Mr. President, I rise today to introduce the National Flood

Insurance Reauthorization Act of 1997 (NFIRA). This legislation provides for a simple and straightforward 5-year extension of the National Flood Insurance Program (NFIP) which is scheduled to expire on September 30, 1997. This legislation will ensure that this important program is placed on a steady and secure foundation to continue the invaluable protection it provides to flood insurance policyholders and the Federal taxpayers. I am pleased that my colleague, Senator SARBANES, the distinguished ranking member of the Banking Committee, has cosponsored this measure.

The National Flood Insurance Program, which is administered by the Federal Emergency Management Agency [FEMA], enables over 3.5 million American families to insure their homes and possessions. In my home State of New York, 85,000 families participate in the NFIP. The NFIP allows these families, on Long Island and along the Great Lakes and the State's many rivers, to purchase adequate insurance coverage to protect their homes in the event of a catastrophic flood.

The NFIP employs a comprehensive approach to alleviating the risks posed by catastrophic floods. Floodplain communities participate in FEMA's Community Rating System and are offered incentives to adopt and enforce measures to reduce the risk of flood damage and improve flood prevention building criteria. To avoid the danger of repetitive losses, the program provides stringent building standards, including increased elevation, designed to reduce the risk of future damage. These flood protection standards must be met before any structure which suffers substantial damage may be rebuilt. In addition, persons who receive disaster assistance and fail to subsequently purchase flood insurance are barred from receiving future assistance.

Mr. President, the NFIP plays a critical role in reducing the costs of Federal disaster relief. Current NFIP policyholders pay approximately \$1.3 billion annually into the NFIP fund. Without this premium income, the Federal Government would likely pay spiraling costs in disaster relief. The NFIP has the added benefits of improving State and community planning and Federal support for locally driven disaster prevention and mitigation activities.

Reauthorizing the NFIP is an important step forward in reaffirming the commitment of the Federal Government to help American families protect their homes and to protect the Federal taxpayer from the risks of catastrophic floods. Clearly, we must do more. Lenders and private insurers who participate in the NFIP must do more to ensure compliance. States and local communities must improve their disaster planning, prevention, and response activities. FEMA must redouble its efforts to increase participation in

the program to improve the safety and soundness of the NFIP fund. Also, the Federal Government must do more to prevent and mitigate against the losses which will inevitably occur from future floods.

Mr. President, I note that this bill is supported by the administration. I urge my colleagues to support the adoption of this legislation and I look forward to working with the members of the Banking Committee to ensure a swift and speedy passage.

By Mr. KEMPTHORNE (for himself, Mr. CHAFEE, Mr. BAUCUS, and Mr. REID):

S. 1180. A bill to reauthorize the Endangered Species Act; to the Committee on Environment and Public Works.

THE ENDANGERED SPECIES RECOVERY ACT OF 1997

Mr. KEMPTHORNE. Mr. President, 2 years ago, in Lewiston, ID, as chairman of the Drinking Water Fisheries and Wildlife Subcommittee, I held a hearing to review the current Endangered Species Act and to identify ways to improve the act. It was clear from the testimony we heard that the current law simply is not working. It isn't working for species and it isn't working for people. That message was loud and clear. Senator CHAFEE was there with us at that meeting.

We must do a better job of protecting species without jeopardizing our communities. The legislation that I am introducing today with Senator CHAFEE, Senator BAUCUS, and Senator REID will do just that. It will bring real and fundamental reform to the Endangered Species Act, and it will minimize the social and economic impact of the ESA on the lives of ordinary citizens, and it will benefit species. That is the critical point.

I want to thank Senators CHAFEE, BAUCUS, and REID, who have worked diligently with me as we have crafted this legislation, which brings about balance and a bipartisan approach to a very sensitive issue.

There are over 1,000 species on the endangered species list today but fewer than half of them have ever had a recovery plan written for them. The best evidence that the current law isn't working may be the fact that not a single species has recovered as a result of a recovery plan. It is as if you have a recovery room filled with patients and one by one these patients are brought in, given an examination by the doctor, and at the conclusion of the examination the doctor says, "Yes, you are critical. Next." "What do you mean, next, doctor? What is the prescription? What is the recovery for this critical condition?"

The emphasis has not been on recovery. It has been on continuing to list, list, list, without the emphasis on recovery.

But the law must also have balance. It must recognize the rights of people, too.

During our hearings, we heard many compelling stories from people who have had to live with the real life impact of the Endangered Species Act. We heard from families in Owyhee County, ID, who cannot get bank loans for their homes because the listing of a tiny snail—the Bruneau Hot Springs snail—has caused their property value to plummet.

We heard from a woman in Laramie, WY, who told us that the mosquito control program in their community had been suspended because of the ESA, causing severe health risks for the citizens of Laramie, including her son who contracted encephalitis from a mosquito.

We heard from a rancher in Joseph, OR, who described how Federal regulators, under the threat of lawsuit from environmentalists, tried to stop all grazing on forest lands up in the mountains because salmon were spawning in streams that ran through the private land below, but in his words, “The cows were up in the high country as far from the spawning habitat as you could get.”

And we heard from mill workers who lost their jobs when the ESA all but shut down logging in certain national forests. I think that Ray Brady from Grangeville, ID, may have captured best the underlying feeling of frustration and anxieties:

We had a choice of moving, of going someplace else. Why should we? I chose to live in a small community like Grangeville. I chose to work there. I worked there for 28 years and somebody else in a different part of the country makes a decision that has cost me my job and occupation and 28 years worth of experience. Now I am having to start all over again. I don't have any income. I don't have any insurance for my family or myself; and I attribute it directly to this Endangered Species Act. Somebody has to do something about it. I mean, not in the future, I mean now.

Ray Brady is right. We need to improve the way that the ESA works, and we need to do it right now. We need an ESA that will make advocates out of adversaries. As it's administered today, it separates people from their environment. It invites Federal regulators to become land use managers over some of the best stewards of our environment—our farmers and our ranchers and our landowners. And we need their help if we are truly going to save species. Just remember, well over half of our endangered species depend on private property.

The ESA must provide more incentives to encourage property owners to become partners in the conservation of a rare and unique species.

The bill we are introducing today will achieve those goals. It will make the law work better. It will reduce unnecessary bureaucracy; it will enhance the recovery of species; and it will treat property owners fairly.

Let me highlight just a few of the significant improvements that we have included in this legislation.

The bill will put new emphasis on the need to use good science in everything from the listing process through recovery. The Secretary will be required to use the best available science in all of his decisions and to give greater preference to information that is empirical and peer reviewed. In addition, all listing and delisting decisions will be subject to independent peer review. That means that we can all have greater confidence in the decisions made under the ESA.

The bill will add teeth to the recovery planning process so that we're no longer just running an endangered species emergency room without also providing the prescription for recovery. For the first time, we will set deadlines for the development of recovery plans for every listed species. Each recovery plan will be developed by a recovery team that includes scientists, economists, and representatives of the communities that are affected by the listing of the species. And we establish new substantive requirements for each recovery plan, including recovery measures, benchmarks to measure progress, and a biological recovery goal that will trigger delisting when it is met. We'll know that the law is working well when species are no longer just being listed, but when they're also being delisted as a result of a successful recovery plan.

The bill recognizes that we can reduce bureaucracy and unnecessary Federal interference with land management decisions without harming species. In the consultation process, for example, the fact is that people spend too much time trying to comply with too many regulations from too many Federal agencies. That cannot only significantly increase the cost of a project, in some cases, it can be deadly.

In 1996, in Yuba County, CA, for example, the Corps of Engineers was prevented from repairing levees south of the city of Marysville because of the impact that the repairs might have on the hibernating garter snake. The work wasn't done and on January 2, a levee failed in Olivehurst, CA, killing three people and flooding 500 homes.

Under our bill, the Federal action agency, in that case the Corps of Engineers, will have the authority to make the initial determination that its repairs would not be likely to adversely affect the species. The levee repair could then proceed, unless the Fish and Wildlife Service objected to the initial determination within 60 days. This simple procedural fix will allow projects to be completed on time without jeopardizing endangered species.

Perhaps most important, the bill includes a number of incentives for property owners so that they can become partners in saving species.

The key is maximum flexibility and our bill provides that. For example, if you're an individual who wants to clear a few acres of land to build your vacation home in red cockaded woodpecker territory, our new low effect conserva-

tion plan may be just what you need. On the other hand, a county planning its development needs for the next 50 years might choose to enter into a multiple species conservation plan to preserve habitat for all of its rare and unique species. State and local governments can even enter into conservation plans to protect unlisted species.

All of the conservation plans are backed by a no-surprises provision that gives landowners certainty that their obligations will be defined by the plan. They won't be required to pay additional money for conservation measures or to further restrict their activities on the land covered by the plan.

In addition to conservation plans, the bill offers landowners the option of entering into separate agreements to manage land for the benefit of species. A small timber company whose lands are suitable habitat for spotted owls might enter into a safe harbor agreement to let the trees grow to attract the owls with the understanding that at the end of some agreed-upon period of time, it can harvest the trees. And a farmer might agree to set aside buffer strips for a species in return for compensation under a habitat reserve agreement.

Finally, the bill limits the ability of the Federal Government and environmental groups to restrict otherwise legal activities on private lands. Under the law today, the Government and environmental groups have used the take prohibition to try to prohibit logging and development on private lands and a city's pumping of an aquifer for drinking water, even where there was no scientific evidence that the activity would in fact harm an endangered species. Our bill will change that, reaffirming that the Federal Government, or an environmental group, has the burden of demonstrating that an activity will actually harm a species and they must meet that burden using real science, not just assumptions or speculation.

When we started this process just over 2 years ago, we asked ourselves the question: Should we make a concerted effort to save species? The answer was yes.

But could we do it without putting people and communities at risk?

Today, I think that we've demonstrated that we can. We can save species with less bureaucracy, using good science, incentives, and where necessary, public financial resources.

Charles Mann and Christopher Plummer wrote in their book “Noah's Choice,” “If we truly want to improve the lot of endangered species, we should stop shooting for the stars, because the arrows will fall back to our feet. By aiming a little closer, we might shoot farther in the desired direction.”

And I will add, and hit the target more often. This bill hits the target.

I would like to use my prerogative to just thank my staff for their efforts on this—Buzz Fawcett, Ann Klee, Jim

Tate, and other members of my staff. I know the other Senators feel as I do about my staff, that they do a tremendous job. As we stand here with results of 18 months of hard effort, we know of the many hours they have contributed as well in making this a success.

Mr. President, we now have a bill that is bipartisan. We have a bill that is scheduled for a hearing 1 week from today and for markup in committee where amendments will be considered 2 weeks from today. It is our full expectation that we will be able to bring this bill to the floor of the Senate for debate and for a vote sometime near the middle of October. It has been many months, if not years, in the making, to create this legislation which improves the Endangered Species Act, so that we can, again, save species and do it without putting people and communities at risk.

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

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

S. 1180

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Endangered Species Recovery Act of 1997”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Listing and delisting species.
- Sec. 3. Enhanced recovery planning.
- Sec. 4. Interagency consultation and cooperation.
- Sec. 5. Conservation plans.
- Sec. 6. Enforcement.
- Sec. 7. Education and technical assistance.
- Sec. 8. Authorization of appropriations.
- Sec. 9. Other amendments.

(c) REFERENCES TO ENDANGERED SPECIES ACT.—Except as otherwise expressly provided, 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 that section or provision of the Endangered Species Act (16 U.S.C. 1531 et seq.).

SEC. 2. LISTING AND DELISTING SPECIES.

(a) BEST SCIENTIFIC AND COMMERCIAL DATA AVAILABLE.—Section 3 of the Act (16 U.S.C. 1532) is amended—

(1) by striking the title and inserting the following: “DEFINITIONS AND GENERAL PROVISIONS”;

(2) by striking “For the purposes of this Act—” and inserting the following:

“(a) DEFINITIONS.—For purposes of this Act—”;

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

“(b) GENERAL PROVISIONS.—

“(1) BEST SCIENTIFIC AND COMMERCIAL DATA AVAILABLE.—Where this Act requires the Secretary to use the best scientific and commercial data available, the Secretary shall when evaluating comparable data give greater weight to scientific or commercial data that is empirical, field-tested or peer-reviewed.”.

(b) CONFORMING AMENDMENT.—The table of contents in the first section (16 U.S.C. 1531) is amended by striking the item relating to section 3 and inserting the following:

“Sec. 3. Definitions and general provisions.”.

(c) LISTING AND DELISTING.—

(1) FACTORS CONSIDERED FOR LISTING.—Section 4(a)(1) is amended—

(A) in subparagraph (C) by inserting “introduced species, competition,” prior to “disease or predation”; and

(B) in subparagraph (D) by inserting “Federal, State and local government and international” prior to “regulatory mechanisms”.

(2) CRITICAL HABITAT.—Section 4(a) is amended by striking paragraph (3).

(3) DELISTING.—Section 4(b)(2) is amended to read as follows:

“(2) DELISTING.—The Secretary shall, in accordance with section 5 and upon a determination that the goals of the recovery plan for a species have been met, initiate the procedures for determining, in accordance with subsection (a)(1), whether to remove a species from a list published under subsection (c).”

(4) RESPONSE TO PETITIONS.—Section 4(b)(3) is amended to read as follows:

“(3) RESPONSE TO PETITIONS.—

“(A) ACTION MAY BE WARRANTED.—

“(i) IN GENERAL.—To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to—

“(I) add a species to,

“(II) remove a species from, or

“(III) change a species status from a previous determination with respect to

either of the lists published under subsection (c), the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned the Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

“(i) MINIMUM DOCUMENTATION.—A finding that the petition presents the information described in clause (i) shall not be made unless the petition provides—

“(I) documentation that the fish, wildlife, or plant that is the subject of the petition is a species as defined in section 3;

“(II) a description of the available data on the historical and current range and distribution of the species;

“(III) an appraisal of the available data on the status and trends of populations of the species;

“(IV) an appraisal of the available data on the threats to the species; and

“(V) an identification of the information contained or referred to in the petition that has been peer-reviewed or field-tested.

“(ii) NOTIFICATION TO THE STATES.—

“(I) PETITIONED ACTIONS.—If the petition is found to present the information described in clause (i), the Secretary shall notify and provide a copy of the petition to the State agency in each State in which the species is believed to occur and solicit the assessment of the agency, to be submitted to the Secretary within 90 days of notification, as to whether the petitioned action is warranted.

“(II) OTHER ACTIONS.—If the Secretary has not received a petition for a species and the Secretary is considering proposing to list such species as either threatened or endangered under subsection (a), the Secretary shall notify the State agency in each State in which the species is believed to occur and solicit the assessment of the agency, to be submitted to the Secretary within 90 days of the notification, as to whether the listing would be in accordance with the provisions of subsection (a).

“(III) CONSIDERATION OF STATE ASSESSMENTS.—Prior to publication of a determina-

tion that a petitioned action is warranted or a proposed regulation, the Secretary shall consider any State assessments submitted within the comment period established by subclause (I) or (II).

“(B) PETITION TO CHANGE STATUS OR DELIST.—A petition may be submitted to the Secretary under subparagraph (A) to change the status of or to remove a species from either of the lists published under subsection (c) in accordance with subsection (a)(1), if—

“(i) the current listing is no longer appropriate because of a change in the factors identified in subsection (a)(1); or

“(ii) with respect to a petition to remove a species from either of the lists—

“(I) new data or a reinterpretation of prior data indicates that removal is appropriate;

“(II) the species is extinct; or

“(III) the recovery goals established for the species in a recovery plan approved under section 5(h) have been achieved.

“(C) DETERMINATION.—Within 12 months after receiving a petition that is found under subparagraph (A)(i) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

“(i) NOT WARRANTED.—The petitioned action is not warranted, in which case the Secretary shall promptly publish the finding in the Federal Register.

“(ii) WARRANTED.—The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement the action in accordance with paragraph (5).

“(iii) WARRANTED BUT PRECLUDED.—The petitioned action is warranted, but that—

“(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species; and

“(II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) and to remove from the lists species for which the protections of the Act are no longer necessary,

in which case the Secretary shall promptly publish the finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

“(D) SUBSEQUENT DETERMINATION.—A petition with respect to which a finding is made under subparagraph (C)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

“(E) JUDICIAL REVIEW.—Any negative finding described in subparagraph (A)(i) and any finding described in subparagraph (C)(i) or (iii) shall be subject to judicial review.

“(F) MONITORING AND EMERGENCY LISTING.—The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (C)(iii) and shall make prompt use of the authority under paragraph (7) to prevent a significant risk to the well-being of any such species.”.

(5) PROPOSED REGULATIONS.—Section 4(b)(5) is amended by—

(A) striking “(5) With respect to any regulation” and inserting the following:

“(5) PROPOSED REGULATIONS AND REVIEW.—With respect to any regulation”;

(B) striking “a determination, designation, or revision” and inserting “a determination or change in status”;

(C) striking “(a)(1) or (3),” and inserting “(a)(1),”;

(D) striking "in the Federal Register," and inserting "in the Federal Register as provided by paragraph (8)."; and

(E) striking subparagraph (E) and inserting the following:

"(E) at the request of any person within 45 days after the date of publication of general notice, promptly hold at least 1 public hearing in each State that would be affected by the proposed regulation (including at least 1 hearing in an affected rural area, if any) except that the Secretary may not be required to hold more than 5 hearings under this clause."

(7) FINAL REGULATIONS.—

(A) SCHEDULE.—Section 4(b)(6)(A) is amended to read as follows:

"(A) IN GENERAL.—Within the 1-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register—

"(i) a final regulation to implement the determination,

"(ii) notice that the 1-year period is being extended under subparagraph (B)(i), or

"(iii) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based."

(B) CONFORMING AMENDMENTS.—Section 4(b)(6) is amended—

(i) in subparagraph (B)(i) by striking "or revision";

(ii) in subparagraph (B)(iii), by striking "or revision concerned, a finding that the revision should not be made,"; and

(iii) by striking subparagraph (C).

(8) PUBLICATION OF DATA AND INFORMATION.—Section 4(b)(8) is amended by—

(A) striking "a summary by the Secretary of the data" and inserting "a summary by the Secretary of the best scientific and commercial data available";

(B) striking "is based and shall" and inserting "is based, shall"; and

(C) striking "regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation." and inserting "regulation, and shall provide, to the degree that it is relevant and available, information regarding the status of the affected species, including current population, population trends, current habitat, food sources, predators, breeding habits, captive breeding efforts, governmental and non-governmental conservation efforts, or other pertinent information."

(9) SOUND SCIENCE.—Section 4(b) is amended by adding at the end the following:

"(9) ADDITIONAL DATA.—

"(A) IN GENERAL.—The Secretary shall identify and publish in the Federal Register with the notice of a proposed regulation pursuant to paragraph (5)(A)(i) a description of additional scientific and commercial data that would assist in the preparation of a recovery plan and—

"(i) invite any person to submit the data to the Secretary; and

"(ii) describe the steps that the Secretary plans to take for acquiring additional data.

"(B) RECOVERY PLANNING.—Data identified and obtained under subparagraph (A) shall be considered by the recovery team and the Secretary in the preparation of the recovery plan in accordance with section 5.

"(C) NO DELAY AUTHORIZED.—Nothing in this paragraph shall be deemed to waive or extend any deadline for publishing a final rule to implement a determination (except

for the extension provided in paragraph (6)(B)(i) or any deadline under section 5.

"(10) INDEPENDENT SCIENTIFIC REVIEW.—

"(A) IN GENERAL.—In the case of a regulation proposed by the Secretary to implement a determination under subsection (a)(1) that any species is an endangered species or a threatened species or that any species currently listed as an endangered species or a threatened species should be removed from any list published pursuant to subsection (c), the Secretary shall provide for independent scientific peer review by—

"(i) selecting independent referees pursuant to subparagraph (B);

"(ii) requesting the referees to conduct the review, considering all relevant information, and make a recommendation to the Secretary in accordance with this paragraph not later than 150 days after the general notice is published pursuant to paragraph (5)(A)(i).

"(B) SELECTION OF REFEREES.—For each independent scientific review to be conducted pursuant to subparagraph (A), the Secretary shall select 3 independent referees from a list provided by the National Academy of Sciences, who—

"(i) through publication of peer-reviewed scientific literature or other means, have demonstrated scientific expertise on the species or a similar species or other scientific expertise relevant to the decision of the Secretary under subsection (a);

"(ii) do not have, or represent any person with, a conflict of interest with respect to the determination that is the subject of the review; and

"(iii) are not participants in a petition to list, change the status of, or remove the species under paragraph (3)(A)(i), the assessment of a State for the species under paragraph (3)(A)(iii), or the proposed or final determination of the Secretary.

"(C) FINAL DETERMINATION.—The Secretary shall take one of the actions under paragraph (6)(A) of this subsection not later than 1 year after the date of publication of the general notice of the proposed determination. If the referees have made a recommendation in accordance with clause (ii) of subparagraph (A), the Secretary shall evaluate and consider the information that results from the independent scientific review and include in the final determination—

"(i) a summary of the results of the independent scientific review; and

"(ii) in cases where the recommendation of a majority of the referees who conducted the independent scientific review under subparagraph (A) are not followed, an explanation as to why the recommendation was not followed.

"(D) FEDERAL ADVISORY COMMITTEE ACT.—The referees selected pursuant to this paragraph shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.)."

(10) LIST.—Section 4(c) is amended by—

(A) inserting "designated" before "critical habitat"; and

(B) striking "determinations, designations and revisions" and inserting "determinations".

(11) PROTECTIVE REGULATION.—Section 4(d) is amended by—

(A) striking "Whenever any species is listed" and inserting the following:

"(1) IN GENERAL.—Whenever any species is listed"; and

(B) adding at the end the following:

"(2) NEW LISTINGS.—With respect to each species listed as a threatened species after the date of enactment of the Endangered Species Recovery Act of 1997, regulations applicable under paragraph (1) to the species shall be specific to that species by the date on which the Secretary is required to approve a recovery plan for the species pursu-

ant to section 5(c) and may be subsequently revised."

(12) RECOVERY PLANS.—Section 4 is amended by striking subsection (f) and redesignating subsections (g) through (i) as subsections (f) through (h), respectively.

(13) CONFORMING AMENDMENT.—Section 4(g) (as redesignated by paragraph (12)) is amended in paragraph (4) by striking "subsection (f) of this section" and inserting "section 5".

(d) PUBLIC AVAILABILITY OF DATA.—Section 3(b), as amended by subsection (a), is amended by adding at the end the following:

"(2) FREEDOM OF INFORMATION ACT EXEMPTION.—The Secretary, and the head of any other Federal agency upon the recommendation of the Secretary, may withhold or limit the availability of data requested to be released pursuant to section 552 of title 5, United States Code, if the data describes or identifies the location of an endangered species, a threatened species, or a species that has been proposed to be listed as threatened or endangered, and release of the data would be likely to result in increased take of the species."

SEC. 3. ENHANCED RECOVERY PLANNING.

(a) REDESIGNATION.—Section 5 of the Act is redesignated as section 5A.

(b) RECOVERY PLANS.—The Act is amended by inserting prior to section 5A (as redesignated by subsection (a)) the following:

"RECOVERY PLANS

"SEC. 5. (a) IN GENERAL.—The Secretary, in cooperation with the States, and on the basis of the best scientific and commercial data available, shall develop and implement plans (referred to in this Act as "recovery plans") for the conservation and recovery of endangered species and threatened species that are indigenous to the United States or in waters under the jurisdiction of the United States in accordance with the requirements and schedules described in this section, unless the Secretary finds, after notice and opportunity for public comment, that a plan will not promote the conservation of the species or because an existing plan or strategy to conserve the species already serves as the functional equivalent to a recovery plan. The Secretary may authorize a State agency to develop recovery plans pursuant to subsection (m).

"(b) PRIORITIES.—To the maximum extent practicable, the Secretary, in developing recovery plans, shall give priority, without regard to taxonomic classification, to recovery plans that—

"(1) address significant and immediate threats to the survival of an endangered species or a threatened species, have the greatest likelihood of achieving recovery of the endangered species or the threatened species, and will benefit species that are more taxonomically distinct;

"(2) address multiple species including (A) endangered species, (B) threatened species, or (C) species that the Secretary has identified as candidates or proposed for listing under section 4 and that are dependent on the same habitat as the endangered species or threatened species covered by the plan;

"(3) reduce conflicts with construction, development projects, jobs or other economic activities; and

"(4) reduce conflicts with military training and operations.

"(c) SCHEDULE.—For each species determined to be an endangered species or a threatened species after the date of enactment of the Endangered Species Recovery Act of 1997 for which the Secretary is required to develop a recovery plan under subsection (a), the Secretary shall publish—

"(1) not later than 18 months after the date of the publication under section 4 of the final regulation containing the listing determination, a draft recovery plan; and

“(2) not later than 30 months after the date of publication under section 4 of the final regulation containing the listing determination, a final recovery plan.

“(d) APPOINTMENT AND ROLE OF RECOVERY TEAM.—

“(1) IN GENERAL.—Not later than 60 days after the date of the publication under section 4 of the final regulation containing the listing determination for a species, the Secretary, in cooperation with the affected States, shall either appoint a recovery team to develop a recovery plan for the species or publish a notice pursuant to paragraph (3) that a recovery team shall not be appointed. Recovery teams shall include the Secretary and at least one representative from the State agency of each of the affected States choosing to participate and be broadly representative of the constituencies with an interest in the species and its recovery and in the economic or social impacts of recovery including representatives of Federal agencies, tribal governments, local governments, academic institutions, private individuals and organizations, and commercial enterprises. The recovery team members shall be selected for their knowledge of the species or for their expertise in the elements of the recovery plan or its implementation.

“(2) DUTIES OF THE RECOVERY TEAM.—Each recovery team shall prepare and submit to the Secretary the draft recovery plan that shall include the team’s recommended recovery measures and alternatives, if any, to meet the recovery goal under subsection (e)(1). The recovery team may also be called upon by the Secretary to assist in the implementation, review and revision of recovery plans. The recovery team shall also advise the Secretary concerning the designation of critical habitat, if any.

“(3) EXCEPTION.—

“(A) IN GENERAL.—Notwithstanding paragraph (1), the Secretary may, after notice and opportunity for public comment, establish criteria to identify species for which the appointment of a recovery team would not be required under this subsection, taking into account the availability of resources for recovery planning, the extent and complexity of the expected recovery activities and the degree of scientific uncertainty associated with the threats to the species.

“(B) STATE OPTION.—If the Secretary elects not to appoint a recovery team, the Secretary shall provide notice to each affected State and shall provide the affected States the opportunity to appoint a recovery team and develop a recovery plan, in accordance with the requirements and procedures set out in subsection (m).

“(C) SECRETARIAL DUTY.—In the event that a recovery team is not appointed, the Secretary shall perform all duties of the recovery team required by this section.

“(4) TRAVEL EXPENSES.—The Secretary is authorized to provide travel expenses (including per diem in lieu of subsistence at the same level as authorized by section 5703 of title 5, United States Code) to recovery team members.

“(5) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the selection or activities of a recovery team appointed pursuant to this subsection or subsection (m).

“(e) CONTENTS OF RECOVERY PLANS.—Each recovery plan shall contain:

“(1) BIOLOGICAL RECOVERY GOAL.—

“(A) IN GENERAL.—Not later than 6 months after the appointment of a recovery team under this section, those members of the recovery team with relevant scientific expertise shall establish and submit to the Secretary of recommended biological recovery goal to conserve and recover the species that, when met, would result in the deter-

mination, in accordance with the provisions of section 4, that the species be removed from the list. The goal shall be based solely on the best scientific and commercial data available. The recovery goal shall be expressed as objective and measurable biological criteria. When the goal is met, the Secretary shall be required to initiate the procedures for determining whether, in accordance with section 4(a)(1), to remove the species from the list.

“(B) PEER REVIEW.—The recovery team shall promptly obtain independent scientific review of the recommended biological recovery goal.

“(2) RECOVERY MEASURES.—The recovery plan shall incorporate recovery measures that will meet the recovery goal.

“(A) MEASURES.—The recovery measures may incorporate general and site-specific measures for the conservation and recovery of the species such as—

“(i) actions to protect and restore habitat;

“(ii) research;

“(iii) establishment of refugia, captive breeding, releases of experimental populations;

“(iv) actions that may be taken by Federal agencies, including actions that use, to the maximum extent practicable, Federal lands; and

“(v) opportunities to cooperate with State and local governments and other persons to recover species, including through the development and implementation of conservation plans under section 10.

“(B) DRAFT RECOVERY PLANS.—

“(i) IN GENERAL.—In developing a draft recovery plan, the recovery team or, if there is no recovery team, the Secretary, shall consider alternative measures and recommend measures to meet the recovery goal including the benchmarks. The recovery measures shall achieve an appropriate balance among the following factors—

“(I) the effectiveness of the measures in meeting the recovery goal;

“(II) the period of time in which the recovery goal is likely to be achieved, provided that the time period within which the recovery goal is to be achieved will not pose a significant risk to recovery of the species; and

“(III) the social and economic impacts (both quantitative and qualitative) of the measures and their distribution across regions and industries.

“(ii) DESCRIPTION OF ALTERNATIVES.—The draft plan shall include a description of any alternative recovery measures considered, but not included in the recommended measures, and an explanation of how any such measures considered were assessed and the reasons for their selection or rejection.

“(iii) DESCRIPTION OF ECONOMIC EFFECTS.—If the recommended recovery measures identified in clause (i) would impose significant costs on a municipality, county, region or industry, the recovery team shall prepare a description of the overall economic effects on the public and private sections including, as appropriate, effects on employment public revenues, and value of property as a result of the implementation of the recovery plan.

“(3) BENCHMARKS.—The recovery plan shall include objective, measurable benchmarks expected to be achieved over the course of the recovery plan to determine whether progress is being made towards the recovery goal.

“(4) FEDERAL AGENCIES.—Each recovery plan for an endangered species or a threatened species shall identify Federal agencies that authorize, fund, or carry out actions that are likely to have a significant impact on the prospects for recovering the species.

“(f) PUBLIC NOTICE AND COMMENT.—

“(1) IN GENERAL.—If the Secretary makes a preliminary determination that the draft recovery plan meets the requirements of this

section, the Secretary shall publish in the Federal Register and a newspaper of general circulation in each affected State a notice of availability and a summary of, and a request for public comment on, the draft recovery plan including a description of the economic effects prepared under subsection (e)(2)(B)(iii) and the recommendations of the independent referees on the recovery goal.

“(2) HEARINGS.—At the request of any person, the Secretary shall hold at least 1 public hearing on each draft recovery plan in each State to which the plan would apply (including at least 1 hearing in an affected rural area, if any), except that the Secretary may not be required to hold more than 5 hearings under this paragraph.

“(g) PROCUREMENT AUTHORITY.—The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions and other qualified persons.

“(h) REVIEW AND SELECTION BY THE SECRETARY.—

“(1) REVIEW AND APPROVAL.—The Secretary shall review each plan submitted by a recovery team, including a recovery team appointed by a State pursuant to the authority of subsection (m), to determine whether the plan was developed in accordance with the requirements of this section. If the Secretary determines that the plan does not satisfy such requirements, the Secretary shall notify the recovery team and give the team an opportunity to address the concerns of the Secretary and resubmit a plan that satisfies the requirements of this section. After notice and opportunity for public comment on the recommendations of the recovery team, the Secretary shall adopt a final recovery plan that is consistent with the requirements of this section.

“(2) SECTION OF RECOVERY MEASURES.—In each final plan the Secretary shall select recovery measures that meet the recovery goal and the benchmarks. The recovery measures shall achieve an appropriate balance among the factors in subclauses (I) through (III) of subsection (e)(2)(B)(i).

“(3) MEASURES RECOMMENDED BY RECOVERY TEAM.—If the Secretary selects measures other than those recommended by the recovery team, the Secretary shall publish with the final plan an explanation of why the measures recommended by the recovery team were not selected for the final recovery plan.

“(4) PUBLICATION OF NOTICE ON FINAL PLANS.—The Secretary shall publish in the Federal Register a notice of availability, and a summary, of the final recovery plan, and include in the final recovery plan a response to significant comments that the Secretary received on the draft recovery plan.

“(i) REVIEW.—

“(1) EXISTING PLANS.—Not later than 5 years after date of enactment of Endangered Species recovery Act of 1997, the Secretary shall review recovery plans published prior to such date.

“(2) SUBSEQUENT PLANS.—The Secretary shall review each recovery plan first approved or revised under this section subsequent to the enactment of the Endangered Species Recovery Act of 1997, not later than 10 years after the date of approval or revision of the plan and every 10 years thereafter.

“(j) REVISION OF RECOVERY PLANS.—Notwithstanding any other provisions of this section, the Secretary shall revise a recovery plan if the Secretary finds that substantial new information, that may include the failure to meet the benchmarks included in the plan, based upon the best scientific and commercial data available, indicates that the recovery goals contained in the recovery plan will not achieve the conservation and recovery of the endangered species or threatened species covered by the plan. The Secretary

shall convene a recovery team to develop the revisions required by this subsection, unless the Secretary has established an exception for the species pursuant to subsection (d)(3).

“(k) EXISTING PLANS.—Nothing in this section shall be interpreted to require the modification of—

“(1) a recovery plan approved, or

“(2) a recovery plan on which public notice and comment has been initiated,

prior to the date of enactment of the Endangered Species Recovery Act of 1997 until revised by the Secretary in accordance with this section.

“(1) IMPLEMENTATION OF RECOVERY PLANS.—

“(1) IMPLEMENTATION AGREEMENTS.—The Secretary is authorized to enter into agreements with Federal agencies, affected States, Indian tribes, local governments, private landowners and organizations to implement specified conservation measures identified by an approved recovery plan that promote the recovery of the species on lands or waters owned by, or within the jurisdiction of, each such party. The Secretary may enter into such agreements, if the Secretary, after notice and opportunity for public comment, determines that—

“(A) each party to the agreement has the legal authority and capability to carry out the agreement;

“(B) the agreement shall be reviewed and revised as necessary on a regular basis by the parties to the agreement to ensure that it meets the requirements of this section; and

(C) the agreement establishes a mechanism for the Secretary to monitor and evaluate implementation of the agreement.

“(2) DUTY OF FEDERAL AGENCIES.—Each Federal agency identified under subsection (e)(4) shall enter into an implementation agreement with the Secretary not later than 2 years after the date on which the Secretary approves the recovery plan for the species. For purposes of satisfying this section, the substantive provisions of the agreement shall be within the sole discretion of the Secretary and the head of the Federal agency entering into the agreement.

“(3) OTHER REQUIREMENTS.—

“(A) AGENCY ACTIONS.—Any action authorized, funded or carried out by a Federal agency that is specified in a recovery plan implementation agreement between the Federal agency and the Secretary to promote the recovery of the species and for which the agreement provides sufficient information on the nature, scope and duration of the action to determine the effect of the action on any endangered species, threatened species, or critical habitat shall not be subject to the requirements of section 7(a)(2) for that species, provided the action is to be carried out during the term of such agreement and the Federal agency is in compliance with the agreement.

“(B) COMPREHENSIVE AGREEMENTS.—If a non-Federal person proposes to include in an implementation agreement a site-specific action that the Secretary determines meets the requirements of subparagraph (A) and that action would require authorization or funding by one or more Federal agencies, the agencies authorizing or funding the action shall participate in the development of the agreement and shall identify, at that time, all measures for the species that would be required under this Act as a condition of the authorization or funding.

“(4) FINANCIAL ASSISTANCE.—

“(A) IN GENERAL.—In cooperation with the States and subject to the availability of appropriations under section 13(f), the Secretary may provide a grant of up to \$25,000 to any individual private landowner to assist

the landowner in carrying out a recovery plan implementation agreement under this subsection.

“(B) PROHIBITION ON ASSISTANCE FOR REQUIRED ACTIVITIES.—The Secretary may not provide assistance under this paragraph for any action that is required by a permit issued under this Act or that is otherwise required under this Act or other Federal law.

“(C) OTHER PAYMENTS.—Grants provided to an individual private landowner under this paragraph shall be in addition to, and not affect, the total amount of payments the landowner is otherwise eligible to receive under the Conservation Reserve Program (16 U.S.C. 3831 et seq.), the Wetlands Reserve Program (16 U.S.C. 3837 et seq.), or the Wildlife Habitat Incentives Program (16 U.S.C. 3836a).

“(m) STATE AUTHORITY FOR RECOVERY PLANNING.—

“(1) IN GENERAL.—At the request of the Governor of a State, or the Governors of several States in cooperation, the Secretary may authorize the respective State agency to develop the recovery plan for an endangered species or a threatened species in accordance with the requirements and schedules of subsections (c), (d)(1), (d)(2), and (e) and this subsection if the Secretary finds that—

“(A) the State or States have entered into a cooperative agreement with the Secretary pursuant to section 6(c); and

“(B) the State agency has submitted a statement to the Secretary demonstrating adequate authority and capability to carry out the requirements and schedules of subsections (c), (d)(1), (d)(2), and (e) of this subsection.

“(2) STANDARDS AND GUIDELINES.—The Secretary, in cooperation with the States, shall publish standards and guidelines for the development of recovery plans by a State agency under this subsection, including standards and guidelines for interstate cooperation and for the grant and withdrawal of authorization under this subsection by the Secretary.

“(3) MEMBERS AND DUTIES OF RECOVERY TEAM.—Each recovery team appointed by a State agency under this subsection shall include the Secretary. The recovery team shall prepare a draft recovery plan in accordance with the requirements of this section and shall transmit the draft plan to the Secretary through the State agency authorized to develop the recovery plan.

“(4) REVIEW OF DRAFT PLANS.—Prior to publication of a notice of availability of a draft recovery plan, the Secretary shall review each draft recovery plan developed pursuant to this subsection to determine whether it meets the requirements of this section. If the Secretary determines that the plan does not meet such requirements, the Secretary shall notify the State agency and, in cooperation with such State agency, develop a recovery plan in accordance with the requirements of this section.

“(5) REVIEW AND APPROVAL OF FINAL PLANS.—Upon receipt of a draft recovery plan transmitted by a State agency, the Secretary shall review and approve the plan in accordance with subsection (h).

“(6) WITHDRAWAL OF AUTHORITY.—

“(A) IN GENERAL.—The Secretary may withdraw the authority from a State that has been authorized to develop a recovery plan pursuant to this subsection if the actions of the State agency are not in accordance with the substantive and procedural requirements of subsections (c), (d)(1), (d)(2), and (e) of this subsection. The Secretary shall give the State agency an opportunity to correct any deficiencies identified by the Secretary and shall withdraw the authority from the State unless the State agency within 60 days has corrected the deficiencies identified by the Secretary. Upon withdrawal

of State authority pursuant to this subsection, the Secretary shall have an additional 18 months to publish a draft recovery plan and an additional 12 months to publish a final recovery plan under subsection 5(c).

“(B) PETITIONS TO WITHDRAW.—Any person may submit a petition requesting the Secretary to withdraw the authority from a State on the basis that the actions of the State agency are not in accordance with the substantive and procedural requirements identified in subparagraph (A). If the Secretary has not acted on the petition pursuant to subparagraph (A) within 90 days, the petition shall be deemed denied and the denial shall be a final agency action for the purposes of judicial review.

“(7) STATE AGENCY.—For purposes of this subsection, the term ‘State agency’ includes—

“(A) State agencies (as defined in section 3) of the several States submitting a cooperative request under paragraph (1); and

“(B) for fish and wildlife, including related spawning grounds and habitat, on the Columbia River and its tributaries, the Pacific Northwest Electric Power and Conservation Planning Council established under the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 et seq.).

“(n) CRITICAL HABITAT DESIGNATION.—

“(1) RECOMMENDATION OF THE RECOVERY TEAM.—Not later than 9 months after the date of publication under section 4 of a final regulation containing a listing determination for a species, the recovery team appointed for the species shall provide the Secretary with a description of any habitat of the species that is recommended for designation as critical habitat pursuant to this subsection and any recommendations for special management considerations or protection that are specific to such habitat.

“(2) DESIGNATION BY THE SECRETARY.—The Secretary, to the maximum extent prudent and determinable, shall be regulation designate any habitat of an endangered species or a threatened species that is indigenous to the United States or waters under the jurisdiction of the United States that is considered to be critical habitat.

“(A) DESIGNATION.—

“(i) PROPOSAL.—Not later than 18 months after the date on which a final listing determination is made under section 4 for a species, the Secretary, after consultation and in cooperation with the recovery team, shall publish in the Federal Register a proposed regulation designating critical habitat for the species.

“(ii) PROMULGATION.—The Secretary shall, after consultation and in cooperation with the recovery team, publish a final regulation designating critical habitat for a species not later than 30 months after the date on which a final listing determination is made under section 4 for the species.

“(B) OTHER DESIGNATIONS.—If a recovery plan is not developed under this section for an endangered species or a threatened species, the Secretary shall publish a final critical habitat determination for that endangered species or threatened species within 36 months after making a determination that the species is an endangered species or a threatened species.

“(C) ADDITIONAL AUTHORITY.—The Secretary may publish a regulation designating critical habitat for an endangered species or a threatened species concurrently with the final regulation implementing the determination that the species is endangered or threatened if the Secretary determines that designation of such habitat at the time of listing is essential to avoid the imminent extinction of the species.

“(3) FACTORS TO BE CONSIDERED.—The designation of critical habitat shall be made on

the basis of the best scientific and commercial data available and after taking into consideration the economic impact, impacts to military training and operations, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary shall describe the economic impacts and other relevant impacts that are to be considered under this subsection in the publication of any proposed regulation designating critical habitat.

“(4) EXCLUSIONS.—The Secretary may exclude any area from critical habitat for a species if the Secretary determines that the benefits of the exclusion outweigh the benefits of designating the area as part of the critical habitat, unless the Secretary determines that the failure to designate the area as critical habitat will result in the extinction of the species.

“(5) REVISIONS.—The Secretary may, from time-to-time and as appropriate, revise a designation. Each area designated as critical habitat before the date of enactment of the Endangered Species Recovery Act of 1997 shall continue to be considered so designated, until the designation is revised in accordance with this subsection.

“(6) PETITIONS.—

“(A) DETERMINATION THAT REVISION MAY BE WARRANTED.—To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.

“(B) NOTICE OF PROPOSED ACTION.—Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

“(7) PROPOSED AND FINAL REGULATIONS.—Any regulation to designate critical habitat or implement a requested revision shall be proposed and promulgated in accordance with paragraphs (4), (5) and (6) of section 4(b) in the same manner as a regulation to implement a determination with respect to listing a species.

“(o) REPORTS.—The Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to section 4 and on the status of all species for which such plans have been developed.”.

(c) CITIZEN SUITS.—Section 11(g)(1)(C) of the Act (16 U.S.C. 1540(g)(1)(C)) is amended by inserting “or section 5” after “section 4”.

(d) CONFORMING AMENDMENTS FOR RECOVERY PLANNING.—

(1) Section 6(d)(1) is amended by striking “section 4(g)” and inserting “section 4(f)”.

(2) Section 10(f)(5) is amended by striking the last sentence.

(3) Sections 104(c)(4)(A)(ii)(I), 115(b)(2), and 118(f)(1) of the Marine Mammal Protection Act are amended by striking “section 4(f)” each place it occurs and inserting “section 5”

(4) The table of contents in the first section (16 U.S.C. 1531) is amended by striking the item related to section 5 and inserting the following:

“Sec. 5. Recovery plans.
Sec. 5A. Land acquisition.”.

(e) PLANS FOR PREVIOUSLY LISTED SPECIES.—In the case of species included in the list published under section 4(c) before the date of enactment of this Act, and for which no recovery plan was developed before that date, the Secretary shall develop a final recovery plan in accordance with the requirements of section 5 (including the priorities of section 5(b)) of the Endangered Species Act (16 U.S.C. 1531 et seq.), as amended by this Act, for not less than one-half of the species not later than 36 months after the date of enactment of this Act and for all species not later than 60 months after such date.

SEC. 4. INTERAGENCY CONSULTATION AND COORDINATION.

(A) REASONABLE AND PRUDENT ALTERNATIVES.—Section 3 (16 U.S.C. 1532) is amended by redesignating paragraphs (15) through (21) as paragraphs (16) through (22), respectively, and inserting the following new paragraph after paragraph (14):

“(15) REASONABLE AND PRUDENT ALTERNATIVES.—The term ‘reasonable and prudent alternatives’ means alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction, that are economically and technologically feasible, and that the Secretary believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.”.

(b) INVENTORY OF SPECIES ON FEDERAL LANDS.—Section 7(a)(1)(16 U.S.C. 1536(a)(1)) is amended by—

(1) inserting “(A)” after “(1)”; and

(2) adding the following at the end thereof:

“(B) INVENTORY OF SPECIES ON FEDERAL LANDS.—The head of each Federal agency that is responsible for the management of lands and waters—

“(i) shall by not later than December 31, 2003, prepare and provide to the Secretary an inventory of the presence or occurrence of endangered species, threatened species, species that have been proposed for listing, and species that the Secretary has identified as candidates for listing under section(4), that are located on lands or waters owned or under control of the agency; and

“(ii) shall at least once every 5 years thereafter update the inventory required by clause (1) including newly listed, proposed and candidate species.”.

(c) CONSULTATION.—Section 7(a)(3) (16 U.S.C. 1536(a)(3)) is amended to read as follows:

“(3) CONSULTATION.—

“(A) NOTIFICATION OF ACTIONS.—Prior to commencing any action, each Federal agency shall notify the Secretary if the agency determines that the action may affect an endangered species or a threatened species or critical habitat.

(B) AGENCY DETERMINATION.—

“(i) IN GENERAL.—Each Federal agency shall consult with the Secretary as required by paragraph (2) on each action for which notification is required under subparagraph (A) unless—

“(I) the Federal agency makes a determination based on the opinion of a qualified biologist that the action is not likely to adversely affect an endangered species, a threatened species or critical habitat;

“(II) the Federal agency notifies the Secretary that it has determined that the action is not likely to adversely affect any listed species or critical habitat and provides the Secretary, along with the notice, a copy of the information on which the agency based the determination; and

“(III) the Secretary does not object in writing to the agency’s determination within 60 days from the date such notice is received.

“(ii) ACTIONS EXCLUDED.—The Secretary may by regulation identify categories of actions with respect to specific endangered species or threatened species that the Secretary determines are likely to have an adverse effect on the species or its critical habitat and, for which, the procedures of clause (i) shall not apply.

“(iii) BASIS FOR OBJECTION.—The Secretary shall object to a determination made by a Federal agency pursuant to clause (i), if—

“(I) the Secretary determines that the action may have an adverse effect on an endangered species, a threatened species or critical habitat; or

“(II) the Secretary finds that there is insufficient information in the documentation accompanying the determination to evaluate the impact of the proposed action on endangered species, threatened species, or critical habitat; or

“(III) the Secretary finds that, because of the nature of the action and its potential impact on an endangered species, a threatened species or critical habitat, review cannot be completed in 60 days.

“(iv) NAS REVIEW.—Not later than 3 years after the date of enactment of this clause, the Secretary shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of and prepare a report on the determinations made by Federal agencies pursuant to clause (i). The report shall be transmitted to the Congress not later than 5 years after the date of enactment of this clause.

“(v) REPORTS.—The Secretary shall report to the Congress not less often than biennially with respect to the implementation of this subparagraph including in the report information on the circumstances that resulted in the Secretary making any objection to a determination made by a Federal agency under clause (i) and the availability of resources to carry out the requirements of this section.

“(C) CONSULTATION AT REQUEST OF APPLICANT.—Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by the applicant’s project and that implementation of the action will likely affect the species.”.

(d) GAO REPORT.—The Comptroller General of the United States shall report to the Committee on Environment and Public Works of the Senate and to the Committee on Resources of the House of Representatives not later than 3 years after the date of enactment of this Act, and 2 years thereafter, on the cost of formal consultation to Federal agencies and other persons carrying out actions subject to the requirements of section 7 of the Endangered Species Act (16 U.S.C. 1536), including the cost of reasonable and prudent measures imposed.

(e) NEW LISTINGS.—Section 7(a) (16 U.S.C. 1536(a)) is amended by adding at the end the following:

“(5) EFFECT OF LISTING ON EXISTING PLANS.—

“(A) ACTIONS.—For the purposes of paragraph (2), the term ‘action’ includes land use plans under the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.) and resource management plans under the Forest and Rangeland Renewable Resources Planning Act (16 U.S.C. 1600 et seq.), as amended by the National Forest Management Act (16 U.S.C. 1600 et seq.).

“(B) RE-INITIATION OF CONSULTATION.—Whenever a determination to list a species as

an endangered species or a threatened species or designation of critical habitat requires re-initiation of consultation under section 7(a)(2) on an already approved action as defined under subparagraph (A), the consultation shall commence promptly, but no later than 90 days after the date of the determination or designation, and be completed within 12 months of the date on which the consultation is commenced.

“(C) SITE-SPECIFIC ACTIONS DURING CONSULTATION.—Notwithstanding subsection (d), the Federal agency implementing the land use plan or resource management plan under subparagraph (B) may authorize, fund, or carry out a site-specific ongoing or previously scheduled action with the scope of the plan on such lands prior to completing consultation on the plan under subparagraph (B) pursuant to the consultation procedures of this section and related regulations, if—

“(i) no consultation on the action is required; or

“(ii) consultation on the action is required and the Secretary issues a biological opinion and the action satisfies the requirements of this section.”

(f) IMPROVED FEDERAL AGENCY COORDINATION.—Section 7(a) (16 U.S.C. 1536(a)) is amended by adding at the end the following:

“(6) CONSOLIDATION OF CONSULTATION AND CONFERENCING.—

“(A) CONSULTATION WITH A SINGLE AGENCY.—Consultation and conferencing under this subsection between the Secretary and a Federal agency may, with the approval of the Secretary, encompass a number of related or similar actions by the agency to be carried out within a particular geographic area.

“(B) CONSULTATION WITH SEVERAL AGENCIES.—The Secretary may consolidate requests for consultation or conferencing from various Federal agencies the proposed actions of which may affect the same endangered species, threatened species, or species that have been proposed for listing under section 4, within a particular geographic area.”

(g) USE OF INFORMATION PROVIDED BY STATES.—Section 7(b)(1) (16 U.S.C. 1536(b)(1)) is amended by adding at the end the following:

“(C) USE OF STATE INFORMATION.—In conducting a consultation under subsection (a)(2), the Secretary shall actively solicit and consider information from the State agency in each affected State.”

(h) OPPORTUNITY TO PARTICIPATE IN CONSULTATIONS.—Section 7(b)(1) (16 U.S.C. 1536(b)(1)) (as amended by subsection (g)) is further amended by adding at the end the following:

“(D) OPPORTUNITY TO PARTICIPATE IN CONSULTATIONS.—

“(i) IN GENERAL.—In conducting a consultation under subsection (a)(2), the Secretary shall provide any person who has sought authorization or funding for an action from a Federal agency and that authorization or funding is the subject of the consultation, the opportunity to—

“(I) prior to the development of a draft biological opinion, submit and discuss with the Secretary and the Federal agency information relevant to the effect of the proposed action on the species and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) that the Federal agency and the person can take to avoid violation of section 7(a)(2);

“(II) receive information, upon request subject to the exemptions of the Freedom of Information Act (5 U.S.C. 552(b)) on the status of the species, threats to the species, and conservation measures, used by the Secretary to develop the draft biological opinion and the final biological opinion, including the associated incidental take statements; and

“(III) received a copy of the draft biological opinion from the Federal agency and, prior to issuance of the final biological opinion, submit comments on the draft biological opinion and discuss with the Secretary and the Federal agency the basis for any finding in the draft biological opinion.

“(ii) EXPLANATION.—If reasonable and prudent alternatives are proposed by a person under clause (i) and the Secretary does not include the alternatives in the final biological opinion, the Secretary shall explain to such person why those alternatives were not included in the opinion.”

(i) INCIDENTAL TAKING STANDARDS FOR FEDERAL AGENCIES.—Section 7(b)(4) (16 U.S.C. 1536(b)(4)) is amended—

(1) in clause (ii), by inserting “and mitigate” after “to minimize”; and

(2) by adding at the end the following: “For purposes of this subsection, reasonable and prudent measures shall be related both in nature and extent to the effect of the proposed activity that is the subject of the consultation.”

(j) REVISION OF REGULATIONS.—Not later than 1 year after the date of enactment of the Endangered Species Recovery Act of 1997, the Secretary shall promulgate modifications to part 402 of title 50, Code of Federal Regulations, to implement the provisions of this section.

SEC. 5. CONSERVATION PLANS.

(a) PERMIT FOR TAKE ON THE HIGH SEAS.—Section 10(a)(1)(B) (16 U.S.C. 1539(a)(1)(B)) is amended by striking “section 9(a)(1)(B)” and inserting in lieu thereof “subparagraph (B) or (C) of section 9(a)(1)”.

(b) MONITORING.—Section 10(a)(2)(B) (16 U.S.C. 1539(a)(2)(B)) is amended by striking “reporting” and inserting in lieu thereof “monitoring and reporting”.

(c) OTHER PLANS.—Section 10(a) (16 U.S.C. 1539(a)) is amended by striking paragraph (2)(C) and inserting the following new paragraphs:

“(3) MULTIPLE SPECIES CONSERVATION PLANS.—

“(A) IN GENERAL.—In addition to one or more listed species, a conservation plan developed under paragraph (2) may, at the request of the applicant, include species proposed for listing under section 4(c), candidate species, or other species found on lands or waters owned or within the jurisdiction of the applicant covered by the plan.

“(B) APPROVAL CRITERIA.—The Secretary shall approve an application for a permit under paragraph (1)(B) that includes species other than species listed as endangered species or threatened species if, after notice and opportunity for public comment, the Secretary finds that the permit application and the related conservation plan satisfy the criteria of paragraphs (2)(A) and (2)(B) with respect to listed species, and that the permit application and the related conservation plan with respect to other species satisfy the following requirements:

“(i) The impact on non-listed species included in the plan will be incidental;

“(ii) The applicant will, to the maximum extent practicable, minimize and mitigate such impacts;

“(iii) The actions taken by the applicant with respect to species proposed for listing or candidates for listing included in the plan, if undertaken by all similarly situated persons within the range of such species, are likely to eliminate the need to list the species as an endangered species or a threatened species for the duration of the agreement as a result of the activities conducted by those persons;

“(iv) The actions taken by the applicant with respect to other non-listed species included in the plan, if undertaken by all similarly situated persons within the range of such species, would not be likely to con-

tribute to a determination to list the species as an endangered species or a threatened species for the duration of the agreement;

“(v) The criteria of paragraphs (2)(A)(iv), (2)(B)(iii) and (2)(B)(v); and

the Secretary has received such other assurances as the Secretary may require that the plan will be implemented. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such monitoring and reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

“(C) TECHNICAL ASSISTANCE AND GUIDANCE.—To the maximum extent practicable, the Secretary and the heads of other Federal agencies, in cooperation with the States, are authorized and encouraged to provide technical assistance or guidance to any State or person that is developing a multiple species conservation plan under this paragraph. In providing technical assistance or guidance, priority shall be given to landowners that might otherwise encounter difficulty in developing such a plan.

“(D) DEADLINES.—A conservation plan developed pursuant to this paragraph shall be reviewed and approved or disapproved not later than 1 year after the date of submission, or within such other period of time as is mutually agreeable to the Secretary and the applicant.

“(E) STATE AND LOCAL LAW.—

“(i) OTHER SPECIES.—Nothing in this paragraph shall limit the authority of a State or local government with respect to fish, wildlife or plants that have not been listed as an endangered species or a threatened species under section 4.

“(ii) COMPLIANCE.—An action by the Secretary, the Attorney General, or a person under section 11(g) to ensure compliance with a multiple species conservation plan and permit under this paragraph may only be brought against a permittee or the Secretary.

“(F) EFFECTIVE DATE OF PERMIT FOR NON-LISTED SPECIES.—For any species not listed as an endangered species or a threatened species, but covered by an approved multiple species conservation plan, the permit issued under paragraph (1)(B) shall take effect without further action by the Secretary at the time the species is listed pursuant to section 4(c), and to the extent that the taking is otherwise prohibited by subparagraphs (B) or (C) of section 9(a)(1).

“(4) LOW EFFECT ACTIVITIES.—

“(A) IN GENERAL.—Notwithstanding paragraph (2)(A), the Secretary may issue a permit for a low effect activity authorizing any taking referred to in paragraph (1)(B), if the Secretary determines that the activity will have no more than a negligible effect, both individually and cumulatively, on the species, any taking associated with the activity will be incidental, and the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The permit shall require, to the extent appropriate, actions to be taken by the permittee to offset the effects of the activity on the species.

“(B) APPLICATIONS.—The Secretary shall minimize the costs of permitting to the applicant by developing, in cooperation with the States, model permit applications that would constitute conservation plans for low effect activities.

“(C) PUBLIC COMMENT; EFFECTIVE DATE.—Upon receipt of a permit application for an activity that meets the requirements of subparagraph (A), the Secretary shall provide

notice in a newspaper of general circulation in the area of the activity not later than 30 days after receipt and an opportunity for comment on the permit. If the Secretary does not receive significant adverse comment within 30 days of the notice, the permit shall take effect without further action by the Secretary 45 days after the notice is published.

“(5) NO SURPRISES.—

“(A) IN GENERAL.—Each conservation plan developed under this subsection shall include a no surprises provision, as described in this paragraph.

“(B) NO SURPRISES.—A person who has entered into, and is in compliance with, a conservation plan under this subsection may not be required to undertake any additional mitigation measures for species covered by such plan if such measures would require the payment of additional money, or the adoption of additional use, development or management restrictions on any land, waters or water-related rights that would otherwise be available under the terms of the plan without the consent of the permittee. The Secretary and the applicant, by the terms of the conservation plan, shall identify—

- “(i) other modifications to the plan; or
- “(ii) other additional measures,

if any, that the Secretary may require under extraordinary circumstances.

“(6) PERMIT REVOCATION.—After notice and an opportunity for correction, as appropriate, the Secretary shall revoke a permit issued under this subsection if the Secretary finds that the permittee is not complying with the terms and conditions of the permit or the conservation plan.”

(d) CANDIDATE CONSERVATION AGREEMENTS.—

(1) PERMITS.—Section 10(a)(1) (16 U.S.C. 1539(a)(1)) is amended by—

(A) deleting “or” at the end of subparagraph (A);

(B) striking the period at the end of subparagraph (B) and inserting “; or”; and

(C) adding the following subparagraph at the end—

“(C) any taking incidental to, and not the purpose of, the carrying out of an otherwise lawful activity pursuant to a candidate conservation agreement.”

(2) AGREEMENTS.—Section 10 (16 U.S.C. 1539) is amended by adding at the end thereof the following:

“(k) CANDIDATE CONSERVATION AGREEMENTS.—

“(1) IN GENERAL.—At the request of any non-Federal person, the Secretary may enter into a candidate conservation agreement with that person for a species that has been proposed for listing under section 4(c)(1), is a candidate species, or is likely to become a candidate species in the near future on property owned or under the jurisdiction of the person requesting such an agreement.

“(2) REVIEW BY THE SECRETARY.—

“(A) SUBMISSION TO THE SECRETARY.—A non-Federal person may submit a candidate conservation agreement developed under paragraph (1) to the Secretary for review at any time prior to the listing described in section 4(c)(1) of a species that is the subject of the agreement.

“(B) CRITERIA FOR APPROVAL.—The Secretary may approve an agreement and issue a permit under subsection (a)(1)(C) of the agreement if, after notice and opportunity for public comment, the Secretary finds that—

“(i) for species proposed for listing, candidates for listing, or species that are likely to become a candidate species in the near future, that are included in the agreement, the actions taken under the agreement, if undertaken by all similarly situated persons,

would produce a conservation benefit that would be likely to eliminate the need to list the species under section 4(c) as a result of the activities of those persons during the duration of the agreement;

“(ii) the actions taken under the agreement will not adversely affect an endangered species or a threatened species;

“(iii) the agreement contains such other measures that the Secretary may require as being necessary or appropriate for the purposes of the agreement;

“(iv) the person will ensure adequate funding to implement the agreement; and

“(v) the agreement includes such monitoring and reporting requirements as the Secretary deems necessary for determining whether the terms and conditions of the agreement are being complied with.

“(3) EFFECTIVE DATE OF PERMIT.—A permit issued under subsection (a)(1)(C) shall take effect at the time the species is listed pursuant to section 4(c), provided that the permittee is in full compliance with the terms and conditions of the agreement.

“(4) ASSURANCES.—A person who has entered into a candidate conservation agreement under this subsection, and is in compliance with the agreement, may not be required to undertake any additional measures for species covered by such agreement if such measures would require the payment of additional money, or the adoption of additional use, development or management restrictions on any land, waters, or water-related rights that would otherwise be available under the terms of the agreement without the consent of the person entering into the agreement. The Secretary and the person entering into a candidate conservation agreement, by the terms of the agreement, shall identify—

“(A) other modifications to the agreements; or

“(B) other additional measures,

if any, that the Secretary may require under extraordinary circumstance.

(e) PUBLIC NOTICE.—Section 10(c) (16 U.S.C. 1539(c)) is amended by—

(1) striking “thirty” each place that it appears and inserting in lieu thereof “60”; and

(2) inserting before the final sentence the following: “The Secretary may, with approval of the applicant, provide an opportunity, as early as practicable, for public participation in the development of a multiple species conservation plan and permit application. If a multiple species conservation plan and permit application has been developed without the opportunity for public participation, the Secretary shall extend the public comment period for an additional 30 days for interested parties to submit written data, views, or arguments on the plan and application.”

(f) SAFE HARBOR AGREEMENTS.—Section 10 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsection:

“(1) SAFE HARBOR AGREEMENTS.—

“(1) AGREEMENTS.—

“(A) IN GENERAL.—The Secretary may enter into agreements with non-Federal persons to benefit the conservation of endangered species or threatened species by creating, restoring, or improving habitat or by maintaining currently unoccupied habitat for endangered species or threatened species. Under an agreement, the Secretary shall permit the person to take endangered species or threatened species included under the agreement on lands or waters that are subject to the agreement if the taking is incidental to, and not the purpose of, carrying out of an otherwise lawful activity, provided that the Secretary may not permit through such agreements any incidental take below the baseline requirement specified pursuant to subparagraph (B).

“(B) BASELINE.—For each agreement under this subsection, the Secretary shall establish a baseline requirement that is mutually agreed upon by the applicant and the Secretary at the time of the agreement that will, at a minimum, maintain existing conditions for the species covered by the agreement on lands and waters that are subject to the agreement. The baseline may be expressed in terms of the abundance or distribution of endangered or threatened species, quantity or quality of habitat, or such other indicators as appropriate.

“(2) STANDARDS AND GUIDELINES.—The Secretary shall issue standards and guidelines for the development and approval of safe harbor agreements in accordance with this subsection.

“(3) FINANCIAL ASSISTANCE.—

“(A) IN GENERAL.—In cooperation with the States and subject to the availability of appropriations under section 15(d), the Secretary may provide a grant of up to \$10,000 to any individual private landowner to assist the landowner in carrying out a safe harbor agreement under this subsection.

“(B) PROHIBITION ON ASSISTANCE FOR REQUIRED ACTIVITIES.—The Secretary may not provide assistance under this paragraph for any action that is required by a permit issued under this Act or that is otherwise required under this Act or other Federal law.

“(C) OTHER PAYMENTS.—Grants provided to an individual private landowner under this paragraph shall be in addition to, and not affect, the total amount of payments that the landowner is otherwise eligible to receive under the Conservation Reserve Program (16 U.S.C. 3831 et seq.), the Wetlands Reserve Program (16 U.S.C. 3837 et seq.), or the Wildlife Habitat Incentives Program (16 U.S.C. 3836a).”

(g) HABITAT RESERVE AGREEMENTS.—Section 10 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsection:

“(m) HABITAT RESERVE AGREEMENTS.—

“(1) PROGRAM.—The Secretary shall establish a habitat reserve program to be implemented through contracts or easements of a mutually agreed upon duration to assist non-Federal property owners to preserve and manage suitable habitat for endangered species and threatened species.

“(2) AGREEMENTS.—The Secretary may enter into a habitat reserve agreement with a non-Federal property owner to protect, manage or enhance suitable habitat on private property for the benefit of endangered species or threatened species. Under an agreement, the Secretary shall make payments in an agreed upon amount to the property owner for carrying out the terms of the habitat reserve agreement, provided that the activities undertaken pursuant to the agreement are not otherwise required by this Act.

“(3) STANDARDS AND GUIDELINES.—The Secretary shall issue standards and guidelines for the development and approval of habitat reserve agreements in accordance with this subsection. Agreements shall, at a minimum, specify the management measures, if any, that the property owner will implement for the benefit of endangered species or threatened species, the conditions under which the property may be used, the nature and schedule for any payments agreed upon by the parties to the agreement, and the duration of the agreement.

“(4) PAYMENTS.—Any payment received by a property owner under a habitat reserve agreement shall be in addition to and shall not affect the total amount of payments that the property owner is otherwise entitled to receive under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), as amended by the Federal Agriculture Improvement and Reform Act of 1996.

“(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Interior \$10,000,000 and the Secretary of Commerce \$5,000,000 for each of fiscal years 1998 through 2003 to assist non-Federal property owners to carry out the terms of habitat reserve programs under this subsection.”.

(h) HABITAT CONSERVATION PLANNING FUND.—Section 10(a) (16 U.S.C. 1539(a)) is further amended by adding at the end thereof the following new paragraph:

“(7) HABITAT CONSERVATION PLANNING FUND.—

“(A) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund, to be known as the ‘Habitat Conservation Planning Fund’, to be used in carrying out this subsection (referred to in this paragraph as the ‘Fund’), consisting of—

“(i) amounts made available under section 15(f);

“(ii) repayments of advances from the Fund under subparagraph (C); and

“(iii) any interest earned on investment of amounts in the Fund under subparagraph (D).

“(B) EXPENDITURES FROM FUND.—

“(i) IN GENERAL.—On request by the Secretary, the Secretary of the Treasury shall transfer from the Fund to the Secretary such amounts as the Secretary determines necessary to make interest-free advances under clause (i).

“(ii) AUTHORITY TO MAKE GRANTS AND ADVANCES.—The Secretary may make an interest-free advance from the Fund to any State, county, municipality, or other political subdivision of a State to assist in the development of a conservation plan under this subsection. The amount of the advance under this clause may not exceed the total financial contribution of the other parties participating in the development of the plan.

“(iii) CRITERIA FOR ADVANCES.—In determining whether to make an advance from the Fund, the Secretary shall consider—

“(I) the number of species covered by the plan;

“(II) the extent to which there is a commitment to participate in the planning process from a diversity of interests (including local governmental, business, environmental, and landowner interests);

“(III) the likely benefits of the plan;

“(IV) such other factors as the Secretary considers appropriate.

“(C) REPAYMENTS OF ADVANCES FROM THE FUND.—

“(i) IN GENERAL.—Except as provided in clause (ii) amounts advanced from the Fund shall be repaid not later than 10 years after the date of the advance.

“(ii) ACCELERATED REPAYMENT.—Amounts advanced from the Fund shall be repaid—

“(I) not later than 4 years after the date of the advance if no conservation plan is developed within 3 years of the date of the advance; or

“(II) not later than 5 years after the date of the advance if no permit is issued under paragraph (1)(B) with respect to the conservation plan within 4 years of the date of the advance.

“(iii) CREDITING OF REPAYMENTS.—Amounts received by the United States as repayment of advances from the Fund shall be credited to the Fund and made available for further advances in accordance with this paragraph without further appropriation.

“(D) INVESTMENT OF FUND BALANCE.—

“(i) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

“(ii) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under clause (i), obligations may be acquired—

“(I) on original issue at the issue price; or

“(II) by purchase of outstanding obligations at the market price.

“(iii) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at market price.

“(iv) CREDITS TO THE FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

“(E) TRANSFERS OF AMOUNTS.—

“(i) IN GENERAL.—The amounts required to be transferred to the Fund under this paragraph shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

“(ii) ADJUSTMENTS.—Proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.”.

(i) EFFECT ON PERMITS AND PROPOSED PLANS.—No amendment made by this section shall be interpreted to require the modification of—

(1) a permit issued under section 10 of the Endangered Species Act (16 U.S.C. 1539); or

(2) a conservation plan submitted for approval pursuant to such section prior to the date of enactment of this Act.

(j) RULE-MAKING.—Not later than 1 year after the date of enactment of this Act, the Secretary shall, after consultation with the States and notice and opportunity for public comment, publish final regulations implementing the provisions of section 10(a) of the Endangered Species Act (16 U.S.C. 1539(a)), as amended by this section.

(k) NAS REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of and prepare a report on the development and implementation of conservation plans under section 10(a) of the Endangered Species Act (16 U.S.C. 1531 et seq.). The report shall assess the extent to which those plans comply with the requirements of that Act, the role of multiple species conservation plans in preventing the need to list species covered by those plans, and the relationship of conservation plans for listed species to implementation of recovery plans. The report shall be transmitted to the Congress not later than 5 years after the date of enactment of this Act.

SEC. 6. ENFORCEMENT.

(a) ENFORCEMENT FOR INCIDENTAL TAKE.—Section 11 (16 U.S.C. 1540) is amended by adding after subsection (g) the following new subsection and redesignating the subsequent subsection accordingly:

“(h) INCIDENTAL TAKE.—In any action under subsection (a), (b), or (e)(6) of this section against any person for an alleged take incidental to the carrying out of an otherwise lawful activity, the Secretary or the Attorney General must establish, using scientifically valid principles, that the acts of such person have caused, or will cause, the take, of—

“(1) an endangered species, or

“(2) a threatened species the take of which is prohibited pursuant to a regulation under section 4(d).”.

(b) CITIZEN SUIT FOR INCIDENTAL TAKE.—Section 11(g) (16 U.S.C. 1540(g)) is amended by adding the following new paragraph after paragraph (2) and redesignating the subsequent paragraphs accordingly:

“(3) INCIDENTAL TAKE.—In any suit under this subsection against any person for an alleged take incidental to the carrying out of an otherwise lawful activity, the person commencing the suit must establish, using scientifically valid principles, that the acts of the person alleged to be in violation of section 9(a)(1) have caused, or will cause, the take, of—

“(1) an endangered species, or

“(2) a threatened species the take of which is prohibited pursuant to a regulation under section 4(d).”.

SEC. 7. EDUCATION AND TECHNICAL ASSISTANCE.

(a) IN GENERAL.—Section 13 (16 U.S.C. 1542) is amended to read as follows:

“PROPERTY OWNERS EDUCATION AND TECHNICAL ASSISTANCE PROGRAM

“SEC. 13. (a) IN GENERAL.—In cooperation with the States, the Secretary shall develop and implement a private landowners education and technical assistance program to—

“(1) inform the public about this Act;

“(2) respond to requests for technical assistance from property owners interested in conserving species listed or proposed for listing under section 4(c)(1) and candidate species on the land of the landowners; and

“(3) recognize exemplary efforts to conserve species on private land.

“(b) ELEMENTS OF THE PROGRAM.—Under the program, the Secretary shall—

“(1) publish educational materials and conduct workshops for property owners and other members of the public on the role of this Act in conserving endangered species and threatened species, the principal mechanisms of this Act for achieving species recovery, and potential sources of technical and financial assistance;

“(2) assist field offices in providing timely advice to property owners on how to comply with this Act;

“(3) provide technical assistance to State and local governments and property owners interested in developing and implementing recovery plan implementation agreements, conservation plans, and safe harbor agreements;

“(4) serve as a focal point for questions, requests, and suggestions from property owners and local governments concerning policies and actions of the Secretary in the implementation of this Act;

“(5) provide training for Federal personnel responsible for implementing this Act on concerns of property owners, to avoid unnecessary conflicts, and improving implementation of this Act on private land; and

“(6) nominate for national recognition by the Secretary property owners that are exemplary managers of land for the benefit of species listed or proposed for listing under section 4(c)(1) or candidate species.”.

(b) CONFORMING AMENDMENT.—The table of contents in the first section is amended by striking the item related to section 13 and inserting the following:

“Sec. 13. Private landowners education and technical assistance program.”.

(c) EFFECT ON PRIOR AMENDMENTS.—Nothing in this section or the amendments made by this section affects the amendments made by section 13 of the Endangered Species Act of 1973 (87 Stat. 902), as in effect on the day before the date of enactment of this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(A) IN GENERAL.—Section 15(a) (16 U.S.C. 1542(a)) is amended—

(1) in paragraph (1), by striking “and \$41,500,000 for fiscal year 1992” and inserting “\$41,500,000 for fiscal year 1992, \$135,000,000 for fiscal year 1998, \$150,000,000 for fiscal year 1999, and \$165,000,000 for each of fiscal years 2000 through 2003”;;

(2) in paragraph (2), by striking “and \$6,750,000” and inserting “\$6,750,000”; and inserting “\$50,000,000 for fiscal year 1998, \$60,000,000 for fiscal year 1999, and \$70,000,000 for each of fiscal years 2000 through 2003” after “and 1992”; and

(3) in paragraph (3), by striking “and \$2,600,000” and inserting “\$2,600,000”; and inserting “, and \$4,000,000 for each of fiscal years 1998 through 2003” after “and 1992”.

(b) EXEMPTIONS FROM ACT.—Section 15(b) (16 U.S.C. 1542(b)) is amended by inserting “and \$625,000 for each of fiscal years 1998 through 2003” after “and 1992”.

(c) CONVENTION IMPLEMENTATION.—Section 15(c) (16 U.S.C. 1542(c)) is amended by striking “and \$500,000” and inserting “\$500,000,” and by inserting “and \$1,000,000 for each fiscal year 1998 through 2003” after “and 1992”.

(d) ADDITIONAL AUTHORIZATIONS.—Section 15 (16 U.S.C. 1542) is further amended by adding the following at the end:

“(d) FINANCIAL ASSISTANCE FOR SAFE HARBOR AGREEMENTS.—There are authorized to be appropriated to the Secretary of the Interior \$10,000,000 and the Secretary of Commerce \$5,000,000 for each of fiscal years 1998 through 2003 to carry out section 10(l).

“(e) HABITAT CONSERVATION PLANNING FUND.—There are authorized to be appropriated to the Habitat Conservation Planning Fund established by section 10(a)(7) \$10,000,000 for each of fiscal years 1998 through 2000 and \$5,000,000 for each of fiscal years 2001 and 2002 to assist in the development of conservation plans.

“(f) FINANCIAL ASSISTANCE FOR RECOVERY PLAN IMPLEMENTATION.—There are authorized to be appropriated to the Secretary of Interior \$30,000,000 and the Secretary of Commerce \$15,000,000 for each of the fiscal years 1998 through 2003 to carry out section 5(l)(4).

“(g) AVAILABILITY.—Amounts made available under this section shall remain available until expended.

“(h) LIMITATION ON USE OF FUNDS.—Of the funds made available to carry out section 5 for any fiscal year, not less than \$32,000,000 shall be available to the Secretary of Interior and not less than \$13,500,000 to the Secretary of Commerce to implement actions to recover listed species. Of the funds made available to the Secretary of Interior and the Secretary of Commerce in each fiscal year to list species, the Secretary of Interior and the Secretary of Commerce shall use not less than 10% of those funds in each fiscal year for delisting species. If any of the funds made available by the previous sentence are not needed in that fiscal year for delisting eligible species, those funds shall be available for listing.”.

(e) ASSISTANCE TO STATES FOR CONSERVATION ACTIVITIES.—Section 6(i) (16 U.S.C. 1535(i)) is amended by adding at the end the following:

“(3) ASSISTANCE TO STATES FOR CONSERVATION ACTIVITIES.—There are authorized to be appropriated to the Secretary such sums as are necessary for each of fiscal years 1998 through 2003 to provide financial assistance to State agencies to carry out conservation activities under other sections of this Act, including the provision of technical assistance for the development and implementation of recovery plans.”.

SEC. 9. OTHER AMENDMENTS.

(a) DEFINITIONS.—

(1) CANDIDATE SPECIES.—Section 3 is amended by inserting the following paragraph after paragraph (1) and redesignating the subsequent paragraphs accordingly:

“(2) CANDIDATE SPECIES.—The term ‘candidate species’ means a species for which the Secretary has on file sufficient information on biological vulnerability and threats to support a proposal to list the species as an

endangered species or a threatened species, but for which listing is precluded because of pending proposals to list species that are of a higher priority. This definition shall not apply to any species defined as a ‘candidate species’ by the Secretary of Commerce prior to the date of enactment of the Endangered Species Recovery Act of 1997.”.

(2) IN COOPERATION WITH THE STATES.—Section 3 (16 U.S.C. 1532) is amended by inserting the following paragraph after paragraph (1) (as redesignated by this subsection):

“(12) IN COOPERATION WITH THE STATES.—The term ‘in cooperation with the States’ means a process in which—

“(A) the State agency in each of the affected States, or the State agency’s representative, is given an opportunity to participate in a meaningful and timely manner in the development of the standards, guidelines, and regulations to implement the applicable provisions of this Act; and

“(B) the Secretary carefully considers all substantive concerns raised by the State agency, or the State agency’s representative, and, to the maximum extent practicable consistent with this Act, incorporates their suggestions and recommendations, while retaining final decision making authority.”.

(3) RURAL AREA.—Section 3(16 U.S.C. 1532) is amended by inserting the following new paragraph after paragraph (16) (redesignated by this subsection and section 4(a)) and redesignating the subsequent paragraphs accordingly:

“(17) RURAL AREA.—The term ‘rural area’ means a county or unincorporated area that has no city or town that has a population of more than 10,000 inhabitants.”.

(4) COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—Section 3(20) (16 U.S.C. 1532(18)) (as redesignated by this subsection and section 4(a)) is amended by striking “Trust Territories of the Pacific Islands” and inserting “Commonwealth of the Northern Mariana Islands”.

(b) FINDINGS, PURPOSES, AND POLICY.—Section 2(a)(3) (16 U.S.C. 1531(a)(3)) is amended by inserting “commercial,” after “recreational.”.

(c) NO TAKE AGREEMENTS.—Section 9 (16 U.S.C. 1538) is amended by adding at the end thereof the following new subsection:

“(h) NO TAKE AGREEMENTS.—The Secretary and a non-Federal property owner may, at the request of the property owner, enter into an agreement identifying activities of the property owner that will not result in a violation of the prohibitions of paragraphs (1)(B), (1)(C), and (2)(B) of section 9(a). The Secretary shall respond to a request for an agreement submitted by a property owner within 90 days of receipt.”.

(d) CONFORMING AMENDMENTS.—

(1) TITLE.—The title of section 10 (16 U.S.C. 1539) is amended to read as follows: “CONSERVATION MEASURES AND EXCEPTIONS”.

(2) TABLE OF CONTENTS.—The table of contents in the first section of the Act is amended with respect to the item relating to section 10 to read as follows:
“Sec. 10. Conservation measures and exceptions.”.

Mr. CHAFEE. Mr. President, I am proud to sponsor, along with Senators KEMPTHORNE, BAUCUS, and REID, the Endangered Species Recovery Act of 1997, which reauthorizes the Endangered Species Act, and makes some significant improvements to the act which are long overdue. The Endangered Species Act was enacted into law in 1973 to conserve threatened and endangered species, and the ecosystems upon which they depend. The ESA is our most important law to protect our

Nation’s natural resources and biological diversity, and has often been referred to as the “crown jewel” of environmental laws.

The ESA has been instrumental in saving some of our country’s most treasured species. The bald eagle and the grizzly bear have both rebounded from precariously small populations, and the Pacific grey whale and American alligator have both recovered and have been delisted. All told, almost half of the species that fall under the act’s protection are either stabilized or improving.

One can understand better the vital need for the ESA when one realizes what we are up against: of somewhere between 10 and 100 million species on this planet, we have discovered only some 1.4 million. Despite this bounty, loss of biological diversity is taking place at a faster rate than ever before. In 1973, Congress offered this poignant observation: “as we homogenize the habitats in which these plants and animals evolved . . . we threaten their—and our own—genetic heritage. The value of this genetic heritage, is quite literally, incalculable.” It was principally for this reason that Congress passed the ESA in 1973.

Controversy has surrounded the law, however, since its passage. In the mid-1970’s, the law became ensnared in a bitter fight over the construction of the \$900 million Tellico Dam and the dam’s impacts on the hapless snail darter. The criticism has grown significantly since 1992, when the most recent authorization of the ESA expired.

Since then, funding for implementing the law has been provided through annual appropriations, which has left the future of the law on uncertain terms, and left the current working of the law subject to numerous appropriations riders, including a moratorium on the listing of species, that resulted in more than a year delay in affording protection to hundreds of species endangered with extinction.

The bill we introduce today includes many reforms. The last major amendment to the ESA was in 1988, almost 10 years ago. Since then, we have developed a greater knowledge of the science of biodiversity, a greater understanding of the problems in implementing the law on private lands, and in this era of shrinking government, a greater need for improved coordination among all levels of government. Our bill takes all this into account by focusing on several key areas: emphasizing recovery as the ultimate goal; seeking to prevent further listings; improving the scientific foundation for decisions; increasing public participation and the role of States; facilitating compliance by, and providing incentives for, private landowners; and streamlining coordination among government agencies. In making these changes, our bill addresses the criticisms leveled against the ESA in recent years.

These criticisms have come from all directions. The environmental community believes that the law has failed in its fundamental mission to recover species to full health, but rather leaves species teetering on the razor's edge of survival. Statistics bear this out: of the approximately 1,000 species currently listed, 41 percent are either improving in status or stabilized, but only 8 percent are actually improving. Furthermore, less than half of the listed species have approved recovery plans.

Private landowners, on the other hand, believe that the ESA is fundamentally flawed in its implementation, with inflexible regulations, heavy-handed enforcement, closed-door science, and no consideration of economic costs. This, too, is largely borne out by the facts: the ESA has very few tools, other than enforcement of certain prohibitions against taking listed species, with which to protect species on private lands. This weakness in the law is heightened by the fact that more than one-third of all listed species reside entirely on private lands. Furthermore, species on private lands are faring worse than on public lands.

If the ESA is to succeed in its ultimate goal of recovering species, these problems must be addressed. Our bill does just that. Most importantly, it completely overhauls the recovery planning and implementation requirements of the ESA. Previously, recovery plans were required to be prepared, but with no deadline for doing so. Once prepared, they generally sat on the shelves with no requirement or incentive to implement them. Furthermore, the scientific findings in the plans were often compromised by political and economic considerations, nor was there any requirement to actually take cost of implementation into account.

This bill requires that recovery plans be completed within a specific deadline. The recovery goal must be developed by scientists, using only the best science available. While economic costs and social impacts must be taken into account, they are considered only in choosing the best method to achieve the biologically based recovery goals. Specifically, measure to achieve the recovery goal must strike an "appropriate balance" among three factors: The effectiveness in meeting the goal; the period of time needed to reach the goal; and the social and economic impacts.

For the first time, the bill provides a requirement that Federal agencies enter into recovery implementation agreements, and also provides incentives for private persons to enter into similar agreements. These incentives include a waiver of consultation normally required under section 7 for actions that are described in sufficient detail. They also include a requirement that Federal agencies participate in the development of an agreement upon the request of a private person, so that the person will know up-front all relevant requirements in undertaking conservation actions.

The bill also improves significantly the law's ability to work on private lands. Under the current law, the permit process has generally been inflexible, cumbersome, and consequently rarely used. The Clinton administration recently instituted a number of policies to encourage landowners to apply for permits in order to conduct economic activities that take listed species on their lands. As a result, the number of permits issued by the administration has increased from 14 in 1992 to more than 200 in 1997, with an additional 250 being developed. Our bill validates and expands those policies.

The bill authorizes permits for multiple species, including both listed and nonlisted species, that depend on the same habitat. New biological standards for nonlisted species ensure that permitted activities do not contribute to the need to list those species in the future. In order to address the needs of small landowners, a more streamlined, less expensive permit process is established for low effect activities. Under this process, the permit can take effect automatically within a certain period, provided that there are no significant adverse comments.

In addition, the bill authorizes several policies and incentives to further encourage landowners to work with the Federal Government. These policies include a no-surprises guarantee that the Government will not seek additional mitigation over time; a safe harbor policy to encourage landowners to protect lands valuable to species without risking additional liability; and a candidate conservation policy, which encourages landowners to undertake protections for species before they become endangered or threatened. The bill also establishes several new funding mechanisms for incentive-based programs, including a habitat reserve program, and a habitat conservation planning fund, which acts as a revolving loan fund. A program to provide technical assistance to landowners is also created.

The bill also makes important changes to the consultation process among Federal agencies. It encourages consultations to be consolidated if they involve related actions by one agency, or they involve several agencies affecting the same species. The consultation process is streamlined by allowing the Federal agency undertaking an action to make the initial determination whether its action affects listed species, and providing an opportunity for the Fish and Wildlife Service, or, for marine species, the National Marine Fisheries Service, to comment on this determination. The Service has 60 days to object, and require a more detailed analysis that it would prepare. This process is similar to the current practice that is used by the agencies.

The bill also addresses the relationship between site-specific and programmatic Federal land management actions. Several recent lawsuits enjoined numerous site-specific actions pending completion of the consultation on the overarching programmatic action. The bill explicitly recognizes that

consultation is appropriate and required at both levels of decision-making, but ensures an orderly process for completing those consultations. In addition, the bill affords greater participation in the consultation process for any person who has sought authorization or funding from a Federal agency.

The bill goes a long way in improving the scientific basis on which decisions are made. The greatest lack of knowledge is in the status and distribution of rare and declining species. This bill requires an inventory of species on Federal lands to fill this critical data gap. Listing decisions must be peer-reviewed, and petitions to list are subject to certain minimum information requirements. Enforcement actions must use scientifically valid principles to establish whether the action caused an unlawful taking of a species. In evaluating comparable data, the Secretary would be required to use peer reviewed, field tested or empirical data.

As you can see, Mr. President, this bill not only reauthorizes the ESA, but it also significantly improves the ESA, in order to embrace needed reforms in the law. Numerous attempts to reauthorize the ESA have been made in recent years. The long and arduous effort culminating in today's bill began more than 18 months ago, as a bipartisan process to address the problems with the current law. When discussions stalled, Senator KEMPTHORNE and I spurred the process forward by releasing a discussion draft, which generated hundreds of comments. Since then, we have negotiated with Senators BAUCUS and REID, and the Clinton administration, to reach agreement on a bipartisan bill.

Just as the original ESA was passed by a Democratic Congress and signed into law by a Republican President, this bill to reauthorize the ESA is also a bipartisan product between a Republican Senate and a Democratic administration. To quote one of the foremost conservationists of our country, President Teddy Roosevelt, the conservation of natural resources is a question "upon which men of all parties and all shades of opinion may be united for the common good." The need for a healthy environment, one large enough for all species that inhabit this planet with us, is a need that transcends politics, and I firmly believe that the bill we introduce today fulfills that need, as embodied in the original passage of the ESA.

I would like to thank my distinguished colleagues, Senators KEMPTHORNE, BAUCUS, and REID, for their tireless work over the months on this important legislation, and I would like to thank the Secretary of the Interior, Bruce Babbitt, as well as his very accomplished staff, led by Jaimie Clark, Director of the Fish and Wildlife Service, and Don Barry, Acting Assistant Secretary for Fish, Wildlife and

Parks, for their willingness to work with us in negotiating a bill that they can support.

Mr. BAUCUS. Mr. President, today, it is a real pleasure for me to join my colleagues on the Senate Environment and Public Works, Senators CHAFEE, REID, and KEMPTHORNE in introducing the Endangered Species Recovery Act of 1997. The bill we are introducing today represents a real victory for bipartisan, commonsense improvements to the Endangered Species Act.

The Endangered Species Act has been an important tool in our fight to conserve ecosystems and to prevent the extinction of species. But over the years, experience has shown that the act can be improved, both for the species it is designed to protect and for ranchers, farmers, and other private landowners.

Senators CHAFEE, REID, KEMPTHORNE, and I have been working, along with the administration, for the better part of 2 years to find agreement on changes that will improve the ESA on the ground, where it really counts.

The bill we are introducing today incorporates several major improvements to ESA. Let me just reiterate a few that I think are particularly noteworthy.

First, it improves the use of good science in our decisions on listing species. It's important that we elevate the role of scientific information in our decisions on whether to put species on the endangered list. An error at this stage in the process can mean extinction for a species.

Second, the bill really turns the focus of the ESA to conserving and recovering species. It puts real deadlines on development of recovery plans and gives States a greater role in developing those plans. And it insists that we have benchmarks for measuring progress toward recovering the species.

Third, the bill opens up the process to the public. More public hearings will be held on critical issues, such as whether to list a species and what actions should be taken to recover the species. And, most important, these hearings can't be just in Washington. They must also be in the States most affected by the issue.

Fourth, the bill takes important strides in cooperating with landowners to conserve species. It encourages landowners to take voluntary steps to improve habitat and protect species on their property. And it seeks to conserve species before they become endangered, thereby avoiding the need to list them.

The bill also provides landowners with something they have never had before, technical assistance and financial aid for the new conservation agreements that are created by the bill.

These are the kind of improvements that will make the ESA work better. That will better protect species and that will help landowners.

It's been a long, hard road to reach this agreement. And I want to again

thank Senator CHAFEE, Senator REID, Senator KEMPTHORNE and Secretary Babbitt for their persistence throughout this process.

I look forward to taking this bill to the committee and to the Senate floor.

By Mr. KEMPTHORNE:

S. 1181. A bill to amend the Internal Revenue Code of 1986 to provide Federal tax incentives to owners of environmentally sensitive lands to enter into conservation easements for the protection of endangered species habitat, to allow a deduction from the gross estate of a decedent in an amount equal to the value of real property subject to an endangered species conservation agreement, and for other purposes; to the Committee on Finance.

THE ENDANGERED SPECIES HABITAT PROTECTION ACT OF 1997

Mr. KEMPTHORNE. Mr. President, I am introducing legislation today which is intended to provide private property owners additional tools in their dealings with the Endangered Species Act. For both those who wish to participate in the conservation of land for the preservation of endangered, threatened, and other species and those whose participation is involuntary, this legislation will add to the already substantial means provided to property owners in the Endangered Species Recovery Act of 1997.

For too long the Federal Government has used its enforcement procedures and its regulatory authority to dictate conservation in aid of endangered and threatened species. This method has failed to produce the kind of results we want. The Endangered Species Act as currently written is almost all stick and no carrot. I would like to begin to change that today.

For 18 months I have negotiated a bill to reauthorize the Endangered Species Act with the Democrats and the administration. Those negotiations have been successfully completed. We have introduced a bill that will provide a variety of incentives to property owners to preserve habitat through conservation agreements and plans, prelisting agreements and other preservation tools. I also have a number of ideas on how to provide tax incentives to private property owners to preserve habitat.

Let me emphasize that inclusion of these new tax incentives will truly benefit both species and people. I have met with many property owners who have said, "we would be happy to step forward and preserve habitat for species and we would grant a conservation easement if there was an incentive." Well with adoption of the ideas included in this bill there will be.

I have had critics that have said that we should not provide these kinds of incentives to private property owners because we will have too many people coming forward and saying, "I have an endangered species on my land." What is wrong with that? To my mind, that would be a welcome reversal from the

current prevailing attitude that some have about the presence of an endangered species on their property. Right now you have a situation that some land owners believe that if they do have an endangered species, or if it's suggested that they might, they're just as likely to try to remove the habitat to avoid a problem down the road. We need to change that attitude if we're going to recover endangered species.

We are currently at the crossroads of two systems. One where you have Government overregulation that tells people what they can and cannot do on their land, and the other a system that encourages property owners to step forward and do something good for species because it's good for them too.

We can depend on our property owners to do what's right and what is good for species. I know that our farmers and ranchers know how to be innovative and creative. They know how to help species. And they know how to manage land.

The right system is one where we encourage active involvement of landowners through incentives. Certainly, I know that if I were an endangered species, I would much rather have a friendly and willing landlord—one that viewed me as an asset—than a reluctant one who viewed me as a threat and a liability because of some bureaucrats and regulations handed down from Washington, DC.

That is what this legislation will do. It is going to make the people active partners.

The legislation I am introducing also includes a provision designed to safeguard the property rights of individuals. The Endangered Species Recovery Act of 1997 will do much to improve and enhance the rights of property owners. The bill limits the ability of the Federal Government and environmental groups to restrict otherwise legal activities on private lands. Under the law today, the Government and environmental groups have used the take prohibition to try to prohibit logging and development on private lands and a city's pumping of an aquifer for drinking water, even where there was no scientific evidence that the activity would in fact harm an endangered species. Our bill will change that, reaffirming that the Federal Government, or an environmental group, has the burden of demonstrating that an activity will actually harm a species and they must meet that burden using real science, not just assumptions or speculation.

ESRA '97 will protect the rights of property owners by making them a part of the process—a process that has excluded them for years. Now citizens, business people and State and local government representatives will be at the table for the development of recovery plans. Furthermore, the recovery plans developed will analyze the cost on the public and private sectors and the impact on jobs and property values for any recovery plan selected.

Under ERSA '97 we will substantially reduce the number of consultations under section 7 of the act. But if a consultation is necessary under the act, property owners will have both a seat at the table and the information they need to meaningfully participate in the consultation.

Throughout ERSA '97 we have kept our bond with the property owners of Idaho and America. But there is always more that should be done.

The Endangered Species Habitat Protection Act contains strong property rights language. That language was developed in conjunction with some of the best minds in the property rights movement. Private property rights is a cornerstone of our democracy. As such it is incumbent on this Congress to address the issue in this Congress. The Endangered Species Habitat Protection Act contains my contribution to the effort.

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

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

S. 1181

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the "Endangered Species Habitat Protection Act of 1997".

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Nonrefundable credit for the agreement to manage land to preserve endangered species.
- Sec. 4. Enhanced deduction for the donation of a conservation easement.
- Sec. 5. Additional deduction for certain State and local real property taxes imposed with respect to property subject to an endangered species conservation agreement.
- Sec. 6. Exclusion from estate for real property subject to endangered species conservation agreement.
- Sec. 7. Exclusion of 75 percent of gain on sales of land to certain persons for the protection of habitat.
- Sec. 8. Right to compensation.

SEC. 2. FINDINGS.

The Senate finds and declares the following:

(1) The majority of American property owners recognize the importance of protecting the environment, including the habitats upon which endangered and threatened species depend.

(2) Current Federal tax laws discourage placement of privately held lands into endangered and threatened species conservation agreements.

(3) The Federal Government should assist landowners in the goal of conserving endangered and threatened species and their habitat.

(4) If the environment is to be protected and preserved, existing Federal tax laws must be modified or changed to provide tax incentives to landowners to attain the goal of conservation of endangered and threatened species and the habitats on which they depend.

SEC. 3. NONREFUNDABLE CREDIT FOR THE AGREEMENT TO MANAGE LAND TO PRESERVE ENDANGERED SPECIES.

(a) **IN GENERAL.**—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25A the following new section:

"SEC. 25B. CREDIT FOR AGREEMENT TO MANAGE LAND TO PRESERVE ENDANGERED SPECIES.

"(a) **ALLOWANCE OF CREDIT.**—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the lesser of—

"(1) the applicable acreage rate of the qualified acreage, or

"(2) \$50,000.

"(b) **APPLICABLE ACREAGE RATE.**—For purposes of subsection (a), the applicable acreage rate is the rate established by the Secretary of the Interior for the taxable year utilizing rates comparable to rental payments under the conservation reserve program under section 1234 of the Food Security Act of 1985 (16 U.S.C. 3834).

"(c) **QUALIFIED ACREAGE.**—For purposes of this section, the term 'qualified acreage' means any acreage—

"(1) which is subject to an endangered species conservation agreement under the Endangered Species Act (16 U.S.C. 1531 et seq.) and accepted into the expanded conservation reserve program pursuant to section 1231(d)(2) of the Food Security Act of 1985 (16 U.S.C. 3831(d)(2)),

"(2) which is owned by one or more individuals directly or indirectly through a partnership or S corporation that is held entirely by individuals, and

"(3) subject to a perpetual restriction that is valued pursuant to section 170(h)(7).

"(d) **CREDIT RECAPTURE.**—If, during the period of the endangered species conservation agreement, the taxpayer transfers the qualified acreage without also transferring the taxpayer's obligations under the expanded conservation reserve program under subchapter B of chapter 1 of subtitle D of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) and the endangered species conservation agreement, then the taxpayer's tax under this chapter for the taxable year shall be increased by the amount of the credit received under this section during all prior years by such taxpayer, plus interest at the overpayment rate established under section 6621 on such amount for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved. No deduction shall be allowed under this chapter for interest described in the preceding sentence, and any increase in tax under the preceding sentence shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, D, or G of this part.

"(e) **JOINT OWNERS.**—For purposes of this section, the amount of credit under this section that any joint owner is entitled to constitutes the total credit allowable under this section with respect to the qualified acreage multiplied by the individual's percentage ownership in the qualified acreage. Each joint owner shall include on the return of tax in which the credit is claimed the names and taxpayer identification numbers of all other joint owners in the property.

"(f) **REGULATORY AUTHORITY.**—

"(1) **TREASURY DEPARTMENT.**—The Secretary shall promulgate regulations to ensure that a taxpayer cannot subdivide property to determine such taxpayer's qualified acreage unless all of the acreage such taxpayer owns within a significant region is submitted to the expanded conservation re-

serve program, whether or not such acreage is eligible for a credit under this section.

"(2) **SECRETARY OF THE INTERIOR.**—As necessary, the Secretary of the Interior shall determine the applicable acreage rate for regions within the United States based on rates comparable to those under the expanded conservation reserve program. Once a rate is prescribed under an endangered species conservation agreement, however, such rate shall remain in effect for the duration of that agreement."

(b) **CONFORMING AMENDMENTS.**—Subchapter B of chapter 1 of subtitle D of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) is amended—

(1) in section 1231(b)—

(A) by striking the period at the end and inserting "; or"; and

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

"(5) lands with respect to which the owner or operator and the Secretary of the Interior or the Secretary of Commerce have entered into an endangered species conservation agreement.";

(2) in section 1231(d), by striking "(d)" and inserting "(d)(1)" and by adding at the end the following new paragraph:

"(2) The Secretary of the Interior and the Secretary of Commerce shall enter into endangered species conservation agreements under this section to enroll acreage, in addition to the 38,000,000 acres authorized by paragraph (1), into the expanded conservation reserve, for which no payment is due under section 3834, totaling 5,000,000 acres during calendar years [1997 through 2002]. In enrolling such acres, the Secretary of the Interior and the Secretary of Commerce shall reserve 1,000,000 acres for enrollment under this section in calendar year [1997].";

(3) in section 1232, by adding at the end the following new subsection:

"(f) This section shall not apply to owners and operators subject to endangered species conservation agreements.";

(4) in section 1234, by adding at the end the following new subsection:

"(i) This section shall not apply to owners and operators subject to endangered species conservation agreements."; and

(5) by inserting after section 1234 the following new section:

"SEC. 1234A. NO PAYMENTS TO PROPERTIES FOR WHICH AN INCOME TAX CREDIT OR DEDUCTION IS TAKEN.

"The Secretary shall ensure that no payment be made under this subchapter to any owner if that owner has indicated an intention to claim an income tax credit (under section 25B of the Internal Revenue Code of 1986) for participation in this program, or an income tax deduction (under section 170(h)(4)(A)(iii) of such Code)."

(c) **CLERICAL AMENDMENT.**—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25A the following new item:

"Sec. 25B. Credit for agreement to manage land to preserve endangered species."

(d) **EFFECTIVE DATES.**—

(1) **CREDIT.**—The amendments made by subsections (a) and (c) shall apply to taxable years beginning after December 31, [1995].

(2) **CONFORMING AMENDMENTS.**—The amendments made by subsection (b) shall take effect on the date of enactment of the Endangered Species Habitat Protection Act of 1997.

SEC. 4. ENHANCED DEDUCTION FOR THE DONATION OF A CONSERVATION EASEMENT.

(a) **IN GENERAL.**—Subparagraph (A) of section 170(h)(4) of the Internal Revenue Code of

1986 (defining conservation purpose) is amended by striking "or" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", or", and by adding at the end the following new clause:

"(v) the protection of a species designated endangered by the Secretary of the Interior or the Secretary of Commerce."

(b) ENHANCED VALUATION.—Section 170(h) of the Internal Revenue Code of 1986 (defining qualified conservation contribution) is amended by adding at the end the following new paragraph:

"(7) ENHANCED VALUATION OF PROPERTY WITH ENDANGERED SPECIES.—For purposes of this section, the valuation of a perpetual restriction granted to the Secretary of the Interior or the Secretary of Commerce or to a State agency implementing an endangered species program for the purpose described in paragraph (4)(A)(iii) shall be made by comparing the value of the property after the restriction is granted with the value of that same property without either the encumbrance of such restriction or any of the restrictions placed on such property by the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after the date of the enactment of this Act.

SEC. 5. ADDITIONAL DEDUCTION FOR CERTAIN STATE AND LOCAL REAL PROPERTY TAXES IMPOSED WITH RESPECT TO PROPERTY SUBJECT TO AN ENDANGERED SPECIES CONSERVATION AGREEMENT.

(a) IN GENERAL.—Section 164 of the Internal Revenue Code of 1986 (relating to deductions for taxes) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) ADDITIONAL DEDUCTION FOR CERTAIN STATE AND LOCAL REAL PROPERTY TAXES IMPOSED WITH RESPECT TO PROPERTY SUBJECT TO AN ENDANGERED SPECIES CONSERVATION AGREEMENT.—

"(1) GENERAL RULE.—Except as provided in paragraph (3), in the case of property—

"(A) which, on the last day of the taxable year, is described in section 25B(c)(1), and

"(B) with respect to which no recapture event described in section 25B(d) has occurred, a deduction in the amount determined under paragraph (2) shall be allowed for all State and local real property taxes paid or accrued with respect to such property during such year. The deduction allowed by this subsection shall be in addition to any other deduction allowed by this section.

"(2) AMOUNT OF ADDITIONAL DEDUCTION.—The deduction allowed by this subsection shall equal 25 percent of the amount of State and local real property taxes that are otherwise deductible under this section without regard to this subsection.

"(3) DEDUCTION NOT ALLOWED.—No deduction shall be allowed under this subsection for taxes imposed upon real property—

"(A) with respect to which a credit under section 25B is allowable, or

"(B) subject to a perpetual restriction that is valued pursuant to section 170(h)(7)."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, [1995].

SEC. 6. EXCLUSION FROM ESTATE FOR REAL PROPERTY SUBJECT TO ENDANGERED SPECIES CONSERVATION AGREEMENT.

(a) IN GENERAL.—Part IV of subchapter A of chapter 11 of the Internal Revenue Code of 1986 (relating to taxable estate) is amended by adding at the end the following new section:

"SEC. 2057. CERTAIN REAL PROPERTY SUBJECT TO ENDANGERED SPECIES CONSERVATION AGREEMENT.

"(a) GENERAL RULE.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to the adjusted value of real property included in the gross estate which is subject to an endangered species conservation agreement.

"(b) PROPERTY SUBJECT TO AN ENDANGERED SPECIES CONSERVATION AGREEMENT.—For purposes of this section—

"(1) IN GENERAL.—Real property shall be treated as subject to an endangered species conservation agreement if—

"(A) each person who has an interest in such property (whether or not in possession) has entered into—

"(i) an endangered species conservation agreement with respect to such property, and

"(ii) a written agreement with the Secretary consenting to the application of subsection (d), and

"(B) the executor of the decedent's estate—

"(i) elects the application of this section, and

"(ii) files with the Secretary such endangered species conservation agreement.

"(2) ADJUSTED VALUE.—The adjusted value of any real property shall be its value for purposes of this chapter, reduced by any amount deductible under section 2053(a)(4) or 2055(f) with respect to the property.

"(c) ENDANGERED SPECIES CONSERVATION AGREEMENT.—For purposes of this section—

"(1) IN GENERAL.—The term 'endangered species conservation agreement' means a written agreement entered into with the Secretary of the Interior or the Secretary of Commerce—

"(A) which commits each person who signed such agreement to carry out on the real property activities or practices not otherwise required by law or to refrain from carrying out on such property activities or practices that could otherwise be lawfully carried out,

"(B) which is certified by such Secretary as assisting in the conservation of any species which is—

"(i) designated by such Secretary as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.),

"(ii) proposed for such designation, or

"(iii) officially identified by such Secretary as a candidate for possible future protection as an endangered or threatened species, and

"(C) which applies to at least one-half of the total area of the property.

"(2) ANNUAL CERTIFICATION TO THE SECRETARY BY THE SECRETARY OF THE INTERIOR OR THE SECRETARY OF COMMERCE OF THE STATUS OF ENDANGERED SPECIES CONSERVATION AGREEMENTS.—If the executor elects the application of this section, the executor shall promptly give written notice of such election to the Secretary of the Interior or the Secretary of Commerce. The Secretary of the Interior or the Secretary of Commerce shall thereafter annually certify to the Secretary that the endangered species conservation agreement applicable to any property for which such election has been made remains in effect and is being satisfactorily complied with.

"(d) RECAPTURE OF TAX BENEFIT IN CERTAIN CASES.—

"(1) DISPOSITION OF INTEREST OR MATERIAL BREACH.—

"(A) IN GENERAL.—Except as provided in subparagraph (C), an additional tax in the amount determined under subparagraph (B) shall be imposed on any person on the earlier of—

"(i) the disposition by such person of any interest in property subject to an endangered species conservation agreement (other than a disposition described in subparagraph (C)),

"(ii) the failure by such person to comply with the terms of the endangered species conservation agreement, or

"(iii) the termination of the endangered species conservation agreement.

"(B) AMOUNT OF ADDITIONAL TAX.—The amount of the additional tax imposed by subparagraph (A) shall be an amount that bears the same ratio to the fair market value of the real property at the time of the event described in subparagraph (A) as the ratio of the amount by which the estate tax liability was reduced by virtue of this section bore to the fair market value of such property at the time the executor filed the agreement under subsection (b)(1). For purposes of this subparagraph, the term 'estate tax liability' means the tax imposed by section 2001 reduced by the credits allowable against such tax.

"(C) EXCEPTION IF TRANSFEREE ASSUMES OBLIGATIONS OF TRANSFEROR.—Subparagraph (A)(i) shall not apply if the transferor and the transferee of the property enter into a written agreement pursuant to which the transferee agrees—

"(i) to assume the obligations imposed on the transferor under the endangered species conservation agreement,

"(ii) to assume personal liability for any tax imposed under subparagraph (A) with respect to any future event described in subparagraph (A), and

"(iii) to notify the Secretary of the Treasury and the Secretary of the Interior or the Secretary of Commerce that the transferee has assumed such obligations and liability.

If a transferee enters into an agreement described in clauses (i), (ii), and (iii), such transferee shall be treated as signatory to the endangered species conservation agreement the transferor entered into.

"(2) DUE DATE OF ADDITIONAL TAX.—The additional tax imposed by paragraph (1) shall become due and payable on the day that is 6 months after the date of the disposition referred to in paragraph (1)(A)(i) or, in the case of an event described in clause (ii) or (iii) of paragraph (1)(A), on April 15 of the calendar year following any year in which the Secretary of the Interior or the Secretary of Commerce fails to provide the certification required under subsection (c)(2).

"(e) STATUTE OF LIMITATIONS.—If a taxpayer incurs a tax liability pursuant to subsection (d)(1)(A), then—

"(1) the statutory period for the assessment of any additional tax imposed by subsection (d)(1)(A) shall not expire before the expiration of 3 years from the date the Secretary is notified (in such manner as the Secretary may by regulation prescribe) of the incurring of such tax liability, and

"(2) such additional tax may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law that would otherwise prevent such assessment.

"(f) ELECTION AND FILING OF AGREEMENT.—The election under this section shall be made on the return of the tax imposed by section 2001. Such election, and the filing under subsection (a) of an endangered species conservation agreement, shall be made in such manner as the Secretary shall by regulation provide.

"(g) APPLICATION OF THIS SECTION TO INTERESTS IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—The Secretary shall prescribe regulations setting forth the application of this section in the case of an interest in a partnership, corporation, or trust which, with respect to a decedent, is an interest in

a closely held business (within the meaning of paragraph (1) of section 6166(b)). For purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are heirs of the decedent shall be treated as a present interest."

(b) CARRYOVER BASIS.—Section 1014(a)(4) of the Internal Revenue Code of 1986 (relating to basis of property acquired from a decedent) is amended by inserting "or 2057" after "section 2031(c)".

(c) CLERICAL AMENDMENT.—The table of sections for part IV of subchapter A of chapter 11 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 2057. Certain real property subject to endangered species conservation agreement."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

SEC. 7. EXCLUSION OF 75 PERCENT OF GAIN ON SALES OF LAND TO CERTAIN PERSONS FOR THE PROTECTION OF HABITAT.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 of the Internal Revenue Code of 1986 (relating to treatment of capital gains) is amended by adding at the end the following new section:

"SEC. 1203. 75 PERCENT EXCLUSION FOR GAIN ON SALES OF LAND TO CERTAIN PERSONS FOR THE PROTECTION OF HABITAT.

"(a) EXCLUSION.—Gross income shall not include 75 percent of any gain from the sale of any land to a conservation purchaser if—
 "(1) such land was owned by the taxpayer or a member of the taxpayer's family (as defined in section 2032A(e)(2)) at all times during the 3-year period ending on the date of the sale, and
 "(2) such land is being acquired by a conservation purchaser for the purpose of protecting the habitat of any species listed by the Secretary of the Interior or the Secretary of Commerce under the Endangered Species Act as endangered or threatened, proposed for listing as endangered or threatened, or which is a candidate for such listing.

"(b) CONSERVATION PURCHASER.—For purposes of this section—
 "(1) CONSERVATION PURCHASER.—The term 'conservation purchaser' means—
 "(A) any agency of the United States or of any State or local government, and
 "(B) any qualified organization.
 "(2) QUALIFIED ORGANIZATION.—The term 'qualified organization' has the meaning given such term by section 170(h)(3) (determined without regard to section 170(b)(1)(A)(v))."

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 1203. 75-percent exclusion for gain on sales of land to certain persons for the protection of habitat."
 (c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, [1997].

SEC. 8. RIGHT TO COMPENSATION.

(a) PROHIBITION.—No agency action affecting privately owned property under this section shall result in the diminishment of the value of any portion of that property by 30 percent or more unless compensation is offered in accordance with this section.

(b) COMPENSATION FOR DIMINISHMENT.—Any agency that takes an action the economic impact of which exceeds the amount provided in subsection (a)—

(1) shall compensate the property owner for the diminution in value of the portion of that property resulting from the action; or

(2) if the diminution in value of a portion of that property is greater than 50 percent, at the option of the owner, such agency shall buy that portion of the property and shall pay fair market value based on the value of the property before the diminution.

(c) REQUEST OF OWNER.—A property owner seeking compensation under this section shall make a written request for compensation to the agency whose action would limit the otherwise lawful use of property. The request shall, at a minimum, identify the affected portion of the property, the nature of the diminution, and the amount of compensation claimed.

(d) CHOICE OF REMEDIES.—If the parties have not reached an agreement on compensation within 180 days after the written request is made, the owner may elect binding arbitration through alternative dispute resolution or seek compensation due under this section in a civil action. The parties may by mutual agreement extend the period of negotiation on compensation beyond the 180-day period without loss of remedy to the owner under this section. In the event the extension period lapses the owner may elect binding arbitration through alternative dispute resolution or seek compensation due under this section in a civil action.

(e) ALTERNATIVE DISPUTE RESOLUTION.—
 (1) IN GENERAL.—In the administration of this section—

(A) arbitration procedures shall be in accordance with the alternative dispute resolution procedures established by the American Arbitration Association; and

(B) in no event shall arbitration be a condition precedent or an administrative procedure to be exhausted before the filing of a civil action under this section.

(2) REVIEW OF ARBITRATION.—

(A) APPEAL OF DECISION.—Appeal from arbitration decisions shall be to the United States District Court for the district in which the property is located or the United States Court of Federal Claims in the manner prescribed by law for the claim under this section.

(B) RULES OF ENFORCEMENT OF AWARD.—The provisions of title 9, United States Code (relating to arbitration), shall apply to enforcement of awards rendered under this section.

(f) CIVIL ACTION.—An owner who prevails in a civil action against any agency pursuant to this section shall be entitled to, and such agency shall be liable for, just compensation, plus reasonable attorney's fees and other litigation costs, including appraisal fees.

(g) SOURCE OF PAYMENTS.—Any payment made under this section shall be paid from the responsible agency's annual appropriation supporting the agency's activities giving rise to the claim for compensation. If insufficient funds are available to the agency in the fiscal year in which the award becomes final the agency shall pay the award from appropriations available in the next fiscal year.

(h) DEFINITIONS.—For the purposes of this section—

(1) the term "agency" has the meaning given that term in section 551 of title 5, United States Code;

(2) the term "agency action" means any action or decision taken by any agency that at the time of such action or decision adversely affects private property rights;

(3) the term "fair market value" means the likely price at which property would change hands, in a competitive and open market under all conditions requisite to fair sale, between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of

relevant facts, prior to occurrence of the agency action;

(4) the term "just compensation"—

(A) means compensation equal to the full extent of a property owner's loss, including the fair market value of the private property taken, whether the taking is by physical occupation or through regulation, exaction, or other means; and

(B) shall include compounded interest calculated from the date of the taking until the date the United States tenders payment;

(5) the term "owner" means the owner or possessor of property or rights in property at the time the taking occurs, including when—

(A) the statute, regulation, rule, order, guideline, policy, or action is passed or promulgated; or

(B) the permit, license, authorization, or governmental permission is denied or suspended;

(6) the term "property" means land, an interest in land, proprietary water rights, and any personal property that is subject to use by the Federal Government or to a restriction on use;

(7) the term "private property" or "property" means all interests constituting real property, as defined by Federal or State law, protected under the fifth amendment to the United States Constitution, any applicable Federal or State law, or this section, and more specifically constituting—

(A) real property, whether vested or unvested, including—

(i) estates in fee, life estates, estates for years, or otherwise;

(ii) inchoate interests in real property such as remainders and future interests;

(iii) personalty that is affixed to or appurtenant to real property;

(iv) easements;

(v) leaseholds;

(vi) recorded liens; and

(vii) contracts or other security interests in, or related to, real property;

(B) the right to use water or the right to receive water, including any recorded liens on such water right; or

(C) rents, issues, and profits of land, including minerals, timber, fodder, crops, oil and gas, coal, or geothermal energy.

By Ms. SNOWE (for herself, Mr. ABRAHAM and Mr. GRAMM):

S. 1182. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to limit consideration of nonemergency matters in emergency legislation and permit matter that is extraneous to emergencies to be stricken as provided in the Byrd rule; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one committee reports, the other committee have 30 days to report or be discharged.

THE EMERGENCY SPENDING CONTROL ACT

Ms. SNOWE. Mr. President, I rise today to introduce legislation that will end a common abuse of the budget process in the Congress: the attachment of nonemergency provisions to emergency spending bills. Senator ABRAHAM and Senator GRAMM are also original sponsors of this legislation.

At a time when Congress and the President have come together and agreed on a plan to balance the budget by the year 2002, I believe it is appropriate that we now seek to ensure that

all future spending decisions be fully weighed and considered before the tax dollars of hard-working Americans are spent. We must ensure that the costs and benefits of a proposal are thoroughly reviewed through our carefully structured budget process—not allowed to be pushed through the Congress with minimal debate and consideration. The legislation I am introducing today would address one of the ways in which spending programs are pushed through Congress with minimal budget scrutiny: the attachment of nonemergency provisions to emergency spending bills.

Mr. President, as my colleagues know, emergency spending bills have been afforded special treatment because of the unique problems they address. While the annual budget and appropriations process typically takes months to complete, emergency spending legislation often receives special, accelerated consideration that can lead to its adoption in days or weeks. This expedited treatment is understandable: When a flood, earthquake, or other natural disaster imperils the lives and safety of the American people, Congress and the President should be ready and able to respond quickly.

We have even made special exceptions for emergency spending bills within our budgetary rules to ensure that disasters and other emergencies are quickly addressed. While we generally require that new spending be offset to ensure the deficit is not increased, we allow this requirement to be waived if the moneys are being spent on an emergency item. In addition, we waive our annual budgetary spending caps if the moneys are being spent to address an emergency or disaster.

Because of their expedited treatment and budgetary exceptions, emergency spending bills have become a magnet for nonemergency items. Rather than subject a proposal to the regular budget and appropriations process, provisions are often attached to emergency spending bills that are moving through Congress on a virtual fast track.

Although nonemergency items in an emergency spending bill are still subject to the annual spending caps, no offset is required if such spending would be below the annual limit. Furthermore, even if a nonemergency item is offset in an emergency spending bill, the expedited consideration of that legislation often does not allow for a thorough analysis in the broader context of the budget. Rather than subjecting the nonemergency spending provision to the same scrutiny as other programs in the budget and weighing its merits accordingly, Congress is forced to make a rapid decision. Delaying the process and carefully weighing these non-emergency items would also mean risking the timely delivery of assistance to those who have been affected by an emergency or disaster. Such a delay is simply not acceptable.

Mr. President, the bill I am introducing today would eliminate this

problem and this practice by ensuring that all nonemergency spending items are subject to the same budget scrutiny and same budgetary rules. If my legislation is adopted, emergency spending bills would no longer be a convenient vehicle for spending money on nonemergency items. Rather, emergency spending bills would be just that: emergency spending bills—not Christmas trees with other goodies and presents tucked beneath them.

Under my bill, nonemergency provisions in an emergency or disaster spending bill would be subject to a new three-fifths majority point of order. If a nonemergency item is included in an emergency spending bill or related conference report—or is contained in an amendment that is being offered to such a bill—this new point of order could be raised by any Member, and a three-fifths majority vote would be required to waive it.

I believe the Members of this body are familiar with the Byrd rule and its impact on the reconciliation process, and my new provision would be administered in much the same way. The only difference would be that while the Byrd rule applies to budget reconciliation bills, this rule would apply to emergency spending bills.

Mr. President, we must no longer allow nonemergency items to be attached to emergency spending bills. We have created an expedited process for considering emergency spending bills for very sound reasons—but providing a vehicle for nonemergency items to be rushed through Congress was not one of them.

As we work toward a balanced budget in the year 2002, I would urge that Congress and the President carefully weigh the merits of every spending program and make priorities accordingly. My legislation would help us achieve this objective by ensuring that non-emergency items are not rushed through Congress while riding on the back of emergency spending bills. I urge that my colleagues join me in this effort and support this legislation.

ADDITIONAL COSPONSORS

S. 474

At the request of Mr. KYL, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 474, a bill to amend sections 1081 and 1084 of title 18, United States Code.

S. 617

At the request of Mr. JOHNSON, the names of the Senator from Idaho [Mr. KEMPTHORNE], the Senator from North Dakota [Mr. CONRAD], and the Senator from Colorado [Mr. CAMPBELL] were added as cosponsors of S. 617, a bill to amend the Federal Meat Inspection Act to require that imported meat, and meat food products containing imported meat, bear a label identifying the country of origin.

S. 766

At the request of Ms. SNOWE, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cospon-

sor of S. 766, a bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

S. 834

At the request of Mr. HARKIN, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 834, a bill to amend the Public Health Service Act to ensure adequate research and education regarding the drug DES.

S. 852

At the request of Mr. LOTT, the names of the Senator from New Mexico [Mr. BINGAMAN] and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of S. 852, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.

S. 1141

At the request of Mr. JOHNSON, the name of the Senator from Missouri [Mr. ASHCROFT] was added as a cosponsor of S. 1141, a bill to amend the Energy Policy Act of 1992 to take into account newly developed renewable energy-based fuels and to equalize alternative fuel vehicle acquisition incentives to increase the flexibility of controlled fleet owners and operators, and for other purposes.

S. 1173

At the request of Mr. WARNER, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 1173, a bill to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

S. 1178

At the request of Mr. AKAKA, his name was added as a cosponsor of S. 1178, a bill to amend the Immigration and Nationality Act to extend the visa waiver pilot program, and for other purposes.

SENATE RESOLUTION 116

At the request of Mr. LEVIN, the names of the Senator from Hawaii [Mr. INOUE] and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of Senate Resolution 116, a resolution designating November 15, 1997, and November 15, 1998, as "America Recycles Day."

SENATE RESOLUTION 121

At the request of Mr. SPECTER, the names of the Senator from Arkansas [Mr. HUTCHINSON], the Senator from Missouri [Mr. ASHCROFT], the Senator from Alabama [Mr. SHELBY], the Senator from New York [Mr. D'AMATO], the Senator from Ohio [Mr. DEWINE], the Senator from Oklahoma [Mr. INHOFE], and the Senator from Kentucky [Mr. FORD] were added as cosponsors of Senate Resolution 121, a resolution urging the discontinuance of financial assistance to the Palestinian Authority unless and until the Palestinian Authority demonstrates a 100-percent maximum effort to curtail terrorism.

AMENDMENTS SUBMITTED

THE FOOD AND DRUG ADMINISTRATION MODERNIZATION AND ACCOUNTABILITY ACT OF 1997
 PRESCRIPTION DRUG USERS FEE REAUTHORIZATION ACT OF 1997

KENNEDY AMENDMENT NO. 1190

(Ordered to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill (S. 830) to amend the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to improve the regulation of food, drugs, devices, and biological products, and for other purposes; as follows:

Amend section 406 to read as follows:

SEC. 406. LIMITATIONS ON INITIAL CLASSIFICATION DETERMINATIONS.

Section 510 (21 U.S.C. 360) is amended by adding at the end the following:

“(m) The Secretary may not withhold a determination of the initial classification of a device under section 513(f)(1) because of a failure to comply with any provision of this Act that is unrelated to a substantial equivalence decision, including a failure to comply with the requirements relating to good manufacturing practices under section 520(f), unless such failure could result in harm to human health from such device.”.

HATCH AMENDMENTS NOS. 1191-1192

(Ordered to lie on the table.)

Mr. HATCH submitted two amendments intended to be proposed by him to amendments intended to be proposed to the bill, S. 830, supra; as follows:

AMENDMENT NO. 1191

At the end of the matter proposed to be inserted, insert the following:

SEC. . SAFETY REPORT DISCLAIMERS.

Chapter IX (21 U.S.C. 391 et seq.), as amended by section 804, is further amended by adding at the end the following:

“SEC. 908. SAFETY REPORT DISCLAIMERS.

“With respect to any entity that submits or is required to submit a safety report or other information in connection with the safety of a product (including a product which is a food, drug, new drug, device, dietary supplement, or cosmetic) under this Act (and any release by the Secretary of that report or information), such report or information shall not be construed to necessarily reflect a conclusion by the entity or the Secretary that the report or information constitutes an admission that the product involved caused or contributed to an adverse experience, or otherwise caused or contributed to a death, serious injury, serious illness, or malfunction. Such an entity need not admit, and may deny, that the report or information submitted by the entity constitutes an admission that the product involved caused or contributed to an adverse experience or caused or contributed to a death, serious injury, serious illness, or malfunction.”.

AMENDMENT NO. 1192

At the end of the matter proposed to be inserted, insert the following:

(d) MISSION STATEMENT.—Section 903(b), as amended by section 101(2), is further amended by striking paragraphs (1) and (2) and inserting the following:

“(1) IN GENERAL.—The Secretary, acting through the Commissioner, in consultation with experts in science, medicine, and public health, and in cooperation with consumers, users, manufacturers, importers packers, distributors, and retailers of regulated products, shall protect the public health by taking actions that help ensure that—

“(A) foods are safe, wholesome, sanitary, and properly labeled;

“(B) human and veterinary drugs, including biologics, are safe and effective;

“(C) there is reasonable assurance of safety and effectiveness of devices intended for human use;

“(D) cosmetics are safe; and

“(E) public health and safety are protected from electronic product radiation.

“(2) SPECIAL RULES.—The Secretary, acting through the Commissioner, shall promptly and efficiently review clinical research and take appropriate action on the marketing of regulated products in a manner that does not unduly impede innovation or product availability. The Secretary, acting through the Commissioner, shall participate with other countries to reduce the burden of regulation, to harmonize regulatory requirements, and to achieve appropriate reciprocal arrangements with other countries.”.

HARKIN (AND OTHERS)
 AMENDMENT NO. 1193

(Ordered to lie on the table.)

Mr. HARKIN (for himself, Mr. HATCH, Mr. DASCHLE, and Ms. MIKULSKI) submitted an amendment intended to be proposed by them to an amendment intended to be proposed to the bill, S. 830, supra; as follows:

At the end of the amendment, insert the following new section:

SEC. . ESTABLISHMENT OF NATIONAL CENTER FOR COMPLEMENTARY AND ALTERNATIVE MEDICINE.

(a) IN GENERAL.—Title IV of the Public Health Service Act (42 U.S.C. 281 et seq.) is amended—

(1) by striking section 404E; and

(2) in part E, by amending subpart 4 to read as follows:

“Subpart 4—National Center for Complementary and Alternative Medicine

“SEC. 485C. PURPOSE OF CENTER.

“(a) IN GENERAL.—The general purposes of the National Center for Complementary and Alternative Medicine (in this subpart referred to as the ‘Center’) are—

“(1) the conduct and support of basic and applied research (including both intramural and extramural research), research training, the dissemination of health information, and other programs, including prevention programs, with respect to identifying, investigating, and validating complementary and alternative treatment, prevention and diagnostic systems, modalities, and disciplines; and

“(2) carrying out the functions specified in sections 485D (relating to dietary supplements).

The Center shall be headed by a director, who shall be appointed by the Secretary. The Director of the Center shall report directly to the Director of NIH.

“(b) ADVISORY COUNCIL.—The Secretary shall establish an advisory council for the Center in accordance with section 406, except that the members of the advisory council who are not ex officio members shall include one or more practitioners from each of the disciplines and systems with which the Center is concerned, and at least 3 individuals representing the interests of individual consumers of complementary and alternative medicine.

“(c) COMPLEMENT TO CONVENTIONAL MEDICINE.—In carrying out subsection (a), the Director of the Center shall, as appropriate, study the integration of alternative medical treatment and diagnostic systems, modalities, and disciplines into the practice of conventional medicine as a complement to such medicine and into health care delivery systems in the United States.

“(d) APPROPRIATE SCIENTIFIC EXPERTISE.—The Director of the Center, after consultation with the advisory council for the Center and the division of research grants, shall ensure that scientists with appropriate expertise in research on complementary and alternative medicine are incorporated into the review, oversight, and management processes of all research projects and other activities funded by the Center. In carrying out this subsection, the Director of the Center, as necessary, may establish review groups with appropriate scientific expertise.

“(e) EVALUATION OF VARIOUS DISCIPLINES AND SYSTEMS.—In carrying out subsection (a), the Director of the Center shall identify and evaluate alternative medical treatment and diagnostic modalities in each of the disciplines and systems with which the Center is concerned, including each discipline and system in which accreditation, national certification, or a State license is available.

“(f) ENSURING HIGH QUALITY, RIGOROUS SCIENTIFIC REVIEW.—In order to ensure high quality, rigorous scientific review of complementary and alternative medical and diagnostic systems, modalities, and disciplines, the Director of the Center shall conduct or support the following activities:

“(1) Outcomes research and investigations.

“(2) Epidemiological studies.

“(3) Health services research.

“(4) Basic science research.

“(5) Clinical trials.

“(6) Other appropriate research and investigational activities.

“(g) DATA SYSTEM; INFORMATION CLEARINGHOUSE.—

“(1) DATA SYSTEM.—The Director of the Center shall establish a bibliographic system for the collection, storage, and retrieval of worldwide research relating to complementary and alternative medical treatment and diagnostic systems, modalities, and disciplines. Such a system shall be regularly updated and publicly accessible.

“(2) CLEARINGHOUSE.—The Director of the Center shall establish an information clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of alternative medical treatment and diagnostic systems and disciplines by health professionals, patients, industry, and the public.

“(h) RESEARCH CENTERS.—

“(1) IN GENERAL.—The Director of the Center, after consultation with the advisory council for the Center, shall provide support for the development and operation of multipurpose centers to conduct research and other activities described in subsection (a)(1) with respect to complementary and alternative medical treatment and diagnostic systems, modalities, and disciplines.

“(2) REQUIREMENTS.—Each center assisted under paragraph (1) shall use the facilities of a single entity, or be formed from a consortium of cooperating entities, and shall meet such requirements as may be established by the Director of the Center. Each such center shall—

“(A) be established as an independent entity; or

“(B) be established within or in affiliation with an entity that conducts research or training described in subsection (a)(1).

“(3) DURATION OF SUPPORT.—Support of a center under paragraph (1) may be for a period not exceeding 5 years. Such period may

be extended for one or more additional periods not exceeding 5 years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director of the Center and if such group has recommended to the Director that such period should be extended.

“(i) BIENNIAL REPORT.—The Director of the Center shall prepare biennial reports on the activities carried out or to be carried out by the Center, and shall submit each such report to the Director of NIH for inclusion in the biennial report under section 403.

“(j) AVAILABILITY OF RESOURCES.—After consultation with the Director of the Center, the Director of NIH shall ensure that resources of the National Institutes of Health, including laboratory and clinical facilities, fellowships (including research training fellowship and junior and senior clinical fellowships), and other resources are sufficiently available to enable the Center to appropriately and effectively carry out its duties as described in subsection (a).

“(k) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this subpart, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1998 through 2002. Amounts appropriated under this subsection for fiscal year 1998 are available for obligation through September 30, 2000. Amounts appropriated under this subsection for fiscal year 1999 are available for obligation through September 30, 2000.

“SEC. 485D. OFFICE OF DIETARY SUPPLEMENTS.

“(a) IN GENERAL.—There is established within the Center an office to be known as the Office of Dietary Supplements (in this section referred to as the ‘Office’). The Office shall be headed by a director, who shall be appointed by the Director of the Center. The Director of the Center shall carry out the functions specified in this section acting through the Director of the Office.

“(b) DUTIES.—

“(1) IN GENERAL.—The Director of the Office shall—

“(A) expand the activities of the national research institutes with respect to the potential role of dietary supplements as a significant part of the efforts of the United States to improve health care; and

“(B) promote scientific study of the benefits of dietary supplements in maintaining health and preventing chronic disease and other health-related conditions.

“(2) CERTAIN DUTIES.—The Director of the Office shall—

“(A) conduct and coordinate scientific research within the National Institutes of Health relating to dietary supplements and the extent to which the use of dietary supplements can limit or reduce the risk of diseases such as heart disease, cancer, birth defects, osteoporosis, cataracts, or prostatism;

“(B) collect and compile the results of scientific research relating to dietary supplements, including scientific data from foreign sources or other offices of the Center;

“(C) serve as the principal advisor to the Secretary and to the Assistant Secretary for Health and provide advice to the Director of NIH, the Director of the Centers for Disease Control and Prevention, and the Commissioner of Food and Drugs on issues relating to dietary supplements including—

“(i) dietary intake regulations;

“(ii) the safety of dietary supplements;

“(iii) claims characterizing the relationship between dietary supplements and the prevention of disease or other health-related conditions;

“(iv) claims characterizing the relationship between dietary supplements and the maintenance of health; and

“(v) scientific issues arising in connection with the labeling and composition of dietary supplements;

“(D) compile a database of scientific research on dietary supplements and individual nutrients; and

“(E) coordinate funding relating to dietary supplements for the National Institutes of Health.

“(c) BIENNIAL REPORT.—The Director of the Office shall prepare biennial reports on the activities carried out or to be carried out by the Office, and shall submit each such report to the Director of the Center for inclusion in the biennial report under section 485C(i).

“(d) DEFINITION.—For purposes of this section, the term ‘dietary supplement’ has the meaning given such term in section 201(ff) of the Federal Food, Drug, and Cosmetic Act.”.

(b) SAVINGS PROVISIONS.—

(1) NATIONAL CENTER FOR COMPLEMENTARY AND ALTERNATIVE MEDICINE.—All officers and employees employed in the Office of Alternative Medicine on the day before the date of the enactment of this Act (pursuant to section 404E of the Public Health Service Act, as in effect on such day) are transferred to the National Center for Complementary and Alternative Medicine. Such transfer does not affect the status of any such officer or employee (except to the extent that the amendments made by subsection (a) affect the authority to make appointments to employment positions). All funds available on such day for such Office are transferred to such Center, and the transfer does not affect the availability of funds for the purposes for which the funds were appropriated (except that such purposes shall apply with respect to the Center to the same extent and in the same manner as the purposes applied with respect to the Office). All other legal rights and duties with respect to the Office are transferred to the Center, and continue in effect in accordance with their terms.

(2) OFFICE OF DIETARY SUPPLEMENTS.—With respect to the Office of Dietary Supplements established in section 485D of the Public Health Service Act (as added by subsection (a)), such establishment shall be construed to constitute a transfer of such Office to the National Center for Complementary and Alternative Medicine from the Office of the Director of the National Institutes of Health (in which the Office of Dietary Supplements was located pursuant to section 485C of the Public Health Service Act, as such section was in effect on the day before the date of the enactment of this Act). Such transfer does not affect the status of any individual as an officer or employee in the Office of Dietary Supplements (except to the extent that the amendments made by subsection (a) affect the authority to make appointments to employment positions), does not affect the availability of funds of the Office for the purposes for which the funds were appropriated, and does not affect any other rights or duties with respect to the Office.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Part A of title IV of the Public Health Service Act (42 U.S.C. 281 et seq.), as amended by subsection (a), is amended—

(1) in section 401(b)(2), by amending subparagraph (E) to read as follows:

“(E) The National Center for Complementary and Alternative Medicine.”; and

(2) in section 402, by redesignating subsections (g) through (k) as subsections (f) through (j), respectively.

THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

DeWINE AMENDMENT NO. 1194

(Ordered to lie on the table.)

Mr. DEWINE submitted an amendment intended to be proposed by him to amendment No. 1186 intended to be proposed by Mrs. HUTCHISON to the bill (H.R. 2107) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1998, and for other purposes; as follows:

At the end, insert the following:

(g)(1) In awarding or expending grant funds under this section, the Chairperson of the National Endowment for the Arts, the Secretary, and each State, territory, group, or institution that receives funds under this section shall ensure that priority is given to supporting projects, productions, workshops, or programs that serve underserved populations or children.

(2) In this section:

(A) The term “child” means an individual under the age of 19.

(B) The term “underserved population” means a population of individuals who have historically been outside the purview of arts and humanities programs due to a high incidence of income below the poverty line or to geographic isolation.

(C) The term “poverty line” means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved.

HUTCHINSON AMENDMENT NO. 1195

(Ordered to lie on the table.)

Mr. HUTCHINSON submitted an amendment intended to be proposed by him to the bill, H.R. 2107, supra; as follows:

On page 127, between lines 15 and 16, insert the following:

SEC. . MAN AND THE BIOSPHERE PROGRAM.

None of the funds appropriated or otherwise made available by this Act shall be made available for the United States Man and the Biosphere program or any related project.

HUTCHINSON AMENDMENT NO. 1196

Mr. HUTCHINSON proposed an amendment to the bill, H.R. 2107, supra; as follows:

On page 152, between lines 13 and 14, insert the following:

TITLE VII—AMERICAN HERITAGE RIVERS INITIATIVE

SEC. 701. AMERICAN HERITAGE RIVERS INITIATIVE.

(a) IN GENERAL.—During fiscal year 1998 and each fiscal year thereafter, the President and other officers of the executive branch may implement the American Heritage Rivers Initiative under Executive Order 13061 (62 Fed. Reg. 48445) only in accordance with this section.

(b) DESIGNATION BY CONGRESS.—

(1) NOMINATIONS.—The President, acting through the Chair of the Council on Environmental Quality shall submit to Congress nominations of the 10 rivers that are proposed for designation as American Heritage Rivers.

(2) PRIORITYZATION.—The nominations shall be subject to the prioritization process established by the Clean Water Act (42 U.S.C. 7401 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), and other applicable Federal law.

(3) CONSULTATION WITH PROPERTY OWNERS.—To ensure the protection of private property owners along a river proposed for nomination, all property owners holding title to land directly abutting river bank shall be consulted and asked to offer letters of support for or opposition to the nomination.

(3) DESIGNATION.—The American Heritage Rivers Initiative may be implemented only with respect to rivers that are designated as American Heritage Rivers by Act of Congress.

(c) DEFINITION OF RIVER COMMUNITY.—For the purposes of the American Heritage River Initiative, as used in Executive Order 13061, the term "river community" shall include all persons that own property, reside, or regularly conduct business within 10 miles of the river.

CAMPBELL AMENDMENT NO. 1197

Mr. CAMPBELL proposed an amendment to the bill, H.R. 2107, supra; as follows:

On page 52 beginning on line 16, strike all through page 54, line 22, and insert in lieu thereof the following:

SEC. 118. Any funds made available in this Act or any other Act for tribal priority allocations (hereinafter in this section "TPA") in excess of the funds expended for TPA in fiscal year 1997 (adjusted for fixed costs, internal transfers pursuant to other law, and proposed increases to formula driven programs not included in tribes' TPA base,) shall only be available for distribution—

(1) to each Tribe to the extent necessary to provide that Tribe the minimum level of funding recommended by the Joint/Tribal/BIA/DOI Task Force on Reorganization of the Bureau of Indian Affairs Report of 1994 (hereafter "the 1994 Report") not to exceed \$160,000 per Tribe; and

(2) to the extent funds remain, such funds will be allocated according to the recommendations of a Task Force comprised of two (2) representatives from each BIA area. These representatives shall be selected by the Secretary with the participation of the tribes following procedures similar to those used in establishing the Joint/Tribal/BIA/DOI Task Force on Reorganization of the Bureau of Indian Affairs. In determining the allocation of remaining funds, the Task Force shall consider the recommendations and principles contained in the 1994 Report. If the Task Force cannot agree on a distribution by January 31, 1998, the Secretary shall distribute the remaining funds based on the recommendations of a majority of Task Force members no later than February 28, 1998.

ABRAHAM AMENDMENTS NOS. 1198–1199

(Ordered to lie on the table.)

Mr. ABRAHAM submitted two amendments intended to be proposed by him to the bill, H.R. 2107, supra; as follows:

AMENDMENT No. 1198

On page 17, line 8, strike "\$167,694,000, to remain available until expended" and insert "\$201,048,000, to remain available until expended, of which \$8,000,000 shall be transferred to the Smithsonian Institution and made available for restoration of the Star Span-

gled Banner, \$8,000,000 shall be transferred to the National Endowment for the Humanities and made available for the preservation of papers of former Presidents of the United States, of which \$9,000,000 shall be available for the replacement of the wastewater treatment system at Mount Rushmore National Memorial, of which \$2,000,000 shall be available for the stabilization of the hospital wards, crematorium, and immigrant housing on islands 2 and 3 of Ellis Island, and of which \$5,000,000 shall be transferred to the Smithsonian Institution and made available for the preservation of manuscripts and original works of great American composers".

On page 96, line 16, strike "\$83,300,000" and insert "\$55,533,000".

On page 96, line 25, strike "\$16,760,000" and insert "\$11,173,000".

At the end of title III, insert the following:

SEC. . Notwithstanding any other provision of law, not more than \$10,044,000 of the funds appropriated for the National Endowment for the Arts under this Act may be available for private fundraising activities for the endowment.

AMENDMENT No. 1199

At the end of title III, insert the following:
SEC. . (a) Congress makes the following findings:

(1) The arts play an important part in American culture and should continue to be supported.

(2) The National Endowment for the Arts has been plagued by controversy by those questioning the use of tax dollars for certain projects and by artists who fear their work will be censored.

(3) The private funding for the arts has been increasing consistently since 1965 and the American people generously gave a record high \$10,960,000,000 in 1996.

(4) Private giving to the arts increased 40 percent during the same years that Federal funding for the arts decreased from \$170,000,000 to \$99,500,000.

(5) The National Endowment for the Arts contributes less than 5 percent of total Federal support for the arts and humanities.

(6) Local governments gave a total of \$650,000,000 in 1996 and State governments spent a total of \$250,000,000 in 1996 for the arts.

(7) The total receipts for performance arts events have increased and are quickly approaching the total receipts for spectator sports.

(8) One-third of direct National Endowment for the Arts grant funds go to 6 large cities. Those cities are New York, Boston, San Francisco, Chicago, Los Angeles, and Washington, D.C.

(9) One-fifth of direct National Endowment for the Arts grant funds go to multimillion dollar arts organizations.

(10) Americans volunteer approximately 2,600,000,000 hours for the arts a year, estimated to be worth \$25,600,000,000 annually.

(11) The average household contribution (from households that do contribute to the arts) was \$216 in 1996. This amount represents a 55 percent increase from 1993.

(12) Certain individuals feel there needs to be a national entity for the arts.

(b) It is the sense of the Senate that—

(1) the National Endowment for the Arts should continue to be phased out during 1998 and 1999;

(2) in 1998 and 1999, the National Endowment for the Arts should be allowed to use a portion of the funds that are appropriated for the endowment, for private fundraising efforts;

(3) there should be a private, nonprofit organization established, to be known as the

"American Foundation for the Arts", where generous Americans can contribute their funds to a national arts entity that promotes the arts throughout the United States without the intrusion of the Federal government; and

(4) additional tax incentives for charitable donations should be established, such as charitable tax deduction for nonitemizers, the elimination of the cap on charitable deductions, and specific tax credit for donations to the private, nonprofit organization described in paragraph (3).

MACK (AND GRAHAM) AMENDMENT NO. 1200

Mr. GORTON (for Mr. MACK, for himself and Mr. GRAHAM) proposed an amendment to the bill, H.R. 2107, supra; as follows:

On page 19, line 2, strike the colon and insert in lieu thereof of "": *Provided further*, That the Secretary may provide such funds to the State of Florida for acquisitions within Stormwater Treatment Area 1-E, including reimbursement for lands or water, or interests therein, within Stormwater Treatment Area 1-E acquired by the State of Florida prior to the enactment of this Act."

MURKOWSKI AMENDMENT NO. 1201

Mr. GORTON (for Mr. MURKOWSKI) proposed an amendment to the bill, H.R. 2107, supra; as follows:

SEC. . (a) PRIORITY OF BONDS.—Section 3 of Public Law 94-392 (90 Stat. 1193, 1195) is amended—

(1) by striking "priority for payment" and inserting "a parity lien with every other issue of bonds or other obligations issued for payment"; and

(2) by striking "in the order of the date of issue".

(b) APPLICATION.—The amendments made by subsection (a) shall apply to obligations issued on or after the date of enactment of this section.

(c) SHORT-TERM BORROWING.—Section 1 of Public Law 94-392 (90 Stat. 1193) is amended by adding the following new subsection at the end thereof:

"(d) The legislature of the government of the Virgin Islands may cause to be issued notes in anticipation of the collection of the taxes and revenues for the current fiscal year. Such notes shall mature and be paid within one year from the date they are issued. No extension of such notes shall be valid and no additional notes shall be issued under this section until all notes issued during a preceding year shall have been paid."

GORTON (AND BYRD) AMENDMENTS NOS. 1202–1203

Mr. GORTON (for himself and Mr. BYRD) proposed two amendments to the bill, H.R. 2107, supra; as follows:

AMENDMENT No. 1202

On page 6, line 20, strike "Any" and insert in lieu thereof "The Federal share of".

AMENDMENT No. 1203

On page 32, beginning with the colon on line 13, strike all thereafter through "funds" on line 18 and insert in lieu thereof the following: "": *Provided further*, That tribes may use tribal priority allocations funds for the replacement and repair of school facilities which are in compliance with 25 U.S.C. 2005(a) so long as such replacement or repair is approved by the Secretary and completed with non-Federal tribal and/or tribal priority allocations funds".

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing on the Federal agency energy management provisions of the Energy Policy Act of 1992, has been scheduled before the full Committee on Energy and Natural Resources.

The hearing will take place Thursday, September 25, 1997, at 9:30 a.m., in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

For further information, please call Karen Hunsicker, counsel to the committee, at (202) 224-3543 or Betty Nevitt, staff assistant at (202) 224-0765.

SUBCOMMITTEE ON WATER AND POWER

Mr. KYL. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources to receive testimony on various measures pending before the subcommittee. The measures are:

S. 725—To direct the Secretary of the Interior to convey the Collbran Reclamation Project to the Ute Water Conservancy District and the Collbran Conservancy District;

S. 777—To authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water supply system, and for other purposes;

H.R. 848—To extend the deadline under the Federal Power Act applicable to the construction of the AuSable hydroelectric project in New York, and for other purposes;

H.R. 1184—To extend the deadline under the Federal Power Act for the construction of the Bear Creek hydroelectric project in the State of Washington, and for other purposes; and

H.R. 1217—To extend the deadline under the Federal Power Act for the construction of a hydroelectric project in the State of Washington, and for other purposes;

The hearing will begin at 2 p.m. on Tuesday, October 7, 1997, in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

Persons interested in testifying or submitting material for the record should contact Betty Nevitt of the subcommittee staff at (202) 224-0765 or write to the Subcommittee on Water and Power, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, September 16, 1997, at 10 a.m. in open session, to consider the nominations of Gen. Michael E. Ryan, USAF, to be Chief of Staff, U.S. Air Force; Adm. Harold W. Gehman, Jr., USN, to be Commander in Chief, U.S. Atlantic Command; and Lt. Gen. Charles E. Wilhelm, USMC, to be commander in chief, U.S. Southern Command and for appointment to the grade of general.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, September 16, 1997, at 9:30 a.m. on tobacco advertising and youth.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. JEFFORDS. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee Special Investigation to meet on Tuesday, September 16, 1997, at 10 a.m. for a hearing on campaign financing issues.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on: Tuesday, September 16, 1997, at 4 p.m. to hold a closed conference on the fiscal year 1998 Intelligence Authorization bill; Thursday, September 18, 1997 at 10 a.m. to hold an open hearing on China; and Thursday, September 18, 1997 at 2:30 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON FINANCIAL SERVICES AND TECHNOLOGY

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Subcommittee on Financial Services and Technology of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, September 16, 1997, to conduct a hearing on financial instrument fraud.

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

ADDITIONAL STATEMENTS

INTERMODAL TRANSPORTATION ACT OF 1997

• Mr. LEVIN. Mr. President, tomorrow, the Senate Committee on Environment and Public Works will conduct a markup of S. 1173, the Intermodal Transportation Act of 1997. It is time that a bill be reported to the Senate for thorough and careful consideration, as the expiration of ISTEPA is only 2 weeks away. So far, we have very little information about the impact of this recently introduced bill. The committee's report to accompany the bill, and analyses from the U.S. Department of Transportation, should be very helpful to Senators in estimating the bill's merits. I look forward to reviewing that report in detail.

Some proponents of the bill say that States will be guaranteed 90 percent of their contributions into the highway trust fund. There were statements like this just before ISTEPA was enacted, and which never materialized, so my colleagues will understand if I reserve judgment. The committee, with the help of the Federal Highway Administration, will hopefully show us that that 90 percent is actual. For the moment however, the information available now should concern all donor States.

According to technical assistance provided by the U.S. Department of Transportation, it seems that paying for a 90 percent of contributions guarantee would cause the ITA bill to exceed the amount allotted in the 5-year budget agreement by approximately \$10.059 billion. Yet, committee staff have indicated that the bill is just within the budget targets. There seems to be a contradiction there somewhere.

	Fiscal years—					
	1998	1999	2000	2001	2002	2003
Budg. Auth. in Budget Agreement	24.695	23.196	23.701	24.198	24.711
Budg. Auth. to get 90% of Contrib	20.291	30.374	26.085	26.654	27.156	27.655
Difference	-4.404	+7.178	+2.384	+2.456	+2.445

According to general information provided thus far by the committee, estimating the State-by-State average return from ITA, Michigan would see about \$696 million annually over 6

years. However, according to Federal Highway Administration projected gas tax receipts, Michigan will contribute and would receive the following at a 90

percent guaranteed rate of return on contributions:

	Fiscal years—						Average
	1998	1999	2000	2001	2002	2003	
Proj. Contributions (millions)	795	1,198	1,027	1,049	1,066	1,087	1,037
Proj. Obligation Auth. (at 90% guarantee)	715	1,078	924	944	951	976	931

So, the average return to Michigan under a bill that provides a true guarantee of 90 percent of contributions would be about \$931 million. That is about \$230 million more annually than the committee's estimate. What's the explanation? It is not yet clear.

I would like to support a Transportation authorization bill that treats States fairly. Unfortunately, there is insufficient information available right now to make that assessment. I am concerned about what I have learned about the bill. I strongly encourage the committee or the Department to provide Senators, as soon as possible, with charts showing the likely apportionments and allocations that each State can expect for each year for the life of the bill, including information on the actual average return that each State can expect in terms of total obligation authority, assuming USDOT's gas tax receipts projections and the balanced budget agreement levels for transportation.

Mr. President, though I am generally pleased that the committee is proposing to modernize the factors in the basic allocation formula to do away with postal routes and other obsolete factors, I was dismayed to learn that S. 1173 would add a convoluted and highly suspect payment to States that seem to receive special treatment. I am referring to the ISTEAs transition payments. I strongly urge the committee members to strike this unnecessary and unfair provision during markup.

There are many questions that need to be answered about that provision. For instance, are these ISTEAs transition payments subject to an obligation limitation? Can they grow over time? Shouldn't they phase out if they are truly transition payments? Shouldn't the fiscal year 1997 basis used in calculating these transition payments be the authorized amount and not as amended in a supplemental appropriations bill?

Mr. President, I would like to support a fair bill to reauthorize our Nation's transportation systems. This bill holds some promise, but there are too many unanswered questions at this point to make a final conclusion.●

TRIBUTE TO THE PROCTOR MAPLE RESEARCH CENTER

● Mr. JEFFORDS. Mr. President, I rise today to pay tribute to the Proctor Maple Research Center in Underhill Center, VT on the occasion of its 50th anniversary. It is the oldest maple research facility in the country with a mission that embraces research, demonstration, and education.

The center employs basic, as well as, applied research in studying various aspects of the sugar maple tree, its

products and methods to improve syrup production. In addition, the facility monitors long-term meteorological as well as air pollution data in close cooperation with a number of State and Federal agencies. Operations on site demonstrate the latest technologies from which the public and industry can learn the best methods available for manufacturing. The center's state-of-the-art laboratory promotes crucial communication among researchers.

Over the years, research conducted at the center has provided new techniques for efficient sap collection and evaporation systems. It has, and will continue to play an integral role in the success of our region's maple sugar industry so very critical to the local economy.

I am sure that the impact of work completed at the center is realized not only in New England, but across the country, as many have had the pleasure of tasting the fruits of their labor. As a Vermonter and one of millions of Americans that enjoys maple sugar products each year, I would like to extend my best wishes to the Proctor Maple Research Center for many more years of continued success.●

FAREWELL TO HIS EXCELLENCE RAUL ENRIQUE GRANILLO OCAMPO, DEPARTING ARGENTINE AMBASSADOR TO THE UNITED STATES

● Mr. DODD. Mr. President, I rise today in order to pay a special tribute to Ambassador Raul E. Granillo Ocampo, until recently the Government of Argentina's Ambassador to the United States. Ambassador Ocampo left Washington last month to return to Buenos Aires and another challenging assignment from President Menem.

During his nearly 4 years in Washington, Ambassador Ocampo did a superb job representing his country's interests. He understood well what it takes to be an effective diplomat in Washington. Not only did he develop close working relationships with the State Department and the White House on matters of mutual concern to the United States and Argentina, he also made a special effort to establish close ties with the United States Congress.

The United States-Argentine relationship has never been better. I believe that Ambassador Ocampo can take a good deal of the credit for this. Certainly issues between our two countries would arise from time to time. That is only natural. But, thanks to Ambassador Ocampo's diplomatic skills, such issues were never allowed to undermine our fundamental friendship and mutual respect.

Those of us who had the privilege of knowing Ambassador Ocampo, quickly

recognized and appreciated his special talents. So too did President Menem. Hence, it came as no real surprise when in July, President Menem announced the appointment of Ambassador Ocampo to the post of Minister of Justice—a very important position in his Cabinet. That is why Ambassador Ocampo has returned to Argentina.

Knowing something about Ambassador Ocampo's background, it makes perfect sense to me that he would be selected to become Minister of Justice. Not only does he have a law degree from the National University of La Plata, a master's degree in Comparative International Law from Southern Methodist University, Dallas, TX; and a doctorate in law from the National University of Buenos Aires. He has also practiced law extensively, served as a judge on the Superior Court of the Province of La Rioja, and as the president, or chief judge, for that court for 2 years.

I for one am only grateful that I had the opportunity to get to know Ambassador Ocampo personally during his tenure in Washington. Thanks to him, I have a much better understanding and appreciation of the complexities of the relations between our two countries and of importance of working to maintain those close ties.

Before the August recess, I was able to personally bid farewell to Ambassador Ocampo and his charming wife, Chini. However, I also wanted to say a more formal farewell to him as well. I particularly wanted him to know that we in the U.S. Senate have been enriched by his presence in Washington over these last number of years.

Finally, Mr. President, it is only fitting that as we say goodbye to an old friend, we also prepare to welcome a new one. President Menem has chosen as Ambassador Ocampo's replacement, His Excellency Diego Ramiro Guelar, who just recently presented his credentials to President Clinton.

Although I have not yet had the opportunity to meet Ambassador Guelar, I understand that he is both an experienced diplomat and an experienced politician—he has held a number of ambassadorial posts and has been a Representative in the Argentine Congress. I look forward to meeting Ambassador Guelar in the very near future, and to working with him as I did with his predecessor.●

INTEL

● Mr. DOMENICI. Mr. President, Intel is the epitome of a good corporate citizen. During the August recess I was able to view the exceptional good deed performed by Intel. Intel has a large semiconductor manufacturing plant located in Rio Rancho, NM. It is a big

employer and it provides good paying jobs. Rio Rancho didn't have a high school so Intel decided to build the community one. Some 1,900 students will attend this beautiful new 30 million-dollar facility. This is exciting for the community because the high schoolers will no longer have to leave Rio Rancho to attend high school. It is a special kind of home coming.

New Mexico is lucky to have Intel as a member of its community. Rio Rancho would have eventually built a high school, but Intel made it happen sooner.

Also of significance is what will be going on inside this high school. Intel has been very active in working with voc-ed programs so that students are trained for the jobs available at Intel. It starts in the high schools and continues in the technical schools, community colleges, and universities. As job requirements change at Intel, the company has a rigorous job training program that makes a prime example of what lifelong learning is all about.●

GROWING SUPPORT FOR AN OUTSIDE AUTHORITY TO HANDLE Y2K

● Mr. MOYNIHAN. Mr. President, there appears to be some movement on my idea to appoint a commission—which will act more like a special task force—to oversee the Federal Government's handling of the year 2000 problem. In this morning's Federal Page of the Washington Post, a story entitled "Year 2000 Report Flunks 3 Agencies" reports that "three house Republicans called on President Clinton to appoint a special aide to tackle the computer problem." In July 1996, I wrote the President and proposed the creation of just such a "Y2K czar." But the administration is still confident that the Office of Management and Budget can handle the job. Like my House counterparts, I fear OMB may not have the time or the resources to handle this issue.

In 1997, fearing the private sector's lagging awareness, I realized that perhaps a task force could increase awareness in the private sector while ensuring compliance in the public sector.

Thus I introduced a first day bill, S. 22, to address this matter through a special task force. S. 22 is cosponsored by 16 Senators and has been endorsed by the New York Stock Exchange [NYSE]. The enormity of this problem demands a task force of experts to ensure compliance. I hope my colleagues agree.

I ask that "'Year 2000' Report Flunks 3 Agencies" from today's Washington Post be printed in the RECORD.

The material follows:

[From the Washington Post, Sept. 16, 1997]

"YEAR 2000" REPORT FLUNKS 3 AGENCIES—LAWMAKERS URGE SPECIAL AIDE TO HANDLE LOOMING COMPUTER PROBLEM

(By Stephen Barr)

A congressional report card flunked three federal agencies and faulted several others

yesterday for moving too slowly on fixing potential "year 2000" computer glitches.

Rep. Stephen Horn (R-Calif), who oversees information technology issues in the House, issued the report card at a news briefing, where he was joined by Reps. Thomas M. Davis III (R-Va.) and Constance A. Morella (R-Md.). The three House Republicans called on President Clinton to appoint a special aide to tackle the computer problem.

"Most agencies are behind schedule," Horn said. "The problem, of course, is that we do not know which programs will fail, what problems their failures will create, an how disastrous will be the consequences."

Most large computer systems use a two-digit dating system that assumes 1 and 9 are the first two digits of the year. Without specialized reprogramming, the system will think the year 2000—or 00—is 1900, a glitch that could cause most to go haywire.

If government systems are not fixed, malfunctions could jeopardize the tax-processing system, payments to veterans with service-connected disabilities, student loan repayments and perhaps even air traffic control.

Horn issued his grades on the same day the Office of Management and Budget delivered to report to Congress that reflected a more aggressive stance by OMB is dealing with the problem. The OMB report said agencies estimate they will spend \$3.8 billion fixing the year 2000 problem.

OMB put four agencies on notice that they will not be allowed to buy new computer and other information technology systems in fiscal 1999 until they have fixed critical computer systems. The funding restriction, however, will be lifted if agencies can justify the need for new equipment or show sufficient progress on the year 2000 problem.

"I have a high degree of confidence there will not be adverse economic consequences flowing from this decision," said Sally Katzen, OMB's administrator for information and regulatory affairs. But, she added, OMB's increased scrutiny will "reestablish priorities for these agencies."

The agencies on OMB's troubled list are the departments of Agriculture, Transportation and Education and the Agency for International Development. On his report card, Horn flunked Education, Transportation and AID and gave Agriculture a D-minus.

Agency officials expressed confidence yesterday that they would make their year 2000 fixes before the Jan. 1, 2000, deadline. The pointed out that the OMB report and Horn's grades represented an August snapshot that does not reflect recent decisions to repair or replace computers.

At the Agriculture Department, Secretary Dan Glickman has issued a five-point plan to address year 2000 problems, officials said. An AID official said the agency has narrowed its problem to 28 date fields in a software system that can be "readily resolved." An Education spokesman said the department "hopes to have most if not all the problems resolved in the coming year." And at Transportation, a spokesman said DOT plans to make many of its fixes by early 1999.

Yesterday, Horn, Davis and Morella urged Clinton to designate a White House official to lead the government effort to fix year 2000 computer bugs. Horn and Davis praised OMB Director Franklin D. Raines but said pressing budget issues rob him of the necessary time to oversee the computer situation. Morella said Katzen, who oversees regulatory affairs across the government, has done a "good job" on year 2000 policy but contended "they need someone for whom this is a full-time job."

Katzen said she "very respectfully disagreed that a new bureaucracy is the way to go. . . . This is an issue in which the agen-

cies themselves have to do the work and it is to them that we must look to be responsible and accountable."

REPORT CARD

[Federal agencies were graded on their progress toward addressing year 2000 computer problems—and given a place to have the report cards signed]

Agency	Grade
Social Security Administration	A-
General Services Administration	B
National Science Foundation	B
Small Business Administration	B
Department of Health and Human Services	B-
Environmental Protection Agency	C
Federal Emergency Management Agency	C
Department of Housing and Urban Development	C
Department of Interior	C
Department of Labor	C
Department of State	C
Department of Veterans Affairs	C
Department of Defense	C-
Department of Commerce	D
Department of Energy	D
Department of Justice	D
Nuclear Regulatory Commission	D
Office of Personnel Management	D
Department of Agriculture	D-
Department of Treasury	D-
NASA	D-
Agency for International Development	F
Department of Education	F
Department of Transportation	F

Source: House subcommittee on government management, information and technology.●

UNANIMOUS-CONSENT AGREEMENT—CONFERENCE REPORT TO ACCOMPANY H.R. 2016

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that at 10:45 a.m. on Wednesday, the Chair lay before the Senate the conference report to accompany H.R. 2016, the military construction appropriations. I further ask unanimous consent that the reading be waived and there be 5 minutes of debate each for Senators BURNS, MURRAY, and MCCAIN and, following the conclusion of that debate, the Senate proceed to a vote on the adoption of the conference report, with no intervening action or debate.

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

THE CALENDAR

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of the following bills, en bloc: Calendar No. 146, S. 308; Calendar No. 150, S. 931; Calendar No. 151, S. 965; Calendar No. 152, H.R. 63; that any committee amendments be agreed to; that the bills be read the third time, and passed, any amendments to the titles be agreed to, the motions to reconsider be laid upon the table, statements relating to the bills appear at this point in the RECORD with the above occurring, en bloc.

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

GRAZING USE STUDY ACT

The Senate proceeded to consider the bill (S. 308) to require the Secretary of the Interior to conduct a study concerning grazing use of certain land within and adjacent to Grand Teton National Park, WY, and to extend temporarily certain grazing privileges,

which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. FINDINGS.

Congress finds that—

(1) open space near Grand Teton National Park continues to decline;

(2) as the population continues to grow in Teton County, Wyoming, undeveloped land near the park becomes more scarce;

(3) the loss of open space around Grand Teton National Park has negative impacts on wildlife migration routes in the area and on visitors to the park, and its repercussions can be felt throughout the entire region;

(4) a few ranches make up Teton Valley's remaining open space, and the ranches depend on grazing in Grand Teton National Park for summer range to maintain operations;

(5) the Act that created Grand Teton National Park allowed several permittees to continue livestock grazing in the park for the life of a designated heir in the family;

(6) some of the last remaining heirs have died, and as a result of the possible termination of ranching, the open space around the park may likely be subdivided and developed;

(7) in order to develop the best solution to protect open space immediately adjacent to Grand Teton National Park, the National Park Service should conduct a study of grazing in the area and its impact on open space in the region; and

(8) the study should develop workable solutions that are fiscally responsible and acceptable to the National Park Service, the public, local government, and landowners in the area.

SEC. 2. STUDY OF GRAZING USE AND OPEN SPACE.

(a) *IN GENERAL.*—The Secretary of the Interior (hereinafter referred to as the "Secretary"), shall conduct a study concerning grazing use and open space in Grand Teton National Park, Wyoming (hereinafter referred to as the "park"), and associated use of certain agricultural and ranch lands within and adjacent to the park, including—

(1) base land having appurtenant grazing privileges within the park, remaining after January 1, 1990, under the Act entitled "An Act to establish a new Grand Teton National Park in the State of Wyoming, and for other purposes", approved September 14, 1950 (16 U.S.C. 406-1 et seq.); and

(2) any ranch and agricultural land adjacent to the park, the use and disposition of which may affect accomplishment of the purposes of the park's enabling Act.

(b) *PURPOSE.*—The study shall—

(1) assess the significance of the ranching use and pastoral character (including open vistas, wildlife habitat, and other public benefits) of the land;

(2) assess the significance of that use and character to the purposes for which the park was established, and identify any need for preservation of, and practicable means of preserving, the land that is necessary to protect that use and character; and

(3) recommend a variety of economically feasible and viable tools and techniques to retain the pastoral qualities of the area, and estimate the costs of implementing any recommendations made for the preservation of the land.

(c) *PARTICIPATION.*—In conducting the study, the Secretary shall consult with the Governor of the State of Wyoming, the Teton County Commissioners, the Secretary of Agriculture, affected landowners, and other interested members of the public.

(d) *REPORT.*—Not later than 3 years from the date funding is made available, the Secretary shall submit a report to Congress that contains the findings of the study under subsection (a) and makes recommendations to Congress regarding action that may be taken with respect to the land described in subsection (a).

SEC. 3. EXTENSION OF GRAZING PRIVILEGES.

(a) *IN GENERAL.*—Subject to subsection (b), the Secretary shall reinstate and extend for the duration of the study described in section 2(a) and until such time as 6 months after the recommendations of the study are submitted, the grazing privileges described in section 2(a)(1), under the same terms and conditions as were in effect prior to the expiration of the privileges.

(b) *EFFECT OF CHANGE IN LAND USE.*—If, during the period of the study or until 6 months after the recommendations of the study are submitted, any portion of the land described in section 2(a)(1) is disposed of in a manner that would result in the land no longer being used for ranching or other agricultural purposes, the Secretary shall cancel the extension described in subsection (a).

The amendment was agreed to.

The bill, as amended, 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 require the Secretary of the Interior to conduct a study concerning grazing use and open space of certain land within and adjacent to Grand Teton National Park, Wyoming, and to extend temporarily certain grazing privileges."

MARJORY STONEMAN DOUGLAS WILDERNESS AND ERNEST F. COE VISITOR CENTER DESIGNATION ACT

The bill (S. 931) to designate the Marjory Stoneman Douglas Wilderness and the Ernest F. Coe Visitor Center, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 931

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 "Marjory Stoneman Douglas Wilderness and Ernest F. Coe Visitor Center Designation Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) *FINDINGS.*—Congress finds that—

(1)(A) Marjory Stoneman Douglas, through her book, "The Everglades: River of Grass" (published in 1947), defined the Everglades for the people of the United States and the world;

(B) Mrs. Douglas' book was the first to stimulate widespread understanding of the Everglades ecosystem and ultimately served to awaken the desire of the people of the United States to restore the ecosystem's health;

(C) in her 107th year, Mrs. Douglas is the sole surviving member of the original group of people who devoted decades of selfless effort to establish the Everglades National Park;

(D) when the water supply and ecology of the Everglades, both within and outside the park, became threatened by drainage and development, Mrs. Douglas dedicated the balance of her life to the defense of the Everglades through extraordinary personal effort and by inspiring countless other people to take action;

(E) for these and many other accomplishments, the President awarded Mrs. Douglas the Medal of Freedom on Earth Day, 1994; and

(2)(A) Ernest F. Coe (1886-1951) was a leader in the creation of Everglades National Park;

(B) Mr. Coe organized the Tropic Everglades National Park Association in 1928 and

was widely regarded as the father of Everglades National Park;

(C) as a landscape architect, Mr. Coe's vision for the park recognized the need to protect south Florida's diverse wildlife and habitats for future generations;

(D) Mr. Coe's original park proposal included lands and waters subsequently protected within the Everglades National Park, the Big Cypress National Preserve, and the Florida Keys National Marine Sanctuary; and

(E)(i) Mr. Coe's leadership, selfless devotion, and commitment to achieving his vision culminated in the authorization of the Everglades National Park by Congress in 1934;

(ii) after authorization of the park, Mr. Coe fought tirelessly and lobbied strenuously for establishment of the park, finally realizing his dream in 1947; and

(iii) Mr. Coe accomplished much of the work described in this paragraph at his own expense, which dramatically demonstrated his commitment to establishment of Everglades National Park.

(b) *PURPOSE.*—It is the purpose of this Act to commemorate the vision, leadership, and enduring contributions of Marjory Stoneman Douglas and Ernest F. Coe to the protection of the Everglades and the establishment of Everglades National Park.

SEC. 3. MARJORY STONEMAN DOUGLAS WILDERNESS.

(a) *REDESIGNATION.*—Section 401(3) of the National Parks and Recreation Act of 1978 (Public Law 95-625; 92 Stat. 3490; 16 U.S.C. 1132 note) is amended by striking "to be known as the Everglades Wilderness" and inserting "to be known as the Marjory Stoneman Douglas Wilderness, to commemorate the vision and leadership shown by Mrs. Douglas in the protection of the Everglades and the establishment of the Everglades National Park".

(b) *NOTICE OF REDESIGNATION.*—The Secretary of the Interior shall provide such notification of the redesignation made by the amendment made by subsection (a) by signs, materials, maps, markers, interpretive programs, and other means (including changes in signs, materials, maps, and markers in existence before the date of enactment of this Act) as will adequately inform the public of the redesignation of the wilderness area and the reasons for the redesignation.

(c) *REFERENCES.*—Any reference in any law, regulation, document, record, map, or other paper of the United States to the "Everglades Wilderness" shall be deemed to be a reference to the "Marjory Stoneman Douglas Wilderness".

SEC. 4. ERNEST F. COE VISITOR CENTER.

(a) *DESIGNATION.*—Section 103 of the Everglades National Park Protection and Expansion Act of 1989 (16 U.S.C. 410r-7) is amended by adding at the end the following new subsection:

(f) *ERNEST F. COE VISITOR CENTER.*—On completion of construction of the main visitor center facility at the headquarters of Everglades National Park, the Secretary shall designate the visitor center facility as the "Ernest F. Coe Visitor Center", to commemorate the vision and leadership shown by Mr. Coe in the establishment and protection of Everglades National Park."

SEC. 5. CONFORMING AND TECHNICAL AMENDMENTS.

Section 103 of the Everglades National Park Protection and Expansion Act of 1989 (16 U.S.C. 410r-7) is amended—

(1) in subsection (c)(2), by striking "personally-owned" and inserting "personally-owned"; and

(2) in subsection (e), by striking "VISITOR CENTER" and inserting "MARJORY STONEMAN DOUGLAS VISITOR CENTER".

AMENDING TITLE II OF THE
HYDROGEN FUTURE ACT OF 1996

The bill (S. 965) to amend title II of the Hydrogen Future Act of 1996 to extend an authorization contained therein, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 965

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.

Section 202 of the Hydrogen Future Act of 1996 (Public Law 104-271) is amended by striking "1997 and 1998, to remain available until September 30, 1999" and inserting "1998, 1999, 2000 and 2001, to remain available until September 30, 2002".

TRINITY LAKE DESIGNATION ACT

The bill (H.R. 63) to designate the reservoir created by Trinity Dam in the Central Valley project, California, as "Trinity Lake," was considered, ordered to a third reading, read the third time, and passed.

COMMENDING DR. HANS BLIX AS DIRECTOR GENERAL OF THE INTERNATIONAL ATOMIC ENERGY AGENCY

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 139, Senate Concurrent Resolution 45.

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

The clerk will report.

The bill clerk read as follows:

A concurrent resolution (S. Con. Res. 45) commending Dr. Hans Blix for his distinguished service as Director General of the International Atomic Energy Agency on the occasion of his retirement.

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

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

Mr. KEMPTHORNE. Mr. President, I ask that the resolution and preamble be agreed to, en bloc, and the motion to reconsider be laid upon the table, and that any statements relating to the concurrent resolution be placed in the RECORD at the appropriate place.

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

The concurrent resolution (S. Con. Res. 45) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, is as follows:

S. CON. RES. 45

Whereas Dr. Hans Blix is nearing the completion of 16 years of distinguished service as Director General of the International Atomic Energy Agency and is retiring from that position;

Whereas Director General Blix has pursued the fundamental safeguards and nuclear cooperation objectives of the International Atomic Energy Agency with admirable skill and professional dedication; and

Whereas Director General Blix has earned international acclaim for his contributions to world peace and security: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress, on behalf of the people of the United States—

(1) commends Dr. Hans Blix for his untiring efforts on behalf of world peace and development as the Director General of the International Atomic Energy Agency; and

(2) wishes Dr. Blix a happy and fulfilling future.

**EXPORT-IMPORT BANK
REAUTHORIZATION ACT OF 1997**

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 156, Senate bill 1026.

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

The clerk will report.

The bill clerk read as follows:

A bill (S. 1026) to reauthorize the Export-Import Bank of the United States.

The Senate proceeded to consider the bill (S. 1026) to reauthorize the Export-Import Bank of the United States, which had been report from the Committee on Banking, Housing, and Urban Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Export-Import Bank Reauthorization Act of 1997".

SEC. 2. EXTENSION OF AUTHORITY.

Section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) is amended by striking "1997" and inserting "2001".

SEC. 3. TIED AID CREDIT FUND AUTHORITY.

(a) Section 10(c)(2) of the Export-Import Bank Act of 1945 (12 U.S.C. 635i-3(c)(2)) is amended by striking "through" and all that follows through "1997".

(b) Section 10(e) of such Act (12 U.S.C. 635i-3(3)) is amended by striking the first sentence and inserting the following: "There are authorized to be appropriated to the Fund such sums as may be necessary to carry out the purposes of this section."

SEC. 4. EXTENSION OF AUTHORITY TO PROVIDE FINANCING FOR THE EXPORT OF NONLETHAL DEFENSE ARTICLES OR SERVICES THE PRIMARY END USE OF WHICH WILL BE FOR CIVILIAN PURPOSES.

Section 1(c) of Public Law 103-428 (12 U.S.C. 635 note; 108 Stat. 4376) is amended by striking "1997" and inserting "2001".

SEC. 5. OUTREACH TO COMPANIES.

Section 2(b)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)) is amended by adding at the end the following:

"(1) The Chairman of the Bank shall undertake efforts to enhance the Bank's capacity to provide information about the Bank's programs to small and rural companies which have not previously participated in the Bank's programs. Not later than 1 year after the date of the enactment of this subparagraph, the Chairman of the Bank shall submit to Congress a report on the activities undertaken pursuant to this subparagraph."

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

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

Mr. KEMPTHORNE. I ask unanimous consent that the committee substitute

be agreed to, the bill be considered read a third time, and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the RECORD.

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

The committee substitute was agreed to.

The bill (S. 1026), as amended, was read the third time, and passed.

JOINT REFERRAL OF NOMINATION

Mr. KEMPTHORNE. Mr. President, as in executive session, I ask unanimous consent that the nomination of David L. Aaron, of New York, to be Undersecretary of Commerce for International Trade, received on September 12, 1997, be jointly referred to the Committee on Finance and the Committee on Banking, Housing, and Urban Affairs.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on the Executive Calendar: No. 136, No. 202, No. 224. I further ask unanimous consent that the nominations be confirmed, the motion to reconsider be laid upon the table, any statements relating to the nominations appear at this point in the RECORD, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations, considered and agreed to en bloc, are as follows:

DEPARTMENT OF JUSTICE

John D. Trasvina, of California, to be Special Counsel for Immigration-Related Unfair Employment Practices for a term of four years.

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

Richard Thomas White, of Michigan, to be a Member of the Foreign Claims Settlement Commission of the United States for a term expiring September 30, 1999.

DEPARTMENT OF STATE

Stephen R. Sestanovich, of the District of Columbia, as Ambassador at Large and Special Adviser to the Secretary of State for the New Independent States.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

**ORDERS FOR WEDNESDAY,
SEPTEMBER 17, 1997**

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent that when the

Senate completes its business today it stand in adjournment until the hour of 9:45 a.m. on Wednesday, September 17. I further ask that on Wednesday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate immediately resume consideration of H.R. 2107, the Interior appropriations bill.

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

PROGRAM

Mr. KEMPTHORNE. Mr. President, tomorrow the Senate will resume consideration of H.R. 2107, and at that point we hope Senator ENZI will be able to offer an amendment on Indian gaming. According to the previous order, at 10:45 a.m., the Senate will begin consideration of the MilCon appropriations conference report. Also, as under the order, a vote will occur at approximately 11 a.m., on the MilCon con-

ference report. Following disposition of that report, the Senate will resume consideration of the Interior appropriations bill with the intention of concluding debate on Wednesday. Therefore, Senators should anticipate numerous votes on Wednesday. As always, Members will be contacted when these votes are ordered.

ADJOURNMENT UNTIL 9:45 A.M.
TOMORROW

Mr. KEMPTHORNE. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:14 p.m., adjourned until Wednesday, September 17, 1997, at 9:45 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 16, 1997:

DEPARTMENT OF STATE

STEPHEN R. SESTANOVICH, OF THE DISTRICT OF COLUMBIA, AS AMBASSADOR AT LARGE AND SPECIAL ADVISER TO THE SECRETARY OF STATE FOR THE NEW INDEPENDENT STATES.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

DEPARTMENT OF JUSTICE

JOHN D. TRASVINA, OF CALIFORNIA, TO BE SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES FOR A TERM OF 4 YEARS.

FOREIGN CLAIMS SETTLEMENT COMMISSION OF
THE UNITED STATES

RICHARD THOMAS WHITE, OF MICHIGAN, TO BE A MEMBER OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES FOR A TERM EXPIRING SEPTEMBER 30, 1999.

DEPARTMENT OF DEFENSE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS CHAIRMAN OF THE JOINT CHIEFS OF STAFF AND APPOINTMENT TO THE GRADE INDICATED UNDER PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 152:

To be general

GEN. HENRY H. SHELTON, 0000.